Appendix B

PÓST- OG FJARSKIPTASTOFNUN

Conclusions from consultation on the Preliminary Draft market analysis of the wholesale market for trunk segments of leased lines

(Market 14)

1 July 2015

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1 Introduction

This document contains a summary of the responses and comments received in relation to the Post and Telecom Administration (PTA) consultation on the Preliminary Draft of the market analysis of the wholesale market for trunk segments of leased lines (Market 14). The initial draft was presented to stakeholders for consultation on the Administration's website on 23 December 2014 and was completed 24 February 2015.

The following parties submitted comments on the Preliminary Draft.

- The Competition Authority
- Fjarskipti ehf. - hereafter named Vodafone
- Mila ehf. - hereafter named Mila

Comments are categorised by subject. Endeavours have been made to identify all significant comments and to answer them. At the end of each comment there is a short summary of the position of the PTA.

2 General comments

The Competition Authority said in its comments that the Authority's study of the Draft market analysis had been limited to the definition of the service market in question, on the geographical market and on those aspects that one could assume to be significant when assessing market strength of companies on the relevant market.

In the Draft, the market in question was defined in advance in accordance with the role of the PTA. The Competition Authority made no comments on the part of the Draft that it had examined and considered that the analysis had been well made and that it served its objectives.

The Competition Authority noted particularly that it agreed with the PTA on obligations that the PTA intends to impose on Mila.

It is however appropriate to state that the Competition Authority has the role of applying the provisions of competition legislation on the electronic communications market. The conclusion reached by the Competition Authority on definitions of markets and of the positions of companies is decided by events in each individual case. In the light of this, the Competition Authority would clearly not be bound by the methodology and the opinions expressed in the Draft when in the future it deliberates cases related to the market in question.

The position of the PTA

The Competition Authority (CA) comments support the PTA conclusions regarding the issues discussed in the comments. They therefore do not require further discussion in this document, except to note that the PTA considers that the comments in question undeniably lend weight to the planned conclusion. The CA for example agrees with the PTA that the geographical definition shall be the whole country. The CA furthermore agrees with the PTA on the planned conclusion of the Three Criteria Test, including the conclusion that the general rules of competition law alone are insufficient to adequately address the competition problems that have been identified on the relevant market. It is worthy of attention to note that the CA specifically states that it supports the obligations that the PTA plans to impose on Mila.

Vodafone agrees with the PTA assessment of the Mila position on this market and considers it important to maintain the obligations that the PTA intends to impose on the company.

Vodafone states that in its dealings with Siminn (which bore the obligations), the company had regularly found it difficult to have Siminn respect the obligations that

the company bore, that is to say with respect to delivery times of service. Vodafone considers it important, if the obligations in question are to be met, that conditions be imposed with respect to reaction time, replies and delivery of services. Up to this point in time, Siminn had had control of the development of the Siminn Group trunk line network, but now this was the remit of Mila, subsequent to the Settlement in question with the Competition Authority from 2013.

Vodafone considered it extremely important that the requirement for access and non-discrimination obligations constituted an obligation to take action. The electronic communications market was, as the PTA well knew, a very demanding market and important business opportunities could be lost were service not available or not given due attention. Vodafone considered it extremely important for the company that access to the trunk line network should not only be assured, as specified by the PTA Decision, but also that it be assured that access be provided in a timely manner, that is to say as quickly as possible.

In accompanying documents to its comments, Vodafone sent copies of requests that had not yet been processed by Mila. Vodafone considered it in the interests of all parties that delays should not be tolerated on the electronic communications market. Vodafone requested that the PTA examine whether it would be possible to ensure in some manner that delivery of service be assured more effectively.

The position of the PTA

Vodafone comments provide support for the PTA conclusions regarding the issues discussed in the comments. The PTA cannot however support the Vodafone request that the access and non-discrimination obligations should imply a specific duty to take action on the part of Mila, except to the extent that the access obligation constitutes a duty for Mila to accede to all normal and reasonable requests for service and connections without undue delay and the non-discrimination obligation obliges Mila to serve internal customers in the same manner as it serves external customers. According to the obligation for price control, such access shall be provided at a cost analysed prices. In addition to this Mila bears the obligation to publish a reference offer on its product offer on the relevant market. One could say that notifications with respect to planned civil works, the making of SLAs, of SLGs and the making and publication of key performance indicators constitutes the obligation to take action on the part of Mila. In addition to this the PTA is always prepared to process complaints received by the Administration and to issue decisions that test both the obligations in question and other obligations that it is planned to impose on Mila on the relevant market.

