

Appendix B



**Conclusions from consultation on the draft analysis of
wholesale markets for local access provided at a fixed location
and central access provided at a fixed location for mass-market
products**

(Markets 3a/2016 and 3b/2016)

Case no. 2022020045

5 April 2024

Table of Contents

INTRODUCTION	5
GENERAL COMMENTS.....	7
<i>Ljósleiðarinn</i>	7
<i>Míla</i>	9
<i>Nova</i>	15
<i>The Icelandic Competition Authority (ICA).....</i>	<i>16</i>
<i>Síminn</i>	18
<i>Tengir</i>	23
1 INTRODUCTION TO THE PRELIMINARY DRAFT	25
1.1 GENERAL.....	25
1.2 LEGISLATION AND OTHER LEGAL PROVISIONS RELATING TO ELECTRONIC COMMUNICATIONS.....	25
1.3 EXECUTION OF MARKET ANALYSES BY THE ECOI	25
2 DEFINITION OF THE RELEVANT SERVICE MARKETS	26
2.1 GENERAL INFORMATION ABOUT DEFINITION OF SERVICE MARKETS	26
2.1.1 <i>Ljósleiðarinn</i>	26
2.2 DEFINITION OF THE RELEVANT MARKETS ACCORDING TO ESA RECOMMENDATIONS AND GUIDELINES	26
3 COMPETITIVE CONDITIONS ON THE RETAIL MARKET FOR FIXED ACCESS AND BROADBAND SERVICES .27	
3.1 GENERAL.....	27
3.1.1 <i>Míla</i>	27
3.1.2 <i>Tengir</i>	30
3.2 ASSESSMENT OF THE COMPETITIVE POSITION IN THE RELATED RETAIL MARKET FOR BROADBAND ACCESS (INTERNET SERVICE) 32	
3.2.1 <i>General</i>	32
3.2.1.1 <i>Ljósleiðarinn</i>	32
3.2.1.2 <i>Míla</i>	33
3.2.1.3 <i>Nova</i>	38
3.2.2 <i>Substitutability between copper and fibre-optics</i>	39
3.2.2.1 <i>Ljósleiðarinn</i>	39
3.2.2.2 <i>Míla</i>	40
3.2.3 <i>Mobile network substitutability</i>	43
3.2.3.1 <i>Ljósleiðarinn</i>	43
3.2.3.2 <i>Míla</i>	50
4 DEFINITION OF WHOLESALE MARKETS	52
4.1 GENERAL.....	52
4.1.1.1 <i>Ljósleiðarinn</i>	52
4.1.1.2 <i>Nova</i>	56
4.1.1.3 <i>Tengir</i>	57
4.2 ASSESSMENT OF VARIOUS ACCESS TECHNOLOGY FOR THE WHOLESALE MARKET FOR LOCAL ACCESS (MARKET 3A)	58
4.2.1 <i>General</i>	58
4.2.1.1 <i>Ljósleiðarinn</i>	58
4.2.1.2 <i>Míla</i>	59
4.2.1.3 <i>Tengir</i>	60
4.2.2 <i>Substitutability between copper and fibre-optic connections on Market 3a</i>	60
4.2.2.1 <i>Ljósleiðarinn</i>	60
4.2.2.2 <i>Míla</i>	62
4.3 ASSESSMENT OF VARIOUS ACCESS TECHNOLOGY FOR THE WHOLESALE MARKET FOR CENTRAL ACCESS (MARKET 3B).....	63
4.3.1 <i>General</i>	63

4.3.1.1	Ljósleiðarinn.....	63
4.3.1.2	Míla.....	65
4.3.1.3	Nova.....	67
4.3.1.4	Tengir.....	68
4.3.2	<i>Substitutability between copper and fibre-optic connections.....</i>	69
4.3.2.1	Míla.....	69
4.3.3	<i>Substitutability with mobile networks on Market 3b.....</i>	71
4.3.3.1	Ljósleiðarinn.....	71
4.3.3.2	Míla.....	76
4.3.3.3	Nova.....	77
5	GEOGRAPHICAL DEFINITION OF MARKETS	80
5.1	REGULATORY FRAMEWORK AND GUIDELINES REGARDING GEOGRAPHICAL ANALYSIS, ECOI'S MARKET ANALYSIS ACCORDING TO DECISION NO. 5/2021 AND FOREIGN PRECEDENTS	80
5.2	JUSTIFICATION FOR THE NEED FOR DETAILED GEOGRAPHICAL ANALYSIS	80
5.2.1	<i>Míla.....</i>	80
5.3	SELECTION OF BASIC GEOGRAPHICAL UNITS TO SERVE AS A STARTING POINT FOR THE GEOGRAPHICAL ANALYSIS	82
5.3.1	<i>Nova.....</i>	82
5.3.2	<i>Tengir.....</i>	83
5.4	GEOGRAPHICAL ANALYSIS OF THE RELATED RETAIL MARKET BY MUNICIPALITY	84
5.4.1	<i>Ljósleiðarinn.....</i>	84
5.4.2	<i>Míla.....</i>	86
5.4.3	<i>Tengir.....</i>	89
5.5	GEOGRAPHICAL DEFINITION OF MARKET 3A	90
5.5.1	<i>Ljósleiðarinn.....</i>	90
5.5.2	<i>Míla.....</i>	135
5.5.3	<i>Tengir.....</i>	143
5.6	GEOGRAPHICAL DEFINITION OF MARKET 3B.....	144
5.6.1	<i>Míla.....</i>	144
6	ASSESSMENT OF SIGNIFICANT MARKET POWER ON MARKET 3A AND 3B	149
6.1	GENERAL.....	149
6.1.1	<i>Ljósleiðarinn.....</i>	149
6.1.2	<i>Míla.....</i>	165
6.1.3	<i>Nova.....</i>	188
6.1.4	<i>Tengir.....</i>	190
6.2	ASSESSMENT OF SMP ON MARKET 3A.....	195
6.2.1	<i>Ljósleiðarinn.....</i>	195
6.2.2	<i>Míla.....</i>	205
6.2.3	<i>Tengir.....</i>	228
6.3	ASSESSMENT OF SMP IN MARKET 3B	235
6.3.1	<i>Míla.....</i>	235
6.3.2	<i>Tengir.....</i>	247
7	COMPETITION PROBLEMS, WHOLESALE-ONLY UNDERTAKINGS AND GENERAL INFORMATION REGARDING IMPOSITION OF OBLIGATIONS	250
7.1	GENERAL INFORMATION ABOUT OBLIGATIONS.....	250
7.2	IMPOSITION OF OBLIGATIONS UNDER THE ELECTRONIC COMMUNICATIONS ACT AND REGULATION ON MARKET ANALYSIS 250	250
7.2.1	<i>Tengir.....</i>	250
7.3	DETERMINING WHETHER MÍLA, LJÓSLEIÐARINN, TENGIR AND AUSTURLÍÓS MEET THE LEGAL REQUIREMENTS FOR BEING CONSIDERED WHOLESALE-ONLY	252
7.3.1	<i>Ljósleiðarinn.....</i>	252
7.3.2	<i>Míla.....</i>	254

7.3.3	<i>Nova</i>	269
7.3.4	<i>Síminn</i>	271
7.4	CURRENT OBLIGATIONS THAT APPLY TO MÍLA IN ACCORDANCE WITH THE ECOI 'S PROVISIONAL DECISION NO. 9/2023 273	
7.4.1	<i>Tengir</i>	273
7.5	COMPETITION PROBLEMS ON THE MARKET IN QUESTION	275
7.5.1	<i>Míla</i>	275
7.5.2	<i>Tengir</i>	277
7.6	ASSESSMENT OF THE IMPACT OF CURRENT OBLIGATIONS ON MÍLA	284
7.7	GENERAL INFORMATION REGARDING DESIGNATION OF COMPANIES WITH SIGNIFICANT MARKET POWER ON SPECIFIC GEOGRAPHICAL MARKETS.....	284
7.8	ASSESSMENT OF THE NECESSITY OF IMPOSING OBLIGATIONS ON MÍLA ON MARKET 3A AND REASONING IN SUPPORT THEREOF 284	
8	IMPOSING OBLIGATIONS ON MÍLA ON MARKET 3A	285
8.1	GENERAL INFORMATION REGARDING DESIGNATION OF COMPANIES WITH SIGNIFICANT MARKET POWER ON SPECIFIC GEOGRAPHICAL MARKETS.....	285
8.2	ASSESSMENT OF NECESSITY AND JUSTIFICATION FOR IMPOSING OBLIGATIONS ON MÍLA ON MARKET 3A	285
8.2.1	<i>Míla</i>	285
8.3	IMPOSING OBLIGATIONS ON MÍLA ON MARKET 3A	290
8.3.1	<i>Míla</i>	290
9	IMPOSITION OF OBLIGATIONS ON LJÓSLÆÐARINN ON MARKET 3A.....	318
9.1	GENERAL INFORMATION REGARDING DESIGNATION OF COMPANIES WITH SIGNIFICANT MARKET POWER ON SPECIFIC GEOGRAPHICAL MARKETS.....	318
9.2	ASSESSMENT OF NECESSITY AND JUSTIFICATION FOR IMPOSING OBLIGATIONS IN ÖLFUS MUNICIPALITY ON MARKET 3A 318	
9.2.1	<i>Ljósleiðarinn</i>	318
9.3	IMPOSITION OF OBLIGATIONS ON LJÓSLÆÐARINN ON MARKET 3A.....	323
10	IMPOSITION OF OBLIGATIONS ON MÍLA ON MARKET 3B	324
10.1	GENERAL INFORMATION REGARDING DESIGNATION OF COMPANIES WITH SIGNIFICANT MARKET POWER ON SPECIFIC GEOGRAPHICAL MARKETS.....	324
10.2	ASSESSMENT OF NECESSITY AND JUSTIFICATION FOR IMPOSING OBLIGATIONS ON MÍLA ON MARKET 3B	324
10.3	IMPOSITION OF OBLIGATIONS ON MÍLA ON MARKET 3B.....	324
10.3.1	<i>Míla</i>	324
10.3.2	<i>Tengir</i>	333
11	IMPOSITION OF OBLIGATIONS ON LJÓSLÆÐARINN ON MARKET 3B	335
12	IMPOSITION OF OBLIGATIONS ON AUSTURLJÓSLÆÐARINN ON MARKET 3B	336
13	ENTRY INTO FORCE AND REPEAL OF OBLIGATIONS	337
14	COMMENTS FROM ADDITIONAL CONSULTATIONS REGARDING SPECIFIC CHANGES IN THREE MUNICIPALITIES	338
14.1	FLJÓTSDALSHREPPUR MUNICIPALITY	338
14.1.1	<i>Míla</i>	338
14.2	SÚÐAVÍKURHREPPUR MUNICIPALITY	338
14.2.1	<i>Míla</i>	338
14.3	SELTJARNARNES MUNICIPALITY.....	339
14.3.1	<i>Míla</i>	339
14.4	VOPNAFJARÐARHREPPUR MUNICIPALITY.....	346
14.4.1	<i>Míla</i>	346

15	COMMENTS FROM THE THIRD CONSULTATION.....	348
15.1	MÍLA	348
15.2	TENGIR	352

Introduction

This document contains an overview of the comments provided by major market participants along with the Preliminary Draft of the Electronic Communications Office of Iceland (ECOI)'s market analysis of wholesale markets for local access provided at a fixed location (Market 3a/2026) and central access provided at a fixed location for mass-market products (Market 3b/2016), as well as the ECOI's position on these comments. This document becomes Appendix B to the final decision regarding this matter.

This document is constructed so that the submitted comments are ordered by the topics and chapters of the market analysis itself, i.e. Appendix A, with regard to main chapter titles and numbers, i.e. Chapters 1-16, as well as the subchapters that follow, e.g. Chapter 1.2, 1.3 etc. This does not apply to further subchapters, e.g. Chapter 1.2.1, 1.2.2 etc., as such subchapters in this document will be used as required to respond to the submitted comments. In addition, there will be a special, unnumbered chapter following this introduction that addresses comments by market participants that cannot be classified in any chapter or subchapter of the analysis, along with the ECOI's position on these comments.

The first part of the consultation took place from 15 September to 16 October 2023. The topics of that consultation included an assessment of the status of the related retail market, a definition of the relevant service markets on the related retail market, as well as the relevant wholesale markets, geographical definition of the relevant wholesale markets, assessment of the relevant geographical markets under consideration, and designation of parties with significant market power (SMP) in parts of those markets. This included the designation of Míla, Tengir and Ljósleiðarinn as parties holding such a position in further specified geographical markets. Chapters 1-6 discuss the comments provided by market participants on the consultation, in addition to the discussion in the chapter for general comments. The following parties submitted comments on the first consultation:

- The Icelandic Competition Authority (ICA)
- Míla
- Ljósleiðarinn
- Tengir
- Nova
- Síminn

The next part of the consultation took place from 29 November 2023 to 3 January 2024. This included a discussion of identified competition problems, an assessment of whether the companies that are to be designated as holding significant market power can be considered purely wholesale companies in the sense of Article 59 of the Electronic Communications Act, and the implementation of obligations imposed on these companies. Concomitantly with this consultation, the ECOI held a consultation regarding further specified amendments to the designation of companies with significant market power in further specified geographical markets, including the addition of Austurljós as a party with significant market power in one geographical market on Market 3b. Chapters 7-15 discuss the comments provided by market

participants on this consultation, in addition to the discussion in the chapter for general comments. The following parties submitted comments on the second consultation:

- Míla
- Ljósleiðarinn
- Tengir
- Nova
- Síminn

The third and final part of the consultation took place from 23 January to 6 February 2024 and involved a change in the ECOI's original position on whether Tengir and Ljósleiðarinn were considered wholesale-only companies, as well as a change in the Office's position on the initial designation of Míla as having significant market power in one geographical market on market 3b, i.e. in Rangárþing eystra. Chapter 16 discusses the comments provided by market participants on this consultation, in addition to the discussion in the chapter for general comments. The following parties submitted comments in the last consultation:

- Míla
- Tengir

General comments

1. Below are general comments from parties that cannot be assigned to specific chapters in the market analysis, i.e. in Appendix A.

Ljósleiðarinn

Duration of consultation

2. Ljósleiðarinn notes in its comments on both the first and second consultation that the time allocated to market participants to review the first part of the draft was limited and insufficient, as the analysis in question was comprehensive. Ljósleiðarinn considers the draft and consultation process to be important and that it is both unfortunate and undesirable that incidents related to a previous analysis of the relevant markets should create time pressure in completing the current market analysis, with a resulting negative effect on the analysis' quality and credibility. Ljósleiðarinn's comments were submitted with this reservation and the company reserved the right to submit further comments and suggestions on the draft analysis.

The ECOI's position

3. In the opinion of the Electronic Communications Office of Iceland (hereinafter the ECOI), the time limit granted, i.e. 32 calendar days for the first consultation, 36 calendar days for the second consultation and 14 calendar days for the last consultation, was adequate. This amounts to a total of 82 calendar days. Article 53(1) of Regulation No. 556/2023 on market analysis in the field of electronic communications refers to a reasonable period of consultation of no less than 30 days, except in exceptional circumstances. The ECOI points out that the first consultation covered only part of the analysis, while the ECOI commenced the next consultation on the second part of the draft analysis from 29 November 2023 to 3 January 2024. Furthermore, the ECOI commenced a limited additional consultation on 23 January 2024, which lasted until 6 February 2024. This means that the total consultation period was over 80 days.

4. Although the actual work on the market analysis could not commence in earnest until the beginning of 2023, as the Rulings Committee for Electronic Communications and Postal Affairs did not issue its ruling until 29 December 2022, it is by no means true that the Office did not conduct the analysis carefully. Many ECOI employees worked continuously on the analysis until the end of February 2024, when the Office completed the work on its position regarding the market participants' comments from the last consultation, and data collection and preparation of the analysis was carried out in the latter half of 2022, after the Decision of the Icelandic Competition Authority (hereinafter the ICA) on the merger of Ardian and Míla was issued on 15 September 2022, which lifted most of the uncertainty about the development of the markets. In December 2022, it was at last confirmed that Sýn and Ljósleiðarinn would renew their contracts and Sýn would sell their trunk network to Ljósleiðarinn, although the ICA did not finally approve this transaction until late September 2023, in addition to which the Rulings Committee for Electronic Communications and Postal Affairs issued its ruling at the end of that same month.

Adaption period due to lifting of obligations imposed on Míla in the ECOI's provisional decision

5. Ljósleiðarinn's comments on the first consultation state on page 5:

"The market analysis contains no material discussion of the ECOI's provisional decision no. 9/2023. In the assessment of Ljósleiðarinn, a provisional decision cannot stipulate that adaptation periods, due to obligations to be lifted on the basis of the new market analysis, should commence on the date of the provisional decision. This is inconsistent with the purpose and nature of a provisional decision, which in the assessment of the complainant cannot but maintain an unchanged situation until a new and final administrative decision has been made."

The ECOI's position

6. Ljósleiðarinn appealed the ECOI's provisional decision, dated 15 September, 2023, to the Rulings Committee for Electronic Communications and Postal Affairs, but the Committee had not reached a conclusion by the time the latter consultation commenced on 29 November 2023. Therefore, the ECOI had little chance to address the provisional decision in the draft analysis. The second draft analysis then sets out when Míla's obligations will be lifted, i.e. 15 days after the final decision on the market analysis is issued. The ECOI considered this an appropriate adaption period given that the lifting of Míla's obligations has been foreseeable since the provisional decision was issued on 15 September 2023. The Rulings Committee for Electronic Communications and Postal Affairs subsequently issued its ruling on 20 December 2023, dismissing Míla's and Ljósleiðarinn's appeals.

The opinion of a foreign expert in European telecommunications law

7. In Ljósleiðarinn's comments on the second consultation document, it was noted that following the publication of the second consultation document on 29 November 2023, regarding obligations on undertakings with significant market power, the company decided to obtain the opinion of a foreign expert in the field of European telecommunications law, Tony Shartall at Telage in Brussels, on the preliminary draft of the wholesale market obligations for the relevant wholesale markets. Furthermore, the expert examined the first part of the draft, especially the geographical definitions of the relevant markets. Ljósleiðarinn wholly agrees with the expert's comments and suggestions,

8. Then Ljósleiðarinn reaffirms the points made in the company's comments on the first part of the draft market analysis, especially that the ECOI had not sufficiently justified the extensive amendments proposed to the 2021 market analysis, especially regarding geographical definitions. The geographic segmentation of the markets in question would result in more complications and uncertainty on the markets in the short and long term. The changes were in many ways flawed and imprudent in light of national circumstances, as pointed out by the expert. Furthermore, it would appear that supervisory bodies in various European countries had encountered problems when implementing the ideas now used as a foundation by the ECOI, particularly through ESA.

9. Ljósleiðarinn pointed out that through the years, the majority of electronic communications companies had used and developed a cost base that was based on a national market, i.e. the whole country. In Ljósleiðarinn's opinion, the proposed changes could possibly result in price changes for telecommunications services, with prices differing between the capital area, smaller urban areas or rural areas, as the cost base for telecommunications services would now have to take note of each geographical market.

10. In connection with definitions of geographical markets, it suffices to note what was previously stated, that there is a lack of discussion in both the former and second drafts on the interaction of markets, 3a and 3b, and the importance of adjacent and related markets. [...]¹. This shortcoming affects the ECOI's decision-making and justification for imposing obligations on these markets.

The ECOI's position

11. Based on its reading of the expert opinion, the ECOI believes that the expert did not have access to the entire analysis, i.e. both the first and second part. The analysis consists of hundreds of pages, that had at that time not been published in English. This raises questions as to on what data or information the opinion is based. The opinion is of a general nature and bears more similarity to academic writing on telecommunications law, as there are not many references to the ECOI's criteria and conclusions. This especially applies to the advisor's discussion on the ECOI's geographical analysis.

12. The ECOI will discuss the comments of Ljósleiðarinn's advisor in relevant sections of this document, including Chapter 5 as regards the geographical definition of markets, Chapter 7 as regards purely wholesale companies and competition problems, and Chapter 10 as regards the obligations imposed on Ljósleiðarinn.

13. Ljósleiðarinn's reaffirmation of the geographical analysis and Míla's market position will also be responded to later in this document, in addition to the detailed discussion on these items in the analysis itself. See the relevant sections.

Míla

Scope of the consultation document

14. Míla submits a general comment on page 4 of its first comment document to the effect that the preliminary draft is needlessly long and describes the background of the matter in question in unnecessary detail.

15. Míla also commented on the latter consultation, stating the following on page 2 in Míla's document of comments:

"Míla comments on the length and format of the consultation document. Whole paragraphs seem to be copied from the previous 2021 market analysis, containing approaches and items not relevant for this market analysis, for example references to disclosure of information on internal transactions etc. The results of extensive

¹ Removed for reasons of confidentiality. The same applies to text in square brackets from here on.

copying of older text for the ECOI's consultation documents in this market analysis are errors, misrepresentations, and misleading information about the market.

The ECOI's position

16. This does not seem to be a material comment that requires a specific response. The ECOI considers it important to provide a full description of the history of the case. It is up to the reader whether to read these sections or not.

17. The ECOI further points out that this is a market analysis independent from the one on which the 2021 decision was based, and that if some items are still relevant it is natural to include them as they are. Thus, the ECOI believes that if Míla has comments on the content of the draft currently under review, the draft should be referred to instead of the previous decision.

18. If this results in errors in the text, the consultation is in fact the correct forum to point them out so the ECOI can correct them. Míla does not refer to any such errors in this comment, but some examples can be found in Míla's other comments, which the ECOI will correct as applicable.

19. The ECOI also rejects the claim that the latter consultation document is too long. The document addresses competition problems on the relevant markets, determines network operators' status in light of whether they meet the criteria for purely wholesale companies, and designates parties with significant market power. It also imposes obligations on three parties with significant market power in Market 3a and three parties in Market 3b. Clearly, this information cannot be summarised briefly.

Parliamentary resolution in the 153rd parliamentary session regarding the government's development of its electronic communications policy

20. In its first document of comments, Míla notes that according to the aforesaid parliamentary resolution, the supply of electronic communications services was good and there was effective competition in most areas. The state of electronic communications in population centres was said to be particularly good, and in most cases also in more rural areas, although there were certain remote areas where options were more limited. According to Míla, this confirms that the authorities do not consider any competition problems to exist.

The ECOI's position

21. The ECOI has the statutory role of conducting market analyses of various electronic communications markets and analysing whether there is effective competition on these markets, or in specific regions as the case may be. This will, of course, not be done with parliamentary resolutions. It is in fact the conclusion of this analysis that there is effective competition in many parts of the country in the relevant wholesale markets, but not in other parts.

Age of statistical data

22. Míla comments on page 4 in its first document of comments that it is a major flaw of the analysis that upon publication of the first part of the Preliminary Draft, the information from year-end 2022 was already 9 months old and newer data had become available. Míla stresses that the analysis should be updated with the newest information available so that it reflects applicable market conditions, adding that this would be consistent with the ESA's comments.

The ECOI's position

23. The ECOI did not receive statistical data from market participants on things as they stood in mid-2023, regarding market shares and, later, deployment, until early October 2023. The ECOI did not consider it justifiable, in view of the time limits of the case, to delay the consultation because of this. It also takes considerable time to review and process the data for individual municipalities. Once the data relating to market share had been received from all parties, the ECOI investigated whether this new information would have any effect on the designation of parties with significant market power in any of the various geographical markets identified. This update resulted in amendments in three municipalities, and this change, together with further discussion of the municipality of Seltjarnarnes, was the subject of an additional consultation which took place from 29 November 2023 to 3 January 2024.

24. The ECOI considered updating the full market analysis with reference to this information, but following informal consultation with ESA, the Office decided against it, as this would have postponed the case for weeks without affecting the results of the analysis. As a result, the ECOI focused on areas where the new figures might affect the outcome, as noted above. The ECOI has therefore decided not to update the full market analysis with these new figures. In Europe, the figures used for market analyses are 12-18 months old at the time of the final decision.

Discrepancies in the assessment of the parties' market power due to high market share

25. Míla states on page 4 of its first documents of comments that there is a noticeable discrepancy in the ECOI's assessment of the likelihood of competition depending on whether Míla has a large market share or other parties are considered to have a large market share. The owners of other networks are in most cases not designated as having significant market power despite their large market share. Where Míla has a comparable position or even a smaller market share, Míla is assessed as having significant market power. Míla states that inadequate reasoning is given and that there seems to be a tendency to consider such situations in favour of other network operators, but to the detriment of Míla. Míla reminds the ECOI that impartiality must be observed, and consistency and equality ensured.

The ECOI's position

26. The ECOI denies that Míla suffers a disadvantage, let alone a systematic disadvantage, in the assessment of significant market power (SMP) in specific geographical markets. The ECOI believes that the assessment is consistent in the evaluation of individual parties in

specific geographical markets. Of course, the assessment takes other factors than market share into consideration.

27. According to Article 14(1) of the Regulation on market analysis in the field of electronic communications, the ECOI must analyse the relevant market pursuant to Article 44 of the Electronic Communications Act with reference to the factors affecting market power to establish whether one or more undertaking has significant market power (SMP). According to Article 17 of the Regulation, an undertaking shall be deemed to have SMP if it, either individually or jointly with others, holds a position of economic strength on a particular market which allows it to prevent effective competition and to operate to a substantial extent without concern for competitors, customers and consumers. As evidenced by Article 19 of the Regulation, this assessment is determined by a number of factors other than market share, such as the overall and proportional size of an undertaking, technical and/or commercial advantage or superiority, easy access to finance, service segmentation (e.g. bundles), economies of size and scope, direct or indirect network effects, advanced distribution and sales systems, vertical integration or signs thereof, and long-term access agreements.

28. Míla obviously outperforms other companies in the relevant wholesale markets in most, if not all, of these aspects, especially in comparison with smaller entities such as the operators of small local networks or small local entities such as Snerpa, Austurljós and Eygló.

29. The success of new entities in competition with a former monopoly holder is a prime example of low access barriers and effective competition. A former monopoly holder's large share is rather an indication that competition has not gained a foothold. The high market share of small local networks owned by municipalities is unlikely to have the effect of enabling such networks to operate independently of consumers, wholesale customers or competitors.

30. This comment is of a very general nature, and it is difficult to identify the particular examples that Míla may have in mind. See the ECOI's responses to Míla's comments on the conclusions for individual geographic markets in Chapter 6 below.

Discrepancy in assessing the likelihood of fibre-optic rollout

31. Míla states on page 5 of its first document of comments that there is a discrepancy in the ECOI's assessment of the likelihood of Míla's fibre-optic rollout in individual areas and that of other network operators, such as Ljósleiðarinn. In that regard, it seems that the ECOI, without adequate reasoning, underestimates the plans of Ljósleiðarinn and overestimates Míla's plans. This is a flaw in the analysis, including with regard to the conditions that applied in the tender process for the NATO optical fibres and Ljósleiðarinn's statements about the construction and installation of fibre-optic networks in rural areas, cf. the Competition Authority's Decision no. 37/2023. The ECOI is again reminded of its obligation of impartiality and the principle of equality according to the Administrative Procedures Act. Ljósleiðarinn was successful in that tender process and purchased Sýn's trunk network, which was linked to a NATO cable following the purchase. Ljósleiðarinn disclosed that this acquisition is part of the expansion and construction of a country-wide backbone network. The Icelandic Competition Authority considered this merger to have levelled the competitive conditions, including with regard to the geographical aspect. If Ljósleiðarinn's plan came to fruition, there

would be two country-wide core networks in operation in this country, which would have a positive effect on competition.

The ECOI's position

32. The ECOI rejects the notion that Míla is disadvantaged as regards network deployment forecasts for other entities than Míla. These forecasts for individual geographical markets are based on several factors, including the network deployment forecasts that the ECOI requested from the companies for its analysis. Other factors were also considered, including the distance of population centres from the NATO cable and whether Míla, or another network operator, has already begun fibre-optic rollout in the relevant population centre.

33. Network deployment forecasts were successfully obtained from network operators, except that Ljósleiðarinn had considerable difficulties providing an accurate or detailed deployment forecast for rural areas, as there was uncertainty regarding the acquisition by Ljósleiðarinn of Sýn's trunk network until 29 September 2023, when the acquisition was approved by ICA's Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*. Furthermore, the NATO optical fibres in question were not formally handed over to Ljósleiðarinn until 1 October 2023, meaning that the company must undertake extensive and time-consuming coordination work on the trunk network in the near future and that this work will probably have priority over developing fibre-optic access networks in various rural population centres. It is also a fact that the company is heavily indebted, the effects of which are particularly keenly felt in Iceland's current high-interest environment. In 2024, the company plans to increase its share capital with the involvement of a third party, and it is uncertain what the outcome of this will be. If successful, the company's investment capacity is likely to increase, but if these plans do not pan out, the investment capacity will obviously be somewhat more limited.

34. The NATO cable and Ljósleiðarinn's acquisition of Sýn's trunk network primarily affect the trunk line market, which will be analysed later, although this will also allow for the company's fibre-optic rollout in rural population centres, particularly ones close to the NATO cable. However, numerous population centres are tens or hundreds of kilometres from the NATO cable and there, Ljósleiðarinn is in a much worse position than Míla, which has a trunk line network with national coverage. Sýn's former trunk network did not have national coverage in the same way as the Míla network and relies almost entirely on connections leased from owners of fibre-optic trunks, with Míla being the largest owner of such infrastructure. Ljósleiðarinn is now Míla's lessee for these connections. Ljósleiðarinn leases some connections from other entities but to a much lesser extent. The position of a company that bases its trunk network on leased connections is different to that of a company that bases its trunk network on its own fibre-optics.

35. Unlike Míla, Ljósleiðarinn has not undertaken fibre-optic rollout where a fibre-optic network is already in place, focusing instead on areas without fibre-optics, as well as joint undertakings with entities including Míla. As mentioned earlier, Míla has commenced, but not completed, fibre-optic rollout in many rural population centres, which reduces the incentive for other entities to introduce their fibre-optic connections to these areas.

36. Should unexpected events that contradict the ECOI's forecasts occur in specific geographic markets, the Office may respond with a new analysis or lifting of obligations, for example on Míla, in specific regions, without a full market analysis being carried out, cf. Article 49 of the Regulation.

37. As for Míla's reference to the alleged conditions for development in relation to Ljósleiðarinn's agreement with the Ministry for Foreign Affairs on the leasing of two fibres in NATO's fibre-optic ring, see the ECOI's response to Míla's similar comment in Chapter 5.

The ECOI's underestimation of the significance of Ljósleiðarinn's acquisition of Sýn's trunk network

38. Míla states on page 6 in the first document of comments that it can be inferred from the analysis that little attention was given to the fact that Ljósleiðarinn purchased the Sýn trunk network and that it is important to update the analysis in this regard. [...]

The ECOI's position

39. For the most part, the ECOI's previous response applies. The acquisition of Sýn's trunk network did not add any fibre-optics to Ljósleiðarinn's network. To this it may be added that in its analysis, the ECOI frequently refers to this acquisition and its potential effects. Elsewhere in this analysis, the ECOI also states that despite the acquisition in question, it is not the case that Míla and Ljósleiðarinn are in a comparable position in terms of trunk networks. See the relevant sections.

The phasing out of the copper system will be accelerated and Míla's plans presented with reservations

40. In its first document of comments, Míla reiterates that during the term of validity of the analysis, efforts will continue to phase out the copper system, pointing out that that the system will very probably be permanently discontinued at an earlier stage than assumed in previous plans. Míla reiterates that information about plans for phasing out and developing fibre-optic networks has always been presented with a clear reservation that these plans are subject to various external factors.

The ECOI's position

41. The ECOI is aware that all business plans are subject to change. However, Míla has not submitted a new plan for the phasing out of copper local loops nor on fibre-optic deployment. Míla submitted an updated plan for the phasing out of its copper network to the ECOI in the spring of 2023. Pursuant to the clear legal provisions of Article 60 of the Electronic Communications Act, Míla is required to notify the ECOI in advance and in a timely manner when there plans to discontinue or replace a part of a network subject to obligations imposed on the company, including the copper network. As previously noted, Míla has not sent the ECOI a new plan which assumes that the network will be discontinued earlier than year-end 2028, as is maintained in the above-mentioned plan submitted by Míla in spring 2023. The ECOI doubts Míla's assertion that their recent plans on discontinuation of the copper network and deployment of fibre-optic networks should now be disregarded. As a result, the ECOI does

not find reason to amend its assessment in this analysis. The ECOI can also react quickly in the event of unexpected events in individual areas, as noted above.

42. It may also be noted that longer-term plans have proportionally less weight in the ECOI's assessment than plans for a shorter term.

Government grants for fibre-optic deployment

43. Paragraph 52 on page 12 of Míla's first comment document states:

"Míla also considers it necessary for the ECOI to correct the misleading presentation, widely found in the document, regarding alleged government grants to Míla in connection with fibre-optic deployment, cf. for example Paragraph 240 and other passages. Míla has accepted no government grants in this context. It is therefore highly reproachable on the part of the ECOI to present the discussion about the deployment of Míla's fibre-optic networks in this manner. The fact is that Míla has been involved in construction efforts with municipalities that have accepted grants from the Telecommunications Structural Fund for the purpose of installing fibre-optic cable. These are investments that would not have been made if not for the aforesaid grants to the municipalities."

The ECOI's position

44. The ECOI is grateful for having this pointed out and will edit the relevant section in Paragraph 240. as well as other sections in the analysis. However, this does not change the fact that in such cases, Míla has acquired various fibre-optic networks through state aid, although Míla was not formally the direct recipient of such aid. Government aid nevertheless resulted in Míla acquiring fibre-optic networks in areas affected by market failure.

Nova

Duration of consultation

45. It was stated in the comments from Nova that as the first part of the market analysis draft was a voluminous document of over 2000 paragraphs, the company was not able to fully explore all aspects of the analysis described in the draft, nor the underlying sources, criteria, etc., within the established time frame. However, after reviewing the draft, Nova cannot but acknowledge that much work was committed to the analysis and that it was carried out according to sound professional principles. Nova reserves the right to submit further comments on individual aspects of the ECOI's market analysis at later stages, when it has been established whether and what kind of obligations the ECOI intends to impose on individual electronic communications companies and in individual markets, when the draft of the relevant obligations is submitted for consultation.

The ECOI's position

46. This comment does not require a detailed response from the ECOI. Nova believes that the ECOI carried out its work in a professional manner. Nova notes that due to the extent of

the analysis, the company reserves the right to include further comments in the second consultation.

The Icelandic Competition Authority (ICA)

The ICA's comments on the ECOI's draft consultation

47. The ECOI received the ICA's comments on the first half of the draft market analysis on the relevant wholesale markets by letter dated 17 October 2023.

48. The ICA notes that according to the ECOI, Market 3a is composed of access networks (local loops) provided at a fixed location, both copper and fibre-optic, and related facilities, along with virtual unbundled local access (VULA) solutions, which fulfil the same needs as local loop lease. With ECOI Decision no. 5/2021, Míla had been designated as an undertaking with significant market power on the relevant market and various applicable obligations were imposed on the company as a result. In summary, it is the preliminary conclusion of the ECOI for this market that the Office carried out a detailed geographical analysis of the market in question in all of Iceland's 64 municipalities and has now concluded that the obligations in 28 municipalities should be lifted, as effective competition has been established in these markets or is expected to be established during the term of validity of the analysis. Thus, the ECOI designates Míla as an undertaking with significant market power in 28 municipalities, Tengir in seven municipalities and Ljósleiðarinn in one municipality.

49. As for the wholesale market 3b, the ECOI stated that it consists of various bitstream solutions that provide a connection between the end user and access points which are central in an electronic communications network and used to provide traditional internet access, along with related services. With ECOI Decision no. 5/2021, Míla had been designated an undertaking with significant market power on the relevant market and various applicable obligations were imposed on the company as a result. In summary, it was the preliminary conclusion of the ECOI for this market, having carried out a detailed geographical analysis of the market in question in all of Iceland's 64 municipalities, that the obligations in 30 municipalities should be lifted, as effective competition had been established in these markets or was expected to be established during the term of validity of the analysis. Thus, for wholesale market 3b for bitstream access, the ECOI designated Míla as an undertaking with significant market power in 33 municipalities, Tengir in seven municipalities and Ljósleiðarinn in one municipality.

50. The ICA makes no comments on the contents of the first part of the ECOI's draft market analysis for wholesale markets 3a and 3b, as the ICA has no information, data or other grounds for challenging or correcting the ECOI's conclusions. Indeed, the ICA agrees with the preliminary assessment and descriptions of positive developments in the wholesale markets for electronic communications, which the ICA considers to be mostly due to two factors. On the one hand, the ICA had conducted an investigation and concluded, in the aforementioned Decision no. 16/2023 on Ardian's acquisition of Míla, that the sale of Míla should be permitted, subject to the conditions of Ardian and Míla's settlement with the ICA, one of which called for considerable amendments the long-term wholesale agreement, meaning that there was no exclusive purchase agreement between Míla and Síminn. In light of the conditions proposed and agreed upon by the companies, and with reference to the positive

impact of breaking up Síminn's vertical ownership of Míla, the merger was successfully completed in agreement with the ICA.

51. On the other hand, the ICA recently issued its Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*, where the Authority concluded that the merger required no intervention, partly because the starting point and one of the main reasons for the transaction was Sýn's loss of optical fibre in NATO's countrywide optical fibre network, which was largely the basis of the company's trunk network. At the same time, i.e. in 2022, Ljósleiðarinn won the Ministry for Foreign Affairs' tender for the use and operation of two optical fibres in the aforementioned cable. Therefore, the ICA did not consider it necessary to respond to the merger, for reasons that included the above-mentioned developments in the trunk line market and the expected positive competition effects of the transaction on the relevant wholesale market. Furthermore, the merging entities simultaneously entered into a long-term wholesale service agreement which did not appear to involve an exclusive purchase agreement or the equivalent thereof but reaffirmed that the companies were at any given time responsible for ensuring that their mutual agreements complied with the provisions of competition legislation, including with reference to their market position in competitive markets, which is subject to change at any given time.

52. As for the ECOI's preliminary assessment of substitutability between services provided by mobile network companies via mains-connected mobile network routers at a fixed location, and the notion that these solutions are now considered to provide substitutability with service provided at a fixed location, on both the retail market for internet service and the wholesale market for central access provided at a fixed location (3b), the ICA stresses that this development is consistent with the Authority's perception of Icelandic electronic communications companies' perspectives on substitutability in competition matters. The aforesaid is also consistent with presentations by foreign competition authorities, received by the ICA through European cooperation, on the development of competitive conditions on European electronic communications markets. This supports the ECOI's results and conclusion on this point in the Preliminary Draft as regards the increasing competitive restraint that certain mobile network solutions have for fixed line solutions.

53. Finally, the ICA reiterates that its role is to apply the provisions of competition legislation on the electronic communications market and that the Authority's conclusions on market definitions, substitutability between goods or services and the position of undertakings depends on the circumstances in each case. This includes the potential links between different electronic communication services and what effects the status of entities has in different marketing stages. Thus, the ICA is, by definition, not bound by the methodology and conclusions of the ECOI's draft market analysis in its handling of any future cases pertaining to the markets in question, although competition authorities may refer to market analyses conducted by electronic communications authorities, including their conclusions and assessments of competitive conditions.

The ECOI's position

54. The ECOI makes no comments on the ICA's review and agrees with the Authority's description of the criteria and conclusions in the decisions concerning the aforementioned mergers in the electronic communications market, namely ICA Decisions nos. 16/2023 and

37/2023. In the opinion of the ECOI, the ICA's comments further support the ECOI's conclusion regarding the analysis of the related retail market, the definition of the relevant service markets, including substitutability between copper and fibre-optic networks, as well as substitutability between those networks and the mobile network solution in question in the related retail market and Market 3b, the definition of geographical markets and the ECOI's analysis of the competition situation in the relevant individual geographical markets, as well as the designation of undertakings with significant market power in individual markets.

Síminn

Criticises the ECOI's comments on Síminn in a previous infringement case

55. Síminn makes no comments on the contents of the first consultation document's analysis of service markets or the geographic segmentation of the relevant markets, but instead comments on other matters investigated by the ECOI. First, the ECOI investigation which concluded with PTA Decision no. 10/2018, *Síminn's violation of the prohibitive provision of Article 45(5) of the Icelandic Media Act*, where the ECOI concluded that Síminn had breached the ban provision of Article 45(5) of the Media Act no. 38/2011, which prohibits media distribution systems from directing their customers to an affiliated telecoms company, in this case Míla, owned by Síminn. Síminn disputes the ECOI's comments in the consultation document concerning Síminn's alleged infringements of Article 45(5) of the Media Act and considers them to constitute allegations against Síminn. Síminn points out that the ECOI's discussion of the alleged effects of these incidents is not consistent with data on market trends in the relevant period and suggests that the ECOI presupposed conclusions that Síminn considers incorrect. Síminn considers this discussion to have no relevance for the ECOI's market analysis, although it demonstrates the Office's well-known bias. Síminn refers to that fact that in 2016, 2017 and 2018, Ljósleiðarinn's fibre-optic local loops increased by 20 thousand, adding that any discussion of these incidents by the ECOI should include a truthful account of how Ljósleiðarinn increased its number of local loops faster during these years than in any other period in the company's history, and that it would furthermore be reasonable for the ECOI to state the following fact: ***"The incidents that occurred in 2015-2018 had no adverse effect on the growth of Ljósleiðarinn, which increased the number of its local loops at a faster rate than any time before or since."***

56. Síminn estimates that in the municipalities where Ljósleiðarinn was operating in 2016, its share has grown to 58% in Market 3a and 61% in Market 3b when mobile network connections are excluded (page 431 in the ECOI's analysis). In Seltjarnarnes, the share is 70% in Market 3a and 73% in market 3b, and in the municipality of Ölfus, the share is 63% in Market 3a and 71% in Market 3b. In the opinion of Síminn, these figures confirm that the incidents that occurred between autumn 2015 and 2018 had no negative impact on competition between Míla and Ljósleiðarinn, and that Síminn could not have had any effect whatsoever on Ljósleiðarinn's progress, as evidenced by the growth figures. Consequently, it may also be concluded that the incidents did not have a negative impact on the companies that utilised Ljósleiðarinn's system, as the increase of Ljósleiðarinn's connections by 20,000 in three years was in fact due to these companies. In Síminn's opinion, the above data prove that Síminn's conduct in 2015-2018 was not of a nature likely to have a negative impact on competition.

57. In view of the above, Síminn considers it necessary either to remove the whole discussion of the matter from the analysis or to issue a correction admitting that the ECOI was wrong. Síminn also points out that the discussion has no relevance to the analysis of Market 3a and Market 3b for the next five years.

The ECOI's position

58. The ECOI points out that this matter to which Síminn refers provides information on market behaviour during Síminn's ownership of Míla. With Síminn's sale of Míla to Ardian, the merging entities agreed to certain conditions for the merger, namely changes to Míla and Síminn's long-term wholesale agreement on electronic communications services. Following ICA Decision no. 16/2023, *Ardian's acquisition of all Míla ehf.'s share capital by Síminn hf.*, the ICA subsequently ruled in a separate case that Síminn and Míla's current shared interests still show signs, at least in part, of vertical integration, cf. ICA Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*. The ECOI therefore considers it appropriate, despite Síminn's sale of Míla, to refer to previous decisions on the behaviour and shared interests of Síminn and Míla in the consultation document, as this discussion is relevant to the assessment of Míla's market power; see below for comments on Síminn's objections to the notion that vertical integration remains.

59. As for the competitive effects of Síminn's behaviour in the aforementioned ECOI case, which concluded with PTA Decision no. 10/2018, *Síminn's violation of the prohibitive provision of Article 45(5) of the Icelandic Media Act*, it is not necessary to assess the effects of Síminn's breach, let alone after the fact in this case, as Síminn now requests. In this regard, it can also be pointed out that companies in a dominant market position may not take any action that could disrupt normal competition, and that this duty is greater the stronger the companies' position. As an example, a violation of the provision prohibiting abuse of a dominant position pursuant to Article 11 of the Competition Act does not require that harmful effects or premeditated disruption of competition be proven. This also applies to undertakings that contravene the prohibitive provisions of the Media Act. Any harmful effects assessed, or which are apparent, may help confirm that a violation has occurred, and heavier sanctions may be imposed.

60. It should be noted that the Rulings Committee for Electronic Communications and Postal Affairs upheld PTA Decision no. 10/2018 with its Ruling no. 3/2016. Síminn appealed this decision to the District Court, which agreed in part with Síminn's claims in its ruling issued on 1 July 2020 in Case no. E-3251/2018. The ECOI, Sýn and Síminn appealed the decision to the Court of Appeal, which upheld the PTA's original decision. Síminn appealed to the Supreme Court, which referred the case back to the District Court in its ruling in Case no. 50/2022 on 31 May 2023, due to procedural defects before the District Court. Síminn's violation therefore remains on the books, cf. the previously mentioned ruling by the Rulings Committee for Electronic Communications and Postal Affairs. The District Court is expected to issue its ruling in early 2024, and then the case will likely pass through all court levels again, which is a process that may take several years.

61. In light of all the above, the ECOI considers it necessary and a matter of course to address this violation by Síminn, as was done in the consultation document, to assess Míla's power due to the wholesale agreement between the companies, regardless of Ardian's

purchase of Míla from Síminn. However, the ECOI's discussion of this violation in the current analysis is much less extensive than in the analysis concluded in 2021, where there was a special chapter on this case in the overview of competition problems.

Criticises the review submitted by the ECOI to the ICA on Síminn's sale of Míla

62. Síminn's comments on the ECOI's market analysis of markets 3a and 3b make it clear that the company was, and still is, dissatisfied with the ECOI's intervention in Síminn and Ardian's transactions in the merger case and that this intervention had cost Síminn's shareholders ISK 10 billion. In the opinion of Síminn, this discussion is of no relevance to the market analysis, especially not as part of a discourse on the position of Míla, which Síminn has now sold. Síminn adds that the company was, and still is, naturally dissatisfied with the ECOI's intervention and unfounded actions in Síminn's sale of Míla, especially since it is clear that the ICA grossly overestimated Míla's alleged power. Síminn believes that this was largely due to information or assessments from the ECOI which have now turned out to be incorrect.

63. Síminn adds that the ECOI is of course obliged to ensure equal treatment so the same comments should have been made in the context of the transaction between Sýn and Ljósleiðarinn. According to Síminn, however, these two mergers were obviously not handled on an equal basis. Síminn considers it absolutely incomprehensible that extensive obligations were imposed on Míla when Ardian acquired the company while no such obligations were imposed on Ljósleiðarinn when the company purchased Sýn's operations, cf. ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.*, and the ECOI's Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*,

64. Síminn makes clear that they are not concerned about the obligations imposed on Míla but rather the fact that the intervention and actions of the ECOI and ICA resulted in the wrongful imposition of obligations, which cost Síminn approximately ISK 10 billion. Síminn says that the ECOI cannot hide behind the fact that the ICA handed down the decision, as the ICA noted especially the importance of the ECOI's position, both in a recent case where Síminn requested the lifting of obligations imposed by the ICA, cf. the aforementioned ICA Decision no. 24/2023, as well as in the merger process discussed above, which was concluded with ICA Decision no. 16/2023. Furthermore, that in Síminn's sale of Míla to Ardian, much was made of the alleged increase in Míla's market power through the acquisition of an MPLS system, although that purchase was completed before any contact with Ardian had been made and thus had no effect on Ardian's acquisition of Míla. However, when Ljósleiðarinn acquired Sýn's MPLS system, the conclusion was that there was no increase in vertical integration, even though Ljósleiðarinn had by then reached a market share of approximately 60% in its market area.

65. Síminn also considers that the ECOI allowed its subjective views of the company to interfere with its work, and that there is reason for the Office to bring fresh perspectives to the table, ones not influenced by their negative opinion of Síminn. Síminn furthermore considers that Ljósleiðarinn and Sýn's transaction will result in increased costs for Ljósleiðarinn, as the company purchased equipment and assets at much too high a price. It was obvious that the purpose of the transaction was not to purchase valuable assets but to pay Sýn for entering into an agreement with Ljósleiðarinn, apparently with the sole purpose of preventing Míla from acquiring the business. Síminn points to the comments from Nova

and other entities who worry that Ljósleiðarinn paid an excessive price for out-of-date equipment.

66. Síminn also finds it absurd for the ECOI to discuss the interactions between Síminn and the ECOI and use them to argue that vertical integration is still present, as if the ECOI had somehow missed the fact that Míla was acquired by Ardian. Síminn advises the ECOI to remove the discussion of correspondence between Síminn and the ECOI, as they have no relevance to the ECOI's assessment, which can remain as it is without reference to these interactions.

The ECOI's position

67. The ECOI is of the opinion that Síminn's preceding comments do not apply to the draft market analysis for which reviews were requested, but rather to other matters under the control of the ICA. The ECOI is nevertheless happy to respond to Síminn's criticism and point out that it was normal to comply with the ICA's request for comments in light of the fact that the matter pertained to markets where the ECOI has expert knowledge and a statutory role, cf. the Act on the Electronic Communications Office of Iceland no. 75/2021. It should also be noted that investigating the competitive effects of mergers involving electronic communications companies is part of the ECOI's duties under Article 5(c) of ECOI and ICA Rules no. 197/2002 on proceedings and resolution of issues in the electronic communications market.

68. The ECOI rejects the notion that the Office's review to the ICA on Síminn's sale of Míla, dated 9 March 2022, had the effect described in Síminn's comment above, and it should have been obvious to Síminn that the wholesale agreement between Síminn and Míla, which accompanied the notification to the ICA of Ardian and Míla's merger, did not meet the conditions required by the ICA to approve the merger as it stood. The ICA reported its initial assessment of the impact of the merger in a statement of objection document presented to the merging entities on 1 July 2022. The statement contained a detailed account of the Authority's initial assessment that the above-mentioned wholesale agreement would, if left as it was, have a serious negative impact on competition in the electronic telecommunications market. It was also noted that the merger was likely to result in increased coordination of conduct by competitors in the operation of data transmission systems, for instance regarding the production and/or performance capacity of domestic data transmissions over a trunk network. Thus, the merger would increase incentives for, and the likelihood of, coordinated conduct by competitors in the electronic communications market. The settlement with the ICA, dated 15. September 2022 approves of the acquisition of Míla by Ardian. The settlement entailed that the merging parties make substantial changes to the wholesale agreement between Síminn and Míla. That same day, the ICA announced the settlement on its website as follows:

“The ICA considers the changed ownership of Míla and its detachment from Síminn a positive step for competition in the telecommunications market. On the other hand, along with the sale, the parties involved made a long-term wholesale agreement which would have created unprecedented barriers to competition. In addition, telecoms systems and wholesale operations were transferred to Míla in relation to the merger,

reinforcing and potentially strengthening Míla's position. The above-mentioned concerns called for the ICA's intervention.

With a settlement signed on September 15th, the ICA has approved the merger with conditions. The settlement entails substantial changes to the wholesale agreement between the parties involved. In addition, Míla has committed to certain conditions for its operation, and Síminn has signed a statement on the company's disintegrated operations and commercial independence. With those commitments, the ICA believes the potential harmful effects and barriers to competition have been sufficiently removed or limited, laying a solid foundation for healthy competition for the good of consumers, businesses, and the community."

69. ICA Decision No. 16/2023, states the following on the wholesale agreement between Síminn and Míla:

"In investigating the matter, the Competition Authority focused on the wholesale agreement between Síminn and Míla which was submitted in the case. The agreement provided for Síminn's procurement of all major wholesale electronic communications supplies for a term of 20+5 years and provided Míla with extensive exclusive purchase rights towards Síminn. The agreement meant that Síminn would be contractually bound to a long-term business relationship with Míla while Míla's competitors would be practically excluded from doing business with the biggest provider of electronic communications services in the country. The wholesale agreement also contained a provision on close vertical cooperation between the companies, which had the purpose, or effect, of preventing competition. Thus, it seemed that the agreement, if left unamended, would have placed harmful and unlawful limitations on Síminn's ability to enter into agreements with other wholesalers of electronic communications services and operators of electronic communications infrastructure. The agreement was also considered likely to maintain various characteristics of vertical integration, which the sale of Míla should otherwise have eliminated."

70. The above indicates that the ICA investigation resulted in changes to the original wholesale agreement between Síminn and Míla so that it complied with competition law, without which the ICA was unable to accept the merger in unchanged form. It was considered that Míla operates electronic communications infrastructure in all Iceland and is the largest and most important wholesaler of electronic communications services in Iceland. Síminn is the most powerful retailer of electronic communications services and consequently the largest buyer of wholesale electronic communications services. It was therefore of great importance to consumers and the economy that Síminn's sale of Míla was carried out without distorting competition in the important markets in question. Thus, it is clear that Síminn cannot blame the ECOI for the merger not being approved like Síminn originally expected, as the agreement would have distorted competition considerably and been rejected by the ICA.

71. To this may be added that despite the above-mentioned settlement and conditions in ICA Decision no. 16/2023 on the merger, the ICA subsequently concluded in another case that Síminn and Míla's shared interests after the merger still has at least some signs of vertical integration, cf. ICA Decision no. 24/2023, as noted above. These shared interests are evident in Síminn's correspondence with the ECOI, which the company refers to in its comments

above and supports the ICA's assessment of there still being signs of vertical integration between the companies despite the lack of ownership links. The ECOI considers it important to address this correspondence in the analysis for the purpose of assessing Míla's market power in the relevant markets.

72. The ECOI considers that equality was observed in its comments to the ICA regarding Síminn's sale of Míla on the one hand and Sýn's trunk network sale to Ljósleiðarinn on the other hand, as Sýn's sale of properties and operations was on a much smaller scale than Síminn's sale of Míla. Furthermore, Ljósleiðarinn and Sýn's service agreement was less extensive than the service agreement between Míla and Síminn, both in terms of the contractual term and obligations, and did not seem to involve exclusive purchasing or the equivalent thereof like Síminn and Míla's service agreement did, cf. the more detailed discussion in the ICA's comments above.

73. Síminn mentions that the equipment sold to Ljósleiðarinn was outdated and too highly priced. If true, this should, on the contrary, reduce the supposed strengthening of Ljósleiðarinn's market power, which Síminn claims that the sale brought about, and strengthen Míla's position in competition with Ljósleiðarinn. This supports the ICA's conclusion in the relevant merger case, contrary to what Síminn would argue. The criteria for the above-mentioned merger decisions SE nos. 16/2023 and 37/2023 are further discussed in the ICA's comments on the consultation draft above, and the ECOI points to what is stated therein.

74. In its comments to the ICA on Síminn's request to the ICA to lift Síminn's obligations in ICA Decision no. 6/2015, the ECOI suggested that the ICA look at Síminn's strong position in the retail market for electronic communications and television services bundles. As before, this case was handled by the ICA, which handed down its final decision following a thorough investigation. In other respects, the ECOI refers to Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*, for further grounds for the Office's decision.

Tengir

Execution of the market analysis

75. Tengir's comments on the first consultation include the following, on page 1 of the company's comments:

“Tengir considers that the ECOI successfully carried out a highly detailed and comprehensive market analysis in a relatively short period of time. Although barely two years have passed since the ECOI's last analysis and decisions on the markets in question, many changes have occurred since then in the Icelandic electronic communications market, and it was obvious that these changes would require another analysis by the ECOI.”

The ECOI's position

76. The ECOI agrees with Tengir that there has been a major shift in the Icelandic electronic communications market, which necessitated a comprehensive revision of the recent ECOI market analysis. Following the changes in the market over the past few years, the ECOI considers that certain uncertainties have been eliminated, which contributed to the ECOI being able to undertake geographic segmentation of markets instead of imposing different obligations. It was therefore necessary to undertake such an in-depth analysis of each geographical market.

Competitive conditions in the electric communications market

77. Tengir's comments on the first consultation include the following, on page 11 of the company's comments:

"Tengir hopes that following the ECOI's decisions regarding the aforesaid markets, for the second time in a short period of time, an adequate competitive environment will be created and that market participants will abide by the decision instead of exploiting all available options to protest having to follow normal rules on the market. Repeated violations of regulations and/or electronic communications or competition legislation should not be tolerated, and the relevant authorities should not have to repeatedly address identical or similar complaints from electronic communications companies. Tengir considers such practices to be harmful to all market participants, overly costly, disruptive for development of infrastructure and, last but not least, harmful to consumers nationwide."

The ECOI's position

78. The aim of this market analysis is to promote competition where it is not effective, through the imposition of obligations on entities with significant market power in individual regions, the lifting of obligations where there is effective competition and support for the deployment of high-speed networks. The ECOI takes a serious view of a company with significant market power failing to comply with the obligations imposed on it by the Office. In recent years, the ECOI has on several occasions had to act against Mila in this respect by specific decisions, but until now, companies other than Mila have not had significant market power.

1 Introduction to the Preliminary Draft

1.1 General

79. No comments were submitted regarding this point.

1.2 Legislation and other legal provisions relating to electronic communications

80. No comments were submitted regarding this point.

1.3 Execution of market analyses by the ECOI

81. No comments were submitted regarding this point.

2 Definition of the relevant service markets

2.1 General information about definition of service markets

2.1.1 Ljósleiðarinn

General information about definition of service markets

82. Ljósleiðarinn's comments on the first consultation include, on page 7:

"The ECOI's's market analysis includes a detailed discussion of the definition of markets and, as required by laws and regulations, this is done in accordance with instructions and guidelines from, among other parties, ESA, the European Commission and BEREC."

The ECOI's position

83. This comment does not require a special response. Ljósleiðarinn is of the opinion that the ECOI has defined the service markets of the case in accordance with the legal provisions on which such analysis is to be based.

2.2 Definition of the relevant markets according to ESA recommendations and guidelines

84. No comments were submitted regarding this point.

3 Competitive conditions on the retail market for fixed access and broadband services

3.1 General

3.1.1 Míla

Lack of objectivity in assessing the likelihood of developing fibre-optic networks

85. In Paragraphs 42 to 46 in Chapter 5.1 in its first document of comments, Míla states:

"In Paragraph 97, the ECOIS addresses the fibre-optic network deployment of individual parties and their deployment ratio in the overall market. It is concluded that the expansion of Míla's fibre-optic network will be increased substantially in the next 5 years whereas regarding Ljósleiðarinn and other parties, it is merely stated that expansion will increase somewhat. This shows a clear difference in the ECOI's approach when it comes to estimating uncertainty in the deployment of different parties. Thus, uncertainty is considered to the detriment of Míla but in favour of others when the market power of these parties is assessed.

As the ECOI is well aware, Míla's deployment plans have always been presented with clear reservations. It has always been clearly stated that these are plans where various uncertainty factors can, by the very nature of the undertaking, have an effect on the progress of Míla's fibre-optic deployment, cf. for example Míla's letter to the ECOI on this matter dated 7 March 2023. Therein it is stated that "at present there is no final decision from the managers and owners of Míla regarding deployment plans after the current year, 2023. Work is ongoing this year to formulate a long-term plan in this regard." Míla points out that it is important to keep this in mind when analysing the company's deployment plans, which were presented in a specific manner and itemised at the request of the ECOI. Míla stresses that the company is still working on next year's plan.

Ljósleiðarinn, on the other hand, has many times declared its intentions to expand its market area to every part of the country. This was a condition in the bid for their leasing of optic fibres in the NATO cable, to name an example. It may also be pointed out that the company recently purchased the fibre-optic system Líf í Mýrdal. Ljósleiðarinn has also invested substantially in trunk network fibre-optics in various areas across the country. "Somewhat" is therefore a peculiar choice of word to describe the deployment of Ljósleiðarinn's fibre-optic network. In this regard, reference may be made to the discussion that was part of ICA Decision no. 37/2023 on Ljósleiðarinn's acquisition of Sýn's trunk network, which addressed, among other things, Ljósleiðarinn's control of fibre-optic pairs in the NATO cable, the takeover of Sýn's trunk network and the development and installation of fibre-optic networks in rural municipalities. The decision states that even though Ljósleiðarinn has already obtained control over the NATO optical fibres, the

purchase of Sýn's trunk network is a part of the development of Ljósleiðarinn's country-wide fibre-optic network. Another backbone network will result in a more equal competitive situation in every part of the country and further reduce the effects of special conditions in specific areas.

History also shows that other parties will undertake developments to install fibre-optics in areas which may even already have fibre-optic connections provided by Míla or others, cf. the fibre-optic network installed by Eygló ehf in the Westman Islands.

In light of this it must be concluded that there is a certain lack of objectivity towards Míla in the ECOI's assessment of the likelihood of fibre-optic network development by various parties."

The ECOI's position

86. Míla maintains that the analysis betrays a certain lack of objectivity towards Míla in the ECOI's assessment of the likelihood of fibre-optic network development by various parties. It is concluded that the distribution of Míla's fibre-optic network will increase substantially in the next 5 years whereas regarding Ljósleiðarinn and other network operators, it is merely stated that deployment will increase somewhat. In this, there was an obvious difference in how the ECOI estimates the uncertainty of deployment by different entities, where uncertainty is judged unfavourably for Míla but favourably for other entities when assessing the market power of these entities. Míla says that the company's deployment plans have always been presented with clear reservations and that various uncertainty factors could affect these plans. Míla adds that the ECOI also underestimates Ljósleiðarinn's deployment plans, and that the company is obligated to undertake fibre-optic deployment pursuant to its agreement with the Ministry for Foreign Affairs on the leasing of fibre-optic pairs in the NATO cable.

87. The ECOI categorically rejects the notion that Míla is at a disadvantage in this assessment and refers to the Office's response to Míla's similar comment in the chapter on general comments at the beginning of this document, where it is noted that the ECOI's deployment forecasts are based on factors beside the companies' deployment forecasts. This chapter also contains the ECOI's response to a similar Míla comment on the underestimation of Ljósleiðarinn's deployment plans. Chapter 5.4.2, under the geographical section, also refers to the ECOI's response to a similar comment from Míla on Ljósleiðarinn's supposed deployment commitments arising from the agreement with the Ministry of Foreign Affairs. See these discussions.

88. Furthermore, the ECOI does not find it credible that Míla's recent and carefully prepared deployment plan requested by the ECOI in March 2023 should now suddenly be disregarded. It is clear that Míla has accelerated its fibre-optic deployment significantly after the sale to Ardian, and Ardian's spokesmen have publicly stated that in coming years, Míla will greatly increase its fibre-optic deployment across the country. It is obvious that Míla's owners have significant means at their disposal and the ECOI considers it highly likely that Míla's statements and plans will be realised over the coming years, while there is considerable

uncertainty about such intentions on the part of Ljósleiðarinn for reasons outlined in the general chapter at beginning of this document.

89. In addition, the Míla document on the decommissioning of the copper system also included information on Míla's deployment plans in the longer term.

90. As for Míla's reference to Eygló's fibre-optic deployment in the Westman Islands, the ECOI has discussed this matter in detail in this analysis, and the ECOI expects this company to complete its fibre-optic deployment in the municipality within a few years. The ECOI is not aware of any entities other than Míla, and to a very minor extent Eygló, who have installed a fibre-optic network where there is another fibre-optic network in place. The ECOI is not aware of any such undertakings by Ljósleiðarinn.

Mobile network capacity

91. Míla's first document of comments includes, in Paragraph 47 of Chapter 5.a on page 11:

"In Paragraph 131, the ECOI discusses accessible capacity of mobile networks and its dependence on the number of simultaneous users of the relevant mobile phone transmitter, although access to a fixed network is always guaranteed. In this regard, Míla would like to point out that accessible capacity on a fixed network is guaranteed by developing more powerful connections in the equipment. This is therefore not much different from a mobile network, i.e. in both cases it is necessary to develop the systems. Most smaller population centres are small enough that a mobile network transmitter can be sufficient for an entire municipality without significant problems."

The ECOI's position

92. Although it is generally true that in mobile networks, the capacity for each user is not as well protected against traffic fluctuations, Míla is correct in saying that quality could be improved with more powerful connections to transmission equipment. This may reveal differences in quality between the networks of different mobile network operators and be a potential factor in their competition for consumers. This assessment by Míla of mobile network capacity supports the ECOI's assessment of the substitutability between fixed and mobile networks in terms of dedicated mains-connected network routers.

Regarding fibre-optic networks and GPON

93. Míla's first document of comments includes, in Chapter 5.c on page 11:

"Paragraph 236 contains a discussion of Míla's GPON solution where it is stated that Míla offers users up to 1 Gb/s symmetric service on its GPON network over "sharing where most commonly there are 64 customers connected to one splitter". This statement is incorrect and must be corrected. [...]"

The ECOI's position

94. The technical characteristics and capacity of GPONs is discussed in general terms in the relevant chapter and paragraph. The ECOI was informed by Míla that 64 users are most commonly connected to each splitter, although GPON technology allows sharing of up to 128 customers. This does not refer to Míla's utilisation of its local loop network, i.e. the number of active customers who use each splitter and share the bandwidth provided by the relevant section of the local loop network. It is therefore not necessary to revise the wording of Paragraph 236.

3.1.2 Tengir

Access fees for local loops

95. Tengir's comments on the first consultation include the following, on page 3 in the company's statement on Paragraph 114 in the Preliminary Draft:

"Despite the fact that the itemisation of expense items in this country is "specific to Iceland", and in such manner that the line charge is separate and may even be collected by a network operator, like in the case of Tengir, Tengir considers this to be an important arrangement due to the competitive conditions in Market 3a. This arrangement has the effect that Tengir has a direct business relationship with end users and repeatedly prevents Míla from moving end users from the local loops of Tengir to the local loops of Míla, without the knowledge of Tengir and the relevant end users.

In light of the fact that Míla has in the last two years greatly expanded its activities in fibre-optic development in Akureyri, which includes installations to most multi-dwelling buildings in the municipality, Tengir considers it entirely clear that Míla will continue to use all measures available to persuade end users who use Míla's bitstream, through Tengir's fibre-optic system, to switch to Míla's fibre-optic system. Anything else would be unnatural, but on the other hand Tengir considers it very important for end users to have a choice which would otherwise be denied them.

Previous comments and analyses have shown that users are considerably loyal to Tengir and that the company is in a strong position in this area of operations, even where there is a double fibre-optic system. It is also the case that residential users pay a lower line charge to Tengir than for example the line charge that is collected by Síminn from users for local loops in Míla's fibre-optic system. These are probably among the reasons that end users regularly wish to be moved back to Tengir's local loops when they discover that they have been moved to a Míla-owned local loop without their knowledge. This situation arises, for example, when customers order services from Síminn and specify Tengir as line provider, but the order is created in Míla's fibre-optic system, either by the relevant sales representative at Síminn or altered by Míla when they receive their order through their Salesforce system. On the other hand, it is not a general rule that end users are moved to Tengir's local loops. In cases where this situation arises after on-site services have been

completed, there are always some people who cannot be bothered to do what is required for the move, i.e. to have another visit from a technician."

The ECOI's position

96. This comment by Tengir describes the company's position on the line charge and its business relationship with consumers but does not contain a substantive comment on the paragraph in question, although at the conclusion of its comment, Tengir describes how the hassle of moving consumer connections between local loop networks may act as a certain access barrier.

Development of Nova's market share in fixed-line connections

97. Tengir's comments on the first consultation include the following, on page 3 in the company's statement, regarding Paragraph 139 in the Preliminary Draft:

"[...].

[...].

[...]."

The ECOI's position

98. Tengir's comment supports the ECOI's analysis of the situation in the relevant retail market. [...].

The ECOI's discussion of Vodafone

99. Tengir's comments on the first consultation include the following, on page 4, on Paragraph 164 in the Preliminary Draft:

"It is stated here that Vodafone has increased its use of connections via Míla's fibre-optic network, and Tengir considers it important that the ECOI take this into account in its assessment of likely developments in market shares of the bitstream market in Tengir's area of operations for the duration of the term of validity of the market analysis. [...]."

The ECOI's position

100. Tengir's comment supports the ECOI's analysis of the situation in the relevant retail market. [...].

3.2 Assessment of the competitive position in the related retail market for broadband access (internet service)

3.2.1 General

3.2.1.1 Ljósleiðarinn

Definition of service market at retail level

101. Ljósleiðarinn's comments on the first consultation include, on page 7:

"Ljósleiðarinn agrees that the following services belong to the retail market for standardised broadband access: Broadband connections on copper network with VDSL technology, connections via cable systems and connections via 4/4, 5G and 5G (and future mobile phone generations) that are provided via an mains-connected network router.

However, Ljósleiðarinn wishes to comment on the terms used by the ECOI. According to the market analysis, microwave networks with fixed wireless access fall under the definition of FWA (Fixed Wireless Access) and are distinguished from mobile network solutions. Ljósleiðarinn considers that both mobile networks based on 4G/4.5G and 5G standards and wireless microwave networks (such as Starlink) should be considered FWA. This is consistent with the terms used by Ljósleiðarinn's suppliers, such as Nokia, which uses the term FWA for terminal equipment based on 5G standards."

The ECOI's position

102. Ljósleiðarinn agrees with the ECOI's assessment of the definition of the service market in the retail market, including as regards copper and the mobile network solution in question.

103. In the opinion of the ECOI, the most important aspect of fixed wireless access is that it is indeed fixed. In the case of the microwave solutions that are now being phased out (such as Wi-Max), a fixed antenna at the point of use is directed to the transmitter in question, which means that neither the antenna nor the equipment connected to it is portable. This is in line with, for example, the definition of the access services provided via mobile networks in Norway. For the service to be considered part of the relevant access service, rather than a general mobile network service, a router at the point of use must be geolocked to the user's location so that it is not possible to move the router and use the service elsewhere. Names applied to such equipment by manufacturers are not relevant in this context unless accompanied by technical characteristics.

104. The ECOI's definition of the mobile network service in question, namely that it must be provided via an mains mains-connected router to be considered substitutable for fixed line service, is based on a fixed location of use. It takes some effort to disconnect a network router from the power supply and take it elsewhere and reconnect. Other people in the household/place of use will then be without an internet connection and the network router

is likewise not usable during the transport except by substantial effort in providing household electricity from batteries with a 12 to 220 V inverter or other such equipment.

3.2.1.2 Míla

Regarding the ECOI's consumer surveys

105. On pages 6 and 7 in its first document of comments, Míla makes a reservation regarding the ECOI's assessment of the findings from the consumer surveys commissioned by the ECOI and carried out in 2020 and 2022, stating the following in that regard:

"Míla is of the opinion that some of the questions may be misleading, and this applies not least to the SSNIP question which is presented far into the survey. Only about 55% of respondents to the survey provide valid answers to this, of which 18.5% answer "don't know". This question is highly misleading as instead of a 5-10% increase in the monthly fee for fibre-optics (which is what is being measured with the SSNIP question), which would correspond to an increase of ISK100-300/month, the question is about the entire internet package which includes fibre-optics, bitstream over the fibre-optic cable, domestic and overseas data traffic, help desk services, breakdown service and retail mark-ups for the entire package. The ECOI also asks about the annual fee instead of the monthly fee so that instead of a monthly increase of ISK 100-300 for fibre-optic cable, the question is about a 10% price increase in the annual fee for internet services, which comes to an increase of ISK 12-15 thousand on an annual basis. Despite this, only about 45% of respondents consider it likely or very likely that they would switch to a Ljósnet (VDSL) connection. Míla considers that if the SSNIP question had been presented properly, the vast majority would have answered the question in the negative. In this regard, Míla refers to its own survey from 2020, which the company has discussed previously."

The ECOI's position

106. Míla made detailed comments along these lines on the ECOI's survey and the SSNIP test it contained in its comments on the previous ECOI market analysis completed in 2021. See the response provided to these comments at the time. It was not considered necessary to amend the survey process when the survey was repeated, nor when a similar survey and SSNIP test was carried out for substitutability with mobile networks. Neither ESA nor the Rulings Committee for Electronic Communications and Postal Affairs has commented on the execution of the survey.

Regarding substitutability in the retail market

107. Míla's comments on the first consultation include, on page 12 and 13:

"Chapter 3.2.1 includes a discussion of different access technology for broadband access at retail level and substitutability in that regard.

The ECOI maintains in Paragraph 289 that there is not substitutability in the Icelandic retail market between wire-dependent connections via fibre-optic cable

or copper networks that use VDSL technology on one hand and connections via satellite on the other hand. The principal reason for this is pricing, particularly the high start-up cost. Míla disagrees with this.

It seems that one of the ECOI's criteria for substitutability is the capacity of connections, cf. for example the discussion in Paragraph 295. Míla considers it obvious that most users wish to move their residential connection from copper to fibre-optic cable as soon as possible. Thus only about [...]% of households where fibre-optic cable is an option use xDSL and in these areas, practically 100% of new connections are installed on fibre-optic cable. Furthermore, the actual adoption of fibre-optics which Míla has supplied indicates that most users do not consider VDSL a substitution for fibre-optic cable, but quite to the contrary. Míla therefore considers that there is no demand-side substitutability.

In Paragraph 298 it is maintained that users who have fibre-optic connections may be inclined to move to xDSL connections if the price of fibre-optics would increase substantially. The ECOI does not refer to any data or provide specific reasoning in support of this. In Míla's opinion it is entirely spurious to maintain this in light of the available information and the results of user surveys which clearly indicate that speed, not price, is the principal determining factor in this regard. Service providers on the retail market are well aware of this. According to Míla's information, end users are therefore offered a connection of the highest quality, meaning that consumers are not being offered the option to connect via copper in the areas where fibre-optic cable is available.

Paragraph 302 includes a discussion of so-called unilateral or asymmetric substitutability, where it is noted that when regulatory bodies within the EEA define broadband services, they usually don't consider there to be such a fundamental difference between new and older service types of copper, cable and fibre-optic networks as to constitute a break in the chain of substitution. To justify the conclusion that there is a break in the chain, there must be an unbridged gap in the chain, for example where the only option would be very low-capacity connections via a copper network, such as ADSL, on one hand, and high-speed connections via a fibre-optic network on the other hand. Míla cannot agree with this.

Míla points out that in Denmark, the market conditions are quite similar to those in Iceland, Danish VDSL connections being of similar quality, to name one example. Denmark boasts, among other things, of newer types of XDSL services than in Iceland, offering up to 300 Mbps service. Míla therefore does not accept that conditions in Denmark are different to those in Iceland, and the ECOI's analysis has not demonstrated that there is a specific difference in this regard. Míla considers the market conditions in this country to be most similar to those in Sweden and Denmark in the sense that fibre-optics are widespread in all three countries, the highest rate being in Iceland. In most other European countries, the progress of fibre-optic rollout has been much slower. There is no demand-side substitutability between fibre-optics and copper.

With reference to the aforesaid and other discussion in this document regarding the phasing out of the copper network, and also Míla's first comments in the last consultation process regarding the market analysis of markets 3a and 3b, it is clear that the ECOI's conclusion regarding substitutability between copper and fibre-optic connections, cf. Chapter 3.2.2.5, is made on completely spurious grounds. The conditions for substitutability between copper and fibre-optic connections are no longer present. We also refer to the recent market analysis carried out by the ECOI's counterpart in Norway in this regard."

The ECOI's position

108. As for substitutability with satellite service, such service has not been adopted to such a degree that it would be reasonable to include it in the selection for Icelandic consumers when it comes to selecting an internet connection for households or general companies. It is a fact that setup costs of satellite services amount to several tens of thousands of krónur, e.g. ISK 78,500, for Starlink according to "starlink.com/residential", which is considerably higher than for a general connection over a fixed network or with an mains-connected mobile network router. For these, there are generally little or no setup costs.

109. As for substitutability between Ljósnet (VDSL) and optical fibre, the ECOI has conducted two consumer surveys that show some willingness on the part of consumers to switch from optical fibre to Ljósnet (VDSL) in the event of a price increase in the former. This willingness grew from September 2020 to April 2022. This may be due to rising inflation and price increases in consumer products, as well as prominent public discussion about decreasing standards of living, which may have made consumers more sensitive to price increases. Whatever the reason, the survey results showed that the percentage of those who reported that such a switch from optical fibre to Ljósnet (VDSL) was very likely went from 17% to 26%, and those who said somewhat likely went from 16% to 19% for a total of 33% who said that a change was likely in September 2020 to 45% in April 2022. See Chapter 3.2.2.3, particularly Paragraphs 346-350 and Figure 3.28, which specifically address the results of this survey question.

110. Consumers also don't mention speed as the most important factor in their purchase decision. When asked in April 2022 what was the reason for their latest change in household internet service provider, speed ranked fifth after price, the quality of the company's services, the selection being made by an employer, and the service package that came with the connection. The fact that price takes first place is supported by the results of the substitutability question discussed above.

111. It can also be mentioned, as stated in Chapter 3.1.4.2 on demand in the consumer market for internet services, in Paragraph 191, that Míla claims on its website that Ljósnet (VDSL) fulfils all usage requirements for households, including several set-top boxes for TV services. The ECOI considers that this could not be said about ADSL, meaning that there is a break in the chain of substitution for ADSL but obviously not for VDSL. It is therefore cause for doubt when Míla makes one claim publicly towards electronic communications companies and consumers and another claim to the ECOI when it suits the company.

112. There is also no difference at the retail price level between copper and general fibre-optic connections, which weighs heavily in the assessment of substitutability.

113. Míla's claim that the ECOI does not present any evidence or rationale for its substitutability assessment is therefore not true. For detailed reasoning for this conclusion, the ECOI otherwise refers to Chapters 3 and 4 of Appendix B.

114. It should also be noted that no electronic communications company on the market, other than Míla, claims that there is no longer substitutability between copper and fibre-optic network connections, not even Síminn, which previously claimed this while it was the owner of Míla.

115. There is also a fundamental difference between the conditions in Sweden and Iceland as far as copper networks are concerned. In Sweden, copper networks are generally only ADSL, not VDSL, and thus have much less capacity than Míla's copper network. In Denmark, the important difference is that there is a price difference between copper and fibre-optic network connections at retail level, unlike in Iceland. The Norwegian analysis referred to by Míla is still in progress, but according to the ECOI's information, the copper network in Norway will be permanently discontinued within a few months and is used by a considerably lower proportion of households and businesses than the copper network in Iceland. The ECOI also notes that the Office is obliged to analyse the relevant markets based on the situation in Iceland, so it is not possible to apply the situation in other countries directly to Iceland. It is worth noting, however, that the vast majority of European states still consider such substitutability to exist.

On competition in the retail market and obligations

116. Míla's comments on the first consultation include, on page 13:

"Chapter 3.2.6 includes an assessment of competition in retail markets. There, the ECOI concludes that but for the existing wholesale obligations, network operators could, at least in certain areas where there is insufficient competition on the retail market, be able to enjoy the economic strength that comes with impeding effective competition and operate to a significant extent without having to consider competitors, customers or consumers. Míla categorically disagrees with this.

The regulatory framework for electronic communications assumes that if a forward-looking market analysis leads to the conclusion that there will be effective competition in a related retail market/markets during the expected term of validity of the analysis, even though no obligations applied to the related wholesale market(s) (the Modified Greenfield Approach), no obligations should be imposed on the relevant wholesale market.

Míla considers that the competitive conditions in the aforesaid markets, which have undergone considerable changes in recent years, justify that all obligations be lifted. There would no risk of harming consumers' interests due to lack of competition if no obligations applied to the underlying wholesale markets. Míla has all the incentives of a wholesale company to offer equal access to the

company's networks at competitive prices, and no incentive to discriminate against electronic communications companies that provide retail services."

The ECOI's position

117. It was the conclusion of a geographical analysis of the related retail market that effective competition could not be determined in any municipality based on the criteria used by the ECOI, taking into account the division of market share and the HHI index. Furthermore, the objective of this analysis is not to designate an entity with significant market power at the retail level, but rather to analyse the competitive situation in the relevant wholesale markets, in specific regions where applicable. The position in the retail market, including in particular regions, is used as a benchmark in this assessment.

118. The ECOI generally agrees with Míla that competitive conditions have changed in recent years. However, this change is not uniform across the country, and in numerous geographical markets, no strides have been made towards increased competition. The previous analysis indicated that in several municipalities, competitive conditions justified partly lifting some obligations. The geographical analysis currently described in Chapter 5 of the Preliminary Draft, as well as in Chapter 6 on the assessment of significant market power in the various geographical markets, details the differences found in individual geographical markets in terms of competitive conditions in the retail and wholesale electronic communications markets for access networks. The situation has changed so that now it can be estimated that there is effective competition in geographical markets where about 80% of the Icelandic population lives. Thus, it is only in the geographic markets where ca. 20% of the population live where competitive conditions are less favourable and obligations are required. There, Míla is in a position to act irrespective of its consumers, customers or competitors at the wholesale level. This also applies to Ljósleiðarinn, Tengir and Austurljós in the geographical markets where these electronic communications companies are in such a position. Refer in particular Chapter 6.2.3 on Market 3a and 6.3.3 on Market 3b, but also to other subchapters in Chapters 6.2 and 6.3 where individual municipalities are discussed.

Regarding competition and access barriers in the retail market

119. Míla's comments on the first consultation include, on page 13:

""There is effective competition on the retail markets and consequently there is no justification for imposing obligations in the relevant wholesale market.

If the ECOI considers the conditions to exist that are described in this chapter, cf. for example Paragraphs 445 and 460, and that there are still significant access barriers in certain areas of wholesale markets 3a and 3b, then the ECOI, with reference to principle of equality according to the Administrative Procedures Act, has a duty to impose obligations on not only Míla but also on other network operators in the areas where the ECOI believes there to be access barriers to the retail market.

As Míla has categorically stated, the company has all the incentives of a wholesale company to provide equal access to the company's connections relevant to this

discussion. Míla categorically denies that the company can operate in any area without having to take competitors, customers or consumers into account. However, if the ECOI considers there to be any likelihood that the contrary is true for specific areas, then the Office has a duty to apply the same reasoning to other network operators, who are numerous and located in many parts of the country, in many cases as the sole network operator for the relevant area."

The ECOI's position

120. In Chapter 3.2, the ECOI concludes, with particular regard to the relevant paragraphs in Chapter 3.2.6 on competition in retail markets for internet services and related services at national level, that there is no effective competition, except perhaps in specific regions. It is also mentioned that the situation would undoubtedly be worse had Míla not been subject to obligations in preceding years. In these paragraphs, reference is made to the continued analysis of the retail level in specific regions in Chapter 5.4. This chapter, including subchapters 5.4.2.5 and 5.4.2.6, contains an assessment of market share and concentration of market share in each of the country's municipalities and a forecast based on recent developments. When considering behavioural factors such as pricing and other factors such as market behaviour, marketing strategy, service provision, quality, characteristics, functionality/utility of connections and nature of demand at retail level, the conclusion of Chapter 5.4.3 is that there are no indications that geographical markets should be segmented at the retail level. However, the structure of the retail market suggests that there are considerable regional differences in competitive conditions, especially with regard to market share between municipalities, network coverage and the number of operating wholesale and retail companies.

121. Chapter 5.4.2.6 also suggests that there is significant concentration on the retail market in all municipalities. Concentration is high and the HHI index is never below 2,600 points, the lowest being 2,663 points in Reykjavík. This indicates a high concentration in the retail market for internet access, which is unlikely to change during the term of validity of the analysis. The ECOI thus concludes that, based on these data, it is not possible to assert that there is effective competition in any municipality at the retail level. As a result, all regions were further analysed at the wholesale level in Chapter 6 of the Preliminary Draft, where the same consideration was given to all network operators.

3.2.1.3 Nova

Competitive conditions in the retail market for broadband services

122. Nova points out that in the discussion of Síminn's position it is noted that there is little mention of Síminn in the mobile network sector, and in the opinion of Nova it is obvious that Síminn has placed immense emphasis on the bundle market, where the "Heimilispakinn" bundle has played a key role. Heimilispakinn has not been offered as part of mobile network solutions, which in Nova's opinion explains why Síminn's mobile network activities are barely noticeable in the market. [...].

123. Nova also points out in this regard that in the ECOI's market analysis there is an overall tendency to state that competition or effective competition exists in individual markets, first

and foremost with reference to there being two or more competitors in the relevant market. According to Nova, effective competition that may exist in a market is determined by many more factors than the number of companies in the market, and it is well known that there are problems with competition on duopolistic and oligopolistic markets where effective competition cannot be established due to the tendency of companies to align to a greater or lesser extent which, depending on the situation, is determined solely by the market structure. Towards the end of Nova's comments regarding competitive conditions in the retail market for permanent access and broadband services, on page 4, it is stated that:

“This is solved with the provisions of Article 45 of the Electronic Communications Act, by authorising the imposition of obligations on a company that enjoys significant market power, whether on its own or together with others. Nova assumes that conditions of this kind will be taken into account when the time comes for imposing obligations, depending on the requirements and grounds that are considered to exist based on the market analysis.”

The ECOI's position

124. With the new Electronic Communications Act No. 70/2022, and the new Regulation on market analysis no. 556/2023 established under the Act, there are new provisions on the obligations that the ECOI may impose on companies falling under the definition of purely wholesale companies, cf. Article 59 of the above-mentioned Act. In the Preliminary Draft, the ECOI concludes, with respect to the retail markets, that it cannot be ascertained that effective competition exists in any municipality. Likewise, the ECOI does not find any companies to have joint significant market power at the wholesale level in any location, although the ECOI will of course take competitive conditions and competition problems into account when imposing obligations.

3.2.2 Substitutability between copper and fibre-optics

3.2.2.1 Ljósleiðarinn

Still substitutability between copper and fibre-optic

125. According to Ljósleiðarinn's comments on the first consultation, the company considers there still to be substitutability between retail internet services with underlying copper and fibre-optic networks.

The ECOI's position

126. Ljósleiðarinn agrees with the ECOI and other market participants, except Míla, that there is still substitutability between retail internet services with underlying copper and fibre-optic networks. There is no need for further discussion on this comment.

3.2.2.2 Míla

Limits to consumers' choice of underlying local loop network

127. Míla states on page 6 of its first document of comments that the ECOI overestimates the options for end users when it comes to selecting the underlying local loop network for their electronic communication service, and that it is the relevant retailer who selects what underlying network is used for the service in each case. Míla mentions as an example that Nova stopped selling copper-based services several years ago. According to Míla's information, it is not generally the case that the average consumer states a preference for a particular local loop network, although there certainly some exceptions to this. It is also noted that retailers may not necessarily take account of such preference [...].

The ECOI's position

128. According to the ECOI, it varies widely whether a consumer chooses one local loop network over another. In the ECOI's April 2022 consumer survey, over 63% of respondents said they knew the type of their household's telecommunication connection, and this proportion remained similar across demographic variables. Likewise, the survey shows that people are generally aware of which company owns and operates the telecommunication connection, but only about 20% of respondents said they did not know this. Consumer responses as to whether their system was from Ljósleiðarinn, Míla or Tengir were not far from the actual share of the companies at national level, so there are indications that the survey is reasonably reliable in this regard. [...]

Substitutability on the retail market

129. Míla's first document of comments includes the following on page 12:

"Due to the ECOI's discussion of the aforesaid in Chapter 3.1.5.1 in the consultation document, Míla wishes to reiterate that it is their intention to discontinue the copper network at a much earlier stage than envisioned in previous plans, which were presented with clear reservations.

According to the consultation document, the ECOI considers it likely that the process for phasing out the copper network will be somewhat slower from 2023 to 2026 than during the years 2027 to 2028 due to the nature of Míla's phasing-out plans and the fact that fibre-optic installation has not yet been completed in areas where conditions are unfavourable. This conclusion is wrong, and it seems that this forecast is only likely to further support the imposition of obligations on Míla. The rollout of 5G will obviously mean that copper will be phased out at a faster rather than slower rate. Míla considers there to be no grounds to assume a significantly slower rate of phasing out copper in the years 2023-26. [...] The grounds assumed by the ECOI in this regard are simply conjectures that do not stand up to scrutiny, and therefore the graphs in Figures 3.26 and 3.27 in the consultation document are seriously flawed. Míla points out in this regard that copper local loops that are not used for xDSL connections are used for Síminn's PSTN connections. As the ECOI is aware, Síminn will discontinue the PSTN system in a few months. It is assumed

that all PSTN connections will have been discontinued before the end of 2023, or in the first quarter of 2024 at the latest. After that, there will be an equal number of copper lines and xDSL connections."

The ECOI's position

130. The ECOI has communicated actively with Míla on the company's plans to discontinue its copper system. In March 2023, Míla submitted a detailed plan to the ECOI, setting out a timed plan for the decommissioning of the copper system of each telephone exchange for the years 2023 to 2028, when the decommissioning of the copper system is expected to have been completed. The ECOI followed up on this information with e-mails in March and April, to which Míla responded satisfactorily. The ECOI completed this data collection in early April 2023. The ECOI bases its discussion on the decommissioning of the copper system on this information from Míla, but Míla has not sent the Office any updated plans after this. Therefore, Míla's remark that the ECOI bases its discussion on "conjectures" is highly surprising, and this sudden change in Míla's attitude, after a few months, is simply not credible.

131. Similarly, Síminn has been in good communication with the ECOI about the decommissioning of the PSTN system, which Síminn maintains will be fully discontinued in the first half of 2024. After that, no copper local loops will be used for anything other than xDSL.

132. This is reflected in the forecast presented by the ECOI in Chapter 3.2.2.2 on copper and fibre-optic network statistics, particularly in Figure 3.26 where the ECOI forecasts the number of copper local loops in service through 2028, based on the above data from Míla and Síminn. The ECOI therefore rejects criticism that this discussion is not based on credible data.

Drop-off from Ljósleiðarinn's fibre-optic network, including from Míla's VDSL system

133. Míla's comments on the first consultation include the following, on page 12:

"According to Paragraph 326 that the ECOI obtained information from Ljósleiðarinn regarding customer drop-off from the company's fibre-optics network. This data shows that the company has been losing an unspecified percentage of customers each month, mostly to Míla, including to Míla's copper network. Míla considers this information totally unreliable and that the ECOI should include a major reservation in this regard, as well as giving serious consideration to Ljósleiðarinn's grounds for providing information about the transfer of customers from the company to Míla. Naturally, Míla has no such information about what happens to the connections that have been cancelled with the company, i.e. whether the relevant connection is transferred to Ljósleiðarinn or if the relevant user has simply passed away, stopped using the service, cancelled it temporarily or moved house."

The ECOI's position

134. Deployment of companies of fixed networks is a known factor. Network operators of local loop networks have a search engine on their websites where addresses can be looked

up to see whether a connection is available there. It is therefore quite easy, when a company makes an analysis of the churn rate of its customers, to see what options a particular location has when it comes to fixed network connections. The ECOI has received copies of such analyses by Ljósleiðarinn, which reveal churn of customers who have had no other fixed network option than Míla's copper network. However, as noted in the paragraph in question, this churn rate has decreased, according to Ljósleiðarinn, since Síminn began providing its services on Ljósleiðarinn's network and as Míla's fibre-optic deployment has progressed. This indicates that consumers have been seeking services provided only by Síminn, such as the "Heimilispakkinn" bundle.

135. Churn of customers to mobile networks is indeed a possibility, as about 10-15% of household connections were only over mobile networks according to the ECOI's consumer surveys, indicating that there could be a similar rate of drop-off over to mobile networks. However, the fact that this churn rate has decreased since Síminn launched its service over Ljósleiðarinn's networks may reduce the likelihood that this was the case.

136. This indicates that at least some users opt for an underlying network to access certain retail services that are available through the network in question but not through others. This conclusion is supported by ECOI consumer surveys showing that bundles of accompanying services are a factor of considerable importance when it comes to selecting an internet service provider.

No substitutability between copper and fibre-optic networks

137. Míla's comments on the first consultation include the following, on page 14 in Chapter 5.f:

"Here, Míla would like to refer back to and reiterate the comments submitted regarding the alleged substitutability between copper and fibre-optic networks, and object to the statement that access to local loops in copper networks is part of Market 3a.

It is stated in the discussion of the substitutability between copper and fibre-optic local loops, cf. Chapter 4.2.3, that ultimately it is the consumers who decide what access to an underlying network they purchase for their internet service and related services, and that electronic communication companies must adapt to this. It is furthermore stated that there is obviously still considerable demand for internet service and related services via copper networks, and that Míla intends to continue to offer such services. There are also unsubstantiated conclusions that consumers can still switch between these types of service, for example if prices would increase slightly but permanently for fibre-optic networks but not for copper networks.

Míla objects strenuously to all these conclusions. First, in the vast majority of cases when end users purchase internet services and related services from the retailer of their choice, it is the relevant retailer who selects what underlying connection is used to provide the requested service, not the end user. The relevant user is always

offered a connection of the best possible quality. Retailers should be able to verify that Míla is correct in this regard."

The ECOI's position

138. The ECOI refers to previous responses on this topic, but notes that two surveys, conducted 18 months apart, provided conclusive responses about the willingness of consumers who then had connections over optical fibre to switch to Ljósnet (VDSL), in the event of price increases for optical fibre. Likewise, the ECOI reiterates that there is substitutability if a sufficient proportion of consumers is willing to make a change if the price of one product rises slightly but permanently but the other does not and the products can be used to meet comparable needs, making such a price increase unprofitable. Not all, or both, substitutability products must meet all needs of all consumers. Thus, the substitutability assessment concerns what the "marginal customer" does rather than all customers, the majority or most customers.

139. It may be pointed out that Míla still claims on its website that Ljósnet (VDSL) has "enough speed for all household use". That is what is communicated to electronic communications companies and consumers so it is not credible that Míla should argue otherwise in this case, when it suits the company in administrative proceedings.

3.2.3 Mobile network substitutability

3.2.3.1 Ljósleiðarinn

Underestimation in the analysis of the effects of substitutability between mobile networks and fixed networks

140. Ljósleiðarinn's comments on the first consultation include, on page 9-12:

" ... it is currently assumed in the ECOI's market analysis, as well as in the ICA's decision on Ljósleiðarinn's acquisition of Sýn hf.'s trunk network, that there is substitutability between mobile networks and fixed networks. Fixed and mobile networks both offer ways to connect to the internet, and the functionality and price of the service are the factors that are most important to the consumer. Information systems and technology now enable users to gain access and communicate information and data independent of terminal equipment such as laptop and desktop computers, tablets and smartphones, or of location (uses across devices). These changes in usage patterns entail fundamental changes in the functionality and interactions of the underlying electronic communication systems, which make the aforesaid use possible, independent of devices and location. Users may not even distinguish between using a fixed line network or a mobile network. They require that there is a perfect continuum in the use of services or software independent of terminal equipment and the underlying telecommunications network. It may even be said that users on mobile network devices hardly notice anymore whether they are connected to a mobile network, even if they are at home, or to Wi-Fi connected to the fixed network.

Ljósleiðarinn points out that the mobile network companies Síminn, Nova and Sýn were on 21 March 2023 allocated frequency authorisations for 20 years on the 800, 900, 1800, 2100 and 3600 MHz frequency ranges. Speed and coverage requirements will increase in the next years, and the final minimum requirements are that at least 99% of homes and places of work will have access to high-speed services on mobile networks, thereof at least 97% with service where the speed is at least 1 Gb/s. Fixed and mobile networks both offer ways to connect to the internet, and the functionality and price of the service are the factors that are most important to the consumer. ...

The ECOI expects that a substantial part of the population will have access to 5G services during the term of validity of the market analysis. First, it is the assessment of the ECOI that in the near future, 5G service will first and foremost mean an increased data transfer rate enabled by the 5G frequency range, utilised with a 4G service core, in addition to which the 3.6 GHz frequency range will be used to "fill in" high-load areas that require increased bandwidth to maintain good (adequate) speed. New 5G service aspects, so-called "standalone 5G", where the service core is also of the 5th generation, which offer among other things considerable bandwidth, very low response time and very low jitter, can in the assessment of the ECOI come into being in the latter half of the lifetime of this market analysis, i.e. in late 2024 or early 2025. It is still not clear what effect "pure 5G" service will have on the supply and/or demand in the relevant market, as the substance of these factors has not been established (paragraph 258).

The ECOI assumes that high-speed mobile network services, especially fifth-generation services, 5G, and furthermore 4G and 4.5G, can provide substitutability with data transfer services via a copper network with VDSL equipment and fibre-optic networks during the term of validity of this market analysis. This is the same conclusion that is reached in the ECOI's trunk network decision.

In the assessment of Ljósleiðarinn, the above has had the inevitable effect that the importance of fixed-line connections has diminished. The ECOI's market analysis states in this regard that " ... bitstream connections via fixed networks have not increased much since the year 2019 and increased much less in the years before that, and far less than the increase in the number of households and the population of the country. This indicates that mobile network connections are beginning to meet the demand of a certain group of consumers, which may suggest substitutability at the retail level between fixed network solutions and mobile network solutions via network routers. However, the ECOI does assume that during the term of this analysis, a large majority of households and companies will continue to have fixed network connections". There are also already indications that 5.5G technology will still further reduce the difference between the transmission capacity of mobile and fixed networks².

When the proportion of homes with fixed network connections is considered, it can be seen that this proportion has decreased from 2019, as stated in the analysis,

² https://www.mbl.is/vidskipti/frettir/2023/10/18/er_5_5g_naest_a_sjondeildarhringnum/

despite the increase in fixed network connections and apartments. As to the number of “data subscription only” subscriptions on mobile networks, it is clear that the number of these connections increases in line with the proportion of fixed network connections. This may indicate that with more access to such networks, households are increasingly using connections via 4G/5G networks.

In Ljósleiðarinn's assessment, the ECOI's analysis of substitutability between mobile networks and fixed networks, and the development of this substitutability in the near future, is probably flawed due to underestimation, and therefore the same applies to its effect. It is particularly important that this analysis is carried out in light of the fact that Míla has now acquired and is in control of a mobile network in both markets 3a and 3b, and the ECOI has concluded that there is no supply-side substitutability between mobile networks and fixed networks."

The ECOI's position

141. The ECOI agrees that mobile networks will be increasingly important going forward, but does not agree with the statement in Ljósleiðarinn's above comments that users can use mobile networks in all respects as a perfect substitute for a fixed-line connection, and even that users do not make any distinction now. Wireless connections for households and general via Wi-Fi are typically centered on a fixed-line network router, ensuring more capacity and quality for users in the household than mobile network transmitters can generally provide. Stand-alone-5G has not arrived in Iceland and it is premature to draw conclusions about its capabilities.

142. However, the percentage of homes with a fixed network connection is no longer almost 100%, as has previously been the case. Mobile network connections are now an option for some households. The ECOI reiterates that substitutability products need not meet all the same needs or include all the options of their counterparts.

143. As for hand-held devices, the ECOI agrees that consumers demand to be able to use such devices in the same way over mobile networks and in the home. The ECOI has not assessed the substitutability between such mobile usage and fixed-line services, as its nature is different and customers generally purchase both data service for a handheld device and a fixed-line connection for the household. The mobile device will then complement the fixed-line connection to maintain a connection outside the household.

144. The ECOI disagrees with Ljósleiðarinn that there is practically absolute substitutability between mobile networks and fixed-line connections and does not consider it necessary to amend its previous assessment that handheld devices are first and foremost an addition, at least for the time being. The mobile network solution that households seem to choose as the “residential connection” is in the form of an electricity mains-connected router that has more purposes than just being an internet gateway for handheld devices, i.e. it also serves as a connection for home computers, video game consoles, television sets and other such local uses that are not mobile in the same sense as the handheld devices, and may even be plugged by ethernet wired connections to the router. The services provided via such a network router are therefore considered substitutable with a fixed-line network router whereas mobile subscriptions for handheld devices are not considered to constitute such substitutability.

145. Based on the above, and as stated numerous times in the analysis, the ECOI disagrees with Ljósleiðarinn that the effects of this mobile network solution are inadequately reasoned or discussed in the analysis. However, should the impact of the solution in question prove to be significantly greater than the ECOI forecasts during the term of the analysis, in line with Ljósleiðarinn's suggestions, the ECOI can respond quickly with a new analysis, either a full analysis or for specific geographical markets where such a development would have a decisive impact.

Substitutability between mobile and fixed networks

146. Ljósleiðarinn's comments on the first consultation include, on page 12:

Ljósleiðarinn considers it evident that consumers in the retail market will demand to be able to use their terminal equipment equally on fixed and mobile networks without noticeable difference in technical aspects, quality or price. Consumers will very soon make an unconditional demand to be able to access content and services independent of equipment. With substitutability between mobile and fixed networks it is therefore assumed that in general, mobile and fixed networks will deliver content and services without noticeable difference in the users' terminal devices, computers or other equipment.

Demand for this feature of electronic communications services and content providers on the retail market will put considerable pressure on wholesale companies in markets 3a and 3b to be able to deliver such products to electronic communications companies and content providers at the wholesale level. In the assessment of Ljósleiðarinn, this factor and its effects are underestimated in the market analysis."

The ECOI's position

147. Refer to the previous response to the practically identical comment on the substitutability of all terminal equipment.

Residential connections paid for by employers, the total size of the market, retail bundles and geographical analysis of the retail market

148. Ljósleiðarinn's comments on the first consultation include, on page 12-13:

"One characteristic of companies in the retail market is that a large part of companies in this country are small, which enables them to use internet connections of consumer quality (residential connections). In general, the capacity and quality of residential connections meet the requirements of the vast majority of companies. The uptime of connections has been reliable and failures have been rare and dealt with quickly. The ECOI states that a defining factor in this country is the great increase in bitstream connections via fibre-optic cable. Statistics on the number of companies purchasing retail internet service are distorted by the fact that companies frequently pay for residential connections for employees. According to a consumer survey commissioned by the ECOI in the autumn of 2020,

this proportion was nearly 20% at that time and if this proportion has changed at all, it most likely has increased somewhat. Such connections are actually consumer service but in the statistics, such a connection is recorded as corporate service as the company in question is the payer.

There has been some uncertainty regarding the size of this market, and in Ljósleiðarinn's assessment it is somewhat larger than previously thought. Ljósleiðarinn reaches this conclusion due to the number of spaces in use with the aforesaid parties and the potential connections to such spaces. It is ever more common that more than one connection is purchased to each space, especially with companies. The arrangements for purchasing such connections can differ from case to case, as companies might, as an example, purchase two fibre-optic connections to a space while others might purchase one fibre-optic connection and one mobile network connection, for instance as a backup connection. This means that the total size of the market is larger than previously thought, and it may even be estimated that the market is up to double the size previously attributed to it. Thus it may be inferred that if there are 150,000 registered spaces, the total size of the market could be 300,000 or even greater when taking into account both varied use and unregistered spaces that are used either for residents or business activities. A good example of this could be several companies sharing a large business space that is registered as one unit, or leased spaces without their own real estate valuation number.

The ECOI's position

149. The ECOI agrees with Ljósleiðarinn about the inaccuracy in the Office's periodic statistical report stemming from employees' residential connections being registered as a corporate rather than residential service due to a company paying for the service. The ECOI has discussed this with the retail companies, but it has been deemed overly onerous to require the retail companies to classify connections by address and assess whether the address in question is likely to be a residential home rather than a place of business. The ECOI reiterates that businesses can be operated in general housing and there is nothing unusual about such a business being a user and payer of electronic communications services, even if the address is in a residential area rather than a "business district". Stakeholders are aware of this shortcoming and take it into account when assessing the market size. However, the ECOI considers that this shortcoming does not result in an overall underestimation of the market size but rather is limited to the segmentation between the residential market and the corporate market in retail sales of general internet services, which does not affect the underlying 3a and 3b wholesale markets.

150. Chapter 3.1.1 of Appendix A includes a discussion of the situation in the retail market for internet services. Figure 3.2 provides a graph of market numbers and trends over the last 13 years. They show that the market has mostly grown in-line with the increasing number of households in the country. Thus, the ECOI cannot agree that the market may be up to twice as big, as Ljósleiðarinn claims. It may be recalled that high-quality corporate connections are part of another market and are not listed in Market 3b as mass-market bitstream connections. It may be acknowledged that there was a certain stagnation in the growth of fixed network connections in 2020 and 2021. This stagnation was accounted for when, in the light of the

results of consumer surveys, a special data collection was undertaken among mobile network companies to identify the number of mains-connected network routers among the terminal equipment using mobile networks. The outcome can be seen in Figures 3.31 and 3.32 in Chapter 3.2.4.1 where in the second figure, the number in the relevant retail service over the last 9 years is compared to the number of apartments in the country. Rather than supporting the market size claimed in Ljósleiðarinn's commentary, this seems to show that mobile network services have become substitutable with fixed line services for a segment of consumers, albeit still a fairly small segment.

Effects of bundles on the internet service retail market

Ljósleiðarinn agrees with the ECOI that the number and share of bundles of various types in the retail market must be taken into account, as some companies may be in a stronger position than others. In the analysis of retail markets, bundles can be of such great importance that they may even be considered a separate retail market. The importance of bundles has been considerable in the supply offered by companies on the retail market, and competition has to a significant extent revolved around companies retaining as large a part as possible of business from households, and to some extent companies, by offering a bundle at a discount from the list price for each product. Of these, the bundles that include both internet and television services are among the most important. This interaction has, in Ljósleiðarinn's assessment, a major impact on the market. There have been instances where companies and a large part of employees (their residential connections and bundles are often part of their employment benefits with the relevant company) switch as a single entity from one wholesale network to another network. It is particularly important to examine the effect of this, including with regard to Síminn's obligation to purchase from Míla on the basis of the companies' exclusive purchasing agreement and Síminn's strong market position on both the corporate and consumer market.

In Ljósleiðarinn's assessment, this factor is underestimated and it seems that no position is taken regarding if, and then what, significance this tendency has for demand and supply on retail markets and consequently the underlying wholesale market. It cannot be determined if the aforesaid "aberration" is such as to have a significant effect on the position of the entities on both the wholesale and retail markets, and if so, then to what extent. In Ljósleiðarinn's assessment, this development is of great significance, in light of the fact that Síminn, Míla's biggest customer, has a powerful position on both the corporate and consumer market, and also because these companies have entered into a long-term trade agreement on Síminn's large-scale purchase of Míla's wholesale services. All the above indicates that the whole country is one and the same market area where there is no distinction in the retail market between different parts of the country, irrespective of whether the supply of services or the price for the relevant services is considered. The retail market thus also includes the wholesale market, and this is consistent with the Competition Authority's opinion on Ljósleiðarinn's purchase of Sýn's trunk network, which was approved with ICA Decision no. 37/2023, issued on 29 September 2023."

The ECOI's position

151. The ECOI disagrees that the importance of bundles is underanalysed. Chapters 3.1.2.7 to 3.1.2.12 include a discussion of bundles offered by Síminn, Vodafone, Nova and Hringdu. Chapter 3.1.4.5 discusses the companies' share in bundles and indeed highlights exactly how bundles seem to be an important factor in the market power of companies, where some are in a stronger position than others. This includes how Síminn has maintained its market share largely through the popularity of the "Heimilispakkinn" bundle. The number of Vodafone and Nova customers who buy bundled services has also increased in recent years. This is summarised in Figure 3.22 where this increase in the number of bundles is shown in proportion to the total number of general internet subscriptions. Therefore, the ECOI cannot agree that there is an error in the Office's analysis of this factor.

152. The power of retailers and the signs of vertical integration identified in Míla and Síminn's wholesale agreements are also taken into account in the assessment of significant market power in Chapter 6. The ECOI therefore does not agree that the impact of bundles was not sufficiently addressed in the analysis.

Lack of supply-side substitutability, Síminn's strong position on the retail market and vertical connection between Síminn and Míla

153. Ljósleiðarinn's comments on the first consultation include, on page 13-14:

"As for supply-side substitutability, Ljósleiðarinn agrees with the ECOI that companies that only offer one type of connection, i.e. connections via fixed networks or via mobile networks, generally cannot amend their supply at short notice. The ECOI maintains that after Síminn sold Míla, none of the larger companies in this country are active in both electronic communications retailing and infrastructure wholesaling on fixed networks. Retailers generally lease access to such infrastructure, although there are some smaller companies in rural parts of the country that are vertically integrated in this area. However, mobile network operators such as Vodafone and Nova do not operate their own fixed networks, but rather purchase wholesale access from entities including Míla, Ljósleiðarinn and Tengir.

[...]³

It is noted in the market analysis that Síminn's market share at national level was just over 46% at the end of 2020, for internet connections via fixed networks, and that at the end of 2022, the company's market share at national level had reached nearly 42% when mobile network solutions were taken into account, although Síminn has only a small share of these solutions, whatever the future may hold. When fixed network connections are taken into account, Síminn's share had reached 45% at year-end 2022. Meanwhile, Sýn's market share was 24.2%, when the aforementioned mobile network connections are included, Nova's was 23.4%, Hringdu had a market share of 8.7% and others accounted for 2.2%. As on the

³ Confidential

wholesale level, the market shares of retailers vary considerably by area. For example, Síminn is in a very strong position in many rural areas, perhaps as much as 70-80%, whereas its position is weaker in the greater capital area where there is more competition.

Síminn's strong market position means that Síminn's principal supplier at the wholesale level, Míla, is in a completely unique position on electronic communication wholesale markets, where Ljósleiðarinn is among Míla's competitors. Míla's strength is also evidenced by the great proliferation of fibre-optics which Míla has effected concomitantly with the company's development of its fibre-optics system, cf. Paragraph 1211 and the graphs that indicate respectively the number of customers and the number of fibre-optic connections. In fact, it must be assessed carefully in each case whether there are adequate grounds for a local definition of a market on the basis of the Competition Act. The European Commission has always acknowledged that competition is to a greater or lesser extent likely to occur in certain fields and for certain customer groups. The ICA's findings when examining mergers in the electronic communications market have confirmed that the whole country is one market area.

The market analysis notes that market share should be interpreted with reference to the relevant market conditions, and especially with reference to the activities or dynamics of the relevant market and to what extent the services are separate. In this regard, Ljósleiðarinn considers that there is need for further and more in-depth analysis and to assess the development thereof over the estimated term of validity of the market analysis."

The ECOI's position

154. As mentioned in the previous response to Ljósleiðarinn's comment, the signs of vertical integration in Síminn and Míla's wholesale agreement are taken into account, as well as the position of retailers with respect to the proportion of mains-connected mobile network routers in the assessment of significant market power for each geographical market in Chapter 6. The ECOI reiterates that Síminn operates the core mobile network, the service itself, and is the spectrum license holder, while Míla operates the radio access network (RAN). As discussed in Chapter 4.3 on access technology covered by Market 3b, Chapter 4.3.6 refers to the range of wholesale services available. These are resales in the case of mobile networks. Mention is made in Chapter 4.3.6.5 on Síminn that Síminn is the largest wholesale distributor of this component in the domestic market, in the form of Hringdu's reselling of Síminn's mobile network services. In this regard, it is Síminn which is the wholesale access provider via mains-connected mobile network routers, not Míla, although Míla benefits from Síminn's increased wholesale transactions due to Hringdu's business. [...]

3.2.3.2 Míla

Substitutability between mobile networks and microwave systems

155. Míla's comments on the first consultation include, on page 13:

“As for the ECOI’s consideration of substitutability between mobile networks in Chapter 3.2.4.1, Míla finds reason to submit that the company has become aware that a considerable number of mobile network connections other than via mains-connected routers are used as residential connections, especially by individuals and foreign nationals who come to this country for work. This mostly refers to so-called “dongles” powered via USB ports. There does not seem to be a great difference between their use and that of mains-connected routers. Míla has also noticed that users have begun using mobile phones to “cast” films to television screens. This means that mobile phone internet connections are beginning to function as fixed-line services for households.

Chapter 3.2.4.2 includes a discussion of fixed wireless access networks and services via satellite and it is concluded that fixed wireless access (FWA) connections are not part of the same market as fixed-line connections. Míla considers that the grounds on which the ECOI bases this conclusion, cf. for example Paragraph 422, also apply to VDSL connections that are provided directly from telephone exchanges, meaning that neither these connections should be part of the same market.”

The ECOI’s position

156. The uses of the technology in question are as numerous and diverse as the users themselves. People are resourceful and will find a way to get what they need. This does not mean, however, that each use of any device or technology for purposes others than for which they were intended, or primarily intended, automatically constitutes substitutability with traditional products that meet those needs. A battery powered wifi access point “dongle”, despite receiving electricity constantly from a computer USB port, does not have the same properties to provide a dedicated household connection as a mains-connected mobile network router. Such devices are portable but short-range, creating a kind of personal area network (PAN) in their immediate area. This is even less applicable to the occasional use of mobile phone properties that allow mirroring of the phone’s screen to a television screen. It is highly unlikely that such a solution would be considered good enough by a sufficient number of consumers to allow for substitutability with a fixed-line connection or a dedicated residential connection at a fixed location via a network router.

157. Microwave systems with fixed wireless access have been on the way out in Iceland for several years, and the number of their users is constantly decreasing. The systems that operated under a spectrum licence have not had their licence renewed, and these spectrums will be used for mobile network systems, i.e. 5G. The systems that continue to operate are on open frequency bands that do not require special licences. The ECOI considers that consumers do not appear to count fixed microwave connections as an option, as the use of such systems is generally limited to locations without Ljósnet (VDSL), optical fibre or high-capacity mobile network connections. Therefore, the ECOI cannot agree with Míla’s view that Ljósnet (VDSL) belongs with such fixed access microwave systems.

4 Definition of wholesale markets

4.1 General

4.1.1.1 Ljósleiðarinn

Potential total market for data transfer services at wholesale level and wholesale bundles – One value chain

158. Page 7-8 in Ljósleiðarinn's comments on the first consultation document state:

"The Competition Authority has, with regard to merger cases, discussed potential more wide-reaching or new market definitions in the electronic communications sector, such as a potential overall electronic communications market, a market for specialised data transmission services for companies, and a potential market for bundled electronic communications services. This has been taken for consideration due to, among other things, the views and reasoning submitted by Icelandic electronic communications companies to the effect that the boundaries between markets for mobile network and fixed-line services are disappearing, including due to changes in consumer use and demand substitutability and increased data transmission speed via mobile phones and mobile networks. The aforesaid is now submitted for the market analysis and it is considered that there is substitutability between mobile networks and fixed -ine networks.

From the case documents of the Ardian merger decision it can be inferred that Míla considers the numerous wholesale markets for electronic communications to form one value chain for data transmission and electronic communication services, all of which are part of Míla's activities. Míla also offers wholesale products in one downstream market that includes other products in adjacent markets. Judging by the company's notifications and public documents, Míla intends to offer more integral supply of products with a consequent major increase in data transmission. Míla intends to offer more and new integral or combined wholesale services to other electronic communication companies with types of service which the company was unable to offer before. These new combined or, as the case may be, bundled wholesale products have been described as services for electronic communication companies from the start to the end of the value chain (end-to-end, E2E). It seems that they are to include access for end users (high-speed connections with a local loop and bit streaming for fixed-line service providers, and in certain cases also with RAN mobile phone distribution for providers of mobile network services), data transmission via leased lines (including trunk lines, terminating segments and IP-MPLS), international connections and internet services.

With reference to the aforesaid, the ICA deemed there to be grounds for a potential definition of a wide-reaching wholesale market for integral or specific data transmission services for companies. By offering products and services on such a market, companies like Míla are meeting the considerable needs of corporate

entities by providing them with various combined, integrated or, as the case may be, bundled electronic communication services in the Icelandic data transmission value chain. In other words, this would include most or all wholesale services required by electronic communication companies to produce and sell various electronic communication products on the downstream retail market via fixed-line or even mobile networks.

Ljósleiðarinn considers that this interesting discussion on the part of the ICA indicates that the ECOI's market analysis is somewhat lacking as regards the inquiry whether one value chain can be analysed for data transmission and electronic communication services, the individual components thereof and the effects on adjacent and downstream markets. This is of particular import in light of Míla's plans, as the company's stated aim is to offer a more comprehensive range of products. To illustrate this there is an evident connection to Market 14, and in Ljósleiðarinn's assessment, that market and its organisation play a key role for markets 3a and 3b in this context. Ljósleiðarinn considers this to be lacking in the analysis, pointing out the market conditions in Iceland, including the conditions that have been created as a result of the Ardian merger case where the seller of Míla, Síminn, was allowed, during the time leading up to Míla's merger, to transfer important infrastructure to Míla, thereby completely transforming the arrangement of the electronic communication markets specifically brought about at the instruction of the ICA ."

The ECOI's position

159. The response to Ljósleiðarinn's similar comments can be found in Chapter 6 below. The ECOI rejects the notion that the Office did not address the above issues or their potential effects in the analysis.

160. To this it may be added that in the light of the above comments by Ljósleiðarinn, the ECOI wishes to point out that ESA has issued guidelines and recommendations on the execution of market analyses. First, there are the guidelines on market analysis and the assessment of significant market power of 16 November 2022.⁴ Second, the recommendation on the relevant market susceptible to ex ante regulation of 11 May 2016 (hereafter the "Recommendation").⁵ The EU Commission issued a new recommendation on the relevant

⁴The guidelines took into account analogous guidelines from the EU Commission of 2018, cf. *Commission guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and service* of 26. April 2018 (2018/C 159/01). See also the Commission Working Document, which contains further discussion on the execution of market analyses, cf. *Commission staff working document, C(2018) 2374 final*.

⁵ EFTA SURVEILLANCE AUTHORITY DECISION of 11 May 2016 RECOMMENDATION on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (<http://www.eftasurv.int/media/decisions/College-decision---Revision-of-ESA-Recommendation-on-Relevant-Markets-susceptible-to-ex-a.pdf>). They take into account the COMMISSION RECOMMENDATION of 9 October 2014 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 communications networks and services (Text with EEA relevance) (2014/710/EU). The above-mentioned ESA recommendations were based on the comparable EU Commission

markets in December 2020⁶, reducing the number of markets, but this recommendation does not formally apply to the current market analysis as it has neither been incorporated into the EEA Agreement nor published by ESA. Finally, there is ESA Recommendation no. 65615 of 2 December 2009 on notifications, time limits and consultation on market analyses with the EFTA Surveillance Authority and other NRAs in the EEA⁷.

161. The ECOI is obliged to take the above guidelines and recommendations into account in its market analysis of the relevant markets while the ICA is not dependant on the same market definition criteria in the individual cases investigated by the Authority at each time. In addition, specific legal and regulatory provisions on the ICA's merger control, which may differ from the electronic communications regulatory framework, apply. Details on the above can be found in the ICA's comments on the draft consultation, sent to the ECOI by letter dated 17 October and discussed previously in this document. The ECOI therefore needs to identify and analyse the competition status in the specifically defined markets and must provide special reasoning for amending any such market definitions. The ECOI has not seen any reason to analyse the relevant wholesale markets 3a and 3b in a broader context, although the analysis obviously refers to factors such as Market 14 on trunk segments of leased lines in its assessment of significant market power.

162. In light of the above comments from Ljósleiðarinn, we refer to the ICA's comments on the ECOI's draft consultation regarding why the ICA's market definitions might differ.

163. In its comments on the draft consultation, the ICA notes that according to the ECOI, Market 3a is composed of access networks (local loops) provided at a fixed location, both copper and fibre-optic, and related facilities, along with virtual unbundled local access (VULA) solutions, which fulfil the same needs as local loop lease. In summary, it was the preliminary conclusion of the ECOI for this market that the Office carried out a detailed geographical analysis of the market in question in all of Iceland's 64 municipalities and had now concluded that the obligations in 29 municipalities should be lifted, as effective competition had been established in these markets or was expected to be established during the term of the

Recommendation 2014/710/EU of 9. October 2014. On 18. December 2020, the EU Commission issued a new recommendation on this subject, cf. C(2020) 8750 final. Therein, the number of markets has been reduced from 5 to 2 and the new recommendation only includes wholesale markets for local access provided at a fixed location, which is similar to Market 3a according to the current ESA Recommendation, and wholesale dedicated capacity. Thus, Market 3b in the current ESA Recommendation is no more, and the ECOI would therefore be required to demonstrate that the conditions of the three-condition test are satisfied in order to be able to designate a company with significant market power in that market, and to impose appropriate obligations on the relevant entities. As the ESA has not updated its recommendations, the ECOI will refer to the applicable ESA Recommendation of 2016.

⁶ Cf. C(2020) 8750 final.

⁷ See <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:302:0012:0021:EN:PDF>. The Directive is based on the comparable Commission Directive 2008/850/EC of 15. October 2008. On 30. March 2021, the EU Commission issued a new Recommendation no. 2021/554 on this subject, "Commission Recommendation (EU) 2021/554 of 30 March 2021, on the form, content, time limits and level of detail to be given in notifications under the procedures set out in Article 32 of Directive (EU) 2018/1972. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021H0554>. The ESA has not updated its recommendations on this subject and therefore the consultation process with the ESA regarding the market analysis presented here is carried out in accordance with the applicable ESA Recommendation of 2009.

analysis. Thus, the ECOI designates Míla as an undertaking with significant market power in 26 municipalities, Tengir in 8 municipalities and Ljósleiðarinn in one municipality.

164. As for wholesale market 3b, the ICA notes that according to the ECOI, the market consists of various bitstream solutions that provide a connection between the end user and access points which are central in an electronic communications network and used to provide traditional internet access, along with related services. In summary, it was the preliminary conclusion of the ECOI for this market, having carried out a detailed geographical analysis of the market in question in all of Iceland's 64 municipalities, that the obligations in 31 municipalities should be lifted, as effective competition had been established in these markets or was expected to be established during the term of the analysis.

165. Thus, for wholesale market 3b for bitstream access, the ECOI designated Míla as an undertaking with significant market power in 31 municipalities, Ljósleiðarinn in one municipality and Austurljós in one municipality.

166. The ICA makes no comments on the contents of the ECOI's draft market analysis for wholesale markets 3a and 3b, as the ICA has no information, data or other grounds for challenging or correcting the ECOI's conclusions. As for the ECOI's preliminary assessment of the substitutability of services provided by mobile network companies via mains-connected mobile network routers at a fixed location, and the notion that these solutions are now considered to provide substitutability for service provided at a fixed location, on both the retail market for internet service and the wholesale market for central access provided at a fixed location (3b), the ICA stresses that this development is consistent with the Authority's perception of Icelandic electronic communications companies' perspectives on substitutability in competition matters. The ICA notes that the aforesaid is also consistent with presentations by foreign competition authorities, received by the ICA through European cooperation, on the development of competitive conditions on European electronic communications markets. This supports the ECOI's results and conclusion on this point in the Preliminary Draft as regards the increasing competitive restraint that certain mobile network solutions have for fixed line solutions.

167. Finally, the ICA reiterates that its role is to apply the provisions of competition legislation on the electronic communications market. The Authority's conclusion regarding market definitions, substitutability between goods or services and companies' positions on the market depends on the circumstances in each case. This includes the potential links between different electronic communication services and what effects the status of entities has in different marketing stages. Thus, the ICA was, by definition, not bound by the methodology and conclusions of the ECOI's draft market analysis in its handling of any future cases pertaining to the markets in question, although competition authorities may refer to market analyses conducted by electronic communications authorities, including their conclusions and assessments of competitive conditions.

168. In light of all of the above, the ECOI considers that the definition of the service markets in question in the draft analysis fully complies with the guidelines and recommendations of the European Commission and the example of other European regulatory authorities on the market definitions of the relevant markets.

4.1.1.2 Nova

Wholesale market 3a for local access provided at a fixed location

169. Nova's comments on the first consultation state that the company considers the wording in the ECOI's market analysis to be unclear in terms of how wholesale market 3a for local access provided at a fixed location is defined, as it specifically states that the lessee may choose which services they provide and have guaranteed or sufficient capacity of adequate quality. Nova finds it unclear whether this wording means that it is possible to require that the fibre-optic cable (dark fibre) itself be part of this use of lessee. Nova notes that Míla and Ljósleiðarinn offer this service in a very limited manner, whereas Tengir offers such service and Míla makes considerable use of that service on Tengir's network. [...].

170. The options available to third parties to offer services are therefore, according to Nova, very different, depending on who installed subterranean fibre-optic cable, and thus it can hardly be said that it is possible to lease access links to homes (Market 3a) from Míla, as the company has maintained that this is technically infeasible. In Nova's assessment it is therefore unlikely that new companies will be competing on this market any time soon.

171. It is further stated at the top of page 5 in Nova's comments:

"In the cases where municipalities and other such parties have embarked upon fibre-optic installation, it may be argued that there is a certain access barrier due to the parties' lack of knowledge on the importance of information technology to allow for efficient services through such infrastructure. [...]."

172. Finally it is stated that Nova has no further comments regarding the ECOI's conclusions on this segment of the market.

The ECOI's position

173. According to the conclusion of the definition of Market 3a in Chapter 4.2.9 of Appendix A, the wholesale market for local access provided at a fixed location, numbered 3a, comprises access to physical connections to access networks in copper and fibre-optic networks. The definition continues, adding that virtual unbundled local access (VULA) solutions that meet 3 specific conditions are also considered part of the market. Chapter 4.2.2 on copper networks includes a detailed discussion on them and these conditions. As noted there, VULA with active service (bitstream service) involves simulating, to the extent possible, local loop access and control of a special bitstream system for those requesting access. Here, Nova mentions the second condition, that the lessee themselves choose what services they provide and that the VULA has a guaranteed or sufficient capacity to ensure the necessary quality.

174. Tengir has long offered access to dark fibre loops in its access network, and Míla has used these to a considerable degree for its GPON services in Tengir's operational territory. Míla offers all retailers the same access options, 1 and 3, which retailers can use for purposes including accessing homes connected to Tengir's local loops. The ECOI agrees with Nova's assessment that Síminn is in a strong position on Tengir's local loop network.

175. Nova is correct in that third party service opportunities vary by local loop networks. Although Míla is subject to obligations for access on Market 3a, the technological topology of PON networks is such that it is more difficult to gain practical access to dark fibre loops for an operator's own equipment than to a P2P network such as Tengir's. Ljósleiðarinn has not been subject to obligations and has not offered such access but limited its offerings to active bitstream access. The ECOI agrees with Nova's assessment that new undertakings are unlikely to enter these markets, at least in the period covered by this analysis.

176. The ECOI agrees with Nova's assessment that Míla has made good use of its power, capacity and ubiquity in the Icelandic electronic communications market to conclude agreements with local fibre-optic networks. Such agreements vary, from Míla developing and providing bitstream services on such a network to long-term agreements on the operation and maintenance of such networks, up to purchasing the network. The small size of many of these networks makes the operation of two competing bitstream systems hardly economical, so this has given Míla a certain advantage in the bitstream market across Iceland.

177. The fact that Nova has no other comments on this part of the analysis supports the ECOI's conclusion on this matter.

4.1.1.3 Tengir

Agreement with the definition of service markets in markets 3a and 3b and the need for obligations

178. Tengir's comments on the first consultation include the following, on page 1 of the company's comments:

“Tengir broadly agrees with the ECOI's definition of markets 3a and 3b and is of the opinion that the ECOI has provided sound reasoning for its conclusions. Tengir agrees that wholesale obligations are necessary in the relevant markets in order to ensure competition, including in the upstream retail markets, but also considers it important that the appropriate obligations are clearly defined and unambiguously address alleged impediments to competition and competition violations that have been reported and may even still be under consideration with the ICA, the ECOI or courts of law.”

The ECOI's position

179. The ECOI is thankful that Tengir mostly agrees with the Office's definition of markets 3a and 3b. A discussion of competition problems and obligations can be found in Chapters 7 to 13 below.

4.2 Assessment of various access technology for the wholesale market for local access (Market 3a)

4.2.1 General

4.2.1.1 Ljósleiðarinn

Agreement with service market definition of Market 3a

180. Ljósleiðarinn's comments on the first consultation include, on page 28-29:

"In the market analysis, the ECOI considers both fibre-optic local loops and copper local loops to belong to Market 3a. This is in accordance with the above-mentioned ESA Recommendation of 2016 in force in Iceland, as well as the vast majority of European telecommunications regulatory authorities.

The ECOI determines that there is no substitutability between local loops for fibre-optic and copper networks on the one hand and for deep mobile network access on the other hand, which may correspond to such access to local loops in the fixed networks. Although it may be technically feasible, or may become feasible during the term of validity of this analysis, to provide such deep access, primarily in 5G networks, the ECOI considers that the structure of the electronic communications market in Iceland, including its small size, and competitive conditions in other respects, makes it impossible to create either demand for or supply of such deep access to the mobile networks during the term of validity of the analysis. There is therefore no commercial basis for such access. In recent years, access to electronic communications networks has been evolving from local loop access to bitstream access, making it clear in the ECOI's opinion that Icelandic electronic communications companies that do not operate their own mobile network systems will make do with bitstream access to mobile networks. The ECOI states that there is indirect competitive pressure from specified mobile network systems on the local loop market but does not consider it sufficient to restrict minor price changes. The ECOI is therefore of the opinion that mobile network solutions based on an mains-connected router do not belong to Market 3a. However, the ECOI will take into consideration this indirect competitive pressure from such mobile network solutions in its assessment of the dominant market position.

Ljósleiðarinn does not offer access to passive local loops on the household market, i.e. access on Market 3a. Local loops owned by the company are nevertheless an underlying part of the company's services on Market 3b, which means that Ljósleiðarinn has a presence on Market 3a with respect to services provided to its own operations in the form of internal sales, though the company does not conduct external sales on Market 3a.

The ECOI's conclusion regarding the definition of Market 3a (in Chapter 4.2.9, par. 553-555) is that wholesale market 3a for local access provided at a fixed location consists of access to physical connections to access networks in copper and fibre-

optic networks, as well as corresponding virtual network solutions that meet the conditions described in the notes with recommendations on the relevant markets, i.e. 1) that access is local and not central; 2) that the lessee can choose the service they provide, and has guaranteed or sufficient carrying capacity of adequate quality; and 3) that the lessee has full control of the connection. The ECOI considers that all connections to fibre-optic and copper networks that fulfil the above-specified criteria belong to the same wholesale market and that there is no reason to distinguish sub-markets according to various technological solutions. Internal sales of companies and groups of companies are also considered a part of the market. In the ECOI's opinion, cable systems, satellites, Fixed Wireless Access connections (FWA) and mains-connected mobile network solutions via 4G/4.5G and 5G with fixed point of use, or other types of mobile network solutions, do not belong to the wholesale market in question.

Ljósleiðarinn agrees with the ECOI's consideration. Access to mobile network transmitters takes place via transmission to a central access point and therefore does not belong to Market 3a."

The ECOI's position

181. The ECOI considers this position by Ljósleiðarinn to support the Office's conclusion on the service market definition for Market 3b.

4.2.1.2 Míla

Phasing out of copper networks and pricing of copper and fibre-optic connections

182. Míla's comments on the first consultation state on page 15:

"Demand for copper connections in particular is currently virtually zero, so Míla intends to stop selling VDSL connections where fibre-optics are already available. This will also eventually be done in areas where a wholesaler other than Míla offers fibre-optic connections.

In Paragraph 492, the ECOI refers to the fact that retail companies have not felt confident in offering different prices for internet services in Iceland according to underlying access technology. Furthermore, the gap in wholesale monthly prices between copper and fibre-optic local loops in Iceland has narrowed following the latest increase in monthly prices of copper local loops, which was approved by ECOI Decision no. 3/2023, dated 3. May 2023. For this reason, Míla wishes to point out that the increase in question would have been implemented much earlier were it not for a significant delay in the ECOI's cost analysis. [...]."

The ECOI's position

183. Although the demand for copper has decreased as fibre-optic deployment continues, it clearly still exists and will do so during the term of validity of this analysis. It's not the case

that all customers will immediately abandon their copper connection as soon as optical fibre becomes a possibility.

184. Regardless of the timing of changes in the monthly price of local loops, it is a fact that there has been some price difference in the lease for local loops at the wholesale level, depending on whether the local loop is a telephone wire from a pair of copper wire or a fibre-optic local loop. This price difference has not been seen in the retail access charge, however. This strongly suggests that retail companies do not see any differentiation in the price of these technologies, either in the sense that one type has increased in price due to superior quality or utility, or that the other should be reduced in price due to inferior quality or features.

185. If the market is competitive, the logical explanation for the lack of difference in pricing between copper and fibre-optic local loops is that consumers do not differentiate between the two types of connections in such a way that justifies a price difference. In a competitive market, pricing is based first and foremost on consumer willingness to pay for the value that the product brings them, not for the underlying costs of production and distribution.

4.2.1.3 Tengir

Conclusion regarding the definition of market 3a

186. Tengir's comments on the first consultation include the following, on page 5 of the company's statement on Chapter 4.2.9 of the Preliminary Draft:

"Tengir agrees with the ECOI's conclusion on how to define Market 3a and deems the Office to have provided a clear and detailed rationale for its conclusion."

The ECOI's position

187. The ECOI looks positively on the fact that Tengir accepts the Office's conclusion regarding the definition of Market 3a.

4.2.2 Substitutability between copper and fibre-optic connections on Market 3a

4.2.2.1 Ljósleiðarinn

Service market definition of Market 3a

188. Ljósleiðarinn's comments on the first consultation include, on page 28-29:

"In the market analysis, the ECOI considers both fibre-optic local loops and copper local loops to belong to Market 3a. This is in accordance with the above-mentioned ESA Recommendation of 2016 in force in Iceland, as well as the vast majority of European telecommunications regulatory authorities.

The ECOI determines that there is no substitutability between local loops for fibre-optic and copper networks on the one hand and for deep mobile network access

on the other hand, which may correspond to such access to local loops in the fixed networks. Although it may be technically feasible, or may become feasible during the term of validity of this analysis, to provide such deep access, primarily in 5G networks, the ECOI considers that the structure of the electronic communications market in Iceland, including its small size, and competitive conditions in other respects, makes it impossible to create either demand for or supply of such deep access to the mobile networks during the term of validity of the analysis. There is therefore no commercial basis for such access. In recent years, access to electronic communications networks has been evolving from local loop access to bitstream access, making it clear in the ECOI's opinion that Icelandic electronic communications companies that do not operate their own mobile network systems will make do with bitstream access to mobile networks. The ECOI states that there is indirect competitive pressure from specified mobile network systems on the local loop market but does not consider it sufficient to restrict minor price changes. The ECOI is therefore of the opinion that mobile network solutions based on a mains-connected router do not belong to Market 3a. However, the ECOI will take into consideration this indirect competitive pressure from such mobile network solutions in its assessment of the dominant market position.

Ljósleiðarinn does not offer access to passive local loops on the household market, i.e. access on Market 3a. Local loops owned by the company are nevertheless an underlying part of the company's services on Market 3b, which means that Ljósleiðarinn has a presence on Market 3a with respect to services provided to its own operations in the form of internal sales, though the company does not conduct external sales on Market 3a.

The ECOI's conclusion regarding the definition of Market 3a (in Chapter 4.2.9, par. 553-555) is that wholesale market 3a for local access provided at a fixed location consists of access to physical connections to access networks in copper and fibre-optic networks, as well as corresponding virtual network solutions that meet the conditions described in the notes with recommendations on the relevant markets, i.e. 1) that access is local and not central; 2) that the lessee can choose the service they provide, and has guaranteed or sufficient carrying capacity of adequate quality; and 3) that the lessee has full control of the connection. The ECOI considers that all connections to fibre-optic and copper networks that fulfil the above-specified criteria belong to the same wholesale market and that there is no reason to distinguish sub-markets according to various technological solutions. Internal sales of companies and groups of companies are also considered a part of the market. In the ECOI's opinion, cable systems, satellites, Fixed Wireless Access connections (FWA) and mains-connected mobile network solutions via 4G/4.5G and 5G with fixed point of use, or other types of mobile network solutions, do not belong to the wholesale market in question.

Ljósleiðarinn agrees with the ECOI's consideration. Access to mobile network transmitters takes place via transmission to a central access point and therefore does not belong to Market 3a."

The ECOI's position

189. Ljósleiðarinn's position stated here supports ECOI's substitutability assessment of Market 3a.

4.2.2.2 Míla

Substitutability between copper and fibre-optic local loops

190. Míla states on page 6 of their first comment document that the company no longer deems the criteria for substitutability between copper and fibre-optic local loops to be met, and that the same conditions apply here as in Norway, Sweden and Denmark, where connections via copper systems were not considered to belong to the markets in question, and systems designed for telephony are giving way to and must give way to new infrastructure.

The ECOI's position

191. In Chapter 3 above, the ECOI responded to a similar comment concerning substitutability between copper and fibre-optics at the retail level, incl. with regard to these three countries, and refers to this comment. The ECOI believes the same consideration to apply at the retail level and on wholesale markets 3a and 3b.

No substitutability between copper and fibre-optic local loops - Percentage of local loops in use – Ljósleiðarinn does not provide local loop access

192. Míla's comments on the first consultation state on page 15:

“Paragraph 539 deals, among other things, with the ratio of copper to fibre-optic connections in operation. The statement is misleading, in the opinion of Míla, as this may be interpreted to mean that 79% of fibre-optic connections are in operation. This is incorrect. Many access addresses are equipped with fibre-optic connections. The 79% rate at the end of 2022 refers to this rather than to the utilisation of fibre-optic connections.

Paragraph 548 states that Ljósleiðarinn does not offer access to passive local loops on the household market, i.e. access on Market 3a. Local loops owned by the company are nevertheless an underlying part of the company's services on Market 3b, which means that Ljósleiðarinn has a presence on Market 3a with respect to services provided to its own operations in the form of internal sales, though the company does not conduct external sales on Market 3a.

Míla wishes to comment on the fact that Ljósleiðarinn's market share of fibre-optic connections in the geographical market in question is much higher than Míla's. Ljósleiðarinn is nevertheless not subject to obligations and has thus been able to deny retailers access to Market 3a. Ljósleiðarinn is the only company with a presence on Market 3a but refuses to provide the access in question.

Míla objects to the ECOI's conclusion that all copper network connections fulfil the necessary conditions and belong to the same wholesale market 3a for local access provided at a fixed location. With reference to previous comments, Míla considers it necessary that the ECOI exclude the company's copper connections from the market in question."

The ECOI's position

193. The ECOI agrees that the wording in Paragraph 539 is unclear and will correct this in the final version of the document.

194. Ljósleiðarinn's internal use of its own local loop for its own bitstream services is taken into consideration in the assessment of companies' positions on Market 3a, as stated in the aforementioned Paragraph 548. Ljósleiðarinn has not sold dark fibre local loops to external operators. Refer to further discussion of Ljósleiðarinn's position in Chapter 6.2.2 regarding Region A in Market 3a, which states that, in a duopoly, the difference in market share does not necessarily mean that the company with the larger share is considered dominant.

195. For substitutability between copper and fibre-optic local loops, refer to previous responses on the topic.

4.3 Assessment of various access technology for the wholesale market for central access (Market 3b)

4.3.1 General

4.3.1.1 Ljósleiðarinn

Available technologies offered by market participants, e.g. XGS-PON 10x

196. Page 5-6 of Ljósleiðarinn's comments on the first consultation state:

"The draft market analysis for markets 3a and 3b is quite typical in that it includes considerable analysis of the technology and the markets themselves, and of the equipment and networks that fall under each market or part of each market. However, the discussion is lacking with regard to technologies and features that market participants have proposed, such as those mentioned above (e.g. XGS-PON 10x) and their potential impact on the market, particularly with respect to supply-side substitutability. It is well known that companies in a dominant position see the advantage of deferring investment until it is clear where the market is heading. The dominant market player has more momentum than competitors in this regard, better financial status, more investment capacity and appeal. According to Ljósleiðarinn, Míla's market momentum has increased considerably after its acquisition by Ardian, as the Company has plans for significant investments in the coming years. Furthermore, Míla has secured a very strong position through its agreement with Síminn, whereby Míla is guaranteed 80% of all of Síminn's wholesale purchases for the retail market as well as transfer of assets from Síminn

to Míla, which gives Míla control over two networks on the market, mobile and fixed, thereby providing Míla with a greater opportunity to develop solutions and technologies that are unavailable to competitors on the wholesale market. Míla's new wide wavelength division multiplexing, which has entered operation, together with XGS-PON (10x), leads to the same effect."

The ECOI's position

197. The ECOI covers both Míla and Ljósleiðarinn's new 10 Gb/s bitstream technology at relevant places in the analysis, including in Chapter 4.3.6 on available central access. It is too early to draw any conclusions about these innovations in the assessment of the companies' positions. New data on this will emerge in the ECOI's statistical report on the state of affairs as of year-end 2023, which will be completed in the first half of 2024. Previous experience with the introduction of new products on the market in question, however, suggests that adoption of these new products will constitute a rather small proportion of the total market to begin with.

198. The ECOI agrees that the various signs of vertical integration in the wholesale agreement between Míla and Síminn, as well as Míla's economies of size and scope, strengthen Míla's position on the markets in question. It also bears mentioning that Ljósleiðarinn is strengthening its position on related markets, such as the trunk line market, although Ljósleiðarinn's and Míla's systems are not fully comparable. The ECOI considers the account given in the analysis of these points and their potential effects satisfactory. Comparable comments by Ljósleiðarinn are discussed elsewhere in this document, including in Chapter 6.

The ECOI to assess the impact of Míla's recently proposed technological changes (10x) on Market 3b

199. Page 5 of Ljósleiðarinn's comments on the first draft consultation states:

"Ljósleiðarinn believes that it is important for the ECOI to consider and evaluate the impact of Míla's recently proposed technological changes and their effect on Market 3b. According to current non-discrimination obligations on Market 3b, Míla must report the development of its access services within three months. At the end of August, Míla announced a new service, 10x, based on new XGS-PON technology, and began providing the service prior to 1 October. According to Míla and Nokia's press release of 16 October 2023, Míla plans to upgrade its entire access network to XGS-PON by the end of 2024, and its equipment will also support 25G-PON – "The deployment, which includes the upgrade of existing Nokia fiber access nodes and optical line terminals, will be completed in 2024"⁸ [...].⁹ Ljósleiðarinn is of the opinion that the ECOI should investigate Míla's behaviour within the context of the market analysis and the applicable obligations."

⁸ <https://www.globenewswire.com/news-release/2023/10/16/2760725/0/en/Nokia-and-Mila-bring-10G-broadband-to-Iceland-with-fiber-network-upgrade.html>

⁹ Confidential

The ECOI's position

200. Here, Ljósleiðarinn reviews the obligations currently imposed on Míla as well as the timeframe and non-discrimination considerations which the company must respect when introducing innovations to bitstream services. The operators who purchase wholesale bitstream services from Míla have not submitted a complaint to this effect to the ECOI, nor has the ECOI decided to open a case on its own initiative about this alleged violation. The ECOI recognises that Ljósleiðarinn is in competition with Míla in providing this wholesale service.

10x results in greater use of Access Option 3 on Market 3b

201. Page 6 of Ljósleiðarinn's comments on the first draft consultation states:

"Ljósleiðarinn is of the opinion that Míla's new product, 10x, and new technology, XGS-PON, which further supports the increased bandwidth of Míla's access network, will result in Market 3b moving towards greater use of Access Option 3. In order to support access layer connections of up to 10g, electronic communications companies must upgrade Access Option 1 connections from 10g to e.g. 40g or 100G. This can involve significant costs. The Míla IP/MPLS network is the backbone of Access Option 3. Ljósleiðarinn has repeatedly noted that the Míla IP/MPLS network is on Market 14 (trunk line market). The ECOI has reaffirmed that it is of the same opinion, though this affirmation was rescinded by appeal, as the Rulings Committee for Electronic Communications and Postal Affairs determined that the affirmation was an administrative decision. It has therefore not been substantively concluded, in the opinion of Ljósleiðarinn, that the Míla IP/MPLS network falls under Market 14."

The ECOI's position

202. The ECOI agrees that 10 Gb/s services may accelerate the trend that has characterised the aforementioned market over the past decade, i.e. that retail companies occupy a lower position on the investment ladder and operate less of their own underlying systems. Previously, retailers competed with Síminn with their own ADSL bitstream systems and leased shared access to copper local loops. These systems merged under Vodafone (now Sýn) and were not updated when Síminn and then Míla introduced VDSL. This infrastructure competition gradually ceased once VDSL took over. Furthermore, retailers have not seen any advantage in leasing fibre-optic local loops or VULA, instead preferring bitstream access.

203. The ECOI is scheduled to analyse the M14 trunk line market and will begin work on this in early 2024. The issue whether IP/MPLS systems belong to Market 14 or constitute their own market will also be decided.

4.3.1.2 Míla

Internal use

204. Míla's comments on the first consultation state the following on page 16, in the company's statement on Paragraphs 621 and 646:

“In response to the discussion of internal use, cf. Chapter 4.3.5, Míla would like to point out that ECOI’s reference in Paragraph 621 to the fact that retail is conducted within the same company in the case of Snerpa also applies to Austurljós, a company that is undertaking quite extensive development in its area of operation. Austurljós is also discussed in Paragraph 646. In this context, Míla points out that according to the company’s information, Austurljós also provides bitstream services through other operators’ fibre-optic systems, e.g. HEF’s and Fljótsdalshreppur’s systems.”

The ECOI’s position

205. The discussion of Austurljós is in a different subchapter than the discussion of Snerpa, i.e. Paragraph 646 of Chapter 4.3.6.8, which states that Austurljós owns local loops and operates bitstream services for both external and internal use, as the company also operates on the retail level.

State-funded networks

206. Míla’s comments on the first consultation state the following on page 17 of the company’s statement on Paragraphs 647:

“Míla again vehemently objects to ECOI’s misleading claim in Paragraph 647 that Míla has used state funding to lay fibre-optic networks. As previously stated, Míla has not received any state funding for this purpose.”

The ECOI’s position

207. According to Paragraph 647 of the consultation document, and various other parts of the analysis, Míla has installed some rural networks under state funding, purchased some of these networks and leased access to other such networks with the purpose of installing active equipment and offering central access that falls under Market 3b.

208. The ECOI wishes to correct the inaccuracies in this paragraph and elsewhere in order to clarify that Míla is not the operator that received state funding for the project “Iceland Optical Connected”. Most rural networks have been built by the municipalities themselves, who received funding for this purpose from the “Iceland Optical Connected” project. There is therefore no question that said networks were built under state funding, regardless of which operator ultimately benefited from the funding.

209. Article 78(1) of the Constitution of the Republic of Iceland No. 33/1944 clearly states that municipalities shall manage their affairs independently as laid down by law. Municipal autonomy essentially means that municipalities are independent of other authorities and are democratically elected by the residents of the municipality¹⁰. However, it is evident from the settled case law of the Court of Justice of the European Union that no distinction is made between funding allocated by the state, government agencies or even by private entities. See in this context *Judgment of the Court of Justice of the European Union in Case No. 78/76 Steinike & Weinlig vs The Federal Republic of Germany [1977] ECR 595, Paragraph 21*. There

¹⁰ Trausti Fannar Valsson (2019) *Database Fons Juris*, p. 58

is, on the other hand, the condition in the understanding of Article 106(2) of the Treaty on the Functioning of the European Union that financing must first be allocated directly or indirectly by the state in order to constitute state funding. See e.g. *Case No. C-303/88 of the Court of Justice of the European Union, Republic of Italy vs. Commission of the European Communities [1991] ECR I-1433, Par. 11.*¹¹

210. The ECOI therefore considers it appropriate to state that the aforementioned networks were subsidised by the state and are now owned by Míla.

4.3.1.3 Nova

Definition of relevant service markets

211. [...].”

212. Nova's comments state:

“It is clear that for years, Síminn and Míla have shaped the range of available products on the electronic communications market, which was primarily designed to effectively serve the Síminn Group. It is very unclear which wholesale products are currently available under the agreement between Síminn and Míla and various questions regarding implementation are therefore not easily answered. For example, with the transfer of Síminn’s backbone network (MPLS) to Míla, it may be assumed that Síminn is no longer able to purchase A1 services from Míla but would instead need to purchase A3 or A4 (with internet) in order to offer the retail products sold by the company (e.g. the “Heimilispakkinn” bundle). Very few changes if any have been made to Míla’s product range and price list (to lower service prices) since Ardian’s acquisition of the company.

[...].

[...].”

The ECOI’s position

213. [...].

214. Míla’s price list for bitstream is set up in such a way that service providers must purchase bitstream internet access, while bitstream telephone (VoIP) and television (IPTV) services are purchased in addition to the internet access.

215. Síminn currently purchases IP/MPLS services from Míla’s network for the distribution of its (Síminn’s) services across the country, including mobile, telephone and television services as well as internet service. There is therefore nothing to prevent Síminn from purchasing Míla’s Access Option 1 bitstream services and then transferring data transmission

¹¹ See also Case No. [C-482/99 of the Court of Justice of the European Union, French Republic vs Commission of the European Communities \(2002\)](#) ECR I-4397 Para. 23 and 24.

to the IP/MPLS network purchased from Míla. Míla also operates the transmission of internet services, which consists of the difference between Access Options 1 and 3, while internet service providers purchase these services per customer. It is a normal measure within Síminn to assess the feasibility of purchasing a large transmission network for a wide range of services as opposed to paying for transmission on a customer-by-customer basis.

216. The status of Síminn's former IP/MPLS network, which is now owned and operated by Míla, on the trunk line market will be evaluated in the ECOI's forthcoming analysis of that wholesale market. Míla's wholesale offerings on this network may then be considered.

217. Based on Míla's statement of independence after its acquisition by Ardian and the company's incentive to make better use of its infrastructure, the ECOI believes that Míla must take Nova's perspective into consideration and accommodate the company with regard to its range of products.

218. [...].

4.3.1.4 Tengir

Access Option 4 from Míla

219. Tengir's comments on the first consultation include the following, on page 5 of the company's comment on Paragraph 636:

"Tengir believes that Míla's ability to provide Access Option 4, which bundles wholesale and retail products, should have a considerable impact on the company's market position. The fact that significant demand for this product has emerged should indicate that it will have a considerable impact on the bitstream market in rural areas during the term of validity of the market analysis."

The ECOI's position

The developments of the last decade have been such that electronic communications companies that focus on retail now occupy a lower position on the access network investment ladder and instead purchase wholesale services. Before Míla was sold out of the group, Síminn sold the technical operation of its internet services to Míla. [...] There is therefore some possibility that smaller service providers will move away from investing in their own equipment for the production of internet services and instead purchase a full-fledged product for resale under their own brand. Now that bandwidth and connection capacity is sufficient, consumers may no longer experience any difference in the technical quality of internet services between different retailers, which could be the case when service providers' capacity on access networks and systems was lower. Internet access itself may become a commodity that retailers add to their own value-added services.

Agreement with service market definition of Market 3a

220. Tengir's comments on the first consultation include the following, on page 5 of the company's statement on Chapter 4.3.7 of the Preliminary Draft:

“Tengir agrees with the ECOI's conclusion on how to define Market 3b and deems the Office to have provided a clear and detailed rationale for its conclusion.”

The ECOI's position

221. The ECOI welcomes Tengir's opinion and believes it to reinforce the Office's conclusion.

4.3.2 Substitutability between copper and fibre-optic connections

4.3.2.1 Míla

Demand-side substitutability between fibre-optic and copper connections

222. Míla's comments on the first consultation state the following on page 16 of the company's statement:

“Míla reiterates its objection to there being demand-side substitutability between fibre-optic and copper connections in the minds of consumers. As mentioned earlier, it is rarely the consumer who decides which access to the underlying network to purchase for internet and related services. This preliminary assessment by the ECOI indicates that the Office has failed to satisfactorily fulfil its investigative duty with regard to this aspect of the analysis.

The fact is that retailers control this and choose, almost without exception, 1Gbps fibre-optic service for their customers if available. Nova, for example, does not offer internet service on copper local loops. This fact alone should confirm that copper local loops no longer meet the criteria for belonging to this market. Other retailers only opt for a copper connection if no other connection of better quality is available. Here Míla recalls what is stated in the ECOI consumer survey, i.e. that connection speed is the most important factor and retailers are naturally aware of this and therefore always offer connections of the best possible quality at any given time. Customers who have had copper connections are offered to upgrade the connection as soon as a fibre-optic connection becomes available.

In many cases, copper local loops are no longer available as many street cabinets have been closed [...]. During the term of validity of this analysis, the number of access addresses without the option of a copper local loop will greatly increase. In such cases there is therefore no substitutability.

The ECOI's preliminary assessment that bitstream services via fibre-optic and copper local loops both belong to Market 3b therefore does not pass muster.”

The ECOI's position

223. The ECOI wishes to begin by summarily rejecting the claim that the analysis lacks an investigation into the aforementioned substitutability. The study is in fact thorough, as the ECOI has twice conducted consumer surveys to investigate consumer opinions in this regard.

While the entities may dispute the result of the assessment, this does not mean that research is lacking.

224. Refer to previous responses regarding substitutability between copper and fibre-optic connections in the access market above, including such substitutability on the retail level. Consumer surveys contained two questions about the importance of factors affecting purchasing decisions. The first question included three sub-questions whereby respondents were asked to name the factors that they considered most important, second most important, and third most important were they to choose an internet service provider today. The April 2022 survey concluded that of these factors, price was the most important (indicated by 22.7% of respondents). The package of accompanying services was in second place with 17.1% of respondents, the quality of the company's services in third place with 13.9% and speed was ranked fourth with 13.0%. When asked which factor was the second most important, price placed at the top again with 18.9% of respondents and speed placed second with 18.1%. When the ratios of all three rounds were added together, the price placed first with 55.6%, speed placed second place with 45.1%, quality of services placed third place with 40.1%, and the package of accompanying services placed fourth with 36.3%. Note that these are the sum of three rounds of questioning, so the percentage will total 300% instead of 100%. It is also worth noting that these questions pertain to factors influencing a hypothetical choice of internet service provider at the time of completing the survey.

225. The other question on this topic asked whether the respondents' household switched internet service providers during the past three years, and if so, when. Those who responded in the affirmative and stated that they had switched within a year were asked to choose the most important factor that influenced their change of internet service providers. The April 2022 survey concluded that price was again in 1st place with 31.4%, quality of service in 2nd place with 17.0%, selection of and payment for services by an employer in 3rd place with 14%, package of included services in 4th place with 7.5%, and speed in 5th place with 6.8%. These were the reasons stated for actually switching providers, not for a hypothetical choice of service provider as in the previous question.

226. Míla's claim that connection speed is the most important factor is therefore wrong. Míla made detailed comments in the last consultation on the ECOI consumer survey conducted in September 2020 and included a report by an external party as an accompanying document. All of Míla's comments were responded to. Refer to these responses for further comments on these two consumer surveys, as the second survey was a repetition of the first. The consumer survey on substitutability of mobile networks is new, but the SSNIP test is the same as in the previous surveys and the same answers apply.

227. Furthermore, the ECOI emphasises that there is no difference at the retail level between connections via copper and fibre-optic networks. Míla also claims, to the market and consumers, that the company's Ljósnet (VDSL), which is based on copper wire the last part of the way, fulfils all household needs. Míla's contentions to the contrary in these administrative proceedings therefore do not ring true. In addition, Míla is the only electronic communications company in Iceland of this opinion.

4.3.3 Substitutability with mobile networks on Market 3b

4.3.3.1 Ljósleiðarinn

10x ways for Market 3b to move toward greater use of Access Option 3 and the effects of Míla's mobile distribution network

228. Page 6 of Ljósleiðarinn's comments on the first draft consultation states:

"Míla now has the technical capability to utilise mobile network technology to further control its fibre-optic rollout, e.g. in rural areas. By transferring Síminn's RAN to Míla, internal purchases of mobile transmitter connections will also be transferred to Míla (from Síminn) due to the fact that Míla now owns the RAN systems. It is unlikely that Míla will direct those transactions to external parties except in cases where the fibre-optics are not under Míla's ownership. The connections in question currently belong to leased line markets. It is anticipated that, due to development of 5G infrastructure, this market will grow rapidly in terms of quality, price, and service area. It is also anticipated that this market (for RAN connections) will have a broad impact on other markets such as fibre-optic local loops, bitstream over fibre-optic local loops and IP/MPLS systems. Míla is able to structure its 5G transmitters and its own IP/MPLS system in such a way as to discourage investments in fibre-optic infrastructure where competition is lower, thereby allowing the company to focus on developing its fibre-optic system where competition is higher. Ljósleiðarinn is of the opinion that the aforementioned items must be handled in a better way."

The ECOI's position

229. Míla's economies of scope and scale are taken into account, particularly as applies to municipalities where competition is not considered effective and there is a need to determine whether any one operator holds significant market power. The market for leased lines on access networks will be analysed later, and that analysis will cover the position of Míla and other entities on that market, as well as their internal use of such leased lines for the development of their own systems.

230. The ECOI has concluded that there is substitutability between mobile network solutions with a mains-connected router and fixed-line solutions on the retail internet access market and the wholesale market for bitstream solutions. The assessment of operators' market share and power takes into consideration internal use by retailers and their wholesalers, i.e. resale of mobile network services that use such routers.

231. Operators' trunk line systems do not belong to the service market analysed here, though the ECOI will soon begin reviewing that analysis. The deployment of high-capacity trunk line networks affects companies' ability to develop effective services on access networks, e.g. innovations such as Míla and Ljósleiðarinn's 10 Gb/s access. As previously mentioned, assessment of market power considers the scope and size that control over trunk line systems entails.

232. The ECOI therefore does not agree that the aforementioned details have not been satisfactorily considered. For further discussion, refer to the responses to similar comments by Ljósleiðarinn in Chapter 6.

Service market definition of Market 3a

233. Ljósleiðarinn's comments on the first consultation include, on page 30-32:

"In terms of assessing different access technologies regarding the wholesale of central access provided at a fixed location (Market 3b), the types of networks that may be considered in this context are copper networks, fibre-optic networks, cable networks, Fixed Wireless Access (FWA) networks and mobile networks. Wholesale services on Market 3b do not need to fulfil these criteria and access to them is usually provided more centrally than on Market 3a, i.e. in a switching station that covers a large area or the whole country. The ECOI generally does not include bitstream under this definition. The ECOI concludes that bitstream services via both fibre-optic and copper local loops fall under Market 3b." This is in accordance with the above-mentioned ESA Recommendation of 2016 in force in Iceland, as well as the vast majority of European telecommunications regulatory authorities. These are virtual solutions, i.e. bitstream and others available in copper and fibre-optic networks, that do not fulfil the necessary criteria for Market 3a and are used to provide mass-produced bitstream services. These are all bitstream solutions, except those used for VULA solutions.

The ECOI conducted a survey of electronic communications companies to gather information on whether they believed there to be substitutability on the wholesale market between the aforementioned fixed network local loops and mobile network solutions. The survey results revealed that the companies did not agree on whether substitutability could exist between fixed and mobile network bitstream solutions. Síminn, Snerpa, Hringiðan and Ljósleiðarinn believed such substitutability to exist or be likely to exist. Nova's and Sýn's responses were somewhat vague but do not necessarily rule out the possibility of substitutability. Only Míla was of the opinion that there is no such substitutability. In general, the companies were more likely to believe in the possibility of substitutability than not.

There are three mobile network companies operating in Iceland (the market analysis refers in some places to the "three mobile network companies", i.e. Síminn, Sýn and NOVA) with spectrum licences and their own mobile core networks. Two of these companies own their own radio access networks (RAN) as of Míla's acquisition of Síminn's RAN in the beginning of 2021. Mobile network operators do not offer bitstream access as a separate wholesale product. With PTA Decision no. 11/2012, access to wholesale mobile networks was deemed to be in effective competition and has since been provided through voluntary agreements between companies.

Resale of services is the lowest form of bitstream access. It is the ECOI's opinion that the resale of mobile network services, consisting of servicing SIM cards in mains-connected mobile network routers, falls under wholesale on Market 3b due

to the substitutability between these services and fixed-line internet services at the retail level. The ECOI believes that it is technically possible to provide said services in mobile networks via bitstream access. However, there is no indication as to whether there is “acceptable supply” for such a solution, including through bitstream access deeper than A4, or whether there is much demand for such bitstream service considering the situation in Iceland, i.e. whether it is realistic from a business perspective for entities that do not operate their own mobile networks. It should be noted that there are no obligations imposed on mobile operators in Iceland to provide such bitstream solutions to external parties. The ECOI concludes that mobile operators are unlikely to want to provide deeper bitstream access to their mobile networks, such as A3 access, as this could harm their retail presence.

The following discussion in the market analysis is worth noting as it involves the potential substitutability between mobile and landline networks on Market 3b. It states: “In this context, however, it must be kept in mind that the three network companies (i.e., Síminn, Nova and Sýn were granted renewal of their spectrum licence for a 20-year period, see paras. 119, 122-123, 183 and 413), whose total share of the retail mobile market is well over 90%, have extensive internal use of their mobile systems, i.e. they use their mobile networks to provide mobile phone service at the retail level as well as for the provision of the said mobile network services via the mains-connected mobile network routers in question. The use of their own telecommunications networks for the aforementioned mobile network solution means that they do not need to lease fixed networks, thus allowing them to increase the utilisation of their own investments. In view of the fact that about 15% of the country's households use such a mobile network solution instead of a fixed network solution, the ECOI believes that internal use, as well as the bitstream service already provided e.g. to Hringdu and possibly other parties during the term of validity of this analysis, places direct competitive pressure on fixed network operators in Iceland. This may, in the ECOI's opinion, easily result in a small but permanent increase in the price of bitstream connections over a fixed network, while prices for mobile network bitstream access remain unprofitable.” It should be noted that Síminn no longer owns an actual mobile phone network as it was sold to Míla, although part of the system, i.e. the mobile core network, is still owned and controlled by Síminn; all the basic mobile network infrastructure of the mobile internet belongs to Míla.

The ECOI concludes that there is demand-side substitutability between bitstream access via fibre-optic and copper networks with VDSL equipment on the one hand and, on the other, bitstream access to 4G/4.5G and 5G networks (and, where applicable, later generations of mobile networks) that allow for the provision of internet service via mains-connected network routers, and that this substitutability will remain throughout the term of validity of this analysis. The ECOI considers there to be a close correlation between such substitutability on the retail market and Market 3b. Most electronic communications companies agree with this assessment.

The February 2022 press release by¹² Síminn, Míla and Ericsson discusses a comprehensive five-year contract for the development of a nationwide 5G network in Iceland; thus, it is clear that the significance of mobile networks on this market will increase exponentially.

[...]

Ljósleiðarinn is of the opinion that it is important to further analyse and investigate the aforementioned items in the market analysis. This is an obvious result of the fact that Míla has obtained a fully developed mobile network prior to the company's acquisition by Ardian. The aforementioned press release also points to large-scale developments in this field. The ECOI furthermore concludes that there is no supply-side substitutability on Market 3b between mobile and fixed networks. This implies that by potentially having both mobile and fixed networks at its disposal, Míla has situated itself in a dominant position on Market 3b and adjacent markets. Ljósleiðarinn believes that there is a strong need to further investigate the impact of this in view of the fact that wholesalers who exclusively operate fixed networks are unlikely to be able to establish mobile networks within a reasonable timeframe. This also presents a need to consider whether there is reason to impose a mobile network access obligation on dominant market players."

The ECOI's position

234. Ljósleiðarinn does not substantively comment on the ECOI's conclusions discussed here, but agrees with the assessment of substitutability between connections via copper, fibre-optic and mobile networks.

235. It remains to be seen whether the circumstances Ljósleiðarinn discusses, which would necessitate a re-evaluation of the wholesale market for mobile network access, ever come to fruition, but the ECOI sees no reason for a re-evaluation at this time.

236. [...].

237. Míla's position as a wholesale mobile network distributor and fixed network provider of both active and passive services on access networks and trunk networks has an effect, as economies of scope and scale, on the assessment of the company's strength where relevant, i.e. particularly in certain regions. The ECOI therefore sees no reason to amend the Preliminary Draft in this regard and believes this point to be well researched in the analysis. Chapter 6 contains further discussion on similar comments by Ljósleiðarinn on this topic.

Impact of nearly non-existent supply-side substitutability between mobile and fixed networks on wholesale market 3b

238. Ljósleiðarinn's comments on the first consultation include, on page 32-34:

¹² <https://www.ericsson.com/en/news/3/2022/siminn-mila-and-ericsson-to-build-the-backbone-of-icelands-telecom-infrastructure>

“The ECOI is of the opinion that there is no supply-side substitutability between mobile and fixed networks. It is highly unlikely that mobile operators will build fixed networks or that fixed network operators, which do not currently have mobile networks, will begin establishing mobile networks to provide bitstream services for internal or external use, although this is not out of the question. However, for there to be substitutability, it is sufficient to demonstrate that there is substitutability on either the demand or supply side. The lack of supply-side substitutability therefore does not preclude substitutability on Market 3b.

[...]

Although the vertical ownership link between Míla and Síminn was severed upon the sale of Míla, with the alleged result that the companies now operate independently on the wholesale and retail markets, there is in effect an exclusive purchase agreement between these two parties for Síminn’s purchase of 80% of all wholesale services from Míla. The aforementioned sale is thus now external rather than internal. Ljósleiðarinn points out that, in practice, this is tantamount to an internal sale, as these transactions (transaction volume/turnover) are not available to other companies on the wholesale market, such as Ljósleiðarinn. The ECOI states that it will consider the internal usage of all companies operating on Market 3b who provide service on copper networks with VDSL equipment, on fibre-optic networks and the aforementioned mobile networks and usage for the provision of services on such networks on those retail markets associated with said wholesale market.

In this respect it is also important to examine the prevailing situation between Síminn and Míla following the acquisition of Míla. In Ljósleiðarinn’s opinion, the fact that Síminn’s technical independence in relation to Míla is minor and the company is almost entirely dependent on Míla cannot be ignored. Access Option 4 is the lowest form of bitstream access and entails the resale of a full-fledged service. However, the buyer of a resale service may produce and add on various value-added services and provide them to customers as part of the retail offering. Following the transfer of Síminn’s AS number and IP addresses to Míla prior to Ardian’s acquisition of Míla and the respective Síminn equipment, Síminn no longer produces its own internet service and instead purchases it entirely from Míla.

Míla is now in possession of the means of production and resources for Access Option 4, but obligations were imposed on Síminn’s internet services before Míla was established and Síminn’s wholesale transferred to the company. There was no demand for resale access to Síminn’s internet services, as the smallest internet service providers were fully equipped to produce their own services. The wholesale obligations imposed on Síminn were repealed, but wholesale obligations on Access Options 1, 2 and 3 remained in place for Míla in the following analyses.

However, a situation has now arisen in which [...]

In light of the ECOI’s conclusion that wholesale market 3b consists of fibre-optic networks, copper networks to which VDSL equipment has been connected and

4G/4.5G and 5G mobile network solutions (and subsequent generations of mobile networks), Ljósleiðarinn considers there to be substitutability between the various solutions on these networks as well as on the wholesale level on the respective market, as these markets are closely related and still significantly lacking in adequate examination of the massive changes the market has undergone following the Ardian merger and the fundamental changes to Míla as an operator of both fixed and mobile networks. There is no evidence to suggest that any analysis has been carried out on the possible impact of this on the evolution of the market, nor has any analysis been carried out on whether and how the above situation has strengthened Míla's position on this market. Ljósleiðarinn believes it is indisputable that this company's position is currently much stronger, and that the ECOI has considerably underestimated said position. It is therefore imperative to further examine and analyse the aforementioned. In this regard it is sufficient to point to the conclusion of the ECOI's analysis that fixed network operators are unlikely to be able to establish mobile networks to meet the demand for mobile network services or to offer wholesale access to their mobile networks, and to the fact that there is now full substitutability between mobile and fixed networks in terms of most if not all bitstream services on the retail market."

The ECOI's position

239. Ljósleiðarinn does not appear to comment on the ECOI's analysis and conclusions in its discussion. Ljósleiðarinn seems to agree with the ECOI's assessment that substitutability between fixed and mobile networks is unlikely.

240. The ECOI discusses Access Option 4 in greater detail in Chapter 7.5.3 of its latter consultation document, which concerns competition problems on Market 3b, i.e. issues associated with economies of scope and/or possible bundling of wholesale services. Ljósleiðarinn's discussion addresses these issues. Ljósleiðarinn's comment does not occasion any amendments to the ECOI's discussion.

241. Similar comments by Ljósleiðarinn will be discussed in more detail in Chapter 6 hereafter, and reference is made to this.

4.3.3.2 Míla

Mobile TV service

242. Míla's comments on the first consultation state the following on page 16 of the company's statement on Paragraph 586:

"Míla disagrees with the statement in Paragraph 586 that there is no substitutability between fixed and mobile networks on Market 3b except for those customers who do not use television services. It is clear that OTT TV services work well over mobile internet solutions, especially in rural areas where customers are so few that 4-5G bandwidth issues do not pose a problem. Such use has not posed a problem even at addresses in Reykjavík where fibre-optics are not available. [...]."

The ECOI's position

243. The aforementioned paragraph recounts Nova's position on the substitutability in question, i.e. the company's response to the ECOI's initial position on substitutability between mobile network services via mains-connected network routers and fixed networks, which the ECOI submitted to electronic communications companies for review in mid-April 2023. In its response, Nova notes that fixed network service packages often include television service, but this is not the case with mobile network packages. The prices of these different packages are therefore not comparable and there is no substitutability between the two. The ECOI does not agree with Nova's position, i.e. that services included in bundles or packages and their prices are indicators of substitutability and agrees with Míla in this respect.

Load on fixed-line networks

244. Míla's comments on the first consultation state the following on page 16 of the company's statement on Paragraph 591:

"Paragraph 591 states that fixed-line networks are always accessible regardless of load. This is incorrect. Fixed-line networks are vulnerable to load, especially in the case of backbone connections on bitstream hardware."

The ECOI's position

245. This paragraph recounts Sým's response to the ECOI's initial position on mobile and fixed network service substitutability, which was submitted to electronic communications companies for review in April of 2023. Here Sým describes its position and experiences in operating both mobile and fixed networks. The ECOI does not consider further discussion of Sým's position necessary and refers to the conclusions of Chapter 4.3.7 on the definition of Market 3b.

4.3.3.3 Nova

Various access technologies via bitstream on Market 3b

246. Nova's comments on the first consultation state on page 5 that it is now proposed to include mobile network solutions via bitstream on wholesale market 3b, and Nova's response to item 2 states its position on that proposal, and concerns substitutability between internet services. In Nova's opinion this is premature, and the next generation, i.e. 5G networks, should be taken into account once "network slicing", which is often done in access networks, has been implemented, thereby more likely ensuring the quality that end users expect.

247. Nova's comments then state on page 5:

"In terms of minimum standards, e.g. not using ADSL solutions, Nova believes that if a network solution can deliver the IPTV service (not just multicast), then it falls under this market. Nova's view is that that service is still very important when it comes to bitstream services, especially when trying to compete in that market with other solutions. IPTV service therefore significantly influences consumers' choice

and must be considered when assessing substitutability. The design of the Iceland's largest access networks, i.e. Míla and Ljósleiðarinn, aims to a great extent at serving the needs of this part of the market.

Wholesale products generally fall into the following bitstream service categories: internet, IPTV and VOIP. [...]. Nova's opinion is that this distinction is necessary in order to prevent the underpricing of other bitstream services, particularly IPTV services, in favour of the largest retail purchaser, though the company believes this already to be the case.

The ECOI's position

248. The ECOI agrees with Nova that if the superior network solutions promised by "5G standalone" become a reality, mobile networks may be better able to match their services with the fixed networks that are currently most common. However, in recent years, fixed networks have often been one step ahead of mobile networks in terms of capacity and service. The introduction of 10 Gb/s fibre-optic solutions earlier this year should be mentioned in this context. Regardless, a significant proportion of households are already using the currently available mobile solutions for their home internet access. To be considered a substitute, a product must only meet the needs of a sufficient proportion of consumers, not every need of a majority of or all consumers.

249. [...]

Definition of relevant service markets

250. In Nova's comments on the first consultation, the company reiterates its earlier remarks on the proposal to include higher-quality internet services via mobile network, i.e. 4G and beyond, on Market 3b. The company is not of the opinion that the substitutability between internet service via mobile network and internet service via access network is the reason for including this service on Market 3b. In addition to these clarifications, the company also wishes to make it known that access networks offer several kinds of bitstream services, i.e. VoIP and IP-TV, which is not often the case for mobile network solutions.

251. Nova also points out that in the political arena, which is tantamount to public marketing, the emphasis on fibre-optics has had the effect of downplaying mobile network services. An example of this is the fibre-optic programme Ísland Ljóstengt (Iceland Optical Connected) and other similar projects described in Item 1181 of the ECOI's market analysis. Nova believes that assessment of substitutability should take into account consumer attitudes and environmental factors, and that the campaign for fibre-optics is partly responsible for the belief among many consumers that fibre-optics is the only long-term option for home internet service.

252. Nova's comments state:

"Nova points out that, in terms of current technology, it is only possible to make a partial comparison between mobile and fixed network services with regard to quality. Substitutability assessment is also based on many factors that must be looked at comprehensively, and most important in this respect is to evaluate

potential substitutability services in terms of possible demand-side substitutability assessment, i.e. from the consumer perspective. Such an assessment must therefore incorporate issues such as consumer expectations based on marketing, government plans for electronic communications service infrastructure, etc.”

Nova remarks that information about mobile network internet services is not currently analysed in such a way that records the volume of transactions down to terminal and location at any given time, which would likely be necessary for market analysis. The company is of the opinion that ECOI should publish guidelines for defining the collection of such information. [...].

The ECOI's position

253. The importance of special services such as virtual closed networks of guaranteed quality for IPTV distribution has decreased as the capacity of public internet connections has increased. The popularity of streaming services that use the public internet for accessing television media reveals that this has become the case. The ECOI therefore does not agree that substitutability assessments should be based on the technical capacity of the access network to provide bitstream services with such quality assurances.

254. The ECOI does not assess which aspects of discussion within the community may affect consumers' opinion and choice of electronic communications services and underlying networks, but it has become the case that some consumers opt for mobile network connections to serve their household needs.

255. [...].

5 Geographical definition of markets

5.1 Regulatory framework and guidelines regarding geographical analysis, ECOI's market analysis according to Decision no. 5/2021 and foreign precedents

256. No comments were made on ECOI's discussion in this chapter.

5.2 Justification for the need for detailed geographical analysis

5.2.1 Míla

Geographical differentiation necessary before

257. Míla's comments on the first consultation state the following on page 17 of the company's statement:

"As stated in the consultation document, pursuant to Paragraph 1, Article 43 (1) of the Electronic Communications Act, the ECOI is required to define service or product markets and geographical markets in accordance with the principles of competition law and obligations under the Agreement on the European Economic Area. Furthermore, geographical areas where market conditions are similar or sufficiently homogeneous so as to be distinguishable from neighbouring areas where the prevailing conditions of competition are significantly different must be identified.

As the ECOI is well aware, Míla made substantial comments on the geographical definition of the markets in the Office's last market analysis based on Decision No. 5/2021, as well as at the appeal stage of that Decision, cf. discussion in Chapter 5.1.9.3. Had the market analysis been conducted in the same manner then, as now, it is clear that the majority of the obligations imposed upon Míla would already have been lifted in those areas where there were conditions for effective competition. As mentioned, the market has undergone even more changes since then and effective competition prevails in more areas; there are thus no longer conditions for imposing obligations on Míla.

The consequences of obligations being left in place despite the fact that the conditions for them are no longer present can be significant, not only with respect to the finances of the company associated with restrictions on commercial freedom, hassle, costs and time involved in the enforcement of the obligations, but such unjustified obligations can also have significant harmful consequences for competition and therefore for consumers. Obligations can thus directly prevent a company from meeting its customers' specific needs, creating innovation, and meeting the competition with better value for the benefit of the consumer. Furthermore, it is impossible for a company under obligations to reduce prices or waive certain fees unless subject to a long and complex consultation process on

the basis of the regulatory framework. Experience has shown that there are often considerable delays in the handling of such cases, so customers often do not reap any benefit in full or in a timely fashion. For example, cost analyses initiated as a result of a proposed price change have taken the ECOI up to two years to complete.

In this regard it is imperative to emphasise the importance of imposing obligations only when absolutely necessary and only to the extent necessary to solve identified competition problems on the relevant market and/or downstream markets.”

The ECOI’s position

258. The ECOI’s previous analysis of the market in question, which concluded with ECOI Decision No. 5/2021, made an assessment of the geographical markets. The ECOI did not consider it timely to differentiate between individual geographical markets and lift obligations in certain regions, but instead imposed differing obligations on Míla according to region. The outcome at the time was primarily determined by the great degree of uncertainty on the market and the resulting unstable competitive conditions due to, among other things, the potential sale of Síminn from Míla and uncertainty as to whether Sýn was to transfer its customers to a greater or even significant extent from Ljósleiðarinn to Míla. The former matter was not solved until 15 September 2022 and the latter not until 29 September 2023, upon the Competition Authority’s approval of the merger of Ardian and Míla and the purchase of Sýn’s trunk networks by Ljósleiðarinn respectively.

259. It should also be noted that ECOI Decision No. 5/2021 was based on data up to the end of 2020, and there have been significant developments in market share and the parallel deployment of fixed networks since then, which resulted in more markets being defined as competitive.

260. The EFTA Surveillance Authority agreed with the ECOI’s conclusion presented in the above Decision no. 5/2021 and did not oppose it, as it could have had the Authority had substantial comments in this respect, nor did the Rulings Committee invalidate the geographical definition in its decision of 29 December 2022.

261. When the ECOI began its review of the 2021 market analysis at the beginning of 2023, it soon became apparent that market conditions were such that there was a need for defining distinct geographical markets due to the changes that had become evident on the electronic communications market by that point. This has been the trend since October 2021, including with Síminn’s sale of Míla and Ljósleiðarinn’s acquisition Sýn’s trunk network, as well as the strengthening of Ljósleiðarinn’s position on the market in competition with Míla, including the allocation of two of NATO’s fibre-optic cables and recent increase in market share.

262. In view of the above, the ECOI does not agree that it would have been appropriate to differentiate between geographical markets in the analysis that concluded in October of 2021. Furthermore, the ECOI notes that such detailed geographical analysis, with the accompanying assessment of significant market power on a number of geographical markets, and, where applicable the imposition of obligations on companies with significant market power on individual geographical markets, is a complicated and time-consuming task that requires thorough investigation.

263. In other respects, the ECOI agrees with Míla that unjustified obligations may have adverse consequences for competition and thus consumer interests, and that obligations should not be imposed or maintained in certain regions unless they are actually required. The obligations imposed on Míla in ECOI Decision no. 5/2021 were both appropriate and necessary, although a new market analysis of the relevant markets indicates that this will change due to changes in market conditions.

5.3 Selection of basic geographical units to serve as a starting point for the geographical analysis

5.3.1 Nova

Geographical definition of markets

264. Nova's comments on the first consultation regarding the definition of geographical markets state that the company believes the ECOI to have proposed significant changes to the definition of these markets. The company is of the opinion that the reasoning for this change has been well argued and it is clear that a lot of preparatory work has been done to reach this conclusion, i.e. to divide the country into market areas on the basis of municipality. However, Nova wishes to point out that the final data collection would need to be well executed in order not to be too burdensome for electronic communications companies, especially for mobile networks where data is not currently sufficiently accessible in terms of location.

265. Nova states that the company assumes the ECOI's assessment of the division of the country by municipality to be thoroughly considered, though the company requests guidelines on the criteria to be used in this regard. In general, Nova does not use information about municipalities in its operations, but a National Registry containing relevant information on individuals and legal entities is readily accessible and may be used in the division of the country by municipality. It would also be desirable to receive guidance on how mobile network service should be considered if it is to fall under Market 3b, i.e. how to manage situations where transmitter service areas may cross municipal boundaries.

The ECOI's position

266. The ECOI is of the opinion that this comment reinforces the conclusion to differentiate between geographical markets on the wholesale markets in question.

267. The ECOI agrees that data collection for purposes of market analysis must not be too burdensome for market participants, and the Office will take this observation seriously and consider the options in this regard.

268. With respect to the mobile network solutions that now belong to Market 3b, the ECOI will collaborate with mobile operators to seek ways to make that data collection consistent and efficient. Among other things, it is necessary to learn how to handle transmitters that cross municipal boundaries. The ECOI expects to request this information annually or even twice a year, next in early 2024.

269. The ECOI concluded that municipalities are the most suitable basic units for geographical analysis in Iceland. To date, data collection based on such boundaries has been successful and, as such, the ECOI does not believe there to be significant drawbacks to such a methodology.

5.3.2 Tengir

Trends in market shares in the Northeast Region

270. Tengir's comments on the first consultation include the following, on page 5 in the company's statement on Paragraph 1055:

“Tengir believes the ECOI to underestimate the potential volatility of market shares in Tengir's area of operation during the term of validity of the analysis and refers in this respect to the fact that considerable changes have taken place within this year alone. Síminn's marketing campaign in Akureyri undoubtedly aims to increase Síminn's customer base, but Tengir believes that it also aims to move customers from copper networks over to Míla's fibre-optic networks and to increase Míla's overall share of the local loop market by moving customers from Tengir's fibre-optic networks to Míla's. [...].”

The ECOI's position

271. The ECOI points out that this discussion pertained to the retail market and Síminn's share of it. The above-described behaviour by Síminn may, however, influence market share trends on the wholesale market, and demonstrates the impact of the agreement between Síminn and Míla as well as revealing the fact that there is still considerable evidence of vertical integration between the two companies, or at least a strong commercial relationship between them, that appears not least of all in Tengir's area of operation.

272. Following the publication of the first national consultation on 15 September 2023, in which market share figures were based on the end of 2022, the Office has received data and calculated market shares in all municipalities as of mid-2023. Based on these figures, there is no evidence that Tengir's concerns regarding market share trends during 2023 are justified, at least not during the first half of that year, as Tengir's share generally rose in the region while Míla's continued to fall, including Akureyri, which is Tengir's most important market.

273. Nova has now signed a contract with Tengir and has begun marketing at the retail level in Tengir's region. This may somewhat reduce Síminn's large market share in the region.

274. In view of the above, the ECOI does not consider it necessary to amend the discussion set out in Paragraph 1055 regarding probable market share trends on the retail market in this region.

5.4 Geographical analysis of the related retail market by municipality

5.4.1 Ljósleiðarinn

Impact of concentration on the electronic communications market underestimated – Market shares, HHI-index, impact of mobile network solutions and advantage difference at the wholesale level

275. Page 8-9 of Ljósleiðarinn's comments on the first draft consultation states:

"The ECOI sets forth two criteria for considering whether there is effective competition e.g. within municipalities; that no single electronic communications company has a market share of over 50% in the municipality in question at the retail level, and that the HHI-index is below 2,000 in the same municipality. According to an analysis by the ECOI, in no municipality has an HHI-index below 2,000, the lowest in Reykjavík at approximately 2,663. This indicates a significant concentration, which is nevertheless even greater in other municipalities.

The ECOI considers it unlikely that the HHI-index will fall below 2,000 in any municipality during the term of validity of this analysis. Furthermore, it is unlikely that a new retailer will enter the retail market during term of validity, which could invalidate this prediction. Moreover, the trend in terms of distribution of retail market shares has been rather show in recent years. The ECOI says that data shows that Síminn has maintained its share quite well, although it has declined somewhat when mobile network solutions were first included in the assessment at the end of 2022. Síminn's share in mobile network solutions is by far the lowest of the four mobile network operators, and the ECOI believes that this can be explained by the fact that Síminn began offering this solution much later than e.g. Nova and Sýn.

As has been mentioned above, this all indicates that mobile network solutions will play a large part in the development of electronic communications markets in the years to come. There is assumed to be substitutability between mobile and fixed networks and an increase in demand for this service is expected. In the opinion of Ljósleiðarinn, it is obvious that Síminn's share in regard to this solution will increase, as the company has a great advantage in bundling of telecommunications and television services. The aforementioned will result in Síminn strengthening its position on the retail market as a whole and in individual regions. The aforementioned will also greatly strengthen Míla's position on the underlying wholesale market, as Míla controls both fixed and mobile networks. Ljósleiðarinn is of the opinion that the market analysis contains little or no analysis of these impacts, and that this is peculiar, especially in light of the fact that the ECOI has already reached the conclusion that there is substitutability between fixed and mobile networks on Market 3b on both the demand and supply side.

It can therefore be argued, with reference to the significant market concentration, the fact that there is little likelihood of new entrants to either the retail and wholesale markets, Síminn's significant power on the retail markets, the

company's ability to bundle telecommunications and television services over both fixed and mobile networks, and last but not least the exclusive purchasing agreement between Síminn and Míla for 80% of all of Síminn's business, to secure telecommunications and television services over both fixed and mobile networks, and last but not least, that it is impossible to reach any other conclusion than that Míla will in all likelihood be able to strengthen its position in all municipalities, in particular the Capital Region, by combining the mobile and fixed network solutions that the company currently has at its disposal.

Ljósleiðarinn believes that the high HHI-value for nearly all municipalities occasions further assessment of the impact of the Ardian merger on the markets under review. In situations of high market concentration, the changes that Míla's technical situation has undergone may have further and more dramatic consequences in both the long and short term. It bears mentioning that Míla is now the only company on the wholesale market that has nationwide mobile and fixed line networks at its disposal, thus giving the company unprecedented scope and capacity to engage in marketing strategies to which no other company is able to respond in a sufficiently timely matter. Míla's official plans for technical development, investment and market expansion also indicate that the company can be expected to fully exploit this advantage difference. High HHI-values in turn indicate that the effects of such strategies are further amplified on the market, with consequent effects on competition on the markets. Ljósleiðarinn is of the opinion that the ECOI's analysis of the significance of these high HHI-values and what they mean for the future of the markets in question is significantly lacking."

The ECOI's position

276. Ljósleiðarinn says that this all indicates that mobile network solutions will play a large part in the development of electronic communications markets in the years to come. It is assumed that there is substitutability between mobile and fixed network solutions on the retail market as well as on Market 3b, and an increase in demand for these services can be expected. It is obvious that Síminn stands to increase its market share in terms of this solution both nationally and in individual municipalities, as the company enjoys a great advantage in bundling telecommunications and television services. The aforementioned will also strengthen Míla's position on the underlying wholesale market, as the company controls both fixed and mobile networks. Ljósleiðarinn is of the opinion that the market analysis contains little or no analysis of these effects.

277. Ljósleiðarinn is correct in that the ECOI has reached the conclusion that connections via 4G/4.5g and 5G mobile networks provided via mains-connected routers (in addition to future mobile generations) belong to the respective retail market, as well as to Market 3b. The full analysis of these markets shows strong indications of this, including in the discussion of market shares, network deployment and geographical analysis, as well as the discussion of the assessment of significant market power on individual geographical markets. It is repeatedly stated, among other things, that Síminn was later than Nova and Sýn to market the aforementioned mobile network solutions and therefore has the most catching up to do in this regard. The market analysis is based on market share figures as of the end of 2022. Looking at the trends of the first half of 2023, Síminn is losing some of the market share of

fixed networks, though the ECOI does not have any newer market share figures for the aforementioned mobile network solutions than as of April of 2023.

278. It is difficult to predict with certainty what proportion of households and businesses will avail themselves of these mobile network solutions and thus forego a fixed network connection. This proportion was about 15% according to the analysis. The ECOI believes that throughout the term of validity of the analysis, the vast majority of households will have a fixed network connection, which is increasingly trending towards fibre-optics at the expense of copper connections. However, as mobile network connections become more robust, especially 5G, this rate is expected to increase somewhat. If the trend is significantly different from what the ECOI expects and what is assumed in the analysis, the ECOI may respond with a new analysis before the end of the term of validity of the current analysis.

279. In view of the above, it is clear that Ljósleiðarinn's comment is not justified. It is in no way possible to agree with the company that the analysis of the impact of these solutions is little to none.

280. Later in Chapter 5, the ECOI will respond to further remarks on Ljósleiðarinn's comment that Míla is at present the only network operator to have a radio access network (RAN) at its disposal. See the relevant sections.

5.4.2 Míla

Potential entry by Nova into Míla's fixed network - Number of electronic communications companies on the retail level in individual municipalities has little effect

281. Míla's comments on the first consultation state the following on page 18 in the company's statement on Chapters 5.4.2.3 and 5.4.2.4:

"With regard to the alleged barriers to entry and the number of retailers in individual municipalities, cf. the discussion in Chapters 5.4.2.3 and 5.4.2.4, Míla wishes to state the fact that [...] Individual smaller retailers do not have active sales operations except in limited areas of the country. It is therefore clear that the number of electronic communications companies at the retail level in individual regions has little to do with barriers to entry."

The ECOI's position

282. Chapter 5.4.2.3 contains a discussion of barriers to entry into the retail market by region and Chapter 5.4.2.4 contains a discussion of the number of electronic communications companies in individual municipalities. Míla mentions in the above comment that [...]. As indicated in the analysis, the ECOI does not consider it unlikely that Nova will reach an agreement to enter into Míla's fixed network on the relevant wholesale markets during the term of validity of this analysis. However, it is difficult to predict the extent of such an agreement or how it will affect the relevant market, including in terms of market share distribution.

283. Míla furthermore states that individual smaller retailers do not have active sales operations except in a limited part of the country. It is therefore clear that the number of electronic communications companies at the retail level in individual regions has little to do with barriers to entry.” The ECOI disagrees with this, although it can be said that this matter carries little weight in the analysis’s overall assessment of the related retail market by municipality. This is outlined in Chapter 5.4 of Annex A.

Trends in individual geographical markets – Instability in ECOI’s network coverage forecasts

284. Míla’s comments on the first consultation state the following on page 18 of the company's statement on Chapter 5.4.2.5:

“Chapter 5.4.2.5 deals with the market share of the retail market by municipality and sets forth the ECOI’s forecast for trends in individual geographical markets. There it is stated in the discussion of West Iceland that Ljósleiðarinn does not have access to a trunk network in north Snæfellsnes. [...].

Míla also reaffirms previous comments regarding the ECOI’s assessment of the likelihood of individual network operators’ fibre-optic coverage in various regions. There is a noticeable difference in the ECOI’s assessment of the likelihood of fibre-optic deployment by Míla on the one hand and by other network operators on the other. Míla notes the ECOI’s statutory duty of impartiality in this respect and principle of equality according to the Administrative Procedures Act. There is also ample reason to advise the ECOI to better familiarise itself with the conditions laid down in Central Public Procurement’s tender on behalf of the Ministry of Foreign Affairs in 2022 for fibre-optic threads in the NATO cable for which Ljósleiðarinn obtained right of use. The commitment to substantial fibre-optic coverage was one of the prerequisites for being granted the aforementioned threads in the tender.”

The ECOI’s position

285. The first part of the comment concerns the claim that Ljósleiðarinn does not have access to a trunk network in north Snæfellsnes. There Míla refers to Paragraph 1044 of Annex A, which states in the latter half:

“Míla is in the best position to deploy fibre-optics there with its nationwide trunk network, as Ljósleiðarinn does not have access to the trunk network there unless it leases from Míla or Orkufjarskipti, and it is uncertain whether the terms that these parties offer are accessible to Ljósleiðarinn. The ECOI does not see anything that could cause rapid and significant changes in market shares in the region over the expected term of validity of the analysis, at least not in such a way as to significantly impair Síminn’s share of the market.”

286. The ECOI stands by this statement and does not consider any amendments to it to be necessary, as Ljósleiðarinn has not obtained any fibre-optics into this region since the Preliminary Draft entered consultation. In addition to the aforementioned advantage difference between Míla and Ljósleiðarinn with regard to a trunk network into this region,

which amounts to dozens of kilometres, it should be noted that Míla has a copper network in the region that it has gradually been upgrading to fibre-optics without having completed the deployment of fibre-optics in the municipalities in question. This upgrade and the large distance from the NATO cables should, all things being equal, mean that these municipalities are not a very attractive investment opportunity for Ljósleiðarinn.

287. The second part of the comment concerns the alleged differences in the ECOI's assessment of the likelihood fibre-optic deployment by individual network operators such that the ECOI systematically assesses a greater likelihood of deployment by Míla in many regions than by other parties. A similar comment by Míla will be answered below in Chapter 6.

288. Concerning the need for the ECOI to better familiarise itself with the conditions laid down in Central Public Procurement's tender on behalf of the Ministry of Foreign Affairs in 2022 for the fibre-optic threads in the NATO cables for which Ljósleiðarinn obtained right of use, the commitment to substantial fibre-optic coverage was one of the prerequisites for being granted the aforementioned threads in the tender.

289. The ECOI is in possession of the lease agreement between the Ministry of Foreign Affairs and Ljósleiðarinn for the pair of fibre-optic threads, dated 30 June 2022, and is well acquainted with it. [...].

290. The Minister of Foreign Affairs appointed a special committee for the allocation of the said fibre-optic threads, which was entrusted with assessing the suitability of tenderers, making proposals for the use of the proposing the use of the fibre-optic threads and, where applicable, initiating negotiations with qualified a qualified tenderer or tenderers. The Committee's work should emphasise transparency, objectivity, equality and cost-effectiveness. The allocation should aim, among other things, to increase access to fibre-optics and high-speed mobile networks nationwide, increase competition in the electronic communications market, particularly the wholesale market, and promote the update and reinforcement of the fibre-optic infrastructure nationwide.¹³

291. Tenderers must submit two proposals to Central Public Procurement. On the one hand, for the contractual usage of an individual optical fibre and for a pair on the other hand. The proposals must be accompanied by a detailed statement which must include a discussion of how the tenderer intends to develop and operate in the interests of the government's objectives with the allocation of the thread(s). In evaluating the proposals, it was stated that the Committee would assess certain aspects of the tenderers' proposals, including whether proposals promoted positive regional development, increased competitiveness and the foundations of innovative industry, particularly in rural areas, not least through the deployment of fibre-optics between unconnected access addresses in rural areas and deploying fibre-optics in existing and planned mobile transmitter stations with respect to settlement and transportation, the upgrading and/or expansion of fibre-optic trunk networks,

¹³ Furthermore, to promote positive regional development, competitiveness and sustainability of rural areas, to promote security interests in the construction of telecommunications networks and to increase the reliability of telecommunications, etc.

the development of alternative electronic communications infrastructures and expansion of available electronic communications on the wholesale market. These items make up 50%.

292. The aforementioned agreement will hopefully generate increased competition on trunk lines throughout the country, as well as on Markets 3a and 3b. Throughout the analysis, the ECOI details this agreement and its potential impact on trends in individual geographical markets. It is clear, however, that the optical fibres were not formally delivered to Ljósleiðarinn until 1 October 2023, and it is therefore also clear that Ljósleiðarinn has a lot of time-consuming work ahead in order to activate the fibres and integrate them with the company's operations. It should be considered likely that Ljósleiðarinn will first focus on this before thinking seriously about developing fibre-optic access networks across the country. It is also clear that many population centres are tens or hundreds of kilometres from the NATO cable, and Ljósleiðarinn does not have trunk connections from the cable to these population centres, but rather would need to lease these connections from Míla or other owners of such trunk networks. This in itself places Ljósleiðarinn in a worse position than Míla, who has its own nationwide trunk network, in addition to the fact that Ljósleiðarinn must pay an annual lease fee to the state whereas Míla receives a contribution from the state for the maintenance of the cable. Furthermore, the fact that Míla has begun fibre-optic rollout in most population centres that are to receive fibre-optic coverage without completing this task can make it difficult for Ljósleiðarinn to enter these regions. It is therefore very difficult to predict the likelihood, extent, or location of the development of Ljósleiðarinn's fibre-optic access networks in rural areas at this time.

293. In view of the above, there is no need to amend the discussion of this agreement in the analysis.

5.4.3 Tengir

Co-operative venture between Tengir and Míla - Control over difficult-to-install facilities

294. Tengir's comments on the first consultation include the following, on page 4 of the company's comments:

"Tengir would like to point out, with regard to the co-operative venture between the company and Míla, that such a venture is not at all an advantageous opportunity for the company in light of how previous collaborations have gone. Problems have repeatedly arisen and communication has often been difficult. [...] However, Tengir does not rule out the further development of fibre-optic infrastructure in partnership with Míla and/or other electronic communications companies should the opportunity present itself, although such cooperation is very discouraging in light of prior experience in Húsavík and most recently in Raufarhöfn.

Míla has taken the initiative in these projects and has executed them more or less according to their own whim. Míla has makes the decisions on all points, and there has in fact never been any real dialogue or negotiation on the points disputed by the companies. [...]

Furthermore, Míla has refused to lay fibre-optics for Tengir for access to addresses where connections are more likely to be “more expensive”, even in cases of multiple properties per access address/multi-dwelling building, despite the fact that the partnership¹⁴ agreement stipulated connection to access addresses, including businesses in the project area. Likewise, they begun work prior to the “formal” commencement of the project in order to prevent Tengir from providing fibre-optics to apartment buildings (Húsavík 2019). [...]

[...]“

The ECOI’s position

295. The ECOI does not consider this discussion to contain any specific comment on the geographical analysis of markets. However, the ECOI believes this to be an indication that such co-operative ventures between Tengir and Míla did not go as planned for Tengir, cf. Húsavík. The ECOI is aware of Tengir’s perspective but does not consider it to alter the results of the analysis, either regarding geographical markets or the assessment of significant market power in individual regions. The ECOI believes that Míla has significant market power in both Markets 3a and 3b in Norðurþing, in which Húsavík and Raufarhöfn are population centres. These considerations are partly described in Chapter 7 of Annex A, which discusses competition problems.

5.5 Geographical definition of Market 3a

5.5.1 Ljósleiðarinn

General information regarding Ljósleiðarinn’s comments on the geographical definition of Markets 3a/b

296. Page 34-49 of Ljósleiðarinn’s comments on the first draft consultation provides a detailed discussion and commentary on the ECOI’s geographical analysis of wholesale markets 3a and 3b. Ljósleiðarinn disagrees that a distinction between the geographical markets involved is necessary. Due to the scope of Ljósleiðarinn’s comments on this point and the great degree of repetition, the ECOI considers it appropriate to provide an outline of the comments rather than publishing them in their entirety here. Ljósleiðarinn’s comments will be published in their entirety on the ECOI’s website and will be referred to here. As this feedback is extensive, the ECOI will respond in several stages in the below presentation of the comments.

¹⁴[...]

The ECOI's new approach, municipalities as a basic unit of analysis and the impact of the merger of Ardian and Míla

297. The ECOI's draft of the market analysis states that it contains a new approach to the definition of geographical markets. It can be said that a significant change in strategy has taken place from what was set out in ECOI Decision no. 5/2021.

298. The ECOI has concluded that municipalities are the most suitable basic units as a starting point for the geographical analysis. However, it is not possible to assert that there is effective competition in any municipality on the basis of the retail market situation, despite the fact that wholesale obligations have been imposed on Míla for years.

299. The ICA states in the Ardian decision that even if the operating areas of other fibre-optics networks than those belonging to Míla were specifically delineated in major population centres or regions of the country, the aforementioned vertical and horizontal effects of the merger would not be affected. The merger would result in a detrimental strengthening of Míla's position, as well as other significant disruptions to competition, whether because of narrower geographical markets limited to the regional deployment of other operators, or more broadly to the whole country. This new demarcation and the ECOI's amended methodology of imposing reduced obligations on Míla in certain competitive areas may, in the ICAs opinion, indicate potentially narrower or smaller defined geographical electronic communications markets in the Office's analysis in the near future, at least with regard to Markets 3a and 3b. With Decision no. 5/2021, the ECOI commits vis-à-vis the EFTA Surveillance Authority to repeat a geographical analysis of these markets in the very near future.

The ECOI's position

300. The ECOI sees no evidence that Ljósleiðarinn itself has commented on the fact that the ECOI has opted for municipalities as a basic unit of geographical analysis. Ljósleiðarinn does, however, comment that on the fact that the ECOI differentiates between geographical markets on Markets 3a and 3b, and does not believe there to be occasion to depart from the previous practice of regarding the entire country as one market on the markets in question.

301. It is correct that this constitutes a change in strategy from the conclusion stated in ECOI Decision no. 5/2021. However, the aforementioned decision involved a detailed geographical analysis that resulted in the imposition of different obligations on Míla on the relevant markets. In Europe this has often been the first step in or a prelude to the definition of distinct geographical markets. The ESA commented extensively on the conclusion of the geographical analysis in 2021, but did not exercise its veto power and therefore allowed the ECOI to make the decision in question, on the condition that the Office perform a reassessment within a fairly short timeframe. One of the main reasons why the ECOI did not distinguish geographical markets in its 2021 analysis is that competitive conditions at the time were considered highly unstable, partly because the sale of Míla to Ardian had been announced and the process vis-à-vis the ICA lay ahead, and there remained uncertainty as to what Sýn would do, e.g., whether it would entirely or at least in large part transfer its business from Ljósleiðarinn to Míla. The ESA agreed with this assessment by the ECOI.

302. Conditions on the markets in question are currently much more stable than in 2021 following the ICA's approval on 15 September, 2022 of the aforementioned Míla/Ardian merger and the purchase of Sýn's trunk network by Ljósleiðarinn dated 29 September 2023, and the approval of a new long-term agreement between the two companies.

303. The importance of geographical analysis has increased considerably in recent months and years, and an ever-increasing number of national regulatory authorities have applied geographical measures such as differentiating between geographical markets or imposing obligations according to region on the markets in question. This trend is primarily a result of an increased number of next-generation telecommunications networks deployed by competitors of previous electronic communications monopolies in the countries involved. As deployment of such networks takes place step-by-step within a country, generally first of all in the most densely populated and profitable regions, a situation may arise whereby competition varies by region within a country.

304. In the light of the increased importance of geographical analysis of the markets in question in Europe in recent years; the increase in fibre-optic network coverage by Míla and the company's competitors in the Capital Region and elsewhere; the increase in Míla's competitors' market share on the relevant wholesale markets in recent years and the variable market share by region of parties on the related retail market, the ECOI deems it appropriate to perform a detailed geographical analysis of the aforementioned markets. In addition to this, Míla now plans to phase out its copper network in the coming years, which means that it will not be likely that any one electronic communications company will have a nationwide network by the end of the intended term of validity of this analysis. From the review of precedents from the ECOI's counterparts Europe, it is clear that many of these national regulatory agencies, the European Commission and ESA have recently tended towards more detailed geographical analysis than was previously practised as well as towards geographical differentiation of the market.

305. With the enactment of Electronic Communications Act No. 70/2022, based on the Code, even more emphasis is placed on the detailed geographical definition of electronic communications markets. Paragraph 2 of Article 42 of the Act states, for example, that in defining markets, the ECOI shall pay utmost consideration to the recommendations and guidelines of the ESA with regard to domestic circumstances, particularly as concerns the geographical market, with reference to, among other things, the nature of competition in the infrastructure of a specific region in accordance with the provisions of the Competition Act. The current ESA Recommendation on the relevant markets of 2016 and the ESA market analysis guidelines from 2022, as well as the new EU Commission Recommendation from December 2020, also place more emphasis than before on detailed geographical analyses.