Accompanying documents to the Vodafone comments do not contain, in a direct and material manner, observations on the content of the PTA Preliminary Draft and for this reason they will not be discussed here.

In the introduction to its comments, Mila mentioned that a period of 8 years had now passed since the existing Decision on the market for trunk segments of leased lines was published. The Decision had been based on the first and only market analysis that has been made on the relevant market in this country and was based on the older ESA Recommendation which had then in reality been obsolete with respect to the relevant market. According to the laws and regulations that apply to market analysis it was normal practice to review market analysis at intervals of 2-3 years.

At the time that the Decision was made in September 2007 it was established, pursuant to the new Recommendation on the relevant market, that the relevant market was not considered to be among the markets deemed to require definition in advance. In the light of this fact, it was furthermore out of order that the PTA had allowed such a long period of time to pass as is the reality, before commencing review of market analysis for this market.

Changes have occurred continuously on the market for trunk segments of leased lines during the past years. During the time that has passed since the last market analysis there are thus many changes on the relevant market.

The position of the PTA

It is certainly true when Mila says that we are now in the eighth year since the Decision on the relevant market was published, in the autumn of 2007. The PTA considers it unacceptable for such a long period of time to pass between analyses, but there are various explanations for the delays. The PTA strongly emphasises that such delays should not be repeated.

The PTA is a very small institution in the European context which means that a small number of staff need to analyse a similar number of markets as do institutions with staffs in their hundreds abroad, where even dozens of employees are fully employed in handling market analyses and where specialisation is such that specific employees handle only one or a few types of markets.

The PTA needed to conclude analysis of 17 electronic communications markets in the years 2006-2008. This was subsequently followed by the substantial and time-consuming task of reviewing all cost analyses and terms of reference offers on most of these markets, in addition to having to settle various disputes related to these markets and to the analyses. Since 2009 the PTA has been working on the second round of market analysis of the various markets and the market here under discussion is the last in that sequence. When the Decision on this market is published there will be no market analysis, older than from 2011. The markets that where analysed in that year will now be reviewed this autumn. In parallel to these market analyses, the PTA

has continued review of the cost analyses and reference offers and has resolved related disputes.

With all of the above in mind it is clear that the PTA is approaching the point in time where one can consider the situation to be acceptable with respect to the age of market analyses.

Mila refers to the fact that laws and regulations on market analysis *generally* allow for review of market analysis at 2-3 year intervals. Market analyses are prescribed in Articles 16-18 of the Electronic Communications Act. The interval in question is not prescribed in that text. It is however prescribed in Paragraph 3 of Article 3 of Regulation no. 741/2009 on market analyses in the field of electronic communications that market analyses should generally be reviewed at intervals of no longer than 3 years. The EU electronic communications regulatory framework from 2009 which among other things, specifically prescribes that market analysis *shall* not apply for more than 3 years, has not been adopted in the EEA Agreement and thus does not apply in Iceland.

With the above in mind it is clear that the delay in reviewing the relevant market has no impact on the validity of PTA Decision no. 20/2007, nor on the market analysis here under discussion. As previously stated, the PTA nevertheless considers that such delays are unacceptable for Mila and for other parties to the market. In addition to this the PTA has provided arguments to show that such delays will not be repeated in the future and the Administration will make every effort to ensure that this is the case. There has been a decrease in the number of markets, PTA staff have acquired better knowledge and more experience of market analysis and it is less time-consuming to review market analysis on a specific market than to make such an analysis for the first time.

Mila is however right in saying that the older ESA Recommendation from 2004, where Market 14 was considered to be among markets that were generally deemed to need definition in advance, had become obsolete with respect to this market when the PTA Decision no. 20/2007, dated 14 September 2007, was published. The existing ESA Recommendation on the relevant markets is from 5 November 2008. In that Recommendation the market in question was not specified *per se* as a market generally deemed to need definition in advance. This does however clearly not mean that electronic communications regulatory bodies in specific states cannot deem there to be a need to maintain obligations on the relevant market if national circumstances would warrant this and it is clear that a considerable number of states still regulate this market today.

With the above in mind it is clear that the market in question was listed in the ESA Recommendation from 2004 which was in force when the PTA Decision no. 20/2007

was published. It was not until about 14 months later that the current ESA Recommendation from 5 November 2008 was adopted and published.

Finally, Mila mentions that much has changed since the PTA Decision in question no. 20/2007 was published, without supporting this assertion further at this stage of the comments. Mila is certainly right in saying that a number of things have changed on the market in question. There was little change in the former part of the period, that is from 2007-2011, at which point in time Vodafone received access to the NATO fibre-optic cable on the Fibre Optic Ring. Apart from Vodafone access to the NATO cable in question, local electronic communications companies, often owned by energy companies, have gradually expanded their networks, both first and foremost for the purpose of expanding local access networks. In order to be able to expand such access networks it can often be necessary to lay trunk lines where they do not already exist. The PTA refers however to the fact that one of the main criteria for measuring effective competition, that is to say market share, shows that in reality there have not been major changes with respect to competition status on the relevant market. The Mila market share has only dropped from [85-90%][1] to [75-80%][2] during the period that has passed since the last analysis. That analysis was based on statistics from 2005, which means that this is now a nine-year period. The Mila market share has thus only dropped by about [..][3] percentage points over 9 years which is well within [..][4] percentage point per annum, on average. The second largest parties, GR and Vodafone, only have about [5-10%] and [5-10%][5] market share respectively on a national basis. From this it is clear that Mila still has absolute dominance on the relevant market.

For further discussion on changes to the relevant market and for PTA arguments for continued designation as Mila as having significant market power and on the application of obligations, reference is made to Appendix A and to more detailed PTA discussion here below.

Mila considered that the PTA analysis of the market was not adequately supported by arguments and that the Administration's conclusions were not adequately based on the appropriate documentation. It was important that obligations imposed in Iceland should correspond to obligations elsewhere in Europe. The PTA needed to show that this was the case and to compare elaboration of planned obligations with common practice abroad. It was important to encourage investment and development on these markets and to conduct the imposition of obligations accordingly. Mila considered

[1] Margins for confidentiality.
[2] Margins for confidentiality.
[3] Omitted for confidentiality.
[4] Omitted for confidentiality.
[5] Margins for confidentiality.

that the PTA #needed to provide better support for the purpose of the analysis in such a manner that the rule of investigation of the Administrative Procedure Act be complied with.

The position of the PTA

The PTA disagrees with Mila with respect to lack of supporting arguments in the PTA analysis of the relevant market. This assertion must be rejected as unfounded as it is clear from the detailed draft market analysis that the PTA arguments are adequate and that they fully correspond to years of implementation of market analysis in this country, which has on many occasions been confirmed by the Appellate Committee for Electronic Communications and Postal Affairs. Companies in the Siminn Group have often presented such arguments without success since the inception of PTA market analysis.

The PTA has nevertheless added to its discussion and arguments with respect to the Section on definition of geographical markets. In addition to this the PTA has made minor amendments to the discussion on the obligation for price control without there being material changes. Finally, the PTA has updated the statistics of the analysis and it now applies up to the end of 2014.

In addition to this Mila provides no arguments whatsoever as to how the conclusions drawn by the PTA in the Preliminary Draft are inconsistent with the text of the analysis. For this reason one must disregard such assertions.

From the time that the relevant market was removed from the list of pre-defined markets in recommendations from the EU and ESA, approximately one third of the States have nevertheless come to the conclusion in their market analyses that there is a party with significant market power on the relevant market and obligations have been imposed on the party in question, in accordance with circumstances pertaining in each state. Homogeneous European circumstances do thus not exist on the relevant market in the EEA states. Definition of the service markets, designation of parties with significant market power and the imposition of obligations takes into account circumstances as they are in each individual country. The PTA employs accepted procedures as elaborated by the EU Commission, ESA and BEREC (previously ERG) and submits proposals for obligations to national consultation as the Administration considers most appropriate for circumstances in this country in order to combat the competition problems that have been identified. The PTA reiterates that the purpose of the obligations is to support effective competition for the benefit of consumers and should circumstances develop in such a manner that access barriers and/or Mila market share were to diminish significantly then the pre-requisites could exist for withdrawing designation of the company as having significant market power and thus

the obligations that have been imposed on the company. Such pre-requisites are however in no way whatsoever in place today.