306. Article 13 of Regulation no. 556/2023 on market analysis discusses the definition of the geographical market. Paragraph 1 states:

“When assessing the competitive conditions on the market, the geographical boundaries of the relevant product and service market shall be defined. **The ECOI shall identify whether there is effective competition in a specific geographical area** on the relevant product- or service market, whether said market comprises the whole or part of the country, as appropriate.” (emphasis added by the ECOI)

307. Paragraph 4 of the same Article states that the relevant geographical market comprises the area in which the products or services in question are provided and where competitive conditions are sufficiently homogeneous as to distinguish an area from others in which competitive conditions are considerably different. **Areas where competitive conditions differ do not belong to the same geographical market.** Paragraph 5 deals with the selection of geographical units upon which ECOI will generally base its assessment. There it is stated that units should be of appropriate size, reflect the network systems of all operators concerned, and the boundaries of geographical areas should remain clear and stable over time. Paragraph 7 states that the geographical demarcation of the telecommunications market is normally determined by **telecommunications network coverage** on the one hand by scope of application of laws and regulations on the other.

308. The detailed geographical analysis undertaken by the ECOI this time concluded that it was appropriate to differentiate between a number of geographical markets in Iceland, both on Market 3a and Market 3b, as the competitive conditions on these geographical markets were now considered significantly different. Chapter 5 of Annex A of this analysis contains a justification of approximately 180 pages for this conclusion.

309. In summary, the ECOI concludes that municipalities are the most suitable basic units for a geographical analysis given circumstances in Iceland. The next step was to group together the geographical units whose competitive conditions appeared to be sufficiently homogeneous.

310. When analysing geographical markets, it is very important to take into account the deployment of telecommunications networks, and this issue has become even more important in geographical analyses following the enactment of the new Electronic Communications Act no. 70/2022. The analysis provides a detailed description of coverage by copper, fibre-optic and 4G, 4.5g and 5G mobile networks by municipality, as well as future projections of the likely coverage trends in the years to come. The forecast is based on the current status of telecommunications network deployment in individual municipalities, the various electronic communications companies' plans for coverage, as well as their ongoing and proposed joint investments. The ECOI also takes into consideration whether the region in question is densely or sparsely populated, and whether parallel fibre-optic networks are foreseeable in the region in question.

311. The existing barriers to entry into Markets 3a and 3b are also discussed by region, as different levels of competition between regions are generally the result of differing barriers to entry. New competitors generally first enter a region with fewer barriers to entry and where economies of scale are not a deciding factor. Similarly, new competitors attempt to serve specific needs or customers, thus finding a niche that currently operating companies are not adequately filling despite their economies of scale. In telecommunications markets, economies of scale and sunk cost play a significant role for new entrants who wish to establish themselves on the relevant market and compete with existing companies. Similarly, barriers to entry may arise from legal issues such as licensing, although this is less true of the Icelandic electronic communications market. An examination of economies of scale and sunk cost by geographic region was therefore undertaken with the intention of drawing conclusions regarding varying competitive conditions. It was concluded that barriers for new entrants to the fixed local access network market were considerably greater in rural areas than in the

densely populated Capital Region, both in terms of lesser opportunity to take advantage of economies of scale in the development of networks as well as in terms of the cost of trunk line connections to provide services to the regions in question.

312. However, economies of scale and sunk cost of currently operating companies that provide services on a fixed network are considerable in the Capital Region, which can create a barrier for new competitors when launching fixed network coverage. On the other hand, the entry barrier to fixed networks can present opportunities to develop mobile networks on Market 3b in the regions with lower start-up costs and economies of scale that come with the increase in coverage to more customers.

313. The number of electronic communications companies on the markets in question is also discussed according to municipality. This is an effective method of identifying barriers to entry according to region. The number of companies currently operating on both the retail and wholesale markets was considered. In order to determine the number of competitors who provide or are capable of providing services on Market 3a in a specific region, the number of electronic communications companies who operate their own networks in Iceland was taken into consideration. To determine the same for Market 3b, consideration was given to the number of electronic communications companies who operate their own bitstream systems in Iceland. The fact that competition conditions may vary by region, due no less to competitor size than their number, was also taken into account. It was concluded that, on the respective wholesale markets, Ljósleiðarinn and Tengir were considered Míla's most significant competitors in their respective regions. Snerpa is also considered to be in a fairly strong position in Ísafjörður and its surroundings in the Westfjords.

314. Also included is an extensive discussion by region of the market shares on the markets in question. Note that at this stage it is not a matter of "actual" market shares, as the final demarcation of the geographical market of the wholesale market had not yet been completed.

315. Apart from telecommunications network coverage and market share distribution within individual municipalities, another important criterion for identifying whether competitive conditions may vary between regions is the possible difference in price on both the retail and wholesale level. Variable pricing across regions may be a strong indication of different competitive conditions, which in turn may justify differentiating between geographical markets or imposing different obligations across regions. By the same token, uniform pricing across the country may suggest that the country comprises one market. However, pricing alone does not tell the whole story, as from the consumer perspective, there may be considerable difference between "regions of competition" and regions of little to no competition despite the fact that the potentially dominant player on the market's pricing is uniform across the country. Uniform pricing may not necessarily indicate that the entire country makes up one geographical market if such uniformity is the result of obligations following the designation of parties with significant market power. It was concluded that Míla's pricing and that of its competitors on the market in question and on the related bitstream market (Market 3b) is not in and of itself a decisive enough factor to justify differentiating among geographical markets in Iceland. Although there are some difference in Míla's wholesale pricing across regions, consumers do not experience these differences at the retail level, regardless of service provider. It was therefore necessary to look at other factors

in deciding whether to differentiate between geographical markets on the wholesale market in Iceland.

316. Finally, the analysis of possible differences between competitive conditions among regions addressed other issues such as market behaviour, service offerings, product quality/characteristics, functioning of connections and the type of demand in each region. The ECOI concluded that it does not consider matters such as market behaviour, marketing strategy, service offerings, quality, features, characteristics and the functioning/utility of electronic communications companies' connections on the wholesale market, nor the type of demand, to differ enough between regions to necessitate the division of the wholesale market on the basis of geography.

317. In view of the above, especially given the wide disparity between the deployment of fibre-optic networks and the existence of parallel fixed networks, as well as the wide disparity in market shares between municipalities, which is reflected in the different competition conditions between regions, the ECOI believes there to be a strong argument in favour of distinguishing between geographical markets in the relevant wholesale markets in Iceland. The ECOI applied a forward-looking approach in this assessment and predicted, among other things, the possible or likely fibre-optic rollout in the various regions throughout the term of validity of this analysis.

318. With the new Electronic Communications Act, as well as the EU Commission's recommendation on the relevant markets and the accompanying working document, it is clear that telecommunications network coverage now plays a more important role in geographical analysis than before. Paragraph 2, Article 43 of Electronic Communications Act No. 70/2022 states:

“In defining markets, the ECOI shall pay utmost consideration to the EFTA Surveillance Authority's recommendations for the service markets in question and to its guidelines for market analyses and assessment of significant market power with respect to domestic circumstances, particularly the geographical market, **with reference to, among other things, the type of competition in the infrastructure of a specific region** in accordance with the provisions of the Competition Act. The ECOI shall, where appropriate, take into account the results of a geographical survey carried out in accordance with Article 11 of Act No. 75/2021 on the Electronic Communications Office of Iceland.” (emphasis added by ECOI)

319. Market shares are also a matter of great importance, but the significance of behavioural factors such as pricing, service offerings, marketing strategy and quality has decreased. This is confirmed in a recent European market analysis, for which a detailed discussion can be found in Chapter 5.1.10 of Annex A.

320. The ECOI also discussed and justified the criteria for the grouping of municipalities into geographical markets. This took into account the proportion of parallel coverage by fixed networks, the proportion of the market share and the number of electronic communications companies in individual municipalities. The assessment of significant market power on all geographic markets in Chapter 6.2 attempted, among other things, to predict the possible or

likely development of market shares on the relevant wholesale market on the geographical markets in question.

321. In its comments on the first part of ECOI's Preliminary Draft of this market analysis, dated 17 October 2023, the ICA did not remark on the conclusion of the ECOI's geographical analysis.

322. The above reference by Ljósleiðarinn to the ICA's conclusion on the issue of the Míla/Ardian merger as concerns the geographical analysis of the markets will be discussed later, whereby the ECOI explains its position on a similar but more detailed comment by Ljósleiðarinn.

Provisions of the regulation on analysis of geographical markets

323. In view of impending changes, Ljósleiðarinn considers it worthwhile to note the instructions stated in Regulation no. 556/2023, which contains detailed criteria for the definition of the geographical market, e.g. the objective of demarcating and defining the boundaries of competition between companies. Regional conditions should be taken into account with respect to the type of competition in the infrastructure of a specific region in accordance with the provisions of the Competition Act. The ECOI should also take into account, where relevant, the results of a geographical survey of predicted high-speed network coverage pursuant to Article 11 of Act No. 75/2021 on the Electronic Communications Office of Iceland. In Ljósleiðarinn's opinion, it is not immediately apparent whether or not this informed the market analysis. The regulation also states the necessity of identifying whether there is effective competition on the product- or service market in question within a given geographical region, whether that region consists of all or part of the country.

324. Ljósleiðarinn believes it can be deduced from the regulation that network coverage area is a deciding factor in the geographical demarcation of telecommunications markets. Another deciding factor according to the regulation is the definition of a geographical market based on competitive conditions on the market in question.

325. The ECOI has referred to the fact that, following ECOI Decision No. 5/2021, changes to residential and commercial fibre-optic coverage by parties other than Míla has continued to increase, which in turn has increased competition among service providers for access to such networks with improved bitstream provider options for service providers. However, the status of infrastructure deployment by others than Míla varied considerably by region and was in some places limited.

The ECOI's position

326. As can be inferred from the the ECOI's above response, the ECOI believes it has complied with the provisions of the regulation as concerns the geographical analysis, including the provisions of Article 13 thereof, which deals specifically with the definition of the relevant geographical market. Refer to that discussion as well as to the discussion in Chapter 5.1.2 of Annex A.

327. Furthermore, it is not apparent that this comment states otherwise, including that the regulation assumes deciding factors in the geographical analysis to include the coverage area of telecommunications networks, conditions on the markets in question, or that the type of competition in infrastructure in certain regions should be taken into account in accordance with the principles of competition law.

328. Ljósleiðarinn says it is unclear whether the ECOI's geographical analysis has taken into account the results of a geographical survey of the predicted coverage of high-speed networks pursuant to Article 11 of Act no. 75/2021 on the Electronic Communications Office of Iceland. The provisions of the aforementioned Article 11 are as follows:

"The ECOI shall prepare a comprehensive coverage map of high-speed networks at least every three years. This will allow the Office to conduct a regional network deployment forecast for high-speed networks. If a network deployment forecast reveals that no telecommunications company or public entity intends to deploy such networks or update its existing networks in a specific area within a given time frame, the ECOI shall publish these results.

The ECOI is authorised to invite the parties to declare their intention to build or upgrade the networks referred to in Paragraph 1 in the region concerned within the said time limit. If the ECOI receives such a declaration, it may investigate whether the parties have plans to develop in the region in question. The Office shall include in its offers the information that must accompany such a declaration by the party.

The ECOI shall deliver, under strict confidentiality, to all relevant authorities responsible for the allocation of public funds for the development of high-speed networks and regional planning, declarations of intent pursuant to Paragraph 2, as they must take into account information pursuant to Article 10 and this provision. The ECOI shall take this into account in the implementation of its tasks in the domain of frequency allocation and universal service."

329. It is therefore necessary to respond that an optional regional network deployment forecast pursuant to Paragraph 1, Article 11 has not yet been made. The ECOI was therefore unable to take such a network deployment forecast into account in its market analysis at this time. In November 2023, preparations began for a project relating to Paragraph 2 of the provision, i.e. an invitation by the ECOI for the parties to declare the intent to develop or upgrade networks. Results for this project are not expected until the first half of 2024. Results will likely reveal the proposed deployment of high-speed networks in the next 3 years, and this information may be useful in the next analysis of the market in question.

330. It should be noted that pursuant to Article 10 of the said Act, the ECOI shall maintain a digital database of public telecommunications networks. The database shall record information on the location and technical specifications of both active and passive infrastructure components of public telecommunications networks. Sentence 1 of Article 11(1) of the Act states that the ECOI shall prepare a comprehensive coverage map of high-speed networks. The ECOI has done this for several years, using the database in its geographical analysis, in addition to requesting electronic communications companies'

deployment plans and conducting a network deployment forecast based on this information, which in turn was used in the geographical analysis.

331. Ljósleiðarinn is correct that the ECOI has, among other things, referred to changes since ECOI Decision no. 5/2021 in that coverage by parties other than Míla has continued to increase, thereby increasing competition among service providers for access to such networks, which has in turn increased service providers' options for bitstream providers. However, the status of infrastructure deployment by others than Míla varied considerably by region and was in some places limited. Ljósleiðarinn does not seem to comment specifically on this matter. It should be added that this trend has been ongoing for some time prior to the aforementioned ECOI Decision of 2021, when the ECOI considered the market too uncertain to deem the demarcation of geographical markets appropriate. That uncertainty has now largely subsided.

Variation in fixed network coverage and advantage difference

332. Ljósleiðarinn stated that, regarding the geographical analysis of Markets 3a and 3b, the ECOI has determined that there is a strong argument to be made for the geographical demarcation of the wholesale markets in question, taking into account, among other things, the great difference in the deployment of fibre-optics networks and the existence of parallel fixed networks, the varying coverage of the mobile networks in question, as well as the great difference in market shares between municipalities, which is reflected in the varying competitive conditions between regions.

333. Ljósleiðarinn is of the opinion that the ECOI's claim that fibre-optic deployment by parties other than Míla has reached the point of being able to promote increased competition among service providers to such networks is seriously lacking in justification and explanation. It is true that, for the first time, Ljósleiðarinn has in recent months reached the point that it has access to the nationwide ring by leasing two strings in the NATO-network from the Ministry of Foreign Affairs. The company also acquired Sýn's trunk network. That national network, however, is far from being fully competitive with Míla at a national level. It was then added that Míla is now owner of a mobile network that covers the entire country, but Ljósleiðarinn has no control over or access to such a network.

The ECOI's position

334. Ljósleiðarinn is correct that the ECOI has concluded in this analysis that it is appropriate to differentiate between geographical markets of the wholesale markets in question, taking into account, among other things, the great difference in the deployment of fibre-optics networks and the existence of parallel fixed networks, the varying coverage of the mobile networks in question, as well as the great difference in market shares between municipalities, which is reflected in the varying competitive conditions between regions. It is clear that there is a great deal of difference in the competitive conditions between municipalities in Iceland in this regard. However, the ECOI groups together the municipalities whose competitive conditions are sufficiently homogenous so that they constitute a single geographical market.

335. The ECOI reiterates Paragraph 4, Article 13 of the regulation on market analysis, which states that the geographical market in question comprises a region in which the products or services in question are provided and where competitive conditions are sufficiently homogeneous that it is possible to distinguish the region from others where competitive conditions are considerably different. Areas where competitive conditions differ do not belong to the same geographical market. For example, the ECOI is of that opinion that that competitive conditions obviously differ between regions where Míla's market share is very high, even near 100%, and Síminn has a very high share of the related retail market, and, e.g., the Capital Region where Míla's share is not the highest and no single electronic communications company's share of the retail market exceeds 35%. There is little competition in the former regions, but competition is significant in the latter. It is therefore a matter of course that these regions do not constitute the same geographical market.

336. Ljósleiðarinn's comment that deployment of providers other than Míla has not reached the point that these parties are able to promote increased competition on such networks does not change the ECOI's aforementioned opinion. The different development of such networks in individual municipalities is precisely reflected in the geographical analysis and is among the main decisive factors in the demarcation. It is the opinion of the ECOI that these differing trends justify demarcation on the basis of geography. The fact that Ljósleiðarinn does not have a nationwide trunk network is therefore not relevant to the geographical analysis. On the contrary, this fact provides further support for the necessity of geographical demarcation. The same can be said of Ljósleiðarinn's comment that Míla is now owner of a nationwide mobile network, but Ljósleiðarinn does not have control over or access to such a network. This fact at least does not undermine a geographical demarcation.

Geographical differentiation in Europe insufficient justification

337. Ljósleiðarinn states that there is little justification for the ECOI's refusal to define all of Iceland as one geographical market, except with reference to the fact that geographical demarcation of markets in Europe has been increasing substantially in recent years. There is, however, no argument to be made regarding what changes have occurred on the markets in Iceland which would necessitate such a demarcation, or whether they are comparable to what has occurred in Europe. This alone cannot be considered sufficient justification.

338. In that context, it is necessary to point to the Regulation's mandate that additional elements be used as a basis for defining geographical markets when assessing the market power of various market participants. There it is stated that a decision regarding the significant market power of one market participant shall be based on the interaction of several factors. This should take into account the market share of the company with potential significant market power in the relevant market, as well as that of its competitors and the competitive pressure that potential competitors could exert in the medium term.

The ECOI's position

339. The ECOI disagrees that the conclusion regarding geographical differentiation of the markets on the relevant wholesale markets is poorly justified. A discussion of ECOI's justification can be found in the ECOI's response to Ljósleiðarinn's first comment on the geographical analysis.

340. The ECOI also disagrees that the main argument for geographical differentiation is a reference to such a trend in Europe. On the contrary, the ECOI primarily looked at the situation and developments on the relevant markets in Iceland, but mentioned in passing that this was also the trend in many places in Europe in recent months and years.

341. The ECOI does, however, agree with Ljósleiðarinn's comment that the regulation on market analysis provides that ECOI must use various elements as a basis for defining geographical markets, i.e. that such an assessment be based on the interaction of several factors, including, as Ljósleiðarinn points out, market share. This is exactly what the ECOI has done in its geographical analysis, cf. the previous discussion above. The elements on which ECOI placed the greatest emphasis were network coverage on the one hand and market share distribution on the other.

Measuring market shares

342. Ljósleiðarinn points out that Article 18 of the regulation specifically states that it is possible to measure market share on the basis of turnover, volume, connected lines or number of subscribers, all according to what is most relevant to the market in question, and that market share can be measured by more than one criterion at any given time.

343. A company may have significant market power despite having a share of less than 50% in the relevant market, which is the case with Míla in large parts of the country. It matters, for example, whether the company in question is generally strong in terms of capital, technology, infrastructure and the range of services. A conclusion regarding significant market power is thus based on an overall assessment in which both market share and matters pertaining to the development of the market are relevant.

The ECOI's position

344. In its analysis of the wholesale markets in question, the ECOI has used quantity figures in calculating market share, and this methodology has been fairly undisputed throughout the years. The main rationale for using quantity figures rather than turnover figures on the markets in question is that these markets are closely related and it has proved difficult to obtain a satisfactory breakdown of the revenue distribution between Markets 3a and 3b, as well as the fact that internal turnover on Market 3a is very high. Therefore, the ECOI believes that quantity figures provide the most accurate picture of the market share distribution on the markets in question. In addition, an examination of the trend reveals consistency between years, but there is a risk that a change to the methodology for calculation results in inaccuracies in the year-to-year comparison. Furthermore, the ECOI is not aware of much difference in prices of products on the markets in question between companies, which would create a significant disparity in results depending on the methodology employed.

345. The latter part of Ljósleiðarinn's comment addresses the assessment of significant market power rather than the geographical analysis. The ECOI agrees with Ljósleiðarinn that a company can have significant market power despite a share of less than 50% of the market in question. There may also be effective competition on a market despite the fact that one single participant has a market share above 50%. Market share is only one of the many factors

that must form the basis for such an assessment, as Ljósleiðarinn points out. This comment therefore does not influence the definition of geographical markets in this case.

Insufficient assessment of the impact of Míla's strong position on the trunk line lease market and mobile network coverage, and as a result of the long-term agreement with Síminn

346. Ljósleiðarinn stated that it does not seem that sufficient consideration has been given to the factors specified in the regulation, including those pertaining to the definition of the markets or assessment of market power. The assessment of Míla's power on the basis of the geographical market did not seem to take consideration of its strong position on Market 14. Míla is "everywhere" and the company's leased line network is underbuilding nearly every network. This has a huge impact on Markets 3a/b. All electronic communications companies are therefore dependent on leased line connections from Míla for both fixed (fibre-optic) and mobile networks. The influence of adjacent markets is a well-known phenomenon in competition law, whereby a company in Market A is able to apply the power and influence it has on Market B back on Market A in various ways.

347. The impact on the geographical markets of the fact that Míla is the only wholesale company to have a mobile network at its disposal does not seem to have been assessed. This is certainly relevant here. There is no supply-side substitutability between mobile and fixed networks and it is clear that Ljósleiðarinn will not be able to compete with Míla's mobile network during the term of validity of this analysis, as Ljósleiðarinn must focus on developing a new trunk network in the form of a fixed network. Although Síminn has retained its spectrum licence, it is now possible to assign these licenses to other providers. The impact of this must be assessed.

348. Also relevant in this context is the fact that Míla has secured 80% of all wholesale trade with the largest retailer on the market, Síminn, by means of a long-term contract. [...].

The ECOI's position

349. These pertain more to the assessment of significant market power rather than geographical analysis, and similar comments will be answered under Chapter 6 below.

350. In terms of mobile networks, the ECOI concluded that router connections over mobile networks belong to Market 3b, not Market 3a. These connections were therefore considered in the geographical analysis of Market 3b, as was the fact that the ECOI considered these solutions to place indirect competitive pressure on fixed networks on Market 3a.

351. As stated in the ECOI's position in Chapter 6 below, it is difficult to predict the impact of Míla's control over mobile networks on the wholesale markets in question. Míla has had such networks at its disposal since the beginning of 2021, though no obvious effects are evident on Markets 3a and 3b. These effects would no doubt be felt, or at least more apparently, if Míla would acquire mobile core networks and spectrum licences, which the company does not currently have at its disposal. At this time, the ECOI has no criteria for assessing the likelihood of this. In the event that there are obvious indications of a significant impact on the competitive position on the relevant markets, the ECOI may respond with a

new analysis, in whole or in part, of the markets in question, or, where appropriate, by making changes to the obligations without a undertaking new market analysis, cf. Article 49 of the Regulation, or by making a provisional decision, cf. Article 56 of the Regulation, if urgently necessary.

Fibre-optic development in rural areas vary in degree of completion, premature to lift obligations on Míla

352. In Ljósleiðarinn's opinion, the discussion in the market analysis is unclear in its attempt to assess the basis of the ECOI's geographical analysis, i.e. that fibre-optic coverage to homes and businesses by providers other than Míla has continued to increase, and with it the competition for access to such networks between service providers. The basis here seems to be that such networks are fully developed, with full functionality equivalent to Míla's nationwide mobile and fixed networks, and demand is already high. Elsewhere in the analysis, however, it is claimed that development of these networks is at a much earlier stage in some locations. When conducting a geographical analysis, it is important to look as far to the future as possible, e.g. to trends on the market in question and the assessment of additional information, such as plans for coverage by various market participants and probable development of market shares.

353. Ljósleiðarinn still has a lot of work to do before the company has at its disposal a functional nationwide telecommunications network capable of competing with Míla to the extent that the ECOI seems to assume. On 4 October, 2023, Ljósleiðarinn was delivered the trunk network it purchased from Sýn, and all co-ordinatory work was in its infancy. Ljósleiðarinn then had to take over a number of leased line networks previously leased by Sýn from Míla. There were also significant delays in the delivery of the NATO optical fibres. Ljósleiðarinn explicitly warned of the potential difficulty of transferring Míla's leased line connections from Sýn to Ljósleiðarinn as the new lessee. All these factors show that it is possibly premature of the ECOI to conclude that there is another nationwide fixed network and to rely on this as justification for lifting obligations on Míla.

354. At several points in the analysis, it is stated that companies are expected to reach their development goals during the term of validity of the analysis. At the time, Ljósleiðarinn was of the opinion that major changes and shifts in could take place in technology, telecommunications network architecture and marketing strategies. It would therefore be prudent to not overstate the progress of development and coverage of networks and to allow those who wish to develop telecommunications networks a realistic opportunity to implement such plans. In light of its control over both a copper and fibre-optic fixed network and RAN system, its competitive advantage in terms of time in rural areas and other factors, Míla would be in a dominant position. Míla's financial power is also obvious; and in fact the company has publicly boasted about this and its investment capacity, as well as the figures according to the company's financial statements.

355. The analysis states that within Europe, competition problems on related retail markets are generally the result of inadequate infrastructure competition (parallel fixed networks) and/or a lack of successful wholesale access, which may vary by region. Ljósleiðarinn reiterated that the ECOI's assumption that Ljósleiðarinn was and would be equipped with a parallel telecommunications network alongside Míla's had not yet come to fruition and was

still a long way off. Furthermore, there had been a fundamental change in the nature of the wholesale market with the substitutability between mobile and fixed networks on Market 3b. Ljósleiðarinn believes that this new position on the geographical market and the impact it may have during the term of validity of this analysis are under-analysed. A situation has arisen in which Míla now has control over more than two networks in almost every region of the country, i.e. trunk lines that guarantee transmission to municipalities, and local fixed (copper and fibre-optic) and mobile networks. This calls for further analysis and possibly alternative and new versions of the obligations imposed on Míla.

The ECOI's position

356. Many of the above comments by Ljósleiðarinn apply more to the assessment of significant market power than to the geographical analysis. This will be answered in Chapter 6 below.

357. Above, the ECOI has argued that the variation in development of and coverage by fibre-optic networks in rural areas instead supports the conclusion to differentiate among geographical markets. See the relevant sections.

358. If coverage by all market participants, or at least the most important participants, was the same across the country, this would instead support the idea that Iceland comprises one geographical market, particularly if market share distribution was also similar across the country. This is obviously not the case in Iceland, as is covered in detail in Chapter 5, Annex A.

359. Ljósleiðarinn says that when conducting a geographical analysis, it is important to look as far to the future as possible, e.g. to trends on the market in question and the assessment of additional information, such as deployment plans by various market participants and probable development of market shares. This is precisely what the ECOI does in Chapter 5 of Annex A in relation to the geographical analysis, as well as in Chapter 6 of that Annex in terms of the assessment of significant market power on the relevant geographical markets.

360. Ljósleiðarinn says that of these factors show that it is possibly premature of the ECOI to conclude that there is another nationwide fixed network and to rely on this as justification for lifting obligations on Míla. The ECOI notes that it is important to not impose or maintain obligations in regions where there is effective competition, and this is in line with the electronic communications regulatory framework for lifting obligations in stages as competition develops and progresses in certain regions. The ECOI does not avouch basing such an assessment on Ljósleiðarinn developing a nationwide fixed network in competition with Míla's. The ECOI is only lifting obligations in regions where this is the case, whether due to Ljósleiðarinn's, Tengir's, Snerpa's or other operators' fibre-optic networks. If such deployment becomes a reality in more regions where Míla is considered to have significant market power, this may mean that obligations will be lifted in more regions in the future. These comments by Ljósleiðarinn do not justify continued nationwide obligations on Míla, despite the fact that Míla has significant market power in large parts of the country. It is therefore not, as Ljósleiðarinn maintains, premature to lift obligations on Míla in regions of effective competition.

361. Ljósleiðarinn says that major changes and shifts in technology, the network architecture of telecommunications services and marketing strategies may take place during the term of validity of this analysis. It would therefore be prudent to not overstate the progress of development and coverage of networks and to allow those who wish to develop telecommunications networks a realistic opportunity to implement such plans. In the opinion of the ECOI, this view does not justify continuing obligations on Míla in regions where competition is currently effective. As mentioned earlier, continued development by Ljósleiðarinn or others in competition with Míla in regions where Míla has significant market power may later lead to further lifting of obligations on Míla. The ECOI does not believe that it has been reckless in asserting the potential development of or coverage by networks of providers other than Míla. Where this is the case, it is based on the companies' deployment plans. On the contrary, Míla has maintained that the ECOI is being too careful with such predictions by providers such as Ljósleiðarinn. The ECOI is able to respond quickly to trends within the various geographical markets if effective competition should arise following the deployment of new fibre-optic networks.

362. Ljósleiðarinn says that the nature of the wholesale market has fundamentally changed with the substitutability between mobile and fixed networks on Market 3b. Ljósleiðarinn believes that this new position on the geographical market and the impact it may have during the term of validity of this analysis are under-analysed. A situation has arisen in which Míla now has control over more than two networks in almost every region of the country, i.e. trunk lines that guarantee transmission to municipalities, and local fixed (copper and fibre-optic) and mobile networks. This calls for further analysis and possibly alternative and new versions of the obligations imposed on Míla. The ECOI notes that its geographical analysis of Market 3b, including with regard to the calculation of market shares, took mobile networks into consideration. In other respects, this comment pertains more to the assessment of significant market power than the analysis of the geographic market, and similar comments will be answered in Chapter 6 below.

The country as one market on the retail level

363. Ljósleiðarinn considers it necessary to assess whether the ECOI's criteria for the review of the geographical analysis are met, as the country as a whole comprises one market on the retail level. This is evident in both the range and pricing of services. The largest market participants offer a homogenous range of services across the country at the same prices. This is the case with e.g. Síminn's "Heimilispakki" package, which is sold at the same rate across the country and with the same line charge. Míla owns two to three networks nationwide, and a combination of all three. There is therefore nothing to suggest that the country on a whole is anything but one and the same marketing area.

The ECOI's position

364. Chapter 4.5, Annex A contains an extensive geographical analysis of the related retail market by municipality. See the relevant sections. The results of that analysis are outlined below.

365. Article 8 of the Regulation, as well as Paragraph 4, Article 44 of the Electronic Communications Act, states that the starting point for any analysis of the wholesale level is

to make an “assessment” of the competition status of the relevant retail market(s), taking into account demand and supply-side substitutability during the period of validity of the analysis, based on prevailing market conditions and their likely development over the term of validity of the analysis in question. If the ECOI determines that the lack of competition on the retail level poses any risk of damage to the consumer, the ECOI shall define and identify the relevant wholesale market(s). The EU Commission Recommendation of December 2020 states that telecommunications regulatory authorities should start by “assessing” whether competitive conditions vary between regions at the retail level, provided that no obligations have been imposed on the wholesale level (the so-called “modified Greenfield approach”). Furthermore, if differing competitive conditions have been identified at the retail level, a detailed geographical analysis of the wholesale level should be performed.

366. From the above, it is clear that the main objective of this market analysis, including the geographical analysis, is to analyse the wholesale markets 3a and 3b. It is the responsibility of the ECOI to demarcate and define the boundaries of competition with the intention of determining whether there is a need to impose obligations on the wholesale markets, either entirely or in specific geographical regions in which the ECOI considers the lack of competition on the retail level to pose a risk to consumers, without imposing obligations on the wholesale level.

367. Before doing so, however, the ECOI must, as mentioned earlier, “assess” the relevant retail markets, including on a geographical basis. The task is therefore not to formally define geographic markets at the retail level, nor to designate market participants with significant market power on the either retail market or certain geographical regions thereof, with a view to impose obligations on such companies on the retail market.

368. The ECOI performed such a “geographical assessment” of the retail markets of all 64 municipalities in Iceland. This municipal assessment of the situation was based on the following factors:

1. Deployment of electronic communications networks
2. Access barriers
3. Number of electronic communications companies
4. Market share
5. Concentration (HHI).
6. Pricing
7. Other factors such as market behaviour, marketing strategy, range of services, quality, features, and characteristics and functionality/utility of connections and the type of demand.

369. Without the task having been to formally define geographical markets on the wholesale level or to identify parties with significant market power on certain geographical markets and impose the applicable obligations on companies on the said retail market, the

matter is such that, pursuant to Article 15 of the aforementioned regulation on market analysis, the ECOI shall not impose obligations on the wholesale market in question or certain geographical regions thereof, if there is considered to be effective competition on the retail market or parts thereof in the absence of wholesale obligations. However, pursuant to Paragraph 4 of Article 2 of the Regulation, the ECOI shall designate companies with significant market power on the wholesale market or parts thereof if there is no effective competition on either the retail market or parts thereof or the wholesale market or parts thereof.

370. As per the conclusion in Chapter 3 of Annex A, that there is no effective competition on the retail market without obligations on the wholesale level when considering the country as a whole, the next task was to determine whether there was effective competition in certain geographical regions of the said market. An assessment was made as to whether there is effective competition in certain geographical regions in Iceland, presuming a lack of wholesale obligations. It is therefore unnecessary to further assess the competition status on the wholesale level in those regions and thereby lift wholesale obligations in said regions without further assessment of the competition status on the wholesale level. The ECOI's opinion is that the wholesale market obligations on Míla that are currently in place and have been for years have increased competition on the retail market, as has the fibre-optic network deployment by Míla's competitors.

371. The ECOI believed that caution should be exercised in making the aforementioned assessment, as the situation on the relevant wholesale markets might be precarious and/or fragile, despite the fact that the retail market situation may at first glance suggest vigorous or effective competition. This should also reduce the risk of a "false positive", i.e. premature lifting or relaxation of obligations when the market circumstances do not justify such measures, along with the associated risk of reduced competitive pressure on the retail level. The ECOI therefore believes it prudent to exercise caution in claiming that vigorous competition on the retail level in a certain municipality or number of municipalities automatically means that this municipality or municipalities do not need to be further examined on the wholesale level. The ECOI also noted that if its task is to perform a complete geographical analysis of the retail market, this definition would likely not fully align with the geographical analysis of Market 3a, as the aforementioned mobile network solutions do not belong to that market, as the case would be with regard to the retail market in question and Market 3b.

372. This assessment paid particular attention to the fact that behavioural factors such as pricing and marketing strategy, range of services, quality, features and functionality/utility of connections and the type of demand on the retail level did not indicate the need to define geographical markets on the retail level, had that indeed been the formal purpose of this analysis in the first place. However, the **structure of the retail market suggested that there are considerable regional differences in competitive conditions, especially with regard to market share between municipalities, network coverage and the number of operating wholesale and retail companies.** It also suggests that there is significant concentration on the retail market in all municipalities, although to varying extents.

373. The aforementioned assessment assumes that two criteria be met in order to determine whether there is effective competition in the municipality or municipalities in question; that no single electronic communications company has a market share of above

50% on the retail level in the municipality in question, and that the HHI is below 2,000 in the said municipality. In short, the HHI did not fall below this threshold on the retail market in any municipality in Iceland, though it varied greatly between municipalities.

374. Despite the conclusion that there is no effective competition on the retail market in any municipality in Iceland, the analysis considered the competitive situation on the retail level in these municipalities as well as the situation on the applicable wholesale markets when defining geographical wholesale markets, including factors such as market share and number of operating electronic communications companies in individual municipalities. The assessment of significant market power in individual municipalities also took the situation on the retail level into consideration.

375. Based on the overall assessment carried out here, it is a gross simplification on the part of Ljósleiðarinn to argue that homogeneous pricing and range of services at the retail level implies in and of itself that a geographical differentiation of markets is not necessary on the wholesale level. The ECOI believes that its justification for the need to geographically demarcate markets at the wholesale level is sufficient.

Assessment of demand and supply-side substitutability in geographical analysis – Homogenous retail pricing

376. Ljósleiðarinn notes that, pursuant to Electronic Communications Act No. 70/2022, electronic communications markets and market power are defined according to the methodology of competition law. The extent to which the supply of goods or services in a given geographical region is considered to belong to the market in question is determined by whether competitive pressures affect the market participant's decision when determining price. Two main constraints should be particularly considered when assessing companies' behaviour on the market: (i) the demand side and (ii) substitutability on the supply side. This could be further differentiated by separating the product market into service competition, distribution competition and infrastructure competition. A third aspect of competitive control on companies' behaviour on the market is potential competition.

377. Generic methods such as analysis of pricing and price differential, both nationally and regionally and with respect to competitors' market shares would also be a useful starting point for analysis. From the point of view of competition law, analysis of the retail price of services would serve as a basis for a market analysis. However, this may not be sufficient as the retail price differential may also reflect different services cost bases. This requires further analysis of the demand factor (due to e.g. the fact that market participants in a given region may prefer to do business with local companies, buying behaviour, different services and different features of products, services and brands) in order to assess whether companies in different regions actually offer consumer options.

378. In Ljósleiðarinn's opinion, there is nothing in the market analysis to indicate a significant price differential among electronic communications services in different locations on the Icelandic market. Chapter 3.1.1, which takes into account the situation in retail and beyond (e.g. Par. 564), notes that the comparable pricing of copper and fibre-optic access on the retail market indicates homogenous pricing of access on the Icelandic market.

379. Based on the market analysis, Ljósleiðarinn does not believe any clarification has been made as to whether there is any difference in retail pricing on specific regional markets. [...], this does not suggest regional variation in pricing on retail markets. Síminn's retail pricing for electronic communications services, for example, is the same across the country. It may be the case that different services are priced differently, though this would merely be due to different cost bases rather than regional differences in pricing. With reference to this fact and others, it does not seem that geographical submarkets or the division of the country into multiple smaller units are justified.

380. Substitutability resulting from changes to the relative price rather than actual price, and therefore the ease of switching service providers, is a key aspect in all assessment of geographical markets. It should be noted that the definition of regional geographical markets does not require complete homogeneity in competitive conditions between sellers or service provider. The main objective is to be able to determine which companies in the region can be said to have significant market power. Ljósleiðarinn is of the opinion that the ECOI should make it a priority to assess whether and to what extent a market participant considered to be in a dominant position deals with barriers to competition that vary between regions.

381. Ljósleiðarinn does not believe there to be sufficient indication or evidence that regional markets exist. For this reason, Markets 3a and 3b should extend across the entire country.

The ECOI's position

382. Regarding Ljósleiðarinn's comment on homogenous retail prices, the ECOI refers to its position in a similar comment below. Pricing is just one of many factors that must be taken into consideration in the overall assessment that defining a geographical market entails.

383. Ljósleiðarinn points out that the definition of a geographical markets must pay closer attention to demand-side and supply-side substitutability. Substitutability resulting from changes to the relative price rather than actual price, and therefore the ease of switching service providers, is a key aspect in all assessment of geographical markets.

384. Chapter 5.1 of Annex A discusses the regulatory framework and guidelines for geographical analysis, and Chapter 5.1.1 contains a general discussion of geographical market analysis. There it is stated that in accordance with current practices in European competition law, a geographical market covers a geographic area in which stakeholder companies participate in the supply and/or demand of goods or services where conditions for competition are the same or sufficiently homogeneous so as to be able to differentiate between regions where competitive conditions are significantly different. In accordance with current ESA guidelines on market analysis and assessment of significant market power of electronic communications companies, the market should be defined as the region in which the product in question is available to consumers under similar or sufficiently homogenous competitive conditions. When markets are defined geographically, competitive conditions for electronic communications companies do not necessarily need to be identical. It is enough that they are sufficiently similar, and for this reason only regions where competitive conditions are significantly different are considered to constitute different geographical markets.

385. According to the guidelines, the same process applies when demarcating a geographical market as when defining product- and service markets, including with regard to assessment of demand-side and supply-side substitutability in the event of a small but permanent price increase, or about 5-10% (the hypothetical monopolist test – SSNIP test). Another factor that could be used in this context is an assessment of potential competition. Whether or not the supply of a given service in a given region belongs to the market in question therefore depends on the competitive pressure market participants face in relation to their pricing. This must be examined on the basis of the aforementioned factors, in particular demand-side and supply-side substitutability.

386. The *SSNIP test* can be used to assess demand-side or supply-side substitutability and thereby identify and demarcate geographical markets. However, it has been stated that this methodology can result in a very large number of small geographical markets, which is not desirable from the standpoint of achieving the objective of a market analysis, i.e. to impose the appropriate obligations on businesses with significant market power with a view to increase effective competition for the benefit of the consumer. For example, a 5-10% price increase for broadband access in one region would likely not cause residents to move to another region, nor would this alone be an incentive for other electronic communications companies to expand their networks into the region in question. **The aforementioned test is thus only one method of many for defining service or geographical markets.**¹⁵ This test would therefore only be realistic under conditions where pricing is free, but much less so in cases where pricing is subject to obligations.¹⁶ The same can be said in cases where consumer choice is determined to a greater or lesser extent by factors other than price. To reach a satisfactory conclusion, it may therefore be useful to consider as one geographical market all regions where competitive conditions are similar according to a given objective criteria. Should a national regulatory authority decide to use the SSNIP test, it should be to the extent that the authority is able to demonstrate that the increase in price of the product in question, within a given region, would not result in consumers switching to a substitute product or subscribe to an electronics communications company in another region.

387. From the above, it can be concluded that the SSNIP test is in many ways less suited to defining geographical markets than product or service markets. In addition, this test is only one of many methods on which to base a geographical differentiation. The ECOI thus went the route of designing relatively objective criteria for classifying municipalities according to homogeneity of competitive conditions, as it is clear according to Paragraph 4, Article 13 of the regulation on market analysis that regions where competitive conditions are different do not belong to the same geographical market. In the ECOI's opinion, it is clear that Míla faces considerably variable competitive conditions in different regions, and therefore it is no longer possible to consider the country in its entirety as one geographical market.

388. The EU Commission Recommendation of December, 2020, adopted after the Code entered into force, states, among other things, that competition problems are unlikely to be the same across all jurisdictions of the Member State in question. Telecommunications regulatory authorities must therefore distinguish between regions where competitive conditions are sufficiently homogenous and regions where conditions are significantly

¹⁵ See Paragraph 29 of the ESA guidelines.

¹⁶ See Paragraph 31 of the ESA guidelines.

different. Particular attention should be given to whether a potential service provider with significant market power behaves the same way between regions where it operates telecommunications networks, or whether the provider faces varying competitive pressure. After selecting the appropriate unit for the basis of geographical analysis, in this case municipalities, telecommunications regulatory authorities should, in accordance with the principles of competition law, determine the initial definition of the extent of geographical markets by grouping together regions with similar competitive conditions. They should assess competitive conditions in a forward-looking manner by taking into account evidence pertaining to the structure of the market and behaviour of market participants, **with particular attention to the importance of infrastructure competition** in accordance with Paragraph 3, Article 64 of the Code. The result should be compared with that of the supply-side and demand-side substitutability analysis. These attitudes are reflected in Electronic Communications Act No. 70/2022 and the 2023 regulation on market analysis.

389. A geographical analysis should examine demand-side substitutability in the context of whether customers are able to switch service providers outside of the hypothetical geographical market should the price of services increase. However, this would be unlikely to have a major impact on this market analysis, as customers would only be able to purchase services through networks connected to their home or workplace.¹⁷

390. On the other hand, analysis of supply-side substitutability is an important factor in the methodology of telecommunications regulatory authorities, as it encourages consideration of future market trends. Supply-side substitutability refers to a competitor's ability to enter a market in response to a price increase. Telecommunications regulatory authorities must therefore consider the possible deployment of telecommunications networks and take various data and indications into account in this context. Among other things, it should be possible to consider whether a competitor has a telecommunications networks in a nearby region, or whether a competitor already has a presence in the region in question but has not yet connected end users to the local loop. The possibility of advantageous business opportunities should also be considered, e.g. high population density, or whether the operator with significant market power has a low retail market share in the region in question. Information concerning market participants' deployment plans may be added to the above points, especially if such deployment has already begun.

391. In accordance with the above, the ECOI's geographical analysis places great emphasis on supply-side substitutability and less on demand-side substitutability due to the described drawbacks to geographical analyses.

Míla's market share likely to increase as a result of the service agreement with Síminn

392. Ljósleiðarinn also states that the ECOI seems to consider competitive conditions to have change substantially in recent years due to, among other things, the restructuring of Síminn and Míla, conditions imposed by the ICA due to the sale of Míla to Ardian, the acquisition of Sýn's trunk network by Ljósleiðarinn, various technological changes and changes to the structure of the electronic communications market. In Ljósleiðarinn's opinion,

¹⁷ See page 21 of the European Commission working document.

however, it is not obvious that any of these factors justify a change to the methodology employed in geographical analyses.

393. Ljósleiðarinn considers the primary objective of a market analysis to be the systematic analysis of the competitive pressure that companies face on the market. The objective, in terms of services and geographical factors, is to identify all actual competitors operating in the market and to analyse whether any party operating on the market held significant market power. Should such a party be identified, the next step must be to define the region of the country over which its control of the market extends.

394. The presence of a significant market power (SMP) operator can be identified by e.g. examining the downstream retail market or analysing its capacity to expand into the developing wholesale market.

395. Míla's share of Market 3a is about 49% nationwide and increasing in terms of fibre-optics alone, in light of the fact that Síminn's share on the retail market makes for a floor for Míla's share of Markets 3a and 3b after the wholesale agreement between the companies. Ljósleiðarinn believes this to show that Míla's nationwide market share is very likely to exceed 50% again in the immediate future.

The ECOI's position

396. Ljósleiðarinn does not consider that the recent changes in competition conditions on the wholesale markets in question, including the sale of Síminn to Míla, the conditions for the sale established by the ICA, Ljósleiðarinn's acquisition of Sýn's trunk network, as well as various technological changes, justified the change in the ECOI's approach to geographical analysis.

397. In Annex A, Chapter 5, as well as above, ECOI provides a detailed justification for why it deemed a geographical differentiation of the wholesale market necessary at this time. A major reason for this lies the new Electronic Communications Act's increased emphasis on the deployment of telecommunications networks in such an assessment. In the analysis completed in 2021, the ECOI seriously considered a differentiation of the market on the basis of geography, but believed market conditions to be too unstable at the time due to, among other things, the proposed sale of Síminn to Míla and uncertainty regarding Sýn's actions. These uncertainties have since been removed. There are significant inconsistencies between municipalities in competitive conditions on the market, and according to Paragraph 4, Article 13 of the regulation on market analysis, regions where competitive conditions differ do not belong to the same geographical market.

398. Ljósleiðarinn considers the primary objective of a market analysis to be the systematic analysis of the competitive pressure that companies face on the market. The ECOI notes that according to Paragraph 2, Article 1 of the regulation on market analysis, the purpose of market analysis is to establish whether there is effective competition in electronic communications markets and to determine which measures to apply in the absence of effective competition, thereby improving consumer interests, while also considering whether deployment of high-speed networks on market terms is sufficient in the formulation of obligations where there is no effective competition. Ljósleiðarinn's comment is therefore correct to this extent.

399. Ljósleiðarinn states that the objective, in terms of services and geographical factors, is to identify all actual competitors operating on the market and to analyse whether any operator holds significant market power. Should such a party be identified, the next step must be to define the region of the country over which its control of the market extends. The first part of this comment is correct to this extent. However, the ECOI points out that before an analysis of the competitive situation on a geographical market can be carried out, the services that fall under the market in question must first be defined and then the relevant geographical market, with reference to the services provided on the market. If an operator with significant market power on the geographical market in question is identified, the ECOI shall designate that SMP operator and subsequently impose appropriate obligations on it in order to attempt to solve the competition problems identified in the market analysis.

400. Ljósleiðarinn states that the presence of an SMP operator can be identified by e.g. examining the downstream retail market or analysing its capacity to expand into the developing wholesale market. The ECOI does not see this as a comment on its the geographical analysis, but rather a statement concerning the assessment of significant market power.

401. Finally, Ljósleiðarinn states that Míla's nationwide share of Market 3a, which stood at 49% at the end of 2022, is likely to exceed 50% again in the near future, due in part to the advantage to Míla created by the long-term agreement between Síminn and Míla. The ECOI does not believe that this agreement alone is likely to increase Míla's market share in the years to come, but rather to mitigate the decline of Síminn's market share, as Síminn still has considerable leeway to purchase wholesale products from Míla's competitors on the market in question. In the ECOI's opinion, however, other factors may lead to what Ljósleiðarinn claims, i.e. if operators such as Nova and Sýn increasingly turn to Míla. The ECOI believes that this could happen during the term of validity of this analysis, but considers that this trend will not cause a sea change in the markets in question.

402. Furthermore, the ECOI considers nationwide market shares to be of limited significance, as the ECOI has defined a number of geographical markets. Market shares and their development are therefore of greater importance within individual geographical markets. In this analysis, the ECOI has attempted to predict the trend of each geographical market, but of course this is only a prediction and is only as good as the data on which it is based, which comes from the electronic communications companies themselves.

Míla's strong position nationwide

403. The ECOI considers Míla's loss of the market share likely to cease or even be reversed to a limited extent. However, ESA has questioned the ECOI's 2021 analysis on the grounds that there is no proof that Míla's loss of market share over the past few years will not continue into the future.

404. [...].

405. *The second thing* that has happened is that Míla has greatly increased its efforts in developing and upgrading its networks to fibre-optics. Míla has indicated that it plans to shut down its public switched telephone network (PSTN) once the fibre-optic system is fully

operational. In terms of retail, it can be seen that Síminn has rapidly increased its market share in fibre-optic connections in recent years (from 9.6% in 2016 to 34.3% in 2020 and to 43% by the end of 2022). The ECOI believes that this increase will continue in light of Míla's plans for continued fibre-optic deployment, which will be more robust in Ljósleiðarinn's regions.

406. These two factors, i.e. the room that the wholesale agreement between Míla and Síminn creates for Míla's shares of Markets 3a and 3b and the upgrade of Míla's access network, are why ECOI does not believe that Míla's market share will continue to decline and may even increase. This view is well supported by data in the analysis.

The ECOI's position

407. In the above response to Ljósleiðarinn's comment, the ECOI responds to a similar comment from Ljósleiðarinn regarding the likelihood of Míla's market share increasing in coming years, partly due to the service agreement with Síminn. See the relevant sections. Here, too, Ljósleiðarinn refers to the possibility of this happening due to upgrades to Míla's access network. The ECOI's analysis takes this into consideration when predicting the likely development of access networks and market shares on individual geographical markets, and this is reflected in both the definition of and assessment of significant market power on specific geographical markets.

Possible unforeseen consequences of the ECOI's methodology – Different obligations instead of distinct geographical markets

408. In Ljósleiðarinn's opinion, there is a potential risk that the methodology employed by the ECOI in defining geographical markets may become an objective unto itself. Analysis of competitive pressure and barriers to competition reveal that competitive conditions can differ considerably between municipalities in Iceland. However, this does not automatically lead to the conclusion that distinct geographical markets exist. This conclusion can have unforeseen consequences such as higher costs and, ultimately, higher long-term retail prices for consumers on such a market.

409. In this context it is crucial to assess how operators with significant market power react to such market conditions. It is possible that such operators choose to pay little attention to varying conditions, e.g. between municipalities. The possible effects of this may be that: (a) the company retains its market dominance despite differences in conditions; (b) the size of the market (of the municipality concerned) is too small for the company to play much of a role; or (c) it chooses to operate at national level despite variation in regional competition (either for commercial or regulatory reasons). On the other hand, if a dominant market player responds by taking a different approach to pricing, this might suggest the existence of a separate and distinct geographical market.

410. In such circumstances, the ECOI may for example examine whether competitive conditions are sufficiently different in Iceland as a whole to justify defining regional markets or to investigate another option, which would be to assess the possibility of regionally-specific measures rather than to differentiate between regions. It may be more appropriate to apply different measures, as the boundaries of individual markets may vary or be subject to change

due to e.g. introduction of new services or changes in market participants' business practices. It is necessary to assess on a case-by-case basis whether it is possible to justify the differentiation of geographical markets from the perspective of competition law.

411. It is the recognised opinion of the EU Commission that competition may vary according to both region and customer base. BEREK and the EU Commission regard defining product markets as one possible method of achieving the objectives of the telecommunications legislature goals for market access.¹⁸ In the context of access markets, however, it is clear that geography and the specifics of geographical regions can be a decisive factor in predicting the possibility of competition.

The ECOI's position

412. In Ljósleiðarinn's opinion, there is a potential risk that the methodology employed by the ECOI in defining geographical markets may become an objective unto itself. The ECOI is not entirely sure what Ljósleiðarinn means with this remark. In any case, the ECOI does not agree. Distinguishing between geographical markets is not an objective in and of itself. However, after a highly detailed analysis of the competitive conditions in individual municipalities, it was concluded that conditions are not sufficiently homogeneous to consider the whole country as one single market; as Paragraph 4, Article 13 of the regulation on market analysis states, areas where competitive conditions differ do not belong to the same geographical market.

413. Ljósleiðarinn states that analysis of competitive pressure and barriers to competition reveals that competitive conditions can vary considerably between municipalities in Iceland. However, this does not automatically lead to the conclusion that distinct geographical markets exist. Ljósleiðarinn's observation that competition conditions can be very different between local municipalities in Iceland does not, in the ECOI's opinion, suggest that the country constitutes a single geographical market. As stated above, areas where competitive conditions differ do not belong to the same geographical market. It is not the case that the ECOI "automatically" decided that a distinction should be made between geographical markets, but was instead the conclusion of a very detailed analysis that took a number of factors into consideration.

414. Ljósleiðarinn contends that this result may result in unintended consequences and describes various scenarios in this context. Ljósleiðarinn also deems it more appropriate to impose different obligations on operators with significant market power rather than to differentiate between geographical markets, especially if the boundaries between markets are variable or unstable. The ECOI points out that in the analysis completed in 2021, the ECOI considered the possibility of differentiating between geographical markets, but in view of the unstable competitive conditions at the time, deemed it more appropriate to proceed with caution and impose varying obligations on Míla. Most of that market uncertainty is currently gone. As previously stated, the ECOI has, after a detailed geographical analysis, concluded that it is no longer possible to justify the conclusion that Iceland as a whole constitutes one

¹⁸ BoR (22) 188 2022: Report on competition among multiple operators of NGA networks in the same geographical region.

geographical market, as it is clear that regions where competitive conditions differ cannot belong to the same geographical market.

415. In Europe, it is generally considered preferable to apply different obligations in cases where boundaries between markets are unclear and/or unstable, and to differentiate between geographical markets where this is not the case. This is reflected in Paragraph 6, Article 13 of the regulation on market analysis which states, among other things, that stability of competitive conditions over time determines whether distinctions should be made between geographical markets or whether different obligations should be imposed.

416. Finally, Ljósleiðarinn refers to the perspective of the EU Commission and BEREC, though this comment does not appear to be directed specifically at the conclusion of the ECOI's geographical analysis nor does it appear to weaken this conclusion.

Economies of density

417. From Ljósleiðarinn's perspective, economies of density are essential for assessing the profitability of constructing and operating electronic communications infrastructure. Such an assessment varies according to circumstances, e.g. conditions and estimates may vary considerably between densely and sparsely populated areas. In this context, it can be important when assessing long-term competition trends to consider the possibility that another comparable telecommunications network is unlikely to be developed alongside an existing one when taking population density into account. This may be an indication of varying competition trends from one geographical market to another. Variability between geographical markets is possibly unstable in the long term. This means that measures that are meant to reflect geographical variation must be able to respond to trends that affect these changes.

418. Ljósleiðarinn notes that both Ljósleiðarinn and Míla are developing fibre-optics systems in regions that were previously considered "unprofitable". This is also due to the fact that capital costs may be higher or lower, whether companies are vertically integrated, as Síminn and Míla have been for a long time, or whether companies focus entirely on infrastructure and wholesale, as is the case with Ljósleiðarinn. Operators who focus on infrastructure may have lower capital costs than traditional operators and thus be able to achieve greater geographical coverage by developing networks. A forward-looking assessment of potential competition would need to take these circumstances into account, especially given that Míla has now become a specialised infrastructure company and has publicly declared that it will focus almost exclusively on operating, constructing and expanding backbone networks.

The ECOI's position

419. The ECOI believes this comment by Ljósleiðarinn supports its conclusion regarding distinct geographical markets in Iceland. The ECOI is of the opinion that the geographical markets identified will be sufficiently stable for the next few years. The ECOI attempted to predict the potential expansion of telecommunications networks and market share trends on individual geographical markets. Also taken into consideration is the fact that Míla has become a specialised infrastructure company that has declared plans for significant

investments in telecommunications networks in the years to come. In the event of any changes, the ECOI may, as previously stated, respond with a new partial or full analysis, amending obligations without conducting an analysis, or by making a provisional decision if strictly necessary.

Trends in telecommunications network development, incl. mobile networks, and risk of too-narrow geographical distinction

420. Ljósleiðarinn states that it is worth noting that competition in telecommunications network development has increased on many markets in Europe in which progress has been made in arrangements of network development and where technology has advanced and demand for telecommunications services has increased. In addition, legal procedures pertaining to access to networks (e.g. BCRD) and their execution by surveillance authorities significantly influence competition in the development of networks.

421. When operators switch over to high-speed networks, they may choose to use different technology in different regions in their provision of service. It may be assumed that an efficient telecommunications network operator will develop and organise a plan for the deployment of high-speed networks that includes a combination of technologies for the provision of services that considers the needs of each and every location. The obvious risk that may arise in these circumstances is that if service markets are too narrowly defined, it could create a multiplier effect resulting in an erroneous assessment of which operator actually holds significant market power. Ljósleiðarinn is of the opinion that the available data and information instead suggests that the country as a whole comprises one market, and that products and services consist of both fixed and mobile networks.

422. Ljósleiðarinn believes that, when an electronic communications company decides to build parallel networks, it is necessary to consider the importance of the type of network the company has at its disposal at every location. For example, it may be much easier to develop a competitive telecommunications network in a region with high population density and thus different competitive conditions than in a rural area with a lower population density. As the importance of high-speed networks is predicted to grow significantly in coming years, electronic communications networks are expected to develop different telecommunications networks at each and every location in order to be able to offer services on the retail market. In Ljósleiðarinn's opinion, it is obvious that electronic communications companies will choose a combination of different technologies in order to deliver services, and that choice will depend on the population density, market size and number of potential customers in each region. Consequently, the economics of high-speed networks (i.e. their cost base and operation) are likely to vary over different technologies and regions.

423. The actual and expected deployment of other operators' networks may be useful in a later assessment of current market power, but are not relevant for the assessment of market

definition. As in the regulation, network deployment is only one factor in this assessment and not the single decisive one, which the ECOI seems to believe in its analysis.

The ECOI's position

424. The ECOI agrees with Ljósleiðarinn that in many places in Europe, including Iceland, advancements have been made in the development of telecommunications networks and the resulting increase in competition where parallel networks have been installed. Furthermore, BCRD and the intervention of telecommunications regulatory authorities have had a significant impact on competition, including infrastructure competition.

425. The ECOI also agrees that electronic communications companies that have both fixed and mobile networks at their disposal are likely to offer a combination of fixed and mobile network solutions. The mobile network operators operating at the retail level, i.e. Sýn, Nova and Síminn, have access to fixed networks and also operate mobile networks. However, Síminn no longer operates its mobile distribution network, as it has been sold to Míla. Síminn nevertheless has retained its spectrum licence and owns and operates its mobile core network, but purchases access to Míla's mobile distribution network. These companies and other retailers such as Hringdu, which have access to Síminn's mobile network, already offer fixed and mobile network solutions for households and businesses.

426. This comment is probably most relevant to Míla, which in addition to owning and operating extensive fixed networks, also operates the aforementioned mobile distribution network. The ECOI is not aware that any other mobile operators than Síminn purchase access to this distribution network, as Sýn and Nova both jointly own and operate their mobile distribution network through Sendafélagið ehf. The ECOI discusses this widely in its analysis as well as the effects it will have during the term of validity of this analysis. The ECOI does not believe that this will have a considerable impact during that time, unless Míla acquires its own mobile core network and spectrum licenses. However, the ECOI has no criteria for assessing the likelihood of this happening, but if it does, the ECOI may need to intervene and review this analysis, in part or in whole, before the expected end of the analysis' term of validity.

427. The ECOI does not believe that this comment will affect the result of the geographical analysis. Furthermore, the ECOI fails to see how an alleged too-narrow definition of geographical markets is any more dubious than a broader geographical definition, or even none at all, as far as these potential effects are concerned.

428. Finally, Ljósleiðarinn states that the actual and expected deployment of other operators' networks may be useful in a later assessment of current market power, but is not relevant for the assessing the definition of the market. As in the regulation, network deployment is only one factor in this assessment and not the single decisive one, which the ECOI seems to believe in its analysis. The ECOI does not agree that the deployment of telecommunications networks, including parallel deployment of fixed networks, should only be considered at a later stage than the definition of geographic markets, i.e. first in the assessment of significant market power. On the contrary, this is an important factor in the assessment of both. The ECOI disagrees that it bases its geographical analysis on network deployment alone as a deciding factor, though it is certainly an important one, as are e.g.

market share distribution and the number of telecommunications networks operating in individual regions.

Benefits of competition may be lost by geographically differentiating among markets in question

429. Geographical distinction of the markets may result in the loss of the benefits gained from competition. If competition were to take place on a geographically large market, it could dictate the results for the domestic market as a whole, i.e. the effectiveness of the competition, which in turn may result in price pressure at both the wholesale and retail level and better services. Consumers in areas where there is only one telecommunications network may benefit from competition that targets the national market as a whole, for the reason that competitors have structured their business activities as if they are operating on one geographical market.

430. Defining distinct geographical markets may result in a decline or even total loss of competitive pressures in such regions, potentially resulting in worsening prices and services for consumers in geographically distinct markets. It should also be noted that regional monopolies on infrastructure do not necessarily entail a lack of competition at the service level. If authorities emphasise open internet access, customers will still have the option of choosing among different retailers.

431. If the ECOI adheres to its methodology of defining geographical markets too narrowly, as was done in the municipality of Ölfus, for example, this may result in offerings and prices of telecommunications services in Ölfus aligning to different retail prices than those of comparable services in Reykjavík. In other words, this could lead to different pricing for telecommunications services by region.

432. With regard to the ECOI's conclusion that Ljósleiðarinn holds the dominant market position in Ölfus, it should be noted that this market comprises 1% of the total market. Considering the aforementioned market size, it is Ljósleiðarinn's opinion that it is difficult and indeed impossible to identify one operator as a dominant market player on such a small part of the total market. The discussion of this municipality does not assume substitutability of mobile networks or the fact that Míla controls three telecommunications networks in the municipality. The ECOI's aforementioned conclusion about Ölfus perhaps best reveals the shortcomings that Ljósleiðarinn believes to be in the market analysis.

433. Consideration should be given to the risk associated with defining regional submarkets. Such geographical distinction may easily result in consumers not benefiting from competition from more competitive regions. Defining regional markets may itself cause market conditions to vary between regions. The definition of the relevant market must primarily take into account market share at the wholesale and retail level. The presence of homogeneous retail offers nationwide is a strong indicator of one single domestic wholesale market.

The ECOI's position

434. Ljósleiðarinn points out that the geographical distinction of markets may result in the loss of benefits gained from competition. For this reason, consumers in areas where there is only one telecommunications network may benefit from competition that targets the national market as a whole. This may result in the decline or disappearance of competitive pressure altogether, and may cause variation in pricing and service offerings according to region. This is the case with the municipality of Ölfus. Thus, defining regional markets may itself cause market conditions to vary between regions.

435. In the ECOI's opinion, considerations about the potential impact of separate markets cannot affect the results of the geographical analysis. Such reflections cannot justify continuing to impose nationwide obligations on Míla on markets in question, including in areas where competition has clearly become effective. The ECOI believes that obligations beyond what circumstances call for may reduce the effects of competition in these regions. Obligations will be imposed on the relevant electronic communications companies on those geographical markets on which they have significant market power. These obligations are intended to promote increased infrastructure competition, including the obligations on access to leased facilities, ducts and conduits and the advertisement of construction projects. In cases where this is not considered practical, obligations to promote service competition on the existing network will be imposed. Whether retailers apply different pricing at the retail level remains to be seen, but this has so far not been the case even though Míla and Tengir have charged different wholesale prices depending on location.

436. Ljósleiðarinn's comments of the municipality of Ölfus will be specifically discussed in Chapter 6 below, and reference will be made to this.

Recent cases of mergers whereby the Competition Authority considers the entire country to comprise one geographic electronic communications market

437. Page 2-3 and page 39 of Ljósleiðarinn's comments on the first draft consultation state:

"Attention is drawn to the Competition Authority's conclusion on geographic markets in two merger cases. The first is No. 16/2023, Ardian's acquisition of Míla ehf.'s share share capital from Síminn hf. (Ardian). In this case, the ICA referred to previous resolutions on the electronic communications market which considered the geographical market to be national and therefore defined as Iceland as a whole.

In this context, the ICA discussed ECOI Decision No. 5/2021 whereby ECOI did not consider it appropriate to base the boundaries of the region of competition on the network organisation of the merging entities (Míla), but rather on the boundaries of certain municipalities of increased competition, and, accordingly, the municipalities reflected the development of Míla's competitors' networks to this extent, although the situation may vary within these regions. The ICA stated that, by imposing reduced obligations on Míla in certain competitive areas, the new geographical definition and the ECOI's amended methodology may indicate narrower or smaller distinct geographical markets for telecommunications services

in the Office's analyses in the near future. This should at least potentially apply to the wholesale market for local access via local loops and central access via bitstream in the production of electronic communications services.

However, in the opinion of the ICA, whether a geographical market is defined broadly or narrowly was not relevant to the merger case. What matters in this context is that Míla enjoys significant nationwide coverage of its access network, trunk network, transmitting stations and Radio Access Network system. The company's operations thus take place at a national level. Míla's proposed data transmission via international connections and/or such combined integrated products therefore extend beyond the borders of the country. In the opinion of the ICA, the merger resulted in the strengthening of the company's market position. Despite the reduction of some of the harmful effects that the merger would have had without intervention, it is nevertheless the case that the merger has significantly strengthened Míla's position on the market, regardless of whether geographical markets are defined more narrowly according to regional deployment by other providers, or more broadly as the country as a whole.

In Ljósleiðarinn's opinion, the strengthening of Míla's status on the markets under investigation in this regard has not been discussed, nor has any attempt been made to assess impact on the markets covered in this analysis. It is the ICA's conclusion that Síminn and Míla occupy a dominant position on the market.

The ICA has also discussed the acquisition of Sýn hf.'s trunk network by Ljósleiðarinn in Merger Decision No. 37/2023 (Sýn's trunk network). In its definition of geographical markets, the ICA points out that discussion of the merger's impact on the wholesale market for trunk lines and terminating segments of leased lines, including its impact on market share and concentration, generally focuses on the country as a whole. The same also applies to defined service markets for local loop access, bitstream connections and international connections. However, the trend in market analyses in telecommunications law seems to be to assess competitive conditions in smaller regions, e.g. due to increased deployment of smaller regional access networks, as these are downstream data transmission markets via trunk lines and termination segments of leased lines. For this reason, whether the market in question is assumed to be nationwide or whether it can be divided into smaller competitive regions has no effect on the outcome of the merger case.

Similarly noted is the limited usefulness of dividing the country into smaller geographical markets, as the interaction of adjacent and downstream markets must be assessed. Ljósleiðarinn believes the aforementioned comments to indicate that although the ECOL's current emphasis is on looking at a narrower definition of geographical markets with an aim to better assess regional competitive conditions, this may detract from other factors that to a greater extent determine market power and companies' ability to compete. Ljósleiðarinn is of the opinion that the narrowing of geographical markets does not suffice to solve the numerous competition problems resulting from the dominant market position that Míla has achieved with its recently acquired control of the mobile network, which until then was specifically located within Síminn, as well as with its private purchase

agreement for 80% of all of Síminn's business on downstream retail markets for the next 20+ years.

... In this context, particular attention must be paid to the fact that the market analysis draft states that "geographical analysis, like product market analysis, is based on the fundamental principles of competition law. The analysis includes an assessment of supply-side and demand-side substitutability, as well as the possibility of having to consider potential competition if applicable at this stage of the market analysis." There is, however, no adequate explanation as to why the ECOI believes it needs to take a different approach than the Competition Authority. It does not suffice to refer to trends in Europe unless such a conclusion can be justified. Furthermore, the competitive interests that both of these agencies are intended to protect do not seem to be so different that they should call for such different approaches, unless an examination of the criteria that form the basis of the regulation on market analysis has brought forth compelling reasons to do so."¹⁹

The ECOI's position

438. In its responses above, the ECOI addresses most of Ljósleiðarinn's comments, including with regard to supply-side and demand-side substitutability, the fact that Míla now has control of a mobile distribution network, and the service agreement between Síminn and Míla. Refer to these responses.

439. Ljósleiðarinn refers to two recent merger cases, i.e. ICA Decision No. 16/2023 (Ardian's acquisition of all Míla ehf.'s share capital by Síminn hf.) and ICA Decision No. 37/2023 (Ljósleiðarinn's purchase of Sýn's trunk network), and criticises the fact that the ECOI reached a different conclusion than the ICA with respect to defining geographical markets.

440. The ECOI points out that, in the case of these mergers, the ICA did not take a position on whether geographical markets on wholesale markets 3a and 3b should be defined as the country as a whole or as smaller units, as this did not affect the cases' outcome. The ICA also did not remark on the ECOI's geographical differentiation in its comments on the first part of this market analysis draft, cf. the ICA's letter to the ECOI, dated 17 October, 2023. The ECOI therefore does not agree that there are inconsistencies in its own and the ICA's approach to the geographical demarcation of the wholesale markets.

441. The ECOI also notes that it has been a long time since the ICA last performed a full-scale geographical analysis of electronic communications markets, and major developments have taken place in network deployment in recent years, including by Síminn's competitors. In addition, specific legislation applies to market analysis in the electronic communications sector, which feature particular emphasis on network deployment, while general competition law applies to the activities of the ICA. There may therefore be justifiable differences in the two agencies' approaches to geographical definition of telecommunications markets. Page 3 of the above remarks by the ICA states, among other things:

¹⁹ Page 39 of Ljósleiðarinn's comments on the previous draft consultation states:

“It should be noted and reaffirmed, however, that it is the Competition Authority’s task to apply the provisions of the Competition Act on the electronic communications market. The Authority’s conclusion regarding market definitions, substitutability between goods or services and companies’ positions on the market depends on the circumstances of each and every case. Thus, the Competition Authority is, by definition, not bound by the methodology and conclusions of the ECOI’s draft market analysis when handling any possible future cases pertaining to the markets in question. On the other hand, competition authorities may be permitted to rely on market analyses conducted by electronic communications authorities, including their conclusions and assessment of competitive conditions.

442. In this regard and with regard to the interaction between general competition law and the telecommunications regulatory framework, the ICA referred to the judgement of EU General Court Case No. T-827/14, *Deutsche Telecom AG v Commission*, 13. December, 2018, and the judgment of the Court of Justice of the European Union Case No. C-152/19, *Deutsche Telecom v Commission*, 25. March, 2021. Reference is also made to the article by Francesco Liberatore, *Slovak Telecom/Deutsche Telecom AG: The interplay between EU competition law and sector-specific rules in the electronic communications sector*, E.C.L.R, 2019, 5. tbl.

443. Furthermore, the ECOI response that it has taken into account the alleged strengthening of Míla’s position in its market analysis, including with regard to the assets that were transferred from Síminn to Míla in the beginning of 2021.

Síminn’s marketing strategy and conduct on wholesale and retail markets affect Míla’s position and strength on wholesale markets

444. Page 3 of Ljósleiðarinn’s comments on the first draft consultation states:

“Síminn’s marketing strategy and conduct on wholesale and retail markets have and will have considerable influence over Míla’s position and strength on wholesale markets. An example is the Competition Authority’s Provisional Decision No. 30/2023 due to Síminn’s probable breach of competition law by denying Nova wholesale and distribution of Síminn Sport, which includes the broadcast of English Premier League football. The aforementioned decision shows how decisive and influential the ability of each market participant is in determining and controlling the supply of television and electronic communications services with market strategies such as bundling and refusal to supply, and the effects of such strategies on business on the underlying wholesale markets.

The ECOI’s position

445. Síminn and Míla are no longer under the same ownership or control, although the ECOI concludes in this analysis that substantial characteristics of vertical integration between these companies are still evident in light of the aforementioned long-term service agreement between the companies, whereby Síminn is obligated to purchase at least 80% of its total demand for fixed line services in the markets in question from Míla. Míla therefore clearly benefits from Síminn’s success on the electronic communications retail market. Síminn’s position on the related retail market for internet connections has, however, weakened in

recent years despite the fact that Síminn offers popular television content and bundles together electronic communications and television services. These effects are discussed in the market analysis, particularly in Chapter 6 of Annex A, which deals with significant market power, and in Chapter 7, which deals with competition problems. The ECOI is of the opinion that this comment is more relevant to those sections than to Chapter 5 on the geographical definition of markets.

The ECOI mistaken in segmentation of geographical markets, regardless of ESA recommendation

446. Page 3-5 in the aforementioned opinion of Ljósleiðarinn's foreign advisor refers to the European Commission's communication regarding market definitions in the context of EU competition law from 1997.²⁰ The law reads in part:

„The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area.”

447. A recent review of the 1997 recommendation, based on the EU Courts' case law, confirms this. The European Commission's explanatory note regarding the 2021 review notes:

„The relevant geographic market comprises the area in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from other areas because the conditions of competition are appreciably different in those areas.”²¹

448. The advisor further points out that the definitions of geographical markets are stipulated in Article 9, paragraph 7 of the EU Merger Regulation of 2004.²² Furthermore, that the European Commission's instructions of 2018, on market analysis and assessment of significant telecommunications market power noted²³:

„The extent to which the supply of a product or the provision of a service in a given geographical area constitutes a relevant market depends on the existence of competitive constraints on the price-setting behaviour of the service provider(s) concerned. There are

²⁰ COMMISSION NOTICE on the definition of relevant market for the purposes of Community competition law (97/C 372/03).

²¹ SWD(2021) 199 final COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997. The advisor also notes: „This is also confirmed, for instance, in the judgment of 5 October 2020, HeidelbergCement AG and Schwenk Zement KG v Commission, T-380/17, EU:T:2020:471 ... paragraph 294. In one of its earlier judgments in Case 27/76, United Brands v Commission, paragraph 11, the CJEU stated: “The opportunities for competition under Article 86 of the Treaty must be considered having regard to the particular features of the product in question and with reference to a clearly defined geographic area in which it is marketed and where the conditions of competition are sufficiently homogeneous for the effect of the economic power of the undertaking concerned to be able to be evaluated.”

²² EU Regulation No 139/2004 of 24 January 2004 on the control of concentrations between undertakings.

²³ Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services, 2018/C 159/1.

two main competitive constraints to consider in assessing the behaviour of undertakings in the market; (i) demand-side; and (b) supply-side substitution. A third source of competitive constraint on an operator's behaviour – to be considered not at the stage of market definition but when assessing whether a market is effectively competitive within the meaning of Directive 2002/21/EC – is the existence of potential competition.”

449. According to Articles 48-50 of the abovementioned guidelines of the European Commission, the case law indicates that the geographical market in question consists of the area where the electronic communications companies participate in supply and demand for the relevant product or services, where competitive conditions are adequately uniform, and where segmentation from adjacent areas is possible due to the fact the prevailing market conditions are considerably dissimilar.²⁴ Areas where competitive conditions are not uniform do not belong to the same geographical market.²⁵

450. Concerning the selection of a geographical base unit for telecommunications regulatory authorities to use as grounds for their geographical analysis, the European Commission has frequently noted that²⁶ telecommunications regulatory institutions should ensure that their units: (a) are the appropriate size, i.e. small enough to avoid significant deviations of competitive conditions within the unit in question, but large enough to avoid unnecessary encumbrance that could result in market segmentation; (b) reflect the network system of all operators in question; and (c) that they have clear boundaries that remain stable over time.

451. In case of regionally based difference that is not considered significant enough to warrant segmentation of geographical markets or the designation of an entity as having significant market power, the telecommunications regulatory authorities could impose obligations that differ by region.²⁷ The stability of the difference, especially as regards the extent to which definitions of competitive areas' boundaries are possible and can remain stable over time, is a key factor for differentiating between geographical segmentation of markets when markets are defined, and the different obligations imposed.

452. Thus, the most important aspects of the assessment are the following:

1. To consider to what extent the competitive conditions are uniform in the areas in question, i.e. if price and availability are comparable in the market.
2. To explore if the disparity can be explained by different demand, supply or possible competition, to the extent that competitive conditions are not uniform.
3. Are different geographical areas of the appropriate size, i.e. not too large or too small.

²⁴ United Brands, *op. cit.*, paragraph 33, Michelin, *op. cit.*, paragraph 26, Case 247/86 Alsatel v Novasam EU:C:1988:469, paragraph 15; Tiercé Ladbroke v Commission, *op. cit.*, paragraph 102.

²⁵ Deutsche Bahn v Commission, *op. cit.*, paragraph 92. Case T:139/98 AAMS v Commission, EU:T:2001:272, paragraph 39.

²⁶ See, for example, Section 2.5 of the Explanatory Note accompanying the Recommendation 2014/710/EU, SWD(2014)298.

²⁷ Explanatory Note to the Recommendation 2014/710/EU, SWD(2014)298, page 14. See also CZ/2012/1322.

4. Are the areas stable, are network systems still being developed, is a new operator expected on the market, or new technology etc. If the latter applies, different obligations are preferred over geographical segmentation of markets.

453. The extent to which the demand or availability of a product or service is considered a part of the market in question depends on whether or not there is competitive pressure towards the pricing decision activities of the producer or operator in question. When assessing activities of companies on the market, two types of competitive pressure must be considered, demand-side and supply-side substitutability. This may be further differentiated by the separate definition of the relevant product or service market in a network deployment competition, an infrastructure competition or a service competition. A third source of competitive pressure is potential competition, which should generally be considered in the assessment of significant market power, rather than in the definition of the relevant markets.

454. In practice, the starting point for geographical analysis is to roughly examine and perform a preliminary analysis of pricing, potential price differences and market share distributions by region. From a competitive point of view, differences in retail pricing are a prerequisite for segmentation of geographic markets. While this is an essential condition for the segmentation of geographic markets, such differences are not sufficient, as they could simply be explained by the different costs of providing services depending on the region. Further analysis of the demand side, such as the importance of national or regional consumer preferences, purchasing patterns, product differentiation, branding, etc., is needed to ascertain whether companies in different regions are a real option for consumers.

455. There is no evidence in the ECOI analysis that a significant price difference exists in the retail market between regions, any more than in the 2021 analysis.

The ECOI's position

456. The ECOI noted at the outset that it is unlikely that Ljósleiðarinn's foreign advisor received an English copy of the entire ECOI analysis, as the analysis contains hundreds of pages that are time-consuming to translate. The consultant's comments are theoretical, with limited attempts to connect them to the ECOI's analysis criteria and results. Therefore, it is likely that the consultant only received an extract or a summary of the analysis' main results from Ljósleiðarinn. The advisor's opinion must be considered in this light.

457. The aforementioned comment by Ljósleiðarinn's advisor, which was received along with Ljósleiðarinn's comments on the second consultation document, is in most respects similar to Ljósleiðarinn's comments on the first consultation document, which included, among other things, the geographical definition of the markets in question. The ECOI refers to their reply to the aforementioned comments of Ljósleiðarinn, in particular the ECOI's detailed response to Ljósleiðarinn's comments entitled *"The ECOI's new approach, municipalities as a basic unit of analysis and the impact of the merger of Ardian and Míla"*, *"The country as one market on the retail level"* and *"Assessment of demand and supply-side substitutability in geographical analysis – Homogenous retail pricing"*.

458. There it is noted that in the 2021 decision, the ECOI had imposed different obligations on Míla according to geographical area, but had not defined segmented geographical

markets, primarily because the competitive conditions were not sufficiently stable at the time. However, the stability of the conditions has now increased considerably, in particular due to the merger of Ardian and Míla being finalised in September 2022, in addition to Ljósleiðarinn purchasing Sýn's trunk network and entering into an agreement that Sýn would largely purchase services from Ljósleiðarinn on the markets in question. When the previous analysis concluded in October 2021 there was a great deal of uncertainty regarding Sýn's actions, and it was equally likely that the company would predominantly direct their business to Míla.

459. There is also a discussion on the fact that the importance of geographic analyses of telecommunications markets has increased considerably in recent years in Europe, and more and more regulation authorities have started defining different geographical markets. This trend would primarily be a result of an increased number of next-generation telecommunications networks deployed by competitors of previous electronic communications monopolies. As deployment of such networks would take place step-by-step within a country, generally first of all in the most densely populated and profitable regions, a situation might arise whereby competition would vary by region within certain countries. Additionally, it is worth noting the policy change set out in the Code of 2018, now adopted in Act No. 70/2022 on Electronic Communications, and in the EU Commission Recommendation on the markets in question of December 2020, which places greater importance on the deployment of fibre-optic networks and other next-generation networks for the geographical definitions of telecommunications markets. Special care should now be given to the nature of infrastructure competition in certain areas when performing such geographical analyses of telecommunications markets. Therefore, it has become very important to consider the deployment of telecommunications networks during geographical market analysis on telecommunications network at the wholesale level. Thus, the Communication of the European Commission on the definition of markets relating to general competition legislation from 1997 and other guidance documents predating the Code, cited by the advisor, should be interpreted in the context of specific development within the EU in terms of geographical analysis on telecommunications markets.

460. Paragraph 4, Article 13 of the regulation on telecommunications market analysis states that the geographical market in question comprises a region in which the products or services in question are provided and where competitive conditions are sufficiently homogeneous that it is possible to distinguish the region from others where competitive conditions are considerably different. **Areas where competitive conditions differ do not belong to the same geographical market.**

461. The EU Commission Recommendation of December, 2020, adopted after the Code entered into force, states, among other things, that competition problems are unlikely to be the same across all jurisdictions of the Member State in question. Telecommunications regulatory authorities must therefore distinguish between regions where competitive conditions are sufficiently homogenous and regions where conditions are significantly different. Particular attention should be given to whether a potential service provider with significant market power behaves the same way between regions where it operates telecommunications networks, or whether the provider faces varying competitive pressure. After selecting the appropriate unit for the basis of geographical analysis, in this case municipalities, telecommunications regulatory authorities should, in accordance with the

principles of competition law, determine the initial definition of the extent of geographical markets by grouping together regions with similar competitive conditions. They should assess competitive conditions in a forward-looking manner by taking into account evidence pertaining to the structure of the market and behaviour of market participants, **with particular attention to the importance of infrastructure competition** in accordance with Paragraph 3, Article 64 of the Code. The result should be compared with that of the supply-side and demand-side substitutability analysis. These attitudes are reflected in Electronic Communications Act No. 70/2022 and the 2023 regulation on market analysis.

462. A geographical analysis should examine demand-side substitutability in the context of whether customers are able to switch service providers outside of the hypothetical geographical market should the price of services increase. However, this would be unlikely to have a major impact on this analysis, as customers would only be able to purchase services through networks at their home or workplace.

463. On the other hand, analysis of supply-side substitutability is an important factor in the methodology of telecommunications regulatory authorities, as it encourages consideration of future market trends. Supply-side substitutability refers to a competitor's ability to enter a market in response to a price increase. Telecommunications regulatory authorities must therefore consider the possible deployment of telecommunications networks and take various data and indications into account in this context. Among other things, it should be possible to consider whether a competitor has a telecommunications networks in a nearby region, or whether a competitor already has a presence in the region in question but has not yet connected end users to the local loop. The possibility of advantageous business opportunities should also be considered, e.g. high population density, or whether the operator with significant market power has a low retail market share in the region in question. Information concerning market participants' deployment plans may be added to the above points, especially if such deployment has already begun.

464. In accordance with the above, the ECOI's geographical analysis places great emphasis on supply-side substitutability and less on demand-side substitutability due to the described drawbacks to geographical analyses above.

465. It is clear that areas where competitive conditions differ do not belong to the same geographical market. For example, it is quite clear that competitive conditions, including the number of operating network operators, network deployment, access barriers, scale economies, and market share distribution, differ greatly between the capital area, where Ljósleiðarinn has outperformed Míla in terms of market share and fibre-optic deployment, and, for example, a number of rural municipalities where Míla is the only operator, and thus in a monopoly position. Many geographical areas fall in between the abovementioned, but there are tens of local network operators in Iceland that operate only in their own regions, either within one municipality or a group of municipalities.

466. The detailed geographical analysis undertaken by the ECOI this time therefore concluded that it was appropriate to differentiate between a number of geographical markets in Iceland, both on Market 3a and Market 3b, as the competitive conditions on these geographical markets were now considered significantly different, cf. the detailed discussion in Chapter 5 of the analysis.

467. Ljósleiðarinn's advisor seems to place primary emphasis on the importance of pricing and possible price differences in the geographical definition of a market, and does not seem to grasp the abovementioned trends and increased emphasis on the deployment of telecommunications networks in the geographical definitions of telecommunications markets.

468. Apart from telecommunications network coverage and market share distribution within individual municipalities, another important criterion for identifying whether competitive conditions may vary between regions is the possible difference in price on both the retail and wholesale level. Variable pricing across regions may be a strong indication of different competitive conditions, which in turn may justify differentiating between geographical markets or imposing different obligations across regions. For example, Míla's pricing varies between urban and rural areas in Markets 3a and 3b, and there is also a price difference between urban and rural areas in Tengir's tariff (setup charges) By the same token, uniform pricing across the country may suggest that the country comprises one market. However, pricing alone does not tell the whole story, as from the consumer perspective, there may be considerable difference between "regions of competition" and regions of little to no competition despite the fact that the potentially dominant player on the market's pricing is uniform across the country. Uniform pricing may not necessarily indicate that the entire country makes up one geographical market if such uniformity is the result of obligations following the designation of parties with significant market power.

469. It was concluded that Míla's pricing and that of its competitors on the markets in question is not in and of itself a decisive enough factor to justify differentiating among geographical markets in Iceland. Although there were some differences in Míla's wholesale pricing across regions, consumers did not experience these differences at the retail level, regardless of service provider. It was therefore necessary to look at other factors in deciding whether to differentiate between geographical markets on the wholesale market in Iceland, since this is an overall assessment where various other aspects than pricing must be considered. As noted above, electronic communications legislation assumes that the deployment of telecommunications networks is relevant for definitions of geographical electronic communications markets at the wholesale level, and market share distribution is always important for such analysis. It is clear that the deployment of telecommunications networks and market share distribution differs greatly between regions in Iceland.

470. Based on the overall assessment carried out here, it is a gross simplification on the part of Ljósleiðarinn's advisor to argue that homogeneous pricing and range of services at the retail level implies in and of itself that a geographical differentiation of markets is not necessary on the wholesale level. Pricing is just one of many factors that must be taken into consideration in the overall assessment that defining geographical markets entails. The ECOI believes that its justification for the need to geographically demarcate markets at the wholesale level is sufficient.

471. As previously noted, deployment of telecommunications networks as well as market share and segmentation, and other factors concerning the structure of markets, e.g. the number of operating telecommunications companies, have become more important than before for geographical definition of the wholesale markets in question, while the importance of behavioral factors such as pricing, range of services, marketing and quality has decreased

since the adoption of the Code in 2018. This is confirmed in recent European market analyses, for which a detailed discussion can be found in Chapter 5.1.10 of the analysis (Annex A).

472. In view of the above, especially given the wide disparity between the deployment of fibre-optic networks and the existence of parallel fixed networks, as well as the wide disparity in market shares between municipalities or number of municipalities, which is reflected in the different competition conditions between regions, the ECOI believes there to be a strong argument in favour of distinguishing between geographical markets in the relevant wholesale markets in Iceland. The ECOI applied a forward-looking approach in this assessment and predicted, among other things, the possible or likely fibre-optic rollout in the various regions throughout the term of validity of this analysis. It should also be noted that The Competition Authority did not comment on the results of the ECOI's geographical analysis in the case.

473. Finally, Ljósleiðarinn's advisor engages in a theoretical discussion on what viewpoints should be considered when telecommunications regulatory authorities select areas for closer analysis (base units). The ECOI complied with these considerations, a discussion of which is included in the market analysis regulation of 2023. There, it was concluded that municipalities were the most suitable basic units for the circumstances in Iceland, similar to many parts of Europe. The advisor does not seem to comment specifically on that choice.

Chain of substitution relating to geographical definition of markets

474. Pages 6-7 in the aforementioned opinion of Ljósleiðarinn's foreign advisor state that a chain of substitution can be present for geographical definitions, in the same way as for definitions of the product or service markets in question. In the abovementioned Communication from the European Commission on the definition of markets relating to EU competition legislation from 1997, it is stated that on certain markets it is possible that two (or more) product or service markets, or geographical markets, where there is no direct substitution, can belong to the same market by means of a chain of substitution. It is also stated that this would apply if substitution is realised in the form of replication (or escalation) throughout the chain, as a justification that each product/service or each region belongs to the market. The market should then be defined more broadly than otherwise.²⁸

475. Substitution chains are used where it can be demonstrated that while there is no direct substitution between products A and C, product B can replace both A and C. Therefore, products A and C could be on the same product market as product B would create pressure on their pricing. The same argument would also apply to the definition of geographical markets. Given the inherent possibility of unduly broadening the scope of the relevant market, adequate justification for a decision on chains of substitution is required. Indicators should clearly demonstrate the price levels on either end of the chain. The extent of substitution between the products or areas in question should be sufficiently extensive.

²⁸ This is further detailed in the advisor's memorandum: "See 1997 Notice on Market Definition, paragraphs 57 and 58. For instance, chain of substitutability could occur where an undertaking providing services at national level constrains the prices charged by undertakings providing services in separate geographical markets. This may be the case where the prices charged by undertakings providing cable networks in particular areas are constrained by a dominant undertaking operating nationally. See also: Case COMP/M.1628 – Total/Elf, paragraph 188."

476. Since pricing of previous or current generations of telecommunications technology could put pressure on future generations of technology, the existence of chain substitution would be likely, which would justify the categorisation of all generations on the same product market in question. As such price pressure is usually present for different generations of technology, they would generally be considered to belong to the relevant telecommunications market.

477. Consequently, and even if the respective telecommunications networks do not overlap completely, or if operators A and C do not engage in direct competition in the same geographical region, other factors may exist such as chain substitution, where pricing in region A, including operators 1 and 2, affects pricing in region B, including operators 2 and 3, and region C, including operators 3 and 4. Although operators 1 and 4 do not operate in the same regions, the price formation in region A may affect the price formation in region C.

The ECOI's position

478. The case cited in the footnote of the report from Ljósleiðarinn's advisor (Commission Decision of 9 February 2000 in Case No. COMP/M.1628) concerns Totalfina's takeover bid for all the shares in Elf Aquitaine. Both companies, founded in France, were involved in the production of petroleum and gas, and re-refining and distributing liquefied petroleum, gas and other petroleum products. Both companies operated globally. The fact that most motorways overlap as a deciding factor in the geographical analysis, resulting in the market covering the sale of all fuel on the motorway network in France. This large overlap led to a chain reaction that stretched from one motorway to another. Thus, the pricing decision of a service station located near the intersection of two motorways would take into account the prices of competitors on both motorways. The conclusion of the case was the definition of one geographical market for fuel sales in France.²⁹

479. As this shows, the situation is somewhat different in the current case. The buyers of local loops do generally not move between municipalities in the same way as cars drive between service stations. The situation in Iceland is rather special, as the distribution of Míla's local loop networks extends to most municipalities and the company operates in most municipalities in Iceland, but the company no longer has a nationwide network. Where Míla is not the owner of the local loop network, the company does provide bitstream services, however. From former times, the company system is segmented into telephone exchange areas which were mostly based on urban kernels and service with neighbouring rural areas. Other networks were not built up in accordance with Míla's telephone exchange areas, but were deployed locally. Ljósleiðarinn has first and foremost developed its network in line with the operating territory of Orkuveita Reykjavíkur, which is owned by the municipalities of the City of Reykjavík, Akranes and Borgarnes. Over the last few years, Ljósleiðarinn has expanded its network across municipalities in the Southwest of Iceland. In addition, Ljósleiðarinn has now gained access to two fibre-optic threads in the NATO cable and purchased Sýn's backbone network, extending throughout Iceland. Therefore, it can be expected that Ljósleiðarinn's fibre-optic local loop network could extend to even more municipalities across the country in the coming years, although it is difficult to predict if and to which municipalities such deployment may extend. For many years, Tengir has developed its network in

²⁹ Section 5.1.2 of the Commission Decision of 9 February 2000 in Case No. COMP/M.1628 (paragraph 177-189)

Eyjafjörður and other parts of North East Iceland, also on the basis of municipality boundaries. Local fibre-optic networks are also operated by Snerpa in the Westfjords, Austurljós in East Iceland and Eycló in the Westman Islands. Local networks that have received funding from the project “Iceland Optical Connected” are developed within the municipalities although they do not achieve the total coverage of a whole municipality. A number of municipalities have also funded networks for their inhabitants, with or without the participation of inhabitants, without government funding. Therefore, it is clear that the deployment status of fibre-optic networks varies widely in Iceland, and in many places Míla operates the only fixed network in the municipality in question, or is by far the largest operator. The ECOI therefore does not accept the assertion that a chain of substitution is present in the geographical market in this case on the basis of overlap like in case COMP/M.1628.

480. It should be noted that the ECOI is aware that a chain of substitution can be applicable for geographical definitions, in the same way as for definitions of the relevant product or service markets, as this is stated in Paragraph 2 of Article 9 of the regulation on market analysis in the field of electronic communication. The provision stipulates that *“{s}ubstitutability may exist where a telecommunications company providing services nationwide affects the pricing of local telecommunications companies providing, for example, local services via their own fibre-optic network”*.

481. In this respect, it must be considered that the importance of geographical analysis has increased considerably in recent months and years, and an ever-increasing number of European regulatory authorities have applied geographical measures such as differentiating between geographical markets or imposing obligations according to region on the markets in question. This trend is primarily a result of an increased number of next-generation telecommunications networks deployed by competitors of previous electronic communications monopolies in the countries involved. As deployment of such networks takes place step-by-step within a country, generally first of all in the most densely populated and profitable regions, a situation may arise whereby competition varies by region within a country. This is a development restricted to market analysis in the field of telecommunications. In this context, reference can be made to the ECOI’s response to the next comment from Ljósleiðarinn’s advisor, as seen above.

482. It can also be noted that Paragraph 4 of Article 13 in the regulation on market analysis in the field of electronic communication states that the relevant geographical market comprises the area in which the products or services in question are provided, and where competitive conditions are sufficiently homogeneous as to distinguish an area from others in which competitive conditions are considerably different. Areas where competitive conditions differ do not belong to the same geographical market.

483. The conclusion of the ECOI’s market analysis showed that pricing on the relevant markets alone is not an adequately decisive factor to justify segmentation of geographical markets in Iceland. Although there were some differences in wholesale pricing between Míla and its competitors by regions, consumers did not experience these differences at the retail level, regardless of service provider. The decision of segmented geographical markets was therefore made on the basis of additional factors. The detailed geographical analysis undertaken by the ECOI this time concluded that it was appropriate to differentiate between a number of geographical markets in Iceland, both on Market 3a and Market 3b, as the

competitive conditions on these geographical markets were now considered significantly different. Chapter 5 of Annex A of this analysis contains a justification of approximately 180 pages for this conclusion.

484. As this shows, factors apart from cross-regional pricing must be taken into account in the analysis of geographic markets. Although consumers do not experience a difference in pricing at the retail level, the ECOI still concludes that competitive conditions have become significantly different between geographical regions. The ECOI therefore does not consider substitutability to be present at both ends of the chain in the geographical markets in question, on the basis that a telecommunications company providing nationwide services affects the pricing of local telecommunications companies.

485. Finally, it should generally be avoided to define an overly “long” chain of substitution. In each iteration of the SSNIP test, the monopolist obtains control of another substitute product (or geographical area) and therefore has a slightly greater pricing power than before. Before long the situation could arise where an SSNIP question would have to be posed for the focal product or the geographical area, so a price increase in one place or product would create a new relevant market. To maintain the strength of each link in the chain, the next substitute product or region must provide significant competitive pressure on the product or region that has been added to the territory of the hypothetical monopolist.³⁰ The ECOI concludes that this situation is not present in Iceland. Since competitive conditions differ between regions, it should not be defined as a single market. As can be expected, the circumstances are not the same in the capital area as, for example, in rural areas where Míla is, or practically is, in a monopoly position. Therefore, it would not be possible to combine the geographical market on the basis of substitutability. In areas where local networks have been developed, Míla has in many cases either entered into a long-term agreement with the network operators or discontinued the use of copper in the area. It cannot be said that Míla is in competition with local network operators from all over the country, and it is not certain that a price change in one area would result in a price change across the country. Therefore, the ECOI concludes that the above circumstances do not apply to Iceland.

Are geographical base units appropriately sized?

486. Pages 7-8 in the aforementioned opinion of Ljósleiðarinn’s foreign advisor state that geographical markets should be sufficiently small to prevent significant deviations in competitive conditions within each unit, but sufficiently large to prevent resource intensive and burdensome microanalysis, which could lead to market fragmentation.

487. The position of SMP operators in the markets and the consequent need to control their behaviour could not be determined solely by the existence of parallel telecommunications networks. Price differences would be the key to detecting behaviour under competitive pressure. A heavily discounted entity that does not call for any response on the part of the SMP operator would indicate that either the area is not significant, or that the discounted entity in question is not considered as a threat by the SMP operator. The

³⁰ Niels, G., Jenkins, H. and Kavanagh, J. (2016) *Economics for competition lawyers* (2nd ed.). Oxford, United Kingdom: Oxford University Press (page 66).

behaviour of the SMP operator is in fact dictated by a position acquired elsewhere than on the potential geographical market in question.

488. In light of this there is a risk that the results of competition in competitive areas are lost by geographical segmentation. For example, where the competitive part of the market is geographically large, it could be a decisive factor for the entire national market. A separate geographical market with only one network could operate on the basis of the national market, which would be affected by competitive regions. In this way, even customers in a monopoly area could benefit from the competition, simply because the owner of the network operates nationally. The delimitation of geographical markets under such conditions would eliminate such competitive pressure and potentially lead to worse outcomes for local consumers. It is also important to note that the monopoly of regional infrastructure does entail a lack of competition at the service level. In the case of open internet access, consumers would still have the option to choose between different retail companies.

The ECOI's position

489. This comment is of a very theoretical nature and it cannot be seen that it is directly related to the criteria or results of the ECOI's geographical analysis. The ECOI maintains that its conclusion on the geographical analysis was well substantiated, including the choice of basic units, i.e. municipalities, and given the market conditions in Iceland.

490. The advisor seems to continue his focus on the factor of pricing in geographical analysis. As explained in the ECOI's position above, it is only one of many factors in the overall assessment of the definition of geographical markets, and greater emphasis is now being placed on the deployment of networks in that assessment, in compliance with new telecommunications legislation.

491. The ECOI does not agree with the final item of the comment, namely that the result of competition is lost by the segmentation of geographical markets. The ECOI considers it of equal importance to eliminate obligations in areas of effective competition as it is to impose or maintain obligations in areas with lack of competition.

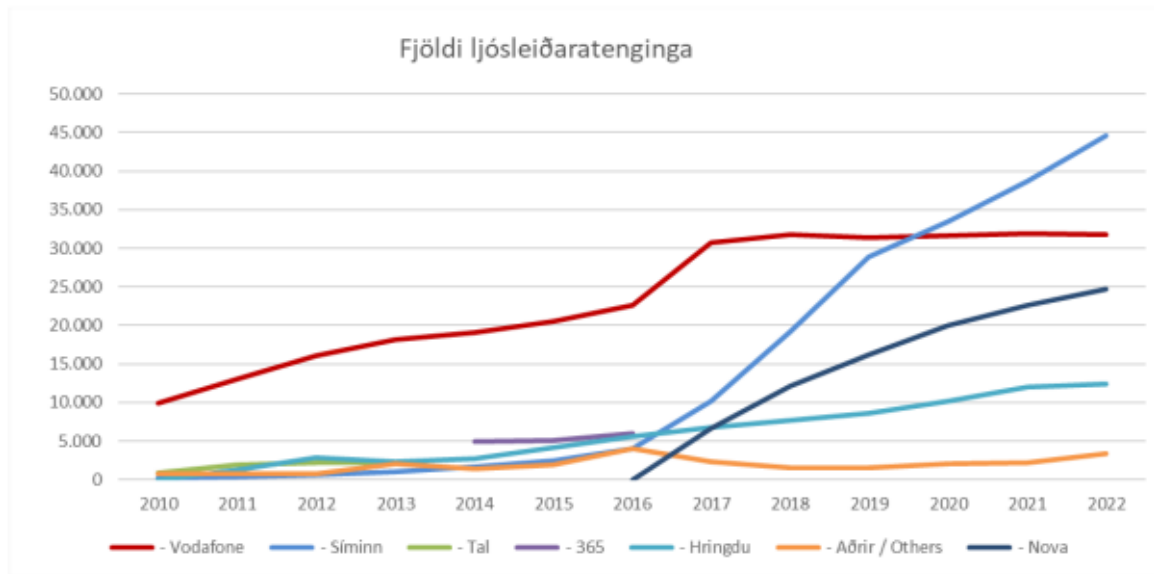
Instability of geographical units – The ECOI should rather impose different obligations on Míla by region

492. Pages 8-9 in the aforementioned opinion of Ljósleiðarinn's foreign advisor state that due to the instability in the geographical scope of the markets, telecommunications regulatory authorities would be advised to maintain geographical markets that covered the whole of the country and instead impose different obligations depending on the region. This would be the case for a number of reasons, especially because obligations can be adapted much faster to changes in market development than it would take to perform a new market analysis.