The obligations that the PTA intends to impose on Mila for the purpose of strengthening effective competition are fully in accordance with the appropriate legal authority and with practice in Europe. The PTA reiterates that it is within the remit of each electronic communications regulatory authority to elaborate various combinations of obligations that the authority in question believes will return results in the specific circumstances pertaining in the State in question. Mila has not mentioned any example of deviations in obligations proposed by the PTA from those in other states in Europe. The PTA, for example, always strives to achieve the balance that should exist between the need for supporting effective competition and for supporting innovation and investment. It is clear that obligations have a certain impact on a party with significant market power and that they limit to some extent his freedom of action. This is inevitable if one is to strengthen effective competition. Obligations must however not be so burdensome that they can significantly impair the interest of a party with significant market power in continuing to invest.

The PTA also totally rejects the assertion that it has not respected the rule of investigation in the Administrative Procedures Act while making the market analysis in question. As before, this is an unfounded assertion by Mila which the PTA sees no reason to pursue as it is difficult to react to such general and unfounded assertions.

3 Definition of service market

Mila refers to Item 58 which deals with the definition of the relevant wholesale market, more precisely the discussion on MPLS-TP with regards to types of service and communication protocols. The Mila MPLS-TP system would not in the opinion of Mila be a replacement for the Siminn IP-MPLS system. The Mila MPLS-TP system runs parallel to and as a sublayer of Mila customer IP-MPLS systems. According to amendments to the CA Settlement which were being prepared, Mila would continue to be authorised to use the Siminn IP-MPLS system as a carrying layer for A3 service.

The position of the PTA

In the text of the preliminary analysis it is stated that the MPLS-TP system would, among other things, replaces the Siminn IP-MPLS system to which Mila had had access. It is also stated in the paragraph in question that the Mila MPLS-TP system is intended to replace older systems and to be the core in the company's trunk line service. Nowhere in this paragraph is it stated that Mila is or will subsequently be unauthorised to continue to enjoy access to the Siminn IP-MPLS system for transit of bitstream service by Access Option 3.

Mila states in connection with Item 75 in the Preliminary Draft, which discusses the current situation on the market, that it was incorrect that Vodafone had not established its own transit routes outside the Fibre Optic Ring. Vodafone operates, for example, a trunk line network both at Snæfellsnes and in the West Fjords. Mila was thus not the only company that operated a trunk line network in large regions as maintained by the PTA. Mila considered this to be an example of how the PTA had not researched this market adequately.

The position of the PTA

Given Vodafone revenue from trunk line wholesale, the Vodafone involvement in the relevant market is very limited. Vodafone market share was only about [5-10%][6] by revenue on a national basis in 2014. The share was just under [0-5%][7] in the Capital City Area and about [5-10%][8] in the countryside. In the regions in question, Snæfellsnes and the West Fjords, Vodafone leased connections among other things from Mila and this was first and foremost for Vodafone's own use. The PTA rejects that it has not researched the relevant market adequately. It is clear that Mila has an absolutely dominant position on the relevant market with [75-80%][9] market share on a national basis and [85-90%][10] in the countryside.

Mila states in connection with Item 79 in the Preliminary Draft which discusses the current situation on the market, that according to obligations in the State tender terms and conditions, Vodafone was to offer service on the Fibre Optic Ring is such a manner that most of the country (at least on the main transit routes) had an option other than Mila. It would thus be too great a generalisation by the PTA to maintain that it was almost impossible for parties to the market to avoid being Mila customers. This was the situation at only a very few locations in the countryside.

The position of the PTA

The PTA stands by its assertion that it was almost impossible for an electronic communications company which wished to offer service at a national level to avoid being a Mila customer, even though it was possible to buy specific connections from other parties. There is every likelihood that in order to avoid being a Mila customer, it would be necessary to embark on inefficient network operations in order to interconnect service locations with paths other than through Mila network systems.

[6] Margins for confidentiality.
[7] Margins for confidentiality.
[8] Margins for confidentiality.
[9] Margins for confidentiality.
[10] Margins for confidentiality.

Mila says, in connection with Item 82 in the Preliminary Draft which discusses the current situation on the market, that it rejects the assertion that Orkufjarskipti "in reality does not operate" as a service provider on Market 14. The company leased facilities in its electronic communications network that it did not use itself (what is called excess capacity), seemed also to provide municipalities with advice on development of fibre-optic access networks and behaved in all other respects like an active service provider with those rights and obligations that applied to an electronic communications company in operation. One could also point out that though the Orkufjarskipti network was mostly off the beaten track, it connected the largest urban kernels in the country and in this manner provided competitive pressure

The position of the PTA

As will be further explained later in this document, the PTA agreed to change the wording in the item in question which stated that Orkufjarskipti did not in reality operate as a service provider on the relevant market. This does not however change the fact that the company's share only about [0-5%][11] of the relevant market and that its operations are thus very limited. Orkufjarskipti does not construct its networks for the purpose of connecting locations where there is demand and thus gain operations that create revenue, but rather only for the needs of its owners in the energy sector. Where capacity is not used and where parties see a way to use the capacity and specifically so request, Orkufjarskipti has leased threads in its network to such parties.

Mila states, in connection with Items 82 and 84 in the Preliminary Draft which discusses the current situation on the market, that, as has been previously stated, Mila thought it immaterial whether the company operated on the wholesale market on the basis of its own fibre-optic network, or on the basis of leasing a network. Electronic communications companies do not need to all their own fibre-optic in the ground to be able to be active participants in competition on the relevant market.

The position of the PTA

Companies that have access to their own fibre-optic are in a much better position to provide a flexible service offer than companies that base their service on leased threads or that lease connections in threads belonging to other parties. There are now 5 years remaining of the lease agreement between the State and Vodafone for NATO threads. It is not clear what will transpire at the end of that period. Companies that do not own their own network will thus find it more difficult to make long-term plans than companies such as Mila which owns an electronic communications network which covers the whole country.

[11] Margins for confidentiality.

Mila states in connection with Items 82-88 in the Preliminary Draft which deals with the current situation on the market, that is clear on the basis of data published on pages 23-26 that the PTA had not gathered adequate data on distribution of use of fibre-optic threads or cables, which in the opinion of Mila are part of the market being analysed here. This would apply to cables that had the function of connecting networks with distribution locations of network operators. As an example one could mention cables in South East Iceland which have been installed in parallel with electricity cables, civil works in the Eyjafjöll area, civil works by Orkufjarskipti between Hafnarfjörður and Krísuvík, civil works for Þeistareykir, cables for municipalities and private parties that were used as trunk lines cables in the same market area as cables laid by Mila, including cables in inland municipalities of South Iceland, in Hvalfjarðarsveit and cables between urban kernels in Eyjafjörður. The PTA did thus not have the necessary pre-requisites to assess the Mila share and the impact of competitors on the market.

The position of the PTA

In recent months and years, various municipalities in the countryside have laid fibre-optic in their territories or have made agreements with parties on the laying of fibre-optic and/or its operation. These are generally very small municipalities which have a few dozen connections. The objective is first and foremost to lay an access network in order that inhabitants of the regions in question will have access to powerful network connections which the Siminn Group does not feel capable of providing. The market share of such smaller parties is negligible and has no impact on the conclusions of this analysis. In addition to this, the PTA has gathered data on the number of connections and on revenue, for example on Orkufjarskipti as is stated in Section 6 of the Preliminary Draft which among other things, discusses parties' market shares. There it is stated that the market share of that company is very small, only about [0-5%][12]. It is clear that the networks of such operators do not exert pressure on Mila operations on the relevant market. The PTA reiterates that Mila has [75-80%][13] market share of the relevant market, on a national basis and [85-80%][14] in the countryside.

Mila states in connection with Item 84 in the Preliminary Draft, which discusses the current situation on the market that it comes as a surprise on the basis of conditions that were set initially by the State for the lease of the thread, that Vodafone does not have an open and transparent tariff as was prescribed in project conditions. Reference is made in this respect to the tender documents in what is called the fibre-optic project when the fibre-optic thread owned by the State was offered for lease.

[12] Margins for confidentiality.
[13] Margins for confidentiality.
[14] Margins for confidentiality.

The position of the PTA
In the opinion of the PTA this comment does not constitute a material comment on the preliminary analysis. The PTA had no involvement in the call for tenders in question for the NATO thread mentioned above.