493. Looking to the future, the geographical scope of fibre-optic networks in access networks is not known today, because the boundaries of such network infrastructure are not stable over time due to the fact that a) infrastructure models and technologies could change,

and b) business models, such as wholesale-only companies, could make changes in cost of capital.

494. Continued market dynamics and network expansion can be seen in paragraphs 2233, 2238, 2304, 2315, 2321 and 2408 of the first consultation document. This would all point to the continued expansion of Míla's fibre-optic network or other market dynamics that allows operators of telecommunications networks to expand their networks. The lack of stability can be seen in the following figure in the first consultation document:



495. Therefore, the extent of possible competition could not be known and great care should be taken in describing the extent of possible competition, with consideration given to imposing different obligations according to geographical area.

496. BEREC has stated the following in its discussion of geographical markets:

“If the evidence found points to varying competitive conditions, but the differences between geographic areas are not yet sufficiently stable, a national market could still be defined. Geographical variations in competitive conditions can then be addressed at the remedies stage (e.g. price control obligations might be lifted for some areas, if sufficient safeguards exist).”

497. Ljósleiðarinn's larger market share in certain areas could be addressed by alleviating Míla's obligations in those areas. Míla would however remain a significant participant in a properly defined geographical market covering the whole of the country. It should be noted that over a period of 6 years, Míla's market share, when only considering nationwide fibre-optics, had increased by 450%.

The ECOI's position

498. As previously explained, competitive conditions within certain regions were unstable during the last analysis, which was completed in October 2021. Therefore, the ECOI did not consider the segmentation of geographical markets appropriate at the time, but rather

imposed different obligations on Míla by geographical area. It is the opinion of the ECOI that this instability is no longer present, as previously stated, and therefore the ECOI concluded that a distinction should be made between geographical markets in the relevant wholesale markets, as it should be undisputed that competitive conditions differ greatly between areas/municipalities/groups of municipalities in Iceland. The fact that deployment of fibre-optics is still ongoing and will continue in the coming years does not preclude this conclusion, as the ECOI is inclined to proactively predict the development of each geographical area, including the deployment of fibre-optic networks and market share trends.

The geographical market should be the whole country

499. Page 9 in the aforementioned opinion of Ljósleiðarinn's foreign advisor states that the ECOI's draft market analyses drafts all indicated that the whole country should be considered one geographical market where Míla had significant market power. Even if a series of geographical submarkets was present in Iceland, it would be too early to assume which these geographical markets should be, as networks are still being developed and geographical boundaries would continue to change. The whole country should therefore remain one geographical market, with Míla as a party with significant market power, but different competitive conditions should be addressed by imposing different obligations.

The ECOI's position

500. As stated above, the ECOI disagrees with this conclusion of the Ljósleiðarinn's foreign advisor and refers to the Office's previous responses in this document, as well as to the ECOI's detailed geographical analysis in Chapter 5 of the analysis (Appendix A).

5.5.2 Míla

Network deployment – Reliance on unsatisfactory data

501. Míla's comments on the first consultation state the following on page 18, in the company's comments on Paragraph 1147:

"Chapter 5.5.2.2 discusses the deployment of telecommunications networks competing with Míla's networks and their position on the relevant retail market with respect to the distribution of such networks by municipality. Míla finds cause to comment on the grounds for the ECOI's preliminary assessment in this regard. For instance, it is clear that the data on which the assessment is based and which are referred to in e.g. Paragraph 1147 are seriously flawed. In Míla's opinion, an assessment based on such poor data cannot form the basis of an administrative decision that involves the imposition of burdensome obligations. An example of a network whose expansion is estimated at about 50% is Skorradalshreppur, where fibre-optic deployment was completed a few years ago. Another example is Skagabyggð, where deployment is estimated at 66% and where fibre-optic rollout was completed 8-9 years ago. The numbers have not changed since. There are many more such examples. Míla therefore considers this data to be seriously flawed and thus unsuitable to serve as grounds for a burdensome administrative decision."

The ECOI's position

502. The ECOI bases its market analysis largely on data from electronic communications companies, and the ECOI assumes data submitted to the Office to be accurate. The ECOI seeks to guide electronic communications companies to the extent possible and verify submitted data. This applies both to the data used for network deployment and market shares. The ECOI must rely on electronic communications companies providing accurate information, and should it come to light that such information is incorrect for individual municipalities, the ECOI must respond accordingly. The ECOI also relies on data from Registers Iceland (the Housing and Construction Authority is now responsible for providing this information) and, as is the case with data from electronic communications companies, must assume that this data are correct unless faults in information from specific municipalities are indicated.

503. Paragraph 1147 provides for general reservations on the accuracy of data; and as is the case with all data, errors can always occur and must be addressed as necessary, hence this reservation. It is possible to register an uninhabited address as a legal domicile, in which case it is unlikely that there will be any demand for fibre-optic access. This may result in lower rates of fibre-optic deployment than expected. On the other hand, it may be assumed that these statistical deviations are insignificant and would only make a difference in smaller municipalities.

504. The completion of a fibre-optic rollout project does not necessarily mean that all legal domiciles and workplaces in the municipality have access to a fibre-optic connection. The project "Iceland Optical Connected", for example, involved providing fibre-optic connections to households, whereas the ECOI's market analysis concerns both residential and business addresses.

505. When determining local network deployment, the information that the ECOI receives from electronic communications companies is linked to the Housing and Construction Authority's demographic data for access addresses (access address ID no.). Companies have therefore registered information about their networks, following ECOI guidelines, in the access address register sent to them by the ECOI.

506. Most companies have supplied this information in such a way that it is easy to associate connections to access addresses with demographic data. Míla, however, has not recorded these numbers for all access addresses so it has not been possible to associate part of Míla's data with the relevant demographic information. This situation has improved somewhat since the last market analysis, but these numbers are still missing from a small part of Míla's data. As a result, it should mostly be Míla's deployment that is underestimated.

507. This could to some extent explain the low level of deployment in Skagabyggð, where the ECOI seems to have omitted certain locations due to Míla's failure to provide the relevant data. This is of course a very small municipality, so every residence or workplace that isn't connected (or about which data is lacking) greatly impacts the network deployment percentage. This error therefore benefits Míla.

508. The flaw in Míla's data is particularly evident in Skagabyggð, where there are residences and businesses that are not actually connected to the network. Nevertheless, this

does not affect the ECOI's assessment of Míla's market position in Skagabyggð, as there is no parallel network deployment in that municipality.

509. In the municipality of Skorradalshreppur, there are several access addresses to the east of Skorradalsvatn that do not have fibre-optic connections (there are no fiber cables in the area), and some businesses in the municipality are also unconnected. Some holiday cottages that have been registered as legal domiciles are also not connected. This does not affect the ECOI's assessment of the situation in Skorradalshreppur, as there is no parallel network deployment in the municipality.

Míla RAN service - Incorrect to omit Síminn coverage

510. Míla's comments on the first consultation state the following on page 18 of the company's statement on paragraph 1148:

"Míla also comments on the ECOI's statement and preliminary assessment in Paragraph 1148 concerning the significance of Míla's ownership of the RAN system that previously belonged to Síminn. In this respect, Míla emphasises that the company has no more control over Síminn's mobile network than any other company's network. Míla's RAN service is available for all spectrum licence holders. In this regard it must also be kept in mind that Síminn not only uses Míla's RAN service but also RAN from Nova/Sýn, for example. Furthermore, Míla does not have a spectrum licence, which is a prerequisite for offering mobile network services. Míla is therefore of the opinion that it is wrong to exclude Síminn's coverage."

The ECOI's position

511. To the best of the ECOI's knowledge, Síminn only uses other providers' RAN for the transmitters to which operators are required to provide access. Síminn therefore does not use other operators' RAN to any greater extent than Míla, [...]

512. The ECOI does not consider Míla's fixed network and mobile network based on Míla's RAN system as two separate competing networks. It is clear that Síminn has an agreement with Míla regarding [...] on Míla's RAN is therefore not in competition with Míla, and Míla earns revenue from the service regardless of whether the service is provided via Míla's fixed network or its RAN.

Network deployment – Criteria for fibre-optic deployment must be updated

513. Míla's comments on the first consultation state the following on page 19 of the company's statement on Table 5.6:

"Míla also comments on the criteria in Table 5.6, which shows fibre-optic cable deployment and the ratio of parallel network deployment by region as of the end of 2022. There is a clear need to update these criteria. Míla notes, for example, that both Ljósleiðarinn and Míla have deployed fibre-optics in Vogar. The companies have collaborated on these projects in accordance with the rules

pertaining thereto. Míla assumes that, before the end of the current year, Ljósleiðarinn will have achieved at least 80% network penetration in Vogar."

The ECOI's position

514. Parallel deployment in the municipality of Vogar had reached 9% by mid-2023, and Míla's network deployment was 41% as opposed to Ljósleiðarinn's 9%, as Míla has fibre-optic networks in rural areas and thus has an advantage over Ljósleiðarinn. Until now, Ljósleiðarinn has not deployed fibre-optics where they are already in place. The ECOI therefore assumes that Ljósleiðarinn will not install fibre-optics in areas where Míla has already done so, unless such deployment is part of a collaboration between the two companies. The ECOI refers to its response to a similar comment by Míla in Chapter 6.2.2 regarding the municipality of Vogar.

Míla's fibre-optic network expansion – Reservations to Míla's expansion plans

515. Míla's comments on the first consultation state the following on page 19 of the company's statement:

"Míla again reaffirms its previous comments regarding the ECOI's assessment of the likelihood of fibre-optic network deployment by Míla and other operators. The company presented its previous plans with clear reservations. Plans for fibre-optic deployment are, by nature, subject to uncertainty. Such uncertainties include the increased use of mobile networks, which may result in faster phasing-out of the copper network than previously assumed. It is therefore very likely that Míla discontinues its copper connections in certain regions regardless of whether or not the company intends to install fibre-optic connections."

The ECOI's position

516. Early in 2023, the ECOI requested network operators' municipal fibre-optic network deployment plans, including Míla's. The ECOI also requested an updated plan for Míla's phasing out of the copper network. Míla submitted credible and well-formulated plans regarding the aforementioned, on which the ECOI's analysis of predicted fibre-optic network deployment and market share trends in individual geographical markets is partially based.

517. Míla certainly noted that its plans were subject to uncertainty and were liable to change due to unforeseen developments or events. In the ECOI's opinion, all plans and predictions are subject to such, including the ECOI's forecasts on the aforementioned trend. The ECOI finds it suspicious, however, that Míla downplays its recently documented plans when it sees that such plans are not in the company's best interest. Despite the fact that some time has passed since submitting its comments on 16 October, 2023, Míla has not yet submitted an updated plan to the ECOI. The ECOI must therefore base its forecasts on Míla's aforementioned plans, though it must be stated that these plans are only one of many factors that the ECOI takes into consideration when assessing likely trends on individual geographical markets.

518. Míla notes that increased mobile network usage is one factor that may lead to the phase-out of the copper network being faster than previously expected. As stated in the analysis, it may be estimated that up to 15% of household are using the aforementioned

mobile network solution and do not have a connection to a fixed network. The ECOI believes that although this percentage could increase somewhat during the term of validity of this analysis, the vast majority of homes will remain connected via fixed network connections, which are mostly provided via fibre-optics. The ECOI therefore believes that Míla's concerns are not likely to result in significant changes on specific geographical markets during the term of validity of this analysis. Should it be the case in any municipality that Míla is no longer considered to have significant market power, the ECOI is able to respond swiftly, as stated earlier.

Underestimation of fiber-optic expansion by Míla's competitors

519. Míla's comments on the first consultation state the following on page 2 of the company's statement on Paragraph x:

"Ljósleiðarinn has stated that its fibre-optic network reaches 120 thousand households. This is about 85-90% of all households in Iceland. It is therefore clear that ECOI's preliminary assessment (see Paragraph 1181 and elsewhere) which concludes that Míla's competitors' fibre-optic deployment will reach 83-85% of homes and businesses by the end of 2025 is an underestimate.

The ECOI's position

520. Paragraph 1181 states that, based on the available deployment plans of operators such as Ljósleiðarinn, Tengir, Snerpa, Austurljós and Eygló in the Westman Islands, it is likely that the total fibre-optic deployment by Míla's competitors will reach about 83-85% of homes and companies Iceland by the end of 2025, assuming that the number of spaces increases by 3,000 per year during that time. At the end of 2022, these companies' total coverage measured between 74-80%. Fibre-optic deployment to businesses is not as far along as it is to households, but these numbers account for both households and businesses. Based on a natural increase of up to 3,000 homes and businesses per year, it may be assumed that households and businesses will number approximately 176 thousand by the end of 2025. Míla is therefore not making the same comparison, as the percentage it states for Ljósleiðarinn applies only to households, which, as previously stated, is higher than for businesses. Míla therefore seems to base its calculations for Ljósleiðarinn on too low a total number, as the total number of households was just under 143 thousand at the end of 2022, which means that Ljósleiðarinn's network reached about 84%. It must also be noted that this may be an underestimate, as the property register does not account for e.g. unlisted apartments in private homes rented out by the owner.

521. The ECOI therefore does not consider it necessary to amend this assessment, as this, like any assessment, is subject to error without it changing the overall discussion. This prediction only applies until the end of 2025, not the entire term of validity of the analysis. This percentage can therefore be expected to increase to up to 90% by the end of 2028.

Switching from copper to fibre-optics does not necessarily mean a transfer to Míla's network

522. Míla's comments on the first consultation state the following on page 19 of the company's statement on Paragraph 1188:

"Míla also comments on the grounds stated in Paragraph 1188 which state that the ECOI estimates that a significant portion of end users of Míla's copper network will transfer to the company's fibre-optic local loops as its fibre-optic deployment progresses. No further reasoning is provided. Míla points out that an analysis such as this cannot be based on such guesswork. As mentioned before, retailers have the most say over which network is used to provide services to end users. The fact that individual copper connections are to be shut down in certain regions does not necessarily mean that the user will be transferred to a Míla fibre-optic connection. Nor can it be assumed that Míla will have fibre-optic connections in all locations where copper connections are shut down."

The ECOI's position

523. The ECOI states in the aforementioned paragraph that a significant portion of Míla's copper network customers can be expected to switch to the company's fibre-optic connections as its fibre-optic deployment progresses. The ECOI believes this to be carefully worded, but does not claim that all of Míla's customers on the copper network will switch to fibre-optics, only a significant portion. Míla states that this decision will first and foremost be up to the retailers. The ECOI points out that Síminn, Iceland's largest retailer by a significant margin, must purchase at least 80% of its connections on these markets from Míla, and the company has already made much use of the leeway that it has. It is therefore clear that a significant portion of Síminn's customers who are still on copper networks will transfer to Míla's fibre-optic networks that have already been installed or will be installed in the years to come. Although some copper network customers may switch to mobile network solutions, the ECOI is of the opinion that this will only be the case for a small minority.

524. In view of the aforementioned, it is not necessary to amend this text.

Míla's purchase of local networks and imbalance in the discussion of Míla's and Ljósleiðarinn's priorities

525. Míla's comments on the first consultation state the following on page 19 of the company's statement on Paragraph 1190:

"Míla contests the ECOI's overestimate of the company's position and plans as stated in Paragraph 1190 of the discussion of local fibre-optic networks, or so-called rural networks. Míla reaffirms that it has not received any state funding in this regard. There is also a noticeable imbalance in the ECOI's discussion of Míla and Ljósleiðarinn's alleged priorities in this regard. In light of the change in Ljósleiðarinn's position after the purchase of Sýn's trunk network and gaining control over a part of the NATO cable, it can be assumed that both companies are equally likely to secure access to local fibre-optic networks. In this context, Míla also notes the proposed increase in share capital and the process of selling new

shares of Ljósleiðarinn, which is expected to be completed next year. The objective is, among other things, to finance further developments by the company. The ECOI should be able to request all information pertaining to this stock offering and sales process."

The ECOI's position

526. Míla objects to the ECOI's alleged overestimation of Míla's position and its plans to acquire further rural networks during the term of validity of this analysis, and to the ECOI's underestimation of the fact that Ljósleiðarinn is taking a similar course of action. The ECOI notes that this is a general discussion and does not have the criteria to make a forecast about the purchase of local networks in individual municipalities, as the companies have not submitted future plans to this effect. However, it may be noted that ECOI has requested such information, if available, from Míla, Ljósleiðarinn and Tengir. This discussion therefore does not affect either the assessment of significant market power in individual geographical markets or the trend forecast. It is clear that, in recent years, Míla has either been purchasing many such state-funded municipal networks or ensuring long-term control over them. The ECOI assumes that this trend will continue, as Míla is in the best position to do so with its extensive trunk line network. Ljósleiðarinn and Tengir have also purchased such networks, but to a far lesser extent than Míla. The ECOI assumes that this will continue, but to a lesser extent than Míla. Míla's comment therefore does not call for an amendment to the text.

527. Regarding Míla's comment that the company has not availed itself of state funding to develop fibre-optic networks in rural areas, refer to the response to a similar comment in Chapter 6.

Market share trends on Market 3a

528. Míla's comments on the first consultation state the following on page 20 of the company's statement on Paragraph 1224:

"Paragraph 1224 mentions certain factors regarding market share trends on Market 3a, particularly as concerns Míla. In this context, Míla wishes to point out that even if obligations are relaxed in certain regions, which in Míla's opinion is long overdue due to the fact that these obligations have lacked a basis for some time, this does not guarantee a dramatic change of Míla's potential to compete on the market on non-discriminatory terms. This is due to the fact that the company remains under burdensome obligations pursuant to the settlement with the ICA and its Decision No. 16/2023. Míla points out that one of the criteria by which the aforementioned obligations were considered necessary in the opinion of the ICA was the ECOI's assessment of Míla's market power, which is stated in ECOI Decision No. 5/2021. This assessment is known to be seriously flawed and the decision was harshly criticised by the EFTA Surveillance Authority, then remanded by the Rulings Committee for a new decision by the ECOI.

As stated in the paragraph cited above and in various places throughout the consultation document, Síminn has increasingly directed its business to Ljósleiðarinn and now offers its customers internet and related services on both

Míla's and Ljósleiðarinn's fibre-optic connections. The same cannot be said for e.g. Sýn and Nova [...].

The conclusion is also made in Paragraph 1224 that Míla's share in Tengir's service area is due to increase. In Míla's opinion, there is no basis for this conclusion. [...].

Míla emphasises that, when assessing competitive conditions on Markets 3a and 3b, the ECOI must, as the EFTA Surveillance Authority indicates in the previous analysis, pay special attention to the characterising incentives of wholesale-only competitors compared to vertically integrated companies with regard to promoting competition. It is important that the ECOI take into account in its analysis the specific incentives that characterise wholesale companies, i.e. companies that are either classified as such in the sense of Article 59 or have at least all of the same incentives as such companies for offering equal access to its systems on competitive terms."

The ECOI's position

529. The ECOI stands by this consideration in spite of the above comment by Míla. The ECOI considers it obvious that Míla has become a very strong and versatile infrastructure company in the electronic communications sector, backed by financially strong sponsors, and that it has disclosed highly ambitious development plans and plans to increase use of its systems by greater inclusion of operators such as Nova and Sýn on its networks. It is also clear that Míla should be able to compete differently and more strongly in the regions where obligations are to be lifted, as these are the regions where the vast majority of the population lives. Considering the great pressure that Míla has exerted on the ECOI to lift obligations as soon as possible, it is peculiar that Míla's comment downplays the company's competitive potential should these obligations be removed.

530. Míla is, however, still subject to obligations pursuant to the company's settlement in 2022 with the ICA. However, those obligations are far less strict than the obligations of which the company is currently being relieved. In addition, Míla has publicly stated that the company considers the obligations which it undertook towards the ICA to be unfair and anachronistic, and that it intends to pursue that these obligations be lifted or relaxed. It is not unlikely that, at a minimum, Míla will in the near future vigorously pursue the ICA to relax the obligations regarding the merger decision in whole or in part, e.g. in the regions where there is more competition.

531. Míla also believes there to be no basis for the ECOI's conclusion that Míla's share on Market 3a in Tengir's service area is due to increase during the term of validity of this analysis. The ECOI stands by its conclusion. Míla has a very small share on this market in many of these municipalities, including Akureyri. Considering Míla's fairly intensive fibre-optic deployment efforts in this region in recent times, including Akureyri, Norðurþing and Fjallabyggð, and the likely continuation of these efforts, Míla must expect that the usage of these systems will increase. Such investment would otherwise not be financially logical. Furthermore, Síminn is in a very strong position in this region and does not appear to intend to negotiate bitstream access to Tengir's networks. Signs of vertical integration are therefore very apparent in this region.

532. In closing, Míla states that it is important that ECOI consider in its analysis the specific incentives characteristic of wholesale-only companies, cf. Article 59 of the Electronic Communications Act. In response, it must first be noted that in Chapter 7 of Annex A, the ECOI concludes that Míla does not meet the legal requirements of the aforementioned provision to be considered a wholesale-only company. Nevertheless, the ECOI can agree that after Síminn's sale of Míla, Míla does have most characteristics of such a company, although the analysis concludes that there are still significant signs of vertical integration between Míla and Síminn due to the companies' long-term service agreement. The ECOI, however, does not believe that this comment is particularly relevant to the development of Míla's market share on Market 3a.

533. Regarding Míla's discussion of Sýn and Nova's business on its network, Sýn is already on Míla's network and should have the possibility of increasing its business. The ECOI also considers it quite likely that Nova will, during the term of validity of the analysis, avail itself of Míla's services to a greater extent, especially if the company wishes to reach the entire population. It must be kept in mind that until only recently, Míla was under the ownership of these companies' main competitor, which may elicit suspicion towards Míla and reluctance to do business with Míla, at least at first. The ECOI believes that Míla's incentives have changed to some extent after the sale to Ardian, though it can take time for the effects of such changes to be felt on the market.

5.5.3 Tengir

Control over difficult-to-install facilities

534. Tengir's comments on the first consultation include the following, on page 5 of the company's statement regarding Chapter 5.5.2.3:

"Tengir does not recognise the barriers to entry referred to and which the ECOI states have emerged (Paragraph 1177), including through Tengir's expansion into Akureyri and elsewhere in North Iceland. Tengir has no objection if the intention is only to state that it is not feasible for new market participants to build a fibre-optic system in Akureyri (Tengir's service area) due to the small population and the expense of establishing trunk line connections into the region. It should be noted, however out that barriers to establishing a trunk line connection in order to provide service to the region currently apply to Tengir, as service providers that use Tengir's system must rely on trunk line connections owned/controlled by Míla or Ljósleiðarinn in order to access the company's local network."

The ECOI's position

535. Tengir states that it does not recognise the barriers to entry referred to in the aforementioned paragraph of the analysis, but that it does not object if the intention is only to state that it is not feasible for new market participants to build a fibre-optic system in Akureyri due to the small size of the population and the expense of establishing trunk line connections into the region. On the other hand, Tengir does face barriers in establishing trunk line connections in order to provide services in the region.

536. The ECOI points out that the aforementioned paragraph contains a general discussion on barriers to entry. The paragraph states, among other things, that barriers to entry can be assumed to be greater in less populated and more rural regions than in regions of higher population, and refers in this context to fibre-optic deployment efforts by Ljósleiðarinn, Tengir and Snerpa in their respective regions. The ECOI does not believe that this comment calls for change. The ECOI does agree that Tengir's lack of trunk line connections outside of its service area is presents somewhat of a barrier for Tengir. However, the ECOI is not of the opinion that this fact changes the conclusions of the analysis.

Regional pricing on Market 3a

537. In its comments on the first consultation, Tengir states in reference to Paragraph 1241 that the company finds Míla's arguments for a proportional price between areas of high and low population density to be of interest in light of the fact that Míla has agreements with many companies allowing Míla to provide location-based services all over the country. Tengir questions whether there is an actual difference in cost, e.g. over a period of one year, according to whether the area in question has a high or low population density.

The ECOI's position

538. The ECOI finds it difficult to understand this comment by Tengir, and that it seems to be based on conjecture and supported neither by further reasoning nor data. The ECOI therefore stands by the consideration that there is a difference between Míla's wholesale products in urban and rural areas.

5.6 Geographical definition of Market 3b

5.6.1 Míla

Position of mobile networks

539. Míla's comments on the first consultation state the following on page 21 of the company's statement on Paragraph 1323:

"... Míla wishes to comment on the ECOI's statement in Paragraph 1323 that this market is characterised by a "two-tower situation" in which the market shares of operators other than Míla and Ljósleiðarinn are almost insignificant. In light of the fact that, according to the ECOI's preliminary assessment, mobile networks belong to this same market, the ECOI's statement about a "two-tower situation" is inaccurate. Thus mobile networks have greater market power in some places than Ljósleiðarinn or Míla. Míla believes that, as 5G deployment had not progressed much by the end of 2022, the position of mobile networks will probably strengthen considerably during the term of validity of the analysis."

The ECOI's position

540. The ECOI appreciates this feedback and will amend the text of Paragraph 1323 in Annex A, and elsewhere if necessary, with regard to mobile networks. The ECOI points out,

however, that subsequent tables include market share statistics that both do and do not take mobile networks into account. Furthermore, that this paragraph was written before the merger of Ljósleiðarinn and Sýn was finally approved by ICA Decision No. 37/2023, dated 29. September, 2023. The ECOI will also update texts and tables pertaining to this merger.

Market share trends for Míla

541. Míla's comments on the first consultation state the following on page 21 of the company's statement regarding Paragraphs 1333 and 1334:

"Míla also submits the following comments regarding the criteria which the ECOI puts forth in Paragraphs 1333 and 1334 for market share trends for Míla on Market 3b. These comments are, for the most part, equally applicable to Market 3a.

- a. Firstly, Míla wishes to point out that even if obligations are relaxed in certain regions, which in Míla's opinion is long overdue due to the fact that these obligations have lacked a basis for some time, this does not guarantee a dramatic change of Míla's potential to compete on the market on non-discriminatory terms. This is due to the fact that the company remains under burdensome obligations pursuant to the settlement with the ICA and its Decision No. 16/2023.
- b. Secondly, the stated policy by Míla's owner concerning investments and the company's investment plan has been formulated with reservations, as plans in this regard are subject to a great deal of uncertainty.
- c. In terms of the acquisition of local fibre-optic networks, it is clear that after Ljósleiðarinn both gained control of a fiber-optic pair in the NATO cable and took ownership of Sýn's trunk network, Ljósleiðarinn is just as likely as Míla to purchase individual local networks. This has already proven to be the case, cf. Ljósleiðarinn's purchase of Líf í Mýrdal. The same can be said about various other network operators. [...]. There are furthermore open systems to which operators requesting access may install their own bitstream equipment. It can be assumed that Ljósleiðarinn will do exactly that.
- d. There is also the fact that there is little to no justification for the ECOI's conclusion that the difference between the extent of Míla's and Ljósleiðarinn's fibre-optic networks in the Capital Region will be insignificant. In addition, Míla's continued fibre-optic expansion in this region does not necessarily mean that the company's share of Market 3b will increase during the term of validity of this analysis. In this context it must be kept in mind that Nova's and Sýn's market share has been increasing, and so far the companies have directed their business to Ljósleiðarinn, except in highly exceptional cases.
- e. The ECOI also provides no further reasoning for the claim that Míla's share on Market 3b in Tengir's service area will increase as Míla continues to develop its fibre-optic network. [...]."

The ECOI's position

542. Regarding item a, the ECOI has responded to a similar comment from Míla concerning Market 3a above. See the relevant sections.

543. Regarding item b, Míla says that the company's owners' policy concerning investments and plans for investments is stated with reservations, as there are many uncertainty factors in play. The ECOI is not convinced by Míla's claims that there is no merit to its public statement regarding proposed investments. These increased investments, which have taken place after the change of ownership, are obvious and the ECOI believes that they will continue unabated in the years to come. In one year, from June 2022 to June 2023, Míla's fibre-optic deployment to domiciles and workplaces has increased from 60% to 65%. During the same time, Ljósleiðarinn's deployment has remained nearly stagnant (an increase of 0.4% percent) and is currently at 71%, while Tengir's deployment has increased from 7.2% to 8.0%.

544. Regarding item c, the ECOI has responded to a similar comment by Míla concerning Market 3a above. See the relevant sections. Míla has been purchasing most of these networks and is the operator with the most potential to continue to do so with its extensive, nationwide trunk line network. The fact that Ljósleiðarinn recently, i.e. on 1 October 2023, acquired control of the previously mentioned two optical fibres in the NATO cable, clearly indicates that the company lacks connections extending from the ring to the various regions. It can be assumed that the company has a lot of time-consuming work ahead in co-ordinating and implementing the aforementioned optical fibres before it can begin to consider building or purchasing access networks in various rural areas, especially those far away from the ring, as Ljósleiðarinn does not have trunk routes from the ring at its disposal. This applies equally to the installation of the company's own fibre-optic networks, purchase of access networks and installation of bitstream equipment on other operators' networks.

545. Regarding item d, the ECOI considers it very likely that Míla will continue its fibre-optic rollout in the Capital Region unabated in the next few years. This is likely in order for Míla to at least maintain business as copper connections continue to decrease. Míla's stated policy also aims increase the use of its networks and it is no secret that the company has looked to Nova and Sýn for this purpose. The ECOI considers that it is not unlikely, especially once obligations have been lifted from Míla in regions where the greatest proportion of the country's population is concentrated, that the company will make headway in this regard. [...] The ECOI therefore does not rule out the possibility of this trend slowing down considerably or even reversing to some or even a great extent during the term of validity of this analysis. It remains to be seen what will actually happen. Míla is therefore incorrect in its claim that the ECOI's considerations are unjustified, though it is true that they are subject to certain uncertainties.

546. Regarding item e, the ECOI has responded to a similar comment above regarding Market 3a. See the relevant sections.

Criteria for classification of municipalities

547. Míla's comments on the first consultation state the following on page 22 of the company's statement on Chapter 5.6.3.1:

“Chapter 5.6.3.1 contains a description of the ECOI’s classification and the criteria municipalities must fulfil for each category, according to the likelihood of competition in the region in question. Míla believes that the ECOI must provide better explanation for these criteria and whether/how ECOI has adapted them to circumstances in Iceland. In this context, Míla notes that the ECOI has stated that its data on network expansion is unreliable. Figures can thus vary by tens of percentage points depending on the data used. In some municipalities, fibre-optics have been installed in all houses that requested it as part of the Iceland Optical Connected project. Nevertheless, according to the ECOI’s figures, network deployment is at just about 54% as in the case of Skorradalshreppur, or 73% in the case of Eyja- and Miklaholtshreppur. Fibre-optics were installed in both municipalities quite some time ago.”

The ECOI’s position

548. It is the case that the ECOI has adapted its classification system or criteria for geographical analysis to circumstances in Iceland. Although the ECOI carefully examined the execution of this analysis in other countries given an account of it in Chapter 5, Annex A, the ECOI’s criteria are entirely based upon domestic competitive conditions. There are no instances of identical criteria in other countries.

549. The ECOI has responded above regarding calculations of network deployment figures and the reliability of that data. As stated therein, Iceland Optical Connected only extended to residences, not companies, and often involved setup charges; for this reason, not everyone participated in the project. Fibre-optic rollout may therefore be complete according to the project without all residences and businesses having fibre-optic access. The ECOI responded above to Míla’s feedback regarding Skorradalshreppur and refers to its response. Deployment to households in Eyja- and Miklaholtshreppur is 92%, but, as Míla points out, considerably less when businesses are taken into account. The ECOI is examining companies’ market shares for connections to residences and businesses, and therefore considers it natural to consider both households and businesses when determining network deployment.

550. The ECOI decided that the criteria for classifying municipalities under region A should be fairly strict, as it proved to be the case that more municipalities were determined to be areas of competition than those that fell under region A. By combining criteria regarding wholesale market share, retail market share and network deployment, the ECOI can avoid going too far in lifting obligations without sufficient grounds for doing so. Having this many requirements is an approach unlike that which other regulatory bodies have applied in the determination of competitive areas.

551. In its examination of the competitive situation in the municipalities, the ECOI noticed that wholesale and retail competition is increasing as expansion of parallel fixed networks increases. The EU Commission has also stated that parallel expansion of 40% is considered significant and 60% is considered large in scale. In light of this, the ECOI decided that, with increasing competitive pressure from parallel networks, lesser requirements would be made regarding wholesale market share, as market share can vary from year to year, though it was noted that owners of parallel networks always have the opportunity to increase their network

usage. The ECOI's criteria nevertheless always require that no single retail company has a market share in excess of 50%.

Mobile network deployment in criteria for classification of municipalities

552. Míla's comments on the first consultation state the following on page 22 of the company's statement on Paragraph 1360:

"Míla disagrees with the statement in Paragraph 1360 that mobile network penetration should not be considered in the ECOI's criteria for classifying municipalities. If mobile networks belong to Market 3b in the first place, their expansion should necessarily be considered in this context. The recent trend also suggests that mobile network services present a competitive restraint on the bitstream services of fixed networks and potentially strong competition in the immediate future.."

The ECOI's position

553. The ECOI considered including mobile networks in its network deployment criteria but ultimately did not do so. As the paragraph states, it is not possible to purchase bitstream access to mobile networks. The impact of mobile network routers is, in the opinion of ECOI, sufficiently represented in the market share criteria for Market 3b, and their impact on market share calculations is extensive. Even though about 15% of household seem to use the aforementioned mobile network solution, and therefore do not have a fixed network connection, the ECOI believes that the vast majority of households will use fixed network solutions throughout the term of validity of this analysis. Parallel fixed and mobile network deployment was one of many factors that the ECOI considered when examining individual markets with in terms of significant market power.

6 Assessment of significant market power on Market 3a and 3b

6.1 General

6.1.1 Ljósleiðarinn

Míla and Síminn's strong position in the markets, the exclusive purchase agreement between Míla and Síminn, the transfer of telecommunications systems from Síminn to Míla during the time leading up to Ardian's purchase of Míla

554. Ljósleiðarinn's comments on the first consultation include, on page 15-18:

"The ICA's investigation of the Ardian merger has revealed that the organisational changes undertaken by Síminn and Míla during the time leading up to Ardian's purchase of Míla created a new and improved situation for Míla on wholesale markets for electronic communications services with an increased and altered capacity to pursue competitive advantages, even in a harmful manner.

In the ICA's initial findings regarding the merger case it was considered that all things being equal the merger would result in Míla, through the takeover of telecommunications systems, in particular the IP-MPLS data transfer network, probably strengthening its market dominant position, at least on the market for data transfer via trunk lines, and also in the potential overlying market for integral and specific data transfer service domestically by fixed line, including the terminal part of the value chain (local access and central access to fixed line, local loop and bit stream). The aforesaid market power and strengthening of Míla's position in the concentrated and seemingly oligopolistic wholesale markets for electronic communications would therefore be an indication of the potential harmful unilateral vertical effects from the merger of Ardian, Míla and Síminn.

It was pointed out that Míla's competitors, many of whom are also customers of the company and dependent on it for data transfer at national level (such as fixed line connections in Market 14), in many cases engage in considerable data transfer for their own activities, such as via leased lines and trunk lines that are their own concern or that of others, and via their own IP-MPLS systems. Following the merging parties' objections to the aforesaid potential vertical effects from the merger and after further investigation on the part of the ICA, data collection revealed that if only the external income of electronic communication companies was considered in the assessment of market power, the competitive restraint and potential market strength of other electronic communication companies would probably be underestimated and Míla's market strength possibly overestimated correspondingly. This applies in particular to external income from IP-MPLS data transfer, which the ICA has included as part of the market for the trunk sections of leased lines, but which the merging parties in their argumentation consider a separate market.

Míla currently has a trunk line system, an IP-MPLS system and an internet portal, and before the Ardian merger, Míla operated the majority of the group's trunk line whereas Síminn's wholesale department sold data transfer via IP-MPLS and international connections via an internet gateway. Míla is currently operating at all levels of the value chain, except for retailing, and throughout the length of the value chain for data transfer, from telephone exchanges to house boxes for residents (access network/local loops), bit stream equipment for connections (access system/bit stream equipment), leased lines in access networks, trunk lines (including IP-MPLS network), and finally for international connections from Iceland to London, Amsterdam and New York. In addition to the aforesaid and with regard to mobile networks, the RAN mobile network system, which Míla currently owns and controls, just as for fixed line services, has the effect to establish Míla everywhere in the value chain for wholesale mobile network services, where access to RAN and transmitter stations replaces access and fixed line connections in the above description. No electronic communication or infrastructure company in this country has a comparable vertical position in the value chain for electronic communication services.

In the aforementioned review by the ICA there was also a discussion of how a merger could entail excluding effects for competitors at a lower marketing stage if it is likely to increase the cost for competitors at a lower marketing stage by limiting their access to important products at a higher marketing stage (i.e. input foreclosure), such as by refusing to supply, and thereby increase the cost for competitors at a lower marketing stage by making it harder for them to access the products at prices and conditions comparable to that before the merger. This can lead to the merged company raising prices and thereby disrupting competition to a significant extent. To create such a situation, the merged company must have an important product in wholesale distribution (important input) and considerable market share in one of the markets in question (i.e. a significant degree of market power).

In this manner, Míla, by virtue of its position as described above, seems to be able to offer integral and "unique" electronic communication products on wholesale terms, and to enter into unilateral agreements with electronic communication companies regarding "end-to-end" (E2E) mobile network or fixed line services, with the potential exclusion of smaller competitors at wholesale level, who until now have been able to provide service to electronic communication companies in a more specialised and separate manner. This limits wholesale companies' access to customers and thereby also their incentive and ability to compete with Míla on wholesale markets. The ICA concluded that Míla will have the ability and incentive to exclude their competitors in the aforesaid manner if the merger would take place as it stood, and thereby have harmful vertical effects on competition.

The ECOI also assessed that the transfer of assets as actually effected gives Míla the opportunity to bundle all wholesale service from "backbone network to internet service", both via fixed and mobile networks. The ECOI cannot see that it was necessary to transfer the aforesaid AS numbers and the aforesaid IP-addresses to Míla, and that the addresses are a limited resource worldwide and there are no

new sequences of IP-addresses available from the relevant allocation bodies. These can only be purchased at considerable cost from parties that already control addresses and are prepared to part with them. AS numbers, however, can be obtained with relatively little effort.

The ICA points out that data transfer will increase greatly in the next years, e.g. due to further fibre-optic rollout and more 5G mobile phone transmitters, with a higher data transfer rate for end users who will thereby demand significantly more data transfer domestically and via international connections. Due diligence carried out before the Ardian merger also addressed increased fibre-optic rollout in rural areas in this context, as it has not progressed as far. According to the merger file in the Ardian case, it is the policy of the new owners of Míla to accelerate expansion efforts in these areas, as fibre-optic rollout is one of the most important regional development issues in Iceland, and the new owner of Míla has the financial means and Míla the know-how required to implement this policy in accordance with the merger file.

In this regard it must also be pointed out that the ICA, through a settlement with Ardian, with the advice and involvement of the ECOI, has imposed conditions on the market and market structure where 80% of all Síminn's trade on the wholesale market for electronic communications market takes place on the basis of the company's obligation to purchase from Míla for the next 20 years. ICA Decision no. 24/2023 states³¹ " ... that despite the sale of Míla and the fact that the direct connections of ownership between the companies had been severed, there was still a large-scale wholesale agreement and a financing agreement in effect between Síminn and Míla. In the assessment of the ICA, these agreements formed a very strong connection between the interests of the companies, which could manifest in various ways. At a minimum, it was therefore not timely to conclude that the effects of the vertical integration were no longer in play". The ICA and ECOI also authorised the transfer of RAN from Síminn to Míla, which based on previous decisions of the ICA had been specifically retained by Síminn. Thus two supervisory bodies have established a market structure and organisation that severely impedes the potential for other companies to grow on the wholesale market.³² In Ljósleiðarinn's estimation it cannot be seen that any analysis is being done of the long and short-term meaning and effects of this on the development of the wholesale market.

Míla's RAN system, i.e. the transmitter system, reaches about 600 locations in the country according to the merging parties in the Ardian merger decision, and supports 2G, 3G, 4G and 5G technology. On the other hand, there is a mobile core

³¹ Request from Síminn hf. regarding the revision of the settlement between the company and the Competition Authority as stated in decision no. 6/2015.

³² A simple examination of supply substitutability clearly reveals the aforesaid unfair advantage. Supply substitutability indicates whether the competitors of the relevant party can or would alter their production on a short-term basis (less than 1-2 years) or offer the product or service in question without incurring high additional cost, in the case of a small but long-term price increase. However, potential competition is taken into consideration in the assessment of market power, cf. Article 21 of Regulation no. 556/2023 regarding market analyses in the field of telecommunications.

network in two locations in the country that connects all transmitters of the distribution system. Even though the RAN system is transferred to Míla, the mobile core network and spectrum licences are not owned by Míla but Síminn (like spectrum licences of other electronic communication companies) with all the obligations pertaining thereto. According to the data submitted in the case, Míla sees an opportunity in sharing, to a certain degree, active infrastructure of the Icelandic electronic communications market in this context in order to maximise the capacity of its transmitter locations, as the company only has wholesale solutions in this field. Thus Míla is currently the owner of trunk networks, access networks and mobile network infrastructure, as well as an IP-MPLS system, a RAN distribution system and an internet gateway previously held by Síminn's wholesale department. After the merger, all will be in the possession of a single entity, along with Míla's other infrastructure and other wholesale activities.

In Ljósleiðarinn's assessment there is little or no consideration given to the aforesaid position which Míla has obtained after the Ardian merger, which in the opinion of Ljósleiðarinn has various effects on the markets analysed here. In light of the ICA's analysis it should be evident that due to this new situation there is good reason to assess this new position of Míla and its effects on Markets 3a, 3b and connected markets. The aforesaid raises questions as to whether the market analysis as such relies excessively on the format and guidelines prescribed by foreign institutions, and whether less consideration is given to the actual conditions in the markets, which, it should be noted, has been analysed by competition authorities in this country. The aforesaid analysis carried out by the ICA is entirely relevant to this market analysis, in the opinion of Ljósleiðarinn, as it would include an analysis of the potential effects on the markets under examination here.

In the Ardian decision, the ICA also states its assessment that the aforesaid development is an indication of actual changes that have occurred with regard to competitive conditions in wholesale markets for electronic communications, in particular the trunk line market and markets for local loops and bit streaming, since the initial findings in the merger case, which were based on the assumption that there was significant danger of competitors in the electronic communications market coordinating their actions as a result of interactions between competitors, due to the merger and the new position of Míla. Thus it is clear that Ljósleiðarinn will now be in control of two of the fibre-optic threads in the NATO cable, which strengthens infrastructure competition in trunk lines against Míla, which was and still is in control of five threads.

Ljósleiðarinn is also of the opinion that there has not been a satisfactory analysis of the effects of the agreement between Síminn and Míla, which has a binding effect or influence on a large part of the trade on the markets under analysis. There is only a discussion of the aforesaid trade and incidents without any assessment of their effect on the development of markets during the term of validity of the market analysis.

Furthermore, it cannot be seen either that the market analysis includes any analysis of the potential effects on retail markets from Míla, but not other wholesale entities, being in possession of RAN. Thus other companies in the retail market must either operate their own mobile networks or purchase fixed networks on the wholesale market. This also has significant effects on upstream wholesale markets and the competition there.

One characteristic of the market analysis is that much time is devoted to analysing technology and distribution methods before concluding which particular services belong to the relevant market. However, there is no analysis of the significance of market participants controlling specific technology and access thereto, and the aforesaid analysis carried out by the ICA for the Ardian merger decision, as well as the merger decision on Ljósleiðarinn's purchase of Sýn's trunk network, gave ample cause for a more detailed analysis of the aforesaid factor and circumstances than that in the draft. In the assessment of Ljósleiðarinn, these are factors that are very important for establishing the potential actions and market operations on the part of the participants on the relevant markets in the next years."

The ECOI's position

555. The ECOI wishes to state that at the beginning of the above comments submitted by Ljósleiðarinn it seems that the company is quoting the ICA's statement of objections regarding negative effects on competition resulting from the merger of Ardian and Míla, had it been executed as it stood at the time. At later stages of the case, the merging parties proposed a settlement of the case, whereby amendments were made to the wholesale agreement between Síminn and Míla, in addition to obligations being imposed on Míla that were intended to reduce the harmful effects which the merger would have on competition, as described in the statement of objections.

556. According to Ljósleiðarinn's comments, the ECOI did not satisfactorily analyse the effects on competition from the transfer of trunk networks, access networks and mobile network infrastructure, as well as the IP-MPLS system, RAN distribution system and internet gateway previously controlled by Síminn's wholesale department, nor carry out an integral analysis thereof as stated in the ICA's merger decision. In this regard, Ljósleiðarinn takes into consideration, among other things, that Míla's competitors, many of whom are also customers of the company and depend on it for domestic data transfer (such as trunk line connections in Market 14), are in many cases carrying out a substantial amount of data transfer for their own activities, such as via leased lines and trunk lines controlled by them or other entities, and via their own IP-MPLS systems.

557. In light of Ljósleiðarinn's comments, the ECOI wishes to state that the ICA's market definition is different in merger cases as the effects which a given merger has on competition are assessed integrally and comprehensively across markets, and with different approach than that of the ECOIS's market analyses of individual markets, as described further in Chapter 4.1.1.1 above. The ICA's investigation of the Míla-Ardian merger case led to the conclusion that obligations had to be imposed on Míla and also that amendments had to be made to the wholesale agreement between Síminn and Míla as aforesaid and as described further in ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.* The ICA's investigation

included an examination of the transfer of telecommunications systems from Síminn to Míla in the period leading up to Síminn's selling of Míla.

558. In the draft market analysis, the total effects on competition are assessed for Markets 3a and 3b, as well as the effects on individual geographical markets relating to the issue, and in 2024 the ECOI will begin market analyses for leased line markets, both terminal and trunk line segments. The competitive impact of the transfer of telecommunications systems referred to by Ljósleiðarinn will also be considered as applicable to the relevant markets. The aforesaid is addressed in Appendix A in Chapter 1.1.2, and its effects on Míla's and Síminn's supply of services are addressed in Chapter 4.3.6 and 5.5.2.3 of the Appendix. The draft also addressed the wholesale agreement between Síminn and Míla and the settlement between the ICA and Ardian in Chapter 6.1.3.2, with a summary in Chapter 6.1.3.8. Chapter 7 in Appendix A includes a detailed discussion of these issues in connection with the discussion of competition problems in the relevant markets.

559. The ECOI's draft market analysis included a consideration of Míla's vertical integration with reference to the wholesale agreement between Síminn and Míla and the transfer of telecommunications systems in the time leading up to the merger, as well as the vertical integration of Ljósleiðarinn, Tengir and Snerpa in Chapter 6.1.5.9, cf. the same chapter in Appendix A.

560. Although the ECOI analyses certain electronic communications markets as described here in accordance with the guidelines and recommendations of the EU and ESA, the total strength of the relevant companies is also taken into consideration, both in general and by individual geographical markets, which Ljósleiðarinn considers to be lacking in the draft. In that regard, consideration is given to various factors that may lead to companies being able to operate without consideration of competitors and customers, which influences the assessment of significant market power. This assessment is based on the potential barriers to access, financial strength, technical or commercial advantages, vertical integration, substitutability products and services, the bargaining power of buyers and sellers, control of facilities that are difficult to imitate, economies of scale, synergistic effects on product supply, long-term access agreements etc., cf. what is stated in the ESA guidelines of 16 November 2022 on market analysis and the assessment of significant market power in electronic communications markets.³³ Assessment of significant market power therefore includes evaluating whether a company in the individual geographical markets has sufficient strength to operate without having to consider competitors and customers, and this includes an examination of influencing factors other than just the market share in the relevant Markets 3a and 3b, as previously noted.

561. With reference to all the aforesaid, the ECOI cannot agree with Ljósleiðarinn's criticism that the aforesaid effects on competition have not been examined or that they have been underestimated in the relevant market analysis of Markets 3a and 3b. As has been noted, the effects of the transfer of the relevant telecommunications systems, as relevant, will also be examined in more detail in the market analysis of the above-mentioned leased line markets.

33

See: <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA%20New%20Guidelines%20on%20market%20analysis%20and%20SMP%20assessment.pdf>

The connection between Síminn and Míla constitutes a technical lockdown

562. Ljósleiðarinn's comments on the first consultation include, on page 19-20:

"As for the effects of the aforesaid exclusive purchase agreement between Síminn and Míla and its effect on the markets under consideration in this market analysis, Ljósleiðarinn considers that no analysis has been carried out of its effects on Markets 3a and 3b.

In the Ardian merger case it was pointed out that it was technologically impossible for Síminn to trade with parties other than Míla, which can be traced to the fact that assets were transferred from Síminn to Míla at the turn of 2020/2021. More precisely, the decision states that Síminn has become technologically dependent on Míla for the provision of technological services to its customers at retail level. According to Ljósleiðarinn, the longer that Síminn is in a binding long-term contractual relationship with Míla, the more technologically dependent or locked in with Míla Síminn will become. Síminn will be dependent on Míla's technical systems and experts to be able to provide electronic communication services on the retail market. Síminn will also become dependent on Míla for the purchase of services from other wholesale companies. In the opinion of Ljósleiðarinn, the aforesaid technological lock-in has evident and immense effects on both Markets 3a and 3b.

Through the transfer of the telecommunication assets, the grounds for the exclusive purchase agreement between Síminn and Míla are fixed in place. Síminn will subsequently be dependent on technical systems and experts from Míla to be able to provide electronic communications services in the retail market and Síminn will also be dependent on Míla to procure services from other wholesale companies. To provide electronic communications services, Síminn must now depend on services from Míla and Míla is concomitantly dependent on Síminn for the sale of its products.

[...]

Ljósleiðarinn's comments in the Ardian merger case also included a more detailed discussion of what Ljósleiðarinn calls "other risks" due to the transfer of ownership of Síminn to Míla in 2020/2021. Therein it is stated that with the transfer, Míla gained a dominant position and the ability to intertwine services provided over fixed networks, mobile networks and the internet, and the ability to attract customers. Míla will be in possession of telecommunications assets which no other competitor at the same marketing stage has or can acquire in the foreseeable future. These assets have a great network effect, such as regarding the sharing of trunk line connections. Míla can bundle products and offer prices that no other electronic communications companies at wholesale level can offer. In the opinion of Ljósleiðarinn, there is a total lack of discussion regarding the effects of the dominant technological position which Míla has now achieved due to the aforesaid transfer of ownership of Síminn assets to Míla in the time leading up to the

purchase, and the long and short term effects thereof on the development of Markets 3a and 3b.

The ECOI's position

563. Ljósleiðarinn points out that Síminn is dependent on Míla following the transfer of telecommunications systems, IP addresses and AS numbers from Síminn to Míla. That Síminn is technologically dependent on Míla, which means that Síminn is unable to trade with any parties other than Míla. Ljósleiðarinn considers the aforesaid effects to be inadequately addressed in the draft market analysis, and also the effects on Markets 3a and 3b.

564. The ECOI's comments to the ICA, dated 9 March 2022, regarding the announcement of the merger of Ardian and Míla due to Síminn's sale of Míla, addressed the above-mentioned transfer of telecommunications systems from Síminn to Míla, stating that this transfer should inevitably be the focus of the ICA's investigation of the merger, as the transfer is directly linked to the sale of Míla. Market participants also described the effects of this transfer of systems to Míla, including Ljósleiðarinn, which in its comments to the ICA specified that the transfer of telecommunications systems as part of the merger had effects that would be wide-reaching, multifaceted and harmful for competition, and increase the trade between Míla and Síminn with a long-term wholesale agreement.

565. The ICA's investigation of the merger and the Authority's statement of objection resulted in Ardian entering into a settlement with the ICA on amendments to the wholesale agreement between Míla and Síminn, as well as conditions intended to ensure Síminn's freedom to trade with Míla's competitors. ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.* included a detailed discussion of the aforesaid transfer of systems, IP numbers and AS numbers and the effects of the wholesale agreement between the companies, which led, among other things, to obligations being imposed on Míla to respond to negative effects from the merger on competition and to make Síminn more independent of Míla. Regarding this, the aforesaid ICA Decision no. 16/2023 states the following:

"Through amendments to the wholesale agreement between Síminn and Míla, in accordance with the settlement, Síminn was ensured more freedom to trade with Míla's competitors with the consequent positive effects for competition. There remains a strong business relationship between Síminn and Míla, including in the transfer of systems and services from Síminn to Míla in the time leading up to the sale. In light of the aforesaid, Míla has undertaken to take no action that limits Síminn's independence and freedom to trade in this regard, subsequent to the merger. Síminn has also signed a declaration whereby the company states and guarantees that it will at each time be capable of purchasing telecommunications service from Míla's competitors without the intermediation of the company."

566. To ensure the aforesaid and follow up on the part of the ICA, Síminn signed a declaration in confirmation thereof which was enclosed as an appendix to ICA Decision no. 16/2023. There was also a prohibition against Míla's anti-competitive bundling and tying, cf. Article 7 of the ruling in ICA Decision no. 16/2013, regarding, among other things, the transfer of the relevant systems and the potential disruption of competition that may result. In other regards, see the aforesaid decision of the ICA and the conditions attached to the merger due

to the comments from Ljósleiðarinn. Notwithstanding the aforesaid ICA decision, the effects of the transfer of the relevant systems to Míla and its effect on the company's market power were discussed in detail in the market analysis of wholesale Markets 3a and 3b. Therein it was considered that the wholesale agreement between Síminn and Míla and other connections between the companies entailed that the companies continued to share significant shared interests that have, at least to some extent, characteristics of vertical integration and had to be taken into consideration when assessing Míla's market power in the relevant markets.

567. Taking all of the above into account, the ECOI cannot agree with Ljósleiðarinn's comments that the draft market analysis includes no consideration to the aforesaid transfer of telecommunications systems to Míla and no assessment of the effects thereof and Síminn's independence on Míla's market power. Otherwise, the ECOI refers to the Office's discussion and position in Chapter 4.1.1 and 6.1.1 in Appendix A regarding, among other things, market analysis of the electronic communications market and the ECOI and ICA's different procedures and surveillance thereof.

Conditions for the Ardian settlement regarding prohibition of anti-competitive bundling and tying – Number of connections does not correctly reflect the market power of companies

568. Ljósleiðarinn's comments on the first consultation include, on page 26-28:

Article 7 of the Ardian settlement contains a provision whereby anti-competitive bundling and tying is prohibited, stating that Míla shall at a minimum offer the following wholesale services/products to customers and ensure that those services and products are adequately distinct and independent of each other in terms of prices and other conditions, and also in the operation of the company, agreements and billing, including cost estimation, presentations, sales, prices and conditions:

- a. Leased line service with all technology (transmission mediums and protocols) in the access networks (including to mobile phone transmitters and on the corporate market, plus dark fibre).*
- b. Leased line service with all technology (transmission mediums and protocols) in the trunk network (including separately for IP-MPLS service, plus black fibre).*
- c. Local loop leasing in copper and fibre-optic networks, if technically feasible.*
- d. Bit streaming service in copper and fibre-optic networks (including via different access routes and for transmission by different scales for quality and priority, including for the needs of VoIP, IPTV and general internet services).*
- e. Internet services*
- f. International connections*

It is also stated that if a customer purchases one or more products or services specified in Paragraph 1, Míla may not impose a condition that the customer must also purchase other products or services from the company that are listed in items a-f. Míla is likewise prohibited from selling other products than those listed in items a-f on the condition that those products are purchased with products in items a-f.

If Mila offers wholesale bundles that include at least one product or service specified in Paragraph 1, this may not be done in a manner that excludes or limits competition from Mila's competitors who do not have as wide a product range. This includes at a minimum a prohibition against pricing or trading conditions for wholesale bundles that are such that the customer has no or limited incentive to purchase, on the one hand, part of their wholesale requirements from Mila and, on the other hand, part from Mila's competitors or to use their own systems in part. It also entails a prohibition against trading conditions or technological actions that are likely to lead to the same result.

It is noteworthy that due to the merger, the ICA assesses Mila's position to be stronger than before as now, in addition to the company's activities in which it has engaged for many years, the company is also in possession of new telecommunications networks and systems that previously were with Síminn's wholesale department, an IP-MPLS network, a RAN distribution system and an internet gateway (international connections). The merger investigation and consultation with stakeholders revealed Mila's capacity and plans to increasingly offer integrated products and services, i.e. tying or bundled types of service that are or usually would be offered as a single service, or may not have been offered before as part of Mila's activities. It has been established that Mila has in this manner gained the capacity and incentive to exclude its competitors, some of whom are also dependent on Mila as customers for data transfer, from important unbundled resources and, depending on the situation, from a group of customers, by tying or bundling wholesale telecommunications services.

In the ICA's assessment, Mila is in a position to offer highly varied and integrated wholesale services/products/bundles at advantageous terms. Mila has the capacity and incentive to achieve a certain profit margin in a more distributed manner from multiple integrated bundled service aspects in a business relationship with its customers, and satisfy their extensive wholesale requirements in a manner more diverse than that of competitors, with one bundled product/service, and with potential harmful effects for competitors and competition. Items a to f in Paragraph 1 of Article 7 in the settlement list all types of wholesale services in Mila's activities during the negotiation of the settlement, excluding services and products directly connected with Mila's mobile network (RAN distribution and other active mobile network equipment, leasing of facilities on inactive mobile network infrastructure such as towers and masts, and housing or connected facilities for mobile networks). In accordance with the provision, Mila must ensure that wholesale services/products are sufficiently separate and independent of each other in the manner described in Paragraph 1 of Article 7.

Another noteworthy aspect in this context is that the ICA concludes that one competitive market relevant to the case could probably be defined as wholesale radio access network services, i.e. via radio access networks (RAN) and active transmitter station equipment, in the manner described above. However, in light of the ICA's findings concerning the effects of the merger and the conclusion of the case by settlement with the merging parties, it is not necessary to take a definite stance regarding the definition of this product or service market.

In Ljósleiðarinn's assessment, there does not seem to be any consideration of the aforesaid factors, which cannot but be seen as being directly or indirectly relevant to the markets under consideration in the market analysis. From the conditions of Article 7 it can be inferred that connections and interactions between markets related to Markets 3a and 3b are evident, in the ICA's assessment. It is also noteworthy that the instructions regarding a prohibition against bundling in Article 7 cannot but be seen to apply also to markets that are under consideration in the market analysis. The market analysis should have included a consideration of the aforesaid factors and provided ample reason to examine and assess Míla's market power in the relevant markets.

Ljósleiðarinn does not find it an acceptable explanation that it is unnecessary to consider the aforesaid factors as they were addressed in Míla's settlement with the ICA. It nevertheless remains that the effects of these factors are indisputable and considerable on the markets under consideration in the market analysis. Therefore it is hard to conclude otherwise than that these factors need to be examined and potential future effects estimated.

The Ardian merger decision includes a summary of the wholesale market for bitstream connections over copper and fibre-optic local loops.

Hlutdeild miðað við ytri tekjur af gagnaflutningi um heimtaugar (markaður c)	2019	2020	2021
Míla	[65-70]%	[65-70]%	[65-70]%
Ljósleiðarinn	[20-25]%	[20-25]%	[20-25]%
Tengir	[5-10]%	[5-10]%	[5-10]%
Samtals	[100,00]%	[100,00]%	[100,00]%

Table 3: Wholesale market for bit streaming connections over copper and fibre-optic local loops. Source: ICA Decision No. 16/2023, Ardian acquisition of Míla ehf. from Síminn hf.

According to the ICAs assessment, Míla is the largest participant on the wholesale market for bitstream connections over copper and fibre-optic local loops based on external income in the year 2021 with a share of 65-70%, whereas Ljósleiðarinn has [...] % and Tengir has [...] %. If the market is analysed by whether copper or fibre-optics are used, Míla has a 100% share of copper and [...] % in fibre-optics, Ljósleiðarinn has [...] % and Tengir has [...] %. If share is calculated based on the number of connections in 2021 instead of external income, Ljósleiðarinn's share increases. Míla still remains the largest company with regard to share as it has a [...] % share, Ljósleiðarinn has [...] % and Tengir has [...] %.

If the market is divided by copper or fibre-optic connections, Míla has a 100% share in copper whereas for fibre-optics Ljósleiðarinn is the largest with a [...] % share, Míla has [...] % and Tengir has [...] %. This assessment raises questions about the statistical analysis employed in the ECOI's market analysis. Therein the main

emphasis is placed on the number of connections rather than turnover, as is the practice in merger cases.

It is not evident that the number of connections reflects the market power of companies in the relevant markets. There is a significant difference between these two indicators, which most probably means that it is necessary to examine both of them more closely rather than relying solely on one of them, as the ECOI seems to do."

The ECOI's position

569. Ljósleiðarinn brings up the ICA's conditions regarding bundles and criticises the ECOI's definition of the relevant markets, noting in particular that Míla's market power must be assessed comprehensively by taking into consideration the company's supply of services in markets other than those assessed in the draft market analysis. Ljósleiðarinn points out that the ICA concluded in the Míla-Ardian merger case that it was probably possible to define one competitive market related to the case that included wholesale RAN services, i.e. via radio access networks. Ljósleiðarinn points out that this is not addressed in the ECOI draft market analysis. Ljósleiðarinn also notes that market shares in the ECOI draft are based on numbers, whereas the ICA's decision in the Míla-Ardian merger case is based on income, and that there is a significant difference between these methods for measurement. Ljósleiðarinn considers that both these methods would probably have to be applied.

570. As for Ljósleiðarinn's comments on the definition of the relevant markets in the ECOI draft market analysis on one hand and the ICA's merger case on the other, see Ljósleiðarinn's comments in Chapter 4.1.1.1 above and the ECOI's position on these comments in the same chapter. As specifically regards radio access network services, the ECOI refers to the fact that for the first time, the draft included the assessment that mobile network solutions (4-5G) provided substitutability with copper and fibre-optics in Market 3b via mains-connected routers at specific locations of use, but not in Market 3a. The draft included a discussion of mobile networks and RAN systems, for example in Chapter 4.2.6 in the draft (currently Appendix A) and the ECOI refers to that discussion.

571. As stated in Paragraph 2 of Article 18 of the Regulation on market analysis, it is possible to measure market share based on turnover, volume, connected lines or the number of subscribers, depending on what is most significant on the relevant market. Also that it is possible to measure market share based on more than one benchmark at each time. Market share can therefore be calculated based on volume or turnover (income). The method would depend on the nature of each market. It may generally be considered that the most appropriate method of calculation for wholesale products is based on quantities, whereas for retail it should be based on profitability. If, on the other hand, there is a large discrepancy between prices, the method of calculation based on volume would not give an accurate indication of the position on the market and therefore market share is usually calculated based on sales revenue rather than volume of sales. If market share is higher in revenue than volume this indicates that the market power is obtained with higher pricing than that of competitors.

572. In the market analyses of the ECOI and other European regulatory authorities, the market power of companies in individual wholesale markets is usually assessed based on quantity or volume rather than income. This is clearly reflected in the ECOI's previous decisions, as the scale of measurement based on quantity often leads to comparable and in many cases more accurate assessments than when based on income, as it often proves difficult to divide income by geographical areas and services by specific telecommunications markets, e.g. between Markets 3a and 3b, which are closely related, and in general there is extensive internal use of products in Market 3a over to Market 3b.

573. It has also been the case that comparable findings are obtained when market share is assessed at the wholesale level of telecommunications markets, as the price differences for individual services and between geographical areas is generally not so great as to have a decisive effect on the findings. Examples of this can be seen in ICA Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*, where market power was assessed based on both revenue and quantity on the retail market, and the findings were usually comparable irrespective of which method of measurement was applied, with the exception of the telephone market, where Síminn was indicated as having a larger market share based on revenue, and where Síminn has decisive market power so this did not have an effect on the determination of dominant position. It also proved difficult in the above-mentioned ICA decision to make a comparable assessment of the position of companies in the market for bundled electronic communications services based on revenue or quantity so that these findings could be compared to each other. Paragraph 202 of the same decision included the ICA's reservation regarding the assessment by market revenue for Premier League football:

"The ICA nevertheless considers it proper to make a reservation regarding this presentation of share based on income from retail as it may be assumed that Síminn's position would be much stronger if the assessment was based the number of subscribers. This is due to the fact that Síminn has very low revenue when Síminn Sport, where Premier League football is broadcast, is sold as part of "Sjónvarp Símans Premium" and "Heimilispakkinn". Thus, for a long time, the price for Síminn Sport was ISK 1,000 as part of these packages, as opposed to ISK 3,500 when the service was sold separately. Both Sýn and Nova have, on the other hand, sold Premier League football separately."

574. ICA Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*, refers to the ECOI's geographic segmentation in Decision no. 5/2023, where it was assumed that the whole country was defined as a single geographical market. There was a reference to that definition being under revision, which later resulted in changes thereto, cf. what is stated in the draft market analysis discussed here. The ICA noted that although in telecommunications law, market analysis seemed to focus on competitive conditions in smaller areas, due to factors such as the increased expansion of smaller local access networks and systems, the merger of Ljósleiðarinn and Sýn could only have limited vertical effects or conglomerate effects on the relevant markets, as they were downstream of the markets for data transfer via trunk lines and terminating segments of leased lines. For this reason, it was not considered that the findings in the merger case were in any way affected by whether the relevant service markets were assessed at national level or whether they could be divided into smaller competitive areas. In the merger case, the ICA therefore based the geographical

definition of markets on the entire country when assessing the effects on competition before and after the merger. A narrower definition would also have caused difficulties with the classification of revenue by geographical area, as electronic communications companies did not itemise revenue in their accounts by geographical area, in addition to which the income entered for service items can differ by companies and cause errors in comparison between them.

575. Paragraphs 454 and 455 of ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.*, states the following about the aforesaid itemisation of revenue.

"Therefore, if it is assumed that most of the customers of both companies purchase local loop leasing and bitstream together, it seems that Ljósleiðarinn enters a larger part of the income from local loop leasing (the more valuable market) than does Míla. This can result in an overestimation of Ljósleiðarinn's share in local loops and an underestimation of bitstream, which corresponds to the difference between share depending on whether it concerns quantities or revenue in both categories. In this regard it may be pointed out that if share is calculated based on the total revenue of each company from local loop leasing and bitstream, then Míla's share in 2021 would be [...]%, Ljósleiðarinn's would be [...]% and Tengir's would be [...]%. This share is consistent with quantities, as share based on quantities is similar irrespective of whether local loop leasing or bitstream quantities are considered. This share also indicates that Míla has the largest share in this field, and therefore Míla is the most powerful company in terms of share."

576. In spite of the aforementioned difficulties in assessing market share based on revenue at wholesale level, these calculations are usually consistent with the assessment of share based on quantities or volume, except when market-dominant companies have the power to charge higher prices than their competitors generally can. Then the calculated market share of the market-dominant company would be higher based on revenue rather than on quantities or volume. As prices are similar between Icelandic electronic communications companies, this difference is insignificant and does not have an effect on the assessment of dominant position in the draft, as that assessment is also based on other influencing factors, such as barriers to access, financial strength, technological or commercial advantage, vertical integration, substitutability products and services, negotiating power of buyers and sellers, control of facilities that are difficult to replicate, economies of scale, cumulative effects with regard to the availability of supplies, long-term access agreements etc., cf. what is stated in Article 19 of the Regulation on market analysis and the ESA guidelines of 16 November 2022 on market analysis and the assessment of significant market power in electronic communications markets.³⁴ Assessing significant market power therefore includes evaluating whether a company has the power to operate without having to consider competitors and customers, sufficient strength to operate without having to consider competitors and customers, and this includes an examination of many influencing factors other than just the market share, as previously noted.

34

See: <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA%20New%20Guidelines%20on%20market%20analysis%20and%20SMP%20assessment.pdf>

577. With reference to all the aforesaid, the ECOI rejects the aforesaid criticism of the market definition and assessment of the market share and market power of the parties on the relevant markets in the draft analysis of wholesale Markets 3a and 3b.

Insufficient account of relationship between Markets 3a/3b and Market 14 (trunk line market)

578. Ljósleiðarinn's comments on the first consultation include, on page 4-5:

“Ljósleiðarinn is of the opinion that the failure to discuss the relationship between Market 14 (trunk line market) and the downstream Markets 3a and, especially, 3b is a serious flaw. Although this discussion primarily concerns the analysis of Markets 3a and 3b, Ljósleiðarinn considers it necessary to discuss the relationship between Markets 3a and 3b on the one hand and Market 14 on the other. Ljósleiðarinn believes that the relationship and interaction between these markets is significant. Míla's dominant position on Market 14 is of great importance in this respect. In this context it is sufficient to note that in many locations, access to Markets 3a and 3b relies entirely on access to Míla's trunk line system on Market 14. In Ljósleiðarinn's opinion, the relationship between and impact of Market 14 on the markets of this analysis are obvious.

[...].

On 20 December 2021, the ECOI published a notification on its website reiterating that obligations on Market 14 applied to Míla's IP/MPLS network. This was withdrawn by ECOI Decision No. 3/2022. Míla's IP/MPLS network is the backbone of Access Options 3 and 4 on Market 3b, and therefore the relationship between markets 3 and 14 is clear. The aforementioned relationships demonstrate the importance of assessing the relationship between these markets as a whole, and that their interaction and influence on each other must be considered when assessing the position of market participants.”

The ECOI's position

579. The above comment by Ljósleiðarinn criticises the fact that the draft of the ECOI's analysis of Markets 3a and 3b does not contain an assessment of their relationship with the trunk line market.

580. Ljósleiðarinn is incorrect in its claim that the position of entities on the trunk line market has not been discussed, as discussion of changes to that market following ECOI Decision No. 5/2021 appears in Chapter 1.1.2 of the Preliminary Draft (now Annex A), and their impact on Markets 3a and 3b is discussed in the current draft market analysis. Chapter 3.1.1, which concerns trunk networks, also contains a discussion of, among other things, access to telecommunications networks, their deployment and usage. Access to cost-effective trunk line connections for services that access networks need to connect to service providers is also discussed in Chapter 4.3.6 of the draft. Paragraph 1179 of the aforementioned section states the following: *“On 1 January 2021, Síminn's IP/MPLS network system migrated to Míla. It is clear that no other electronic communications company in Iceland operates a nationwide*

IP transmission network or any transmission network that comes close to being as robust as the aforementioned Míla network. Ljósleiðarinn has now purchased Sýn's backbone network, based on a single fibre-optic thread in the NATO cable, and has entered into a 10-year contract with the State for the lease of two threads in the cable. However, Ljósleiðarinn does not own trunk feeders from the aforementioned NATO cable into areas located at varying distances from the cable, meaning that trunk lines must either be installed or leased from other operators that own trunk lines, primarily Míla."

581. The assessment of significant market share considered various determinants such as barriers to entry, financial strength, technological or commercial advantage, vertical integration or signs thereof, substitutability products and services, contractual strength of buyer and seller, control of facilities that are difficult to imitate, economies of scale and scope, synergy effect in product supply, long-term access agreements, etc., cf. Article 19 of the regulation on market analysis and the ESA guidelines of 16 November, 2022 on market analysis and the assessment of significant market power in electronic communications markets. The aforementioned factors were assessed, both in general and on individual geographical markets, in the section of the draft that concerns Míla's strong position on the trunk line market. Reference may be made to e.g. Paragraph 1476 on barriers to entry, Chapter 6.1.5.4 on economies of scale, and Chapter 6.1.5.9 on vertical integration. Furthermore, a detailed discussion of these issues can be found in Chapter 7, which deals with competition problems.

582. In other respects, the ECOI wishes to state that in 2024, it will initiate a specific analysis of the trunk line market. The ECOI refers to the discussion of market analyses and defined markets as a result of the feedback from Ljósleiðarinn in Chapter 4.1.1.1 above and the ECOI's position on these comments.

583. In view of all the above, the ECOI does not agree with the aforementioned comments by Ljósleiðarinn to the effect that the draft of the analysis of Markets 3a and 3b fails to address the relationship between these markets and the trunk line market.

Ljósleiðarinn/Sýn merger did not create nor strengthen a market-dominant position

584. Ljósleiðarinn's comments on the first consultation include, on page 3-4:

"It is worth pointing to the ICA's conclusion that the merger of Ljósleiðarinn and a part of Sýn's operations does not create or reinforce a dominant position on the relevant markets. Furthermore, the ICA's investigation did not reveal any other possible effects on competition, i.e. adverse vertical or conglomerate effects which would significantly alter competition and thus provide reason to intervene in the merger. It is important, in Ljósleiðarinn's opinion, to keep the aforementioned conclusion in mind when assessing operators' position on Markets 3a and 3b in this analysis."

The ECOI's position

585. The ECOI agrees with Ljósleiðarinn's aforementioned remark on ICA Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network* and made the same

assessment of the matter in its comment to the ICA. The ECOI does not consider the discussion in the draft market analysis to conflict with the results of the aforementioned ICA decision, which is based on a general assessment of Ljósleiðarinn's nationwide market power. Nor does it seem that Ljósleiðarinn maintains this. The ECOI notes, however that despite the aforementioned assessment, Ljósleiðarinn may nevertheless have significant power on specific parts of the market in certain parts of the country, even though the merger did not create or strengthen a dominant market position for the company on a national basis.

Ljósleiðarinn plans to bring competition to rural areas

586. Ljósleiðarinn's comments on the first consultation include, on page 51:

"As explained and stated in public discussion, Ljósleiðarinn plans to bring competition to Market 3b and the adjacent Market 14 across the country, with increased access, quality and more cost-effective high-speed services.

Ljósleiðarinn's purchase of Sýn's trunk network and lease of part of the NATO cable are the company's first steps towards competing with Míla on a nationwide level in wholesale electronic communications services, primarily on Market 14. However, as previously noted, Míla's advantage is still quite clear. Ljósleiðarinn plans to establish control over permanent fibre-optic connections to as many densely populated areas of the country as possible. [...].

[...].

[...]."

The ECOI's position

587. The ECOI will monitor trends in product offerings and competitive conditions on the markets in question and on the trunk line market (Market 14), and will respond, if necessary, by updating its analysis during the intended period of validity of the analysis.

588. It is also worth noting that the ECOI's analysis discusses the advantage difference between Míla and Ljósleiðarinn on Market 14 in spite of the fact that Ljósleiðarinn now has access to two fibre-optic threads in the NATO cable. See the relevant sections.

6.1.2 Míla

The ECOI's discussion of ICA Decision no. 16/2023 regarding Ardian's acquisition of Míla – Correspondence between director of Síminn and director of the ECOI

589. Míla's comments on the first consultation state the following on page 22 of the company's comments:

"Míla makes serious comments to the ECOI's claim in its discussion of ICA Decision no. 16/2023 regarding the acquisition of Míla by Ardian, and particularly the list of

changes to the wholesale agreement between Míla and Síminn in this context. These changes are of no significance to the matter at hand, and even less so to the assessment of significant power on Markets 3a and 3b. Míla's opinion is that this demonstrates a lack of objectivity towards Míla. The same account is not given of the changes to Ljósleiðarinn's agreement with Sýn prior to the ICA's approval of Ljósleiðarinn's purchase of Sýn's trunk network, but it is clear from the aforementioned decision that such changes were made with the aim of having the acquisition approved.

Míla also strongly objects to the conclusion that the ECOI draws from the ICA's assessment, published in Decision no. 24/2023, directed towards Síminn and the correspondence referred to in Paragraphs 1410 and 1411. The ECOI's conclusions and initial assessment presented therein are in substantial contrast to its statements elsewhere in the aforementioned consultation document. The ECOI thus confirms elsewhere, as per correspondence with Míla, that Síminn has a surprisingly significant number of connections with Ljósleiðarinn. It is difficult, in light of this, to agree with the ICA's discussion of the aforementioned correspondence between the directors of Síminn and ECOI, which claims that Síminn is unlikely to take advantage of the competitive restraint that the Authority's settlement with Ardian and Míla affords Síminn. This is a serious contradiction of ECOI's prior confirmation regarding the impact of Síminn's agreement with Ljósleiðarinn and the fact that the ECOI was surprised by the number of Síminn's connections. Míla finds it very suspicious that the ECOI draws these conclusions from this correspondence, as the correspondence in question had been ongoing for some time and had nothing to do with Míla after its sale to Ardian, and is therefore of no relevance to the analysis in question here. The inclusion of this discussion in the analysis of Markets 3a and 3b demonstrates a serious lack of objectivity towards Míla.

Míla also vehemently objects to the conclusion that the ECOI emphasises in Paragraph 1409, i.e. that the relationship between Míla and Síminn and the wholesale agreement between the companies have an effect equivalent to vertical integration. In view of the principle of equality and non-discrimination in the Administrative Procedures Act and the ECOI's statutory duty of objectivity, the ECOI should also draw the same conclusions about the wholesale agreements of other network operators, particularly Ljósleiðarinn's agreements with Nova and Sýn."

The ECOI's position

590. The settlement with the ICA, dated 15. September, 2022, approves of the acquisition of Míla by Ardian. The settlement entailed that the merging parties make substantial changes to the wholesale agreement between Síminn and Míla. That same day, the ICA announced the settlement on its website as follows:

"The ICA considers the changed ownership of Míla and its detachment from Síminn a positive step for competition in the telecommunications market. On the other hand, along with the sale, the parties involved made a long-term wholesale agreement which

would have created unprecedented barriers to competition. In addition, telecoms systems and wholesale operations were transferred to Míla in relation to the merger, reinforcing and potentially strengthening Míla's position. The above-mentioned concerns called for the ICA's intervention.

With a settlement signed on September 15th, the ICA has approved the merger with conditions. The settlement entails substantial changes to the wholesale agreement between the parties involved. In addition, Míla has committed to certain conditions for its operation, and Síminn has signed a statement on the company's disintegrated operations and commercial independence. With those commitments, the ICA believes the potential harmful effects and barriers to competition have been sufficiently removed or limited, laying a solid foundation for healthy competition for the good of consumers, businesses, and the community."

591. ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.*, states the following about the wholesale agreement between Síminn and Míla:

"In investigating the matter, the ICA focused on the wholesale agreement between Síminn and Míla which was submitted in the case. The agreement provided for Síminn's procurement of all major wholesale electronic communications supplies for a term of 20+5 years, and provided Míla with extensive exclusive purchase rights towards Síminn. The agreement meant that Síminn would be contractually bound to a long-term business relationship with Míla while Míla's competitors would be practically excluded from doing business with the biggest provider of electronic communications services in the country. The wholesale agreement also contained a provision on close vertical cooperation between the companies, which had the purpose, or effect, of preventing competition. Thus it seemed that the agreement, if left unamended, would have placed harmful and unlawful limitations on Síminn's ability to enter into agreements with other wholesalers of electronic communications services and operators of electronic communications infrastructure. The agreement was also considered likely to maintain various characteristics of vertical integration, which the sale of Míla should otherwise have eliminated."

592. The above indicates that the ICA investigation resulted in changes to the original wholesale agreement between Síminn and Míla so that it complied with competition law, without which the ICA was unable to accept the merger in unchanged form. It was considered that Míla operates electronic communications infrastructure in all Iceland and is the largest and most important wholesaler of electronic communications services in Iceland. Síminn is the most powerful retailer of electronic communications services and consequently the largest buyer of wholesale electronic communications services. It was therefore of great importance to consumers and the economy that Síminn's sale of Míla was carried out without distorting competition in the important markets in question. Thus it is clear that Síminn cannot blame the ECOI for the merger not being approved like Síminn originally expected, as the agreement would have distorted competition considerably and been rejected by the ICA.

593. To this may be added that despite the above-mentioned settlement and conditions in ICA Decision no. 16/2023 on the merger, the ICA subsequently concluded in another case that Síminn and Míla's shared interests after the merger still has at least some signs of vertical

integration, cf. ICA Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*. These shared interests are evident in Síminn's correspondence with the ECOI, to which Míla refers in its comments above and supports the ICA's assessment of there still being signs of vertical integration between the companies despite the lack of ownership links. The ECOI considers it important to address this correspondence in the analysis for the purpose of assessing Míla's market power in the relevant markets.

594. The ECOI is of the opinion that non-discrimination was upheld in Síminn's sale of Míla and Ljósleiðarinn's purchase of Sýn's trunk network, as Sýn's sale of its assets and operations was on a much smaller scale than Síminn's sale of Míla. Furthermore, Ljósleiðarinn and Sýn's service agreement was less extensive than the service agreement between Míla and Síminn, both in terms of the contractual term and obligations, and did not seem to involve exclusive purchasing or the equivalent thereof like Síminn and Míla's service agreement did, cf. the more detailed discussion in ICA Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*.

595. The ECOI notes that, with Síminn's sale of Míla to Ardian, the merging companies agreed to certain conditions for the merger, primarily changes to the long-term wholesale agreement between Míla and Síminn. Following ICA Decision no. 16/2023, *Ardian's acquisition of all Míla ehf.'s share capital by Síminn hf.*, the ICA subsequently ruled in a separate case that Síminn and Míla's current shared interests still show signs, at least in part, of vertical integration, cf. ICA Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*. Accordingly, the ECOI considers it appropriate to refer to previous ICA decisions in the consultation document concerning the behaviour of and shared interests between Síminn and Míla despite Síminn's sale of Míla, as this discussion is relevant to the assessment of Míla's market power, cf. Míla's comments on the ECOI's discussion of ICA Decision no. 16/2023, which states that, despite the conditions that the merger imposed upon Míla, there is still some evidence of vertical integration between the companies due to the wholesale agreement.

596. The ECOI objects to the claim that it has been insufficiently objective towards Míla in this market analysis and in market analyses in general. With this analysis, the ECOI relaxes obligations on Míla in many regions that comprise about 80% of the country's population. As stated in the comments from e.g. Ljósleiðarinn, Tengir and Nova, these companies believe the ECOI is acting too hastily in relaxing obligations on Míla. Thus it is clear that each company has its own opinion on the matter.

597. The wholesale agreement between Síminn and Míla, as part of Síminn's sale of Míla to Ardian, can be regarded as a description of how Míla's market position, revenue and future opportunities were considered by the seller as the "sales product" for which the buyer is paying. The changes that the companies had to make to the agreement for the Míla/Ardian merger to be approved draw attention the way in which the agreement in its unamended form would have violated competition law and strengthened Míla's position through vertical integration with Síminn. Nevertheless, the agreement in its final form still bears some such features, which indeed strengthens Míla's position. Of course, these features are weaker after these changes than in the original agreement.

598. In the ECOI's opinion, an assessment of Míla's competitive power must take this agreement into consideration when looking towards the future. The establishment of this agreement, and Síminn's willingness to substantially commit the company on a long-term basis in order to guarantee Míla business and revenue, though this commitment had to be partially withdrawn, are relevant to this assessment. The ECOI thus cannot agree that the agreement and the changes made to it during merger proceedings are of no significance when assessing Míla's market power. The same applies to the aforementioned correspondence between the directors of Síminn and the ECOI, which the ECOI believes to include issues that may be considered lobbying by Síminn on behalf of Míla and a criticism of the ECOI's alleged inaction with regard to Ljósleiðarinn. The ECOI's opinion is that, after the sale of Míla, Síminn should not be acting on behalf of another network operator, but instead appreciate the fact that there are more reliable options available at the wholesale level.

599. It is then not correct that the ECOI fails to discuss the sale of Sýn's trunk network to Ljósleiðarinn and the long-term agreement between those companies. A detailed discussion on the matter can be found in Chapter 6 of Annex A.

The ECOI's discussion of Ljósleiðarinn's wholesale agreement with Sýn

600. Míla's comments on the first consultation state the following on page 23 of the company's comments:

"The ECOI's discussion of Ljósleiðarinn's wholesale agreement with Sýn demonstrates a much higher degree of objectivity than its discussion of Míla's wholesale agreement with Síminn. In this context it is quite clear that the ECOI was involved as a consultation body in the merger case involving Ljósleiðarinn's acquisition of Sýn's trunk network and the aforementioned wholesale agreement, and undoubtedly had access to most if not all evidence in the case. The ECOI should therefore be fully aware of the changes the merging parties made to the aforementioned wholesale agreement. Unlike the above-mentioned discussion of the agreement between Míla and Síminn, no account has been given of any such changes made to the agreement between Ljósleiðarinn and Sýn in order for the merger to go through.

It should also be pointed out that Ljósleiðarinn is publicly owned by three municipalities and in fierce competition with private companies, and has been successful in its market expansion efforts. Ljósleiðarinn already has a market share of around 65-70% in the Capital Region, which is the most profitable region in the country and has so far been used to keep prices in rural areas down with average prices determined by the ECOI. There is thus no rationale for the reference to market stagnation in Paragraph 1416.

Míla also points out that with Ljósleiðarinn's acquisition of Sýn's trunk and backbone networks, Ljósleiðarinn, which is a public company mostly owned by the City of Reykjavík, is now able to serve the vast majority of the country's population.

[...]."

The ECOI's position

601. Ljósleiðarinn has not been subject to any obligations, neither regarding pricing nor any other factors. Obligations on Míla have been relaxed, including in most regions where Ljósleiðarinn operates. Míla therefore has every opportunity to compete with Ljósleiðarinn on a commercial basis. Sýn's agreement with Ljósleiðarinn is not equal in scope, duration or obligation to the agreement between Síminn and Míla. The ECOI denies that it failed to treat these agreements with objectivity. Nor did the ICA act any further with respect to that merger by establishing conditions, as it did in the case of the Ardian/Míla merger. Sýn and Ljósleiðarinn indeed made some changes to the original draft of their agreement after the ICA's processing of the case. These changes are described in Chapter 6 of Annex A, though much of this discussion is confidential.

602. Míla claims that Ljósleiðarinn's market share in the Capital Region amounts to 65-70%. As stated in the analysis, this statement is incorrect.

603. Regarding Míla's claim that Ljósleiðarinn is now able to serve the vast majority of the population after gaining access to two threads in the NATO cable, the ECOI has responded to similar comments elsewhere in this document. Furthermore, the ECOI's analysis gives an account of the advantage difference between Míla and Ljósleiðarinn in terms of trunk network connections across the country, in spite of Ljósleiðarinn's access to such connections. See the relevant sections.

Size and reach of Ljósleiðarinn

604. Míla's comments on the first consultation state the following on page 24 of the company's comments on Paragraph 1446:

"Chapter 6.1.4 deals with the overall size and profitability of major electronic communications companies and states, in Paragraph 1446 and elsewhere, that, of all electronic communications companies that either own fixed access networks or lease access to them, Míla is the only one whose reach is anywhere close to nationwide. Míla once again points out how important it is for the ECOI to update its analysis with reference to the changes resulting from Ljósleiðarinn's acquisition of Sýn's trunk network. As previously mentioned, Míla believes this acquisition results in an expansion of Ljósleiðarinn's network to the extent that, like Míla's, it is now almost nationwide."

The ECOI's position

605. Míla comments on the statement in Paragraph 1446 to the effect that of those companies who own fixed access networks, Míla's network is the only one whose network is anywhere close to nationwide. Míla is of the opinion that the ECOI must update its analysis to reflect Ljósleiðarinn's acquisition of Sýn's trunk network. Although other operators have built fibre-optic networks in Iceland, their reach is nowhere near nationwide, as is the case with Míla, in the ECOI's opinion. Míla's trunk network has an advantage over Ljósleiðarinn's in terms of connections into the various regions, and also has at its disposal a nearly nationwide access network. At the same time, Ljósleiðarinn's access network is far from

nationwide, as it only covers the Southwest Region. Despite the fact that Ljósleiðarinn has acquired Sýn's trunk network and currently has access to 2 threads in the NATO cable, the company's access network coverage is, as previously stated, far from nationwide as it only has local loops in part of the country. Ljósleiðarinn's acquisition of Sýn's trunk network did not mean that Ljósleiðarinn acquired a fibre-optic trunk; thus, in order to be able to take advantage of its investment, Ljósleiðarinn must lease infrastructure from Míla as well as pay the State for the usage of the NATO threads. The ECOI therefore does not consider it necessary to update its analysis in this respect, and is still of the opinion that Míla's is the only telecommunications network that approaches nationwide coverage.

Financial support from Ljósleiðarinn's owners.

606. Míla's comments on the first consultation state the following on page 24 of the company's comments on Paragraph 1449:

“Paragraph 1447 notes that Ljósleiðarinn is fully owned by Reykjavík Energy, which is in the public sector and mostly owned by the City of Reykjavík. Reykjavík Energy is financially strong in comparison to the electronic communications companies under discussion in the ECOI's analysis. In accordance with Article 10 of the Electronic Communications Act, Ljósleiðarinn should be financially separate from Reykjavík Energy's other operations as if they were two unrelated companies, and consideration should be given to the fact that competitive operations such as Ljósleiðarinn's are not subsidised by other of Reykjavík Energy's activities which enjoy exclusive rights or special privileges in sectors other than electronic communications. The ECOI has the role pursuant to the law, to monitor that electronic communications operations are financially separated from utility operations which enjoy monopoly or special rights in other fields than in electronic communications, and the ECOI has for this purpose, imposed various obligations on Ljósleiðarinn in recent years.

Further account is given of the ECOI's assessment that Ljósleiðarinn does not enjoy in a direct manner the financial strength of its owner more than other electronic communications companies from their owners, e.g. from pension funds which are the main owners of Siminn and Sýn, and Ardian France SA, which is the owner of Míla.

*Paragraph 1449 furthermore states that the deviations in the financial separation of Ljósleiðarinn and Reykjavík Energy, which the ECOI has identified during Ljósleiðarinn's period of operations, cannot, in the ECOI's opinion, be considered significant. The ECOI provides an account of its decisions in this regard and the recent ESA decision, which concludes that the four measures under consideration did not include State aid from Reykjavík Energy to Ljósleiðarinn in the understanding of the EEA Agreement. Míla points out that the ECOI's statement regarding the ESA decision is not entirely correct. The truth of the matter is that ESA's conclusion is that the aforementioned measures did not constitute unlawful State aid. Measure 1, discussed in the ESA decision, indeed constituted State aid, but upon further examination was considered to fall under the regulation on *de minimis* aid, and was therefore not considered unlawful State aid in the*

understanding of the EEA Agreement. However, it is clear that the authorities were required to notify of this measure before granting it, as clearly stated in the de minimis regulation. This was not done.

In view of this, it is clear that Ljósleiðarinn has certainly received financial support from its parent company.”

The ECOI’s position

607. Míla comments on the ECOI’s statement that the four measures under consideration by ESA did not constitute State aid from Reykjavík Energy to Ljósleiðarinn in the understanding of the EEA Agreement, but according to Míla, Ljósleiðarinn has indeed received financial support from its parent company. Míla’s comment is correct insofar as measure 1 does constitute State aid, but upon further examination by ESA, it was considered to be de minimis and thus not unlawful State aid in the understanding of the EEA Agreement. The ECOI will therefore make an appropriate amendment to the above Paragraph 1449 of the Preliminary Draft in respect of the above.

608. ECOI had previously identified in its decision the deviation to which Míla refers and considered it to conflict with Article 10 of the Telecommunications Act (Article 36 of the older Telecommunications Act of 2003), which requires the financial separation of telecommunications activities from other activities of entities with a monopoly in other sectors. The ECOI thus reiterates its assessment of the deviations to the financial separation of Ljósleiðarinn and Reykjavík Energy, which the ECOI had previously identified as insignificant. The ECOI is therefore still of the opinion that Ljósleiðarinn’s operations do not, in general, benefit from state subsidies and that the company operates according to market requirements.

Facilities for telecommunications equipment

609. Míla’s comments on the first consultation state the following on page 24 of the company’s comments on Paragraph 1466:

“Paragraph 1466 makes the claim that facilities for telecommunications equipment are lacking in large areas of the Capital Region and that Míla’s facilities are already in full use in various regions. This is wrong. Míla has not, to the company’s knowledge, denied any operators the use of its facilities in recent years, neither in the Capital Region or elsewhere. [...]. It is important that the ECOI corrects this obvious misstatement in its analysis.”

The ECOI’s position

610. It is positive that Míla declares that the company has sufficient space to rent facilities to third parties, as access to Míla’s facilities is vitally important to infrastructure and service competition on account of the company’s prior history of developing telecommunications systems across the country. Míla’s hosting facilities and connection points are an important part of the operation of services, not least of all in the connection of networks. The ECOI thanks Míla for this information and will amend this paragraph accordingly. This paragraph

can be found under the section on control over difficult-to-install facilities and relates to barriers to entry.

Nationwide fibre-optic networks

611. Míla's comments on the first consultation state the following on page 25 of the company's comments on Paragraph 1469:

"Paragraph 1469 states that the ECOI considers it unlikely that any operator would benefit from building new local loop networks nationwide. Míla does not agree with this. In this context it bears mentioning that Ljósleiðarinn has repeatedly expressed a desire to build new nationwide networks, and appears to be actively doing so already."

The ECOI's position

612. Here, the ECOI refers to nationwide local loop networks comparable to the copper networks Míla owned and operated before, i.e. a continuous and homogenous network with coverage to all residences and businesses in the country. It does not seem likely that any other local loop network will achieve such status in the future, not even Míla's fibre-optic network. The ECOI will provide better clarification for this paragraph.

Access to facilities

613. Míla's comments on the first consultation state the following on page 25 of the company's comments on Paragraph 1470:

"The claim in Paragraph 1470 that facilities are lacking is, as previous stated, a misstatement that must be rectified. There are no barriers to entry due to a lack of facilities."

The ECOI's position

614. The ECOI will amend this paragraph to reflect the previous comment. In this context, however, it should be noted that this discussion pertains not only to Míla's facilities but to various other operators as well, and it may not be the case that there is room everywhere to host multiple electronic communications companies' facilities.

Marketing costs

615. Míla's comments on the first consultation state the following on page 25 of the company's comments on Paragraph 1473:

"Sunk costs are discussed in Chapter 6.1.5.3. Paragraph 1473 refers to the cost of marketing. In Míla's opinion, this applies more to the retail market and much less so to the wholesale markets 3a and 3b."

The ECOI's position

616. All companies engage in marketing activities using finances that cannot be recovered. Marketing is a concept that extends beyond advertising in mass media, and encompasses all of a company's activities in product development, presentation of products and supply, co-operation with retailers on marketing initiatives, relations with both current and prospective customers, and pricing. The ECOI therefore upholds this paragraph and sees no reason to amend it.

Competition with the Míla bitstream system

617. Míla's comments on the first consultation state the following on page 25 of the company's comments on Paragraph 1476:

"Paragraph 1476 argues that new companies have found it difficult to compete with the Míla bitstream system, which covers nearly the entire country and has been developed in recent years under different market conditions. Míla strongly contests this statement on the grounds that it is false, and in no way can there be said to be any barrier to entry under current market conditions, and even less so in the future. The expansion of Ljósleiðarinn and Tengir are evidence to the contrary."

The ECOI's position

618. The ECOI upholds its position. It is not the case that customers switch immediately to a new provider as soon as the new provider begins offering service in the region. It takes years for a new operator to accrue a share of the market. Ljósleiðarinn is building upon well over 10 years of activity in its area of operation, and up to 15 years of activity since first entering the market. Tengir has operated a bitstream system for years, but the company's share of the bitstream market in its area of operation cannot be considered significant. The same can be said of Snerpa in the Westfjords, which has operated its own bitstream system for probably over 15 years. Snerpa first built an xDSL system on Míla's copper local loops, then laid its own fibre-optics on which it built its own bitstream system. It has taken Snerpa a considerable amount of time to achieve its current position. The opinion that it has proved difficult for new entrants to compete with the Míla bitstream system is therefore justified, and it has been a costly and time-consuming endeavour in those regions where there is now competition.

Nationwide market share

619. Míla's comments on the first consultation state the following on page 25 of the company's comments on Paragraph 1484:

"Míla questions the relevance of particularly specifying companies' market share at the national level in this analysis, cf. Paragraph 1484 and onwards. Míla points out that Ljósleiðarinn's market share on the national level is likely 50-60%, and between 65 and 70% in its area of operations. Míla furthermore identifies a lack of objectivity in on the part of the ECOI in this analysis, as it is implied that Míla's increase in market share at the expense of the aforementioned companies is something negative. This is a curious perspective, given that the companies in

question have higher market shares the Míla and already fulfil the criteria for SMP designation.

Míla also points out that the ECOI presents an increase in Míla's share of the fibre-optic market in a negative light, while completely ignoring the fact that Ljósleiðarinn has a higher share of these markets than Míla and is in fact in a dominant position. Ljósleiðarinn's extensive deployment has given the company a considerable advantage in competition, as it has proved difficult, as the ECOI is well aware, to obtain homeowner consent for the installation of equipment where fibre-optics already exist."

The ECOI's position

620. The paragraph on which Míla comments here can be found in the chapter titled "Economies of scope and network effects". This analysis concludes that geographical markets in Iceland should be differentiated. Consequently, the ECOI performed an assessment of significant market power on every geographical market on the wholesale markets in question. The ECOI agrees with Míla on the point that nationwide market share figures are less important than figures for individual geographical markets. However, the ECOI believes that nationwide market share matters in the context of assessing companies' total size, power, economies of scope, network effects, etc. In this context there is no lack of objectivity towards Míla.

621. In the aforementioned paragraph, the ECOI describes the fact that, if only fibre-optic market shares are considered, Míla has been gaining ground in recent years. Míla states that the ECOI considers this a negative trend. The ECOI has not stated this anywhere and rejects Míla's claim.

622. Furthermore, this market analysis does not conclude that Ljósleiðarinn has significant market power or is in a dominant position in many regions, as Míla claims. In the ECOI's opinion, this is only the case in the municipality of Ölfus. The ECOI believes that Míla has the power, opportunity and ability to compete fiercely with Ljósleiðarinn.

Effects of Ljósleiðarinn's acquisition of Sýn's trunk network on economies of scope

623. Míla's comments on the first consultation state the following on page 26 of the company's comments:

"In the context of the ECOI's discussion of economies of scope, Míla reaffirms the importance of the ECOI updating the analysis with respect to Ljósleiðarinn's acquisition of Sýn's trunk network, as this acquisition is of enormous relevance to the comparison of the economies of scope, network penetration and market power of the companies concerned."

The ECOI's position

624. On 20 December 2022, Sýn and Ljósleiðarinn signed an agreement for Ljósleiðarinn's purchase of Sýn's trunk network. This agreement included a 12-year service agreement

between the companies that grants Sýn wholesale access and services over Ljósleiðarinn's backbone and access networks, as well as international network connections. The acquisition was subject to the ICA's approval, which authorised the merger without intervention on 28 September 2023 with Decision no. 37/2023, *Ljósleiðarinn ehf.'s acquisition of Sýn hf.'s trunk network*. The ECOI's Preliminary Draft of 15 September 2023 contains a detailed discussion of Ljósleiðarinn's forthcoming acquisition, which states among other things: *"The agreement between Ljósleiðarinn and Sýn is part of the ICA's merger case concerning Ljósleiðarinn's potential acquisition of Sýn's trunk network. The case is still under investigation by the ICA and the Authority's decision can be expected in the coming weeks."* It should be noted that the service agreement between Ljósleiðarinn and Sýn is less extensive than the agreement between Míla and Síminn after the imposition of conditions by the ICA concerning e.g. contractual term and obligations."

625. In light of the aforementioned comments by Míla, it must be noted that the ECOI's Preliminary Draft took into account Ljósleiðarinn's impending acquisition and reached the preliminary conclusion that this transaction would, should it come to pass, not fundamentally impact the comparison of e.g. the economies of scope, network penetration and market power of the companies concerned in the ECOI's Preliminary Draft, as their position on the markets in question is not as strong as Míla's.

626. It must furthermore be noted that the NATO cable and Ljósleiðarinn's acquisition of Sýn's trunk network primarily affect the trunk line market, which will be analysed later, although this will allow the company to bring fibre-optics to population centres in rural areas, especially those within close proximity to the NATO cable. However, many population centres are tens or hundreds of kilometres away from the NATO cable, thus placing Ljósleiðarinn at a much worse position than Míla, who owns a nationwide trunk network. In addition, Sýn's former trunk network is not nationwide in the same way that Míla's is, and relies to a great extent on connections leased from Míla. Ljósleiðarinn is now Míla's lessee for these connections. Ljósleiðarinn leases some connections from other entities but to a much lesser extent. The position of a company whose trunk network relies on leased connections is different from that of a company who builds its trunk network on its own fibre-optics.

627. In view of all the above, the ECOI does not believe that the ICA's confirmation of Ljósleiðarinn's acquisition of Sýn's trunk network will result in substantive changes relevant to the ECOI's Preliminary Draft of the market analysis since the publication of ICA Decision no. 37/2023 in the aforementioned merger case. The ECOI will, however update the analysis based on the fact that the acquisition has now been formally approved.

Vertically integrated companies

628. Míla's comments on the first consultation state the following on page 26 of the company's comments on Paragraph 1528:

"Chapter 6.1.5.9 addresses the vertical integration and the relevance of such integration to the telecommunications market. Following that discussion, Paragraph 1528 states that Snerpa is the only electronic communications company that can be considered purely vertically integrated. Míla would like to add that Austurljós can also be considered such."

The ECOI's position

629. The ECOI agrees with Míla that Snerpa and Austurljós are vertically integrated electronic communications companies. The ECOI will update this paragraph accordingly. The discussion of Austurljós is in a different section of the Preliminary Draft, i.e. Paragraph 646 of Chapter 4.3.6.8, which states that Austurljós owns local loops and operates bitstream services for both external and internal use, as the Company also operates at the retail level.

Vertical integration

630. Míla's comments on the first consultation state the following on page 26 of the company's comments on Paragraph 1532:

"Paragraph 1532 states that Míla is vertically integrated at all or most levels of the value chain for electronic communications services and that many competitors, partners or other electronic communications companies depend on Míla on the wholesale markets covered in this analysis. In Míla's opinion, the ECOI's statement about the company's vertical integration is misleading, particularly in view of the fact that this discussion follows another specific discussion of the significance of the vertical integration of electronic communications companies. The relationship between Nova, Sýn and ÍslandsTurnar is thus also an example of vertical integration on the telecommunications market. Furthermore, in Míla's opinion, competition on the wholesale markets 3a and 3b is effective in most parts of the country, as the ECOI has stated that it will consider relaxing obligations on Míla in the regions that comprise over 80% of the country's population. There are also options other than Míla for retail operators in most geographical markets under discussion here. Competitors, partners and other electronic communications companies are therefore far from dependent on Míla on these markets."

The ECOI's position

631. The ECOI notes that this paragraph must be read in light of the preceding Paragraph 1531, which discusses the statement in Decision no. 24/2023 that, despite the dissolution of the ownership relationship between the two companies, there is still some degree of vertical integration between Síminn and Míla, though to a lesser extent than before. The ECOI fails to see similar integration between Nova, Sýn and ÍslandsTurnar, and this claim requires further justification from Míla. In addition, any possible such integration would apply to the mobile network market and only in part to Market 3b. As Míla is fully aware, no obligations are imposed in regions where the ECOI intends to lift obligations, only in those regions where Míla, e.g. by virtue of vertical integration with Síminn, is able to operate irrespective of customers, competitors, and, where applicable, consumers.

Effects of Ljósleiðarinn's acquisition of the Sýn trunk network

632. Míla's comments on the first consultation state the following on page 26 of the company's comments on Paragraph 1536:

“Paragraph 1536 deals with Ljósleiðarinn and states, among other things, that the company only operates access networks and systems. Míla considers this to be incorrect. Ljósleiðarinn has operated an extensive IP/MPLS network in its service area and sold backbone network connections on this network. The company has also been installing a nationwide fibre-optic trunk network, and with the acquisition of Sýn’s backbone network, the company’s trunk and backbone networks reach the vast majority of the country, or approx. 95-98% of residences and businesses. Míla again reaffirms the importance of the ECOI updating its analysis and taking full account of the impact of Ljósleiðarinn’s acquisition of Sýn’s trunk network and the companies’ wholesale agreement.”

The ECOI’s position

633. Paragraph 1536 of the draft to which Míla refers states that Ljósleiðarinn only operates access networks and systems, i.e. wholesale fibre-optic local loops of the bitstream access supplied to the Capital Region and neighbouring municipalities. It is also stated that Ljósleiðarinn has its own fibre-optic trunk network which runs from Reykjavík to the municipalities of the Suðurnes region and eastwards towards Landeyjasandur via Hveragerði, Selfoss, Þorlákshöfn, Hvolsvöllur and to the Westman Islands. Likewise, westwards from Reykjavík via Akranes, Borgarnes, Hvanneyri and Bifröst. It was also noted that Ljósleiðarinn’s access network reaches about 71% of residences and businesses in the country. Until then, Ljósleiðarinn had not been involved in any other areas of telecommunications at the time of the paragraph’s writing. It was stated that the ICA had reviewed Ljósleiðarinn’s acquisition of Sýn’s trunk network, and that Ljósleiðarinn had been allocated two fibre-optic threads in the NATO cable on 30 June, 2022. The ECOI emphasises that the paragraph was written based on the current conditions at the time, and the Office will update the analysis to reflect the fact that Ljósleiðarinn’s acquisition of Sýn’s trunk network has now been confirmed, cf. ICA Decision no. 37/2023, *Ljósleiðarinn ehf.’s acquisition of Sýn hf.’s trunk network*.

Access to hosting

634. Míla’s comments on the first consultation state the following on page 26 of the company’s comments on Paragraph 1537:

“Paragraph 1537 claims that it is difficult to access facilities for hosting equipment. Míla considers this to be incorrect. There has been no shortage of hosting space in recent years, and Míla does not anticipate that this will change, especially as the copper network has been phased out. Fibre-optic connections are also not as dependent on length as copper connections, and can cover a range of tens of kilometres without issue. It is thus entirely feasible to host equipment at one location and run fibre-optic lines from there.”

The ECOI’s position

635. In accordance with the ECOI’s response to an identical comment from Míla, titled “Facilities for telecommunications equipment” earlier in this chapter, the ECOI will amend the paragraph in question. In this context, however, it should be noted that this discussion pertains not only to Míla’s facilities but to various other operators as well, and it may not be

the case that there is room everywhere to host multiple electronic communications companies' facilities.

Access to hosting

636. Míla's comments on the first consultation state the following on page 27 of the company's comments on Paragraph 1538:

“Paragraph 1538 confirms that a shortage of facilities at Míla is not a problem, therefore a shortage of hosting facilities does not present a barrier to competition. Here, the ECOI completely contradicts its statement in the analysis regarding a shortage of facilities. This significantly undermines the credibility and investigative basis of the analysis. In this context, Míla wishes to point out that the company has every incentive to offer access to facilities regardless of obligations in order to promote the optimal usage of its infrastructure and facilities. Míla also points out that there are other hosting providers in addition to Míla. RÚV, Neyðarlínan and ÍslandsTurnar are a few examples, as well as data centres of varying size around the country. There is therefore both competition and development taking place all over the country. Fibre-optics make it possible to have equipment in one location providing services to another, tens of kilometres away from the point of origin.”

The ECOI's position

637. The ECOI has considered Míla's previous comments concerning these issues as they pertain to Míla's facilities. It seems that Míla is only taking its own facilities into consideration, as space has opened up in many locations due to the decommissioning of copper local loops. The general discussion of equipment facilities addresses these issues in general, which may present an obstacle if facilities do not accommodate the equipment of multiple electronic communications companies. This comment does not give reason to amend the paragraph in question. The ECOI upholds its conclusion that, as stated in the paragraph referred to herein, the shortage of hosting facilities does not constitute a barrier to competition, given that obligations on access are in force, though it could present such a barrier in the absence of obligations.

Barriers to entry - State-funded fibre-optic networks

638. Míla's comments on the first consultation state the following on page 27 of the company's comments on Paragraph 1546:

“In response to the discussion in Paragraph 1546 on local networks, Míla reaffirms that the company has never received any state funding in this context. Míla demands that the ECOI rectify these misstatements, which appear throughout the analysis. Míla has also been entrusted with the aforementioned construction at the request of the municipalities in question. As the ECOI is well aware, there has been a complete market failure for the installation of fibre-optics in many municipalities that now have local fibre-optic networks at their disposal. Most of these networks were installed under the aegis of the Telecommunications Structural Fund. The aforementioned networks are open, and as a result, it is the responsibility of all

companies that offer bitstream services to avail themselves of these networks. However, given the small size of the networks and relatively few connections, interest has been limited. Míla has offered this service in partnership with the respective network operators and considers it a civic duty to do so.”

The ECOI’s position

639. The ECOI appreciates the input and will amend the text in Paragraph 1546 in the Preliminary Draft and elsewhere in the analysis. However, this does not change the fact that in such cases, Míla has acquired various fibre-optic networks that were built through state funding, although Míla was not formally the direct recipient of such funding. Government aid nevertheless resulted in Míla acquiring fibre-optic networks in areas affected by market failure.

Entry barriers

640. Míla’s comments on the first consultation state the following on page 27 of the company's comments on Paragraph 1547:

“The ECOI concludes that there are barriers to entry for new companies trying to enter the wholesale market 3b, cf. Paragraph 1547. Míla disagrees with this conclusion, as it is evident that many local networks have been installed in recent years, some with the aid of funding and others by private enterprise, e.g. Austurljós, Tengir, Eygló, Snerpa and various other municipal networks. These networks have offered comparable services to Míla with the exception of the rural systems, i.e. both fibre-optic local loops and bitstream. For example, Austurljós advertised that it was the first company to offer speeds exceeding 1 Gb/s. It therefore cannot be concluded that there were any barriers present in these regions. Sýn also often installed equipment enabling the company to offer services on municipal networks, cf. Rangárþing Eystra.[...]”

The ECOI’s position

641. The aforementioned Paragraph 1547 in the Preliminary Draft states:

“With reference to the aforementioned discussion, the ECOI concludes that there are barriers to new companies entering the wholesale market for central access provided at a fixed location for mass-market products, which strengthens Míla’s and Ljósleiðarinn’s positions on this market, and to some extent Tengir’s and Snerpa’s position in their service areas.”

642. This paragraph can be found in the general section (Chapter 6) on the assessment of significant market power on Market 3b, which deals with, among other things, barriers to entry. This is not an assessment of the situation in individual geographical markets, but rather in general and on a nationwide scale. Chapter 6.3 then specifically discusses the assessment of market power on individual markets in Market 3b. As Chapter 6.3 indicates, barriers to entry on Market 3b vary by individual geographical market.

643. The conclusion of the general discussion in Chapter 6.5 was that there were generally barriers to entry on this market in Iceland, which mainly strengthened Míla's and Ljósleiðarinn's positions, but also Tengir's and Snerpa's in their respective service areas. The ECOI points out that there is only one bitstream system available in many geographical markets, usually owned by Míla, and hardly ever more than two such systems in individual geographical markets. ECOI believes that this indicates the presence of entry barriers on Market 3b, though their extent varies by geographical market, as stated in Chapter 6.3.

644. The inclusion of regional network operators does not change that general conclusion. Míla notes e.g. the many small municipal networks, most of which were installed under state funding. It should be noted that Míla operates bitstream systems on these networks, not the municipal networks themselves. Míla points to e.g. Austurljós, which operates a bitstream system in Fljótsdalshreppur, where the company is considered to have significant market power. The ECOI will therefore add that company to the list in the aforementioned paragraph of companies for which barriers to entry may strengthen the position of individual network operators in certain regions. The ECOI notes once more, however, that the discussion of individual geographical markets in Chapter 6.3 is the most important in this regard.

645. It must also be noted that Ljósleiðarinn has now acquired both Sýn's trunk network as well as its bitstream equipment in many places around the country, including on several municipal networks. This does not increase the number of bitstream operators; rather, one company takes over another company's bitstream system, and as a general rule, there are no more than two bitstream systems on individual geographical markets where multiple systems exist in the first place. However, this strengthens Ljósleiðarinn's position in general, while the aforementioned paragraph says that barriers to entry primarily strengthen Míla's and Ljósleiðarinn's position on the market concerned.

Countervailing buyer power

646. Míla's comments on the first consultation state the following on page 27 of the company's comments:

"Chapter 6.1.6.1 deals with countervailing buyer power on the market. In this context, Míla would like to point out that the case is now such that a retailer with 10-20 thousand connections is a great asset to network operators. Considering the fact that in many places there are two fibre-optic systems, it is clear that countervailing buyer power may well be significant."

The ECOI's position

647. Chapter 6.1.6 discusses competition on Markets 3a and 3b. The main objective of the market analysis is to investigate whether competition on telecommunications markets is effective and to respond with the appropriate measures should it prove not to be the case. An analysis of the wholesale markets should reveal five factors influencing competition which determine a company's long-term profitability. These factors are:

1. Bargaining power of buyers in a strong position.
2. Product differentiation/tying

3. Possible competition.
4. Pressure from substitutability products.
5. Customers' freedom of choice and potential cost of switching or amending binding contracts.

648. Chapter 6.1.6.1 contains a general discussion of buyers' bargaining power. Chapters 6.2 and 6.3 then assess the competitive position on individual geographical markets on the respective wholesale markets and determine whether they contain entities with significant market power. The assessment within individual geographical market relies in part on countervailing buyer power.

649. Míla comments on the aforementioned Chapter 6.1.6.1 concerning buyers' bargaining power that a retailer with 10-20 thousand connections is a major asset to network operators, and if the fact that many regions have two fibre-optics systems is taken into consideration, it becomes clear that countervailing buyer power could easily be significant.

650. Paragraph 1557 of the Preliminary Draft contained a conclusion on the assessment of buyers' bargaining power at the national level, i.e. not on individual geographical markets, which can be found in Chapters 6.2 and 6.3. In general and on the national level, the ECOI concludes that the buyers' bargaining power towards Míla, i.e. that of electronic communications companies other than Síminn, is limited due to the special nature of the business relationship between Míla and Síminn, the largest electronic communications service retailer in the country, and the strong business commitment between the companies. Síminn's large share of the retail market also generally weakens the position of other buyers. However, Sýn has strong countervailing buying power against Ljósleiðarinn.

651. The ECOI upholds this conclusion and believes that the countervailing buyer power of retailers with 10-20 thousand connections is not high or significant against Míla, although, as Míla mentions, it is certainly an asset in such transactions.

652. Paragraphs 1554 and 1556 of the Preliminary Draft discuss Ljósleiðarinn's acquisition of Sýn's trunk network and the long-term agreement between the companies, which was written before the ICA's conclusion regarding the acquisition was made available. The ECOI will update that text now that this conclusion is available.

Number of Síminn's connections with Ljósleiðarinn

653. Míla's comments on the first consultation state the following on page 28 of the company's comments on Paragraph 1555:

"Paragraph 1555 deals with Síminn's agreement with Ljósleiðarinn and concludes that Síminn will only sell small quantities of connections via Ljósleiðarinn during the term of validity of this analysis. This conclusion contradicts the ECOI's previous statement that Síminn had a surprisingly high number of connections on Ljósleiðarinn's network. [...]."

The ECOI's position

654. Items 3 and 4 of Paragraph 1555 of the Preliminary Draft, which can also be found in the above Chapter 6.1.6.1 (Buyers' bargaining power), states:

"In August 2021, Síminn began selling connections via Ljósleiðarinn's network. In the ECOI's opinion, such sales will be made in rather small quantities during the period of validity of this analysis, and Síminn will retain most of its connections via Míla's local loop network."

655. The ECOI upholds this statement, as it is clear that, in the long term, Síminn is obligated to keep at least 80% of these connections with Míla. Furthermore, Síminn has already utilised just over half of the leeway provided in the agreement. As Míla continues to deploy fibre-optics in Ljósleiðarinn's service area, the increase of Síminn's number of connections with Ljósleiðarinn is likely to abate, as [...].

Sýn's countervailing buyer power against Míla

656. Míla's comments on the first consultation state the following on page 28 of the company's comments on Paragraphs 1556 and 1557:

"Paragraph 1556 deals with Sýn's countervailing buyer power vis-à-vis Ljósleiðarinn and concludes that it is very high. [...]."

In addition, Míla does not agree with the claim in Paragraph 1557 to the effect that the countervailing buyer power of operators other than Síminn is limited against Míla, as Míla has focused greatly on obtaining business from Nova, Sýn and other operators. Míla, on the other hand, wonders whether Ljósleiðarinn's strong bargaining position has made these companies either unwilling or unable to purchase more connections from Míla. Complications due to the obligations imposed on the company may also play a part in this, as, as previously stated, Míla has been unable to fully meet these operators' wishes on account of the restrictions imposed on the company by the aforementioned obligations."

The ECOI's position

657. Paragraphs 1556 and 1557 were written before the merger case of Ljósleiðarinn and Sýn, regarding Ljósleiðarinn's acquisition of Sýn's trunk network, was complete. The ICA approved this acquisition at the end of September 2023, and at the same time, the wholesale agreement came into effect between Ljósleiðarinn and Sýn for Sýn's purchase of a significant portion of residential connections from Ljósleiðarinn. This ended a long period of uncertainty for Ljósleiðarinn about what Sýn would do. For a while, especially during 2021 and 2022, it even appeared that Sýn would shift its business entirely or in large part from Ljósleiðarinn to Míla.

658. As Ljósleiðarinn has secured the majority of Sýn's business on the residential market for the long term, it can be said that Sýn's countervailing buyer power against Ljósleiðarinn has decreased. However, the ECOI believes that Sýn still has some bargaining power against Ljósleiðarinn, though not to the same degree as before, although [...]. Sýn's bargaining power

against Ljósleiðarinn can therefore no longer be considered “high” or “very high”, as stated in the aforementioned Paragraphs 1556 and 1557 of the Preliminary Draft. The ECOI will therefore amend that text in accordance with the above, but this will not affect the conclusion of the analysis.

659. The ECOI has responded above to a similar comment by Míla that the countervailing buyer power of operators other than Síminn is not, in Míla’s opinion, limited. The ECOI disagrees with this and refers to the previous response above.

660. In terms of Míla’s speculations about whether or not Ljósleiðarinn’s strong bargaining position has made it difficult to conduct more business with Nova and Sýn than has been the case, Míla responds that it puts much effort into getting the ECOI’s obligations lifted in as many places as possible in order to e.g. be able to negotiate with these companies for increased usage of Míla’s network. In this analysis, the ECOI believes that Míla focusses greatly on obtaining an increased share of business from these companies, and the ECOI believes that this is not unlikely to happen, especially in the case of Nova, [...]. The ECOI believes that, at a minimum, Míla is in a strong position to compete for business with Nova and that portion of Sýn’s business that is not obligated to Ljósleiðarinn, as well as with other electronic communications companies on the market.

Electronic communications companies’ trunk line systems

661. Míla’s comments on the first consultation state the following on page 28 of the company's comments on Paragraph 1560:

“Paragraph 1560 states that Míla operates the only nationwide trunk line system in the country. This is no longer the case. This applies just as much to Ljósleiðarinn as to Míla after Ljósleiðarinn acquired Sýn’s trunk network and gained control over two threads in the NATO cable. Furthermore, it is clear that Orkufjarskipti also operates an extensive nationwide fibre-optic trunk network that market participants make use of, e.g. both Ljósleiðarinn and Nova, as did Sýn before their trunk system was sold to Ljósleiðarinn. There are also new fibre-optic systems around the country which were built in rural areas to connect users, and many of them contain new trunk lines used on the market. It is therefore completely false that Míla is the only operator with a nationwide system. Míla, Ljósleiðarinn (formerly Sýn) and Nova operate trunk systems in Iceland.”

The ECOI’s position

662. Paragraph 1560 can be found in Chapter 6.2.6.2 of the Preliminary Draft, which deals with product differentiation/tying.

663. Paragraph 1558 states that product differentiation refers to how the buyer defines a product and distinguishes between one product and another similar product. Clear product differentiation in a company’s offering can create customer loyalty, but also make it difficult for new operators to enter a market, as opposed to when the range of products offered is more homogenous.

664. Paragraph 1559 states that a company that is dominant on one market can take advantage of its position in order to integrate products on that market with products on another market, creating offers difficult for competitors to match. If competitors do not have the opportunity to offer something comparable, a company's dominant position is strengthened on the former market and a competitive advantage is created on the latter. It may be necessary to examine such an advantage when assessing market power on the latter market.

665. The aforementioned Paragraph 1560 states that Míla is the only electronic communications company operating on the wholesale market in Iceland that owns and operates a radio access network (RAN), as well as the only company to own and operate a nationwide trunk line system. The company therefore has the opportunity to tie together wholesale services in a way that its competitors do not, in addition to having greater economies of scope than competitors. Paragraph 1561 then discusses the close business relationship between Míla and Síminn as a result their long-term service agreement. Síminn is the largest telecommunications retailer in Iceland, which strengthens Míla's position.

666. The aforementioned comment by Míla must be examined in this light, and the ECOI upholds this discussion. It must be noted, however, that the discussion in question is in Chapter 6.1, which deals generally with the situation in the wholesale markets, while Chapters 6.2 and 6.3 then deal with the situation on individual geographical markets where these issues are considered in the individual regions.

667. The ECOI has responded above to a similar comment by Míla to the effect that Míla does not operate the country's only trunk line system. Refer to these responses. It is clear that Míla's advantage difference on the aforementioned trunk line market and that of its competitors, incl. Ljósleiðarinn, is great.

Business relationship between Síminn and Míla

668. Míla's comments on the first consultation state the following on page 28 of the company's comments regarding Paragraphs 1561 and 1562:

"Míla strongly objects to the ECOI's discussion in Paragraphs 1561 and 1562 pertaining specifically to Síminn and the conclusions drawn from Síminn's alleged violations of the Competition Act, which are still under investigation, and from the decision and proceedings relating to the ECOI's decision regarding Síminn's violation of the Media Act, which has yet to be decided. This discussion, which is of no relevance whatsoever to the assessment of Míla's significant market power, shows a serious lack of objectivity towards Míla."

The ECOI's position

669. The above Paragraphs 1561 and 1562 can also be found in the above Chapter 6.1.6.2, which discusses product differentiation/tying.

670. Paragraph 1561 states that Míla is in a unique position on this market due to its strong ties with Síminn from the time that they were under the same ownership and later, with its strong business relationship after the sale of Míla to Ardian severed the ownership

relationship. Síminn is ubiquitous on the domestic market and has trademarks that it has been developing for decades, much of that time as a company with exclusive rights in most areas of electronic communications. In this instance Mila is in a good position, but it must be kept in mind that the markets in question are wholesale markets, where it can be assumed that a brand's power is not as important as on the general consumer market. The ECOI does not believe that this comment calls for an amendment to the paragraph.

671. Paragraph 1562 deals with recent cases in which the ECOI and the ICA concluded that Síminn had committed an offence, particularly by tying together television content and telecommunications services. This discussion is mentioned here for the sake of context, not to draw any conclusions regarding the assessment of Míla's market power on the wholesale markets other than as a reminder that despite Síminn's sale of Míla, the companies are still closely linked by their strong business relationship. Síminn's success thus has an impact on Míla's interests. The ECOI therefore sees no reason to remove this discussion.

Ljósleiðarinn's trunk line system

672. Míla's comments on the first consultation state the following on page 28 of the company's comments on Paragraph 1570:

"The discussion in Paragraph 1570 also demonstrates how important it is that the ECOI update this analysis to reflect the impact created by Ljósleiðarinn's acquisition of Sýn's trunk network. It is not the case that Ljósleiðarinn lacks trunk routes from the NATO cable. The acquisition of Sýn's trunk network has given Ljósleiðarinn such access in most places."

The ECOI's position

673. Paragraph 1570, on which Míla comments here, can be found in Chapter 6.1.6.3 and deals generally with potential competition on the markets in question. Chapters 6.2 and 6.3 then discuss potential competition on individual geographical markets.

674. Paragraph 1570 states:

"The ECOI concludes that there is little likelihood of new operators entering and commencing competition with current system operators on the wholesale market for local loop or bitstream access, especially at the national level. Instead of competing against Míla, small local network operations are focused on providing inhabitants of their respective regions with fibre-optics access, as this would be an unfeasible option without such an initiative. Local networks have therefore been developed as community projects to promote regional development rather than to foster direct competition with other electronic communications companies. Moreover, such small local operators generally do not operate bitstream systems, but have instead agreed with Míla, and to a lesser extent Tengir, for the provision of bitstream services. However, such an opportunity may present itself to Ljósleiðarinn now that the company has gained access to two threads in the NATO cable, though the company still lacks trunk routes from there to population centres which may be tens or hundreds of kilometres from said NATO cable."

675. Míla states that Ljósleiðarinn does not lack trunk routes from the NATO cable, as the purchase of Sýn's trunk network has provided Ljósleiðarinn with such access in most locations.

676. The ECOI upholds the discussion in the aforementioned paragraph with the exception that it intends to rephrase the final item to reflect the fact that the company does not "lack" trunk routes from the NATO cable to population centres, but rather that there is a considerable advantage difference between Míla and Ljósleiðarinn on these routes, as is argued throughout the analysis and earlier in this document. It should also be pointed out that Ljósleiðarinn's acquisition of the Sýn trunk network does not mean that Ljósleiðarinn has acquired a fibre-optic trunk. Ljósleiðarinn must lease infrastructure from Míla in order to make use of this investment, as well as paying the state for the lease of the NATO threads themselves.

Competitive pressure from mobile network solutions

677. Míla's comments on the first consultation state the following on page 29 of the company's comments on Paragraph 1586:

"Paragraph 1586 asserts that there is no competitive pressure from mobile network solutions on Market 3a. This statement is misleading in Míla's opinion, as it is apparent according to the most recent EU Commission Recommendation, which will also be adopted by the EEA, that Markets 3a and 3b have merged into a single market. It is also clear that if a fixed line connection on 3a does not provide bitstream service, it is not purchased. It is therefore obvious that if a fixed network connection transfers to a mobile network solution, neither the local loop nor the bitstream service it provides is purchased, and thus the mobile network solution has de-facto substitutability between mobile solutions and fixed line services on M3a."

The ECOI's position

678. The ECOI agrees with Míla's comment to an extent. Paragraph 533 of the Preliminary Draft, which can be found in Chapter 4.2.6 regarding mobile networks, states:

"The ECOI therefore concluded that condition three is satisfied and condition one is satisfied as far as fibre-optics are concerned, but is uncertain as to whether condition two is satisfied. In the ECOI's opinion, there is clearly indirect competitive pressure from certain mobile network systems on the local loop market, but does not consider it sufficient to prevent minor price changes. The ECOI is therefore of the opinion that mobile network solutions that rely on a mains-connected router do not belong to Market 3a. However, the ECOI will take this indirect competitive pressure from such mobile solutions into consideration when assessing dominant market position."

679. According to this, the ECOI considers there to be indirect competitive pressure from the aforementioned mobile network solutions on Market 3a, but that it is not sufficient to conclude that said solutions belong to that market. However, the ECOI will take this into account when assessing significant market power on individual geographical markets. The

ECOI will rectify the relevant paragraph to better account for this indirect competitive pressure.

680. Míla is incorrect in its claim that the recent EU Commission Recommendation of December 2020 on the markets in question combines Markets 3a and 3b. Rather, the Recommendation now designates Market 3a as Market 1, and the previous Market 3b has been removed. Some countries, however, have decided to merge these markets in their analyses. The ECOI closely considered that point in this analysis, but concluded that the circumstances in Iceland did not justify doing so. The ECOI therefore continues to analyse these markets separately, though they are obviously closely related.

6.1.3 Nova

Assessment of significant market power on Market 3a

681. Nova's comments on the first consultation include the following, on page 7:

[...].

The discussion of economies of scope deals with Síminn's "Heimilispakki" and what it includes. There is no mention of how this package relates to the mobile phone services that the company offers. Although mobile phone service as such is not included in the package, Nova believes the package's 10x upgrade to be great enough that it is tantamount to including these services as part of the package. The 10x upgrade is only available for mobile phones through the "Heimilispakki", and a very high percentage of Síminn's customers choose this option.

The discussion deals with the impact of the NATO cable on Ljósleiðarinn's opportunities, which in Nova's opinion are little compared to the facilities that Míla has at its disposal, though this discussion does not mention that the transfer of Síminn's MPLS-network to Míla will strengthen Míla's position by giving it a more robust backbone network as well as even more secure revenue from this service, as Míla was also able to take advantage of this opportunity to simplify its older trunk network.

In Nova's opinion, Ljósleiðarinn's situation is entirely different with regard to its acquisition of Sýn's infrastructures, as it considered these infrastructures to be out of date and require major upgrades in order to be of any use in competition. Ljósleiðarinn may therefore be heading for a very risky operation where it stands to lose much business as a result of the changes that must be made.

The boundaries between wholesale companies on the telecommunications market are changing. Míla, the largest wholesaler on the market for service to households and businesses via access network, now owns and operates an internet gateway and a more comprehensive backbone network than ever before. It is unclear how the markets will be affected by the fact that both Míla and Ljósleiðarinn will offer internet gateway services and therefore add further bundling in order to

strengthen their competitive position, e.g. by bundling access networks, bitstream services and now internet service. [...].

[...].

[...].

Nova comments on the conclusion on Market 3b, i.e. that there is effective competition, or that competition will be effective within the term of validity of the analysis, in all places mentioned in Chapter 6.3.4.5. Reference is made to the foregoing on this subject, though Nova also believes the impact of mobile networks on the market is overestimated. The impact assessment of Míla's mobile network is not specifically examined, but it may be assumed that if Míla's proposed development of a 5G mobile network comes to fruition, Míla's advantage will also extend to that part of the market in due time. There is a risk that if obligations on Míla are lifted too hastily, it will significantly reduce the potential force of competition on the mobile network market and therefore have even more negative impact than on Market 3b alone."

The ECOI's position

682. The ECOI points out in the analysis that, as Nova notes, there are still signs of vertical integration between Síminn and Míla. Chapters 3.1.2.7 to 3.1.2.12 of the Preliminary Draft include a discussion of bundles offered by Síminn, Vodafone, Nova and Hringdu. Chapter 3.1.4.5 discusses the companies' share in bundles and indeed highlights exactly how bundles seem to be an important factor in the market power of companies, where some are in a stronger position than others. This includes how Síminn has maintained its market share largely through the popularity of the "Heimilispakkinn" bundle. Retailers' market power and the signs of vertical integration identified in the wholesale agreement between Míla and Síminn are also taken into account in the assessment of significant market power in Chapter 6. The ECOI therefore does not agree that the impact of bundles was not sufficiently addressed in the analysis. The ECOI does not consider it necessary in this analysis to determine whether Síminn's mobile phone service is included in the "Heimilispakkinn" bundle or not, as this would not change the preliminary assessment as stated in the draft in any way.

683. The ECOI agrees with Nova that the allocation to Ljósleiðarinn of two fibre-optic threads in the NATO cable and Ljósleiðarinn's acquisition of Sýn's trunk network will not immediately have a significant impact on Míla's market power, at least not on the local loop market. It will be the ICA's job to ensure compliance with the settlement made on Síminn's sale of Míla to Ardian, and that the conditions of the merger established in the agreement are respected.

684. The ECOI is well aware that caution must be exercised in lifting obligations on Míla, but does not agree with Nova with regard to the impact of mobile networks on wholesale market 3b. The ECOI believes that it has done so in this analysis. Consideration must be given to the fact that significant technological changes and increased data transfer speeds over mobile networks, especially 5G, will, within the term of validity of this analysis, increasingly become an option for customers and serve as a competitive restraint to traditional fixed line

connections on the market. This must be taken into account when assessing the competitive impact on both the retail and wholesale markets 3b.

6.1.4 Tengir

Settlement between the ICA and Ardian

685. Tengir's comments on the first consultation include the following, on page 6 in the company's comments on Paragraph 1399:

"It is Tengir's experience that Míla employs anti-competitive measures by bundling and tying services in order to eliminate competition from Tengir, and this has not changed following the agreement between Míla and the ICA of 15 September 2022. Síminn sent Míla a numerous requests in 2019, as customers ordered a fibre-optic local loop from Tengir and services from Síminn in Húsavík. Míla rejected these requests on the grounds that Míla would only use its own local loops to provide bitstream services in the region. Síminn and other service providers were therefore unable to order local loops from Tengir, and all of these instances involved access addresses where duplicate systems had been installed, i.e. fibre-optic local loops for both Míla and Tengir. Tengir has regularly attempted this, including after obligations were imposed on the market in question at the end of 2021, without success. [...]"³⁵.

The ECOI's position

686. The ECOI points out that it is the role of the ICA to comply with the settlement regarding Síminn's sale of Míla to Ardian and that the conditions of the merger are respected. If Tengir believes there to be shortcomings to the settlement, the company may refer the matter to an independent supervisor, cf. Article 10 of ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.*

687. The ECOI is aware of the relationship between Míla and Síminn that Tengir addresses in this comment, despite Síminn's sale of Míla. This relationship is particularly evident in Húsavík and other regions within Tengir's service area. The ECOI discusses this specifically in Chapter 7, which identifies competition problems. There ECOI concludes that there are still some signs of vertical integration between Míla and Síminn despite the sale, as reported in the analysis and throughout this document.

Agreement between Míla and Síminn

688. Tengir's comments on the first consultation include the following, on page 7 in the company's comments on paragraph 1411:

³⁵ [...].

“Tengir wholeheartedly agrees with the ECOI’s conclusion that there are still significant shared interests between Síminn and Míla, which is entirely consistent with Tengir’s experience. [...]

[...]

[...]”

The ECOI’s position

689. The ECOI mentioned in the draft that there are still signs of vertical integration between Síminn and Míla, which affects the assessment of Míla’s significant market power on the wholesale markets. Reference is made to the fact that the ICA considered the current shared interests of Síminn and Míla to show signs of vertical integration at least in part, cf. ICA Decision no. 24/2023, *Síminn’s rehearing petition in relation to settlement requirements as per decision 6/2015*. Reference is made to the discussion in the draft of the ECOI analysis of wholesale markets 3a and 3b, and earlier in this document.

690. [...].

Evaluation of significant market power, substitutability between copper and fibre-optics, and alleged discrepancies in network deployment figures

691. Tengir’s comments on the first consultation include the following, on page 6 of the company’s comments regarding Chapter 6.1.1:

“Tengir believes, based on the factors that influence market power, that the company does not satisfy such criteria on any geographical market. Tengir has operated without any obligations imposed by the ECOI, and this has not resulted in any barriers to competition on Tengir’s part vis-à-vis end users. In Tengir’s opinion, its competitors’ power in region C and Akureyri is significant, especially in light of the obvious relationship between Síminn and Míla despite the separation. [...].

In its statements on the previous market analysis, Síminn believed that ECOI was imposing obligations on the wrong party by imposing obligations on Míla in those regions where Tengir’s fibre-optic system had significant coverage and not considering the fact that there is substitutability between copper and fibre-optic networks. Tengir therefore wishes to point out that in that market analysis and this one, fibre-optics is not the only product on Market 3a, so it would be very strange to assess an electronic communications company’s deployment (and to impose obligations) on the market in question based solely on a fibre-optic network. The ECOI’s response to this comment was that this was a false assumption, and this presumably still applies. Tengir therefore considers it extremely important to assess the extent of Míla’s fibre-optic and copper network (only the part that belongs to the market in question, of course) when comparing the companies in Tengir’s service area.

However, if the utilisation ratio is used instead, i.e. proportion of an electronic communications company's local loops in use, Tengir wishes to point out that in conversations with employees of other companies, it has come to light that there may be differences in companies' data submission/definitions with regard to these factors. [...].

[...]."

The ECOI's position

692. Tengir agrees with the conclusion that there is substitutability between copper and fibre-optic local loops, as did all others who gave an opinion on the matter except Míla. This reinforces the ECOI's conclusion in this regard.

693. While market share is just one of the many factors considered in assessing whether a company has significant market power, it is a very important one, as is deployment of parallel networks.

694. In the geographical markets where Tengir is believed to have significant market power on Market 3a, the company's share is very high and increasing at the same time as the number of Míla's copper local loops decreases. However, the number of Míla's fibre-optic local loops is increasing somewhat in some regions. Fire-optic deployment in area C by operators other than Tengir is negligible, and since this area is very sparsely populated, there cannot be expected to be much parallel deployment, at least not in the near future, and competition from copper local loops is expected to decrease, especially where VDSL connections from Míla are not available. Tengir is therefore in a key position in area C regarding access to its fibre-optic local loops and the company has an incentive to charge too much or to withdraw access to these local loops and only offer bitstream, regardless of whether the company has done so or not up to this point.

695. As for the municipality of Akureyri, there is more uncertainty about parallel fibre-optic deployment and competition from Míla, but it is impossible to ignore the fact that Tengir's market share is high and increasing; as of mid-2023, Tengir's market share was 79%.

696. Regarding Tengir's discussion of parallel fixed networks, it should be noted that the ratio of parallel fixed networks may be low despite fibre-optic deployment by other operators if Míla is no longer offering service via copper local networks at all access addresses in the municipality. Copper local loops are no longer available in many places in rural areas where fibre-optics have been deployed.

697. As mentioned earlier, the ECOI's assessment of significant market power largely considers two indicators, i.e. market share based on number of active connections and fixed-network deployment. These are two separate indicators and the ECOI does not consider it appropriate to combine them by looking at each company's usage, as this is a very unstable indicator while deployment is in progress. The ECOI nevertheless considers companies' fibre-optic usage in individual municipalities if the ECOI believes this will effect the situation in the municipality in question.

698. [...]. When determining the deployment of fixed networks, the ECOI looks at each company's connectable access addresses on an individual basis and the number of domiciles and workplaces in the region according to information from the Housing and Construction Authority (HMS). [...].

Control of difficult-to-install facilities – Joint project with Míla

699. Tengir's comments on the first consultation include the following, on page 4 of the company's comments:

“Tengir wishes to make it known, with regard to a joint project with Míla, that such a project is not at all an attractive option for the company in light of how previous joint projects with Míla have gone. Problems have repeatedly arisen and communication has often been difficult. [...]. However, Tengir does not rule out further fibre-optic development in partnership with Míla and/or other electronic communications companies should the opportunity present itself, although such cooperation is very discouraging in light of prior experience in Húsavík and most recently in Raufarhöfn.

Míla has taken the initiative in these projects and has executed them more or less according to their own whim. Míla has acted unilaterally on all points, and there has in fact never been any real dialogue or negotiation on the points disputed by the companies. [...].

Furthermore, Míla has refused to lay fibre-optics for Tengir for access addresses where connections are more likely to be “more expensive”, even in cases of multiple properties per access address/multi-dwelling building, despite the fact that the partnership³⁶ agreement stipulated connection to access addresses, including businesses in the project area. Likewise, they begun work prior to the “formal” commencement of the project in order to prevent Tengir from providing fibre-optics to apartment buildings (Húsavík 2019). [...].

[...]“

The ECOI's position

700. The ECOI notes that the joint projects to which Tengir refers have not been carried out on the basis of Article 55 of the Electronic Communications Act on new high-performance high-speed networks, as this was a new provision of the new Electronic Communications Act No. 70/2022, which entered into force at the end of June 2022. These projects were carried out under special permission from the ICA.

701. In light of the potential benefits of such projects for reducing costs and thus reducing barriers to entry, the ECOI finds it regrettable that Tengir considers a joint project with Míla an unattractive option. If Tengir believes that Míla is not complying with the obligations imposed on it, the ECOI encourages Tengir to submit a formal complaint whereby Míla will

³⁶[...]

have the opportunity to express its views, or to direct such complaints to the ICA. However, the ECOI appreciates that Tengir does not rule out further collaboration in fibre-optic development, as such collaboration promotes the development of parallel fibre-optic networks, which in the long term is likely to result in increased competition on the retail market. It may take a long time for Míla's partners to build their market share following parallel deployment in the regions where Síminn has a high retail market share. [...].

Access to capital for development in more rural areas

702. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraph 1502:

"Tengir agrees with the ECOI's conclusion that access to capital for the development of an access network will remain anti-competitive due to the high investment costs in more rural areas and the two largest players on Market 3a will have an advantage over others in this regard. Tengir considers this to be of considerable importance when assessing the competitive conditions on the market in question."

The ECOI's position

703. Tengir agrees with the ECOI that access to capital may present barriers to competition in the development of telecommunications networks, especially in rural areas. The ECOI is aware of the varying power of the operators involved in the deployment of fibre-optic networks in Iceland, and this is taken into account.

Vertical integration between Míla and Síminn

704. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraph 1532:

"Tengir considers the shared interests between Síminn and Míla, which can be equated to vertical integration, to still be relevant on the wholesale markets in the analysis and, as stated before, greatly affect competitive conditions."

The ECOI's position

705. The ECOI mentions in the draft analysis of the relevant wholesale markets that there are still signs of vertical integration between Síminn and Míla, which affects the assessment of Míla's significant market power on these wholesale markets. Reference is made to the fact that the ICA considered the current shared interests of Síminn and Míla to show signs of vertical integration at least in part, cf. ICA Decision no. 24/2023, *Síminn's rehearing petition in relation to settlement requirements as per decision 6/2015*. Reference is made to this discussion in the draft of the ECOI analysis of the wholesale markets 3a and 3b, and earlier in this document.

Tying

706. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraph 1559:

"This is exactly what Míla and Síminn are doing today and is very apparent, in Akureyri for example, as will be seen later."

The ECOI's position

707. Here Tengir agrees with the ECOI's assessment that tying of products on the market in question with products on another market strengthens Síminn's position, which in turn affects Míla's position due to Síminn's obligation to do business with Míla, as stipulated in the companies' wholesale agreement.

Bundling

708. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraph 1560:

"In the ECOI's opinion, is Míla's Access Option 4 anything other than anti-competitive bundling and a violation of the settlement between the ICA and Míla? Tengir also believes equality to be lacking among buyers of Míla's wholesale products when the company does not provide bitstream services unless the service provider also purchases a local loop from Míla, where Míla makes such a demand (Húsavík).

[...]."

The ECOI's position

709. It is not within the ECOI's purview to take a stance on the question of whether Míla's production of internet services which Síminn purchases wholesale is in violation of the settlement between the ICA and Míla. In the second consultation of the preliminary draft of the analysis, a draft was submitted of the obligations imposed on Míla for wholesale access to Access Option 4.

6.2 Assessment of SMP on Market 3a

6.2.1 Ljósleiðarinn

Market share, relationship between wholesale markets, and potential overlying market for wholesale electronic communications markets

710. Ljósleiðarinn's comments on the first consultation include, on page 21-24:

"Regulation No. 556/2023 on market analysis in the field of electronic communications contains a number of instructions on how to structure a wholesale

market analysis. Article 21 states that an analysis is expected to identify competitive pressure from products or services outside of the market in question and the underlying retail market or markets, and an assessment made of the effects thereof. Article 5 of the regulation states that when defining markets, the ECOI shall pay utmost consideration to the current ESA guidelines for market analysis and assessment of significant market power in the field of electronic communications. It is also stated that ECOI shall take a stance on how the product or service market in question is further defined based on domestic circumstances.

Ljósleiðarinn considers there to be a significant flaw in the market analysis in that it includes no discussion of the relationship between wholesale markets 3a and 3b and other adjacent and related markets. In Ljósleiðarinn's opinion, there are connections and interactions between these markets, i.e. trunk line markets, and Markets 3a and 3b. As previously noted, it is well known that companies in a dominant position on one market can exercise their power on that market on an adjacent market or markets. There is no need to elaborate at length about the various relationships between e.g. the markets under examination here and Market 14, and the same applies to e.g. international connections.

In Ljósleiðarinn's opinion, there is an advantage to the fact that at least two merger decisions have been made within a short time in which Icelandic telecommunications markets have been subjected to detailed analysis and assessment on the grounds of competition law. Furthermore, the ECOI has concluded its market analysis with Decision No. 5/2021. In this context it is sufficient to mention the ICA's comments in the Ardian merger decision. There the Authority saw occasion to submit a summary of Míla's share of the wholesale markets, probably in order to assess the company's overall power on related wholesome markets, including for the purpose of facilitating an assessment of both Míla's power on the wholesale markets and Síminn's power on downstream retail markets. The numerous matters discussed there do not seem to have been considered in the market analysis, though it may be stated that a detailed account was given of the domestic circumstances and situation, which is of major significance for the market analysis.

Heildsölumarkaðir - hlutdeild Mílu	2019	2020	2021
a) Heildstæð gagnaflutningsþjónusta (tekjur af öllum gagnaflutningi, heimtaugaleigu og bitastraumi)	[60-65]%	[60-65]%	[60-65]%
b) Heimtaugaaðgangur	[55-60]%	[50-55]%	[50-55]%
c) Bitastræmstengingar	[65-70]%	[65-70]%	[65-70]%
d) Lúkningarhluti leigulína	[75-80]%	[70-75]%	[70-75]%
e) Stofnlínuhluti leigulína	[65-70]%	[65-70]%	[65-70]%
IP-MPLS gagnaflutningsnet	[0,00]%	[0,00]%	[65-70]%
f) Aðstöðuleiga á óvirkum farsímamainnvíðum	[40-45]%	[40-45]%	[40-45]%
g) Farsímadreifing, virkur búnaður og sendar	[0,00]%	[0,00]%	[60-65]%
h) Útlandatengingar*	[30-35]%	[40-45]%	[40-45]%
Smásölumarkaðir - hlutdeild Símans			
i) Internettengingar, smásala	[40-45]%	[40-45]%	[40-45]%
j) Farsímaþjónusta, smásala	[35-40]%	[35-40]%	[30-35]%
k) Talsímaþjónusta, smásala	[55-60]%	[60-65]%	[60-65]%

*Síminn og Míla ekki aðgreind í upplýsingum frá Farice.

Tafla 1: Samantekt Samkeppniseftirlitsins á hlutdeild Mílu á heildsölumörkuðum (miðað við tekjur nema á mörkuðum e) og g)) og hlutdeild Símans á smásölumörkuðum. Heimild: Samkeppniseftirlitið, ákvörðun nr. 16/2023, Kaup Ardian á öllu hlutafé í Mílu ehf. af Símanum hf.

According to the summary, the share of the potential overlying market or wholesale market for what the ICA considers to be comprehensive data transmission, i.e. all domestic data transmission, local loop leasing and bitstream, to be about 60-65% and over 50% on individual submarkets (with the exception of the market for leasing of facilities for passive mobile phone infrastructure and the market for international connections). The ICA states that all of these markets are characterised by a high level of concentration with an HHI-index between 4,857 and 5,525.

In Ljósleiðarinn's opinion, it is worth considering why the ECOI does not employ the same or similar approach as the ICA, as the goal of both is to analyse and determine companies' market power on wholesale markets.

Furthermore, the ICA's analysis of market share, based exclusively on IP-MPLS data transmission networks, is of no less interest.

Hlutdeild miðað við ytri tekjur vegna IP-MPLS gagnaflutningsnets (hluti af markaði e)	2019	2020	2021
Míla	[0,00]%	[0,00]%	[65-70]%
Ljósleiðarinn	[50-55]%	[50-55]%	[15-20]%
Sýn	[40-45]%	[40-45]%	[10-15]%
Síminn	[5-10]%	[5-10]%	[0-5]%
Samtals	[100,00]%	[100,00]%	[100,00]%

Table 2: Revenue exclusively from IP-MPLS data transmission networks (wholesale) Source: ICA Decision No. 16/2023, Ardian acquisition of Míla ehf. from Síminn hf.

According to the ICA's analysis of the share for the year 2021 based only on revenue from IP-MPLS data transfer networks (wholesale), Míla's market share is the greatest at around 65-70%, while Ljósleiðarinn's is around 15-20% and Sýn's around 10-15%. External revenue is taken into account.

Ljósleiðarinn agrees with the ICA that these figures clearly show the effects of the sale of the IP-MPLS system from Síminn's wholesale to Míla at the end of 2020/beginning of 2021, as Síminn's share vanishes for the most part and transfers to Míla. Sýn's and Ljósleiðarinn's revenues in this category remain steady throughout the time period. However, the share fluctuated considerably, as the system that previously belonged to Síminn (where it seemingly generated little external revenue) transferred to Míla, which sold the service at wholesale, thereby generating significant external income. In this context the ICA points out that the benchmark for market share on the downstream retail market, i.e. internet connections at retail, may be considered.

Ljósleiðarinn also points out that Míla now maintains that IP-MPLS does not fall under Market 14 and is therefore not subject to obligations. Thus it is clear that Míla intends to employ the aforementioned technology and equipment in large-scale expansion into adjacent and downstream markets. This is apparent in the current dispute between Míla and the ECOI regarding which market IP-MPLS systems belong to. [...]

Míla's share in the potential overlying market or wholesale market for comprehensive data transmission, All these markets are also characterised by a high degree of concentration, ranging from 4,857 to 5,525 points. According to Ljósleiðarinn's assessment, there is no indication in the market analysis that the aforementioned factors are taken into account or their effects assessed with reference to the markets under consideration."

The ECOI's position

711. The ECOI notes that the ECOI and the ICA operate according to different regulatory frameworks and that the ECOI is required to comply with the Electronic Communications Act, the Regulation on market analysis and the various ESA recommendations and guidelines for the market analysis, as specified in Chapters 1, 2 and 4 and elsewhere in the Preliminary Draft. As specified in Chapter 4 of the draft, the market analysis under discussion here deals with Markets 3a and 3b, not every telecommunications market in the country. However, in light of Ljósleiðarinn's comments, the ECOI wishes to point out that the ICA's market definition is different in the merger cases, where the competitive impacts of a given merger are assessed comprehensively across markets, and a different approach is taken than in the ECOI's analysis of individual markets, as further discussed in Chapter 4.1.1.1 above. The ICA's investigation of the merger of Míla and Ardian led to the imposition of conditions on Míla as well as amendments to the wholesale agreement between Síminn and Míla, as further discussed in

ICA Decision no. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.* The ICA's investigation included an examination of the transfer of telecommunications systems from Síminn to Míla in the period leading up to Síminn's sale of Míla.

712. Regarding the market share figures to which Ljósleiðarinn refers in the aforementioned merger case, it could be said that they take into account the country as a whole, though considering the structure of this ECOI analysis, such statistics are of limited relevance, as they primarily focus on shares of the individual geographical markets involved. Furthermore, the ICA's turnover figures are based on the years 2019-2021, though as the ECOI's analysis states, market shares are based on year-end figures from 2022 and in some cases on figures for mid-2023; these figures are therefore based on newer information than the ICA's merger case. Míla's share on the wholesale markets analysed here has continued to decline.

713. The ECOI's draft market analysis assesses overall competitive impact for Markets 3a and 3b, and early in 2024, the ECOI will commence an analysis of leased line markets specifically, i.e. both access and trunk networks. The competitive impact of the transfer of telecommunications systems referred to by Ljósleiðarinn will also be considered as applicable to the relevant markets. The above is discussed in Chapter 1.1.2 of the draft market analysis, and its impact on Míla and Síminn's service offerings is discussed in Chapters 4.3.6 and 5.5.2.3 (now Annex A). The draft also addressed the wholesale agreement between Síminn and Míla and the settlement between the ICA and Ardian in Chapter 6.1.3.2, and the wholesale agreement between Sýn and Ljósleiðarinn in Chapter 6.1.3.4, with a summary in Chapter 6.1.3.8. Potential competition problems associated with this were further detailed in Chapter 7 (Competition problems), which, along with obligations, entered into consultation at the end of November 2023, i.e. after Ljósleiðarinn submitted the above comment.

714. Although the ECOI analyses specific telecommunications markets, as explained herein, in accordance with the guidelines and recommendations of the ESA and, as applicable, the EU, it also takes into account the overall strengths of the companies in question, which Ljósleiðarinn believes is lacking in the draft. In this regard, various influencing factors are also considered which may lead to a company being able to operate regardless of competitors and customers, which affects the assessment of significant market power, both generally and on the wholesale markets in question as well as on the individual geographical markets. This assessment is based on factors including potential barriers to entry, financial strength, technological or commercial advantage, vertical integration, substitutability products and services, buyer and seller bargaining power, control of facilities that are difficult to replicate, economies of scale, synergy effect in product supply, long-term access agreements, etc., cf. the ESA guidelines of 16 November, 2022 on market analysis and the assessment of significant market power in electronic communications markets.³⁷ Analysis of significant market power thus involves an assessment of whether there is a company that has the economic strength to be able to operate to a significant extent without taking competitors and

³⁷See:

<https://www.eftasurv.int/cms/sites/default/files/documents/gopro/ESA%20New%20Guidelines%20on%20market%20analysis%20and%20SMP%20assessment.pdf>

customers into consideration. Such an assessment examines more influencing factors than only the share of Markets 3a and 3b, as mentioned earlier.

715. The ECOI is certainly aware of Míla's position on the trunk line market and the importance of this market for access to Markets 3a and 3b, especially in rural areas. The draft market analysis draft assesses the overall competitive impact for Markets 3a and 3b, and in early 2024, the ECOI will begin conducting separate market analyses for leased line markets, i.e. both terminating and trunk line segments. This will include the TP and IP MPLS services which Ljósleiðarinn refers to in its above comments. The competitive impact of the transfer of telecommunications systems referred to by Ljósleiðarinn will also be considered as applicable to the relevant markets. The above is discussed in Chapter 1.1.2 of the market analysis draft, and its impact on Míla and Síminn's service offerings is discussed in Chapters 4.3.6 and 5.5.2.3. The draft also addressed the wholesale agreement between Síminn and Míla and the settlement between the ICA and Ardian in Chapter 6.1.3.2, with a summary in Chapter 6.1.3.8. All of these issues were also further addressed in Chapter 7 (Competition problems), which, along with obligations, entered into consultation at the end of November after Ljósleiðarinn submitted the aforementioned comment.

716. However, the ECOI cannot ignore the trends in Míla's market share in recent months, nor the growth of Ljósleiðarinn's market share. Here, the ECOI refers to Tables 5.8 and 5.12 in the Preliminary Draft, which show Míla's declining market share across the country. This trend is driven by growing competition from companies in this market, and it is clear that Míla's market share has changed the most and most rapidly in municipalities where there is infrastructure competition. The ECOI is obliged to take this into consideration.

717. Taking all of the above into account, the ECOI cannot agree with Ljósleiðarinn's comments that the draft market analysis does not address the relationship between other markets and the transfer of telecommunications systems to Míla. In other respects, the ECOI refers to its discussion and position in Chapters 4.1.1. and 6.1.1 on analysis of telecommunications markets and the ICA's different procedures and monitoring in such matters.

Síminn's strong position on the retail market and long-term service agreement between Síminn and Míla

718. Ljósleiðarinn's comments on the first consultation include, on page 24-25:

"Ljósleiðarinn also agrees with the ICA that Síminn's position on the electronic communications retail markets is also of great significance. Síminn's position on the downstream retail markets is certainly addressed, but in Ljósleiðarinn's opinion this discussion in the market analysis is unsatisfactory and its significance underestimated.

It cannot be seen that a satisfactory analysis and assessment was made of the vertical effects between Síminn and Míla, especially as regards the vertical effects that are still evident due to the wholesale agreement between Síminn and Míla, which includes Síminn's wholesale trade on three retail markets on which the company operates; internet (and television) service, mobile and general telephone

services. Síminn's position on all these markets is very strong, and on two of them, Síminn is the largest company. According to the ICA's analysis of the retail market for internet connections, Síminn is the largest company with a market share of 40-45%, which is somewhat more than Sýn's market share, which follows with a share of 25-30%. Concentration on this market is high, with an HHI index of 2,846. Síminn is the next largest operator on the mobile phone retail market with a share of 30-35%, slightly less than Nova, whose share is 35-40%. Concentration on this market is higher, with an HHI index of 3,190. Síminn is the largest company on the telephony service market (fixed line), with a share of 60-65%, which is considerably more than Sýn who is the next-largest with a share of 20-25%.

[...].

With the Ardian merger decision, Míla and Síminn undertook to change their wholesale agreement such that Síminn's obligation to purchase wholesale services from Míla was reduced for those services that fall under markets where Míla is in a strong or dominant position, both for local loop lease and bitstream, whether for fibre-optic or copper connections. Míla and Síminn similarly undertook to ensure that Síminn would only be obligated to purchase 80% of its total data transmission requirements via lines leased from Míla for fixed line services specifically, both terminating and trunk line segments of leased lines. However, Síminn and Míla refused to make this amendment with regard to mobile networks. In Ljósleiðarinn's opinion, this demonstrates a clear and important relationship between the exclusive purchase agreement and Markets 3a and 3b. Ljósleiðarinn considers the discussion of the analysis and assessment of the effects of this agreement to be quite scant and insufficient.

Following the amendments of the agreement between Míla and Síminn, which were imposed by the ICA in the merger case, it may be said that a certain degree of flexibility and incentives were created for Síminn to purchase wholesale services from Míla's competitors, at least on the wholesale markets involving the aforesaid types of services, by up to 20%. In Ljósleiðarinn's opinion, it would have been appropriate for the ECOI to perform a scenario analysis of the possible development of this contractual relationship between Síminn and Míla over the duration of the agreement, which extends over 20 years. It is therefore clear that the effects will be evident in at least the next four market analyses, if the ECOI intends to fulfil the legal requirement of performing an analysis at a minimum of every five years.

As the agreement has wide-reaching effects on a large number of telecommunications markets, both at wholesale and retail level, and underlying markets, it would have been very important to analyse both its long and short-term impact. Such analysis should include an examination of the likely developments of products and services on the retail market and Síminn's incentive to purchase supplies on wholesale markets. Here it is evident, assuming that the mobile network factor will grow in coming years, that Síminn's incentives will lead to an increase in business between Síminn and Míla, who has both mobile and fixed networks at its disposal. It would also have been necessary to analyse the

development of the contractual relationship should Míla be unable to keep up with market developments in terms of technological solutions."

The ECOI's position

719. The ECOI considers the aforementioned comment to support the assessment of significant market power on the markets in question, as well as the conclusion that the wholesale agreement between Síminn and Míla shows some signs of vertical integration, which in turn strengthens Míla's position by guaranteeing business from the largest retailer of general internet services and other services provided over bitstream connections.

720. However, the ECOI does not agree that a sufficient assessment or analysis of the effects of these vertical, contractually-bound transactions has not been performed. This agreement and the settlement between the ICA and Ardian are discussed in detail in Chapter 6.1.3.2, where it is concluded that there are still significant shared interests between Síminn and Míla due to this long-term agreement, and these shared interests must be taken into consideration when designating operators with significant market power and imposing obligations on the relevant markets. Chapters 6.2 and 6.3 on the assessment of significant market power on Markets 3a and 3b do this when assessing Míla's position on a number of geographical markets. Chapter 7 then deals with competition problems in greater detail, which in turn affects the implementation of obligations towards Míla on individual geographical markets.

Ljósleiðarinn does not have significant market power on Markets 3a and 3b in Ölfus Municipality

721. Ljósleiðarinn's comments on the first consultation include, on page 49-51:

"Various questions arise with regard to the geographical markets on which the analysis has determined Ljósleiðarinn to be in a dominant position.

First of all, Paragraph 1358 establishes a series of conditions that specify regions where competition is likely (designated Area A). Although Ölfus Municipality fulfils the conditions of this paragraph, the ECOI has decided to make an exception due to Ljósleiðarinn's strong position in fixed network connections in the municipality.

While it may be argued that Ljósleiðarinn established its access network in this municipality before Míla, it cannot be assumed that Míla's access network does not extend into this region, due to its close proximity to Reykjavík and the fact that the variables that determine cost of implementation (how construction is carried out, technology, cost base, etc.) are constantly changing. Ljósleiðarinn considers it more important to look at what is happening at the retail level in this municipality. While Míla's share of the wholesale market has been declining, its share of the retail market has actually increased during the same time period.

This can be seen in Figure 6.3.39 below, taken from the market analysis.

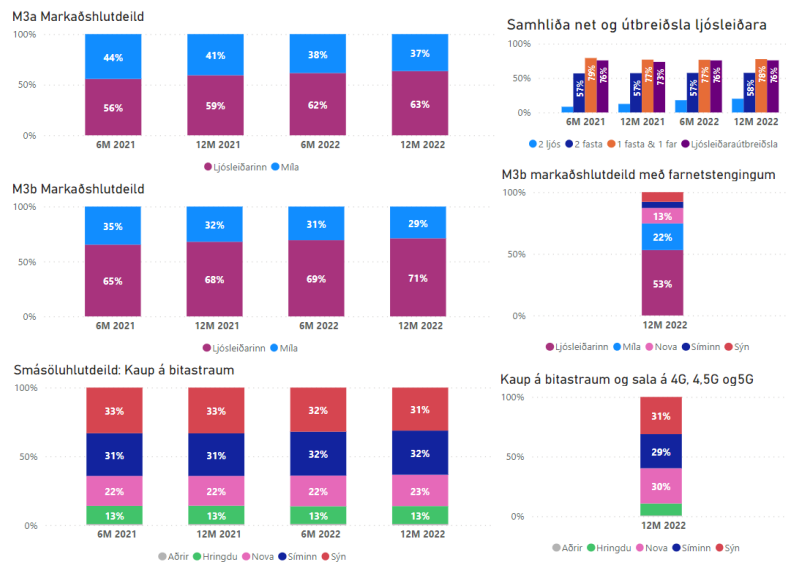


Figure 5: Market analysis – Ölfus.

The definition of the product market is also an issue in this case. A clear effect can be seen from various types of mobile network technologies, where Míla has an advantage, which is particularly reflected in the fact that Síminn’s share of the retail market exceeds that of the share of suppliers on Market 3b. At the end of 2022 there were 1,140 active bitstream connections in Ölfus Municipality, of which 851 were via fixed network and 289 via mobile network routers. Converted to Market 3a, this would give Ljósleiðarinn a market share of less than 50% (47%) with the addition of wireless access options, but the inclusion of access options via mobile networks would significantly reduce the share on Market 3b.

BEREC notes the following in its survey of geographical markets: “If the evidence found points to varying competitive conditions, but the differences between geographic areas are not yet sufficiently stable, a national market could still be defined³⁸. Geographical variations in competitive conditions can then be addressed at the remedies stage (e.g. price control obligations might be lifted for some areas, if sufficient safeguards exist)³⁹.” Ljósleiðarinn’s increased market share in certain regions can be addressed by amending the obligations on Míla in these regions. Nevertheless, Míla still has significant market power at national level. This is evidenced by a 450% increase in Míla’s share of the domestic fibre-optic market over a period of 6 years.”

The ECOI’s position

722. For the definition of geographical markets, ECOI refers to previous responses. The same applies to the definition of markets.

723. The ECOI notes that there is a local fibre-optic network in the rural area of Ölfus Municipality that is owned by Ljósleiðarinn, and the ECOI considers the installation of parallel

³⁸ BoR (14) 73, page 35

³⁹ BoR (18) 213

fibre-optic networks in competition with Ljósleiðarinn to be highly unlikely. There are somewhat large population centre in this municipality, i.e. Þorlákshöfn, though the proportion of low-population areas in the municipality is 29% when looking at domiciles and workplaces. Ljósleiðarinn's network deployment in the low-population area is considerable, especially when looking at households, while Míla's is quite low by comparison. Ljósleiðarinn's fibre-optic deployment in Þorlákshöfn is very high and extends to nearly every household. The figures for mid-2023 reveal that Ljósleiðarinn's market share has increased since the end of 2022 and its share on Market 3a has reached 66% and 73% for fixed network connections, but is 54% when connections via mobile network routers on Market 3b are taken into account.

724. There are still copper local loops without bitstream (PSTN) on the local loop market, which will not remain on the market much longer. The share of these local loops is a little less than [...]%. If unchanged, this will, in the ECOI's opinion, strengthen Ljósleiðarinn's position at Míla's expense. Míla's share of these markets is largely based on copper local loops and VDSL, but Míla has been deploying fibre-optics in the municipality and the copper local loops are expected to be discontinued during the period of validity of the market analysis, and Míla's services will for the most part transfer over to fibre-optics. Míla's fibre-optic deployment in 2023 was mostly in Þorlákshöfn, which is the only densely-populated area in the municipality. Ölfus is an expansive municipality, and the ECOI believes there is hardly any chance that Míla will invest in parallel fibre-optic networks in the rural area. The ECOI therefore believes there will be no competition from parallel fibre-optic networks from Míla in rural areas, and Ljósleiðarinn will remain in a position of advantage.

725. In terms of the conditions for the classification of competitive areas, Ljósleiðarinn's market share has been increasing in recent months and is now 54% when mobile network connections are included, while the benchmark was 55%. It is therefore likely that the municipality will not meet this condition in the future.

726. Competition from mobile networks is considerably greater in densely populated areas than in rural areas, especially with regard to 5G, and the ECOI considers the greatest competitive pressure from mobile networks to be in Þorlákshöfn. The ECOI therefore believes there will not be much competitive pressure from mobile networks in rural areas where Ljósleiðarinn is in a very strong position. Furthermore, the ECOI notes that the aforementioned mobile network solutions are only substitutable for fixed networks on Market 3b, but not 3a.

727. Applying less stringent obligations on Míla in this municipality, as Ljósleiðarinn proposes, is also out of the question, simply because Míla does not have significant market power in the municipality and imposing obligations on Míla in the region is not permitted.

728. In view of the above and with reference to the ECOI preliminary draft, ECOI does not see any reason to change its position on designating Ljósleiðarinn as an operator with a significant market share in the municipality.

6.2.2 Míla

Míla's mobile distribution system

729. Míla's comments on the first consultation state the following on page 29 of the Company's comment on Paragraph 1592:

"Míla objects to the ECOI's misleading statement in Paragraph 1592, which refers to Míla's mobile network. As the ECOI is well aware, Míla neither owns nor operates mobile networks or mobile services. However, Míla does own and operate a RAN system, which is only a part of a mobile network and cannot be called a mobile network unto itself. Thus Míla is not a mobile network company, as it would need to have or lease access to a mobile core network and frequencies in order to be able to offer mobile network services. This is not the case. Míla therefore considers it wrong to include mobile network deployment in this information."

The ECOI's position

730. Paragraph 1592 of the Preliminary Draft can be found in Chapter 6.2.1, the introduction to Chapter 6.2., which deals with the assessment of significant market power on individual geographical markets in Market 3a. The ECOI appreciates this feedback and will change the wording so that it does not refer to Míla's mobile network, but instead to its radio access network (RAN). However, the ECOI does not consider Míla's fixed network and mobile network based on Míla's RAN system as two separate competing networks. It is clear that Síminn has an agreement with Míla regarding [...] on Míla's RAN is therefore not in competition with Míla, and Míla earns revenue from the service regardless of whether the service is provided via Míla's fixed network or its radio network. It is also clear that the ECOI concluded in Chapter 4 of the analysis that the aforementioned mobile network solution is not a substitute wholesale service for local loops over copper and fibre-optic networks, although mobile networks may create some indirect competitive pressure. The discussion and figure that shows deployment of mobile networks is therefore much less relevant to Market 3a than to Market 3b.

Copper local loops with PSTN service

731. Míla's comments on the first consultation state the following on page 29 of the Company's comment on Paragraph 1593:

"Míla criticises the ECOI's approach in Paragraph 1593 and the graph referred to therein, which includes copper local loops with PSTN service exclusively, as it has been established that this service will be permanently discontinued in the next few months. For this reason it is inappropriate to include copper local loops with PSTN service exclusively in Market 3a. The situation at the beginning of the year in no way accurately reflects the situation in coming months, as large-scale shutdowns of Síminn's PSTN systems are underway, resulting in a drastic reduction of local loops."

The ECOI's position

732. The ECOI considers it appropriate to include all copper local loops to households and businesses regardless of usage, as the usage may change and the local loop may be used for bitstream. The ECOI takes into account Síminn's comprehensive plans to dismantle its PSTN system and Míla's plans to dismantle its copper network, which the companies have submitted to the ECOI. There it is stated that the PSTN telephony system will be fully discontinued in the first half of 2024 and the copper network itself before the end of 2028. Figure 3.26 in Annex A contains a graph of the actual decrease of copper loops in recent years and a projection of the discontinuation of the system as well as a graph of the actual VDSL decrease compared to the decrease in copper lines, with a projection until the end of 2025, which assumes that there will be no copper loops without VDSL after 2025. The ECOI therefore takes the developments indicated in Míla's comment into account. However, Míla's share of the local loop market to date and in the near future is based in part on copper local loops, but by 2025 the share of copper local loops and VDSL is expected to be low on a national scale.

Area A

733. Míla's comments on the first consultation state the following on page 29 of the company's comments on Paragraphs 1597, 1602 and 1609:

"[...].

With reference to the aforementioned and market share trends on Market 3a, Míla contests the ECOI's preliminary assessment in Paragraph 1609, which states that there are no grounds for designating Ljósleiðarinn as having significant market power on the relevant geographical market in Area A."

The ECOI's position

734. The ECOI has received updated data from market participants based on the situation as of the middle of 2023 and has reviewed the data. The ECOI investigated whether this new information would change anything in terms of the designation of operators with significant market power on any of the numerous geographical markets. All municipalities belonging to Area A still fulfil the conditions set by the ECOI in terms of market share for Area A and no changes are foreseeable during the term of validity of this analysis. The ECOI has looked specifically at the number of copper local loops without bitstream in this region (PSTN connections) and their impact is so small that the ECOI does not believe that their discontinuation will result in the conditions no longer being met. The effects of the PSTN discontinuation should be mostly apparent by the middle of 2023 and entirely by the first part of 2024, if Síminn's plans come to fruition.

735. The situation in this region is such that parallel deployment of two fixed networks is generally very high. Parallel fibre-optic deployment in the region is also high and rising. If Míla's fibre-optic deployment is put in the context of the agreement with Síminn, in addition to Síminn's strong retail position, the ECOI considers it unlikely that the trend will be such that the conditions established for the selection of Area A will not be fulfilled even though the

number of copper local loops continues to decrease and will be entirely removed from the market by the end of the period of validity of this analysis.

736. As the same time as the number of Míla's copper local loops is decreasing, the company is engaged in expansive fibre-optic deployment and must consider that the greatest proportion of end users who stop using copper local loops will end up on Míla's fibre-optic network, although Ljósleiðarinn will certainly receive some share, as well as the fact that a rather low percentage of consumers will be content with the aforementioned mobile network solution. Should Míla reach an agreement with Nova regarding the increased entry by Nova onto Míla's fibre-optic network, Míla's position in this region will strengthen at Ljósleiðarinn's expense. The ECOI does not consider that scenario to be implausible given the strong emphasis Míla has placed on it and the public statements by Míla's directors and representatives of the company's owner, Ardian.

The City of Reykjavík

737. The accompanying document with Míla's comments on the first consultation states the following regarding the City of Reykjavík in the section about 3a:

"Míla points out that its market share has been decreasing in "older" Ljósleiðari areas, and there is nothing to suggest that this is going to change. One reason is that Ljósleiðarinn already has a significant advantage in fibre-optic connections to households. There are also indications that the electronic communications companies have binding or quantity agreements with Ljósleiðarinn that contain built-in quantity discounts. If a user already has equipment and indoor installations from one provider, this will cause a certain degree of reluctance on the part of the end user to have field services come and replace the equipment that essentially provides the same service. Retailers' sales discussions thus aim to cause as little disruption as possible for the end user, i.e. use the same bitstream equipment (ONT/lightbox) that is already in place and only replace the electronic communications company's terminal equipment, i.e. the router. This creates a "critical mass" for the larger operator. This is particularly the case now that Síminn is selling services over Ljósleiðarinn's connections. Míla also points out that during the fibre-optic rollout that took place this year, [...] % of homeowners in the 101 postal code did not want fibre-optics installed due to hassle it would present, i.e. having to stay home to receive an employee from Míla and potential disruption to the property.

Míla notes that its share in Reykjavík is due to some extent to copper installations, which are rapidly being phased out. Míla estimates that nearly all copper connections in the Capital Region will be phased out in the next 2-3 years, even though some connections may remain longer. This is known as a 'long tail'. Míla therefore considers it obvious that its market share in Reykjavík will fall to 20-25% in the next few years along with the accompanying strengthening of Ljósleiðarinn. Míla points out that in previous market analyses, Míla's predictions have been far more accurate than the predictions of the ECOI. Míla objects to Reykjavík being considered a competitive area and considers it evident that Ljósleiðarinn should be designated as dominant on the market."

The ECOI's position

738. The situation in mid-2023 in Reykjavík was such that Míla's share of Market 3a was 34% as opposed to Ljósleiðarinn's share of 66%. The ECOI does not expect this situation to change in such a way that there will be occasion in the near future to designate Ljósleiðarinn as being in a market-dominant position.

739. Míla has enjoyed significant success in deploying fibre-optics in Reykjavík and its coverage was at least 76%⁴⁰ as of mid-2023, according to the ECOI infrastructure database. Míla continues its aggressive fibre-optic deployment efforts in Reykjavík, and in this context it should be noted that ⁴¹ the document „gpon_sales“ on the Míla website states⁴² that 5,135 residences in Reykjavík are marked as “sale begun” for the year 2023 and 1,136 residences are marked “sale planned” in the document “gpon_planned” for the same year. It can therefore be assumed that at least 5,135 residences, and probably more, were added to Míla's network in Reykjavík during 2023. According to these documents, continued fibre-optic deployment is planned and there is nothing to suggest anything other than that Míla will fully deploy throughout all of Reykjavík, or at least for the most part, during the period of validity of this analysis.

740. As a result, Míla is very capable of maintaining its market share and increasing it in the long term despite the decreasing number of copper local loops, including if Míla is able to reach an agreement with Nova, which is not out of the question. Not all customers currently on copper can be expected to switch to Ljósleiðarinn. It can be said that the agreements between Míla and Síminn guarantee Míla a minimum market share, but there are limits to what Síminn can purchase from Ljósleiðarinn. When considering fixed networks as of mid-2023, Síminn had a retail market share of approximately 42%, and there is nothing to indicate that its share is declining when taking into account trends in recent months, at least not in any significant way.

741. While some residents may not want Míla's fibre-optics now, this does not necessarily mean that they won't later, especially considering changes and upgrades such as 10 Gb/s connections. Furthermore, the proportion of the market that does not want a connection is not so great that it will have a significant impact on Ljósleiðarinn's position in Reykjavík. Míla is, however, certainly correct that it is generally more difficult to deploy fibre-optics in a region where another provider has already done so. It should nevertheless not be impossible for Míla to achieve success in competition under such conditions, considering, among other things, the company's financial strength, its economies of scope and other factors that give Míla an advantage over Ljósleiðarinn.

⁴⁰ As Míla's data have been of such nature that it is not possible in all cases to connect addresses from Míla to data from Registers Iceland, it is possible that this is a case of underestimation. The expansion is 78% based on information from Míla regarding the position at the end of 2022 in the company's expansion plans and the number of work places and homes in the municipality.

⁴¹ <https://www.mila.is/framkvaemdir/aaetlanir-ljosleidara-og-ljosnets/>

⁴² Document from 11.12.2023.

742. If Ljósleiðarinn has binding or quantity agreements with electronic communications companies, the ECOI expects that Míla will respond in kind with similar offers once the obligations imposed on the company have been lifted. [...]

743. In view of the above and with reference to the ECOI's Preliminary Draft, the ECOI does not see any reason to change its position and designate Ljósleiðarinn as an operator with a significant market share in the municipality.

The municipality of Kópavogur

744. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Kópavogur in the section about 3a:

"Míla believes that its market share will continue to decline, as there is still a significant number of copper connections."

The ECOI's position

745. As of mid-2023, Míla had a 42% share of Market 3a in Kópavogur and Ljósleiðarinn had a 58% share. The ECOI does not expect this situation to change in such a way that there will be occasion in the near future to designate Ljósleiðarinn as being in a market-dominant position.

The municipality of Seltjarnarnes

746. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Seltjarnarnes in the section about 3a:

"Míla notes that its shares have decreased by [...] percent this year. Míla predicts that its market share will drop below 20% during the next year, as Míla owns very little of the fibre-optic infrastructure in the region and the further development in the municipality remains uncertain. Míla also notes that about [...]% of homeowners refused Míla's fibre-optics in Reykjavík, where Ljósleiðarinn has had a presence for some years. This discourages the company from further deployment in areas where Ljósleiðarinn already has a strong presence.."

The ECOI's position

747. In the additional consultation document published on 29 November 2023, the ECOI paid special consideration to the municipality of Seltjarnarnes on account of changes to Míla's and Ljósleiðarinn's market shares in the region. The ECOI refers to that detailed discussion and the justification presented therein. The ECOI concluded that there are no grounds for designating Ljósleiðarinn as an operator with a significant market share in the municipality of Seltjarnarnes.

The municipality of Akranes

748. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Akranes in the section about 3a:

"Míla is not deploying fibre-optics in Akranes and its market share will most likely drop below 30% within the period of validity of the analysis."

The ECOI's position

749. Míla's claim that it is not deploying fibre-optics in Akranes is not entirely correct,⁴³ if the document „gpon_sales“⁴⁴, which states that 213 residences in Akranes are marked as “Sales started” for the year 2023, is to be trusted.

750. Míla's fibre-optic coverage to households and businesses had reached 52% by mid-2023, and was at 49% at the end of 2022. Fibre-optic rollout is often slower when homeowners do not pay high installation fees, as was the case in the “Iceland Optical Connected” project or when another operator offers parallel fibre-optic network. Usage of Míla's network can therefore be expected to increase over time, in addition to the fact that Míla's fibre-optic network is already in place and, according to the company's plans, Akranes is in [...]. In mid-2023, Míla's market share was 38% in the municipality.

751. In view of the above and with reference to the ECOI's Preliminary Draft, the ECOI does not see any reason to change its position and designate Ljósleiðarinn as an operator with a significant market share in the municipality.

Bláskógar Municipality

752. Míla's comments on the first consultation state the following on page 31 in the company's comments:

“Míla comments on the ECOI's grounds for designating the company as having significant market power in the municipality of Bláskógabyggð, particularly compared to other network operators who have a much higher share of the market in other regions but are not designated as having SMP. Míla is designated as having significant market power on the basis of the company's 58% market share.. In other municipalities, it seems that operators other than Míla need to have a share of over 70%. Ljósleiðarinn's share of 70% in Reykjavík, for example, does not suffice to earn the company an SMP designation. This raises significant concern in Míla's opinion.

Míla stresses that the ECOI's criteria for designating Míla as having significant market power in specific regions should also apply to other network operators who have equally high or higher market shares in their areas of operation. Seltjarnarnes is a good example, as the analysis shows that Míla's position there is not strong and there is no indication that its position will become stronger during the period of validity of the analysis. [...]. In reference to the criteria on which the ECOI bases its designation of Míla as an operator with significant market power in individual municipalities, it is clear that these criteria also apply to Ljósleiðarinn in the

⁴³ <https://www.mila.is/framkvaemdir/aaetlanir-ljosleidara-og-ljosnets/>

⁴⁴ Document from 11.12.2023.

municipality of Seltjarnarnes, and that the company should therefore be considered to have significant power on that market."

753. The accompanying document with Míla's comments states the following regarding the municipality of Bláskógabyggð in the section about 3a:

"Here Míla has a share of 58% and other operators 42%. A large portion of Míla's connections are on copper while the competition is on fibre-optics, thus the area should obviously be considered competitive. Míla does not see how it is able to strengthen its position in the municipality, as each new fibre-optic connection with Míla in the area involves switching from copper."

The ECOI's position

754. In the ECOI's opinion, it is not possible to compare market shares in municipalities with virtually no parallel fixed networks, as is the case in Bláskógabyggð, with the situation in a municipality with nearly 100% parallel fixed network coverage and 74% dual fibre-optic network coverage, which is likely to reach 100%, as is the case in Reykjavík. When two operators have parallel fixed networks, both operators have the opportunity to improve their position and market shares can change drastically over a short period of time.

755. As far as the ECOI is aware, no operator has plans to deploy fibre-optic networks parallel to Míla's in the municipality of Bláskógabyggð. However, the number of Míla's fibre-optic local loops is increasing in the municipality.

756. The situation in Bláskógar is such that there are two **separate** access networks, i.e. the municipally owned fibre-optic network Bláskógaljós and Míla's network. Bláskógaljós was developed in the rural region under State aid while Míla operates a fibre-optic network in the densely populated area of the municipality. Bláskógaljós and Míla are in fact the only operators offering local loop access to residences and businesses on their own networks, and therefore both have a 100% market share for the access addresses covered by their networks. As will be explained later on about similar municipally-owned fibre-optic networks, the ECOI does not see any reason to define Bláskógaljós as market dominant, considering its origins and purpose. Míla, on the other hand, is operated for profit and is the largest electronic communications infrastructure company in the country; its position is entirely different from that of Bláskógaljós. The ECOI therefore considers it appropriate to define Míla as market dominant in the municipality of Bláskógabyggð, and the situation in Seltjarnarnes or Reykjavík has no effect there, as the markets are in no way comparable.

The municipality of Bolungarvík

757. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Bolungarvík in the section about 3a:

"Míla has lost [...] % to Snerpa during the year. Míla currently has no plans for fibre-optic deployment. It is clear where the situation in Bolungarvík is headed, as Snerpa is the only operator to offer fibre-optics."

The ECOI's position

758. Míla's market share as of mid-2023 was 56% in the municipality of Bolungarvík. This figure is based on the company's copper local loops. According to Míla, Bolungarvík is in [...] So far Snerpa's fibre-optic deployment has been slow and it is unsure how the situation will develop.

759. The ECOI therefore does not consider this situation likely to change during the period of validity of the analysis.

760. However, the ECOI will continue to monitor market share trends in all municipalities in the country. Should the situation change considerably or it become evident that such changes significantly affect the competitive situation on the markets in question, the ECOI may respond with a new market analysis, either in part or in full, or by amending obligations where appropriate without a new analysis, cf. Article 49 of the Regulation, or by making a provisional decision, cf. Article 56 of the Regulation, if urgently necessary.

The municipality of Dalabyggð

761. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Dalabyggð:

"Míla believes that the ECOI is mistaken in this case, which further demonstrates a lack of objectivity with regard to Míla. There are two operators present here and obligations are imposed on the one with less deployment and who only has copper local loops. Míla has not announced any plans for fibre-optic deployment which would justify the imposition of obligations on the company. Míla notes that it is a wholesale company with open access and vectoring is not an option in the municipality."

The ECOI's position

762. There are two **separate** access networks in the municipality of Dalir, i.e. Dalaveitur's fibre-optic network and Míla's network. The Dalaveitur network was installed with State aid in the rural area and Míla's network is located in Búðardalur, the only population centre in the municipality. There is no parallel network deployment in the municipality. Dalaljós and Míla are in fact the only operators offering local loop access to residences and businesses on their own networks, and both operators have a 100% market share for the access addresses that their local loop networks covers. As previously explained with regard to comparable municipally-owned fibre-optic networks, the ECOI sees no reason to designate Dalaljós as having significant market power, considering its origins and purpose. The ECOI also refers to its discussion of Míla's comment below that operators of local/municipal networks are not designated as having significant market power.

763. The ECOI summarily rejects the claim that it is biased in its assessment. The ECOI's assessment takes into account parallel network deployment and operator status. Dalaveitur is owned by the municipality and operates a state-funded network and has provided electronic communications companies like Míla full access to its local loops to residences and businesses. Residents and the municipality have a common interest when it comes to

minimising costs for the residents, who are also the municipality's voters. Míla, on the other hand, is operated for profit and is the largest electronic communications infrastructure company in the country; its position is entirely different from that of Dalaljós. It is worth noting in this context that Dalaljós sells access to all of its local loops to external operators, while Míla sells virtually none and none at all in this municipality.

764. As far as ECOI is aware, no operator has plans to deploy fibre-optic networks parallel to Míla's in the municipality of Dalabyggð. The number of Míla's fibre-optic connections in the municipality has decreased little, and the connections that have decreased in number recently are mostly copper connections without bitstream.

765. In view of the above, the ECOI does not see any reason to amend its conclusion that Míla is in a market dominant position on its local loop network in the municipality of Dalabyggð.

The municipality of Fjallabyggð

766. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Fjallabyggð:

"Here Tengir has 35% market power and has installed fibre-optics in Ólafsfjörður and rural areas of Fjallabyggð, while Míla has almost exclusively copper. Míla states that this should be considered a competitive area as Míla's market share is decreasing fast while the share of Tengir is increasing. Míla thus has no current plans to deploy fibre-optics in Ólafsfjörður and the vicinity but a network will likely be installed in Siglufjörður in cooperation with Tengir."

The ECOI's position

767. Míla's market share in the municipality as of mid-2023 was 61%, parallel fixed network coverage was around 43%, and parallel fibre-optic coverage was only around 3% as of mid-2023. Míla's market share has decreased slightly and was 65% at the end of 2022. Both Tengir and Míla have deployed fibre-optics in the municipality in recent months, but Tengir's deployment is currently considerably greater than Míla's. According to the forecasts of electronic communications companies in this region, Tengir plans to increase the number of fibre-optic connections by [...] from March 2023 to the end of 2025, while Míla plans to increase the number of fibre-optic connections by [...] by the end of 2025. In this case, Tengir's deployment will reach [...]% while Míla's fibre-optic deployment will reach [...]%, based on network deployment figures from the ECOI infrastructure database for the end of 2022, while Míla's copper network extends to nearly the entire municipality. According to Míla's projections, Siglufjörður and Ólafsfjörður are in [...] of the decommissioning of copper local loops, for which Míla's plan states that [...] Usage of Tengir's fibre-optics is [...].

768. The ECOI also takes the service agreement between Míla and Síminn into consideration, and the agreement can be said to guarantee Míla a certain minimum market share, as Síminn does not purchase bitstream from Tengir. Síminn had a share of around 84% of the retail market in the municipality when looking at fixed networks as of mid-2023, and

there is no indication that this share is decreasing but has instead increased. The situation in the municipal retail market is therefore not good at all.

769. Míla is correct that Tengir owns fibre-optics in the rural area of Fjallabyggð and it is not likely that another parallel network will be installed in that area. However, there are rather few connections compared to the population centres in the municipality, i.e. Ólafsfjörður and Siglufjörður.

770. At present, and if electronic communications companies' plans come to fruition, the ECOI sees no reason to change its position with regard to designating Míla as an operator with significant power on Market 3a in this municipality.

771. However, the ECOI will continue to monitor market share trends in all municipalities in the country. Should the situation change considerably or it become evident that such changes significantly affect the competitive situation on the markets in question, the ECOI may respond with a new market analysis, either in part or in full, or by amending obligations where appropriate without a new analysis, cf. Article 49 of the Regulation, or by making a provisional decision, cf. Article 56 of the Regulation, if urgently necessary.

The municipality of Grindavík

772. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Grindavík in the section about 3a:

"Ljósleiðarinn is engaged in significant development efforts. The ECOI's speculations that Ljósleiðarinn's marketing efforts will not be successful there are, in Míla's opinion, incorrect as this statement is not supported by experience. There are indications that the electronic communications companies have binding or quantity agreements with Ljósleiðarinn that include built-in quantity discounts. Míla therefore contests this analysis of the market and considers the region to be competitive. It is clear that the ECOI's market analysis does not look to the long term."

The ECOI's position

773. As of mid-2023, Míla's market share in the municipality was 96% and parallel fibre-optic deployment was low. Given the ongoing seismic activity in the area that began in November of 2023, all deployment plans can be expected to remain uncertain indefinitely. Míla's fibre-optic network extends to the rural area and is unlikely to be doubled.

774. The ECOI sees no reason to amend its conclusion regarding the municipality.

The municipality of Hveragerði

775. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Hveragerði in the section about 3a:

"Míla believes that Ljósleiðarinn's market share will soon surpass 70%. Míla has lost [...] % this year."

The ECOI's position

776. As of mid-2023, Ljósleiðarinn's share of Market 3a in the municipality was 60%. Parallel network deployment is significant, i.e. taking copper and fibre-optics into account, and Míla's fibre-optic coverage was around 44% as of mid-2023. Based on Míla's network deployment forecast, the company's fibre-optic deployment will reach [...] % by the end of 2025. In these circumstances and in its position in general, Míla is fully capable of competing with Ljósleiðarinn in the municipality and the ECOI sees no reason to amend its conclusion that there is a basis for competition there, as the vast majority of the municipality's inhabitants reside in the population centre of Hveragerði, unlike e.g. the neighbouring municipality of Ölfus, where a considerably larger proportion live in rural areas.

The municipality of Ísafjörður

777. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Ísafjörður in the section about 3a:

"Míla has lost [...] % points this year to Snerpa."

The ECOI's position

778. In mid-year 2023 Míla had a market share of 54% in the municipality, where there is considerable parallel deployment of fixed networks and increasing parallel deployment of fibre-optics. Snerpa and Míla are in a considerably different position with regard to their power in general, and Míla has a significant advantage over Snerpa relating to economics of scale and scope. In spite of Snerpa's increasing market share, Míla is fully capable to compete with Snerpa in the municipality and the ECOI does not find there is reason to alter its conclusion that there are grounds for active competition in the municipality during the term of the analysis.

The municipality of Múlaþing

779. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Múlaþing in the section about 3a:

"Highly disparate status of fibre-optic installation and wide availability of copper. Austurljós has declared a willingness to engage in further expansion."

The ECOI's position

780. Míla is in a very strong position in the municipality, with a market share of 84% in mid-year 2023, in addition to which Míla is expanding its fibre-optic deployment. Austurljós is a very small company compared to Míla and the ECOI does not anticipate that Míla's position will be sufficiently altered in the municipality to justify changing the Office's conclusion to designate Míla as having significant market power there in Market 3a.

The municipality of Rangárþing eystra

781. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Rangárþing eystra:

"The deployment of Ljósleiðarinn's fibre-optics is far greater than that of Míla in population centres, and Ljósleiðarinn's competitive position has therefore been strengthening. Míla believes that the market position will change rapidly there in the near future. Míla has lost [...] % points during the year 2023 and drops below [...] % at the beginning of 2024 if the trends continue. Míla therefore considers it likely that this will become a competitive area during the term of the analysis."

The ECOI's position

782. By mid-year 2023, Míla had a market share of 76% in the municipality. Míla's fibre-optic cable reached 45% of domiciles and workplaces in the municipality by mid-year 2023. Ljósleiðarinn's deployment covered about 40% of domiciles and workplaces in the municipality, and this is limited to the population centre, i.e. Hvolsvöllur. The ECOI does not anticipate any further deployment on the part of Ljósleiðarinn in the municipality. This municipality has a very wide-reaching municipal network that is owned by Míla and the ECOI does not expect that a parallel fibre-optic cable will be installed there, and therefore Míla's market share will be 100% in the rural areas. Míla's use of its own fibre-optic cable is [...] % compared to Ljósleiðarinn's [...] %. Míla's fibre-optic cable also reaches access addresses in the population centre, in addition to which Míla owns fibre-optic cable that connects to street boxes in the area, plus a voluminous copper network.

783. Although there is competition in the population centre, it will not reach the rural areas where Míla is the only participant that offers access to local loops. Míla's market share has also not decreased significantly despite Ljósleiðarinn's fibre-optic deployment, which occurred many years ago. The ECOI therefore does not find there is reason to alter its conclusion that Míla is in a market-dominant position in the municipality on Market 3a.

The municipality of Rangárþing ytra

784. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Rangárþing ytra:

"Míla is destined for 0% in the area as Ljósleiðarinn covers the population centres and the municipality covers the rural areas."

The ECOI's position

785. By mid-year 2023 Míla had a 20% market share in the municipality, Ljósleiðarinn had 34%, and Rangárljós had 45%. Míla's share decreases from that of year-end 2022, but this may mostly be attributed to the decrease in the number of local loops without bitstream (Public Switched Telephone Network, PSTN), and at present there remain no local loops of this type in the municipality. Míla's fibre-optic deployment to domiciles and workplaces was 12% at year-end 2022 and has been slowly increasing, whereas Ljósleiðarinn's fibre-optic deployment was about 40% at the same time. Ljósleiðarinn's fibre-optic cable reaches the

population centre at Hella and the ECOI does not anticipate any further deployment on the part of Ljósleiðarinn in the municipality. Rangárljós owns the fibre-optic network in the population centre, which was installed with the aid of government grants, and the ECOI does not anticipate that a parallel fibre-optic cable will be installed there. As stated in the Preliminary Draft, the ECOI does not find there are grounds for designating Rangárljós as having significant market power on its network. Míla also has optical network connections (copper) in the municipality in addition to the fibre-optic connections and therefore Míla owns fibre-optic cable through the population centre at Hella which Míla can use for expanding fibre-optics to local residences, and this fibre-optic deployment may occur in a short period of time as Hella is not a particularly large population centre. Recent developments in the reduction of Míla's Ljósnet connections do not indicate that their number is decreasing very fast and therefore the ECOI cannot agree with Míla's statement that the company's share is heading for 0%. Competition between Míla and Ljósleiðarinn is mostly limited to the population centre at Hella, and in the ECOI's assessment, Míla is entirely capable of competing with Ljósleiðarinn in this area, and therefore the ECOI does not find there is reason to alter its conclusion that there are grounds for competition in the municipality.

The municipality of Skaftárhreppur

786. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Skaftárhreppur:

"Ljósleiðarinn has declared that the company plans for fibre-optic rollout in the population centres. This means that the company will likely have a 30-40% market share during the period."

The ECOI's position

787. Míla has been purchasing local networks in the municipality and thereby has increased its market share since the draft was submitted for consultation. The ECOI is not aware that Ljósleiðarinn has embarked on fibre-optic rollout in Kirkjubæjarklaustur, and according to deployment data for mid-year 2023 Ljósleiðarinn owned no fibre-optic local loops in the municipality. Even if Ljósleiðarinn does initiate fibre-optic rollout, this would be in the form of a joint project with Míla at Kirkjubæjarklaustur, and Míla would remain in a very strong position in this municipality after the aforesaid purchase. Furthermore, the proportion of rural areas is high in this municipality. The ECOI does not find there is reason to amend its conclusion that was described in the draft.

The municipality of Súðavíkurhreppur

788. Míla's comments on the first consultation state the following on page 31 in the company's comments:

"In Súðavíkurhreppur Míla is designated as having SMP in Market 3a. [...] With reference to this, Míla objects that there are grounds for designating Míla as having significant market power in Market 3a in this area, and maintains that there is every reason to relieve Míla of its obligations in this market."

789. The accompanying document with Míla's comments states the following regarding the municipality of Súðavíkurreppur in the section about 3a:

"Míla has lost [...] % of its market share this year and therefore the ECOI's analysis is outdated. This demonstrates how the ECOI seems to underestimate local parties in this analysis. Míla calls upon the ECOI to analyse the market using the latest figures in the Offices's possession, which should be the mid-year figures for 2023. Míla considers that this should be a competitive area and objects to Míla being designated as having SMP in the area."

The ECOI's position

790. In the additional consultation document for the additional consultation that took place from 29 November 2023 to 3 January 2024, the ECOI gave particular consideration to Súðavíkurreppur due to changes in the market shares of Míla and Snerpa in that municipality during the first part of 2023. The ECOI refers to that discussion and the conclusion was that ECOI considers that competition has now been established on that market. See that discussion and the updated discussion in the analysis, cf. the current Chapter 6.2 in Appendix A.

The municipality of Hornafjörður

791. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Hornafjörður:

"This could change quickly if Ljósleiðarinn enters this market."

The ECOI's position

792. In mid-year 2023 Míla had a market share of 85% in the municipality. The ECOI is not aware that Ljósleiðarinn has any plans for fibre-optic rollout in the municipality. The ECOI does not find there is reason to alter its conclusion that was described in the draft, as Míla is in a very strong position on Market 3a in this municipality.

The municipality of Vogar

793. Míla's comments on the first consultation state the following on page 31 in the company's comments:

"With regard to the municipality of Vogar, the ECOI concludes that it is unlikely that Ljósleiðarinn will, during the term of the analysis, install fibre-optics to all access addresses that already have a fibre-optic connection from Míla. Míla is designated as having significant market strength on these grounds. Míla objects to this designation and considers it to be based on faulty grounds and clearly unreliable conjecture. As indicated in official documents, Gagnaveita Reykjavíkur (currently Ljósleiðarinn) entered into an agreement with the municipality in 2018 regarding the installation of fibre-optics for the entire town, which was scheduled to be completed before the end of 2023. Míla and Ljósleiðarinn have also cooperated in 2023 to provide fibre-optics to the same neighbourhoods in Vogar."

Míla therefore considers that there will be a high level of competition in the future in Vogar during the term of the analysis, and therefore there are no grounds for the SMP designation."

794. The accompanying document with Míla's comments includes the following in the section on Market 3a concerning the municipality of Vogar:

"Here it seems that the ECOI does not have the figures from Ljósleiðarinn, which is nevertheless active in the municipality and entered into an agreement with the municipal council in 2018 on fibre-optic installation in the municipality, which is to be completed this year. The project is already in full flow and here, the ECOI has not applied a prospective analysis. Míla considers that this should be a competitive area."

The ECOI's position

795. By mid-year 2023 Míla had a market share of 95% in the municipality and parallel deployment of fixed networks had reached 9%. Míla's fibre-optic deployment had then reached 43% and that of Ljósleiðarinn had reached 9%. Míla owns a fibre-optic network in the rural area and the ECOI does not consider there to be any likelihood of a parallel fibre-optic cable being installed there. Míla has also engaged in fibre-optic rollout in the population centre, partly in cooperation with Ljósleiðarinn. The ECOI considers that even though a parallel network is developed in the population centre, the effects on Míla's market share will be slow to materialise. Also, that competition will not reach the rural areas as Míla is the only party that offers access to local loops. The ECOI therefore does not find there is reason to amend its conclusion that Míla is in a market-dominant position in the municipality during the term of this analysis.

The municipality of Ölfus

796. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3a concerning the municipality of Ölfus:

"Míla considers the findings to be correct, although questions arise why the same should not apply to Seltjarnarnes, where Ljósleiðarinn has an even stronger position. Míla considers that the ECOI does not give provide strong arguments for not imposing obligations on Ljósleiðarinn in Seltjarnarnes."

The ECOI's position

797. The ECOI points out that in the municipality of Ölfus there is a local fibre-optic network in the rural areas that is owned by Ljósleiðarinn and the ECOI does not consider there to be any likelihood of a parallel fibre-optic cable being installed there. This is what differentiates these municipalities as Seltjarnarnes is exclusively a population centre, which makes it a much more promising prospect for the installation of fibre-optic cable parallel to a fibre-optic cable that is already in place. Furthermore, there is no Ljósnet network (VDSL on copper) in the rural areas of the municipality of Ölfus that could provide competition with Ljósleiðarinn's fibre-optic local loops.

The municipality of Tálknafjörður

798. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Tálknafjarðarhreppur in the section about 3a:

"Here it seems that Snerpa is installing fibre-optics and Míla has lost [...] points this year. Míla submitted a plan this spring that stated the company's intent to install fibre-optics to 100 apartments by 2025, but there is no confirmed plan regarding continued development."

The ECOI's position

799. By mid-year 2023, Míla had a market share of 90% in the municipality. Snerpa's fibre-optic deployment has not increased recently. Míla had a market share of 92% at year-end 2022 and therefore not much change has occurred.

800. Based on the progress of Snerpa's fibre-optic rollout efforts up until now, the ECOI does not anticipate a sudden leap in Snerpa's market share. In light of Míla's strong position, the ECOI does not find reason to amend its decision described in the Preliminary Draft.

The Municipality of Vestmannaeyjar

801. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Vestmannaeyjar in the section about 3a:

"Míla estimates that in the next 3 years Eygló will have a 75% market share and thereby have significant market power, yet no obligations are imposed on it. The system does not include the obligations that come with grants from "Iceland Optical Connected" except to a very limited extent. For example, the board of Eygló could decide one day to start offering bitstream service, and prevent other parties from offering bitstream service. This means that the ECOI has no involvement in ensuring normal business practises of an SMP entity."

The ECOI's position

802. Eygló is an electronic communications company that the municipality of Vestmannaeyjar establish for the purpose of expediting fibre-optic deployment in the municipality, as the town authorities and the local townspeople did not feel that profit-driven electronic communications companies showed sufficient interest in fibre-optic deployment in the municipality. Míla has nevertheless installed fibre-optics for nearly 26% of the municipality in recent years. It may therefore be said that Eygló is a community project without a focus on profitability, despite the fact that the largest part of the network is in a population centre and therefore does not qualify for support from the Iceland Optical Connected project.

803. According to statements from Eygló, the company does not intend to engage in operating bit stream systems on its own fibre-optic local loops, and the company has offered electronic communications companies access to the local loop network. In the event that Eygló withdraws this access and there are obvious indications of a significant impact on the

competitive position on the relevant markets, the ECOI may respond with a new analysis, in whole or in part, of the markets in question, or, where appropriate, by making changes to the obligations without undertaking a new market analysis, cf. Article 49 of the regulation, or by making a provisional decision, cf. Article 56 of the regulation, if urgently necessary.

The municipality of Vopnafjarðarhreppur

804. Míla's comments on the first consultation state the following on page 21 in the company's comments on the paragraph:

"With regard to Vopnafjarðarhreppur the ECOI concludes that there are grounds for active competition on Market 3a. Nevertheless, Tengir is the only entity that owns fibre-optics in the municipality [...]. Therefore, Míla considers it normal for Tengir to be designated as having significant market power in Vopnafjarðarhreppur."

805. The accompanying document with Míla's comments states the following regarding the municipality of Vopnafjarðarhreppur in the section about 3a:

"Here Tengir has a market share of about [...] % according to Míla's latest figures, and has installed fibre-optics in nearly the entire municipality. It is clear that the analysis is wrong as Míla will hold a 0% market share in this area during the term of the analysis. Míla categorically objects that this is a competitive position that will endure."

The ECOI's position

806. In the additional consultation document for the additional consultation that took place from 29 November 2023 to 3 January 2024, the ECOI gave particular consideration to Vopnafjarðarhreppur due to changes in the market shares of Míla and Tengir in that municipality during the first part of 2023. The ECOI refers to that discussion and the ECOI decided to designate Tengir as having significant market power in Vopnafjarðarhreppur, with the consequent obligations imposed on the company. Reference is made to the aforesaid consultation document, as well as the amended discussion in Chapter 6.2 in Appendix A to the analysis.

The municipality of Þingeyjarsveit

807. The accompanying document with Míla's comments on the first consultation states the following regarding the municipality of Þingeyjarsveit in the section about 3a:

"Míla considers this to be the correct conclusion."

The ECOI's position

808. The ECOI believes that Míla's position reinforces the Office's conclusion with respect to this municipality on Market 3a.

Operators of local networks/municipal networks not designated as having significant market power

809. Míla's comments on the first consultation state the following on page 23 of the company's comments:

"As indicated by the analysis, the ECOI does not intend to designate any operators of local networks/municipal networks as having significant market power. This preliminary assessment seems to be based on grounds including the FICORA case, which is referred to in Paragraph 1635. In that case it is pointed out that i) these networks in general follow a general open business model with regard to access, ii) that the majority of them had been given a government grant for construction and that iii) the behaviour of these parties on the market differs significantly from that of conventional electronic communications companies that have the principal objective to maximise profits and therefore operate in a completely different manner than small, local electronic communications networks that serve the objectives of communities in sparsely populated municipalities, cf. footnote 343 in the document.

In Paragraph 1638 it is stated that the ECOI does not find reason to designate the owner of the fibre-optic network in the relevant municipality as having significant market power. It is said to be extremely unlikely that the municipality will misuse its network in a manner contrary to the interests of consumers or wholesale trading in the area. Also that the network is subject to obligations according to rules on State aid that apply to open wholesale access. This is a community project and it is clear that the municipality did not embark on the above-mentioned deployment for the purpose of competing on the telecommunications market, but rather to promote development and employment efforts in this remote and sparsely populated region. This project is not done for profit, unlike the fibre-optics deployment of entities such as Míla, Ljósleiðarinn, Tengir and Snerpa. The behaviour of such a party therefore differs greatly from that of the aforementioned electronic communications companies that are competing with each other. The municipality's business model is based on an open business model for open access, equality and fair pricing.

Míla has several notes regarding the aforesaid. Firstly, it is not at all clear what obligations based on rules regarding government grants that apply to open wholesale access the Office is talking about there, and Míla requests that the ECOI explain this. Various different grounds and conditions have been applied to the grants that have been given to municipalities and other parties in connection with fibre-optic projects. It is even less clear what follow-up should be carried out for the relevant grants and the alleged obligations that apply to them. If the ECOI intends to base the assessment of significant market power on these grounds it must be satisfactorily investigated precisely what conditions are present. Is there for instance something that prevents the owner of the network from imposing an excessively high price for access to the network? Secondly, it is also unclear what is meant by open access, and Míla therefore considers it important that the ECOI

investigates and verifies whether any such conditions have been made in connection with each individual network and what significance those conditions have in actuality, i.e. is the network to be open for wholesale parties and/or retailing parties and what is the significance of an open business model in this regard. Míla reiterates that the same could apply to Míla's network, which offers open access based on equality and fair pricing. The same could even be said for other network operators. Thirdly, it should be clear to the ECOI that many of the projects with which Míla has been involved through the years can hardly be considered profit-driven projects as their objective has much rather been for the purpose of meeting the requirements of local parties, to be socially responsible and to ensure safe telecommunications in the relevant areas.

Furthermore, as the ECOI is well aware, municipal networks are frequently bought and sold and therefore it could well turn out that changes in ownership of individual networks will result in some of the companies which the ECOI lists in its comparison and discussion, for example in Paragraphs 1638 and 1644, will acquire certain municipal networks during the lifetime of this analysis. With reference to the aforesaid, and with due consideration of the principle of equality according to the Administrative Procedures Act, the market share of each municipal network in the markets relevant to this case and other competitive conditions in the relevant area must be taken into account when designating parties as having significant market power."

810. In Míla's accompanying document there are similar comments to the one on Árneshreppur made for the following 11 municipalities: Kjósarhreppur, Skorradalshreppur, Hvalfjarðarsveit, Eyja- og Miklaholtshreppur, Hrunamannahreppur, Skeiða- og Gnúpverjahreppur, Flóahreppur, Reykhólahreppur, Tjörneshreppur, Fljótisdalshreppur, Ásahreppur.

The ECOI's position

811. *Firstly*, Míla claims that various different grounds and conditions have been applied to the grants that have been given to municipalities and other parties in connection with fibre-optic projects. Míla says that it is even less clear what follow-up should be carried out for the relevant grants and the alleged obligations that apply to them.

812. The ECOI notes that under the terms of "Iceland Optical Connected", systems funded by the grant must be designed for open access.⁴⁵ In any case, the ECOI also points out that effective wholesale access for third parties to State-funded networks is an indispensable condition of any State aid measure under Paragraph 129 of the ESA Guidelines on State aid for broadband networks of 8 February 2023. It is worth pointing out that this access is not dependent on a preceding market analysis.

813. As regards follow-up, the EFTA Surveillance Authority monitors State aid that has been provided by Iceland, Liechtenstein and Norway. ESA has the same role as the European

⁴⁵ See paragraph 15 of the 2021 terms https://www.stjornarradid.is/library/01--Frettatengt---myndir-og-skrar/Skiol---Frettatengt/%C3%8Dsland%20lj%C3%B3stengt%202021_skilm%C3%A1lar.pdf. In this respect, the terms have not changed since 2016.

Commission in this context and works in close cooperation with that body with the objective of ensuring pan-European implementation, cf. paragraph 220 of the aforesaid guidelines.

814. It is also worth mentioning that so far, a bill has twice been proposed in Parliament concerning open wholesale access to public networks constructed with State aid for the purpose of increasing consumers' access to high-speed service. It is also discussed that the ECOI shall resolve differences regarding access to such telecommunication networks, including the arrangements for access and at what point in the network it shall be provided, technical interfaces and wholesale prices. According to the bill, the ECOI shall abide by the guidelines from ESA and the European Commission regarding State aid for broadband service.⁴⁶ This provision can be found in Article 2 of the bill proposed at the 153rd Parliamentary session, case 947. The same issue was then raised again without any amendments to the aforesaid provision at the 154th Parliamentary session, case 205, in the year 2023. Neither bill was approved due to a dispute concerning other provisions of both bills, and the ECOI expects that as likely as not the bill will be approved next when it is proposed, and that the ECOI will to some extent be responsible for monitoring state-aided networks before much of the term of the analysis has passed.

815. *Secondly*, Míla says that it is not at all clear what obligations based on State aid rules on open whole access the Office is referring to here, and Míla requests that the ECOI explain this.

816. The ECOI reiterates that this applies to the conditions derived from the aforesaid ESA rules regarding State aid for the development of broadband networks.⁴⁷ These include conditions that apply to wholesale access that is described in more detail in Chapter 5.2.4.4 of the guidelines. Paragraph 129 includes the following:

“Nevertheless, the type of wholesale access obligations imposed on a State-funded network should take into account the portfolio of access obligations laid down under the sectoral rules. However, as aid beneficiaries are not just using their own resources but public funds to deploy the network, they should provide a wider range of wholesale access products than those imposed by NRAs on the undertakings having significant market power. Such wholesale access should be granted as early as possible before starting to provide the relevant services and, where the network operator also intends to provide retail services, at least 6 months before the launch of those retail services.”

817. It may be seen from the aforesaid that the conditions that apply to wholesale access in accordance with the ESA guidelines are significantly more onerous and wide-reaching than the conditions for access which the ECOI can impose on companies with significant market power.

⁴⁶ Article 2 of the Parliamentary record, Legislative Session 153 during 2022-2023, Parliamentary Document 1480 -- Agenda Item 947, and Article 1 of the Parliamentary record, Legislative Session 154 during 2023-2024, Parliamentary Document 208 -- Agenda Item 205. Please note that this response discusses the same rules.

⁴⁷ See the following link:

https://www.eftasurv.int/cms/sites/default/files/documents/C_2022_9343_1_EN_ACT_part1_v2.docx.pdf.

818. It should also be pointed out that according to Paragraph 130 of the ESA guidelines regarding State aid for development of broadband networks, access to a state-supported network shall be fair and the conditions for access shall be applied without discrimination. This is therefore an obligation that can be equated with the obligation regarding non-discrimination which the ECOI may impose on electronic communications companies with significant market power, cf. Article 50 of the Electronic Communications Act no. 70/2022.

819. Finally, it may be mentioned that rates for wholesale access are discussed in Chapter 5.2.4.4.4 of the ESA guidelines. Therein it is stated that price for access shall be based on the benchmarks listed in the Chapter. It may therefore be said that where state-aided networks are concerned, a certain price obligation or condition applies to pricing.

820. *Thirdly*, Míla asks whether rules exist that prevent the network's owner from imposing unusually high prices for access to the network.

821. The ECOI points out that, as stated earlier in Chapter 5.2.4.4.4 of the ESA guidelines, wholesale access rates are specifically addressed. In this chapter it is stated that the wholesale rate for each product must be based on one of the following three benchmarks:

- a) The average of issued wholesale rates that apply in other comparable and more competitive areas of a Member State.
- b) A rate that has already been decided by a telecommunication monitoring authority on the relevant market for the relevant product.
- c) Price benchmarks or methodology that is stipulated in sectoral legislation.

822. As the conditions for determining rates in accordance with items b) and c) do not exist in Iceland, those who have received State aid for the development of networks have only the option of deciding rates in accordance with official wholesale prices in comparable but more competitive areas. This provision is intended to prevent the owner of the network from imposing an excessively high price for access to the network. It is clearly stated by the wording of the provision that wholesale rates must be consistent with the aforesaid conditions.

823. *Fourthly*, Míla states that it is also unclear what is meant by open access, and Míla therefore considers it important that the ECOI investigate and verify whether any such conditions have been made in connection with each individual network and what significance those conditions have in actuality, i.e. is the network to be open for wholesale parties and/or retailing parties and what is the significance of an open business model in this regard.

824. The ECOI would first like to point out that the guidelines for State aid are general in nature and therefore it is not necessary to specifically investigate this aspect in connection with each and every network in a market analysis. The ECOI has not received any formal complaints from market participants regarding anti-competitive behaviour on the part of any such state-aided local network, which the ECOI has taken for consideration.

825. Open access means effective access to state-aided networks that is granted on equivalent terms and subject to conditions that are non-discriminatory. Such wholesale access encourages competition between other electronic communications companies and

recipients of aid in the markets where the State aid applies. With open wholesale access it is also less likely that a local monopolistic participant will be established due to the State aid. By encouraging competition in the relevant market it may also be anticipated that the competition will lead to positive development of the market in the long run.⁴⁸

826. In accordance with Paragraph 133 of the ESA guidelines, effective wholesale access must be provided for a minimum of 10 years for all products that are active, except in the case of VULA solutions, where access must be provided for the duration of the lifetime of the network. In accordance with Paragraph 135, access shall be provided to new facilities (tubes, poles, street cabinets or dark optics) for the duration of the lifetime of the network. If State aid is granted for the construction of facilities, these must be constructed to benefit the parties who requested access, both with regard to their current and future needs. It is proper to state that the aforesaid conditions of access shall apply to all parts of the network, i.e. also the existing infrastructure that was used in the construction of the network, cf. Paragraph 137 of the guidelines.

827. It should also be pointed out that the conditions stated in the guidelines are not equally burdensome depending on the level of market failure in the relevant area. In the case of a so-called "white area"⁴⁹ the owner of a state-aided network shall at a minimum provide: bitstream access, access to dark fibre and access to facilities such as street cabinets, tubes, poles, masts and towers. In addition, a state-aid recipient must ensure that at least either material access (physical unbundling) or VULA access⁵⁰ is provided. In so-called "gray areas"⁵⁰ and "black areas"⁵¹, firstly there shall be the availability of the same wholesale products as listed earlier for white areas, and secondly there shall be physical access to a local loop (physical unbundling).⁵² If a state-aid recipient considers VULA access to be more appropriate than physical access, this shall be stated in the official consultation document before the aid is granted, as shall the reasons for that conclusion.

828. A more detailed description of what is entailed in the conditions for open access can be found in the aforesaid ESA guidelines, which are referred to for more detailed definitions.

829. *Fifthly*, Míla reiterates that the same could apply to Míla's networks (and municipal networks), which offer open access based on equality and fair pricing. The same could even be said for other network operators. It should also be clear to the ECOI that many of the projects with which Míla has been involved through the years can hardly be considered profit-driven projects as their objective has much rather been for the purpose of meeting the requirements of local parties, to be socially responsible and to ensure safe telecommunications in the relevant areas.

⁴⁸ ESA guidelines on State aid for broadband networks from 8 February 2023, paragraph 129 <https://www.eftasurv.int/cms/sites/default/files/documents/C_2022_9343_1_EN_ACT_part1_v2.docx.pdf>

⁴⁹ White areas are defined in the following manner in paragraph 100 of the guidelines „*White areas are areas where no fixed ultrafast network is present or credibly planned in the relevant time horizon.*“

⁵⁰ Grey areas are defined in the following manner in paragraph 101 of the guidelines: „*Grey areas are areas where only one fixed ultrafast network is present or credibly planned in the relevant time horizon.*“

⁵¹ Black areas are defined in the following manner in paragraph 107 of the guidelines „*Black areas are areas where at least two fixed ultrafast networks are present or credibly planned in the relevant time horizon.*“

⁵² Ibid, paragraph 140-143.

830. The ECOI reiterates that local operators of municipal networks do not have the same incentives as conventional electronic communications companies, i.e. they do not conduct themselves in the same manner in the experience of the ECOI and other telecommunication monitoring authorities in Europe. Míla is a profit-driven company and does not have the same social responsibilities as the operators of municipal networks which are as often as not operated by the relevant municipality that safeguards the interests of its local residents and is first and foremost concerned with improving the living conditions of the residents in the municipality. There may exist outliers in this regard, for example where Míla has "inherited" a country-wide copper network that was constructed with state funds when the company had exclusive rights to all electronic communications, and no doubt areas may be found where segments of networks are operated at a loss. There Míla is, on the other hand, maintaining its ubiquity and the power that comes with such a position. This is power which local municipal networks are in no position to misuse.

831. *Sixthly*, Míla states that municipal networks are frequently bought and sold and therefore it could well turn out that changes in ownership of individual networks will result in some of the companies which the ECOI lists in its comparison and discussion, for example in Paragraphs 1638 and 1644, will acquire certain municipal networks during the term of this analysis. Consequently, with due consideration of the principle of equality according to the Administrative Procedures Act, the market share of each municipal network in the markets relevant to this case and other competitive conditions in the relevant area must be taken into account when designating parties as having significant market power.

832. As aforesaid, the obligations imposed on state-aided networks apply more broadly than in accordance with the obligations of the ECOI. Consequently, broader obligations apply when Míla, or another network operator, purchases such a local state-aided network. If the relevant company has considerable market strength in the relevant municipality, the obligations of the ECOI apply along with the obligations in accordance with the state-aid rules. Such purchase can also result in a company that was not considered to have significant market power in the relevant municipality or geographical market being designated as such after the purchase and, depending on the situation, a geographical market where active competition was considered to be in place will no longer be regarded as having such active competition following the purchase.

833. The ECOI wishes to state that in accordance with Paragraph 7 of Article 46 of the Electronic Communications Act, cf. also Article 32 of the market analysis regulation, the ECOI shall monitor market developments, for instance in connection with trade agreements regarding co-investments that have an effect on competitiveness, with due consideration of the obligations that apply in the market. If this development is not sufficiently important to warrant another market analysis, the ECOI shall without delay assess whether it is necessary to reconsider obligations that have been imposed on companies with significant market power and to alter previous decisions, including by lifting obligations or imposing new obligations in order to ensure that such obligations continue to meet the requirements of Paragraph 5. Such amendments shall only be effected after a consultation has taken place in accordance with Articles 24 and 28 of Act no. 75/2021 on the Electronic Communication Office of Iceland. If this provision is not sufficient and it is necessary to designate a participant as having significant market power on a specific geographical market, the ECOI can implement the analysis in that area.

834. From the aforesaid it may be seen that if purchase of such local networks has an effect on competitiveness, with due consideration of existing obligations, it may be proper to reconsider the existing obligations or carry out a new market analysis in the relevant area.

Comment regarding the following municipalities: Kjósarhreppur, Skorradalshreppur, Hvalfjarðarsveit, Eyja- og Miklaholtshreppur, Hrunamannahreppur, Skeiða- og Gnúpverjahreppur and Flóahreppur

835. The accompanying document with Míla's comments on the first consultation includes the following in the part of the document concerning Market 3a with regard to the aforesaid municipalities:

"Míla considers it to be quite noteworthy that no obligations are imposed on monopolizing parties in locations where there is no likelihood of competition. This means that the ECOI has no involvement in ensuring normal business practises with monopolizing parties."

The ECOI's position

836. The ECOI refers to the above responses to Míla's comment regarding the operators of local networks/municipal networks not being designated as having significant market power.

Comment regarding the following municipalities: Reykhólahreppur, Árneshreppur, Tjörneshreppur, Fljótsdalshreppur and Ásahreppur

837. The accompanying document with Míla's comments on the first consultation includes the following in the part of the document concerning Market 3a with regard to the aforesaid municipalities:

"Míla will not engage in fibre-optic rollout in these areas."

Míla considers it to be quite noteworthy that no obligations are imposed on monopolizing parties in locations where there is no likelihood of competition. This means that the ECOI has no involvement in ensuring normal business practises with monopolizing parties."

The ECOI's position

838. The ECOI refers to the above responses to Míla's comment regarding the operators of local networks/municipal networks not being designated as having significant market power.

6.2.3 Tengir

Parallel expansion in Area C

839. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraph 1621:

"Parallel deployment of fixed networks is rather small in scale in Area C according to the ECOI's analysis. Tengir wonders whether this information can be correct, when fixed network applies to both fibre-optic and copper networks. If account is only taken of the deployment of Míla's VDSL fixed network, which is a substitute product for a fibre-optic network, Tengir is of the opinion that it cannot be correct that deployment is only about 36% in the area. The largest population centre in Area C is Dalvík (16% of addresses in Area C) where, according to a search on Míla's home page, there is the option of connecting to Míla's Ljósnet where Tengir does not have a fibre-optic connection to the building. This presumably also applies where Tengir has fibre-optics in place. It is also stated in the same place: "Ljósnet is a high-speed connection where fibre-optic cable is connected to the street cabinet, and from there the last part of the connection goes over copper installation"."

The ECOI's position

840. The extent of parallel deployment of fixed networks differs between the municipalities in area C and it is the average for all municipalities in area C that appears in the summary for the area. In area C, the deployment of parallel fixed networks is most extensive in Dalvíkurbyggð, i.e. 67%, and after that Grýtubakkahreppur has 63%. In the other municipalities parallel deployment of fixed networks is much more limited. On the other hand, parallel deployment of fibre-optic networks is nearly non-existent and there seems to be no indication that it will occur in the future to any significant extent, except possibly in the largest populated areas. Tengir also has a fibre-optic network that reaches the rural areas in these municipalities and the ECOI considers there to be little to no likelihood of fibre-optic cable being installed there in parallel with Tengir's fibre-optic cable. Therefore it is not anticipated that Tengir's large share on Market 3a will diminish even if Míla's Ljósnet (copper) or fibre-optic cable, that is if Míla embarks on further fibre-optic installation in the area, will provide competition for Tengir's fibre-optic local loops in the population centres.

Development of Míla's fibre-optic local loops in Area C

841. Tengir's comments on the first consultation include the following, on page 8 in the company's comments on Paragraphs 1622-1623:

*"Here it is stated that the number of Míla's copper local loops is decreasing and that the number of Míla's **active** fibre-optic local loops is low. As regards the construction of Míla's fibre-optic local loops, Tengir on the other hand considers that the increase in number of fibre-optic local loops must be somewhat similar for Tengir and Míla when considering the last 1-2 years, as both companies usually install their own fibre-optics to new buildings in population centres in Area C. In Hörgársveit there is now a large population centre just on the boundary between Akureyri and Hörgársveit, in addition to which smaller population concentrations are forming in the municipality. The same can be said for Eyjafjarðarsveit, where there is considerable increase in the number of access addresses and construction activities in Hrafnagili are already underway. In addition, Míla has declared its intention to invest heavily in rural areas, which will probably include municipalities in Area C, and Tengir therefore **cannot** agree that it is unlikely that changes will*

occur regarding the status of Míla's fibre-optic connections in the aforesaid area during the term of the analysis."

The ECOI's position

842. By mid-year 2023, Tengir's market share had reached 88% in Area C in Market 3a and therefore keeps getting stronger. Even if Míla installs fibre-optics in new buildings in Area C, this will not alter Tengir's strong position in the area, as that company also installs fibre-optics in new buildings. As has been noted, Tengir owns a fibre-optic network that reaches the rural areas in these municipalities, and the ECOI considers there to be little to no likelihood that fibre-optics will be installed parallel to Tengir's fibre-optics, at least not to any significant extent.

Míla's fibre-optic deployment underestimated in Akureyri

843. Tengir's comments on the first consultation include the following, on page 8-10 in the company's comments on Paragraphs 1627-1628 and 1630-1632:

"Tengir would like to point out that real estate where connections can be installed according to information provided by Tengir are properties where connections could be installed without having to engage in groundwork. I.e. a pipe is installed from the connection hole and into the address. This has been done in accordance with applicable guidelines.

If Míla's fibre-optic deployment was assessed in the same manner as for Tengir, there would be connectable property on Míla's fibre-optic network in every place where there are threadable tubes that lead into buildings which Míla can use to thread fibre-optic cable without engaging in groundwork.

Given that Míla has about 33% fibre-optic deployment in Akureyri, this is consistent with Míla only having (based on registrations of the number of real estate units in Tengir's systems) fibre-optics in the streets with the largest multi-dwelling buildings in the town, plus Hagahverfi. However, it is clear that Míla has fibre-optics connected to a far greater number of access addresses in the town. If it is assumed that Míla's expansion is only about 33%, Míla nevertheless controls a fixed network in addition to the fibre-optics and can offer customers a VDSL connection, a substitute product, to most, if not all, other access addresses in the town. A comparison of Míla's and Tengir's deployment should therefore, in the opinion of Tengir, include a consideration of the deployment of fixed networks on the relevant market, not exclusively the expansion of fibre-optic networks.

Up until now, Míla has used Tengir's fibre-optic system and taken very slow steps towards further development of its own fiber-optic system. However, since Síminn sold Míla, there has been a conspicuous change in this regard. Míla has engaged in large-scale development in Akureyri in the last two summers (2022 and 2023) and unlike Tengir has installed fibre-optic cable to access addresses without consulting the property owners. Míla works on the assumption that this constitutes an upgrade to systems, and uses a large part of pre-existing infrastructure. Míla

also installs fibre-optic cable to access addresses that are already connected to fibre-optic networks and Tengir has invested in indoor installations to a large degree; installations that Míla can make use of without much expense. Míla therefore probably has much lower construction costs than Tengir, in addition to which Míla has not worked according to the same rules as other providers in Akureyri, by giving notice of planned projects and giving other providers the opportunity to share in projects.

[...]

In light of the aforesaid, Tengir considers that the conditions in the town of Akureyri and those in Area C are very different. It may also be mentioned that in Akureyri, Tengir has established a fibre-optic system without receiving government grants, and this has been a slow-paced, long-term project. From the beginning, the objective has been to offer users a better telecommunications connection and all service providers have been given the option to use Tengir's fibre-optic system. There are no plans to make any changes to this arrangement.

Tengir considers that Síminn's market share in the town of Akureyri reflects the strong position enjoyed by Míla, not only in Market 3b but also on Market 3a in light of the obvious connection between Síminn and Míla.

[...]

Tengir therefore cannot fathom what obligations would be necessary to impose on the company in Market 3a, where there is already a high level of competition and the obstructions to competition that have surfaced are not connected to the company."

The ECOI's position

844. When the ECOI sends out a request for a list of locations, the following definition is applied:

A structure is considered to be connected if the process of expansion to the structure has been completed, the structure can generate a service order and there are processes in place for establishing connection within a few days.

845. This is therefore a harmonised definition, and the most important aspect is that the service can be ordered and the connection established within a few days. The manner in which the companies approach this differently has not been specifically examined by the ECOI. The ECOI has no information that indicates that the companies do not abide by this definition. [...].

846. Tengir nevertheless is in a very strong position in the town of Akureyri, and by mid-year 2023 Tengir's market share had reached 79% in the town of Akureyri in Market 3a and therefore Tengir's market share continues to strengthen. [...]. Tengir is correct to state that the conditions in Area C and in the town of Akureyri are different to some extent and this mostly applies to parallel expansion of fixed networks. More impact may be expected to result

from competition with Míla in the town of Akureyri than in Area C, despite the fact that Míla's market share has been rapidly declining in the municipality. Míla has been engaged in fibre-optic rollout in the municipality, but parallel fibre-optic deployment has still not reached 40% and the number of Míla's active fibre-optic connections has not increased proportionally to the expansion. The reason is likely that residents in the area have a certain loyalty to Tengir. [...]. In 2023, Nova began to offer electronic communications services on Tengir's fibre-optic local loops, which may result in even further strengthening of Tengir's position. Due to this strong position which Tengir holds today, the ECOI does not find there is reason to alter its conclusion that Tengir is in a market-dominant position in the town of Akureyri.

847. This position could change if Míla continues with its fibre-optic deployment, although there is uncertainty regarding the adoption of Míla's fibre-optics by the consumers who are already connected with Tengir's fibre-optics, especially in light of the aforesaid loyalty which consumers seem to afford to Tengir. In the event that Míla continues with its fibre-optic deployment in the town of Akureyri, and there are clear indications of a significant impact on the competitive position on the relevant market, the ECOI may respond with a new analysis, in whole or in part, of the markets in question, or, where appropriate, by making changes to the obligations without undertaking a new market analysis, cf. Article 49 of the regulation, or by making a provisional decision, cf. Article 56 of the regulation, if this is urgently necessary.

848. As regards indoor installations, these are the property of the home owners even though electronic communications companies may have incurred expenses in the installation thereof. This position has arisen in other locations in the country where parallel fibre-optics are installed, and then it is usually the first participant to enter the market that bears the expense of indoor installations or the owner of the housing.

Designation of Tengir as a company with significant market power

849. Tengir's comments on the first consultation include the following, on page 1 of the company's comments:

"Tengir however does not agree that the company is in a dominant position on Market 3a [...] and is only to a limited extent compliant with the eight main aspects which the ECOI uses in its assessment. The ECOI concludes that Tengir has achieved market dominance in seven municipalities, whereas Tengir considers that the retail market conditions in the relevant municipalities and the strong position of Tengir's competitors who have a nation-wide telecommunications network consisting of fibre-optic, copper and mobile networks, can have such an effect on the activities of Tengir that the company cannot be considered to have market dominance. Irrespective of whether Míla's declarations regarding fibre-optic development in rural areas come to fruition or not, Tengir finds it highly unlikely that Míla will have fully removed its copper systems by 2028, as is widely stated in the draft market analysis. Tengir therefore believes that Míla will continue to have three telecommunications systems at its disposal during the term of validity of the analysis.

Fibre-optic development in population centres has not qualified for State aid, but in such case Tengir might be required to provide open access to its fibre-optic

network for a competitor that has the financial means to install its own fibre-optic system to the most efficient addresses, and use Tengir's fibre-optic network in other cases. This reflects the situation on the market today, as Tengir operates an open fibre-optic network that is open to all who wish to use it. [...]. In areas where it is unlikely that other electronic communications companies will install high-speed telecommunications systems parallel to Tengir's fibre-optic system, mainly in rural areas, the development has in most cases benefited from some form of government grants, including in connection with the project "Iceland Optical Connected". The obligations that come with such development prevent potential impediments to competition. In addition, Tengir does not consider there to be any signs of the company having impeded or planned to impede competition on the telecommunications market in any manner, but rather Tengir desires the conditions on the telecommunications market to be such as to foster healthy competition and that all consumers, electronic communications companies and other parties have as many options as possible."

The ECOI's position

850. The ECOI disagrees with the statement that the Office has not demonstrated and supported that Tengir has significant market power in the 8 geographical markets concerned. Reference is made to Chapter 6.2 of Appendix A in support of this.

851. As regards Tengir's statement that state-aided networks are subject to obligations in accordance with state-aid rules that apply to such networks, see the above response. Therein it is stated among other things that obligations from the ECOI are added to such obligations.

852. The ECOI considers that the access which Tengir has provided to its fibre-optic network in Market 3a is very important and that it is necessary to prevent obstruction to or withdrawal of this access. Tengir also operates a bitstream system in competition with Míla, which uses local loop leasing with Tengir in the area, and therefore there might be an incentive for the company to withdraw access to its local loop network and only provide bitstream access. Tengir is certainly not comparable in size or power to Míla or Ljósleiðarinn, but is in the position to be able to take advantage of its market power on those markets on which Tengir has already been designated as having significant power. In order to justify an obligation on access, it is sufficient that there exists the potential for an incentive to engage in harmful competitive behaviour, and a company with significant market power does not need to have demonstrated such behaviour in the past.

Position of Tengir compared with other market participants

853. Tengir's comments on the first consultation include the following, on page 11 of the company's comments:

"Tengir has a considerable advantage in many municipalities when it comes to the deployment of a fibre-optic network in the area of operation. However, it cannot be ignored that this concerns a local, not nationwide, network. Both Míla and Ljósleiðarinn, on which the ECOI plans to impose appropriate obligations in the markets, have at their disposal a far larger telecommunications system, use of the

NATO optical fibres, as well as long-term service and/or wholesale agreements with the major providers of internet services in the country. [...]. "

The ECOI's position

854. The ECOI agrees with Tengir that at national level Tengir's size and strength is significantly lower than that of both Míla and Ljósleiðarinn. However, Tengir has a high market share and the deployment of the company's fibre-optic network is extensive in the areas where Tengir operates and therefore Tengir is designated as market-dominant in the specified areas. The ECOI takes Míla's position into account when determining the obligations that are imposed on the company.

Míla's fibre-optic deployment

855. Tengir's comments on the first consultation include the following, on page 2 in the company's comments:

"The ECOI's draft includes a reference to Míla's website (reference 341 and 344) where information can be found regarding a plan to develop fibre-optic and optical networks. Tengir considers that the ECOI should examine whether the information provided by Míla meets the requirements that apply to the company. On its home page, Míla provides information regarding planned projects "in accordance with the rules of the ECOI". This includes pictures of the areas where the planned projects are to be carried out, and usually a general statement that the project will involve both the digging of ditches and threading through existing tubes. By formally announcing the fibre-optic deployment, Míla does not have to provide other parties that desire access to available tubes (granted that this is for a fee that is in most cases higher than the cost of installing new infrastructure – that is a separate issue) with priority of any kind. However, the fact is that Míla has repeatedly specified an entire municipality as a planned project area, without carrying out any work. Míla has also issued a plan and stated that it is unable to begin work when inquired with regard to participation, and then commenced the work (even only a few days later). The responses obtained by Tengir when seeking information about project areas are to the effect that Míla announces its groundwork projects that are required to be disclosed on Míla's website [...] In addition, Míla is today engaged in projects at many locations on Tengir's area of operations, in places where there is a legal requirement to report work that involves digging of pits and/or ditches, without any information being found in this regard."

The ECOI's position

856. It cannot be seen that this comment is relevant to this market analysis, at least not directly. Tengir does on the other hand submit comments regarding Míla's work procedures as regards the announcement of fibre-optic construction in accordance with the applicable obligations. The ECOI appreciates the notification but states that the Office has not received a formal complaint about Míla's alleged violation of an applicable obligation in this regard. Still, it is not impossible that the ECOI will examine Míla's projects with this in mind if a formal

complaint is received from a market participant or participants. The ECOI also points out that Míla is being relieved of all obligations in many locations in Tengir's area of operations in the analysis here under discussion, including this obligation. The obligation will nevertheless continue to apply on Market 3a in the municipalities where Míla is still considered to have significant market power, including certain municipalities that are located in Tengir's area of operations. It may be mentioned that where Míla's obligations are being cancelled in Tengir's area of operations the fibre-optic deployment efforts of Tengir are in many cases nearly complete or far advanced, especially as regards households.

6.3 Assessment of SMP in Market 3b

6.3.1 Míla

The City of Reykjavík

857. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the City of Reykjavík:

"Míla points out that Míla's market share has been decreasing in "older" Ljósleiðari areas, and that there is nothing to indicate that this will change, for reasons including the fact that Ljósleiðarinn already has a significant advantage in the supply of fibre-optics to households. *There are also indications that the electronic communications companies have binding or quantity agreements with Ljósleiðarinn that contain built-in quantity discounts. If a user already has equipment and indoor installations from one provider, this will cause a certain degree of reluctance on the part of the end user to have field services come and replace the equipment that essentially provides the same service. Retailers' sales discussions thus aim to cause as little disruption as possible for the end user, i.e. use the same bitstream equipment (ONT/lightbox) that is already in place and only replace the electronic communications company's terminal equipment, i.e. the router. Thus "critical mass" is created with the larger entity. This is particularly the case now that Síminn is selling services over Ljósleiðarinn's connections. Míla also points out that during the fibre-optic rollout that took place this year, [...] % of homeowners in the 101 postal code did not want fibre-optics installed due to hassle it would present, i.e. having to stay home to receive an employee from Míla and potential disruption to the property. Míla submits that the share which Míla holds in Reykjavík is partly due to copper installations, which are rapidly being phased out. Míla estimates that nearly all copper connections in the Capital Region will be phased out in the next 2-3 years, even though some connections may remain longer. This is known as a 'long tail'. Míla therefore considers it obvious that its market share in Reykjavík will fall to 20-25% in the next few years along with the accompanying strengthening of Ljósleiðarinn. Míla points out that in previous market analyses, Míla's predictions have been far more accurate than the predictions of the ECOI. Míla objects to Reykjavík being considered a competitive area and considers it evident that Ljósleiðarinn should be designated as dominant on the market.*"

The ECOI's position

858. This comment from Míla is to the same effect as the company's comment regarding the municipality in Market 3a above, and the ECOI refers to its position in the Office's reply there.

The municipality of Kópavogur

859. The accompanying document with Míla's comments on the first consultation includes the same statement regarding Reykjavík, but adds that the situation is slightly more even in Kópavogur.

The ECOI's position

860. The situation in Kópavogur mid-year 2023 was that Míla had a market share of 41% in Market 3b whereas Ljósleiðarinn had a market share of 59%. The ECOI does not expect this situation to change in the near future to such extent that there will be reason to define Ljósleiðarinn as being in a dominant position on the market in the relevant municipality.

The municipality of Seltjarnarnes

861. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Seltjarnarnes:

"Míla considers that here, the ECOI is wrong in its analysis of the market. Míla refers to the comment on M3a and on Reykjavík, as the fact is that in this market, M3a is the foundation for the market power of M3b. Míla considers it evident that Ljósleiðarinn has achieved market dominance, both in Markets 3a and 3b. Míla's data indicate that the company has lost [...] % of its market power this year, and Míla expects to drop below 20% market power in the near future. Míla considers that there is no doubt that in this instance, Ljósleiðarinn should be defined as having SMP."

The ECOI's position

862. In the additional consultation document issued in connection with the additional consultation that took place on 29 November 2023 to 3 January 2024, the ECOI gave particular attention to the municipality of Seltjarnarnes due to the changes in Míla and Ljósleiðarinn's market shares there. The ECOI refers to that discussion, and also to Chapter 6.3 in Appendix A. The Office concluded that there were not grounds for designating Ljósleiðarinn as having significant market power in the municipality of Seltjarnarnes, neither on Market 3a nor 3b.

The municipality of Akranes

863. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Akranes:

"Míla points out that the company has ceased its fibre-optic rollout for this year, and the position in that area will probably deteriorate slightly. Míla considers it likely that the company will drop below 30% in the near future."

The ECOI's position

864. This comment from Míla is materially the same as the company's comment regarding the municipality in Market 3a above, and the ECOI refers to its position in the Office's reply there.

The municipality of Akureyri

865. Míla's comments on the first consultation state the following on page 32 in the company's comments:

"According to the ECOI's preliminary assessment, the Office considers Míla to have significant market power on Market 3b in the municipality of Akureyri. As demonstrated further in the enclosed accompanying document, Míla does not consider there to be grounds for this designation, especially when the the principle of equality is taken into consideration with reference to the large share which Ljósleiðarinn holds in Seltjarnarnes, among other places, and the company is not designated as holding SMP there. [...]"

The ECOI's position

866. In mid-2023, Míla had a market share of 78% in the municipality in Market 3b in terms of fixed network connections, whereas the company's market share was 69% when mobile network connections via network routers are also included. Míla's share had therefore not changed from what it was at year-end 2022.

867. As stated in the Preliminary Draft, Síminn has a significantly large market share in retail, as Síminn's market share was 68% in fixed network connections by mid-year 2023 in the municipality of Akureyri, whereas the company's market share was 62% when mobile network connections via network routers are also included. Síminn's market share has been rather stable recently. It may be said that the long-term wholesale agreement between Míla and Síminn ensures a certain minimum market share for Míla, but Síminn does not purchase access to Tengir's fibre-optics except through Míla.

868. Compared to the retail market shares of the electronic communications companies in the municipality of Seltjarnarnes, where there is far more competition on the retail market so the situation is not at all comparable. In the municipality of Seltjarnarnes, the market share of the company with the largest share in retail was 40% of fixed network connections at mid-year 2023, but 39% when mobile network connections via network routers are also included. The market share is also much more divided between the electronic communications companies, with the second-largest entity having a market share of 32% and the third largest a 19% share with connections via mobile network routers.

869. Furthermore, the obligations imposed on Tengir to provide access to its fibre-optic network will ensure Míla's access to Tengir's local loops. Considering the access to Tengir's

local loops and loyal trade with a major retailer on the market, the ECOI cannot see that Míla's position on Market 3b is about to change much in the near future.

The municipality of Akureyri and several other municipalities in Northeastern Iceland

870. The accompanying document with Míla's comments on the first consultation includes the following in section 3b concerning the municipalities of Akureyri, Norðurþing, Fjallabyggð, Dalvíkurbyggð, Eyjafjarðarsveit and Þingeyjarsveit:

"Míla considers it evident that Ljósleiðarinn will enter these areas and at a minimum be a strong participant on the bitstream market. The position will therefore change significantly with the involvement of Ljósleiðarinn. Míla considers there to be an enormous flaw in this analysis in that the ECOI seems to think that Ljósleiðarinn will remain inactive on the market during the next years while Míla will be expanding. Míla considers it evident that the ECOI is yet again underestimating the company, which is publicly owned. Míla also considers that the ECOI's reasoning to the effect that electronic communications companies in Iceland cannot establish trunk connections from Akureyri to Reykjavík to be without merit. Both Nova and Ljósleiðarinn own their own DWDM equipment in Akureyri, in addition to which Nova has A1 access to Míla's systems in many locations in the country, which establishes that the company has trunk networks originating there. Ljósleiðarinn and Nova have nearly nation-wide backbone networks, and connecting to Akureyri is not a major issue."

The ECOI's position

871. The ECOI is not aware that Ljósleiðarinn has any plans for fibre-optic rollout in the municipalities mentioned by Míla, and considers it far from evident that this will be the case during the term of validity of the analysis. In the municipalities to which Míla refers, fibre-optic rollout is already well under way in many areas, and Míla's Ljósnet (VDSL) is also available in many locations. There are various drawbacks involved with entering an area as participant number two, let alone participant number three. In Fjallabyggð, fibre-optic rollout is less advanced, Ljósleiðarinn has no fibre-optic connection into the area and the NATO cable does not extend there. The ECOI considers it more likely that Ljósleiðarinn will focus on fibre-optic rollout where it is possible to enter into co-investment in population centres where fibre-optic rollout has not been completed, as the company has done recently in co-operation with Míla. As for Market 3b, it is also not particularly likely in the ECOI's assessment that Ljósleiðarinn will lease access to Tengir's or Míla's fibre-optic local loops in this area for the purpose of installing a third bitstream system in these areas. The ECOI points out that Ljósleiðarinn can purchase access to bitstream from Tengir or Míla in these areas to service its customers without committing to the investment required for the development and operation of a bitstream system.

872. Also, Ljósleiðarinn's first step upon the purchase of Sýn's trunk network is to transfer bitstream connections to where Sýn had equipment, and harmonise the systems. In spite of Ljósleiðarinn's purchase of Sýn's network and access to the NATO cable, Ljósleiðarinn must in many cases rely on access to Míla's trunk network to be able to offer access in many parts the

country, as the NATO cable only reaches the major population centres outside the capital region. Thus there is a considerable advantage difference between Ljósleiðarinn and Míla in the trunk line market. Financing of further investments is also uncertain for Ljósleiðarinn, as there has been a stock offering and this will take a certain amount of time. Under such circumstances, the ECOI cannot engage in much speculation regarding behaviour on the part of Ljósleiðarinn that calls for investments and must base its findings on the information that is available.

873. The ECOI has in this document discussed Míla's statement that Ljósleiðarinn and Nova have practically country-wide networks and refers back to that discussion.

The municipality of Bolungarvík

874. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Bolungarvík:

"Míla's market share is decreasing fast, i.e. by [...] % during the year 2023. Míla assumes that Snerpa will strengthen its position greatly in this area during the period."

The ECOI's position

875. In mid-2023, Míla had a market share of 52% in terms of fixed network connections, but when mobile network connections via network routers are also included its market share was 43%. Míla therefore has a larger market share than Snerpa, which has a market share of 48% for bitstream connections via the fixed network and 40% when mobile network connections via network routers are also included. Snerpa has been increasing its market share in line with the fibre-optic rollout, although Snerpa's fibre-optic deployment has advanced slowly. Recently, Míla's Ljósnet (copper) has provided competition for Snerpa, and if Míla chooses to embark on fibre-optic rollout in the area, the company controls a fibre-optic cable into the population centre in the area. The ECOI does not consider there to be grounds for designating Snerpa as being in a dominant position on this market. Snerpa is a small company and possesses neither the economy of scope nor scale that Míla does, nor does it have the same ready access to capital for investment. The company is also dependent on leasing trunk line connections from Míla in order to provide its service to consumers in Bolungarvík.

The municipality of Dalvík

876. Míla's comments on the first consultation state the following on page 32 in the company's comments:

"Míla equally objects to the designation of the company in Market 3b in the municipality of Dalvík. The ECOI's conclusions that it is unlikely that the position of Tengir will change in this market during the term of validity of the analysis are without foundation. In Míla's opinion, there are no grounds for designating the company as having SMP and consequently impose obligations on services provided"

on the network of another party that is also in competition with Míla for the same bitstream service. [...]."

The ECOI's position

877. In mid-2023, Míla had a market share of 85% on Market 3b in Dalvíkurbyggð in terms of fixed network connections, and a market share of 72% when mobile network connections via network routers are also included. As stated in the Preliminary Draft, Síminn has a considerably large market share in retail, as Síminn had a market share of 80% in fixed network connections in Dalvíkurbyggð as of mid-year 2023, and this share has remained relatively stable in recent times. Therefore, the situation at retail level in this municipality is bad. It may be said that the long-term service agreement between Míla and Síminn ensures Míla a certain minimum market share, as Síminn does not purchase access to Tengir's fibre-optics except through Míla. The ECOI considers it unlikely that this will change during the term of validity of the analysis.

The municipality of Grindavík

878. Míla's comments on the first consultation state the following on page 32 in the company's comments:

"Míla also objects to the Market 3b designation in the municipality of Grindavík. Reference is made to the cooperation project of Míla and Ljósleiðarinn in connection with this, and the companies' ventures in the municipality last summer. In Míla's assessment, the conditions for competition clearly exist and therefore there are no grounds for designating Míla as having SMP."

879. The accompanying document with Míla's comments includes the following in the section on Market 3b concerning the municipality of Grindavík:

"Here the situation in percentages is similar to that in Seltjarnarnes. The difference is that in the near future, Ljósleiðarinn will have more fibre-optic deployment here than Míla in Seltjarnarnes. Here, the ECOI concludes that Míla is dominant, but not that Ljósleiðarinn is dominant in Seltjarnarnes. Míla objects to this conclusion. Míla also points out that there is already a cooperation project between Míla and Ljósleiðarinn ongoing in the area, whereas the ECOI seems to consider that they only have vague plans for fibre-optic installation there. The project encompasses 160 addresses with 190 apartments. That is substantially more than Míla's small-scale fibre-optic rollout in Seltjarnarnes."

The ECOI's position

880. In mid-2023, Míla had a market share of 95% on Market 3b in the municipality in terms of fixed network connections, and a market share of 69% when mobile network connections via network routers are also included. Síminn has a large market share in the retail market, which in the ECOI's assessment will in the future support Míla's large market share on Market 3b.

881. As for fibre-optic rollout in the area, the ECOI refers to the responses to Míla's comment regarding Market 3a above, including what was stated about seismic activity in the area.

The Municipality of Hvalfjörður

882. The accompanying document with Míla's comments includes the following in the section on Market 3b concerning the municipality of Hvalfjarðarsveit:

"Ljósleiðarinn will take over Sýn's share and strengthen its position in the area. In light of the indications regarding quantity and/or exclusive agreements with most service providers it is likely that their situation will improve in the near future."

The ECOI's position

883. In mid-year 2023, Míla had a market share of 76% on Market 3b in the municipality in terms of fixed network connections, and a market share of 49% when mobile network connections via network routers are also included. Despite Míla's large market share, the ECOI did not see reason to designate the company as having a market-dominant position due to competition from mobile networks, in addition to which there was the expectation that Ljósleiðarinn would take over the operation of Sýn's equipment. Even though it is expected that there will be more competition from Ljósleiðarinn, the ECOI considers Míla to be quite capable of engaging in that competition as there will be no obligations imposed on the company in the area. Therefore there are no grounds for designating Ljósleiðarinn as having significant market power in this area, if that is what Míla is implying.

The municipality of Hveragerði

884. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Hveragerði:

"There is a vast number of copper networks, which will be phased out. Ljósleiðarinn's position will be strengthened because Míla's plans are at best moderate in scale, i.e. an increase of 10% until 2026."

The ECOI's position

885. In mid-2023, Ljósleiðarinn had a market share of 63% on Market 3b in the municipality in terms of fixed network connections, and a market share of 57% when mobile network connections via network routers are also included. There is an extensive parallel deployment of fixed networks, and Míla's fibre-optic rollout had reached 43% by mid-2023. Based on Míla's network deployment forecast, the company's fibre-optic deployment will reach [...] by the end of 2025. Under these conditions, and with due consideration of Míla's position in general, Míla is entirely capable to compete with Ljósleiðarinn in the municipality, and the ECOI does not find reason to amend its conclusion that there is active competition in the municipality that will remain for the expected term of the analysis.

The municipality of Rangárþing eystra

886. Míla's comments on the first consultation state the following on page 32 in the company's comments:

"Míla objects to the SMP designation in Rangárþing eystra based on a 46% market share. Ljósleiðarinn has fibre-optics in Hvolsvöllur, whereas Míla has only a small presence there. [...]. Not taking these facts into account, as well as that Míla has only about 46%, can hardly be considered satisfactory grounds for the SMP designation."

887. The accompanying document with Míla's comments includes the following in the section on Market 3b concerning the municipality of Rangárþing eystra:

"Míla categorically objects to this conclusion as it is clear that this should be a competitive area. The situation is that Ljósleiðarinn has access to all the fibre-optics system in the municipality, either as owner or through the municipal fibre-optics system owned by Míla (P2P open system). Míla on the other hand has no access to Ljósleiðarinn's fibre-optics system in Hvolsvöllur."

The ECOI's position

888. According to this comment from Míla, Sýn had bitstream equipment on Míla's P2P network in rural areas. This was not included in Sýn's data, and as no distinction is made between Míla's internal and external sales in its data, this was also not obvious from these data. Upon closer examination of the data, it is revealed that Míla sells a somewhat higher number of fibre-optic local loops than bitstream connections via fibre-optic cable, which confirms this external sale on the part of Míla in the municipality. The ECOI has obtained confirmation from Ljósleiðarinn that the company did take over the operation of Sýn's bitstream equipment in the municipality, and Ljósleiðarinn informed the ECOI about the number of connections at the start of this year.

889. This information clearly calls for a review of the situation on Market 3b in this municipality. According to data from mid-2023, having taken these changes into account, Míla had a market share of 66% in bitstream via fixed network connections and 44% when connections via mobile network routers are included. The ECOI considers that open access to Míla's P2P fibre-optic network in rural areas is very important and will promote increased competition in Market 3b.

890. With due consideration of the aforesaid and the effects from mobile networks on competition in the municipality, the ECOI assesses that competition is now active in Market 3b in Rangárþing eystra, or at least will be during the term of validity of the analysis. The obligations that have been imposed on Míla in Market 3b in the municipality will therefore be removed. This change does not affect the ECOI's conclusion on market 3a in the municipality, but confirms the importance of Míla continuing to offer open wholesale access to local loops in the municipality, especially the P2P access provided in rural areas, as it is not foreseen that parallel networks will be developed in the near future.

891. Alterations to the assessment of significant market power in Rangárþing eystra on market 3b entered into national consultation on 23 January 2024, which concluded on 6 February 2024.

Reykhólahreppur

892. Míla's comments on the first consultation state the following on page 21 of the company's statement on Chapter 6.3.29::

"Míla also objects to the SMP designation in Market 3b in Reykhólahreppur. As stated in the discussion of Market 3a in Reykhólahreppur, there is every indication that the municipality will be in a monopoly position in 3a within a few years. The ECOI nevertheless did not find reason to designate the municipality as having SMP. On the other hand, Míla is designated as having SMP in Market 3b and consequently there will be obligations imposed on Míla for offering its service on an underlying system that is operated as an open system but in a monopoly position. Míla considers that there is no justification for the designation of the company on these grounds ."

The ECOI's position

893. In mid-2023, Míla had a market share of 100% on Market 3b in the municipality in terms of fixed network connections, and a market share of 73% when mobile network connections via network routers are also included. Míla is the only entity that provides bitstream service on the open network of Fjarskiptafélag Reykhólahrepps (the municipal electronic communications company of Reykhólahreppur) and the ECOI does not expect this to change in the near future, as this is a sparsely populated municipality with a low economy of scale. In the assessment of the ECOI, this strong position which Míla holds in this market is sufficient reason to designate Míla as market-dominant in the municipality on Market 3b.

894. As for the reason for not designating Fjarskiptafélag Reykhólahrepps as dominant on Market 3a, the ECOI refers to the earlier responses to the similar comment from Míla regarding local networks owned by municipalities.

The municipality of Skaftárhreppur

895. The accompanying document with Míla's comments on the first consultation includes the following in section 3b concerning the municipality of Skaftárhreppur:

"Ljósleiðarinn has announced its plans for fibre-optic installation in Kirkjubæjarklaustur. Míla considers there is a likelihood that this area will be moved to the competitive category in the near future."

The ECOI's position

896. The ECOI refers to its position regarding Míla's similar comment on Market 3a with regard to Skaftárhreppur.

The municipality of Súðavíkurbreppur

897. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Súðavíkurbreppur:

"According to Míla's figures, the market share has reached [...] % this year. Míla considers that the analysis cannot be correct in light of the analysis of Seltjarnarnes, where Míla is in a position that is worse than Snerpa's position here. Míla points out that Snerpa is a local company which, as experience shows, is often the first option."

The ECOI's position

898. In the additional consultation document for the additional consultation that took place from 29 November 2023 to 3 January 2024, the ECOI gave particular consideration to Súðavíkurbreppur due to changes in the market shares of Míla and Snerpa in that municipality. The ECOI refers to that discussion and the conclusion was that ECOI considers that competition has now been established on that market, on both Markets 3a and 3b.

The municipality of Vogar

899. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Vogar:

"Here it seems that the ECOI does not have the figures from Ljósleiðarinn, which is nevertheless active in the municipality and entered into an agreement with the municipal council in 2018 on fibre-optic installation in the municipality, which is to be completed this year. The project is already in full flow and here, the ECOI has not applied a prospective analysis. Míla considers that this should be a competitive area."

The ECOI's position

900. In mid-2023, Míla had a market share of 95% on Market 3b in the municipality in terms of fixed network connections, and a market share of 67% when mobile network connections via network routers are also included.

901. Míla owns a fibre-optic network in the rural area and the ECOI does not consider there to be any likelihood of a parallel fibre-optic cable being installed there. Míla has also engaged in fibre-optic rollout in the population centre, partly in cooperation with Ljósleiðarinn. The ECOI considers that even though a parallel network is developed in the population centre, the effects on Míla's market share will be slow to materialise. Also, that competition will not reach the rural areas as Míla is the only party that offers access to local loops.

902. The ECOI also points to Síminn's strong position on the retail market and the effect this has on Míla's position. The ECOI therefore does not find there is reason to amend its conclusion that Míla is in a market-dominant position in the municipality.

The municipality of Ölfus

903. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Ölfus:

"Míla considers it evident that this is the correct conclusion, but also that this points to a significant inconsistency with places such as Seltjarnarnes and elsewhere where the ECOI does not reach the same conclusion even though the conditions are similar."

The ECOI's position

904. The ECOI points out that in the municipality of Ölfus there is a local fibre-optic network in the rural areas that is owned by Ljósleiðarinn and the ECOI does not consider there to be any likelihood of a parallel fibre-optic cable being installed there. This is what differentiates these municipalities as Seltjarnarnes is exclusively a population centre, which makes it a much more promising prospect for the installation of fibre-optic cable parallel to a fibre-optic cable that is already in place. Míla furthermore has no Ljósnet network (VDSL based on copper) in the rural areas of the municipality of Ölfus that could provide competition for Ljósleiðarinn's fibre-optic local loops, and the rural areas in this municipality account for nearly 30% of its total area.

The municipality of Tálknafjörður

905. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Tálknafjarðarhreppur:

"Míla's market share is diminishing fast, i.e. by [...] % during the year. Míla assumes that Snerpa or other entities will strengthen their position greatly in this area during the period. Míla therefore considers that the ECOI is not looking far into the future in its analysis."

The ECOI's position

906. In mid-2023, Míla had a market share of 89% on market 3b in the municipality in terms of fixed network connections, and a market share of 70% when mobile network connections via network routers are also included. The ECOI therefore cannot agree that Míla's share is diminishing fast considering the position at year-end 2022, when Míla had a market share of 90% in fixed network connections and a market share of 70% when mobile network connections via network routers are also included.

907. The ECOI does not expect a sudden leap in Snerpa's market share and points out that the municipality is a long distance from Snerpa's core area of operation and that Snerpa has no trunk network that reaches the southern coast of the West Fjords. In light of Míla's strong position, the ECOI does not find reason to amend its decision described in the Preliminary Draft.

The Municipality of Vestmannaeyjar

908. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Vestmannaeyjar:

"Míla considers there to be a high likelihood that Ljósleiðarinn will enter this market."

The ECOI's position

909. Míla's market share has not changed since year-end 2022, Míla's share being 100% as of mid-2023. The current situation is that Ljósleiðarinn is not providing bitstream service on Eygló's network and [...].

910. In light of Míla's strong position, the ECOI does not find reason to amend its decision described in the Preliminary Draft.

Vesturbyggð

911. The accompanying document with Míla's comments on the first consultation includes the following in the section on Market 3b concerning the municipality of Vesturbyggð:

"Míla's market share is diminishing fast, i.e. by [...] % during the year. Míla assumes that Snerpa or other entities will strengthen their position greatly in this area during the period."

The ECOI's position

912. In mid-2023, Míla had a market share of 95% on Market 3b in the municipality in terms of fixed network connections, and a market share of 65% when mobile network connections via network routers are also included. Míla's market share in the fixed network has remained the same but decreased from 67% at year-end 2022 to 65% by mid-2023. This is because the share decreases when connections via mobile network are taken into account, in addition to which the total number of connections on the fixed network has decreased.

913. The ECOI therefore cannot agree that Míla's market share is diminishing fast, as Míla maintains, and points out that the municipality is a long distance from Snerpa's core area of operation and that Snerpa has no trunk network that reaches the southern coast of the West Fjords.

914. In light of Míla's strong position, the ECOI does not find reason to amend its decision described in the Preliminary Draft.

Revision of obligations

915. In the conclusion of Míla's comments on the first consultation, the company maintains that the Preliminary Draft contains major material flaws that must be rectified before a final decision is reached in the case. It has been established that the findings of the analysis may have enormous long-term effects on Míla's interests and the conditions on the market, as the

decision is binding for the market for the next years, or until the ECOI carries out another analysis of the market. It is therefore important that care is taken in the execution, that the ECOI adhere to its investigative duties at all stages of the investigation and duly observe the principles of necessity and proportionality in all decision-making, including the imposition of obligations on undertakes that operate on the market.

916. The company also states the following:

"Míla points out that in accordance with the provision of Article 46(7) of the Electronic Communications Act, the ECOI shall, after issuing its final decision, continue to monitor market developments, including in connection with business agreements, such as agreements on mutual investment that have competitive effects in terms of obligations on the market. If this development is not of sufficient importance to warrant another market analysis, the ECOI shall without delay assess whether it is necessary to reconsider obligations that have been imposed on companies with significant market power and to amend previous decisions, including by lifting obligations or imposing new obligations in order to ensure that such obligations continue to meet the requirements of Paragraph 5."

The ECOI's position

917. The ECOI has reviewed the data obtained from market participants and other available data which the institution considers relevant in order to reach the conclusion described in the Preliminary Draft. In addition, the Office has held two consultations regarding the analysis and, where applicable, taken part of them into account and amended the analysis according to valid comments. Some factors cannot be anticipated that will have significant effects on the future development of markets, such as electronic communications companies' purchase of local networks or even active electronic communications companies, deviations from network deployment forecasts, deviations from forecasted market share developments, agreements between market participants and the entry of new participants onto markets.

918. The ECOI will continue its regular data collection on these markets in order to monitor the developments thereon. Throughout the years, the Office has also received complaints from market participants, which can give an indication of behaviour by companies in the market that requires further examination. In the event that there are obvious indications of a significant impact on the competitive position on the relevant markets, the ECOI may respond with a new analysis, in whole or in part, of the markets in question, or, where appropriate, by making changes to the obligations without a undertaking new market analysis, cf. Article 49 of the regulation, or by making a provisional decision, cf. Article 56 of the regulation, if urgently necessary.

6.3.2 Tengir

Hörgársveit

919. Tengir's comments on the first consultation include the following, on page 10 in the company's comments on Chapter 6.3.22:

"Tengir considers the ECOI's conclusion that it is likely that the progress achieved in Tengir's bitstream service in Hörgársveit will continue unabated during the term of the analysis to be incorrect. Tengir installed fibre-optics in the municipality long before Síminn/Míla entered Tengir's fibre-optic network with bitstream service. Consequently, users had only the option of using Tengir's bitstream service when the first part of the network was installed. Tengir therefore considers that Míla's share in the bitstream market in the municipality could grow, especially while Síminn does not offer service through Tengir's bitstream service."

The ECOI's position

920. In mid-2023, Tengir had a market share of 35% on market 3b in the municipality in terms of fixed network connections, and a market share of 33% against Míla's 60% share when mobile network connections via network routers are also included. However, at year-end 2022, Tengir's market share was 38% for bitstream via fixed network connections and 35% when mobile network connections via network routers are also included. Tengir's market share has therefore diminished, which is a rather surprising development as Tengir's market share in Hörgársveit has increased steadily until the end of 2022. The ECOI still considers this market to be developing towards competition, especially when the agreement between Tengir and Nova is taken into account. There are also few connections in total so small deviations in the number of connections between periods can cause a proportionally large shift in market share.

921. The ECOI will continue its regular data collection on this market and closely monitor the developments thereon. Throughout the years, the Office has also received complaints from market participants, which can give an indication of behaviour by companies in the market that requires further examination. In the event that there are obvious indications of a significant impact on the competitive position on the relevant geographical market, the ECOI may respond with a new analysis, in whole or in part, of the markets in question, or, where appropriate, by making changes to the obligations without a undertaking new market analysis, cf. Article 49 of the regulation, or by making a provisional decision, cf. Article 56 of the regulation, if urgently necessary.

922. In light of the aforesaid, the ECOI does not at present find reason to alter its conclusion as described in the Preliminary Draft, notwithstanding later developments.

Míla's obligations lifted in Market 3b

923. Tengir's comments on the first consultation include the following, on page 2 and 10 of the company's comments:

"Tengir also finds it dubious to lift Míla's obligations in Market 3b, where Tengir operates a fibre-optic system and Míla sells bitstream and has, as noted in the ECOI's draft analysis, a far larger share in the provision of bitstream services on Tengir's fibre-optic system than Tengir itself. Although the shares of the companies are becoming more equally divided in several municipalities and the ECOI concludes that effective competition is in place, Tengir considers it evident that if an electronic communications company was authorised to withdraw bitstream

service that was already being provided, against the will of the relevant network operator, this could have a harmful effect on the retail market and the end users of internet services.

[...].

[...]."

The ECOI's position

924. There are three municipalities where Tengir is in a dominant position on Market 3a and obligations are lifted from Míla on Market 3b: Grýtubakkahreppur, Hörgársveit and Svalbarðsstrandahreppur. They are sparsely populated compared to other municipalities in Tengir's area of operations, Akureyri in particular. There, obligations will still apply to Míla on Market 3b, including the obligation that Míla shall not withdraw its bitstream equipment on Tengir's fibre-optic network.

925. The situation in Hörgársveit was addressed earlier, and the ECOI refers to that discussion. What characterises Grýtubakkahreppur and Svalbarðsstrandahreppur is that Tengir's bitstream share has been increasing and in retail, Sýn has been quite successful on Tengir's network and via mobile network routers. Therefore the ECOI finds that there are grounds for lifting obligations from Míla in these markets in Market 3b. In addition, Nova is now offering its services on Tengir's network, which will possibly strengthen the position of Tengir as well as the retail competition.

7 Competition problems, wholesale-only undertakings and general information regarding imposition of obligations

7.1 General information about obligations

926. No comments on this chapter of the analysis were submitted.

7.2 Imposition of obligations under the Electronic Communications Act and Regulation on market analysis

7.2.1 Tengir

Obligations not in compliance with the Electronic Communications Act and Regulation on market analysis

927. Tengir's comments on the second consultation include the following, on page 1 of the company's statement on obligations:

"Tengir is of the opinion that the obligations proposed to be imposed on the company are in no way in accordance with the Electronic Communications Act No. 70/2022 and with Regulation No. 556/2023 on market analysis in the field of electronic communications, as part of the obligations in question has a significant adverse effect on the company, its structure and its plans for developing telecommunications in the eight municipalities in which the obligations are in force.

Tengir believes that the Electronic Communications Office of Iceland (ECOI) has conducted an extensive market analysis in accordance with Regulation No. 556/2023, but that there is a lack of consistency in the review of the competitive situation on Markets 3a and 3b, the position of other electronic communications companies in adjacent and downstream markets which, in the opinion of Tengir (and the ECOI), have a major impact on the markets in question, and the ECOI's conclusions regarding market power in Tengir's service area.

Tengir believes that this conclusion by the ECOI is incorrect and neither in accordance with competitive conditions in the municipalities in question nor with Tengir's power on the telecommunications market. Tengir specifically contests the claim that the company is in a market-dominant position in the municipality of Akureyri.

Furthermore, Tengir considers it cause for concern that although the ECOI and the ICA both identify strong shared interests and business relations between Míla and Síminn and lingering signs of vertical integration, obligations on Míla have already been relaxed to a great extent, a case in point being that the obligations intended to prevent competition problems associated with signs of vertical integration are

not part of the proposed decision (but were part of ECOI Decision No. 5/2021) and Míla is actually given a significant competitive advantage, e.g. in Akureyri.”

The ECOI's position

928. A significant part of this comment concerns Tengir's objection to being designated as having significant market power in eight municipalities. The ECOI refers to its response to similar comments in Chapter 6 above,

929. ECOI refers to the discussion in Chapter 6.2 of the market analysis. As stated there, Tengir's fibre-optic deployment and its market share are significant and have been steadily expanding in recent months. In these eight municipalities, Tengir's fibre-optic local loops reached about 92% of domiciles and workplaces, so it can be said that the company's fibre-optic deployment is nearly complete, although progress has been slower in the municipality of Vopnafjarðarhreppur, where 70% of domiciles and workplaces are nevertheless covered. The ECOI therefore does not see any indications that the obligations will have a very negative impact on incentives for development in these municipalities, as Tengir maintains, nor that they run contrary to the Electronic Communications Act or the Regulation on market analyses, and Tengir provides no support for such claims. The ECOI believes that it has adequately justified the imposition of obligations and identified the competition problems they are intended to solve. For more on this, refer to Chapters 7 and 9 in the analysis (Annex A). Also refer to Chapter 9 later in this document.

930. The ECOI considers the access that Tengir has provided to its fibre-optic network on Market 3a to be very important and that it is vital that this access is not obstructed or withdrawn. Tengir also operates a bitstream system in competition with Míla, which leases local loops from Tengir in the region so there might be an incentive for the company to withdraw access to its local loop network and only provide bitstream access. Tengir is certainly not comparable in size or power to Míla or Ljósleiðarinn, but is in a position to take advantage of its market power on the markets on which Tengir has been designated as having significant market power. To justify an obligation for access, as well as obligations for non-discrimination and fair and reasonable prices, there only has to be opportunity and incentive to engage in harmful competitive behaviour, and a company with significant market power does not need to have demonstrated such behaviour in the past.

931. Regarding the situation in Akureyri, the ECOI refers to its responses in Chapter 6.2.3 above.

932. Tengir comments that the ECOI is lifting obligations on Míla in many municipalities, which will give Míla a competitive advantage, e.g. in Akureyri. Since Míla is not designated as having significant market power, the ECOI has no choice but to lift obligations on the company, as not doing so would be in clear violation of the provisions of the Electronic Communications Act. In some places, the ECOI concludes that there is effective competition, meaning that no single operator is in a position of significant market power and no obligations are in force, while operators other than Míla are designated as having significant market power and the appropriate obligations imposed on those companies, including Tengir in Akureyri and other municipalities.

7.3 Determining whether Míla, Ljósleiðarinn, Tengir and Austurljós meet the legal requirements for being considered wholesale-only

7.3.1 Ljósleiðarinn

The ECOI's assessment of wholesale-only undertakings

933. On page 3 of Ljósleiðarinn's comments on the second consultation, on the ECOI's assessment of wholesale-only undertakings, Ljósleiðarinn agrees with the ECOI's analysis and conclusion on whether Míla, Ljósleiðarinn, Tengir and Austurljós meet the requirements for being considered wholesale-only undertakings in the sense of Article 59 of the Electronic Communications Act No. 70/2022. The comments include the following:

“Ljósleiðarinn has long maintained that Míla has never and will never meet the legal requirements of Article 59 of the Electronic Communications Act, in part because of the extensive vertical relationship between Míla and Síminn hf.”

The ECOI's position

934. The ECOI certainly made the preliminary conclusion in its consultation document, published on 29 November 2023, that Míla did not meet the requirements to be considered a wholesale-only undertaking, but that Tengir and Ljósleiðarinn did. During that consultation, comments were made by several market participants to the effect that the latter two companies did not meet the legal requirements of Article 59 of the Electronic Communications Act to be considered as operating on the electronic communications retail market. Upon further investigation, it emerged that these comments were warranted and in the additional consultation document published on 23 January 2024, the ECOI amended its position in this regard, concluding that none of the companies should be regarded as wholesale-only in the sense of the aforementioned legal provision. For more on this, refer to the aforementioned consultation document, Chapter 16 below, as well as Chapters 7.3.3 and 7.3.4 of the updated analysis (Annex A).

Míla's status

935. Ljósleiðarinn's consultant's opinion covers Míla's status as a company that does not meet the requirements to be considered a wholesale-only undertaking. Previously, for example, Míla belonged to a group of companies that were vertically integrated. In that context, obligations are addressed that are conducive to driving the development of high-speed networks by encouraging investment. Specifically, reference is made to Article 77 of the Code, on functional separation (see also Article 56 of the Electronic Communications Act), Article 78 of the Code, on voluntary separation by a vertically integrated undertaking (see also Article 57 of the Electronic Communications Act), and Article 80 of the Code, on wholesale-only undertakings (see also Article 59 of the Electronic Communications Act). It is also reiterated that wholesale-only undertakings are assumed to be in many ways exempt from the regulatory framework that provides long-term investors a degree of stability over the next 10-15 years. Even though such companies enjoy significant market power, they are exempt from various obligations that may otherwise be imposed on a company with significant

market power that isn't wholesale-only. On the other hand, a vertically integrated company that segregates its activities might not be expected to be treated the way wholesale-only undertakings may expect to be treated.

936. It is also stated that the rationale behind Article 80 of the Code, on wholesale-only undertakings, assumes that the connections and relationships a company has in the value chain are taken into consideration. Any connections could have the effect that exceptions intended to encourage investment are leveraged in order to apply market power elsewhere in the value chain, unless a company's activities are entirely separate.

937. Ljósleiðarinn's consultant advises Ljósleiðarinn to support the ECOI's conclusion that Míla does not satisfy the criteria to be considered a wholesale-only undertaking. The consultant considers Míla to have a dedicated relationship and cross ownership links which remain important and affect the company's position on the market. The consultant also advises Ljósleiðarinn to state that the context of Article 80 of the Code (and presumably also Article 59 of the Electronic Communications Act) is different for former vertically integrated companies with respect to their previous position on the market. The Code specifically states that the exemptions deriving from Article 80 do not apply in the same way to former vertically integrated companies and companies that enter the market as wholesale-only.

938. In practice, the consultant states that wholesale-only undertakings can expect to be exempt from most of the obligations that may be imposed on a company with significant market power. However, the same does not go for previously vertically integrated companies that fulfil the criteria for being considered wholesale-only undertakings. In this case, says the consultant to Ljósleiðarinn, such a company cannot expect to enjoy the same exemptions from obligations as a company that enters the market as wholesale-only. In this context reference is made to Paragraph 3, Article 78 of the Code, which states the following:

“Without prejudice to Article 80, the legally or operationally separate business entity that has been designated as having significant market power in any specific market in accordance with Article 67 may be subject, as appropriate, to any of the obligations referred to in Articles 69 to 74 or any other obligations authorised by the Commission pursuant to Article 68(3), where any commitments offered are insufficient to meet the objectives set out in Article 3.”

939. The consultant says that even if the ECOI had concluded that Míla does not fulfil the requirements for being regarded as a wholesale-only undertaking, that would not necessarily mean that Míla would have enjoyed the same exemptions if it had fulfilled them.

The ECOI's position

940. The ECOI's preliminary conclusion in the consultation document, published on 29 November 2023, was that Míla did not fulfil the requirements to be regarded as a wholesale-only undertaking, but that Tengir and Ljósleiðarinn did. During that consultation, comments were made by several market participants to the effect that the latter two companies did not meet the legal requirements of Article 59 of the Electronic Communications Act to be considered as operating on the electronic communications retail market. Upon further investigation, it emerged that these observations were warranted and the additional

consultation document, published on 23 January 2024, the ECOI amended its position in this regard, concluding that none of the companies shall be regarded as wholesale-only in the sense of the aforementioned provision of law.

941. Míla was deemed not to fulfil the ownership requirement, as Ardian, Míla's holding owner, owns electronic communications companies elsewhere in the EEA area that operate retail services. However, no assessment was made of whether Míla operates at the retail level in Iceland. The ECOI also looked at Míla in its investigation of whether Tengir and Ljósleiðarinn operated at the retail level in Iceland, cf. the aforementioned consultation document of 23 January 2024. The ECOI concluded that all three companies operate at the retail level of electronic communications in Iceland and none of them fulfil the criteria to be considered wholesale-only in the sense of Article 59(1) of the Electronic Communications Act. Míla in fact fails to fulfil two conditions. For more on this, refer to the aforementioned consultation document, Chapter 16 below, as well as Chapter 7.3.2 and 7.3.4 in the updated analysis (Annex A).

942. The ECOI considers it unnecessary in this analysis to address the Ljósleiðarinn consultant's statement on what would have happened if Míla had fulfilled the aforementioned legal provision, having previously been in a monopoly position on the Icelandic telecommunications market, and the fact that the provisions of Article 59 of the Electronic Communications Act do not apply or apply to a lesser extent than to competitors who enter the market later. There is therefore no need to take a position on this comment as Míla is not considered a wholesale-only undertaking in electronic communications in Iceland.

7.3.2 Míla

Assessment of a wholesale-only undertaking

943. In Paragraph 33, page 8, Chapter 4 of its first document of comments, Míla notes that with regard to the first condition of Article 59 of the Electronic Communications Act:

“ ... the vast majority of the company's customers operate on the basis of the general authority of the Electronic Communications Act for telecommunications activities, as defined in the Act. Míla operates primarily on wholesale telecommunications service markets and provides a wide range of services to those customers who either operate on the retail markets for services provided to end users or to service providers who are engaged in self-supply. The latter customer group comprises large companies with specific needs, who provide electronic communications services for internal use. The wording of the Code unambiguously states that electronic communications companies that provide services in this manner should be regarded as wholesale undertakings.

944. Míla also points out that Paragraph 34 states:

“Part of Míla's activities, like those of other comparable electronic communications companies that develop and operate telecommunications networks, involves hosting services, on-site services, various construction activity, etc. Customers who purchase such services from Míla are not necessarily electronic communications companies and

the services are not considered electronic communications services in the sense of the Electronic Communications Act. Míla does not consider the aforementioned services to be retail services provided to end users. The ECOI is also aware of another specific Míla customer group, so-called critical infrastructure operators. In some cases, these operators have not been registered with the ECOI, cf. the ECOI consultation of November 2019 with telecommunications network operators on the definition of critical infrastructure operators as a specific customer group. Míla is of the opinion that the services it provides to this specific customer group should not be considered retail services provided to end users.”

The ECOI’s position

945. The ECOI does not see any need to make a decision in this analysis regarding Míla’s reference to the fact that the Code clearly states that sales to retail companies for internal use should not be taken into account, as Míla in fact fails to fulfil two conditions of Paragraph 1, Article 59 of the Electronic Communications Act, cf. the above. Míla’s reference is presumably to the final sentence of Paragraph 208 of the Code, which states that an electronic communications company that supplies retail services to business users larger than small and medium-sized enterprises and not considered electronic communications companies should not be precluded from being regarded as a wholesale-only undertaking. This exception was not included Article 80 in the Code, nor in Article 59 of the Electronic Communications Act nor in the Regulation on market analysis in the field of electronic communications. It is therefore the position of the ECOI that this exception does not apply in Iceland.

946. The ECOI agrees with Paragraph 34 of Míla’s comments, which states that work carried out for various customers does not preclude a company from fulfilling the conditions of Article 59 of the Electronic Communications Act.

947. Accordingly, Míla does not fulfil the condition to not operate in the retail market for electronic communications services provided to end-users under Article 59(a) of the Electronic Communications Act No. 70/2022. This is in addition to the fact that Míla was deemed not to fulfil the ownership requirement of the same provision, as Ardian, Míla’s holding owner, owns electronic communications companies elsewhere in the EEA area that operate retail services, cf. the further details below.

Ardian’s status as owner of electronic communications companies in the EEA

948. Míla refers to Article 59(1)(a) of the Electronic Communications Act and Paragraph 35 of its first document of comments, pointing out that as for shareholders who are capable of exercising control over the undertaking, and do not have activities in any retail market for electronic communications services provided to end-users, Ardian does not have activities in retail markets for electronic communications services. Ardian is, however, a shareholder of Adamo in Spain and EWE in Germany, and these companies are both wholesalers and retailers of electronic communications services in the respective countries. Míla notes that Ardian is involved with these companies from a fund management perspective and is therefore a different kind of shareholder as when the owners themselves operate within the telecommunications sector and manage subsidiary companies in Europe. Ardian’s incentives as a fund management company are different from those of an owner.

949. Míla states in Paragraphs 36 and 37:

“Moreover, Ardian’s investments on markets outside of Iceland cannot affect the assessment of whether Míla can be considered a wholesale company on the Icelandic telecommunications market. Unlike the wording of the final sentence of Article 80(1)(b) of the Code (Directive 2018/1972), which refers to retail markets in the EU states (“in the Union), the provisions of Article 59 are limited to Iceland and the ECOI’s authority and jurisdiction are limited to the administration of telecommunications within the jurisdiction of the Icelandic state. The potential ownership links and investments by Míla’s foreign shareholders in companies operating on telecommunications markets outside of Icelandic jurisdiction are therefore completely irrelevant to the assessment of whether Míla may be considered a wholesale company in Iceland in the sense of Article 59 of the Electronic Communications Act.

With reference to the above, Míla considers the company to fulfil the first condition of Article 59 of the Electronic Communications Act.”

The ECOI’s position

950. The ECOI does not agree that Ardian’s status as a fund management company affects the interpretation of Article 59(1)(a) of the Electronic Communications Act. Were this the case, it would have been stipulated in the legal provision or at least in the Code. This is not done. For example, Ardian is the only shareholder of Adamo in Spain, not simply one of many shareholders as Míla implies. The ECOI also fails to see how Ardian’s incentives are different from those of any other type of owner of an electronic communications company.

951. The latter part of Míla’s comment refers to the fact that, unlike the wording of the final sentence of Article 80(1)(b) of the Code, which refers to retail markets in EU member states, the provision of Article 59 is restricted to electronic communications services provided in Iceland. There Míla is presumably referring to the final sentence in item a of the aforementioned provision of the Code and to the aforementioned provision of the Electronic Communications Act, not to item b. In regard to this comment, the ECOI refers to Chapter 7.3.2 of the analysis (Annex A) and the response to Míla’s similar but more detailed comment below, which was submitted during the second consultation. In the aforementioned Chapter 7.3.2 of the analysis, the ECOI provides detailed justification for this conclusion. The comment does not change the ECOI’s assessment. Míla also engages in retail operations in Iceland, as discussed above, both of which can have an effect on the arrangement of Míla’s obligations, which is a factor considered by the ECOI in the selection of obligations for Míla in this analysis.

952. In view of the above, the ECOI does not agree that Míla fulfils the requirements of Article 59(1)(a) of the Electronic Communications Act and is therefore not considered, in the ECOI’s opinion, a wholesale-only undertaking in the sense of the Electronic Communications Act.

Commitment to doing business with one company

953. Míla states in Paragraphs 38-40 of its first document of comments:

“With regard to the latter condition of the provision, Míla can confirm that the company is not obligated to engage in business with one single company that operates on a downstream market and is active on the retail market for electronic communications services as a result of an exclusive agreement. The wholesale agreement between Míla and Síminn, which was signed alongside the sale of Míla to Ardian last year, does not obligate Míla to do business with Síminn any more than with any other electronic communications companies operating on the retail market, cf. Ardian’s settlement with the ICA, signed on 15 September 2022.

Míla has strongly emphasised that all companies operating on the retail markets for electronic communications services have access to Míla’s networks and services. Míla plans to increase utilisation of the company’s investments to the greatest extent possible. This includes enabling as many electronic communications companies as possible to use Míla’s services and systems. Míla thus has strong incentives to ensure maximum use of the company’s infrastructure and Míla benefits from strong competition on the retail market. [...].

With reference to the aforementioned, Míla believes that the company should unequivocally be considered a wholesale company in the sense of the Electronic Communications Act. Míla thus satisfies all the conditions of Article 59 and clearly possesses all characteristics of a wholesale company as specified in the provision. Míla’s incentives, like those of other wholesale companies, are to promote the increased utilisation of its infrastructure and systems. In Míla’s opinion, it is evident that this can only be achieved by ensuring equality and providing access to Míla’s systems on competitive terms and conditions.”

The ECOI’s position

954. Míla made this comment before the ECOI brought Chapters 7 to 14 of the analysis to consultation. In the latter part of the preliminary draft that entered consultation after these comments from Míla were received, Chapter 7.3.2 discusses whether Míla fulfils the legal requirements for being considered a wholesale-only undertaking. It does not state that Míla is obligated to do business with one single company that operates on a downstream market, cf. Article 59(1)(b) of the Electronic Communications Act. For other conditions which must be fulfilled in order to qualify as a wholesale-only undertaking, the ECOI refers to the discussion in the aforementioned Chapter 7.3.2 of the analysis (Annex A) and to the ECOI’s response to Míla’s comments in this document.

Wholesale-only undertakings and obligations

955. In its first document of comments, Míla points out that should it be designated as a company with significant market power on any geographical market, the ECOI must take into account the company’s status as a wholesale company and that the applicable obligations should be restricted to Articles 48 and 50 on fair and reasonable pricing.

The ECOI's position

956. Míla made this comment before the ECOI brought Chapters 7 to 14 of the draft decision to consultation. Chapter 7.3.2 of the document that entered consultation after Míla submitted these comments discusses whether Míla fulfils the legal requirements for being considered a wholesale-only undertaking. This discussion addresses the obligations that may be imposed on companies considered wholesale-only undertakings. Regarding the obligations that the ECOI intends to impose on Míla, the ECOI refers to the discussion in Chapters 8 and 11 of the analysis (Annex A) and its responses to Míla's comments in this document.

Legal interpretation of the provision on wholesale-only undertakings

957. Míla's comments on the second consultation include the following, on page 19-21 of the company's statement:

"As mentioned earlier, Article 59 of the Electronic Communications Act stipulates the conditions under which an electronic communications company may be considered a wholesale company, including that "all companies and business units within the undertaking; all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholders capable of exercising control over the undertaking, only have activities, current and planned for the foreseeable future, in wholesale markets for electronic communications services and therefore do not have activities in any retail markets for electronic communications services provided for end-users", cf. item a, Paragraph 1, Article 59.

The provision does not stipulate that this separation applies to the entire EEA and therefore it is logical to conclude, according to the general annotation and the scope of the Act, as well as Icelandic law in general, that the separation is restricted, i.e. to Iceland.

The comments accompanying the draft bill state that the provision is based on Article 80 of Directive (EU) 2018/1972 ("the Code"). Furthermore, "{i}f a company with significant market power operates exclusively on the wholesale market and has no links or special agreements with retail companies, the ECOI can normally only impose obligations on access to networks and services, non-discrimination and fair and equitable pricing".

Accordingly, it is presumed that the wholesale company in question, here Míla, shall not, if it is to be considered a wholesale company in the understanding of the provision, have any relationship with a retail company, which also partly supports the aforementioned understanding that this separation is restricted to Iceland. Nor is the conclusion illogical with consideration to the protection of the interests in question, as the reasoning behind the provision is that there is no need for such extensive obligations as would otherwise be the case when an electronic communications company is a wholesale company.

The ECOI gives little consideration to the above items in the consultation document. Thus, it appears that the ECOI does not consider it relevant that Article 59(1)(a) does not apply to the entire EEA, as such is otherwise stipulated in the Regulation on market analysis, and the “{r}egulation constitutes a valid regulatory act with which the ECOI is obligated to comply”. The aforementioned comments in the preparatory legal documents are also “peculiar” in view of the “clear” wording of Article 59.

On this occasion, Míla points out that, while it is recognised that implementing powers are authorised, within certain limits, to issue general directives (administrative directives/regulations), it follows from the principle of legality that the subject matter of such directives must not contradict general law. There is considerable precedent for this in Supreme Court case law, cf. **H 1975:683 (real estate assessment board)**, **R 1984:1136 (fishing association)**, **R 1986:1022 (sales profits)** and **H 1988:1381 (primary school teacher)**. It is less likely still that a government minister may, by regulation, impose burdensome conditions on benefitting from a statutory exemption (concession), as is the case here.⁵³ The ECOI’s aforementioned remark that the “{r}egulation constitutes a valid regulatory act with which the ECOI is obligated to comply” is thus contrary to the principal provisions of law. It should also go without saying that the content of regulations are to be interpreted according to the content of the law and not the other way around, as the ECOI intends.

It is also clear that the draft regulation in question was written by the ECOI and further prepared in co-operation with the Ministry. This is confirmed by documentation obtained by Míla from the Ministry on the basis of the Information Act. However, the aforementioned documents shed no light on the reasons for adding the phrase “within the EEA” to item a, Article 44 in the final draft of the Regulation. Míla has requested further clarification on this. This confirms that the ECOI itself had considerable input in the wording of the regulatory acts that the Office then says it must follow.

There is no reason for the ECOI to dismiss the preparatory legal documents with the remark that they are “peculiar”. The unquestionable importance of preparatory documents in the interpretation of law need not be expounded upon.⁵⁴

Nor is it of any use to settle the matter on the ECOI's aforementioned argument that “{p}rovision 80 of the Code, which Article 59 of the Electronic Communications Act was intended to implement, expressly states that the provision cannot be interpreted as being limited to retail services within individual countries, but rather within the whole of the European Union”, therefore “Article 59 should be interpreted as pertaining to retail services within the whole of the EEA, not only Iceland”, and “had the legislation intended to contravene the explicit wording of

⁵³ The principle of legality is of great importance in the field of public market supervision, since the supervisory authorities' actions often involve an intrusion upon constitutionally protected rights, with the consequence that the Constitution's legality principles apply, cf. Eiríkur Jónsson, Friðrik Árælfsson and Kristín Benediktsdóttir: *Opinbert markaðseftirlit*, p. 124. This applies in this case, as burdensome conditions include, among other things, an intrusion upon Míla's freedom of trade.

⁵⁴ See e.g. Róbert R. Spanó: *Túlkun lagaákvæða*, p. 102 et seq.

the Code, it would need to have been clearly stated in Article 59(1)(a), which was not done”.

As before, the ECOI's justification has little basis in legal precedent and the principle provisions of law, cf. e.g. H 160/2015 (price indexation):

*“Article 3 of Act No. 2/1993 prescribes that all laws and regulations shall, to the extent necessary, be construed in accordance with the EEA Agreement and the regulations upon which the Agreement is based. The natural legal interpretation of this is that Icelandic law should, to the extent possible, be given an interpretation that does not contradict the letter of the law while going as far as possible to correspond to mutual rules that are supposed to apply in the EEA. Such interpretation cannot, however, result in Icelandic law being **given an interpretation that contradicts the letter of the law**, cf. for example the Supreme Court decision of 9 December 2010 in Case no. 79/2010.”⁵⁵*

It cannot be derived from the wording of Article 59 of the Electronic Communications Act that the reservation presented in item a, Paragraph 1 must necessarily extend to the whole of the EEA in order to consider the reservation met. Nor does such a conclusion follow from the preparatory legal documents, but rather to the contrary, as previously stated. Nor is the conclusion irrational in terms of the protection of the interests involved.

In relation to all of the aforementioned, it must also be considered that on the basis of the ECOI's extensive interpretation, the Office deems it appropriate to impose on Mila all manner of burdensome obligations that would otherwise not be permitted; the extensive interpretation is thus directly burdensome to Míla. This approach to legal interpretation is consistent with, among other things, a little recognised view of the interpretation of law.⁵⁶”

⁵⁵ Refer also to **H 10/2013 (Flugastraumur)**. The circumstances of the case were that an appeal was lodged against a ruling by a district court denying Landsbankinn hf. 's request to seek an advisory opinion from the EFTA Court in relation to a case that Flugastraumur ehf. had brought against Landsbankinn hf. in connection with a so-called financial lease between the parties. Landsbankinn hf. asked two questions pertaining to whether the the prohibition in Act No. 38/2001 on Interests and Price Indexation against tying liabilities in Icelandic krónur to foreign exchange rates is in breach of Articles 36 and 40 of the EEA Agreement. The Supreme Court's decision states:

*“Pursuant to Paragraph 1, Article 2 of Act No. 2/1993, the main text of the EEA Agreement is legally valid in Iceland. Article 40 of the Agreement states that, within the limits of the provisions of the Agreement, there shall be no restriction between the Parties on the transfer of funds belonging to those resident in the EC Member States or EFTA States nor any discrimination, based on the nationality or residence of the Parties or where the funds are used for investment. Annex XII contains the necessary provisions for the implementation of this Article. Article 3 of Act No.2/1993 prescribes that all laws and regulations shall, to the extent necessary, be construed in accordance with the EEA Agreement and the regulations upon which the Agreement is based. **As stated in the Supreme Court's decision of 9 December 2010 in Case no. 79/2010, the legal interpretation provided for in Article 3 of Act No 2/1993 The natural legal interpretation is that Icelandic law should, to the extent possible, be given an interpretation that does not contradict the letter of the law while going as far as possible to correspond to mutual rules that are supposed to apply in the EEA. Such legal interpretation cannot, however, result in the text of Icelandic law being disregarded, as is stated in the court decision.**”*

The previously mentioned decision **H 92/2010 (foreign currency loans)** includes the following: *“Article 3 of Act No.2/1993 prescribes that all laws and regulations shall, to the extent necessary, be construed in accordance with the EEA Agreement and the regulations upon which the Agreement is based ... The natural legal interpretation of this is that Icelandic law should, to the extent possible, be given an interpretation that does not contradict the letter of the law while going as far as possible to correspond to mutual rules that are supposed to apply in the EEA, **but this cannot result in the text of Icelandic law being disregarded.**”*

⁵⁶ For extensive and restrictive interpretations of law and the perspectives that must be considered, see Róbert R. Spanó: *Túlkun lagaákvæða*, p. 280 et seq.

The ECOI's position

958. In regard to this comment from Míla, the ECOI refers to the detailed discussion and justification provided in Chapter 7.3.2 of the analysis (Annex A) for the claim that Míla does not fulfil the legal requirements of Article 59(1)(a) of the Electronic Communications Act to be considered a wholesale-only undertaking, as Míla's owner, Ardian, owns electronic communications companies within the EEA that engage in retail operations; this is the so-called ownership requirement.

959. There it is stated that the aforementioned legal provision does not specifically address whether such retail operations are restricted to Iceland or apply to the whole of the EEA. The provision is therefore silent on the matter, i.e. it does not specifically address whether only retail activities in Iceland are to be taken into consideration or whether to look to the rest of the EEA. However, this is addressed in item a, Paragraph 1, Article 44 of the Regulation on market analysis in electronic communications markets. The regulation constitutes a valid regulatory act with which the ECOI is obligated to comply. The aforementioned provision of the regulation contains a more precise formulation of the legal provision in question, which accounts for the fact that the provision of Article 80 of the Code is clear in this respect, i.e. that the relevant company or its controlling owner may not engage in retail activities in the electronic communications sector within the EEA. Item c, Article 30 of the Regulation also states that one reason for imposing obligations is to promote the development of an internal electronic communications market within the EEA. Had the legislator intended to contravene the explicit wording of the Code, it would need to have been clearly stated in the aforementioned legal provision, which was not done.

960. The ECOI therefore has no other choice than to comply with valid and clear regulatory directives and it is not within the purview of the authorities to determine whether provisions of the regulation have an adequate legal basis. This is only the purview of the courts. The ECOI is furthermore of the opinion that it has accurately interpreted the aforementioned legal provision. The ECOI also disagrees that the content of the above regulatory provision is "contrary" to the legal provision in question, as Míla claims. If Míla's interpretation is used as a basis, it is clear the aforementioned provision of the Code has been incorrectly implemented.

961. Míla states that there was no reason for ECOI to dismiss the preparatory legal documents on the notion that they are "peculiar", and that the importance of such documents in the interpretation of law need not be expounded upon. The ECOI also notes that the comments accompanying the draft bill that would later become the Electronic Communications Act are also silent on this point. What Míla is referring to applies to the ECOI's discussion of a different point in the commentary on the aforementioned legal provision and is therefore unrelated to the matter disputed here.

962. Míla states that the ECOI is taking the liberty of applying an extensive interpretation of the law, and as a result the ECOI sees reason to apply all manner of burdensome obligations on Míla, which would not be permitted if Míla were considered a wholesale-only undertaking cf. Article 59 of the Electronic Communications Act. Though it is not relevant to this interpretation, the ECOI contests the claim that it is imposing all manner of obligations on Míla that would not be permitted were Míla considered a wholesale-only undertaking

pursuant to the provision. The only obligation that the ECOI imposes on Míla that would not be permitted if Míla fulfilled the aforementioned legal requirements is a more burdensome obligation on price control of part of Míla's product offerings on Market 3a, i.e. access to facilities, ducts and conduits. This obligation pertains to fair and reasonable pricing, and may be imposed on wholesale-only undertakings. For example, the ECOI does not impose such a burdensome price obligation on access to the company's local loops or bitstream, nor does it impose an obligation for transparency, accounting separation or cost accounting entry. In addition, the ECOI also recommends the removal of all obligations on Míla on the markets in question in areas whose population comprises approx. 80% of the country.

963. Míla also says that the draft regulation in question was clearly written by the ECOI and further prepared in co-operation with the Ministry. This is confirmed by documents obtained by Míla from the Ministry. These documents, however, shed no light on the reasons for including the phrase "within the EEA" to item a of Article 44 of the final draft of the regulation. Míla has requested further clarification from the Ministry on this. This confirms that the ECOI had considerable input in the wording of the regulatory acts that the Office then says it must follow.

964. On 12 January 2024, the ECOI received a copy of an e-mail from an employee of the Ministry of Higher Education, Science, and Innovation to Míla's lawyer, which contained a reply to Míla's above-mentioned request.⁵⁷ The Ministry's response states:

"It is indeed correct that the quoted text of the Electronic Communications Act and the provision of the Regulation on market analysis are not entirely consistent. In assessing whether the reference to the EEA in Article 44 of the Regulation lacks a legal basis, it is clear, in the Ministry's opinion, that when interpreting the law both generally and specifically, the enactment of these laws is an implementation of the EU Electronic Communications Directive ("the Code"), as the preparatory legal documents clearly state. It is also clearly stated in the comments regarding Article 59 of the draft bill that the Article is based on Article 80 of the Code.

The Code's provision regarding market analyses extends to all electronic communications companies in the European Economic Area, incl. retail activities within the region. The fact that Article 59 of the Electronic Communications Act is silent on this point does not, in the opinion of the Ministry, mean that the law should be interpreted in such a way as to suggest that it was not intended to implement the rule in question in accordance with the provisions of the Code. It is also hardly the case that the regulatory provision in question directly contradicts the law. Such an interpretation is contrary to all accepted perspectives of legal interpretation, such as the purpose of the Act, the comparative interpretation of its other provisions and with reference to the provisions of the Code. It should also be noted that Paragraph 3, Article 43 of the Electronic Communications Act contains specific regulatory permission allowing the Minister to further elaborate on the implementation of the Code. It is evident in the comments regarding that provision in the draft bill that a further elaboration of the substantive provisions of the Act belongs in the Regulation. Last but not least, it must

⁵⁷The e-mail stated that the Ministry sent the ECOI a copy of the response requesting information concerning the ECOI's involvement in the regulatory work.

be noted that Icelandic law must be interpreted in accordance with EU law. This main principle of EU law is particularly relevant to the matter at hand. Any conclusion other than the one here would result in different rules applying to a company that operates both in Iceland and other EEA countries, despite the fact that the Code applies in all countries.

It is worth mentioning that no comments were made on the draft regulation when it was published in the consultation portal. The aforementioned phrasing of the regulation was not subjected to special scrutiny or discussion between the Ministry and the ECOI when drafting the regulation, thus there is no documentation on the subject to be provided.”

965. The ECOI is in full agreement with the above response from the Ministry, which is essentially the same as what is stated in the aforementioned Chapter 7.3.2 of the analysis (Annex A).

966. Finally, the ECOI points out that it is a well-known practice in Icelandic administration that the first draft of a regulation that applies to a specialised sector is drawn up by the relevant professional agency. The draft of this Regulation is no exception. Following this correspondence, the Ministry took the initiative and held a number of meetings with the ECOI in connection with the draft, whereby various provisions were amended. Furthermore, Míla is incorrect in that the phrasing of item a, Paragraph 1, Article 44 of the Regulation has been added to the final draft, as it was in fact included in the first draft that was submitted to the Ministry. There was, however, no reason to change this provision of the Regulation, nor was it the subject of any discussion, and both the ECOI and the Ministry agreed upon its phrasing. As per procedure, the Ministry’s final draft was published in the administrative consultation portal, where no comments were submitted on the Regulation at all, let alone on this particular provision. It is therefore strange that Míla neglected to comment on the implementation of this provision while the company still had an opportunity to influence its final formulation, but decided instead to comment on the provision within the context of this market analysis.

Effects of Ardian’s acquisition of Verne Global

967. Míla’s comments on the second consultation include the following, on page 21 of the company’s comments:

“The ECOI’s reference to Ardian’s potential acquisition of Verne Global and the fact that “Verne Global may possibly be considered an electronic communications service retailer on the domestic market” deserves criticism. The aforementioned cannot constitute a basis for defining Míla as a company with links to the retail market, as can clearly be inferred from the counter-arguments from Paragraph 3, Article 59 of the Electronic Communications Act.⁵⁸ Having said that, Míla has no knowledge of anything to confirm that Verne Global’s operations in Iceland may be considered to belong to the electronic communications retail market. Nothing

⁵⁸ The provision states:

ECOI shall review obligations imposed on the undertaking in accordance with this provision at any time, if it concludes that the conditions laid down in paragraph 1 of this article are no longer met. The relevant undertaking shall, without undue delay, inform ECOI of any change of circumstance relevant to conditions pursuant to paragraph 1 of this article.

on the company's website indicates that Verne is engaged in such activity. Míla believes that this is a fundamental misunderstanding of what Verne's website states. The website only explains that Verne is a telecommunications hub (one of many) for Iceland. This is a Farice-based telecommunications hub that electronic communications companies and other Farice customers use to connect to other countries via submarine cables, especially the IRIS submarine cable. It is in no way possible to conclude from this that Verne is selling electronic communications services at the retail level. Míla emphasises that it is dubious of the ECOI to draw such conclusions without further justification. It would be more appropriate for the ECOI to obtain the relevant information from Verne before referring to the company's potential effect on the assessment of whether Míla may be considered a wholesale company in the sense of Article 59 of the Electronic Communications Act. Míla reaffirms that Ardian's potential acquisition of Verne cannot be the basis of or have any effect on the assessment of Míla's current position with respect to Article 59 of the Electronic Communications Act.

Ardian's investments around the world do not as such justify the imposition of additional obligations on Míla for the sole reason that Míla's owner has invested in companies that operate on electronic communications retail markets in other countries that have no connection to Iceland nor any effect on the competitive conditions in this country."

The ECOI's position

968. The ECOI refers to the ruling by the Rulings Committee for Electronic Communications and Postal Affairs in Case no. 3/2021 whereby the Committee found reason to make amendments to ECOI Decision No. 5/2021 after the ICA confirmed Síminn's sale of Míla. The Committee believes there to have been a significant breach of the premises of the contested Decision No. 5/2021, as the market is considerably different following the sale of Míla. The Committee thus based its ruling on the market conditions after the authorisation of the Ardian/Míla merger after the contested ECOI Decision was made. Judging from this, the Rulings Committee did not consider the ECOI to have given adequate consideration to Ardian's potential acquisition of Míla in its Decision, which at the time was under examination by the ICA.

969. In view of the above, the ECOI now deems it appropriate to take into account the potential market conditions in the event of Ardian's acquisition of Verne Global, which was announced to competition authorities in a merger notification dated 11 December 2023, and has now received confirmation. ECOI has confirmed that Verne Global does operate in the retail space of telecommunication services, although that part of their operation is very small in comparison with the total turnover of the company.

The ECOI must assess corporate incentives and observe proportionality

970. Míla's comments on the second consultation include the following, on page 22 of the company's comments:

“As ESA has correctly pointed out to the ECOI, it is incumbent upon the ECOI, when assessing appropriate obligations on companies that have been defined as having significant market power, to investigate the different incentives of wholesale companies in comparison to vertically integrated companies in terms of promoting competition on the retail market and to base the assessment of obligations on these incentives. ESA pointed this out specifically in its comments to the ECOI on its analysis of the same markets in 2021.⁵⁹This comment by ESA was not made in the context of the Code provision on wholesale-only undertakings, as neither the Code nor the current Electronic Communications Act had entered into force in Iceland, nor had the Code been incorporated into the EEA Agreement despite the fact that the EEA Joint Committee Decision (JCD) had already been made.

It is therefore clear that what is important in assessing the imposition of obligations is whether the company in question indeed has the incentives of a wholesale company to promote effective competition on the retail market. There should be no doubt that this applies to Míla, as it does to all other comparable wholesale companies. Ardian’s ownership interests in companies in Europe does not change this, as whether or not Míla’s owner holds shares in companies in other countries, within the EEA or outside of it, does not affect the competitive conditions of the Icelandic telecommunications market. Whether Ardian has ownership interests in a company that is active on the telecommunications retail market in Spain, South America, Germany, Asia or elsewhere thus makes little to no difference to Míla’s activities and the Icelandic telecommunications market. It is therefore unreasonable to impose more stringent obligations on Míla than would otherwise be permitted solely on the basis that Ardian has invested in companies operating on the retail market in Spain or elsewhere in the EEA.

Míla finds reason here to reiterate the ECOI’s legal obligation to observe proportionality when imposing obligations. The imposition of heavier obligations on Míla on the aforementioned grounds contravenes the principle of proportionality of the Administrative Procedures Act.”

The ECOI’s position

971. Refer to the ECOI’s detailed response above regarding whether Míla fulfils the ownership requirement of Article 59(1)(a) of the Electronic Communications Act despite the fact that Ardian, Míla’s holding owner, owns electronic communications companies within the EEA.

972. The ECOI has indeed considered Míla’s incentives after the sale to Ardian, and the obligations imposed on Míla are to a great extent consistent with the incentives of a wholesale company and considerably less stringent than the obligations currently in force. However, the agreement between Síminn and Míla, its extent and duration must not be ignored. Given Síminn’s strong position on the retail market, this agreement has a significant impact on the market and Míla’s position on it.

⁵⁹ Cf. letter from ESA to the ECOI, dated 14 October 2021, bottom paragraph of page 8

973. The ECOI is therefore of the opinion that it has observed proportionality in imposing obligations on Míla in this analysis. Examples of obligations no longer imposed include those pertaining to transparency, accounting separation, cost accounting entry and price control, with the exception of price control obligations applying to those parts of Míla's service that belong to Market 3a, i.e. regarding access to facilities, ducts and conduits. The ECOI's analysis provides thorough justification for the necessity of price control obligations in these instances, as they are specifically intended to promote fibre-optic network deployment in areas without such infrastructure and, as appropriate, to promote infrastructure competition. Furthermore, obligations on Míla will only apply in regions where approx. 20% of the population lives.

Tengir should not be considered a wholesale-only undertaking

974. Míla's comments on the second consultation include the following, on page 2 of the company's statement:

"In Míla's opinion, the ECOI's conclusion in support of the claim that Tengir cannot be considered a wholesale-only undertaking cannot possibly stand up to scrutiny, a case in point being that Tengir's website clearly indicates that the company operates retail services (directly to end users) in the corporate market.⁶⁰ Tengir sells companies various electronic communications services, including bitstream services from 100Mb/s to 1 Gb/s⁶¹, cf. the figure. Such services fall within the definition of electronic communications services in item 17, Article 5 of the Electronic Communications Act. Tengir therefore clearly does not meet the requirements to be considered a wholesale-only undertaking.

Figure 1: Screenshot of Tengir's website

⁶⁰ Cf. e.g. the following information published on tengir.is/info:

"The level of service Tengir offers for corporate connections varies according to the service plan selected. Companies are thus able to select a plan with a higher level of service if necessary. Small businesses/own-account workers may also request a home connection (the terms of service for home connections apply here) and such customers are handled on a case-by-case basis.*

There are three main retail service plans (direct to end users) which can then be further tailored to individual customer needs if necessary*. All plans offer bitstream service from Tengir or other service providers.

Ljósbox: Fibre-optic local loop on service level 4. Available for small businesses.

Bitstream service with Tengir: Data link from 100Mb/s - 1Gb/s. The customer is not on a private network (not a VLAN), therefore it is not possible to connect different locations.

Ljósbraut: Fibre-optic local loop on service level 3. Available for small and mid-sized businesses.

Bitstream service with Tengir: Data link from 100Mb/s - 1Gb/s. VLAN (x1-4) services. Private network connection that travels the shortest distance from customer to service provider via the fibre-optic network.

Metro connection: Fibre-optic local loop on service level 2. Intended for larger businesses and organisations.

Bitstream service with Tengir: Data link up to 10Gb/s. Active, ring-connected links within Akureyri and secure backup links from Siglufjörður and Húsvaik to Akureyri (via the NATO cable). Multiple private networks available. It's easy to connect locations such as headquarters, stores, factories or customer locations to a closed and secure private company network. It is also possible to prioritise data, which enables users to decide what can wait and what can't."

⁶¹ See Tengir's website: <https://tengir.is/info#tabnr-6>

Um ljósleiðara

Heimilistengingar

Fristundahúð

Fyrirtækjategingar

Þjónustugjafi

Greiðsluskilmálar

Uppsögn og þjónustulífi

Framkvæmdir og breytingar

Stærtnir Tengis

FYRIRTÆKJATEGINGAR

Fyrirtækjateging um ljósleiðara Tengis er oflag fjarskiptateging, ætíu rekstraradilum fyrirtækja. Þarfr fyrirtækja eru öðkar, m.a. eftir stærðgráðu en við erum með lausir sem henta öllum, litlum, meðalstórum og stórum fyrirtækjum.

Þjónustugjafi fyrirtækjateginga hjá Tengir er mismunandi eftir því hvaða þjónustuleið er valin. Þannig geta fyrirtæki valið þjónustuleið með hærri þjónustugjöf ef þörf er á. Lítil fyrirtækjeyrkar geta sæk þessa óskáð eftir heimilistengingu (þjónustuskilmálar heimilistengingar eiga þá við) og er algreipsla þeirra meðin hverja sams.

Um er að ræða þrjár megin þjónustuleiðir í smásölu (þarfr til endanóndanna), sem síðan er hægt að sérsníða enn frekar eftir þörum hvers viðskiptavinar ef þörf er á*. Á öllum þjónustuleiðum er í boði bílstraumsþjónusta frá Tengir eða öðrum þjónustavélendum.

- **Ljósbox:** Ljósleiðaraheimtaug á þjónustugjöf 4. Í boði fyrir lítil fyrirtæki
 - Bílstraumsþjónusta hjá Tengir: Gagnasamband frá 100Mb/s - 1Gb/s. Viðskiptavinar eru ekki á einkaneti (ekki einkna vLAN rétur) og því ekki mögulegt að tengja saman útbú.
- **Ljósbraut:** Ljósleiðaraheimtaug á þjónustugjöf 3. Í boði fyrir lítil og meðalstór fyrirtæki.
 - Bílstraumsþjónusta hjá Tengir: Gagnasamband frá 100Mb/s - 1Gb/s. vLAN (x1-4) þjónustur. Samband um einkanet sem fer stýðstu leið um ljósleiðaranet frá viðskiptavin til þjónustavættu.
- **Metro tenging:** Ljósleiðaraheimtaug á þjónustugjöf 2. Ætíu stærri fyrirtækjum og stofnunum.
 - Bílstraumsþjónusta hjá Tengir: Gagnasamband allt að 10Gb/s. Virk sambönd sem eru hringtengd innan Akureyrar og tryggð varasambönd frá Siglufrið og Húsavík til Akureyrar (um NATO streng). Fjöldi einkaneta í boði. Það er auðvelt að tengja saman starfsstöðvar inn á lokað og öruggt einkanet fyrirtækisins, t.d. hófuðstöðvar, verslanir, verksmiðjur eða starfsstöðvar viðskiptavina. Eins er mögulegt að forgangsráða gögnum, sem gerir notendum kleift að velja hvaða samskipti mega ekki verða fyrir töfum.

*Tengir Tengir áskur sér rétt til að halfa afgreiddu á ákveðnum þjónustuleiðum til fyrirtækja. Ef Tengir telur að viðkomandi tenging sé óvinnandi mætt við reitur þessa fyrirtækis og geti mögulega haft áhrif á reitur þess, ef t.d. sum til brottfalls á þjónustubílnar á jöðudara.

*Ljósleiðaraheimtaug er svarfrá jöðudara, þ.e. ljósleiðaraþráður sem er tengdur án endanóndar.

It should be kept in mind that Tengir's marketing efforts are directed towards end users, incl. soliciting via telephone. Tengir's pricing is also aimed at end users, which is a crucial factor in end users' decision on what fibre-optic connection to purchase.⁶² Apart from this, Míla also disagrees with the ECOI's reasoning for claiming that Tengir does not operate on the retail market. Charging end users directly for accessing a fibre-optic network does indeed constitute "electronic communications retail market activity" according to the general annotation on Article 59 of the Electronic Communications Act, irrespective of whether or not the collection of the charge itself constitutes an electronic communications service. Míla also points out that, pursuant to the electronic communications regulatory framework, leasing a local loop falls under Market 3a. Míla does not see how the basic unit of electronic communications services is not considered a service on the telecommunications market."

The ECOI's position

975. The ECOI certainly made the preliminary conclusion in its consultation document, published on 29 November 2023, that Míla did not meet the requirements to be considered a wholesale-only undertaking, but that Tengir and Ljósleiðarinn did. During that consultation, comments were made by several market participants to the effect that the latter two companies did not meet the legal requirements of Article 59 of the Electronic Communications Act to be considered as operating on the electronic communications retail market. Upon further investigation, it emerged that these observations were warranted and the additional consultation document, published on 23 January 2024, the ECOI amended its position in this regard, concluding that none of the companies shall be regarded as wholesale-only in the sense of the aforementioned provision of law. For more on this, refer to the aforementioned consultation document, Chapter 16 below, as well as Chapters 7.3.3 and 7.3.4 in the updated analysis (Annex A).

976. Míla, Ljósleiðarinn and Tengir all market directly to the end user, e.g. by advertising on television. The ECOI does not believe that this alone precludes the companies from being considered wholesale-only, but, as previously stated, Tengir fails on the condition pertaining to the sale of electronic communications services to companies on the retail market.

977. As per the argument put forward in Chapter 7.3.4, however, the ECOI is not of the opinion that the fact that Tengir collects an access charge from end users means that the company cannot be considered wholesale-only, though as stated before, Tengir fails on the

⁶² Míla's pricing has little impact on what electronic communications companies charge their customers for the local loop, but most charge approx. ISK 4,000. Míla charges ISK 2,870 ISK incl. VAT for its fibre-optic local loop in Akureyri and most retailers charge users approx. 4,000 ISK, while Tengir charges its end users ISK 3,490 incl. VAT.

condition pertaining to sale of electronic communications services to companies on the telecommunications market.

978. In this context it is worth noting that Tengir does not operate an internet access service or international gateway. Tengir is therefore not in a position to provide retail internet service, i.e. the service most associated with Markets 3a and 3b. Tengir does not, for example, provide services such as internet, telephone or television to end users.

Ljósleiðarinn should not be considered a wholesale-only undertaking

979. Míla's comments on the second consultation include the following, on page 24 of the company's comments:

"In exceptional cases (about 1% of connections), Ljósleiðarinn collects the access charge from the end user directly. The above arguments therefore also apply mutatis mutandis to Ljósleiðarinn."

The ECOI's position

980. The ECOI certainly made the preliminary conclusion in its consultation document, published on 29 November 2023, that Míla did not meet the requirements to be considered a wholesale-only undertaking, but that Tengir and Ljósleiðarinn did. During that consultation, comments were made by several market participants to the effect that the latter two companies did not meet the legal requirements of Article 59 of the Electronic Communications Act to be considered as operating on the electronic communications retail market. Upon further investigation, it emerged that these observations were warranted and the additional consultation document, published on 23 January 2024, the ECOI amended its position in this regard, concluding that none of the companies shall be regarded as wholesale-only in the sense of the aforementioned provision of law. For more on this, refer to the aforementioned consultation document, Chapter 16 below, as well as Chapters 7.3.3 and 7.3.4 in the updated analysis (Annex A).

981. Míla, Ljósleiðarinn and Tengir all market directly to the end user, e.g. by advertising on television. the ECOI does not believe that this alone precludes the companies from being considered wholesale-only, but, as previously stated, Ljósleiðarinn fails on the condition pertaining to the sale of electronic communications services to companies on the retail market.

982. As argued in Chapter 7.3.3, however, the ECOI does not believe that the fact that, in exceptional circumstances, Ljósleiðarinn charges end users directly for access but does not provide services such as internet, telephone or television precludes a company from being considered wholesale-only, though as previously stated, Ljósleiðarinn fails on the condition pertaining to sale of electronic communications services to companies on the telecommunications market.

7.3.3 Nova

Definition of a wholesale-only undertaking and transparency in wholesale company pricing

983. In their comments on the second consultation, Nova agrees with the ECOI's assessment that Mila cannot be considered a wholesale-only undertaking, and therefore the provisions of Article 59 of the Electronic Communications Act do not limit the obligations that the ECOI is authorised to impose on the company.

984. In addition to the criteria on which the ECOI bases its assessment of whether the legal requirements are present for considering a seller of wholesale services a wholesale-only undertaking, it is Nova's opinion that the direct sale of electronic communications services to larger end users such as government agencies and data centres constitutes participation in the retail market. Those wholesale sellers who provide services to such end users can therefore not be considered wholesale-only undertakings.

985. Nova agrees with the ECOI's assessment of imposed obligations and also wishes to present certain perspectives on the need for transparency in the pricing of wholesale services. Nova notes that within bitstream services (on Market 3b) there are 3 distinct virtual local area networks (vLANs) offered, i.e. for 1) public internet, 2) fixed line telephone service over IP (VoIP) and 3) TV over IP network (IPTV). The ECOI proposes quality definition guidelines for the provision of these services in the draft.

986. In Nova's opinion, it is generally important that wholesale service sellers' wholesale prices for access service and all bitstream services are transparent. This is necessary for the comparison of different service providers' pricing of access charges and various bitstream services, e.g. internet on the one hand and television on the other. In general, transparency is important to ensure that one service does not subsidise others, which may be a way for retailers to favour larger customers at the expense of smaller ones competing on the retail market.

987. In Nova's opinion, it is in no way less expensive to operate the bitstream (virtual network) for television service, especially when considering the fact that multicast usage has largely been replaced by streaming services (VOD). Furthermore, in multicast viewing today, it is almost always possible to pause the program and resume later, which essentially means that multicast as such is no longer in use but instead streaming (unicast). The amount of data that passes through a virtual network for television service can be many times the amount that passes through a virtual network for internet service. Therefore, in Nova's view, this is not a legitimate justification for the price difference in the above example, but rather a form of discriminatory or predatory pricing, which is advantageous to those retailers who offer television service.

988. Another example Nova gives is of a wholesaler who considers one type of bitstream services as part of the basic services offered, in which case it is included in the access charge without separation or itemisation. It would therefore be impossible to compare different vendors' pricing for bitstream services, in addition to the fact that it would not be possible to purchase only those bitstream services that a retailer may need.

989. Nova stresses the importance of increasing transparency when it comes to any kind of bundling of telecommunication and television services. In Nova's 2020 comment on the same markets under discussion here, Nova's opinion was that rationale was lacking for including bitstream service for public internet as part of the access service, thus presenting the risk of favouring a certain Nova competitor on the retail market. Nothing has changed in this respect despite the dissolution of the Síminn Group, as Míla is bound by a long-term contract to provide services to Síminn, which lacks the transparency necessary to create trust that competition is taking place under normal conditions on the market. Ljósleiðarinn's recent acquisition of Sýn's internet portal along with other infrastructure assets further increases the importance of transparency in this respect.

990. Nova requests that the ECOI impose obligations in a way that ensures transparency with respect to the pricing of services on the markets in question.

991. Finally, Nova notes that it has no comments on the ECOI's proposals for specific amendments to the draft assessment of significant power on distinct geographical markets company from the previous consultation.

The ECOI's position

992. The ECOI appreciates that Nova does not comment on the proposed amendments to the previous draft's assessment of significant market power on distinct geographical markets.

993. In the consultation document published on 29 November 2023, several market participants pointed out that Tengir and Ljósleiðarinn, and even Míla as well, cf. Nova's aforementioned comment, were operating at the retail level. In the aforementioned consultation document, the ECOI had concluded that Tengir and Ljósleiðarinn met the conditions of Article 59(1) of the Electronic Communications Act to be considered wholesale-only undertakings, as they did not operate at the retail level. Here the ECOI relied on the statements of company representatives in meetings with the Office. After receiving these comments, the ECOI requested customer lists from the companies. Upon inspection of these lists, it was found that all the companies were conducting business at the retail level and therefore could not be considered wholesale-only in the sense of the aforementioned provision. In an additional consultation document published on 23 January 2024, the ECOI changed its position in this regard in the cases of Ljósleiðarinn and Tengir, while the ECOI had already concluded in the consultation document of 29 November 2023 that Míla did not meet the legal requirements. For more on this, refer to the aforementioned consultation document, Chapter 16 below, as well as Chapter 7.3.2 and 7.3.4 in the updated analysis (Annex A).

994. Regarding increased transparency in wholesale pricing, the ECOI refers to the response to comparable comments from Síminn on the same subject in Chapter 7.3.4 below. The same argument applies to the different pricing of bitstream according to the product offering in which it is used when selling services on the retail market. It is worth mentioning, however, that bitstream for television service is being increasingly replaced by streaming via internet, which avoids the potential problem that Nova points out in the above comment. It is also worth noting that Míla's bitstream pricing has been subject to cost analysis under

domestic consultation. The ECOI does not consider it necessary to apply specific obligations requiring increased transparency in pricing on the wholesale level, and leaves it in the hands of retail companies to further examine wholesale offerings in terms of basic pricing and contractual terms on a case by case basis. If e.g. Míla is serious about wanting to do business with Nova, it should be easy for Míla to tailor its pricing to Nova's wishes with due consideration to non-discrimination, as the ECOI's obligations will apply to Míla and, depending on circumstances, pursuant to the September 2021 settlement between Míla and the ICA.

7.3.4 Síminn

Retail companies' access to telecommunication services of infrastructure companies and wholesale-only undertakings

995. In their comments on the second consultation, Síminn considers that it is necessary to reconsider the ECOI's market analysis for the Capital Region due to the conclusion that Nova can potentially negotiate for trade in services from Míla instead of Ljósleiðarinn. Síminn states that Nova did negotiate an agreement with Tengir in North Iceland regarding use of Tengir's bitstream service. This indicates that Nova does not plan to sell connections via Míla's systems, at least not on the residential market. The fact that Nova entered into an agreement with Tengir rather than Míla must be examined with due consideration of the the ECOI's statements to the effect that Nova is likely to make agreements with Míla and thereby cause a reduction in Ljósleiðarinn's market share.

996. Síminn states that Sýn altered its pricing in such manner that connecting to Míla is more expensive than connecting to Ljósleiðarinn, which is probably for the purpose of transferring connections to Ljósleiðarinn. This action on the part of Sýn, and actually also on the part of Nova, is interesting when it is taken into consideration that, according to Síminn, Ljósleiðarinn's local loops are more expensive than those of Míla. This could also suggest that the agreement between Ljósleiðarinn and Sýn includes terms other than what is available to general electronic communication companies, or that it stipulates a minimum purchase condition which Sýn must meet. Based on official rates, connections via Míla's systems should be cheaper rather than the opposite in Síminn's assessment. Síminn categorically states and reiterates its views that it is desirable for the market if the rates of infrastructure companies are not made public, even though they should be transparent and accessible to the buyers of the service.

997. Síminn considers that the ECOI 's analysis of the Capital Region must be submitted to a revision as it involves an underestimation of the agreements which Ljósleiðarinn has entered into with Nova and Sýn. Síminn is also of the opinion that the aforesaid shows that there is reason to impose an obligation on Ljósleiðarinn regarding reference offers and a prohibition against discrimination.

998. Síminn considers that further investigation is necessary to determine which companies meet the conditions to be classified as wholesale-only undertakings. Síminn states that both Ljósleiðarinn and Tengir sell electronic communication services to companies and institutions on a retail basis. Síminn therefore submits to the ECOI the suggestion that at a

minimum this factor should be examined in more detail. Thus both Ljósleiðarinn and Tengir publish on their websites information about prices and/or terms relating to companies in general.

999. Síminn considers that Tengir must be obligated to sell access to local loops on a wholesale basis and states that both Ljósleiðarinn and Míla offer such access. It is important that electronic communications companies can sell internet services to their customers with the cost of local loops included in the price.

The ECOI's position

1000. The ECOI does not find that it is necessary to specifically review the draft of the market analysis even though Nova has entered into an agreement with Tengir regarding wholesale trade in North Iceland. What is relevant is that Nova [...] could just as well trade with Míla if the company can obtain competitive terms regarding the trade like Síminn has from Míla.

1001. The ECOI sees reason to find flaw with the complaint submitted by Síminn regarding Míla's competitive position due to Sýn's pricing on the retail market for consumers via connections. This underlines the vertical connections that still exist with Síminn and Míla in spite of the change in Míla's ownership. Whether Sýn's agreement with Ljósleiðarinn is more advantageous than the agreement that Síminn has with Míla is speculation on the part of Síminn [...]. It is also not the role of the ECOI to intervene in competition on the retail market and the manner in which individual companies implement their business plans. Different pricing on the retail market can be part of the competition which individual companies engage in with the objective of stirring the market and attracting trade. The ECOI considers that complete transparency regarding agreements can result in impediments to competition and lead to price convergence on the retail market. Official pricing is still in place, as Síminn points out, that provides basic information about the rates and contractual terms available. This does not mean that the basic rates are set in stone and they may change to some extent depending on the situation in which the contracting parties find themselves at each time, without the relevant agreements and terms being contrary to competition law or the obligations of the ECOI. It is the responsibility of the parties to ensure compliance with competition law both with regard to the terms of the agreement and the business relationship and the implementation thereof.

1002. With reference to the aforesaid, the ECOI does not find reason to alter the assessment of significant market power in the Capital Region in the draft due to inferences regarding potential actions on the part of retailers concerning trade at wholesale level, nor to impose additional obligations regarding complete transparency in Ljósleiðarinn's agreements.

1003. As regards Síminn's statement that Tengir and Ljósleiðarinn are working at the retail level of electronic communications, see the response to Nova's similar comment earlier in the text.

1004. The ECOI considers that even though the line fee for users on the retail market is included in Tengir's wholesale prices, this does not call for the imposition of specific obligations on the part of the Office Síminn and other companies on the retail market can continue to provide internet service via Tengir's local loops if they consider this to be to their

advantage and to serve their business interests. Furthermore, the ECOI does not consider that it can obligate companies with significant market power to alter their business model, as this would at a minimum be contrary to the principle of proportionality that must be ensured when imposing obligations.

7.4 Current obligations that apply to Míla in accordance with the ECOI 's provisional decision no. 9/2023

7.4.1 Tengir

Access to groundworks and installation projects

1005. Tengir's comments on the second consultation include the following, on page 2 of the company's statement on Chapter 7.4:

"In the earlier comment, Tengir also addresses Míla's alleged non-compliance with the obligation to provide access to groundworks and installation projects and the obligation to report groundworks projects, which bears repeating (reference to paragraphs 341 and 344 in the draft of the ECOI 's market analysis). Tengir considers there to be a high likelihood that Míla will continue as before, and on 14 December last Míla published a picture of its intended project area in Siglufjörður for yet another year and the area in question is the one on which the company has been working on at least three earlier occasions. The northern part of the area is indeed located on Tengir's project area of 2021, where Tengir ceased operations due to the lack of participation from home owners in the street at the top, but the company has nevertheless installed basic tubes and dug a well (see Tengir's general maps which are submitted to the ECOI on a regular basis). The reason for the low level of participation was the planned fibre-optic installation announced by Míla, without start-up costs. Not to put too fine a point on it, Míla has yet to install fibre-optics in the aforesaid area nor any other areas where the company has acted in the same manner. Development of a high-speed network in Siglufjörður has therefore proceeded badly, to say the least, also with regard to the development of Tengir's fibre-optics as the company needs to take into account the desire of home owners to participate. Tengir considers it quite clear that this behaviour on the part of Míla is no coincidence and that it has the express purpose of causing harm to Tengir and slow down the development of a high-speed network in the area, as Míla published a summary of its intended project area for the years 2021-2023 in Siglufjörður on 8 April 2021, after Tengir had begun the process of presenting its planned projects to the residents and the development of its fibre-optic system in the area. (Enclosed is a screenshot of Míla's announcement of 8 April 2021. The majority of advertised project areas can be found on Míla's home page, although it seems that some announcements have been deleted).

Siglufjörður

Áætluð framkvæmdasvæði vegna ljósleiðaravæðingar Mílu 2021-2023. Þeir sem hafa áhuga á að samnýta framkvæmdir á þessu svæði hafa samband við Mílu með tölvupósti á netfangið mila@mila.is



Tengir also addressed factors relating to equality and transparency in the provision of local loop information and connection options. Tengir wishes to add that the company considers Míla to be in violation of the obligation for transparency by not officially publishing information about the registration of local loops, tubes and installation routes, so that tube infrastructure that is owned by Míla but the company does not need to use can be used for the construction of telecommunication installations if other electronic communications companies step up and meet the needs of municipalities."

The ECOI's position

1006. The purpose of the obligation to announce groundworks projects is to promote the deployment of parallel fibre-optic networks in a practical manner. Tengir's aforesaid description of the implementation of this obligation by Míla suggests that Míla announces projects solely for the purpose of ensuring that the company can at any time embark on projects, and therefore is not entirely consistent with actual plans. However, it must be taken into account that the plans of companies can change.

1007. The ECOI states that the Office has not received a formal complaint about Míla's alleged violation of an applicable obligation in this regard. Still, it is not impossible that the ECOI will examine Míla's projects with this in mind if a formal complaint is received from a

market participant or participants, and the ECOI will in such case seek to obtain Míla's responses to such complaints. Siglufjörður is located within the municipality of Fjallabyggð, where Míla is considered to still hold significant market power.

7.5 Competition problems on the market in question

7.5.1 Míla

Signs of vertical integration between Síminn and Míla

1008. Míla's comments on the second consultation include the following, on page 2 in the company's comments:

"Míla has serious reservations regarding the ECOI repeatedly stating, without giving any arguments in support thereof, that there remain signs of continuing vertical integration between Síminn and Míla. The ECOI must provide adequate reasoning for such statements, as assessments of this kind cannot be based solely on what is perceived to be true. It is not sufficient to point out the agreement between the companies solely regarding wholesale trade. The effects of Síminn and Míla's long-term agreement do not exceed that "Síminn's agreement with Ljósleiðarinn has had considerable effects to increase the share of Ljósleiðarinn at Míla's expense", like the ECOI confirmed to Míla last August. The effects of Ljósleiðarinn's long-term agreement on Sýn and Nova respectively are also significant. [...]. As is well known in competition law, such a discount arrangement can have a harmful effect on competition when a market-dominant company is involved. Like the ECOI is well aware, Ljósleiðarinn has a considerably larger share than Míla on the geographical market in which the company is active."

The ECOI's position

1009. The ECOI rejects the statement that the discussion of continuing signs of vertical integration between Síminn and Míla is only based on what is perceived to be true. The ECOI refers to Chapter 6.1.5.9 and Chapter 7.5 of the Office's market analysis (Appendix A) which include a discussion of the effects of the wide-reaching agreement into which Síminn and Míla have entered, as well as the Competition Authority's treatment of the continuing strong connection between the companies.

1010. In addition it may be mentioned that Ljósleiðarinn is the only network operator from which Síminn purchases bitstream service, though with the involvement of Míla, as a kind of intermediary with regard to technological arrangements, and it seems that Síminn is technologically very dependent on Míla. The ECOI does not foresee that this will change in the near future. This has the effect that Síminn's retail market power is transferred to Míla as in the case of vertically integrated companies.

1011. [...].

Incentives to take unfair advantage of favourable position

1012. Míla's comments on the second consultation include the following, on page 3 of the company's statement regarding competition problems:

"Míla also has notes regarding the ECOI 's discussion regarding competition problems on the wholesale markets under consideration. The ECOI there presents a general list of behaviours that constitute barriers to competition, which appears to be yet another copy-paste from an older document, followed by a statement that Míla "could" engage in certain of the behaviours on the list, without performing any further analysis in this regard with reference to the relevant geographical markets. The ECOI seems to ignore completely the fact that Míla's customers on the relevant geographical markets which reach nearly 20% of the entire country's population also trade with Míla all over the country. It should be evident that Míla has no incentive to abuse its position on 20% of the market with regard to its customers and parties requesting access, as this would be liable to harm Míla's business relationship with the aforesaid customers, and Míla could lose the business of the same parties in other, larger, geographical markets. Míla therefore has all the same incentives in these areas as elsewhere to offer just and fair terms and rates."

The ECOI's position

1013. Chapter 7.5 of the analysis, which concerns competition problems, is nearly 60 pages long and describes actual and potential competition problems that have arisen or might arise on the relevant wholesale markets, both where Míla is concerned as well as other parties that will be designated as holding significant market power. The text is to some extent based on an earlier analysis, but with extensive additions and/or amendments. The older analysis was not carried out a long time ago and therefore the same actual or potential competition problems are currently in play to a large degree. Still, there is much new to be found in the chapter, cf. the developments that have occurred since the earlier analysis took place, such as the Ardian-Míla merger, and also the long-term agreement between Síminn and Míla and Ljósleiðarinn's purchase of Sýn's basic network and the new long-term agreement between these companies. It does not constitute grounds for imposing obligations if a competition problem has become a reality, but rather it is sufficient that a party with significant market power has the incentive, ability and opportunity to abuse its position.

1014. Even though this analysis will result in Míla being relieved of all obligations in geographical markets where about 80% of the country's population live, Míla will nevertheless be in a very strong position in many geographical markets and therefore the ECOI considers it important that Míla is subject to obligations in these areas, just as obligations will apply to Ljósleiðarinn, Tengir and Austurljós where those companies are considered to hold significant market power.

7.5.2 Tengir

Misleading information provision from a market-dominant electronic communications company

1015. Tengir's comments on the first consultation include the following, on page 2 in the company's comments:

"Another point which Tengir wishes to get across is that in the first market analysis it was stated that information on central access and related service shall be equally accessible to other electronic communications companies as to related parties. Tengir considers that such a provision should be clear and worded in such manner that electronic communications companies that provide wholesale access to their systems are required to provide information about what connections are possible to an address and about the ownership of the relevant connections. For example, if Síminn can order a VDSL local loop from Míla with a speed of 100 Mb/s, a fibre-optic local loop from Míla with a speed of 1 Gb/s, a fibre-optic local loop owned by a municipality/electronic communications company with a speed of 1 Gb/s, all these options shall be displayed when an address is looked up. Both in ordering systems (e.g. Salesforce) and equally on Míla's home page, in light of the fact that everyone can look up a relevant address on Míla's home page. This information used to be displayed on Míla's and therefore both customers and service providers could examine what local loops were on offer and similarly what speed was available. A few years ago, Míla altered this arrangement and Tengir's repeated requests that this is not displayed in a misleading manner have led to a "revision" of the text or the layout. Today the title is "Míla's fibre-optics" whereas the response text appears in a manner such as "fibre-optics are available with a speed of 1 Gb/s". No information is displayed regarding whether the fibre-optics are owned by Míla or another party, which Míla explains by stating that the information in question concerns bitstream service and not local loops. Tengir does not consider that there is anything wrong with this information provision, that it should only be of benefit for customers while preventing wrong/misleading information being provided by a market-dominant telecommunications company."

The ECOI's position

1016. The ECOI does not find that Tengir's aforesaid comment relates directly to the market analysis. The obligation of equality entails the requirement that the parties that purchase access from Míla receive the same information, but it is not specified what information shall be available, such as who owns which local loop.

Incentive to refuse access

1017. Tengir's comments on the second consultation include the following, on page 3 in the company's statement regarding paragraphs 2183-2184:

"Even though more than 50% of fibre-optic local loops that are in use in the aforesaid municipalities are owned by Tengir, the company can in no manner agree

that it has an incentive to refuse electronic communications companies access to them (paragraphs 2183-84), but the ECOI concludes that Tengir could also have an incentive to provide access on inaccessible terms. Tengir considers this conclusion to be unfortunately unsupported by the ECOI, and as stated earlier Tengir provides dark fibre access, to Míla among others, to a great extent, and Míla provides bitstream service in competition with Tengir. [...] It is in the interests of Tengir to have optimal use of the local loops and Tengir wants the company's customers to be able to choose between all the available service providers.

For verification of the importance of everyone being able to offer their services on Tengir's local loop network, and also that everyone can choose their service providers, reference can be made to the case connected with Skútustaðahreppur, of which the ECOI is well aware. In that case, Míla had for quite a long time been trying to obtain access to a fibre-optic network owned by the municipality and landowners, and this case was appealed to the ECOI (then the Post and Telecommunication Administration) among others, without any success for Míla. It is clear that some of the interaction and history shared by Síminn and Míla was such that owners were completely unwilling to provide Míla with access to local loops for Síminn's sale of services. When Tengir bought the telecommunications company of Skútustaðahreppur, the ink had barely dried on the paper when an e-mail message arrived from Míla regarding access to the network. This access was granted by Tengir as a matter of course.

However, it may be agreed that Tengir might have an incentive to provide access at inaccessible terms or on inaccessible conditions, although this is not the case and never will be. We therefore support the ECOI having efficient means to prevent such abuse in cases where the institution considers telecommunication companies to be in a position to engage in such behaviour."

The ECOI's position

1018. The ECOI considers it proper to state that in the municipalities where Tengir is designated as being in a market-dominant position the total market share is considerably greater than 50%, i.e. 81% on market 3a.

1019. The ECOI considers that there is certainly an incentive for Tengir to withdraw local loop access and only provide bitstream access in order to increase its revenue from bitstream service. There is a certain risk involved in taking that route but it would likely result in Síminn being forced to purchase access to Tengir instead of from Míla in order to be able to offer internet service in Tengir's entire area of operation, otherwise consumers would have to transfer to other electronic communication companies. Even though Tengir currently has no such plans, the position could arise during the term of the analysis that the company would find this to be to their advantage, which is the business model which both Ljósleiðarinn and Míla use. [...]

1020. All companies that hold significant market power also have an incentive to increase rates, if they can get away with it. In many locations in Tengir's area of operation the situation is that there is little competition and therefore there would be nothing to stop increase in

local loop rates unless obligations were imposed on Tengir regarding fair and equitable pricing. If Tengir intends to adhere to the policy which the company has pursued in recent years by pricing local loops and increases do not exceed general price trends, the price obligation which the ECOI imposed on Tengir will have no effect on the company's activities. The same can be said for the access and equality obligations, apart from that currently the company must advertise its local loop expansion with a minimum notice period of 4 months, and provide access to housing and tubes and installation routes. It remains to be seen if there will be a demand for such access.

Difference between the positions of Tengir and Míla

1021. Tengir's comments on the second consultation include the following, on page 4 in the company's statement on paragraph 2321:

"As stated in the draft there is a significant difference between the positions of Tengir and Míla as regards access to and control of trunk line connections. Tengir and other electronic communications companies that operate local networks can therefore not operate without considering other electronic communications companies [...], customers and consumers, in addition to which Tengir does not have the economic power to be able to hinder active competition in the relevant markets. Míla on the other hand does have that power, which is reflected in that the year 2023 is a record year for investments (cf. pgr. 2321) in spite of economic challenges that arose during the year [...]."

The ECOI's position

1022. In the discussion about companies being able to operate without taking into account other electronic communications companies, customers and consumers, reference is made to the market which is being analysed at each time. In Market 3a the discussion concerns local access, not central access, and therefore trunk line connections are not required to provide such access. It has nevertheless been established that Tengir and Míla hold are in very different positions with regard to economy of scope and financial strength in general. Tengir's position in the relevant wholesale market 3a is on the other hand very strong in the areas where the company is considered to hold significant market power. [...] The ECOI considers that it did take the aforesaid into account in the analysis of this market.

Míla's strong position and operation of the company's bitstream equipment on telecommunication networks owned by other parties

1023. Tengir's comments on the second consultation include the following, on page 4 in the company's statement regarding paragraphs 2323-2325:

"The ECOI is aware of the challenges that come with the operation of smaller telecommunication networks and the importance of Míla, at least as regards the provision of bitstream service on such networks. It is the assessment of Tengir, Míla's market position on the trunk line market and the strong connection between the interests of Míla and Síminn (with emphasis on the significance of paragraphs 2323-2325) ensures that Míla holds a market-dominant position in the country as

a whole, and that this has a very significant effect on the competitive environment in each municipality, even though Míla's strength as regards the number of fibre-optic local loops varies within it.

Consequently, Tengir considers it very important that Míla is obliged to operate bitstream equipment on telecommunication networks owned by other parties, if this is requested, and also not permitted to discriminate between addresses in the operations on the relevant network/municipality.

Tengir would also like to stress the importance of Paragraph 2324, as the company does not have control of a trunk network connected to all the company's access networks, nor to Reykjavík, and both these factors are of great significance for the company and severely limits its market power in the company's entire area of operations."

The ECOI's position

1024. The ECOI imposed an obligation on Míla to provide bitstream service on the local loops of other network operators in decision 5/2021 with reference to vertical integration between Síminn and Míla and the effects thereof on competition. In its finding regarding the complaint for that decision, the Rulings Committee lifted this obligation since such vertical integration no longer existed. The ECOI does not disagree with that finding and considers that as the direct ownership link that previously justified this obligation no longer exists, there are no grounds for obligating Míla to grant the wishes of external parties concerning the connection of Míla's bitstream equipment to their local loops, even though significant signs of vertical integration can still be detected between Síminn and Míla. It is also unclear if such an obligation would pass scrutiny with the Rulings Committee or courts of law, as this would constitute a broadening application of an access obligation. On the other hand, the ECOI does consider that it can impose on Míla the obligation to not withdraw bitstream equipment which the company has already installed on the local loops of other parties, as this is a less onerous obligation.

Tengir's interconnection fee

1025. Tengir's comments on the second consultation include the following, on page 4 in the company's statement on Paragraph 2341:

"Tengir reiterates that the company has stated all factors in a truthful and accurate manner, and that it is prepared to enter into talks with both the ECOI and Míla regarding the aforesaid issue, and other issues as well. Míla repeatedly points out "facts" that are not warranted, and accuses Tengir of engaging in unfair reasoning, yet as Míla is well aware and of which the ECOI should also be apprised, the aforesaid interconnection fee (which Tengir does nevertheless consider to be fully justified and simply to reflect cost items which would otherwise accrue to Míla in installation work, purchase of inactive equipment and operation of trunk lines in PLC equipment which is necessary to provide bitstream service on local loops with GPON configuration) has not been collected by Tengir in all municipalities at the request of Míla. Míla has not offered to enter into any talks about this "additional

fee" being an obstruction in Húsavík, even though Tengir has always been prepared to accommodate Míla when requests have been submitted for a discussion about prices or costs regarding which the parties have been in disagreement.

In this context it may be mentioned that Míla receives 30% of income from Tengir's local loops in Húnaþing vestra, even though Míla only owns a small part of those local loops. Tengir is there at a considerable disadvantage when any principles of fairness are considered, but Míla's demands were met in full without complications. Tengir therefore considers that Míla is in no position to claim that Tengir has not been willing to cooperate with Míla in the past, as rather the contrary is true."

The ECOI's position

1026. The aforesaid paragraph is in Chapter 7.5 in the analysis of competition problems on Market 3b due to vertical integration. There the ECOI states the grounds for that obligation from Decision 5/2021 which is described in an earlier comment and was removed by the Committee for Electronic Communications and Postal Affairs and not re-imposed in the draft here under consideration, cf. the response to Tengir's comparable request which has just been described in the text. This comment submitted by Tengir does not constitute a material comment regarding the content of the aforesaid chapter or the paragraph referenced, rather it describes Tengir's view that the company experiences problems in connection with competition on the relevant market, but does not accept responsibility for them and assigns that responsibility to Míla.

Obligation for Míla to install bitstream equipment on telecommunication networks owned by other parties

1027. Tengir's comments on the second consultation include the following, on page 2:

"This obligation imposed on Míla by decision no. 5/2021, whereby the company was obligated to install bitstream equipment on a telecommunication network owned by other parties, while Síminn would not offer bitstream service via the relevant network, is not part of the obligations imposed on Míla in the intended decision. The Rulings Committee for Electronic Communications and Postal Affairs did not make a material assessment regarding the aforesaid obligation (according to pgr. 2344.), rather it was only omitted due to the severance of the ownership link between Síminn and Míla, and Tengir wishes to reiterated that those arguments barely hold up in light of what is stated in the ECOI 's analysis.

The ECOI and the Competition Authority have repeatedly stated that there still remain signs of vertical ownership links, and therefore Tengir is disappointed that this obligation is not kept in place at this point as it has immense value where the construction of fibre-optics are concerned in locations where market-based grounds do not exist. This was addressed in an earlier statement submitted by Tengir. It is therefore clear that in rural areas, where Síminn is in a dominant position, neither Tengir nor any other electronic communications company will benefit from constructing a fibre-optic system through any form of cooperation

project with Míla. For instance, it is now clear that in Raufarhöfn no customer of Síminn will be able to choose a local loop from Tengir unless current circumstances change. Some users will consider changing service providers as they would rather trade with Tengir in light of the outcome of the project in this location, but most of them are used to the "interface" of Sjóntvarp Símans and will not take the steps to make changes. The option of obtaining internet from e.g. Vodafone in order to utilise a local loop from Tengir and then receive a decoder from Síminn, is currently more expensive than opting for the total package from Síminn, via Míla's local loop. Tengir's revenue in the municipality on Market 3a will therefore be minimal and probably more than 90% of customers will have a local loop from Míla.

Subsequent to the impending decision, there is nothing that indicates this will be any different if an electronic communications company enters into a cooperation project for the installation of fibre-optics with Míla in a municipality other than Norðurþing.

Tengir also considers it important that the ECOI make a ruling regarding appropriate operational costs for Tengir's installations and investments in PLC equipment as well as the housing thereof in Tengir's access stations, along with what would be an appropriate fee for a trunk line from Míla's OLT equipment, which is located at switching centres. This is equipment installed, owned and operated by Tengir so that Míla can offer its bitstream service via Tengir's systems (and also connected with what is stated in Paragraph 2888). It is harmful for Tengir that Míla adds this fee to the bitstream fee for service providers (currently Míla charges service providers about ISK 257 pr./local loop that goes through Tengir's fibre-optic system) and thereby tries to direct them over to Míla's fibre-optic local loops where available, or outright charge service providers an overly high fee for bitstream service when taken via Tengir's local loops. Míla pays ISK 212 to Tengir for access to bitstream equipment in Akureyri and ISK 312 in rural areas. The aforesaid fee shall, according to the agreement, be altered to reflect changes in the rates for local loops with Tengir, but this has not happened with the latest increase. The fee should properly be ISK 235 in Akureyri and ISK 346 in rural areas."

The ECOI's position

1028. When deciding what obligations to impose on Míla, the ECOI takes into account the strong connection between the interests of Míla and Síminn that still exists. In support of this it may be pointed out that, as stated in paragraphs 2913 and 2914 of the second consultation document, the ECOI maintains the obligation that Míla shall not withdraw its bitstream equipment or service from the fibre-optic networks of other network operators than Míla, from whom Míla has leased dark fibre, while Síminn does not provide service over bitstream systems of such operators.

1029. The arguments cited in support of the aforesaid obligation were that Síminn has so far not provided service on bitstream systems of parties other than Míla on the residential market, and because there are more service providers at some locations that use the Míla bitstream system, the ECOI considers it important that Míla should not withdraw that equipment and that service while such a situation remains. The ECOI considers this obligation

to be important and justified, as it has applied to Míla since 2021 and the Rulings Committee did not agree that it should be lifted at the demand of Míla in its ruling of 29 December 2022.

1030. The ECOI took it under advisement to maintain the obligation that Míla must connect its equipment to Tengir's fibre-optic local loops and other network operators that might be in the same situation as Tengir while Síminn does not connect to the fibre-optic system of the aforesaid network operator in a specific area. The purpose of this obligation, when it was imposed on Míla by the ECOI's decision in Case no. 5/2021, was to counteract the effects of vertical integration between Míla and Síminn. Even though the ECOI can still detect signs of vertical integration between Míla and Síminn it is clear that ownership has been terminated so there is consequently less vertical integration than before, although signs of it can still be seen. It is also clear that the severance of the ownership link between the companies that occurred on 15 September 2022 had the effect that the obligation was lifted by the Rulings Committee in Case no. 3/2021. For the above-stated reasons, the ECOI considered that this would be going too far in relation to the Office's authorisations to maintain the obligation in question. It is therefore uncertain that such obligation would stand up to scrutiny as it concerns a broadening application of an access obligation.

1031. Also it seems that one of the principal reasons that Síminn does not negotiate with Tengir about bitstream access is the fact that Tengir itself collects the access fee from end-users, and Síminn demands in its comments that the ECOI obligate Tengir to sell such access to retailers on a wholesale basis so that the retailers will collect that fee, with a retail markup, from the end-users. Sýn and Nova have also declared that they are unhappy with this arrangement for Tengir. It therefore seems clear to the ECOI that the cause for Síminn's decision not to lease bitstream access from Tengir can at least partially be attributed to Tengir, although it is not impossible that Síminn is in this way safeguarding the interests of Míla.

1032. In this market analysis, the ECOI does not attempt to resolve individual issues such as Míla's pricing of bitstream service via Tengir's fibre-optics. Earlier in this document there is a description of Tengir's views regarding Míla's bitstream access, but in order to get the ECOI to examine this issue, the company must submit a formal complaint, after which the ECOI will consider whether the issue is relevant to the obligations that are imposed on Míla in the areas where Míla is considered to hold significant market power, and if this is the case, then Míla's views must be obtained before any decision can be made.

1033. The ECOI points out that the following is stated in Chapter 11.3.3.7 of Appendix A in the discussion regarding the obligation of equality that is imposed on Míla:

“The ECOI therefore imposes the obligation regarding Míla's bitstream unit that it is not permitted to discriminate in any manner by underlying network with respect to price or other possible charges, processing of work requests with respect to connection or configuration of equipment. This entails that the company's bitstream unit shall process requests about connections and configuration of connections through fibre-optic networks of unrelated parties in the same manner as with its own local loops. Costs, processing times, complexity and inconvenience vis-à-vis service providers and/or end users shall be the same. Míla is unauthorised to assume that Míla local loops are the default choice for an underlying local loop when a request for connection comes from a

sales representative of another network operator or service provider or if an end user requests that a local loop from an unrelated party be the underlying network.”

7.6 Assessment of the impact of current obligations on Míla

1034. No comment was received regarding this chapter of the preliminary draft.

7.7 General information regarding designation of companies with significant market power on specific geographical markets

1035. No comments were made that can be assigned to this chapter of the consultation document

7.8 Assessment of the necessity of imposing obligations on Míla on Market 3a and reasoning in support thereof

1036. No comment was received regarding this chapter of the preliminary draft

8 Imposing obligations on Míla on Market 3a

8.1 General information regarding designation of companies with significant market power on specific geographical markets

1037. No comments on this chapter of the analysis were submitted.

8.2 Assessment of necessity and justification for imposing obligations on Míla on Market 3a

8.2.1 Míla

The ECOI did not observe proportionality in imposing obligations

1038. Míla's comments on the second consultation include the following, on page 24-26 of the company's statement:

“The importance of proportionality in the imposition of obligations has been discussed above, both according to the laws and regulations of the telecommunications market and according to the rules of administrative law and the Administrative Procedures Act. The rule states, among other things, that authorities may not unnecessarily burden citizens and the most lenient measures must be chosen. The more burdensome the restrictions resulting from measures taken by a government authority, the stricter the requirements must be to prove the necessity of the restrictions. In this context, the fact that the obligations directly affect Míla's right to operate and rights in rem, which enjoy constitutional protection incl. according to the constitutional law's principle of proportionality, must not be ignored.

Míla also points out the importance of the relationship between the principle of proportionality and rule of investigation, which has emerged in case law and administrative practice in recent years, incl. the activities of the Rulings Committee for Electronic Communications and Postal Affairs, cf. e.g. Case No. 7/2019, which repealed the ECOI's decision on Síminn's repeated infringement of Article 45(5) of Electronic Communications Act No. 38/2011. The Committee believed that stricter requirements were necessary to ensure that a thorough investigation had been carried out, and that the application of the provision was based on detailed and thorough reasoning. The Rulings Committee also noted the importance of observing proportionality when applying the provision. In this regard, the Rulings Committee stated, among other things:

“In order to accept the ECOI's conclusion in the appealed decision, a more detailed justification is necessary for why a particular decoder is considered a part of the complainant's electronic communications services and how other OTT solutions differ in terms of technology. The Rulings Committee thus considers the decision to lack sufficient clarity and reasoning, and, as described

above, this must be subject to very strict requirements in cases of burdensome administrative decisions which at the same time result in the levying of administrative fines. The Rulings Committee considered it inevitable, particularly in reference to the rule of investigation and principle of proportionality of the Administrative Procedures Act, to repeal the contested decision in its entirety.”

*Reference may also be made here to **H 511, 512, 513 and 541/2015 (Suðurnes Line 2)**, where an interaction was deemed to exist between constitutional and administrative proportionality on the one hand and the rule of investigation on the other. There it is stated, among other things:*

“According to all of the aforementioned and with respect to the principle of proportionality of constitutional law, cf. Article 10 of the Administrative Procedures Act No. 37/1993, for this reason, the appellant's claim for the annulment of the decision by the Minister of Industry and Commerce [...] will be accepted.”

In Míla's opinion, the imposed obligations according to the draft consultation do not at all satisfy these requirements.

The foregoing is clearly reflected in the fact that, were it not for Míla's parent company owning a company on the retail market in Spain, which has no connections whatsoever with Iceland and which the ECOI does not even mention, the obligations imposed on Míla would take into account the directives of Article 59 of the Electronic Communications Act, i.e. the access obligation pursuant to Article 34 of the Regulation on market analysis, cf. Article 48 of the Electronic Communications Act, the non-discrimination obligation pursuant to Article 36 of the Regulation on market analysis, cf. Article 50 of the Electronic Communications Act and the obligation for fair and reasonable pricing if deemed justifiable on the basis of the market analysis. Under the pretext of Míla's “Spain connection”, on the other hand, Míla is made to endure, among other things, obligations pertaining to price control of ducts and conduits and access to facilities, which otherwise would not be the case.

There is thus no consistency with regard to proportionality. More specifically, where the legislature has taken the position that the obligations specified are sufficient to achieve the objectives of the Electronic Communications Act regarding companies that operate exclusively on the wholesale market, the ECOI shall, under the pretext of Míla's failure to satisfy the formal requirements to be considered a wholesale-only undertaking due to the aforementioned “Spain connection”, deem it appropriate to impose obligations on Míla well beyond what the legislature itself has deemed necessary in the case of wholesale companies.

In actuality, the ECOI uses the “Spain connection” as a carte blanche to impose these excessive obligations despite the fact that there is no connection between the operations in Spain and in Iceland.

Furthermore, Paragraph 4 of Article 29 states: “When considering a specific obligation, the ECOI shall evaluate its feasibility and perform a cost-benefit analysis, taking into account its ability to respond. The ECOI's assertion that the benefit of certain obligations exceeds the cost to Míla does not constitute an analysis on the basis of the aforementioned provision.”

In any case, with respect to the aforementioned, the requirements for proof of the necessity of excessive obligations are not met, but it should be noted that the greater the restriction, the greater the need for proof of necessity. When examining a certain obligation, the ECOI shall, pursuant to Paragraph 4, Article 29 of the Regulation, assess its feasibility and perform a cost-benefit analysis that takes into account the obligation's ability to respond to certain competitive problems at the retail level and to create a competitive environment based on separation and technological neutrality. It is not apparent from the consultation documents that the ECOI has performed any such assessment. Adequate clarity and reasoning is therefore lacking, as is justification for this distinction.”

The ECOI's position

1039. The ECOI wishes to begin by stating that ECOI and other market participants have referred the quoted Rulings Committee Decision No. 7/2019 to the courts, as the Rulings Committee is alleged to have annulled the aforementioned the ECOI decision on the basis of a lack of investigation into a matter which should not have affected the outcome of the case and in connection to a related case in which the District Court partially annulled the ECOI's decision from 2018, but was later reversed by the Court of Appeals. The Supreme Court then remanded the case back to the District Court. The District Court confirmed ECOI's decision by a ruling on February 1st, 2024, in all aspects except for the fine, due to lack of clarity in the relevant paragraphs of the law. The ruling was not appealed and therefore it stands that Siminn did violate the act. The court decision regarding the latter case of Síminn's alleged violation of the Media Act is awaited, thus it is prudent to not draw too many conclusions from the quoted Committee decision at this point.

1040. The ECOI does not at all agree with Míla's aforementioned comments. Firstly, thorough and detailed reasoning of the imposition of obligations on Míla is presented in the appropriate chapters. The ECOI rejects Míla's claim that the Office has not conducted an investigation that was sufficiently thorough to justify imposing the obligations in question, though as Míla should be aware, the ECOI has been conducting a detailed investigation for over a year (though the company has repeatedly complained about alleged delays in the case as well as the length of the consultation documents). Each and every obligation imposed is supported by a statement of reasoning and an assessment of necessity, as well an explanation of how they relate to specific competition problems that are identified and an account of them given in Chapter 7 of the analysis. Based on the aforementioned, there are therefore certain inconsistencies in Míla's above comment and others by the company.

1041. It is important to note that, as a result of this market analysis, obligations on Míla are to be lifted in areas of the country that comprise 80% of the population. The obligations in areas where they will remain will be significantly more lenient than before. The obligation for transparency imposed on Míla in the previous analysis has been lifted, for example, and the

company is no longer required to publish reference offers. Obligations requiring account separation or cost accounting entry have also been lifted. Míla has been subject to obligations for many years, and all of the systems should be in place within the company to ensure that they are enforced. It is more burdensome to impose new obligations for the first time than it is to maintain those already in force.

1042. It should be noted that the obligation for price control is to be removed from Míla on Market 3a in those regions where the ECOI has determined there to be effective competition, and now the only obligation will require fair and reasonable pricing for local loop lease on the company's copper network. Until now, an obligation has been in place requiring a nationwide cost analysis of Míla's copper networks.

1043. As Míla is subject to an obligation requiring fair and reasonable pricing for local loop lease of its fibre-optic network in those regions where the company has significant market power, Míla is authorised to determine its wholesale prices without the involvement of the ECOI and which are not subject to review by the ECOI unless the ECOI should receive a complaint.

1044. The ECOI also deems it necessary to uphold price control obligations on Míla with regard to lease of facilities and access to ducts and conduits in regions where the company has significant market power. As stated in the ECOI analysis, such facilities can be associated with various competition problem. It is therefore important, in the ECOI's opinion, to impose effective obligations on Míla regarding lease of facilities. Míla is the largest and most powerful player on the Icelandic telecommunications market in terms of such facilities. Furthermore, access on acceptable terms to such facilities as well as, as applicable, ducts and conduits can be of key importance in the deployment of fibre-optics where they are either not already in place or in limited supply, and can promote the infrastructure competition on which the new electronic communications legislation places increased emphasis. Because the ability of electronic communications companies to access facilities on acceptable terms is a key factor in keeping competition on the market alive, this is not a disproportionate obligation. In the ECOI's opinion, it is clear that the benefits of this obligation for competition and the consumer are greater than the inconvenience to Míla of keeping it in place. The results of such cost analyses can then be used to monitor whether other operators who have significant market power are offering fair and reasonable prices for such access by comparing their prices with Míla's.

1045. On the same grounds, the ECOI also deems it necessary to impose price control obligations on Míla regarding access to the company's ducts and conduits in 23 of the 26 municipalities in which the company is considered to have significant market power, with the exception of the municipalities of Fjallabyggð, Norðurþing and Rangárþing Eystra. In these three municipalities, an obligation for fair and reasonable pricing on access to ducts and conduits will apply. The reason for more lenient obligations on access to ducts and conduits in these three municipalities is that parallel fixed network coverage is higher here than in the other 23 municipalities, or between 40-60%. There is therefore less urgent a need for burdensome price control obligations in these three municipalities. Míla's cost analysis of this access, which the ECOI has been processing for some time, could then be used in a price comparison in order to monitor whether other operators with significant market power are offering fair and reasonable prices for the same kind of access.

1046. It is important to note that the aforementioned cost analysis obligation applies only to these specific products, and not to actual local loop or bitstream lease. In that context, the ECOI considered factors such as proportionality when applying obligations.

1047. On Market 3b, the ECOI imposes an obligation on Míla for fair and reasonable pricing in those regions where the company has significant market power. Míla will therefore be authorised to determine the wholesale prices it charges on this market on the condition that the pricing is fair and reasonable. The conclusions of the ECOI's market analysis reveal that in most regions where Míla has been designated a company with significant market power on Market 3b, Míla's market share is high and has seen little to no decrease in recent months. In most cases, Míla is also the only bitstream provider in these regions. A company in such a strong position has incentive, ability and potential to maintain too-high prices.

1048. For all of the above reasons it is clear that the so-called "Spain connection" is far from the only reason for imposing price control obligations on Míla, and the ECOI completely rejects the allegation that it used this connection as a kind of "carte blanche". The ECOI believes that the price control obligation is justified, transparent, reasoned, in accordance with the nature of the competition problems identified and designed to solve those problems, in accordance with the intended objectives of promoting competition and investment in high-speed networks and not to exceed proportionality, as the analysis thoroughly argues.

Not proportional that the same obligations are not imposed on Tengir and Ljósleiðarinn

1049. Míla's comments on the second consultation include the following, on page 26 of the company's comments:

"The fact that the same obligations are not imposed on Tengir and Ljósleiðarinn clearly reflects a lack of proportionality, incl. proof of the necessity of such obligations. The ECOI's justification is that the ECOI is in fact "not authorised" to do so, as Ljósleiðarinn and Tengir are, as previously stated, considered wholesale-only undertakings. The ECOI thereby implies that it otherwise would have imposed similar obligations on Ljósleiðarinn and Tengir, but was not able to. This argument does not stand up to scrutiny, as the legislature has, as previously stated, determined that such obligations are unnecessary in the case of wholesalers regardless of the ECOI's wishes. The obligations are also correctly considered unnecessary vis-à-vis Míla, as the aforementioned "Spain connection" cannot affect the Icelandic telecommunications market in such a way that calls for the imposition of obligations on wholesale companies beyond what legislation deems necessary."

The ECOI's position

1050. Míla's aforementioned comment presents a misinterpretation of the ECOI's words. This is simply a rewording of Paragraph 3, Article 59, which states: "should the ECOI conclude that the requirements stipulated in Paragraph 1 are met, the ECOI may only impose on the company obligations pursuant to Articles 48 and 50 and those for fair and reasonable pricing

if deemed justifiable on the basis of a market analysis.“ It is clear that the meaning of the provision is the same as in the analysis.

1051. With respect to Míla’s reference to the ECOI’s conclusion in the latter consultation document, dated 29. November, 2023, that Tengir and Ljósleiðarinn met the legal requirements pursuant to Article 59 of the Electronic Communications Act to be considered wholesale-only undertakings. As indicated in Chapters 7.3.3 and 7.3.4 of the final version of the analysis (Annex A) and justified in a secondary consultation document that entered into national consultation on 23 January 2024, the ECOI has amended that preliminary conclusion and now does not consider the companies to meet those legal requirements, as they engage in activity that falls under the retail market. However, the ECOI did not believe that this change would entail more extensive obligations on the two companies than those provided for in the consultation document of 29 November 2023. For further justification, refer to the consultation document of 23 January 2024 and Chapters 7.7.3, 7.7.4, 9, 10 and 12 of Annex A.

8.3 Imposing obligations on Míla on Market 3a

8.3.1 Míla

Equivalence of Input obligation on Míla - preferred buyers

1052. Míla’s comments on the second consultation include the following, on page 3 in the company’s comments on Paragraph 2600:

“Míla furthermore vehemently contests the claim in the consultation document that Míla provides service of a certain quality to “preferred buyers” and “entities with strong business connections”, which would necessitate the imposition of so-called Equivalence of Input obligations on Míla (Paragraph 2600). Míla does not give preference to any buyers, and this applies just as much to Síminn as to Míla’s other customers. It can be assumed that the ECOI is also referring to Síminn when it mentioned “entities with strong business connections to Míla”. Allegations such as these do not belong in consultation documents and administrative decisions of an authority bound by the rules of the Administrative Procedures Act in its proceedings, incl. the principles of validity and legality, the rule of investigation, and the principles of proportionality and equality. Should the ECOI determine that Míla has “preferred buyers” or “entities with strong business connections” who enjoy any sort of advantage over other operators, the ECOI must provide justification backed up with facts and data, not insinuations and conjecture. Furthermore, the ECOI must justify the necessity of burdensome obligations with satisfactory reasoning, not with vague reference to alleged preferred buyers/entities with strong business connections. As previously stated, Míla does not grant Síminn any privileges over other providers.”

The ECOI’s position

1053. ICA Decision No. 16/2023, *Ardian acquisition of Míla ehf. from Síminn hf.*, states that the original wholesale agreement between Míla and Síminn following the merger contained

a provision for extensive bans on competition. These bans were essentially intended to prevent Síminn from competing against Míla at the wholesale level and Míla from competing with Síminn at the retail level. These bans on competition seemed to be in place for the duration of the agreement, or at least 20 years. The wholesale agreement also stipulated that Míla's prices and all charges to Síminn that are not subject to price obligations imposed by telecommunications authorities [...]. The ICA commented on this and argued in a document of protest that such a provision on pricing may restrict competition and result in higher prices than otherwise, to the detriment of the consumer. Míla and Síminn would be in very close co-operation despite the dissolution of the ownership link and vertical integration between the companies. The ICA's document of protest explains that the wholesale agreement creates strong long-term economic ties between Síminn and Míla. In addition, the agreement also stipulated special collaborative committees that would create close vertical ties between Síminn and Míla through close co-operation and consultation on commercial decisions on the telecommunications market, such as those pertaining to investments and development. The ICA argued that this would further increase the adverse effects of the wholesale agreement.

1054. In the opinion of the ICA, the wholesale agreement remained unchanged and therefore, in practice, an exclusive purchase agreement with certain narrow exceptions as well as "English clauses" and harmful contractual clauses on long-term bans on competition and close vertical co-operation. The ICA therefore saw reason to impose conditions on the merger by amending individual provisions of the agreement. In spite of the aforementioned conditions and amendments, the ECOI still finds that strong business connections and indeed considerable signs of persistent vertical integration remain between Síminn and Míla, as Míla remains Síminn's main supplier, providing a minimum of 80% of the company's telecommunications needs on the wholesale level on the access markets analysed here. The above signs of vertical integration are, however, naturally significantly less than before.

1055. As described above, Míla's activities were also subject to conditions, the most important of which being that the company was prohibited from engaging in anti-competitive bundling and tying of services. It matters in this context that important systems and services were transferred from Síminn to Míla when preparing for the sale of Míla. This significantly broadened the range of Míla's services and products and strengthened the company vis-à-vis its competitors. Measures were also taken to ensure increased freedom for Síminn to do business with Míla's competitors, which is conducive to stimulating competition in spite of the fact that Síminn is still largely obligated to do business with Míla.

1056. ICA Decision No. 24/2023 *Síminn's rehearing petition in relation to settlement requirements as per Decision 6/2015*, following the publication of the aforementioned merger decision in the case of Síminn and Míla, states that the Authority has determined that strong business connections still exist between the companies, incl. regarding the transfer of systems and services from Síminn to Míla leading up to the sale. It was therefore the opinion of the ICA that despite the sale of Míla and the dissolution of direct ownership links between the companies, there is still an extensive wholesale agreement and a financing agreement in effect between Síminn and Míla, which Decision No. 16/2023 discusses in detail. The ICA believes that these agreements constitute strong shared interests between the companies that may manifest in various ways. The ICA therefore considers it at the very least premature to claim that there are no longer demonstrable signs of vertical integration.

1057. In view of all the above, the ECOI believes that there are still strong business relations and signs of vertical integration between Síminn and Míla, and denies that such an assessment is based on allegations unsupported by data or facts.

1058. The ECOI therefore considers the aforementioned non-discrimination obligation on Míla to be fully necessary where the company is deemed to have significant market power. Imposition of obligations does not require that a company has committed a violation or acted in such a way as to discriminate among buyers; it is sufficient that a company is in a position where it has the ability, incentive and opportunity to do so. The ECOI believes that this applies to Míla as well as to Ljósleiðarinn, Tengir and Austurljós on those geographical markets where they are deemed to have significant market power.

Not proportional to impose different non-discrimination obligations on companies

1059. Míla's comments on the second consultation include the following, on page 26 of the company's comments:

"The lack of proportionality is also reflected in the application of non-discrimination obligation. In Ljósleiðarinn's case, "the non-discrimination obligation will be somewhat simpler than in the case of Míla, and, for example, not include obligations for service-level agreements, service-level guarantees or the disclosure of key performance indicators". The non-discrimination obligation on Tengir is also "somewhat simpler ... , as the company is not required to make service-level agreements, provide a service-level guarantee or disclose key performance indicators". There is no justification for this distinction between Míla on the one hand and Tengir and Ljósleiðarinn on the other, cf. the following discussion of the principle of equality. There is in fact no discernible attempt made to explain the difference except on a case-by-case basis "with respect to all of the aforementioned", as it is not clear what the actual difference there is. In any case, as before, the requirements for proof of the necessity of excessive obligations on Míla are not satisfied. It should also be noted that there are new versions of key performance indicators for which no specific reasoning is provided. The necessary conditions of this obligation therefore do not stand up to scrutiny, and the ECOI must, pursuant to the principles of proportionality and non-discrimination of the Administrative Procedures Act, waive obligations such as the ones proposed for Míla but not other wholesale companies with significant market power.

The same considerations apply in other instances in which full non-discrimination is not upheld, such as regarding the deadline for notification of deployment and development of local loop networks and the access obligation which appears to be considerably more comprehensive vis-à-vis Míla."

The ECOI's position

1060. The ECOI notes that obligations pertaining to service-level agreements, service-level guarantees and disclosure of key performance indicators are not being imposed on Míla for the first time, but have been in effect since 2014. Míla should have all of the systems in place

for maintaining the aforementioned obligations, while Ljósleiðarinn and Tengir do not have such capabilities. The obligations on the latter two companies would therefore be more burdensome. In accordance with the principle of proportionality, the ECOI did not consider it appropriate to impose these obligations on Ljósleiðarinn and Tengir. Ljósleiðarinn only has significant market power on Markets 3a and 3b in one municipality while Tengir has significant power in eight municipalities, but only on Market 3a. Míla, on the other hand, has significant market power on both Markets 3a and 3b in a large number of municipalities. As indicated in Chapter 7.5 of the analysis on competition problems and in Chapters 6.2 and 6.3 on the assessment of significant market power, Míla is generally in a stronger position than Ljósleiðarinn and Tengir, e.g. in the adjacent trunk leased line market, in addition to the fact that there is still considerable vertical integration between Míla and Síminn, which is the country's largest retailer. Míla's economies of scope are also much greater than those of these companies. The ECOI therefore does not consider it necessary to impose the same degree of obligations on Ljósleiðarinn and Tengir as are imposed on Míla. This is reflected in, among other things, the fact that these obligations are only remaining in force towards Míla as opposed to being imposed on Ljósleiðarinn and Tengir.

1061. The ECOI deems it important for all of Míla's contracting parties to be able to compare the services they receive from Míla with what terms e.g. the firms priority buyer receives as well as against the industry average. In this way, Míla's contracting parties will be able to determine whether they are being discriminated against. Disclosure of key performance indicators will, as described above, help shed light on whether the non-discrimination obligation is respected, particularly as concerns those factors that do not pertain to pricing, and whether Míla has fulfilled its requirement to make sufficient service-level agreements with its contracting parties.

Heavier obligations on Míla

1062. Míla's comments on the second consultation include the following, on page 3 of the company's statement on the imposition of obligations:

"Míla makes serious comments on the ECOI's rationale for imposing more stringent obligations on Míla than is authorised on the basis of Article 59 of the Electronic Communications Act No. 70/2022, as the imposition of obligations must take into account among other things the incentives of a company that has been identified as having significant market power, in comparison with a vertically integrated company, to promote competition on the retail market. Míla is no longer vertically integrated with a company on the retail market, and therefore has all of the same incentives as comparable competitors on the market. In this context as in any other, the ECOI is statutorily obligated to observe objectivity and non-discrimination when imposing obligations. It goes against the principles of non-discrimination and proportionality to impose more stringent obligations on Míla than on other competitors who are considered wholesale-only undertakings, for the sole reason that Míla's foreign owner has invested in companies that operate on telecommunications retail markets in countries that have no competitive influence whatsoever in Iceland.

Míla also makes serious comments on individual obligations, in particular on those burdensome factors that the non-discrimination obligation imposes on Míla to a greater extent than on other companies with significant market power, the price control obligation, the obligation to comply with requests to prepare a database on the location and condition of the company's ducts and conduits, etc., cf. below."

The ECOI's position

1063. Regarding Míla's comment on that aspect of the non-discrimination obligation that is only maintained vis-à-vis Míla and not imposed on Ljósleiðarinn and Tengir, refer to the ECOI's response to Míla's comment above, though it may be added that Tengir and Ljósleiðarinn were also subjected to an obligation requiring them to prepare a database of the location and condition of ducts and conduits.

1064. The ECOI points out that there are strict requirements in place that determine whether a company can be considered wholesale-only. These strict requirements are due to the fact that this is an exemption from the regulatory framework on the full imposition of obligations, which must be defined narrowly. According to Paragraph 208 of the Preamble to the Code, obligations should generally be less intrusive when it comes to wholesale-only undertakings, provided that the companies actually follow the wholesale-only business model and do not have any incentive to discriminate between customers.

1065. Míla does not fulfil the aforementioned criteria to be considered a wholesale-only undertaking, thus it cannot be assumed that the company has the same characteristics proposed by legislation with respect to wholesale-only undertakings, i.e. that there are no incentives to discriminate against electronic communications companies that provide retail services. In this context, consideration should be given to the fact that Míla and Síminn have entered into a 15-year wholesale agreement whereby Síminn is obligated to purchase 80% of its total requirements for broadband connections to homes, both local loop lease and bitstream services, via fibre-optic or xDSL copper combination, from Míla.

1066. In support of this, it may be pointed out that in the company's comments on the latter consultation document, Síminn complains about Míla's competitive position in relation to the rates Sýn charges users for connections. This underlines the fact that signs of vertical integration persist between Síminn and Míla despite the change in Míla's ownership.

1067. As previously stated, the ECOI amended its preliminary conclusion that Tengir and Ljósleiðarinn fulfilled the requirements to be considered wholesale-only undertakings in the sense of Article 59 of the Electronic Communications Act. The ECOI's reason for amending this preliminary conclusion is that the companies engage in activity that falls under the retail market. The ECOI also possesses information that Míla is engaged in the same activities that fall under the retail market, therefore the company cannot be considered wholesale-only in the sense of the Electronic Communications Act regardless of the aforementioned "Spain connection". The ECOI therefore cannot assume that Míla does not have the incentive to discriminate against electronic communications companies that provide services at the retail level, though there is naturally less incentive now than before the sale of Míla by Síminn. With a view to all of the above, the ECOI does not agree with the aforementioned comments by Míla.

Different competitive conditions in different geographical regions must be taken into account

1068. Míla's comments on the second consultation include the following, on page 26 of the company's comments:

"Míla also notes that an assessment of the proportionality of obligations should pay consideration to the different competitive conditions that may exist in different geographical regions, cf. e.g. the aforementioned recommendations of the Regulation on market analysis. It does not appear that such an assessment has been made except to a limited extent. On the contrary, although the ECOI has divided the country into a number of geographical markets, the obligations imposed on Míla are the same in all locations where the company is deemed to have significant market power with the exception of Fjallabyggð, Norðurþing and Rangárþing Eystra, where no requirements are made for cost-reflective pricing for access to pipes and conduits."

The ECOI's position

1069. The ECOI has indeed assessed the different competitive conditions on different geographical markets. The conditions on the geographical markets in which Míla has significant power are very similar. On the other hand, Fjallabyggð, Norðurþing and Rangárþing Eystra all have in common the fact that parallel coverage of fixed networks is much greater than in the other municipalities, or between 40 and 60%. The ECOI therefore determined that the need for a price control obligation on access to Míla's pipes and conduits was not as urgent in those three municipalities. However, the ECOI did not consider the circumstances to be such that they would affect the imposition of other obligations, as Míla has a significantly high market share in the regions in question.

Not proportional to impose detailed obligations in municipalities with small populations

1070. Míla's comments on the second consultation include the following, on page 27 of the company's comments:

"Míla also notes that the vast majority of the municipalities in question have small populations, and some are even very small. A proportionality assessment must consider the feasibility of the obligation in question based on its costs and benefits. Míla considers the complexity and inevitable costs associated with detailed and thorough obligations to far exceed the cause, especially in smaller municipalities. The same objective can be achieved with a significantly simpler implementation, such as wording that generally reflects the guidelines on obligations as set out in the Electronic Communications Act. It should also be noted that in recent years, Míla has resorted to numerous measures such as waiving installation charges for fibre-optic and copper local loops in rural areas as well as development fees in certain regions."

The ECOI's position

1071. The ECOI points out that Míla is in a dominant market position in far more regions than the other electronic communications companies, thus it should be easier for the company to enforce the obligations stipulated in this market analysis. Míla has also be subject to obligations on this market for many years and should have in place the processes and systems necessary to enforce these obligations. The obligations in question are more lenient than in the past, and Míla has historically enforced more burdensome obligations throughout the country, including in small municipalities. The ECOI is therefore not of the opinion that proportionality has not been observed.

Míla does not agree that obligations already in place are less burdensome

1072. Míla's comments on the second consultation include the following, on page 27 of the company's comments:

"A disclaimer must be made to the ECOI's claim that obligations are not considered burdensome if they are already in place and Míla has prior experience with them. Such justification in no way fulfils the Electronic Communication Act's requirements on the imposition of burdensome obligations and administrative decisions."

The ECOI's position

1073. According to Paragraph 1, Article 30 of the Regulation on market analysis in the field of electronic communications., the ECOI must emphasise proportionality when applying measures and choose the least disruptive method of handling the particular problems identified in the market analysis. It is relevant to the present matter that there are no new obligations in question, but it may be assumed that the process and systems for enforcing the aforementioned obligations are in place, thus their enforcement presents less disruption to the company's operations. In the ECOI's opinion, the benefits to competition and, in turn, the consumer outweigh the cost and inconvenience to Míla of maintaining these obligations in the regions where Míla is considered to have significant market power. The ECOI also reiterates that Míla is to be released from all obligations on many geographical markets in which approx. 80% of the population live.

Míla does not consider the ECOI to have complied with the Regulation on market analysis when determining obligations

1074. Míla's comments on the second consultation include the following, on page 27 of the company's comments:

"...according to the Regulation on market analysis, the ECOI must choose the least disruptive method of handing certain problems identified in the market analysis. Obligations must be transparent, justifiable, supported with reason, appropriate to the nature of the problem identified in the market analysis and specifically designed to solve it. It must also be noted that the ECOI should endeavour to simplify the implementation of obligations where possible. This condition is not considered fulfilled, particularly with respect to more detailed non-discrimination

and access obligations imposed on Míla than on other operators with significant market power and with respect to excessive price control obligations, effectively cost-reflective pricing, on the basis that Míla is not considered a wholesale-only undertaking; the non-discrimination and access obligation should not apply more to Míla than to Tengir and Ljósleiðarinn, and a fair and reasonable pricing requirement should replace cost-reflecting pricing.”

The ECOI’s position

1075. The ECOI notes that the obligations imposed on Míla are much more lenient than before and, as has been stated repeatedly, Míla should have the tools needed to enforce the obligations in question. In the ECOI's opinion, the obligations on Míla pose the least possible disruption to the company’s operations. Regarding the replacement of cost-reflective pricing by a fair and reasonable pricing obligation, refer to the ECOI's response to Míla’s comment in Chapter 8.2.1 above.

Míla comments on the ECOI's justification of obligations

1076. Míla’s comments on the second consultation include the following, on page 27 of the company's comments:

“In addition to the above, Míla has significant reservations about the ECOI's general argument in justification of obligations. The ECOI discusses at length, theoretically and otherwise, the “potential” negative consequences on competition of an operator being deemed to have significant market power, cf. above. However, with the exception of a lengthy discussion of Norðurþing and Tengir, about which Míla has significant reservation as in case no. 5/2021, concrete examples are lacking. Refer to all of Míla’s objections in that case, which were detailed and thorough, mutatis mutandis, as well as other objections therein in respect of previous administrative matters. The consultation document also refers to old cases, such as the “Snerpa case” and the fact that companies experienced difficulty in gaining full access to Síminn’s VDSL system between 2010 and 2012”. Míla does not consider this an adequate justification of obligations. Worse yet are unsubstantiated insinuations such as “wrong or insufficient information provided by Míla delays the market analysis and increases the risk of incorrect conclusions, which may necessitate a review of the analysis and the additional work involved.”

The ECOI’s position

1077. As Míla must be aware, this is an ex ante analysis and the ECOI must consider the potential competition problems that may arise on the markets in question, incl. those that result from significant market power. Obligations shall be proportionate to the nature of the actual and potential competition problems identified by the ECOI on the markets in question. A discussion of identified competition problems can be found in Chapter 7.5 of the latter consultation document (now Annex A) and is further referred to in the context of the imposition of obligations.

1078. Regarding the discussion of cooperation between Tengir and Míla in Norðurþing (Húsavík) and other matters, the ECOI reiterates that competition issues do not need to be real or ongoing in order for the imposition of certain obligations on operators with significant market power to be appropriate. Furthermore, the ECOI does not intend to impose on Míla any obligation to comply with requests from other network operators to install bitstream equipment on Míla's networks, as was done in the aforementioned ECOI Decision No. 5/2021. There the ECOI takes proportionality into account.

1079. However, the ECOI reiterates that a company's ability and incentive to engage in harmful competitive behaviour is sufficient to justify imposing obligations, and a company with significant market power need not have engaged in such behaviour in the past.

The ECOI's discussion of the trunk line market

1080. Míla's comments on the second consultation include the following, on page 28 of the company's comments:

"A disclaimer must also be made to the ECOI's discussion of the trunk line market in this respect, regarding both Míla's position on that market and its general significance. The ECOI's supports its arguments with, among other things, a long outdated market analysis. The Electronic Communications Act requires the ECOI to perform a new market analysis within 5 years of the previous decision, but currently almost 10 years have passed since the last analysis of the trunk line market. This market has changed significantly since the last analysis. Little attention seems to have been given to Ljósleiðarinn's trunk network, incl. on the basis of the NATO cable, and purposeful attempts seem to be made to downplay its significance as much as possible. The discussion is also misleading in many respects, e.g. the claim that Míla owns 5 threads in the national fibre ring when in some locations the company owns 3, and that Ljósleiðarinn does not have a nationwide IP/MPLS system, which is incorrect, as Ljósleiðarinn has acquired Sýn's backbone network. Míla also has significant reservations concerning the entire discussion about IP/MPLS, incl. the fact that the aforementioned service is considered to belong to the trunk line market in the first place and that Síminn does not have the technical independence to purchase such services from other bitstream networks.^{63 64"}

The ECOI's position

1081. the ECOI refers to the February 2021 statement and report by the Minister of Foreign Affairs and International Development Cooperation's task force on fibre-optics and tendering of fibre-optic threads which states the following:

"The fibre-optic trunk system in Iceland still relies to a great extent on the eight-thread cable laid in cooperation between NATO and the Icelandic authorities, which entered

⁶³ Míla points out that Míla and Síminn entered into an agreement in the autumn of 2022 that secured Síminn's right to use Míla's IP addresses throughout the duration of the agreement, regardless of the underlying network. Síminn is thus allocated IPv4 addresses as needed/by request. Míla therefore does not have any influence on this usage. Furthermore, Míla's bitstream and IP/MPLS system supports IPv6 addresses that are not restricted by RIPE. Síminn can therefore choose its own IP addresses for its customers.

⁶⁴ In *Paragraph 2303* of the consultation document, the ECOI also refers to the fact that Míla operates a "robust nationwide mobile distribution network (RAN) which is difficult for the company's competitors to duplicate". Míla does not have its own frequencies or core, which are necessary for the company to use a RAN for its own purposes. The system is currently a "managed service" and is available for operators with their own frequencies and core to share.

into operation in the early 1990s. Míla ehf. currently owns 5/8 of the shares of the trunk fibre-optic cable while 3/8 are registered property of the NATO Security Investment Program and are the responsibility of the Ministry of Foreign Affairs. Míla ehf. is responsible for the operation and maintenance of all the eight threads in the cable, cf. the service agreement from 2013, which is based on the agreement from 2001. The fibre-optic trunk is an important link in all telecommunications in the country. The fibre-optic threads form the foundation of most telecommunications systems used in Iceland, including for data transmission/internet connections, mobile phone and internet, television and radio, TETRA emergency communications, maritime and air traffic safety communications and international data connections.”

1082. Based on the aforementioned, the Minister for Foreign Affairs and International Development Cooperation’s task force maintains that Míla owns 5/8 of the NATO fibre-optic cable that circles the country. The ECOI is not aware that Míla has contested this claim, as the company’s comments above currently state. It must be noted, however, that the ECOI will begin preparing an updated analysis of the leased line and trunk line market this year, which will consider, among other things, Míla’s and Ljósleiðarinn’s IP/MPLS systems.

1083. As stated in the analysis, incl. Chapters 6.2 and 6.3 on the assessment of significant market power and in Chapter 7.5 on competition problems, Míla’s position on the trunk line market is much stronger than that of Ljósleiðarinn or other network operators, and the advantage difference is significant.

The ECOI's discussion of the relationship between Síminn and Míla

1084. Míla’s comments on the second consultation include the following, on page 29 of the company's comments:

“As before, the ECOI is trying to make the most out of the relationship between Síminn and Míla as justification for obligations imposed, cf. e.g. the aforementioned comment to the effect that “there are still strong shared interests between Síminn and Míla, and it remains to be seen whether this relationship can provide an incentive for Míla to apply its market power in a way that restricts competition” and “identified and potential competition problems still exist despite the changes to market conditions in light of the sale of Míla to Ardian”, incl. “signs of continued vertical integration”. No clear justification is provided for this statement. Míla considers this a violation of the principle of validity of the Administrative Procedures Act on the part of the ECOI. It is also difficult to maintain a logical thread in the consultation document, as it seems to make little difference that there are no longer any ownership links between the companies. Míla has already confirmed with the ECOI in its statement on the first part of the consultation document that the company is not obligated to engage in business with one single company that operates on a downstream market and is active on the retail market for electronic communications services as a result of an exclusive agreement. The wholesale agreement between Míla and Síminn, which was signed alongside the sale of Míla to Ardian last year, does not obligate Míla to do business

with Síminn any more than to any other electronic communications companies operating on the retail market, cf. Ardian's settlement with the ICA, signed 15 September 2022. Míla has strongly emphasised that all companies operating on the retail markets for electronic communications services have access to Míla's networks and services. Míla plans to increase utilisation of the company's investments to the greatest extent possible. This includes enabling as many electronic communications companies as possible to use Míla's services and systems. Míla thus has strong incentives to ensure maximum utilisation of its infrastructure and it is to the company's advantage that there is robust competition on the retail market. The ECOI has also verified with Míla that Síminn's agreement with Ljósleiðarinn confirms that the companies do a significant amount of business with each other.

Given the repeated discussion of the connection between Síminn and Míla under the pretext of the aforementioned contractual relationship, Míla considers it rather strange that, at the same time, the ECOI attempts to significantly downplay the contractual relationship between Ljósleiðarinn and Sýn. Míla is of the opinion that the agreement contains discount terms that are directly dependent on the purchase of a certain amount of connections, a so-called retrospective discount, which creates an obvious incentive for Sýn to direct its customers to Ljósleiðarinn with the resulting exclusionary effect. Among other things, Míla has become aware in recent months of an ever-increasing number of end users/Sýn customers switching from Míla's fibre-optic connections to Ljósleiðarinn's, in some cases without consent from Míla or even without informing Míla of the switch. Míla also sees reason to believe that Ljósleiðarinn's agreement with Nova is also subject to similar conditions.

Furthermore, as has typically been the case with the ECOI's market analyses, efforts are made to exaggerate Míla's network deployment plans, incl. "installing fibre-optic network under state subsidy" without any justification, while at the same time making an effort to downplay competitors' competitiveness, incl. Ljósleiðarinn's. This is how Míla's "ambitious" plans are referred to, while the competitors' are "much more modest". Previous market analyses have taken the same tone. These forecasts by the ECOI, which have since been used as justification for imposing large-scale obligations on Míla, incl. by Decision No. 5/2021, have never materialised. For example, Míla's nationwide market share has fallen by 7% since the last decision, contrary to the forecasts. Ljósleiðarinn's deployment plans over the years have also often been more extensive than the ECOI describes, and in this respect Ljósleiðarinn seems to be keeping the ECOI in the dark."

The ECOI's position

1085. For the business relationship between Síminn and Míla, the ECOI refers to similar comments from Míla in Chapter 8.3.2 and to the ECOI's responses to them above.

1086. The ECOI's preliminary draft discusses Míla's and Ljósleiðarinn's expansion plans on the basis of information provided by the companies themselves for the ECOI's market analysis. This information is taken into account when assessing trends on the markets in question during the period of validity of the decision, which is expected to be five years from the date on which the decision is made. In the event of significant changes to the relevant markets within this time frame that result in changes to market conditions and the position of individual companies, the ECOI will respond appropriately as necessary.

1087. In other respects, the ECOI refers to responses to similar comments from Míla earlier in this document.

Míla considers proposed obligations to be contrary to the principle of equality of the Administrative Procedures Act and administrative law

1088. Míla's comments on the second consultation include the following, on page 30 of the company's comments:

"In view of the aforementioned, Míla also considers the proposed obligations to be contrary to the principle of equality of the Administrative Procedures Act and administrative law.

Thus, as has been mentioned, the obligations on Ljósleiðarinn are considerably lesser in scope than those on Míla, as "the ECOI is not authorised to impose on Ljósleiðarinn a more detailed price control obligation such as on pricing of ducts and conduits or access to facilities, as in Míla's case, as Ljósleiðarinn meets the legal requirements of Article 59 of the Electronic Communications Act to be considered a wholesale-only undertaking" as well as the fact that "the non-discrimination obligation will be somewhat simpler than in the case of Míla, and, for example not include obligations for service-level agreements, service-level guarantees or the disclosure of key performance indicators". As mentioned before, similar perspectives and justifications are given vis-à-vis Tengir. Regarding Austurljós, the ECOI states that "essentially, similar obligations will be imposed on Austurljós as are on the other electronic communications companies that have been assessed as having significant market power". However, consideration is given to the fact that "this is a very small company which does not have the same service systems or economic strength as the other companies, and "therefore access to information systems will not be required, and the access and non-discrimination obligations will be somewhat simpler than those on the other companies, especially Míla". In addition, "there is no discussion of access to quality-assured virtual networks access to quality-assured virtual networks for VoIP and IPTV because Austurljós does not provide such services". Finally, "no price control obligation will be imposed, as Austurljós is dependent on the municipality for its bitstream sales", cf. the previous discussion.

In its essence, the principle of equality means that the authorities are to be consistent and impartial with respect to the law. The rule states that similar cases should be treated and resolved in a comparable way.

The only legal “justification” for imposing excess obligations on Míla in the form of, among other things, different access and price controls, i.e. cost-reflective pricing, compared to Tengir and Ljósleiðarinn, is that Míla does not, in the opinion of the ECOI, fulfil the formal conditions for being considered a wholesale-only undertaking due to the aforementioned “Spain connection”. This connection, however, can in no way be considered an objective or factual justification for the discriminatory imposition of burdensome obligations on the Icelandic telecommunications market. cf. the earlier discussion of proportionality, mutatis mutandis.

Similarly, there is no substantive argument, let alone urgent necessity, to justify a distinction between Míla on the one hand and Tengir and Ljósleiðarinn on the other with regard to the non-discrimination obligation, incl. the fact that it should be “simpler” vis-à-vis the latter two companies. In any case, this is deemed unproven. It should also be noted that this distinction is not made on the basis of the definition of a wholesale-only undertaking in the sense of Article 59 of the Electronic Communications Act.

The above arguments also apply to other instances where adequate consistency is not observed, such as the implementation of an access obligation that appears to be considerably more comprehensive vis-à-vis Míla, and the timing of reports on the expansion and development of local loop networks. Míla furthermore considers it an act of non-objective discrimination that the ECOI does not require Access Option 1 from Ljósleiðarinn while imposing such an obligation on Míla.”

The ECOI's position

1089. When imposing obligations, the ECOI shall take into account the situation on each relevant market. Obligations are therefore not uniform across the board. The ECOI considers itself to have followed this when determining obligations in this preliminary draft.

1090. The ECOI does not impose obligations on companies that require them to change their business model and provide new types of access in regions where they are deemed to have significant market power. The ECOI believes that this would go against the principle of proportionality. However, there is an obligation to continue providing the access already offered and not discontinue that access.

1091. The ECOI's assessment of Míla as having significant market power is based on many factors, such as scale, scope, market share and strong business relationships with the largest telecommunications retailer in Iceland. Míla is stronger in these respects than other market participants, and in view of this, different obligations are imposed on Míla than on smaller operators where those operators are considered to have significant market power. Due to these differences in the companies' strength, Míla's significance as a wholesale company, the extent of the regions in which Míla is considered to have significant market power and its

market shares in those regions, the ECOI considers it important that Míla provide its wholesale buyers with a bare minimum of proof that the company is meeting their needs on an equal basis according to disclosed key performance indicators. Refer to Chapter 6.2.3 on Zone B of Market 3a, where Míla has a 95% share in 15 municipalities and to Chapter 6.3.3 on Zone B of Market 3b, where the company has a 99% share in 13 municipalities. In addition to those areas, there are also individual municipalities where Míla has been assessed as having significant market power. There are a total of 26 such municipalities with approx. 15% of the population on Market 3a, and 31 municipalities with approx. 19% of the population on Market 3b. Míla has been subject to such an obligation for a long time, and it cannot be considered significantly burdensome to keep it in place. The obligation to publish service-level agreements is also reduced. Obligations on Míla are also more lenient on Market 3a in three municipalities than in others where the company has significant market power. The company is not required to cost-analyse its prices for access to ducts and conduits in these three municipalities.

Pointless obligation imposed on Ljósleiðarinn

1092. Míla's comments on the second consultation include the following, on page 31 in the company's comments:

“The ECOI’s obligation on Ljósleiðarinn to publish a list of proposed groundworks and installation projects with 4 months’ notice in regions where the company is considered to have significant power on the relevant market is completely pointless, as Ljósleiðarinn has already finished deploying fibre-optics in the municipality concerned.”

The ECOI’s position

1093. There has been considerable debate recently in Ölfus, where the municipal authorities clearly express a willingness to develop and increase economic activity and build new businesses and residential areas. Regardless of whether or not these developments in the municipality take place, the ECOI deems it necessary for the sake of potential competition that Ljósleiðarinn notify of its projects with reasonable notice and invite other companies to utilise these construction efforts to lay their own fibre-optic cables. The ECOI notes that the analysis and obligations should be forward-thinking and create conditions that facilitate increased competition, including infrastructure competition, on the relevant markets.

1094. It should also be noted that, according to the ECOI infrastructure database, fibre-optic coverage to domiciles and businesses in Ölfus Municipality is 76%; meaning that fibre-optic rollout has not been completed in the municipality. This applies to workplaces in particular, as a greater percentage of domiciles are connected to fibre-optics.

Imposition of different obligations on Austurljós than on Míla is justifiable

1095. Míla's comments on the second consultation include the following, on page 31 in the company's comments:

“In Míla’s opinion, however, the ECOI has at least partially justified imposing different obligations on Austurljós than on Míla, Ljósleiðarinn and Tengir, as Austurljós’s position and power is different from the other companies’ in significant respects.”

The ECOI’s position

1096. Despite the fact that Austurljós is considered vertically integrated and has a high market share in Fljótshreppur, it is nevertheless still a very small company and does not have the same service systems and economic power as the other electronic communications companies. The ECOI therefore does not consider it in keeping with the principle of proportionality to impose highly burdensome obligations on the company. Furthermore, Fljótshreppur is a very small, sparsely-populated municipality with only a few dozen connections. It should also be noted that Austurljós only owns the bitstream system, which Tengir previously operated in this municipality, and not the fibre-optic system itself. Míla can therefore not compare itself to Austurljós in terms of obligations in this small, sparsely-populated municipality.

Access to ducts and conduits.

1097. In Chapter 5 (v) of the comments on the second consultation, Míla refers to comments made in the company’s complaint about Decision 5/2021 or the previous analysis of the market in question. Míla reiterates the same comments here:

“Míla owns a considerable number of ducts in the ground. They may either be empty or in partial or full use. Míla may find itself in a situation whereby the company has installed local loop ducts where there is only room for one local loop, the use of which must wait until fibre-optics are deployed; should another operator wish to install a cable in the duct, it seems that Míla is obligated to comply even if it means that Míla itself has no access unless it has formally notified of its fibre-optic deployment in the region in question with the appropriate notice in advance. There is thus not only an access obligation on Míla but also priority rights for other companies to use Míla’s ducts, which can hardly be considered normal;

The procedures that Míla must follow regarding the delivery of information about the location and condition of the company’s ducts and conduits, e.g. by recording this information in a database, are by nature labour-intensive, costly and unpredictable in the sense that Míla never knows when a request will be made. The construction of such a database and entry of information requires the involvement of many specialised Míla employees. Meanwhile, these employees are unable to perform their normal duties. This goes for e.g. employees in the IT department who generally work on important projects such as new customer service systems. Such an obligation is therefore very burdensome, including because Míla itself apparently has to bear this cost;

It should also be noted, regarding the database obligation, that Míla does not currently keep track of the space remaining in individual ducts, etc. No record is

kept of the condition of ducts or available space in them, and obtaining such information is almost impossible because the ducts are buried in the ground.”

The ECOI’s position

1098. The ECOI points out that the obligation of access to ducts and conduits is not new, and was not also in the 2021 decision, as it was originally enacted in a decision from 2014. The change made by the 2021 decision involved clarifying implementation of the obligation and defining the process, since it otherwise would have been of no use to interested operators due to Míla’s unclear answers and opacity regarding available ducts. The ECOI considered and still considers it important that this obligation is effective in facilitating and expediting fibre-optic installation promoting competition in rural areas.

1099. It should be noted that the Rulings Committee did not amend this obligation in its ruling as a response to Míla’s appeal of the earlier decision.

Obligation to disclose planned excavation and installation projects

1100. In Chapter 5 (v) of the comments on the second consultation, Míla refers to comments made in the company’s complaint about Decision 5/2021 or the previous analysis of the market in question. Míla reiterates the same comments here:

“Hitherto, there has been virtually no interest from other operators in making use of Míla’s projects, and therefore it is difficult to understand the necessity of the obligation, let alone in a manner as burdensome as prescribed therein; the process will be considerably more cumbersome and slow compared to current procedures;

Míla believes that it must be possible to achieve the goal of other operators “realising the true scope of the projects” by less burdensome means, rather than having to fully design the project from start to finish within a certain time limit;

It is worth noting that some operations do not always require groundworks, e.g. conduit work, which is of a much simpler nature. It is not apparent that such projects are of the sort that require notification;

The obligation is intended to cover both overall development in places where there is no infrastructure and those excavation and installation projects in places where infrastructure is in place and fibre-optic cables are either being laid or run to buildings, as well as other projects related to fibre-optic development and deployment; however, “repair and renovation of individual local loops are generally not covered by this obligation”. Ideally, the obligation will make a clear distinction between the two.”

The ECOI’s position

1101. The ECOI points out that this obligation is also not new, but minor changes were made to it in the 2021 decision in order to improve clarity from its earlier formulation. This obligation is, in the ECOI's opinion, necessary and important to facilitate and expediate fibre-

optic deployment in rural areas and to promote competition in these regions. The ECOI does not agree that the obligation is unclear following the changes made in 2021.

1102. It should be noted that the Rulings Committee did not amend this obligation in its ruling as a response to Míla's appeal of the earlier decision in 2021.

1103. In the additional consultation published 23 January 2023, the ECOI further defines the obligation so that it does not apply in cases where other other electronic communications companies have infrastructure in place, as well as shortening the notification period to three months as opposed to four, as stipulated in the preliminary draft. This period was 6 months in previous market analyses and has therefore significantly reduced the scope of the obligation and has addressed comments from market participants to the effect that decisions about construction are often made quickly in Iceland, as well as the fact that the most construction takes place between spring and autumn due to weather conditions.

Obligation on access to ducts and conduits

1104. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“Míla also expresses serious concerns about the obligation requiring the company to give priority to interested parties requesting access to Míla's investments such as ducts and conduits and the fact that Míla is not permitted to use its own investments for fibre-optics once an interested network operator has made a request (Paragraph 2536). Such an obligation violates Míla's right of ownership and the principle of proportionality of the Administrative Procedures Act, as well as the company's right to use its own investments. Míla normally installs ducts in the ground with the intention of using them for the company's fibre-optic projects. Contrary to the ECOI 's assertion, the obligation for a database of ducts and conduits and for giving priority to interested network operators is very burdensome despite only applying in regions where only a small number of end users live. Building and maintaining such a database always involves a certain base cost and a massive amount of working hours. Investing in a database is a significant and burdensome undertaking regardless of whether the area it covers is large or small. For example, the cost to Míla of setting up a database of ducts and conduits would run into the tens of millions as well as requiring a specific full-time position. Such a database and access to it could also compromise the security of the telecommunications infrastructure.”

The ECOI's position

1105. Priority given to operators requesting access to facilities is a normal aspect of the access obligation. It goes without saying that as soon as a reasonable and objective request is made for access to certain available facilities that are under obligation, Míla cannot, by subsequent action, take those facilities for its own use and exclude the operator requesting access.

1106. In order to know which facilities in ducts and conduits are available for the requested use, the operator requesting access must obtain this information from Míla. It would contradict the purpose of the obligation if, after a request has been made, Míla would decide to use the facilities in question itself. It is precisely for the sake of proportionality that the ECOI sets such narrow parameters for this process. First, the party requesting access must clearly define the neighbourhood or region about which it is requesting information. Secondly, Míla must provide information about available ducts within three months, and thirdly, the party requesting access has one month from the time it receives the relevant information to make a decision about the available options for use. Míla has every opportunity to shorten the process by delivering the information earlier.

1107. The obligation also stipulates that if Míla has notified of its fibre-optic deployment in the region with a notice of at least three months, the priority given to parties requesting access does not apply.

1108. All electronic communications companies are charged with guarding the information pertaining to and the security of telecommunications infrastructure. The obligation does not cover open access to the aforementioned information or unsecure transmission of this information.

1109. It also bears mentioning that this is not a new obligation. It remains unchanged from the decision of 2021 and the Rulings Committee made no changes to it after Míla appealed that decision.

1110. Finally, it should be noted that this obligation is well-known and widely implemented throughout Europe. The ECOI therefore objects to the claim that the obligation, as implemented, violates Míla's right of ownership. In most cases, it is certainly possible for Míla as well as other operators to install cables. It is beneficial to both national fibre-optic deployment and infrastructure competition that Míla does not have the option of rejecting a request for the use of an empty duct which Míla itself has not used. Míla would also receive an appropriate lease fee for usage of its ducts.

Obligation on excavation and installation projects

1111. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“The ECOI’s formulation of the obligation to publish a list of proposed groundworks and installation projects (Paragraph 2544) in the consultation document contains significant discrepancy, as a notice period of either 6 or 4(2) months is stated. Míla also expresses serious concern regarding the fact that such an obligation extends to duct/conduit work in areas where infrastructure exists, as space in the existing ducts is limited and it is generally the case with Míla’s older local loop ducts that it is only possible to blow one cable into such a duct. The imposition of this obligation therefore does not comply with non-discrimination with respect to the companies concerned.”

The ECOI's position

1112. Paragraph 2427 of the consultation document states:

“Mila will still be required to notify of proposed fibre-optic projects, but the notification period is now at least 4 months instead of 6. This is thus not a new obligation but a relaxation of a current one.”

1113. Earlier decisions by the ECOI and previously the Post and Telecom Administration (PTA) stipulated a 6-month notification period for proposed groundworks and installation projects. This was shortened to four months in the preliminary draft. The additional consultation document published on 23. January, 2024 further shortened the period to 3 months. The obligation is therefore much more lenient than before.

Obligation on hosting

1114. In Chapter 5 (v) of the comments on the second consultation, Mila makes the following comment regarding the obligation on hosting:

“The obligation on hosting, which exceeds the requirements of Article 35 of the Electronic Communications Act, is also far beyond what is proportional (Paragraph 2544). According to the consultation document, this obligation not only covers hosting in vacant Mila premises, but may also apply to “requests involving expansion/construction of new premises”. Mila vehemently contests this obligation. The ECOI's justification for this obligation does not stand up to scrutiny. Furthermore, this obligation does not require the necessary cost-benefit analysis to any greater extent than other imposed obligations, which the ECOI must perform pursuant to Paragraph 4, Article 29 of the Regulation on market analysis. A reference to the fact that the obligation affords Mila an “opportunity for use of facilities in excess of its capacity” is also not sufficient justification for burdensome obligations, nor is the fact that “payment for access allows Mila to receive reimbursement for its investment”. The ECOI's reference to the fact that Mila has been under similar obligations on hosting for years is also not sufficient justification for imposing this obligation. Mila notes that there is no shortage of hosting facilities and the company has every incentive to offer hosting where available to those operators who request it. There is no need to impose a specific hosting obligation on Mila. The necessary conditions for the aforementioned obligation are therefore not present.”

The ECOI's position

1115. The obligations that the ECOI imposes pursuant to these paragraphs are nearly identical to those previously in force for years, with the exception that the obligations imposed here only apply in those regions where Mila is designated as having significant market power. As stated in Paragraph 2545 of the consultation document, Mila is also under obligations on hosting that arise from other decisions regarding leased line markets, which will be reviewed in due course.

1116. Paragraph 2547 limits the obligation to share or host to reasonable and objective requests where cases may be referred to the ECOI if an agreement between parties is not reached. The ECOI therefore does not agree that the provisions of this obligation are disproportionate.

1117. The ECOI considers the obligation on hosting to be of utmost importance for promoting fibre-optic deployment in areas where such infrastructure does not exist and, where applicable, promoting infrastructure competition in accordance with the emphasis placed on this type of competition in the new Electronic Communications Act. The ECOI is of the opinion that the benefit of upholding this obligation, while currently in effect in a much more limited area than before, is considerably greater than any resulting inconvenience or potential cost to Míla. Ljósleiðarinn and Tengir are also subject to such an obligation.

Obligation on price control of leased facilities

1118. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“The price control obligation on Míla regarding access to leased facilities in regions where the company is considered to have significant market power is also contrary to the principles of proportionality and equality of the Administrative Procedures Act. [...] Míla also objects to the ECOI's claim that the company is “the largest and most powerful player on the Icelandic telecommunications market in terms of such facilities (Paragraph 2644), is a misleading assertion, as there are many other major players on the same hosting market, e.g. ÍslandsTurnar (with about 400 locations according to their website), RÚV, and the emergency line (Neyðarlínan). Nova and Sýn may also possibly still have some locations. It is clear that many of Míla's hosting locations have copper connections and are therefore due to be decommissioned in the coming months, thus Míla has been closing its technical facilities in many places.”

The ECOI's position

1119. The ECOI notes that the price control obligation on Míla regarding access to leased facilities is in effect on the leased line market, pursuant to PTA Decisions No. 21/2015 and No. 8/2014. Míla must therefore perform a cost analysis of all facilities related to the leased line market, so it is not clear how this obligation places an additional burden on Míla. The ECOI does not rule out that it will continue to base its cost analyses on the price categories in Míla's current price list. Furthermore, the cost analyses that Míla have already submitted have calculated the operating and investment costs for every facility.

1120. Regarding Míla's claim that it is not the largest and most powerful operator in terms of leased facilities, the last cost analysis of Míla's hosting facilities, the ECOI Decision No. 8/2021, identified [...] rental units that to which the company sells access and which the company's price list covers. Míla does not own all of these rental units, though the ECOI is not aware of any other electronic communications company with a similar availability of facilities. Access to Míla's facilities is also very important in many places, as these facilities are connected to vital infrastructures on the fixed network.

Non-discrimination obligation on access to information, product offering and lead time

1121. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“Concerning the obligation for equal access to information, the impact on product offering trends and lead time (Chapter 8.3.3.3). Míla also considers this obligation to be in violation of the principles of proportionality and equality of the Administrative Procedures Act in addition to being very poorly thought out. The purpose of this obligation is hardly to make the residents of these regions wait 3-6 months longer than the other 80% of the population for new products and services. It is difficult to see any potential benefit to Míla’s customers and the few end users in the regions in question of Míla having to notify of everything the proposed obligation entails within the time limit established therein. There also seems to be some discrepancy in the consultation document regarding this notification period, as some places state that it should be no shorter than three months (cf. Paragraphs 2944, 3028 and 3075). In any case, Míla considers the 6-month period for notifying of deployment, construction or other development of its local loop networks (and related services and other relevant innovations) too long, especially in an ever-changing technological environment. This in fact negatively impacts the end users involved. Additionally, there is a discrepancy regarding the length of the notification period in comparison to e.g. Ljósleiðarinn that cannot be considered justified. The access obligation therefore seems significantly more comprehensive for no valid reason.”

The ECOI’s position

1122. The ECOI considers the aforementioned obligation necessary to safeguard competition in the long term, especially with regard to infrastructure-based competition. The FST considers this obligation to be of particular importance in the regions discussed here, as the area lacks effective infrastructure competition. The ECOI rejects Míla’s comment that the proportionality and equality principles of the Administrative Procedures Act were not observed in the imposition of the obligation. The aforementioned discrepancy between the 3 and 6-month notification period will be corrected to 3 months in the final version of the market analysis.

Obligation for measurement of key performance indicators

1123. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“Further details on the obligation to measure key performance indicators (KPIs) and to publish the results (Chapter 8.3.3.5). Míla considers this obligation to be contrary to the principles of equality and proportionality. The ECOI is requesting the disclosure of information that, to a great extent, is sensitive and confidential. Only Míla is subject to this obligation and no other companies with significant market power. In addition, this obligation is more comprehensive than the previous

KPI obligation. Míla also objects to having to disclose confidential information such as the number of orders processed (cf. item a, Paragraph 2606) and malfunction rates. This is information that competitors should not have access to. Furthermore, the percentage of orders rejected (cf. item b) is a "metric" with little significance and can be directly misleading. Orders may be rejected for various reasons, e.g. in the event of a wrong address which becomes evident when the user is contacted. The order is then rejected in consultation with the electronics communications company, which then submits a new order with the correct information. Nor does Míla keep track of transfers of service. The process involves an electronics communications company applying for a fibre-optic connection, which is established and delivered. The company then cancels the old connection. Míla sees no reason to specifically keep track of transfers of service, as retailers manage this process, not Míla. Here Míla reaffirms its earlier comment regarding the fact that end users have little to no say over which underlying network is used to provide services. [...]"

The ECOI's position

1124. The ECOI refers to the previous response regarding key performance indicators which addressed Míla's overall size and strength compared to other companies operating on the market in question and the extent of the regions in which Míla is designated as having significant power on the said markets. Refer to Chapter 6.2.3 on Zone B of Market 3a, where Míla has a 95% share in 15 municipalities and to Chapter 6.3.3 on Zone B of Market 3b, where the company has a 99% share in 13 municipalities. In addition to those areas, there are also individual municipalities where Míla has been assessed as having significant market power. There are a total of 26 such municipalities with approx. 15% of the population on Market 3a, and 31 municipalities with approx. 19% of the population on Market 3b.

1125. For comparison, Tengir is assessed as having significant power on Market 3a in 8 municipalities where 7% of the population lives and Ljósleiðarinn in 1 municipality where less than 1% of the population lives. On Market 3b, both Ljósleiðarinn and Míla are determined to have significant power in the same 1 municipality with less than 1% of the population.

1126. In view of this difference between the extent of the regions in which operators are determined to have significant market power and companies' competitive position, which is covered in detail in Chapter 6.1 of the preliminary draft (now Annex A), the ECOI rejects the claim that the obligation on Míla to disclose key performance indicators is contrary to the principle of proportionality. This information is important for Míla to assure its customers that the company is treating them equally in terms of the service provided, as each company discloses its own key performance factors and can compare them with Míla's overall performance towards its customers. Any regular difference may suggest that non-discrimination has not been observed. The fact that performance in individual aspects varies for a wide range of reasons should not systematically favour any one operator in the long term, although fluctuations from month to month may be normal.

Obligation on fibre-optic local loop access

1127. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“According to the ECOI, the obligation on shared access to Míla’s fibre-optic local loops falls under the access obligation on Market 3a (Paragraph 2572). Míla vehemently opposes this obligation because, as the ECOI correctly notes, it is an access that is not technologically possible to comply with. Nokia, Míla’s xPON supplier, confirms this impossibility.”

The ECOI’s position

1128. The aforementioned obligation on access to Míla’s fibre-optic local loops has been in place since Decision 21/2014. Reference was then made to the 2010 report by the consulting firm WIK on potential technological implementations of such an access, incl. wavelength unbundling (WU) and WDM, with respect to complexity and potential inconvenience in both execution and operation.

1129. In 2017, BEREC published a report on new possibilities for shared access to PON networks⁶⁵ based on wavelength unbundling. A 2018 report on a successful attempt to share access between a GPON system and an XGS-PON system on the same passive PON network can be found on the IEEE,⁶⁶ ‘Institute of Electrical and Electronics Engineers’ website which demonstrated that this was then technologically feasible. While no requests have been made for such shared access on Míla’s passive fibre-optic local loops, the ECOI considered it necessary in Decision 5/2021 to uphold this obligation on Míla on Market 3a in view of potential competition for bitstream services on Market 3b.

1130. For the same purpose, it is normal to uphold the obligation, in the opinion of the ECOI, in the regions where Míla is determined to have significant market power. Increased competition for active services on passive infrastructures benefit both the market and the consumer.

1131. In August 2023, Míla launched a new bitstream service on its PON network, XGS-PON. This service is already operating parallel to the company’s existing GPON bitstream services with shared access to the same PON network, in apparently identical or similar way as described in IEEE’s 2018 experiment. Míla’s supplier, Nokia, also states on its website that this is indeed possible⁶⁷ in a document on the business opportunities that Nokia’s XGS-PON technology and equipment offer bitstream providers. Nokia’s website also contains an earlier discussion from 2022 on the importance of compatibility between new active solutions on

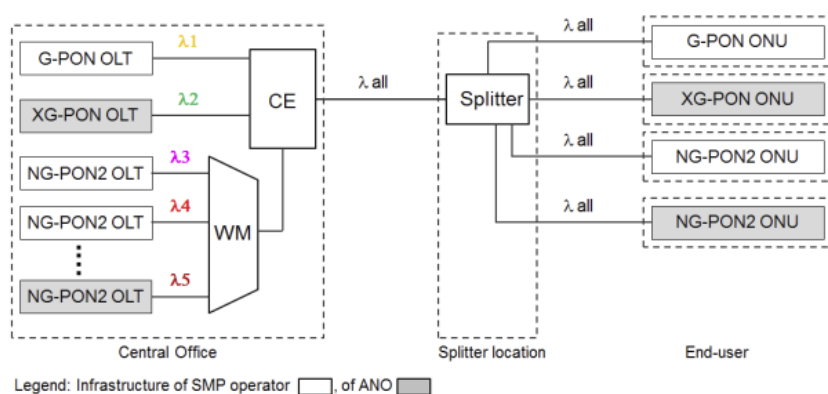
⁶⁵ BoR (17) 182 BEREC Report on the New Forms of Sharing Passive Optical Networks Based on Wavelength Division Multiplexing, <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-new-forms-of-sharing-passive-optical-networks-based-on-wavelength-division-multiplexing>

⁶⁶ Demonstration of XGS-PON and GPON Co-Existing in the Same Passive Optical Network, <https://ieeexplore.ieee.org/document/8533167>

⁶⁷Why XGS-PON? - An overview of the business opportunities, page 11. <https://onestore.nokia.com/asset/213480>

PON networks and the older ones already in place⁶⁸. There the author describes how XGS-PON and older GPON can operate side by side on the same infrastructure, as well as how Nokia plans to ensure that the next generation of PON technology, 25G-PON and 50GPON, can be added to these so that customers can operate four parallel active PON service systems on the same passive PON-configured infrastructure.

1132. Although Nokia's discussion assumes that the same operator has parallel systems, it is not impossible for each operator to have its own system. Each system requires the appropriate fibre-optic equipment (optical network unit, ONU) on the user's end, which Míla switches from GPON over to XGS-PON, e.g. in the case of the new XGS-PON system. The party requesting access can handle this themselves. Likewise, the access requester can operate its own nodal equipment (OLT). Such technical arrangements are discussed in detail in the above BEREC report from 2017, which includes this diagram:



Source: BEREC

Figure 9: WU example 2 – SMP operator uses G-PON and NG-PON2, ANOs use XG-PON and NG-PON2³⁴

Source: BEREC

1133. Although split access to the PON access network is obviously technically feasible, it may not be easily implemented within Míla's systems or operationally viable. The ECOI does not, however, rule out the fact that it may be in the future. The ECOI therefore upholds the obligation on Míla on Market 3a which requires the company to comply with any reasonable and objective requests for shared access to its passive PON infrastructure.

Obligation on geographical information for access to ducts and conduits

1134. In Chapter 5 (v) of the comments on the second consultation, Míla makes the following comment:

“The consultation document continues to discuss the database obligations under Market 3a (Paragraph 2575 and beyond). Míla reaffirms its previous comment regarding proportionality and equality. [...]”

The ECOI's position

⁶⁸ Back to the future: why the next generation of PON needs to look backwards <https://www.nokia.com/blog/back-to-the-future-why-the-next-generation-of-pon-needs-to-look-backwards/>

1135. Tengir says that, in general, the obligations the ECOI intends to impose on it are reasonable considering the fact that the company has significant market power in certain regions, except for the obligation to notify of construction plans, which the company considers very harmful.

1136. While Tengir is not comparable to Míla or Ljósleiðarinn in size or power, it is nevertheless in a position to be able to take advantage of its market power in those geographical regions where the company is designated as having significant power. Of these regions, Akureyri is the most populated and the most important. The ECOI deems the obligation to issue notification of construction necessary to economise the infrastructure and promote infrastructure competition on Market 3a in those regions where there is no effective competition, regardless of whether Tengir, Míla or Ljósleiðarinn has significant market power in the region in question.

1137. In addition, Tengir's coverage is already considerable in the municipalities in which the company is assessed as having significant market power and where the obligation is in effect. Nevertheless, the obligation remains an important tool in increasing competition within the relevant municipalities.

1138. Míla has been subject to a similar obligation for years. In order for the ECOI to be able to respond to any non-compliance with the obligation, it is necessary for all parties to submit a former complaint so that legal proceedings can be initiated.

1139. In light of the comments from Tengir and other operators, incl. Míla, the ECOI decided in an additional consultation document published 23. January, 2024 to decrease the scope of the obligation somewhat in order to reduce the likelihood of it causing a negative impact and to maintain incentives to deploy fibre-optics and encourage infrastructure competition. On the one hand, the notification period will now be 3 months instead of 4, as assumed in the preliminary draft. It should be noted that in previous market analyses, this period was 6 months. On the other, the obligation will not apply in areas, e.g. streets, neighbourhoods, housing clusters, etc., where there are existing infrastructure, conduits or ducts owned by electronic communications companies other than the dominant operator which could be used in competition with that dominant company. This is important, as the purpose of the obligation is to promote joint fibre-optic projects in co-operation with the dominant company, not to create conditions for competitors who already own existent infrastructure to play "strategic" games with the intent of delaying construction and progress to the detriment of the consumer. This would be useful to e.g. Tengir in Akureyri, Míla in Hvalsöllum in Rangárbing Eystra and Ljósleiðarinn in Ölfus Municipality.

Fibre-optic local loop access

1140. Tengir's comments on the second consultation include the following, on page 7 of the company's Comments on Paragraph 2699:

"ECOI refers to the fact that Tengir currently offers fibre-optic access in its local network with a local loop that has a P2P configuration. It is important to reiterate that this does not apply in every case, and one holiday home community in Þingeyjarsveit operates CWDM equipment. Furthermore, in the event of

unforeseen population densification in rural areas and other circumstances in which the existing supply fails to meet the demand, system architecture will likely be adapted accordingly as necessary.”

The ECOI’s position

1141. The ECOI understands that there are many ways to deviate from the most common scenario when it comes to constructing and operating telecommunications networks. It should also be pointed out that access requests must be reasonable and objective and compliance with these requests must be technologically feasible. Exceptional circumstances that make doing this difficult may be addressed by providing a different kind of access than was requested, provided that such access can sufficiently satisfy the requirements in question. It is understood that in some cases an impossibility may exist. Both the party requesting and the party providing access may refer issues to the ECOI for resolution in the event of disagreement.

Access to ducts

1142. Tengir’s comments on the second consultation include the following, on page 7 of the company’s comments on Paragraph 2711:

“There may be some misunderstanding about Tengir’s existing (unused) duct infrastructure, which is in no way comparable to the duct infrastructure of older providers. Since Tengir installs its fibre-optic ducts in the ground, in most cases these are air-blow ducts for fibre-optic cables. The duct for a fibre-optic local loop is 14/10mm and only accommodates one air-blown fibre cable (of the type Tengir uses). The capacity of these ducts is therefore of no use to other electronic communications companies. In general, no extra ducts beyond what the company requires have been installed on trunk routes. In rural areas, the company has generally plowed fibre-optic cables directly into the ground (i.e. not in a duct).”

The ECOI’s position

1143. The obligation to access facilities as deeply as possible and incentives to share the use of investments for the sake of increasing infrastructure competition is an aspect of that obligation which may be imposed on operators who have been designated as having significant market power, and is in effect in the region to which the SMP designation applies and where no other electronic communications companies have infrastructure in place. In the ECOI’s opinion it is important that no allowances are made on this obligation. The ECOI does not have information about the duct systems of telecommunications networks, their usage or access possibilities. The obligation applies wherever shared usage is possible. The ECOI would, in the event of an justifiable request for such access to Tengir’s ducts and conduits where Tengir maintains the aforementioned, investigate the veracity of Tengir’s claims. The obligation will therefore not be withdrawn on the basis of the above comment from Tengir.

Restriction to Tengir's use of its own ducts

1144. Tengir's comments on the second consultation include the following, on page 2 of the company's statement:

"Should another electronic communications company apply for the use of a duct owned by Tengir, which is not likely to have the capacity for an extra cable, that allocation would therefore be very likely to prevent Tengir from using its own infrastructure in a normal way. Those very few instances where Tengir has ducts that have so far not been used (i.e. fibre-optic cables have not been blown) are in regions where the company has e.g. laid local loop ducts in parallel with other projects on a lot where the duct terminates at the lot boundary or only reaches the nearest connection well while other service providers have been at work in order to connect to Tengir's system later. Allocation of such ducts would exclude Tengir from making use of its own infrastructure while the company is installing in the region in question.

Regarding the fact that the ECOI considers Tengir to have significant market power in Vopnafjörður, Tengir submits that Míla has a large duct infrastructure in the populated area and has already installed fibre-optics and ducts over the largest "industrial area" to which Tengir's expansion efforts have not yet reached, and Míla also has a lot of infrastructure in the western part of the town. Tengir has no infrastructure in this proposed construction area. The same situation has arisen there as in other municipalities where Míla has infrastructure and would therefore have an advantage in terms of construction and development before Tengir is able to begin its own work. The proposed obligation on Tengir in Vopnafjörður would, in the opinion of the company, have considerable adverse effect on Tengir's future fibre-optic development in the area.

It is therefore in no way understandable, in Tengir's opinion, that similar obligations for the use of existing infrastructures are imposed on a company that has a lot of unused infrastructure that either the company in question or other providers could use (Míla; e.g. Siglufjörður, Vopnafjörður, etc. in Tengir's service area), thereby minimising disruption and expediting development, as are imposed on a company constructing fibre-optic systems from the ground up and has nearly no unused infrastructure."

The ECOI's position

1145. The ECOI refers to Míla's response regarding the obligation imposed on Míla on other geographical markets for access to ducts and conduits and for information on ducts and conduits. The ECOI notes that requests for access shall be reasonable and objective, and must not unfairly impede the infrastructure owner's future prospects. Access is also not free of charge to the requesting party, who shall pay a reasonable fee for the use of another company's ducts and conduits. The ECOI notes that cases may be referred to the ECOI for resolution in the event that the parties involved disagree.

1146. The ECOI reiterates the response to Tengir's comment that the obligation would not apply in areas, e.g. streets, neighbourhoods, housing clusters, etc., where companies other than the dominant one own infrastructure, conduits or ducts owned by companies other that may be used in competition with the said dominant company, cf. the additional consultation document published 23 January 2024.

9 Imposition of obligations on Ljósleiðarinn on Market 3a

9.1 General information regarding designation of companies with significant market power on specific geographical markets

1147. No comments were received on this section of the consultation document.

9.2 Assessment of necessity and justification for imposing obligations in Ölfus Municipality on Market 3a

9.2.1 Ljósleiðarinn

Proportionality

1148. The report by Ljósleiðarinn's consultant regarding the second consultation discusses the general principle of proportionality in European law on pages 12 and 13. It is noted that the principle restricts the authorities by obliging them to strike a balance between the measures employed and the objective pursued. Within the context of the ECOI's market analysis, the consultant states that the defined geographical markets should be large enough to avoid resource intensive and burdensome microanalysis that may fragment the market. In addition, potential remedies must be evaluated in terms of the desired result. Specifically, the principle of proportionality requires that the benefits of the restriction of rights or the imposition of obligations must not outweigh any adverse consequences resulting from the aforementioned restrictions or imposition of obligations. The consultant therefore states that such imposition or restriction of rights must be justified. Furthermore, it states that appropriate safeguards attached to obligations should be able to support the measure. The criteria for such a measure are that it should be both necessary and sufficient to achieve the intended objective.

1149. The consultant states that the issue of proportionality has not received enough attention. The consultant also mentions three issues that arise regarding the obligations imposed on Ljósleiðarinn. First of all is the fact that Ljósleiðarinn is considered a wholesale-only company, which the consultant states implies that obligations are unnecessary. Secondly, the cost of implementing the obligation is disproportionate on a market as small as Ölfus, regardless of how "lenient" the obligations are. Thirdly, the consultant believes that this obligation will have consequences for the market that are contrary to the objective pursued.

The ECOI's position

1150. The need to impose the obligations on Ljósleiðarinn described in the latter consultation document were assessed according to the principle of proportionality. The ECOI sought to select the method that would cause the least disruption in order to address the identified problems in accordance with Paragraph 2, Article 46 of the Electronic Communications Act. In the ECOI's opinion, the obligations imposed on Ljósleiðarinn are conducive to achieving the Electronic Communications Act's objectives regarding effective

competition and promoting the expansion of fibre-optic networks in Iceland, as well as generating benefits for the consumer.

1151. Regarding the consultant's first point that the ECOI being a wholesale-only company means that obligations are unnecessary, it must be noted that the presence of a wholesale-only company on the market does not necessarily mean that there is effective competition. Circumstances may be such that wholesale-only undertakings are designated as having significant market power, though the likelihood of competition problems arising are less than in the case of vertically integrated companies. In general, obligations are more lenient on wholesale-only undertakings, provided that the company actually follows the wholesale-only business model and has no incentives to discriminate among customers. Paragraph 208 of the preamble to the Code states, however, that it is particularly important not to relax the obligation on fair and reasonable pricing unnecessarily. It is also important that telecommunications regulatory authorities be able to respond should competition problems detrimental to the consumer arise.

1152. In addition to the above, in a consultation document published 23. January, 2024, the ECOI announced a change of policy from the preliminary draft, i.e. that Ljósleiðarinn does not meet the legal requirements of Article 59 of the Electronic Communications Act for being considered a wholesale-only undertaking, as closer scrutiny reveals that the company sells electronic communications services at the retail level.

1153. Regarding the consultant's comment that the costs of enforcing the imposed obligations are disproportionate to the small size of the municipality, the ECOI does not consider the costs disproportionate to the objectives pursued and the benefits to competition and consumers that may result from the obligation.

1154. With regard to the third point that the obligations are contrary to the objective pursued, the ECOI assumes this refers to the latter comment in the consultant's document which states that the obligations post a risk of fragmenting the markets. Refer to the ECOI's response to these comments.

Obligations on Ljósleiðarinn as a wholesale-only company

1155. The report by Ljósleiðarinn's consultant on the second consultation states on page 13 about Chapter 10.2 that the discussion in this section undermines the obligations imposed on Ljósleiðarinn. Ljósleiðarinn is subject to obligations for access, fair and reasonable pricing, and for price control and transparency.

1156. The consultant says that Ljósleiðarinn's business is to provide access and that the company does not reject any reasonable requests for access. The ECOI acknowledges this in its assessment of wholesale-only undertakings as well as in Paragraph 2792 of the consultation document, in which the ECOI does not consider the obligation for equal treatment of contracting parties to be burdensome, which Ljósleiðarinn has so far contended. The consultant says that it is illogical to make the company's current business practice an obligation.

1157. The consultant claims that Ljósleiðarinn does not discriminate against its customers who are in the same position, and the idea behind exempting wholesale-only undertakings assumes that there are no incentives to discriminate among retail companies.

1158. The consultant says that the obligation for fair and reasonable pricing makes no sense, as the nature of Ljósleiðarinn's business is to offer its wholesale products at a fair and reasonable cost. It can be inferred from European Union case law that the concept of fair and reasonable pricing is to prevent prices from being so high that they essentially constitute effective denial.⁶⁹ The consultant considers the aforementioned pricing methodology unreasonable for a company whose sole purpose is to sell wholesale access.

The ECOI's position

1159. As stated above, the ECOI amended its initial assessment that Ljósleiðarinn meets the legal requirements of Article 59 of the Electronic Communications Act to be considered a wholesale-only company, cf. the consultation document from 23. January, 2024.

1160. The purpose of making the business practices an obligation is to prevent a company designated as having significant market power from using that power to deviate from its business practices when the company in question is in the position and has the incentives to do so. In such a case it is enough that the company in question has such an opportunity and the incentive. It does not matter that the company has no previous history of such behaviour. The same argument applies to the potential discrimination and unfair pricing.

1161. It is also not correct of Ljósleiðarinn's consultant that the ECOI intends to impose obligations for price control or transparency, only obligations for access and fair and reasonable pricing. Despite this change in position, the ECOI did not consider it justified to impose any further obligations Ljósleiðarinn than those stipulated in the preliminary draft. The ECOI therefore does not intend to impose any obligations on Ljósleiðarinn that would not be authorised if the company met the legal requirements of Article 59 of the Electronic Communications Act.

Price controls and transparency require new, costly systems

1162. The report by Ljósleiðarinn's consultant on the second consultation document states the following on page 13 and 14 on the fair and reasonable pricing obligation. The consultant says that while the fair and reasonable pricing seems harmless, it is nevertheless excessive. The fiber optic system has adopted a business and IT strategy and an Business Support System in Iceland. To date, no function has been developed to allow Ljósleiðarinn to monitor one part of its system, e.g. on particular region. The consultant considers it costly to adopt an OSS/BSS system that requires investments that disproportionate to the size of Ölfus, which constitutes less than 1% of the market.

The ECOI's position

1163. As noted in Chapter 10.3.4 of the preliminary draft (now Annex A), the ECOI will first consider whether the price of the service has changed abnormally, taking into account

⁶⁹ Refer to COM(2023) 232 and 2023/0133 (COD).

general price trends and whether the price is in line with comparable markets in Iceland where competitive pressure is greater.

1164. The ECOI will take these perspectives into consideration when assessing whether the price is considered fair and reasonable. However, the ECOI must also take into account the fact that companies prepared to invest in these infrastructures have the right to demand a cost-effective investment based on a given lifetime and reasonable profitability of the investment. Anything else would discourage electronic communications companies from investing, which would not promote the development of high-speed networks.

1165. For this reason, the ECOI has ensured the right of telecommunications operators to challenge the decision to determine prices according to a price comparison or price trends, so that companies are not forced to subsidise prices in less profitable areas.

1166. If Ljósleiðarinn, who operates in a competitive area, decides to keep the same prices in Ölfus Municipality as in areas with more competition such as the Capital Region, Hveragerði and Árborg, the price is deemed to meet the requirement for fair and reasonable pricing.

1167. Thus it is only necessary to examine whether the prices match the cost if the following two conditions are met:

- a) Ljósleiðarinn decides to raise prices in Ölfus Municipality so that they exceed the company's prices in competitive areas, and
- b) Ljósleiðarinn does not accept the ECOI's conclusion that the price after the increase has changed abnormally with respect to general price trends, should this be the conclusion in the first place.

1168. When determining whether prices are in line with the cost, it is necessary to have all information about the cost of providing service in the municipality in question. The ECOI does not have information on the operating and investment cost of fibre-optic deployment in each municipality. This information is in the hands of the entities engaged in deployment themselves. As indicated in Chapter 10.3.4, the burden of proof that fees are based on cost is on the company involved. If it cannot be proven that the fees are based on cost, then the price is determined by the ECOI by price comparison or general price trends.

1169. Ljósleiðarinn can therefore save the effort of specifically differentiating cost in the municipality, while at the same time acknowledging that the price cannot be higher in Ölfus Municipality than in the competitive areas where Ljósleiðarinn operates, or that a price increase in that municipality, so that prices there exceed prices in competitive areas, must be limited to normal price trends.

Obligations create risk of separate markets

1170. The report by Ljósleiðarinn's consultant on the second consultation document discusses the risk of formation of separate markets on pages 14 and 15. The consultant believes that the proposed obligations present a risk of the formation of separate markets in the future, as Ljósleiðarinn would be forced to create separate accounts for each region. Thus different costs would have to be accounted for which would result in different prices, which

in turn would result in actual geographical segregation. The aforementioned poses a risk of losing the benefits of competition in more competitive regions due to geographical segregation. For example, since the more competitive part of the market is geographically large, conditions there may affect the entire market. A regional market with only one network may therefore benefit from the conditions on the domestic market. The consultant states that the aforementioned segregation of geographical markets may even allow customers in a monopoly region may benefit from competition simply because the owner of the network operates nationwide. It should be noted that a detailed and thorough analysis of geographical markets under these conditions would breach that competitive restraint and potentially lead to worse outcomes for regional customers. The consultant reaffirms that a regional monopoly on infrastructures does not entail a lack of competition at the service level.

1171. The consultant says that if the ECOI is determined to analyse the geographical market in a very detailed manner, as in the case of Ölfus, this could lead to separate offers in Ölfus, which in turn would mean that competition in Reykjavík would have no effect on the pricing in this much more remote region.

1172. The consultant believes that too rapid an analysis of geographical markets within Iceland could deprive consumers in less competitive regions of the benefits of the competition from more competitive regions, as Míla operates nationwide. The definition of geographic markets alone could divide the market. The definition of the appropriate market (whether the entire country constitutes one geographical region or the country is divided into smaller regions) should primarily take into account market share on the wholesale and retail level. The existence of homogenous retail offers across the country should be a string indicator of a single geographical market at the wholesale level.

1173. The actual and expected deployment of parallel networks may be helpful in assessing significant market power, but in the consultant's opinion it is not relevant to the definition of the market. The consultant says that it follows from the ECOI market analysis that retail prices seem nearly identical across the country. In such cases, the consultant considers the geographical distinction of the markets to be unusual and requires a specific justification.

1174. To summarise, the consultant says that for a wholesale company like Ljósleiðarinn, the obligation to justify pricing and separate accounting is (a) spurious and reflects a logical hole in the argument, and (b) does not reflect the reality of a company that operates on a nationwide level and whose systems and bookkeeping account for the entire country. The obligation to omit one region from Ljósleiðarinn's system is extreme because of (i) the cost in comparison to the small size of that market, and (ii) the fact that there is no logical reason for doing so.

The ECOI's position

1175. The ECOI refers to its earlier responses to similar comments in Chapters 5.4.1 and 5.4.2 above.

Potential effects of the proposed obligations

1176. Page 16 of the consultant's report on the second consultation document discusses the possible effects of the proposed obligations on Ljósleiðarinn. The consultant says that the potential consequences of dividing the market in the way the ECOI proposes are not given adequate consideration.

1177. The consultant says that one possible consequence of a regional analysis is that parties requesting access are unable to make a nationwide offer if they must manage different resources and operate according to different rules depending on the region. The consultant believes this will increase both transaction costs (having to manage and categorise different resources) and costs in general (where marketing be done on a regional basis and differ according to region).

1178. Thus, according to the consultant, the geographical division of the market becomes a self-fulfilling prophecy. When a company restructures its operations and plans around this new reality in the wholesale market, regional pricing can emerge, solidifying the geographical differentiation of the market. For example, it is likely that Ljósleiðarinn has invested an increased cost in the development of its system in Ölfus. The report notes that the Ljósleiðarinn currently decides its prices at national level, as the company is aware of the competition it faces, especially in Reykjavík and other high population centres. However, if Ljósleiðarinn needs to restructure its operations in order to separate its accounting, the company may opt for regional pricing that reflects the cost of expanding the network.

1179. The consultant says that there is a risk that the definition of regional markets in Iceland could deprive consumers in areas where there is less competition of the benefits of competition in more competitive areas. The presence of homogeneous retail offers is a strong indication that there is one geographical market.

The ECOI's position

1180. The ECOI refers to its earlier responses to similar comments in Chapters 5.4.1 and 5.4.2 above, as well as its response to the similar comment from Ljósleiðarinn earlier in this section regarding pricing and cost associated with price control.

9.3 Imposition of obligations on Ljósleiðarinn on Market 3a

1181. No comments were received on the contents of this section of the preliminary draft.

10 Imposition of obligations on Míla on Market 3b

10.1 General information regarding designation of companies with significant market power on specific geographical markets

1182. No comments were made on this section of the consultation document.

10.2 Assessment of necessity and justification for imposing obligations on Míla on Market 3b

1183. No comments were made on this section of the consultation document.

10.3 Imposition of obligations on Míla on Market 3b

10.3.1 Míla

Obligation preventing Míla from revoking bitstream access

1184. Míla's comments on the second consultation note that there is a legal basis for maintaining the obligation that Míla not revoke bitstream access that it provides on networks to which the company has obtained local loop access. In this context Míla refers to Paragraphs 2093 and 2094 of the consultation document.

1185. Míla refers to Case No. 5/2021 and states the following on page 32 of the company's comments:

"In the aforementioned case, Míla referred to, among other things, the following comments from the report prepared for Míla by Analys Mason, dated 4. October, 2021:

It is an inappropriate and unprecedented remedy that is outside the EU Framework to remove from Míla the choice of how it is to provide network service to meet a wholesale customer request to connect to a particular end user. Not only is this corrosive to Míla having the correct incentives to manage its own networks efficiently, it will also risk devaluing investments that have already been made (which will affect Míla's (and other Icelandic operators) ability to borrow from investors in the future) and make it less likely that Míla will seek to cooperate with other parties in building parallel infrastructure in new areas (because its internal business case for the investment will need to assume that that other party might avail itself of this remedy, adding costs to Míla and reducing the level of certainty about future levels of demand for loops if Míla were to make a sunk investment). Instead of removing this freedom from Míla to choose how to use the resources it has at its disposal, if there is to be such an obligation to offer wholesale services based on a partner network against Míla's wishes, then to be

compatible with the Framework in my view it would have to be designed and very expressed differently.

There are costs to such remedies. The parallel Mila equipment to support multiple different ways to reach the same end user will necessarily be inefficient, increasing costs and decreasing welfare (e.g. more OLT ports will be required as Mila's splitters will be less efficiently utilised). Other wholesale providers including Tengir itself will not face the same level of inefficiency.

Mila reiterates its pleadings in Case No. 5/2021 to the effect that Mila is aware that there are no other such precedents, either in competition or telecommunications law, of that obligation being imposed on an operator who possesses and has established its own infrastructure with the associated investments and costs, to use the infrastructure of a competitor in the same region. Mila also believes this to violate the principles of proportionality and non-discrimination.

Access obligations in telecommunications law generally refer to granting another company access to facilities or services, and not to 'purchase' or 'lease' facilities or services from a competitor, such as the above-mentioned obligation, which may correctly be considered a "purchasing obligation" to an extent, involves. Mila must pay Tengir for providing bitstream services on Tengir's network. However, Mila does not lease Tengir's fibre-optics, as is wrongly maintained throughout the consultation document. Tengir continues to collect the local loop fee from the end user. Therefore, it is in fact the end user leasing the fibre-optics, not Mila. This service has been associated with considerable diseconomy and cost due to, among other things, the fact that two representatives are dispatched in two visits to connect the end user; Tengir's representative on the one hand to see to the fibre-optics, and Mila's on the other hand to connect the bitstream service.⁷⁰ [...] It is unacceptable that Mila be required to provide its bitstream service for a fee to a company with significant market power on Market 3a in its area of operation. With

⁷⁰ It is in fact only necessary for both operators to dispatch field service to the end user when establishing a new connection. Nevertheless, in most cases, both operators visit the end user with all the accompanying inconvenience. For further clarification, the practise has mostly been as follows for Tengir's fibre-optics:

1. New connection to fibre-optics and bitstream: Tengir must complete indoor fibre-optic installation. The operator who owns the system deal with its own system and bears the costs involved. Tengir must also connect fibre-optics to a coupler and install a light transducer (ONT) from Mila. The cost of this can run into the tens of thousands. Mila's field service will then provide a router and decoder. This is done in two visits, i.e. from both operators' field service, unless the visits are coordinated, though it is rare that both arrive at the same time. However, Tengir always installs the ONT in postal codes 600 and 603 and handles all indoor equipment installation.
2. Mila's fibre-optics transfer over to Tengir's while bitstream remains with Mila: Tengir enters the connector housing and transfers the fibre-optic cable to a coupler and then to either the end user or intake (in the case of an apartment building) and transfers to Tengir's local loop.
3. Transfer from Tengir's bitstream to Mila's: Here Tengir should ensure that the bitstream equipment is switched off when entering the connector housing/substation and connecting the fibre-optic cable to the coupler in order to connect the end user to Mila's bitstream. Mila's field service visits the end users and completes the installation of the ONT the company's ISP equipment. Tengir's procedure was to visit the end user in order to measure the connection, but Mila does not do this. In fact, only one visit is necessary.
4. Change of rightholder and/or ISP of Tengir fibre-optics and Mila bitstream. Here Tengir need only register the new end user in its system. Mila usually sends field service to install equipment if necessary. I.e., only one visit is required.

such obligations as this, the ECOI is enabling market dominant operators to maintain and even further strengthen their dominant position on the market. This is entirely contrary to the current regulatory framework. As previously stated, this is a purchasing obligation, not an access obligation; the imposition of this obligation therefore lacks a legal basis.

In this context, care must be taken to ensure that the legal authority for imposing burdensome obligations are clear and unambiguous, as is common knowledge, and may not be based on progressive legal interpretations such as those in the ECOI's pleadings.⁷¹

The ECOI's position

1186. The ECOI initially imposed the obligation in question on Míla with Decision No. 5/2021, along with a more extensive obligation that required Míla to install its bitstream equipment on the fibre-optic networks of other operators who wanted certain conditions to be met. Míla filed a complaint about these obligations to the Rulings Committee for Electronic Communications and Postal Affairs, who repealed the latter obligation but not the one under consideration here. Here Míla is correct that the latter obligation constituted a sort of "purchase obligation". The above reference to the discussion by Analysys Mason seems to primarily apply to that obligation rather than the one in question here. In the present analysis, the ECOI decided not to propose the imposition of the latter obligation, either in modified or unmodified form. The ECOI took proportionality into consideration, among other things.

1187. Míla has leased fibre-optic local loops from Tengir all over North Iceland to which it has connected its bitstream equipment, as well as deploying parallel fibre-optic networks in certain regions. These networks, however, are not as extensive as Tengir's. The same can be said of the vast majority of the small local rural networks, most of which have been subsidised by state grants, i.e. those that Míla has not purchased. Since Síminn, Iceland's largest telecommunications retailer, and other service providers have so far not usually provided service through bitstream systems other than Míla's on the domestic market, the ECOI⁷² considers it important that Míla not remove this equipment or revoke this service while this remains the case. As stated in this analysis, the ECOI believes that, despite Síminn's sale of Míla, there remain strong business connections and in fact considerable signs of vertical

⁷¹ When considering the requirements for detail and clarity of the legal standards that authorise restriction of economic freedom, the nature of these restrictions must be taken into account. The more emotional or burdensome the restriction of economic freedom, the more stringent the requirements must be for the clarity and detail of the legal authority permitting it, cf. Páll Hreinsson: "Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar", *Líndæla*, p. 418-419.

See also p. 402 of the same text: "The debate on whether the government has the appropriate authority to make a burdensome decision depends on the interpretation of whether the relevant legal provision grants sufficient authority. Such an interpretation of law is typically based on the notion that the more emotional or burdensome an administrative decision is, the more stringent the requirements for clarity must be for the legal authority on which the decision is based. [...] In assessing whether the content of a decision is considered burdensome, consideration is given both to what rights are restricted and to the extent and nature of the restriction."

See also p. 420 of the same text: "The more emotional or burdensome the reduction of economic freedom in question, the stricter the requirements must be made to ensure that the Althingi has taken a legislative stance on the extent of the restriction deemed necessary."

⁷² In 2020, however, Síminn entered into an agreement with Ljósleiðarinn to provide bitstream access and began doing so via Ljósleiðarinn's network in August, 2021.

integration between the companies, due in part to the long-term wholesale agreement between them.

1188. The ECOI therefore upholds the obligation on Míla to not remove bitstream equipment or revoke services via other fibre-optic networks than Míla's own in those regions where Míla has significant market power as long as Síminn is not providing services via these other operators' bitstream systems. Such an obligation is intended to benefit competition on Market 3b and related markets and is conducive to maintaining or increasing options for service providers and consumers regarding the choice of underlying telecommunications networks. In order to prevent such operators from unreasonably increasing the fees Míla pays for access, Míla may refer to the ECOI with regard to whether their fees or other conditions are fair and reasonable. This is then determined by the ECOI decision. Míla may be released from this obligation if the ECOI believes that these operators' prices and conditions are inconsistent with what is considered normal. The ECOI also points out that, if Síminn agrees with the aforementioned operators regarding bitstream access to said operators' fibre-optic networks, Míla will also be released from this obligation.

1189. This access obligation must be interpreted in accordance with the non-discrimination obligation maintained on Míla on Market 3b in those regions where the company is considered to have significant market power. Part of that obligation stipulates that Míla is not permitted to regard its own local loops as the default choice of underlying local loop when a sales representative from another network operator or service provider places a request for a connection, or when the end user requests as its underlying network another provider's local loop to which Míla has installed its bitstream equipment.

1190. Here the ECOI is imposing on Míla the obligation to not revoke access that the company has already provided to its bitstream equipment. This is access that Míla has heretofore provided without being required to by obligation. Míla is not being required to provide access that the company has not already provided, and because Míla provides this access on its own initiative, it can be assumed that the company benefits from doing so.

1191. Here the ECOI ensures that consumers can choose whether they purchase local loops from Míla or other providers, and whether they want to do business with Síminn.

1192. The ECOI denies the claim that this obligation has no legal basis. The access obligation is supported by Article 48 of the Electronic Communications Act, which contains a list of what may be required of electronic communications companies. Paragraph 2 states:

"Among other things, electronic communications companies may be required to:

- a. provide access to individual parts of networks or facilities, incl. unbundled access to local loops and branches,*
- b. provide access to certain active network elements or virtual network elements and virtual network services,*
- c. negotiate in good faith with companies requesting access,*
- d. not revoke access to facilities that has already been provided, ..."*

1193. This article is supported by Article 73 of the Code and is therefore in line with the European regulatory framework in this sector, contrary to what Analysys Mason claims. As described above, however, the ECOI is of the opinion that the aforementioned comment from Analysis Mason applies only or at least primarily to the more burdensome obligation that the ECOI imposed on Míla in the last analysis but no longer does.

1194. As stated in Paragraph 2, Article 48, this is not an exhaustive list and the ECOI's authority to impose obligations is not limited to this. Item d specifically addresses the obligation that electronic communications companies do not revoke access they have already provided. While specific reference is made to facilities, the ECOI is of the opinion that a comparable obligation regarding bitstream access is reasonable and justified. For example, the ECOI has imposed a similar obligation on Tengir to not revoke access that the company has already provided to local loops on Market 3a. This access is very important to Míla, and Míla has benefitted from the fact that Tengir, unlike Míla, provides such local loop access.

1195. Tengir depends heavily on Míla for the purchase of local loops, as approx. [...] % of Tengir's leased loops are used for Míla's bitstream.

1196. In view of the above, the ECOI rejects the claim that the imposition of the aforementioned obligation lacks a legal basis and that it violates the principle of proportionality.

Access Option 4

1197. Míla's comments on the second consultation state the following in Chapter 5 (v), p. 34:

"As mentioned earlier, the ECOI has decided to add an access obligation to so-called Access Option 4. Access Option 4 enables retailers to obtain fully equipped internet access for resale, similar to Síminn. Míla took over from Síminn the technical operations necessary for providing this service some time ago, so there is considerable experience of such operations within the company already. Therefore "ECOI does not consider the obligation burdensome on Míla and thus does not exceed proportionality".

The aforementioned rationale, in support of a new obligation, is far from justifiable. Regardless of Míla's supposed "experience" with the aforementioned technical operations, the obligation, like other obligations, is certainly burdensome. Furthermore, there is no evidence of the necessity for and scope of the obligation, incl. support from statistical data, not to mention the fact that the obligation was removed at the time due to lack of use. It is of no use to impose a new obligation on the grounds that there is "supply and demand for such a product" without further/more detailed analysis and justification. Míla notes that there is little demand for this service at the national level, let alone in the regions where imposing the obligation is deemed necessary. It should also be noted that Síminn is responsible for the identification and statutory registration of data related to usage by end users, and therefore it is not correct to say that Síminn "now resells Míla's full-fledged internet service" (see e.g. paragraph 2301)."

The ECOI's position

1198. Síminn's decision to transfer the technical production of internet service and all that it requires, incl. AS number and IP addresses, to Míla made Síminn a wholesale purchaser of that service. This has been the case as of the transfer at the beginning of 2021. This change that the group made to internet service structure prior to the sale of Míla changed the wholesale bitstream service environment, as internet service itself is now a part of the wholesale offering defined as bitstream service and a product offering for which there was no demand before is now purchased wholesale by the country's largest internet service provider. Thus there is already supply and demand.

1199. Míla is now responsible for the wholesale of this access, as from a technical standpoint, internet service is produced for resale. It is standard resale-only practice for the retailer to provide a range of consumer services to its customers, such as invoicing, billing and front-line services. Customer identification, i.e. controlling which customers have access, i.e. making the service available to them on the basis of being paying subscribers, or blocking subscribers if they leave the service or do not pay invoices, is part of the service that must be provided in order to be considered a retailer of said service.

1200. It is certainly possible for the wholesaler, if the wholesaler has such consumer-level service systems, to offer the reseller access to invoicing and billing, access control systems and even front-line service on behalf of the reseller. This is an additional service independent of the telecommunications service itself that is sold for retail, although it is related to electronic communications services.

1201. While Síminn owns and operates such systems, this does not change the fact that Míla has created Access Option 4, which includes wholesale internet access with bitstream access, and the country's largest internet access providers purchases this service for the majority of its customers. It therefore cannot be considered particularly burdensome for Míla to provide such access to its other customers. This would increase the utilisation of Míla's systems and equipment, and the company should aim to achieve such optimisation.

1202. The ECOI denies that it has not adequately justified the imposition of the obligation in question, and refers to the discussion in Chapter 7 on competition problems and Chapter 11 of the analysis (now Annex A).

Non-discrimination obligation

1203. In Chapter 5 (v) of the comments on the second consultation, Míla refers to comments made in the company's complaint about Decision 5/2021 or the previous analysis of the market in question. Míla reiterates the same comments here:

"Paragraph 95 of the appealed Decision furthermore states the following non-discrimination obligation on Market 3b:

(95) The Míla bitstream unit is not authorised to discriminate in any manner according to underlying network with respect to price or other possible charges, processing of work requests regarding connections or equipment configuration. Míla's bitstream unit shall therefore process requests for connections and

configuration of connections via unrelated operators' fibre-optic networks in the same was as on its own local loops. Costs, processing times, complexity and inconvenience vis-à-vis service providers and/or end users shall be the same. Míla is forbidden from assuming that its own local loops are the default choice of underlying local loop when a sales representative from another network operator or service provider requests a connection, or when an end user requests an unrelated operator's local loop as the underlying network.

This is discussed in the report by Analysys Mason, dated 4 October 2021, Chapter 3.1, cf. attachment 4, and Míla adopts these points of view:

The obligation for Míla to take end user's (or another network provider's employee's, if not its wholesale customer's i.e. the retail ISP's) requests into account is also unprecedented and not only outside the Framework but also problematic in terms of the contracts between Míla and its customers. Míla is a wholesale player and is not in communication with end users about their needs; end users purchase from retail providers. It is wholly inappropriate to attempt to use a regulatory remedy to impose on Míla (which is by design wholesale only) an obligation to take into account any party's requests other than its direct wholesale customer. If the wholesale customers (i.e. retail ISPs) choose to buy a specific product, that is for them to decide. Similarly, if the retail ISP has chosen a particular Míla product, that contractual decision cannot be overridden by Míla based on the preferences expressed by the end user or by a representative of any company other than the wholesale customer (i.e. the retail ISP): the end user does not get to tell Míla what to do (they can choose a different retail product from their ISP, or possibly a different retail ISP, which will cause the retail ISP then to make an order from Míla or another provider, but that is as far as it goes).

Specifically, and as is well known, Míla is a wholesale telecommunications company that sells its telecommunications solutions to resellers, which are companies and organisations engaged in Electronic Communications Activities. Míla does not have a contractual relationship with end users, and it must be resellers who request Míla's local loop bitstream service, particularly if this service is to be provided on a local loop other than Míla's; otherwise, Míla should be free to provide the service over its own local loop.

Regarding price discrimination, it is important to note that when Míla provides services on its own local loop, it is cheaper than when the company provides service over other operators' local loops, such as Tengir's, where Tengir requires a special "access fee" from Míla, thus creating a price floor. Míla assumes that any price differences relating to this are not considered discriminatory.

The quote in the obligation that "processing times, complexity and inconvenience vis-à-vis service providers and/or end users shall be the same" does not satisfy clarity requirements. Thus, by its very nature, "complexity" and "inconvenience" can increase when this service (local loop/fibre-optic and bitstream) is in the hands of two electronic communications companies instead of one; at least Míla is can

be required to “increase” its own complexity when it is responsible for both aspects of the service. If it is to serve its purpose it all, it is necessary to reformulate the obligation.”

1204. Míla further comments on this quote:

“In this context, it is of particular significance that the Rulings Committee repealed the obligation stated in the final sentence of item a, Paragraph 9 of Decision No. 5/2021 that, on Market 3b, Míla shall connect its bitstream equipment to other network operators’ fibre-optic local loops. The ECOI stated before the Committee that the purpose of this obligation was to counteract the effects of the vertical integration of Síminn and Míla. The Committee pointed out that the obligation was no longer necessary, as the companies in question are no longer vertically integrated. The obligation was therefore repealed. The Rulings Committee is a higher administrative authority and the ECOI is required to comply with its rulings and directives. The views expressed in the ruling on this apply just as much and even more so now. No comparable obligation is imposed on other companies on the market, therefore the same should apply to Míla. It is in no way possible to justify such an obligation on the grounds that Míla’s foreign owner has invested in a company that operates on the retail market in another EEA country, as there is no causal relationship between such ownership links and the aforementioned obligation. In view of this, the ECOI shall waive the obligation on Míla to connect its bitstream equipment to other network operators’ fibre-optic local loops.

These are extremely burdensome obligations in regions with very few end users, and thus not at all consistent with the principle of proportionality of the Administrative Procedures Act”.

The ECOI’s position

1205. The ECOI notes that Míla is not under all of the same obligations as were imposed on it by Decision No. 5/2021, and those that are in place apply to a smaller market area. Míla is thus under no obligation to connect its bitstream equipment to other network operators’ fibre-optic local loops, only to not revoke the access that the company already provides.

1206. The obligation that Míla not revoke its bitstream access does not require the company to begin providing services on other providers’ local loop networks where it did not do so previously. The ECOI considers it normal that, on those networks where Míla already provides bitstream services via networks owned by other operators, the retailer in question or, as the case may be, the end user may choose that underlying network. In most cases, the provider who purchases wholesale bitstream services from Míla would presumably make such a request. The ECOI otherwise refers to a detailed response regarding this obligation earlier in this section.

1207. One aspect of the obligation is that Míla is not permitted to discriminate in any way based on underlying network and the same processing times, technical configuration and implementation should apply to bitstream services provided on other operators’ local loop networks as apply on the company’s own local loop networks with regard to its services to

retailers or end users. Míla is not permitted to assume that its own local loops are default choice of underlying network when a sales representative from another network operator or service provider requests a connection, or when an end user requests an unrelated operator's local loop as an underlying network. The ECOI believes the obligation is clear with respect to the aforementioned. Míla shall, in other words, not unreasonably or non-objectively apply a more time-consuming or complicated process when delivering and establishing connections to its bitstream system on other operators' local loops than it does on its own local loop network. In terms of field service visits to install equipment, this obligation applies equally to the delivery process vis-à-vis telecommunications retailers receiving access to Míla's bitstream systems and to end users and consumers.

1208. Míla correctly points out that the Rulings Committee for Electronic Communications and Postal Affairs removed the latter obligation with its decision of 29. December, 2022, with reference to the fact that Síminn sold Míla to Ardian, therefore dissolving the ownership link between Míla and Síminn. Paragraph 368 of the ruling states:

“As reported above in detail, the appealed decision was based on the assumption that Míla and Síminn belong to a group of companies. It is clear that this has changed as of 15. September. 2022. Although Míla and Síminn are still somewhat linked due to the wholesale agreement between the companies, it is not clear whether less stringent remedies can be employed to counteract the adverse effects that those links have on competition on the telecommunications market. Consequently, the Rulings Committee deems it appropriate to recall the following obligations that apply directly to the Síminn Group, as of 15. September 2022.” (emphasis added by the ECOI)

1209. As stated in the Rulings Committee's ruling, the Committee appears to have waived the aforementioned obligation on the grounds that it was based on considerations that were no longer applicable (i.e. that the companies in question were part of a group). The Committee nevertheless gives the proviso that, although Míla and Síminn are still linked to some extent by the wholesale agreement between the companies, it was not clear whether less stringent remedies could be applied to counteract the adverse effects of those links on competition on the telecommunications market. It therefore appears that the aforementioned obligations has been waived as a precautionary measure without an assessment of the wholesale agreement between the companies having been performed.

1210. In this analysis, the ECOI has performed a detailed and thorough assessment of the aforementioned wholesale agreement between Míla and Síminn as well as other factors closely connect the companies in terms of business and shared interests. The ECOI concludes that there are still signs of vertical integration between the companies though by their nature they are weaker than before. With regard to this and the competition problems identified on Market 3b, the ECOI considered it important to reimpose the aforementioned obligation on Míla, though now only on those geographical markets where the company has significant power on that market.

1211. The ECOI refers to the above responses with regard to different prices.

10.3.2Tengir

Míla is not authorised to revoke bitstream access via local loops owned by other operators

1212. Tengir's comments on the second consultation include the following, on page 2 in the company's comments:

"Based on the market analysis, the ECOI determines that there either is or will be effective competition on Market 3b in Tengir's service area in Grýtubakkahreppur, Hörgársveit, Svalbarðsstrandarhreppur and Tjörneshreppur, throughout the term of validity of this analysis. Obligations on Míla in those municipalities should be waived. Tengir does not agree.

Tengir deems it appropriate to note that the company began installing fibre-optics in these communities in 2007, but Síminn did not connect to Tengir's network until 2011, in Akureyri. Users in these municipalities therefore did not have the option of using any other system than Tengir's bitstream. The product known today as "fibre to the home (FTTH)" also did not exist as a commodity in North Iceland. Users were therefore on some kind of "ADSL subscription service plan", which was configured as "ADSL" on the fibre-optic cable provided by Tengir. Of course, they also did not have access to standard copper ADSL services, as most were using either wireless systems from e.g. Emax or an ISDN dial-up connection. Tengir believes this sheds a clear light on why the situation on Market 3b is the way it is, and that the removal of obligations in the aforementioned municipalities must be done with care.

In the ECOI's opinion, Míla is significant market power in other municipalities in Tengir's service area, and Tengir agrees that obligations on these markets are necessary, incl. upholding the obligation that Míla not be permitted to revoke bitstream access that the company has already provided via local loops owned by other electronic communications companies.

Tengir believes, however, that this decision by the ECOI is based on the same reason that should underpin the decision that Míla must offer bitstream services over other operators' local loops if requested."

The ECOI's position

1213. The ECOI refers to its response to Tengir's comment in Chapter 6.3.2 above regarding the ECOI's assessment that there is effective competition in the municipalities in question.

1214. The ECOI has also responded to Tengir's comment in Chapter 7.5.2 regarding the obligation that Míla establish bitstream services on other providers' local loops. It should be reaffirmed that the ECOI took it under advisement to uphold the obligation on Míla to connect its equipment to Tengir's fibre-optic local loops and those of other network operators who may be in the same position as long as Síminn is not connected to said network operators' fibre-optic system in a given region. The purpose of this obligation, when it was imposed on

Míla by the ECOI 's decision in Case no. 5/2021, was to counteract the effects of vertical integration between Míla and Síminn. Even though the ECOI can still detect signs of vertical integration between Míla and Síminn it is clear that ownership has been terminated so there is consequently less vertical integration than before, although signs of it can still be seen. It is also clear that the severance of the ownership link between the companies that occurred on 15 September 2022 had the effect that the obligation was lifted by the Rulings Committee in Case no. 3/2021. For the above-stated reasons, the ECOI considered that this would be going too far in relation to the Office's authorisations to maintain the obligation in question. It is therefore uncertain whether such an obligation would stand up to scrutiny, as it is an extensive implementation of the access obligation.

1215. The ECOI stands by its conclusion regarding the three municipalities in Tengir's service area where the ECOI considers there to be effective competition on Market 3b. These are small municipalities where Míla's status is significantly different and weaker than in the municipalities where it is still considered to have significant power in Tengir's service area on Market 3b, incl. Akureyri, the most populous and important region.

11 Imposition of obligations on Ljósleiðarinn on Market 3b

1216. No comments were submitted on this section of the preliminary draft.

12 Imposition of obligations on Austurljós on Market 3b

1217. No comments were submitted on this section of the preliminary draft.

13 Entry into force and repeal of obligations

1218. No comments were submitted on this section of the preliminary draft.

14 Comments from additional consultations regarding specific changes in three municipalities

14.1 Fljótshreppur Municipality

14.1.1 Míla

Austurljós now designated as having significant power on Market 3b

1219. Míla's document on the second consultation contains comments on the additional consultation regarding specific changes in the final section of the document. It states the following about the municipality of Fljótshreppur:

Then Austurljós is now designated as a company with significant market power in Fljótshreppur on market 3b, but earlier this market had been considered to be in active competition in this municipality.

The ECOI's position

1220. Míla does not comment on the designation of Austurljós as an operator with significant power in the municipality on Market 3b, nor does the company comment on the lenient obligations that the ECOI intends to impose on Austurljós due to the small size of both the company and the municipality. The ECOI welcomes Míla's position and the acknowledgement that obligations are appropriate to companies' size and strength.

14.2 Súðavíkurhreppur Municipality

14.2.1 Míla

Effective competition

1221. Míla's document on the second consultation contains comments on the additional consultation regarding specific changes in the final section of the document. It states the following about the municipality of Súðavíkurhreppur:

"Míla was to be designated as having significant market power on both Markets 3a and 3b in Súðavík but the current plan is to assess the competition in that municipality as effective on the markets in question. This is most likely the case."

The ECOI's position

1222. In the ECOI's opinion, it is good that Míla is in agreement about the market circumstances in Súðavíkurhreppur.

14.3 Seltjarnarnes Municipality

14.3.1 Míla

Assessment of effective competition on Markets 3a and 3b remains the same in Seltjarnarnes

1223. Míla's document on the second consultation contains comments on the additional consultation regarding specific changes in the final section of the document. It states the following about the municipality of Seltjarnarnes:

"The additional consultation contains a revised discussion on the status of the competition in Seltjarnarnes in light of new data, but in the ECOI's opinion this does not change the situation in the municipality, i.e. that competition is effective on both markets.

The reasoning regarding Seltjarnarnes can be summarised as follows:

40. Given the above, and in particular the good position in the associated retail market in this region and the high degree parallel distribution of fixed networks, the ECOI does not see reason, according to the current situation or forward-looking projections, to designate Ljósleiðarinn as having significant market power, despite the aforementioned increase in Ljósleiðarinn's market share in the first half of 2023. This can be explained by the reasons identified above, and the ECOI believes that this increase will slow considerably in the next months and that this trend will reverse to some or even a great extent during the latter half of the term of validity of this analysis. For example, there is a trend towards much greater parallel fibre-optic deployment than in most rural regions where Míla has significant market power. There is nothing to suggest that Ljósleiðarinn will be able to operate there without taking competitors, customers and consumers into consideration. Attempts to do so could have repercussions across the entire Capital Region if service providers such as Nova, Sýn and Hringdu were to increasingly turn to Míla. Considering Míla's financial strength, the company could also decide to deploy fibre-optics in the municipality at a faster rate than the current plans provide for. Should it decide to do so, the company could easily complete its fibre-optic deployment in that municipality within a year.

41. The ECOI therefore considers there to be effective competition on Market 3b in the municipality of Seltjarnarnes and that this will remain the case throughout the intended term of validity of this analysis, despite the aforementioned increase in Ljósleiðarinn's market share during the first half of 2023. This can be explained by the reasons identified above, and the ECOI believes that this increase will slow considerably in the next months and that this trend will reverse to some or even a great extent during the latter half of the term of validity of this analysis. Among other things, there is a trend towards much greater parallel fibre-optic deployment than in most rural regions where

Míla has significant market power. Obligations on Míla in this region will therefore be lifted.

Míla has serious reservations about this conclusion and the rationale behind it. Míla points out in its statement on the first part of the consultation draft that only 40% of the company's connections were on fibre-optics, which means that 18% of the connections in that region were on Míla's copper system. The odds that this 18% will switch to Ljósleiðarinn's network during the period of validity of this analysis are therefore overwhelming. Míla's position in Seltjarnarnes has weakened considerably from the beginning of last year and the number of local loops has decreased by 84 during this time. The total number of local loops in the region is the same as at the beginning of the year and Míla's share of Market 3a in the municipality is now 25%. In reference to the criteria on which the ECOI bases its designation of Míla in this analysis as an operator with significant market power in individual municipalities, it is clear that these criteria also apply to Ljósleiðarinn in the municipality of Seltjarnarnes, and that that company should therefore be considered to have significant power on that market. Míla reaffirms this view."

The ECOI's position

1224. The document on the second consultation regarding on specific changes in three municipalities review this trend in Míla and Ljósleiðarinn's market share in Seltjarnarnes up to mid-2023. As the ECOI notes, the significant decrease in the number of copper local loops in the first half of 2023 can be attributed to copper local loops without bitstream, and therefore the closure of the PTSN has already had an effect and should not be expected to recur, as such local loops no longer exist in the municipality. Criteria for trends regarding copper local loops were proposed in the consultation document, to which Míla made no comment. The ECOI also expects that the usage of Míla's fibre-optic network will stagnate at first during deployment, but will increase over time. The ECOI cannot in any way assume that all of Míla's customers on copper local loops will switch to Ljósleiðarinn's fibre-optics. Míla is deploying fibre-optics in the municipality, and it is reasonable to assume that the majority of consumers currently using copper local loops will transfer to Míla's fibre-optics, as there are limits to how much business Síminn can do with Ljósleiðarinn. The ECOI therefore does not expect Míla's position to weaken any further, at least not significantly, and over time it can be expected to improve as the company continues its fibre-optic deployment and usage of its networks increases. The VDSL rate was still 14% by mid-2023, thus it was not the case that all consumers were demanding to immediately switch to fibre-optics even though Síminn now offers such connections through Ljósleiðarinn in areas where Míla has not deployed fibre-optics⁷³.

1225. It is clear that many factors are taken into consideration when assessing the situation in the municipality, though Míla does not provide any examples of municipalities to which it refers in comparison to the situation in Seltjarnarnes. None of the municipalities in which Míla is designated as being in a market-dominant position is part of the Capital Region or similar regions of urban sprawl, i.e. where the boundaries between municipalities are unclear. In no municipality where Míla is designated as being in a market-dominant position is the retail

⁷³ Síminn is by far the largest buyer of VDSL from Míla and purchases about [...] % of connections.

market comparable to the situation in Seltjarnarnes. In no municipality where Míla is designated as being in a market-dominant position is the competition as strong as Míla faces in Seltjarnarnes. The ECOI sees no evidence that market conditions in any municipality or group of municipalities that constitute one geographical market in which Míla is designated as being in a dominant position are comparable. The ECOI also believes that Míla is fully capable of competing with Ljósleiðarinn in Seltjarnarnes. The ECOI does not believe that Ljósleiðarinn can operate without regard to its competitor or consumers despite the fact that its current market share in the area is high.

Míla

The ECOI has already established that the municipality of Seltjarnarnes is considered an independent geographical market. Accordingly, and in accordance with the legal definition of a geographical market, this market comprises a region in which the competitive conditions are sufficiently homogeneous and can be distinguished from regions where competitive conditions are significantly different.

The ECOI's reasoning for not designating Ljósleiðarinn as having significant market power is, on the other hand, partly due to the great similarity that the ECOI believes there to be between the aforementioned municipality and the greater Capital Region, incl. the fact that attempts at unscrupulous behaviour "could have repercussions across the whole Capital Region if service providers such as Nova, Sýn and Hringdu were to increasingly turn to Míla". Simply put, this reasoning is somewhat paradoxical, considering that the ECOI has decided to define the municipality of Seltjarnarnes as an individual geographical market.

The ECOI's position

1226. What distinguishes Seltjarnarnes from other municipalities in the Capital Region is that there Ljósleiðarinn has been in operation there the longest, its market share there is greater than elsewhere in the Capital Region, and Míla's fibre-optic coverage is least extensive. For this reason, it was decided to examine this municipality separately instead of including it with other municipalities in the Capital Region (outside Kjósarhreppur) where companies' overall deployment and market share has been studied. If such an approach had been taken, the result would have been the same and this municipality would not possibly have been included in the market in which Ljósleiðarinn has significant power. The ECOI, on the other hand, believed that the method chosen, i.e. to examine Seltjarnarnes independently, was more transparent than including it in a larger region.

1227. Seltjarnarnes was therefore considered separately, as were many other municipalities, and the ECOI concludes that there is effective competition in that municipality, though this would not have been as immediately clear as if the municipality were to have been considered within the same geographical market as the Capital Region (with the exception of Kjósarhreppur). This approach does not prevent the ECOI from examining all the factors that may affect the market, including its proximity to Reykjavík.

Míla

“Similarly, it is absurd to believe that Míla’s “expansion plans” during the period of validity of this analysis would move the situation on the market in the way that the ECOI assumes. These plans are still severely limited and proposed under heavy reservation. Plans to decommission copper loops on the one hand and to deploy fibre-optic networks on the other, for example, are also not comparable. It should also be pointed out here that, looking only at the few properties in Seltjarnarnes in which Míla has deployed fibre-optics, its usage is only 27% (and has remained low for a long time), thus the benefit of launching a large-scale deployment effort is limited, incl. considering Sýn’s strong position and the fact that it has incentive to direct its business to Ljósleiðarinn.”

The ECOI’s position

1228. Connections via Míla’s fibre-optic local loops are increasing steadily in the municipality and the ECOI sees no reason to believe that this trend will stop. The ECOI considers Míla’s usage very acceptable, considering that the company is deploying fibre-optics in the municipality after other network operators who installed cables throughout the municipality long time ago, as stated in the additional consultation, dated 29. November 2023. The nature of the matter is that as soon as new fibre-optic local loops are available for purchase, the usage rate falls, as connections to new local loops will not be made until somewhat later. As a result, this measure often drops or fluctuates greatly during fibre-optic deployment. Usage was of course very low initially when Ljósleiðarinn deployed fibre-optics throughout the entire municipality in a coherent project. While it will take time for Míla to deploy fibre-optics in the municipality and is not likely to complete the project during the period of validity of this analysis, the fact that such a strong company with the infrastructure that Míla has in the municipality, as well as its plans for widespread fibre-optic deployment, affects the competitive pressure on this market and Ljósleiðarinn’s opportunity to operate without regard to its competitor or users.

Míla

“The ECOI assumes that ‘considering Míla’s financial strength, the company could also decide to deploy fibre-optics in the municipality at a faster rate than the current plans provide for’ and that ‘should it decide to, the company could easily complete its fibre-optic deployment within a year’”. This methodology of ignoring actual expansion plans and focusing instead on theoretical possibilities is not only on opposition to the emphasis of the ECOI’s earlier administrative practices, but is also at odds with the ECOI’s argument for the claim that Míla should be designated as having significant market power in a large number of municipalities in which Ljósleiðarinn or Tengir theoretically “could”, just like Míla, without consideration. The aforementioned violates the principle of non-discrimination.”

The ECOI’s position

1229. Here the ECOI is not claiming that Míla intends to deploy fibre-optics faster than planned, and the ECOI’s assessment does not at all ignore Míla’s actual expansion plans. The

ECOI is only pointing out Míla's financial strength which has been discussed in this analysis and, in the ECOI's opinion, is unmatched by any other electronic communications companies on the market. As the ECOI states, Míla aims to have achieved [...] fibre-optic deployment by the end of 2024, according to the company's expansion plans. The ECOI believes that Míla is capable of deploying fibre-optics throughout Seltjarnarnes within the period of validity of this analysis, should the company choose to.

Míla

“Furthermore, the ECOI's assessment of Míla's financial strength compared to that of Ljósleiðarinn calls for further examination. Míla points out that net cash from operations is one key metric for assessing a company's financial position. However, it suggests how much net cash is generated by day-to-day operations and, as a result, serves as an indicator of the company's fiscal capacity and whether the company is prepared to finance its growth. Net cash from operations constitutes 77% of Ljósleiðarinn's revenue, as opposed for only 48.6% of Míla's. This all suggests that Ljósleiðarinn could in fact spend a higher proportion of its revenue on investments, interest payments and amortisation.

Investment is one foundation of the operations of the companies under examination here, therefore EBIT and EBIT% must also be taken into consideration when looking at the companies' profitability. Ljósleiðarinn's EBIT% is higher, which is also an indication of greater profitability. This is possibly due to the fact that Ljósleiðarinn is vertically integrated and belongs to the Reykjavík Energy Group, which is majority-owned by the city of Reykjavík.

Any comparison between the two companies must take into account the fact that Míla is no longer vertically integrated with Síminn. Ljósleiðarinn, however, enjoys a synergy effect as a subsidiary of Reykjavík Energy and therefore receives various services from its parent company which, by virtue of its size, receives better terms. This must be taken into account as well as the fact that Ljósleiðarinn receives all support services from its parent company and therefore has no specific human resources, financial or accounting departments, etc.

Ljósleiðarinn has an equity ratio of 40% as of 30.06.23 [...]. A company's capital structure is actually a policy set by the owner, thus it is always up to the owner to decide the extent to which the company is leveraged. Ljósleiðarinn has been in a very heavy investment phase and will now have considerable capacity to direct investments elsewhere now that the company has achieved full coverage in the greater Capital Region and beyond. The ECOI has noted that development in the telecommunications sector is largely financed by borrowed funds. Furthermore, a much higher percentage of Ljósleiðarinn's revenue than Míla's is in the form of net cash from operations. Ljósleiðarinn should therefore be able to finance investments through operations. Thus, it appears that Ljósleiðarinn's board of directors has decided to leverage the company or establish a financial structure that allows it to invest faster and to a greater extent. The ECOI should naturally take all of this into consideration when assessing the financial strength of the two companies and the possible effects on expansion plans, market power, etc.”

The ECOI's position

1230. Míla is correct that net cash from operations is one key metric in assessing companies' financial strength and serves as an indicator of a company's fiscal capacity to finance its growth. However, the ECOI wishes to state that an assessment of companies' financial strength must be based on more indicators than net cash from operations alone, e.g. equity ratio and net interest-bearing debts divided by EBITDA. Míla's comment states that the 77% of Ljósleiðarinn's revenue in the year 2022 was in the form of net cash from operations, while Míla's was 48.6%. The percentage Míla identified for Ljósleiðarinn is wrong, and was instead 70.3% for 2022 and not 77%. The ECOI would like to point out that a comparison of electronic communications companies' financial strength for the year 2022 may not accurately reflect Míla's net cash from operations, as the company's annual financial statement for that year specifies that costs from sales and operations were higher than for the previous year due to one-off costs of reorganisation. A comparable percentage for Míla for the year 2021 is 63.8% and 73.3% for Ljósleiðarinn. The difference between the two companies is therefore significantly smaller than what Míla indicates for this metric when looking at the year 2021. The ECOI does not yet have these figures for 2023.

1231. Míla's comment states that Ljósleiðarinn's EBIT% was higher than Míla's and implies that this is due to the fact that Ljósleiðarinn is vertically integrated and a part of the Reykjavík Energy Group, and therefore enjoys better terms in the form of services from its parent company which, by virtue of its size, enjoys better terms itself. The ECOI denies this and points out that, according to Article 10 of the Electronic Communications Act, Ljósleiðarinn is financially separate from Reykjavík Energy's other activities as if it were an unrelated company, and consideration should be given to the fact that competitive operations such as Ljósleiðarinn's are not subsidised by other activities of Reykjavík Energy, which enjoy exclusive rights or special privileges in sectors other than telecommunications. All transactions between the companies are on market terms and in the ECOI's assessment of the financial separation of Ljósleiðarinn within the Reykjavík Energy Group for the 2018-2020 period, cf. the ECOI Decision No. 1/2022. The aforementioned the ECOI decision also specifically considered the pricing of various resources to Ljósleiðarinn from Reykjavík Energy. The assessment concluded that transactions between Reykjavík Energy and Ljósleiðarinn were the same as between unrelated entities.

1232. At the end of its comment, Míla points out the Ljósleiðarinn, having achieved full deployment throughout the greater Capital Region and beyond, has considerable capacity to direct its investments elsewhere. Particularly because a higher percentage of Ljósleiðarinn's revenue is in the form of net cash than Míla's, Ljósleiðarinn is therefore able to finance its investments from its operations. Regarding Ljósleiðarinn's expansion plans and its ability to invest, the ECOI would like to reiterate its earlier statement that there is some uncertainty surrounding these plans, as the company is highly leveraged, e.g. after acquiring Sýn's trunk network, and the company plans to increase its share capital later in 2024 in order to strengthen its capital structure and for investment purposes. Ljósleiðarinn's investment capacity is therefore subject to a degree of uncertainty as long as the company has yet to increase its share capital.

Míla

“It should also be noted that Sýn is by far the largest retail player on the market in question, with a share of approx. 40%. As a result of the aforementioned agreement with Ljósleiðarinn, Sýn seems to have an explicit interest in end users using Ljósleiðarinn’s connections rather than Míla’s. This is reflected in the fact that Sýn’s access charge to connections on Míla’s fibre-optic local loop is 12.5% higher than on Ljósleiðarinn’s systems. This naturally decreases Míla’s competitiveness and its incentives. With respect to Sýn’s position, it is misleading to repeatedly discuss Síminn’s “strong position”.

As mentioned before, Míla is aware that Sýn has increasingly transferred its customers from Míla’s fibre-optics to Ljósleiðarinn’s. There are even examples of this having been done without the end user’s knowledge, under the pretext of a service visit by a Vodafone employee for the purpose of improving internet connection. Míla’s Optical Network Terminals (ONTs) have also been taken down during these visits. Vodafone’s recent price changes confirm the company’s emphasis in this respect and the fact that the company’s interests are to have as many customers as possible connected to Ljósleiðarinn’s system. Vodafone’s website explicitly states that Míla’s internet connection is more expensive than other distributors’.

Míla also recalls that the basis of the Regulation on market analysis is that “a very high market share, i.e. over 50%, of one company over a period of time is considered a strong indicator of significant market power, except in exceptional cases”. Ljósleiðarinn’s market share is far greater than 50% on both markets. The burden of proof here, i.e. that Ljósleiðarinn should all of a sudden no longer be regarded as having significant market power, therefore rests on the ECOI. The ECOI has not yet shouldered that burden. Reference to the Energi Ikast Fibernet case is far from applicable here, as that company is not the largest fibre-optic network operator in its respective country, as is the case with Ljósleiðarinn.”

The ECOI’s position

1233. The ECOI is aware of Sýn’s retail market share in Seltjarnarnes and is well documented in the ECOI’s consultation. The ECOI was referring to Síminn’s strong retail position in general, as Síminn’s market share is 41% nationwide and 37% in the Capital Region. As the ECOI states, Síminn’s market share is lower in Seltjarnarnes, or 32%. Seltjarnarnes is one of very few municipalities in which Síminn does not have the highest retail share of the market in question, and the only municipality in the Capital Region where this is the case. As has been noted, Seltjarnarnes was the first municipality in which Ljósleiðarinn completed full fibre-optic deployment. The ECOI believes that, historically, this is because those of Síminn’s customers who chose fibre-optics over VDSL had no other choice than to switch to Sýn while Síminn was not purchasing fibre-optics from Ljósleiðarinn and Míla did not offer fibre-optic connections at all in the municipality. This has since changed and Síminn’s market share in Seltjarnarnes has increased in recent months after Síminn began purchasing fibre-optics from Ljósleiðarinn and Míla began installing fibre-optic cables in the municipality. Nationwide market power is certainly relevant, as consumers generally remain with their service provider

if comparable services are available, and often stay with the same provider after a move. The ECOI believes that, over time, the situation in Seltjarnarnes will be the same or at least similar to elsewhere in the Capital Region.

1234. Regarding Sýn's behaviour and the transfer from Míla's network to Ljósleiðarinn's, it is clear that both Sýn and Síminn have agreements that obligate the companies to a minimum purchase from their suppliers. As stated by the ICA, the duration of Sýn's agreement with Ljósleiðarinn is shorter and stipulates a lower minimum purchase rate than Síminn's agreement with Míla. It is clear that these agreements affect competition on the market. Míla's description lines up with Tengir's complaints about transfers from Tengir's network due to the agreement between Míla and Síminn, and also demonstrates how Síminn can easily transfer customers from Ljósleiðarinn's fibre-optic local loops over to Míla's where they exist. However, it is worth mentioning in this context that Sýn's retail market share has recently fallen behind in Seltjarnarnes.

1235. The context of the ECOI's discussion of Energi Ikast was that, in the case of a duopoly, it is not possible to look at a 50% market share in isolation, and various other factors must also be taken into consideration.

1236. Despite Ljósleiðarinn's high market share in Seltjarnarnes, the ECOI does not believe that the company can operate in this small market area without taking competitors, customers and consumers into account. The ECOI has made a detailed and thorough argument for this conclusion in this market analysis. The ECOI believes that Míla's increased fibre-optic deployment in the municipality will bring the situation in Seltjarnarnes closer to elsewhere in the Capital Region.

1237. The ECOI also points out that the new Electronic Communications Act requires the ECOI to consider incentives for investment. The ECOI believes that it should be very careful in imposing burdensome obligations on operators that have taken the risk of investing in new infrastructures in competition with former telecommunications monopolies who had a 100% market share when efforts began to dissolve the monopoly and promote competition. It is not in keeping with the incentive to invest to penalise that operator, especially where there is competition that has every possibility of increasing. The success of such an operator can be seen more as an indication of lower barriers to entry in the region in question rather than that a new operator has gained a dominant position.

14.4 Vopnafjarðarhreppur Municipality

14.4.1 Míla

Mila's unchanged position as an entity with significant market power on Market 3b

1238. Míla's document on the second consultation contains comments on the additional consultation regarding specific changes in the final section of the document. It states the following about the municipality of Vopnafjarðarhreppur:

“Competition was assessed as active on Market 3a in Vopnafjarðarhreppur, and the plan is now to designate Tengir as a company with significant power on the market in question in the municipality. Míla’s status as a company with significant power on Market 3b in Vopnafjarðarhreppur remains unchanged.

As far as Vopnafjörður is concerned, no special consideration supports the claim that Míla should continue to be regarded as having significant power on Market 3b, and Míla assumes that that factor was not, in fact, examined particularly in the additional consultation. Here Míla reiterates all previous arguments.”

The ECOI’s position

1239. The ECOI sees no reason to change Míla’s designation as a company with significant power on Market 3b in Vopnafjarðarhreppur, as the company’s market share was 95% in mid-2023. The ECOI refers to its discussion in Chapter 6.3.43.

15 Comments from the third consultation

1240. Míla and Tengir submitted comments during the third ECOI consultation, which took place between 23 January and 6 February 2024. These comments were in large part reiterations of earlier comments that were not relevant to the topics under discussion in the third consultation. These comments are left unanswered, and reference is made to earlier responses regarding those issues.

15.1 Míla

Amendments to the ECOI's assessment of significant market power on Market 3b in Rangárþing eystra

1241. Paragraphs 5 and 6 of Section 2 of Míla's comments on the third consultation state:

"Míla does not comment on the amendments to the assessment of significant market power on Market 3b in Rangárþing eystra.

However, Míla considers it appropriate to comment on the fact that a third consultation was held concerning this municipality. Míla believes that if the ECOI had properly analysed the data already available, the conclusion regarding the assessment of significant Market power on Market 3b in Rangárþing eystra would have been presented in the consultation published on 29 November 2023.

The ECOI's position

1242. The latter paragraph of Míla's comment is not relevant to the topic of the consultation, but the ECOI believes it reaffirms the fact that Míla is in agreement as concerns Rangárþing eystra.

Amendments to the assessment of Ljósleiðarinn's and Tengir's status as wholesale-only undertakings

1243. Paragraphs 7-11 of Section 3 of Míla's comments on the third consultation state:

Míla does not comment on the amendments to the assessment of whether Ljósleiðarinn and Tengir are considered wholesale-only undertakings.

Míla does, however, comment on the ECOI's procedure in this regard. The ECOI should have requested lists of the aforementioned companies' customers at the same time as it requested such a list from Míla earlier in 2023. Had the ECOI properly fulfilled its investigative duty in this respect, it would not have been necessary to enter into a third/additional consultation on this matter. This caused even further delay in a case that has already been delayed unduly.

Míla also expresses serious concern about the ECOI's reasoning for not considering Míla to be a wholesale-only undertaking in the sense of Article 59 of the Electronic Communications Act. Míla has already submitted detailed comments in this

regard. In addition, Míla also comments on the statements regarding Míla's customers that appear in the ECOI's third consultation document. Míla particularly objects to the claim that Míla's business with the 13 companies/entities that the ECOI denotes with a yellow highlight in the Excel document sent to Míla on 25 January 2025 can be regarded as retail market activity that provides electronic communications services to end users, and that for this reason the relevant conditions of Article 59 are not met. [...] . Explanations of and comments on each of these 13 companies and agencies are presented in the accompanying ECOI Excel document. Míla deems it appropriate to point out the ECOI's statutory investigative duty.

Many of these business relationships were established many years ago, even during the time of Míla's predecessor. For years, Míla has been under obligation to provide electronic communications companies with access to its systems and services. When companies such as these have expressed a wish to do business with Míla, Míla has looked to the list of registered electronic communications companies that the ECOI maintains and has published for years. When implementing obligations on Míla, the ECOI has never emphasised that Míla must ascertain that its customers are actual electronic communications companies, i.e. that the ECOI's list is not the correct criteria in that respect, let alone that they pay operating fees to the State as would electronic communications companies.

In addition to this, the Code makes clear that wholesale telecommunications undertakings providing services to large businesses, i.e. larger than small and medium-sized enterprises, should be regarded as wholesale-only undertakings, cf. the final sentence of Article 208 of the Code: "An undertaking active on a wholesale market that supplies retail services solely to business users larger than small and medium-sized enterprises should be regarded as a wholesale-only undertaking." As stated in the meeting between Míla and the ECOI on 5 February, the ECOI's assessment of which businesses may be considered large companies in this sense takes into consideration the definitions of the Annual Accounts Act No. 3/2006. In view of this, it is very surprising that the ECOI refers to companies such as [...] and, without further justification, states that Míla's business with these companies mean that the aforementioned criteria of Article 59 are not satisfied. Míla deems it appropriate to once more point out the ECOI's statutory investigative duty.

The ECOI's position

1244. First of all, the ECOI notes that it was the ECOI's preliminary conclusion in the second consultation that Míla did not fulfil the criteria of Paragraph 1, Article 59 of the Electronic Communications Act, cf. Article 44 of the Regulation on market analysis in the field of electronic communications on account of the ownership requirement, as Ardian, Míla's majority owner, owns electronic communications companies within the EEA that operate on the retail market. For that reason alone, Míla cannot be considered a wholesale-only undertaking in the sense of the provisions. Here Míla is commenting on another condition that the ECOI does not consider Míla to fulfil. That unto itself does not impact the conclusions of the analysis for the aforementioned reason.

1245. The ECOI, on the other hand, objects to the claim that it has failed to perform its investigative duty. By providing Míla with preliminary results for consultation, comments and objections, the ECOI has conducted an investigation. The case is under investigation until concluded with a final decision.

1246. Furthermore, registration with the ECOI following a company's general notification of the intention to commence telecommunications operations and the general authorisation that such registration involves, is not a guarantee that operations in the electronic communications sector has actually begun, nor is it a guarantee that the operations for which the company is responsible includes electronic communications services that are sold on the general market. The ECOI also suspects that companies register with the ECOI for the sole purpose of getting on the list and reaping the benefits of wholesale business with Míla and other wholesale operators. This system, which replaced the previous licensing system, makes it difficult for the ECOI to reject such registration as well as being unclear about the ECOI's legal authority to deregister companies, that have put themselves on the list, against the wishes of the company in question. Deregistration has been done with the consent of or in consultation with the entities in question.

1247. Furthermore, collection of an operating fee is generally a better metric although not universally valid, as companies that do not report their own sales turnover can avoid paying operating fees until the ECOI becomes aware of this and consequently monitors the company's behaviour in this regard. The fact that the company does not pay an operating fee normally means that the company in question does not actually sell any electronic communications services or network access.

1248. It is clear that a wholesale-only designation is very beneficial to a company with respect to the obligations that the regulatory authority is allowed to impose on such a company should it be determined to have significant market power. This is an escape clause and Article 59 must therefore be interpreted narrowly. Should a company wish to obtain such a designation, no one is better suited than the company itself to mind who it sells services to and for what purpose. The most obvious aspect of a company's sales operations where it is possible to keep track of such things is the business relationships and management for which managers and sales representatives who are in direct contact with customers are responsible.

1249. It is evident from the preamble to the Code and the relevant paragraphs that the purpose of the wholesale-only designation is to provide competitors of former monopoly rights holders, who on a European basis are vertically integrated companies, with increased competitive leeway by e.g. strictly limiting obligations for price control and transparency. It must also be noted that new companies' success in competition with previous monopoly rights holder is more an indicator that barriers to entry to the market in question are low than of the fact that a new company has gained significant market power and can operate without regard to customers and competitors, although this can be the case, as the ECOI concludes regarding Ljósleiðarinn and Tengir on some geographical markets.

1250. Regarding the reference to Paragraph 208 of the preamble to the Code, which states that business by wholesale operators with large undertakings that are not considered to be electronic communications companies does not constitute non-compliance with Article 59, it can be said that the aforementioned exception does not fall under the clearly worded Article

80 of the Code, nor previously mentioned provision nor Article 44 of the Regulation. It is therefore unavoidable for ECOI to consider that this exception does not have validity in Iceland.

1251. Despite the above, it is clear that Míla does business with companies that are not considered electronic communications companies.

Míla's incentives as a wholesale undertaking and the ECOI's statutory obligation to not discriminate against electronic communications companies when imposing obligations

1252. In Sections 4 and 5 of its comments on the third consultation document, Míla reiterates its previous comments that the ECOI intends to impose obligations on Míla in excess of what is allowed to be imposed on a wholesale-only undertaking.

The ECOI's position

1253. Refer to the ECOI's previous responses on those topics, e.g. Chapter 8.2.1.

Amendments to the obligation's entry into force and implementation of the obligation on new operators to report groundworks projects

1254. Chapter 6 (5 sic) of Míla's comments on the third consultation document states the following:

"The aforementioned amendment to the obligation's entry into force and the implementation of the obligation on new operators to report groundworks projects is a further example of discriminatory imposition of obligations on electronic communications companies in a comparable position. The ECOI has thus announced, "with consideration to fairness and proportionality", that obligations on Ljósleiðarinn and Tengir to report groundworks projects will not take effect until 6 months after the Decision following this market analysis enters into force.

Míla vehemently contests this discrimination, particularly when taking into account the fact that Míla has never been granted such an adjustment period when new obligations are imposed. Míla also points out that publishing these announcements is relatively simple. The companies in question, Ljósleiðarinn and Tengir, have both made agreements with Míla to share groundworks projects, so these companies are familiar with the practice and such an agreement is already in place. Míla therefore sees no justifiable reason for introducing an adjustment period, especially if the purpose is to ensure competition, as in practice, this results in the year's projects to be outside the scope of such obligations."

The ECOI's position

1255. The aforementioned obligation is already in effect on Míla and it is incorrect to assert that a new obligation has been imposed on the company. On the contrary, it has been significantly relaxed; the grace period between the date of notification and the beginning of the project has been significantly shortened and the obligation's scope of application reduced such that it does not apply in areas where another operator owns infrastructure that can be used in competition with Míla for fibre-optic network access.

1256. The other two companies on which this obligation is to be imposed have never before had significant market power. The obligation is therefore indeed new where those companies are concerned. Agreements for the shared use of groundworks projects that have been made on market grounds can be of use to the companies concerned, though the companies' experience of these agreements has been mixed. The ECOI is therefore of the opinion that earlier agreements for the shared use of groundworks projects are of limited use as a precedent for negotiations.

1257. Since the period in which groundworks projects can be undertaken is relatively short in Iceland, i.e. primarily from spring until autumn, it may negatively impact new operators to impose such an obligation shortly before the construction period begins and when preparations are fully underway. In accordance with the principle of proportionality when imposing obligations, the ECOI considers it reasonable to afford new operators a fairly lenient adjustment period where this obligation is concerned. The purpose of this obligation is not to jeopardise fibre-optic deployment, but the ECOI believes that this adjustment period grants the companies sufficient opportunity to prepare for the obligation without compromising plans that have already been made.

15.2 Tengir

New provisional decision needed

1258. Tengir's comments on the third consultation state the following on page 1 of the company's comments:

"Tengir does not consider it necessary for the ECOI to make a new provisional decision in order to eliminate potential legal uncertainty, and it is clear that the previous market analysis and related obligations remain in effect pursuant to Article 48 of Regulation no. 556 on market analysis in the field of electronic communications. Article 49 of the Regulation also states that the ECOI is authorised to impose new obligations as well as to amend or abolish existing ones without full market analyses if adequate justification is provided."

The ECOI's position

1259. The ECOI welcomes the position Tengir describes here, which supports the ECOI's opinion that the articles of the Electronic Communications Act dealing with market analysis and obligations are clear on the fact that there can never be a period of time in which obligations aren't in place, and older obligations apply until they are replaced via a new decision made on the basis of a new market analysis. The ECOI is of the opinion that the Rulings Committee for Electronic Communications and Postal Affairs confirmed this

understanding with its decision of 20 December 2023, whereby the Committee dismissed complaints by Míla and Ljósleiðarinn regarding the ECOI's provisional decision of 15 September 2023.

Updated assessment of whether Tengir is considered a wholesale-only undertaking

1260. Tengir's comments on the third consultation state the following on page 1 of the company's comments:

"The ECOI has had a change of opinion and no longer considers Tengir to fulfil one of the conditions of Article 59 of the Electronic Communications Act, i.e. the one pertaining to conduct.

Tengir believes it qualifies as a wholesale-only undertaking based on prior discussions and the ECOI guidelines regarding what counts as a wholesale and retail market, incl. the fact that Tengir sells fibre-optic local loops that normally belong to the wholesale market to end users on the retail market, despite the fact this is considered a wholesale product according to market analyses. Article 59 of the Electronic Communications Act assumes that a company does not operate on any retail market for electronic communications services, and refers to the connection as such rather than actual service. Tengir does not offer internet, television or telephone services. In cases where Tengir provides bitstream services on the company's network, the company does not have significant market power and is therefore not subject to Article 59. Tengir charges end users an access fee directly, which also is not considered sale of electronic communications services on the retail market pursuant to Article 59. Tengir therefore disagrees with the ECOI's change of position and expresses concern that this position results in obligations that the company cannot shoulder in the difficult competitive environment of its area of operation. As a result of this change, however, the ECOI will examine the imposition of obligations in accordance with Article 47 of the Electronic Communications Act. Tengir believes that the proposed obligations on the company are partly in accordance with the access obligation as described in Article 47 which covers, among other things, access to ducts and conduits and the announcement of proposed projects. Article 48 of the Act states that obligations pursuant to Article 47 shall be regarded as a more lenient remedy before a decision is taken regarding the imposition of obligations provided for in Article 48, though the ECOI does not believe that they suffice on their own."

The ECOI's position

1261. All retail electronic communications services are taken into account when assessing whether a company is considered wholesale-only pursuant to Article 59 of the Electronic Communications Act. Retail services taken into account are not limited to internet service, IPTV, phone service or other services that rely on wholesale products on Markets 3a and 3b. The ECOI also looks at retail services that derive from other wholesale markets, e.g. the market for terminating segments of leased lines. According to the data about Tengir's business available to the ECOI, it is clear that a portion of Tengir's customers in electronic

communications services cannot be considered to provide services to end users. As a consequence, sale to the companies in question counts as retail of electronic communications services.

1262. Refer to the discussion below regarding the imposition of obligations for access to buildings and structures.

Obligation according to Article 47 of the Electronic Communications Act

1263. Tengir's comments on the third consultation state the following on page 1 of the company's comments:

"If the ECOI deems it necessary to impose obligations on Tengir, the company believes great caution should be exercised in doing so. Article 47 makes it possible to impose an obligation on a company's infrastructure for access to buildings/structures or parts thereof. The purpose is to enable smaller electronic communications companies to install networks without having to dig ditches or build special facilities. It is understood that obligations under this Article can be useful in the development of new telecommunications networks, i.e. in neighbourhoods and places where there are no existing networks. [...] It is therefore important that electronic communications companies share the use of construction projects to the greatest extent possible when installing networks, to reduce both investment costs as well as the disruption and inconvenience associated with construction. An obligation on Tengir that allows companies like Mila, who has extensive infrastructure at its disposal throughout Tengir's area of operation, would go against the Regulation's objective to promote the development of new high-speed networks and increase competition between networks."

The ECOI's position

1264. The ECOI considers it necessary in order to fulfil the objectives of the Electronic Communications Act, including promoting fibre-optic deployment in areas where this has not been done, as well the development of parallel fibre-optic networks in areas where such may prove advantageous, to impose on Tengir an obligation to comply with reasonable requests for access to structures including ducts and conduits pursuant to Article 47 of the Electronic Communications Act in those geographical markets where the company has significant market power in Market 3a. Given its importance, the ECOI does not consider this obligation excessive, though it would of course only apply in those regions where Tengir has significant market power.

1265. The ECOI's initial assessment concluded that, on the basis of Item g, Paragraph 2, Article 48 of the Electronic Communications Act, it was possible for the ECOI to impose on Tengir an obligation for access to hosting and shared usage of associated facilities. The ECOI is therefore of the opinion that this is not an unreasonable amendment to the implementation of obligations.

1266. It is evident in the implementation of the obligation in Chapter 9.3.2.3 that Tengir must comply with a request by an electronic communications company to install a new cable in ducts and conduits owned by Tengir that are not fully used, on the markets under discussion here and in regions where Tengir is considered to have significant market power, provided that the request is fair and reasonable. The ECOI can decide on whether the network operator's request for access to Tengir's ducts and conduits is deemed fair and normal, should a dispute arise on that issue between Tengir and the network operator in question.

1267. Furthermore, it is stated that the aforementioned obligation must not, however, impede Tengir's normal usage of its infrastructure or the company's fibre-optic deployment. If Tengir has formally announced fibre-optic deployment in the aforementioned area with at least three months' notice, the priority given to parties requesting access does not apply. Tengir must then specify exactly which addresses are involved and the timing of the project.

1268. [...]

Repeal of the cost analysis obligation on Míla for access to ducts and conduits in Fjallabyggð

1269. Tengir's comments on the third consultation state the following on page 2 in the company's comments:

"Pursuant to Article 30 of the Regulation on market analysis, proportionality in the imposition of obligations must be prioritised when choosing the method that causes the least disruption when handling problems identified in the market analysis. [...] Given how high-speed network development has progressed in Fjallabyggð and how little progress has been made in the population centre of Sigjufjörður, Tengir does not see any reasoning behind the proposed repeal of the cost analysis obligation on Míla for access to ducts and conduits in the municipality. The ECOI bases its decision on the fact that there is considerable parallel fibre-optic deployment in Fjallabyggð, but Tengir does not believe that this is correct and is interested in examining any data that demonstrate this. The same applies to Norðurþing, where fibre-optic cables are to be installed in parts of Raufarhöfn. When the ECOI mentions parallel fibre-optics in Norðurþing, it is doubtlessly referring to Húsavík, where Míla owns almost all of the duct infrastructure that can be used for the installation of further fibre-optic cables. A large part of Tengir's fibre-optic network in Húsavík consists of cables in Míla's duct system, to which Tengir has purchased access. Tengir owns little unused duct infrastructure, but it is worth noting that Tengir has yet to install fibre-optics in a number addresses in Húsavík, incl. addresses where Míla has installed prior to the start of a formal partnership or that Míla kept out of contract."

The ECOI's position

1270. As indicated in the market analysis, Míla is subject to a less stringent obligation in these municipalities because parallel fixed-network deployment there is around or over 40%. Tengir's fibre-optic deployment in Fjallabyggð is about 46% and parallel fixed-network

deployment is 43%. In Norðurþing, the Company's fibre-optic deployment is 73% and parallel deployment is 60%.

1271. Míla is designated as market-dominant in these municipalities and is under an obligation for access to its ducts and conduits. An obligation for fair and reasonable pricing for access to ducts and conduits is also in effect in these municipalities, which the ECOI believes to be in accordance with the principle of proportionality.

1272. Tengir may therefore request access to Míla's ducts and conduits and Míla is required to provide this access at fair and reasonable prices.

Access to buildings and structures pursuant to Article 47 of the Electronic Communications Act.

1273. Tengir's comments on the third consultation state the following on page 2 in the company's comments:

"In a new consultation document, the ECOI states that obligations for access to buildings and structures pursuant to Article 47 of the Electronic Communications Act are also imposed on Tengir, in accordance with the obligations on Míla on Market 3a. This discussion in the consultation document is unclear. Tengir therefore disagrees that it is possible to compare the positions of Míla and Tengir as is done in the consultation document. As the ECOI is aware, the advantage difference between Míla and Tengir is significant in many respects. One of the most important is the difference in terms of access and control over trunk line connections. Another is that Míla owns a large amount of ground infrastructure and facilities in Northeast and East Iceland. [...]"

The ECOI's position

1274. The ECOI must examine whether obligations under Article 47 of the Electronic Communications Act are sufficient to address identified competition problems before imposing an obligation under Article 48 of the Electronic Communications Act on companies with significant market power. Because the ECOI's preliminary position was that Tengir met the criteria for a wholesale-only undertaking, Article 47 of the Electronic Communications Act was never considered, as only obligations under Articles 48 and 50 and the fair and reasonable pricing obligation may be imposed on wholesale-only undertakings, if deemed appropriate on the basis of the market analysis.

1275. Following comments from Míla, Síminn and Nova on the second consultation document, the ECOI requested customer lists from Tengir and Ljósleiðarinn. Those two companies were found to be engaging in retail activities; thus the ECOI amended its position. For the above reason, the ECOI decided it was necessary to assess whether obligations under Article 47 of the Electronic Communications Act would suffice as a moderate way to handle the identified competition problems. The conclusion was that this was not the case, and the ECOI deemed it necessary to impose access obligations under both Articles 47 and 48 of the Electronic Communications Act on Tengir. The reason for this is that the ECOI considers the obligation under Article 47 of the Electronic Communications Act to be important in order to

enable smaller electronic communications companies to deploy their own networks without having to undertake special construction projects. This obligation can thus be of use in the development of new telecommunications networks and help reduce the inconvenience caused by repeated construction.

1276. However, the ECOI does not believe that the obligation for access to structures addresses all of the identified competition problems, but Article 48 of the Electronic Communications Act states that the ECOI may stipulate that companies with significant market power comply with reasonable requests for access to and use of certain network elements and facilities if refusal of access or unreasonable terms and conditions are considered to inhibit the development of a sustainable competitive retail market and are not in the end user's interest.

1277. It should be mentioned here that the ECOI had already determined in the second consultation document that it was permissible to impose an obligation for access to hosting and related facilities, cf. Item g, Paragraph 2, Article 48 of the Electronic Communications Act. The implementation of the access obligation is therefore not much different from the ECOI's previous plans.

1278. The ECOI recognises that there is an advantage difference between Míla and Tengir in some areas, such as control over facilities, economies of scope, long-term contracts with Síminn, size and strength, access to financing, etc. The description of the ECOI's market analysis in Annex A, for example, discusses the fact that Míla controls facilities in telephone exchanges and equipment houses in many places around the country, which makes it difficult for other electronic communications companies to establish themselves. It is also clear that Míla is subject to heavier obligations than Ljósleiðarinn and Tengir in terms of cost-analysed pricing and non-discrimination. The ECOI is therefore of the opinion that the difference in the companies' positions has been taken into consideration in the imposition of obligations. The obligation only applies to those facilities over which the company has control.

Implementation of the proposed obligation for groundworks project sharing

1279. Tengir's comments on the third consultation state the following on page 3 of the company's comments:

"Tengir believes that the only possible way to implement the proposed obligation for groundworks project sharing is that it only apply to locations and areas in which there is no existing infrastructure or networks. The obligation can only apply to new telecommunications networks in new neighbourhoods and locations. [...] In light of numerous points of dispute, Tengir encourages the ECOI to implement the condition described herein in detail. Tengir must be able to fairly clearly determine when it is required to announce proposed projects. [...]"

The ECOI's position

1280. The consultation states the following regarding the obligation to report groundworks projects:

*“If the obligation for sharing groundworks projects is to be useful and reasonable in promoting fibre-optic network deployment and encouraging infrastructure competition, it must **not apply in areas where infrastructure, conduits, or ducts owned by any other electronic communications company than the dominant one are available** for the potential use by these companies in competition with the dominant one.”*

1281. The experience of development in new neighbourhoods has been that the infrastructure companies operating in the area in question install fibre-optic cables during the time of construction. The ECOI believes it is going too far if the obligation only applies to new networks in new neighbourhoods and locations; there is no lack of incentive for infrastructure companies to install parallel fibre-optic networks in these cases. The purpose of the obligation is to encourage competition in the development of infrastructure where there is no existing infrastructure that can be used for the deployment of fibre-optics. The ECOI is of the opinion that infrastructure competition is the most effective way to encourage long-term retail competition.

1282. The ECOI considers the obligation, as amended in the third consultation document and outlined above, to be sufficiently clear and therefore it is unnecessary to elaborate further. Furthermore, the ECOI is not able to anticipate every situation that may arise, but notes that parties may refer disputes to the ECOI for resolution.

Other comments from Tengir

1283. Tengir’s comments in paragraphs 6-8 and 10-12 of their document of comments reiterate comments submitted to the ECOI in earlier consultations and have been substantively answered in this document. The ECOI therefore sees no reason to repeat them here.