Mila states in connection with Item 84 in the Preliminary Draft which discusses the current situation on the market, that the PTA assertion that Vodafone in general does not have a connection outside the Fibre Optic Ring, is untrue. Vodafone had a total of [..][15] and that the research conducted by the Administration was in this respect deficient which led to a reduction in the significance of Vodafone the market. The PTA is challenged to investigate this aspect more thoroughly before a final decision is made. Vodafone has received access to the NATO thread at [..][16] locations in the country. This meant that Vodafone had a total of [..][17].

The position of the PTA
As is stated previously, the Vodafone share by revenue in the relevant market is very small at about [5-10%][18] on a national basis, [5-10%][19] in the countryside on just under [0-5%][20] in the Capital City Area. The PTA considers that the data submitted here by Mila precisely supports the conclusion of the analysis that it is extremely difficult for an electronic communications company to have connections to trunk lines outside the Fibre Optic Ring, except by leasing from Mila. Vodafone's purpose in leasing a NATO thread and in having connections from the thread is first in foremost to serve the company's internal needs rather than to be an independent wholesaler of leased lines to other companies. This is manifested by the company's small market share.

4 Geographical market

Mila reiterated that in the last market analysis from 2007, which was the basis for the Decision currently in force on the relevant market, the PTA had come to the conclusion that the geographical market was segmented into 2 parts. In the opinion Mila the reason why the PTA planned in this Draft to change its prior conclusion had not been adequately justified with arguments. Mila considered that on the other hand

[15] Omitted for confidentiality
[16] Omitted for confidentiality
[17] Omitted for confidentiality
[18] Margins for confidentiality.
[19] Margins for confidentiality.
[20] Margins for confidentiality.

the segmentation into 2 parts had strengthened during the period that the Decision had been in force.

Mila considers that it would have been in accordance with good administrative practice to implement a special consultation on the issue of no longer using geographical segmentation, before the preliminary analysis of the market was published with a limited period of notice to object. During the generous period of time that the PTA had taken to review this market, there had truly been reason to discuss this basic change of policy on the market analysis in force. At the informal meetings between Mila and the PTA it had always been Mila's understanding that such amendments were not anticipated.

Mila objected to the geographical market being considered to be the whole country. Mila considered it clear that in the Capital City Area and on the Fibre Optic Ring there was effective competition which meant that the PTA was obliged to withdraw obligations on those geographical markets.

The position of the PTA

The PTA does not agree that arguments are lacking for the planned decision to have the service market in question cover the whole country. The PTA refers to detailed arguments for this in Section 4 in Appendix A in the Preliminary Draft. The PTA has however decided to substantially improve the general discussion on geographical markets in Section 4.1 and the arguments presented in Section 4.2. These sections are therefore much more detailed and precise than they were in Preliminary Draft. The data and information gathered by the PTA in the course of the revision in question of the geographic section demonstrate without a doubt that it would not be justifiable to segment the geographical market in the manner requested by Mila.References here made to detailed PTA arguments to this effect in the above specified Section 4.2 in Appendix A.

In the sections in question it is stated among other things that it is a key issue in ensuring effective competition that there should be more than two network operators in a given area to prevent undesirable oligopoly. In those areas that Mila considers should be delineated as independent geographical markets, that is to say the Capital City Area on the one hand and the Fibre Optic Ring on the other hand, this is not the case. Vodafone is on the Fibre Optic Ring and GR in the Capital City Area (and Vodafone also to a very small degree there as the company has less than [0-5%][21] market share). In addition to this the Orkufjarskipti network is partly located in parallel to the Fibre Optic Ring that is to say between Akureyri and Fljótsdalur in East Iceland. These companies provide Mila with some competition, but it is clear that

[21] Margins for confidentiality.

Mila would be considered to have a dominant market position in both areas were they to be geographically segmented, as the Mila market share is much higher than that of the other companies in the market as a whole and also in the regions/paths in question, and in addition to this there are other factors which support the same conclusion.

There is furthermore, president in Europe that has shown that it is not an option to segment more than one geographical market in a specific service market unless the market share of the incumbent officer has dropped to 40-50% and where there are at least three electronic communication operator networks in the relevant area.

The main factor that is considered to indicate a single geographical market in this instance is that pricing and terms and conditions of electronic communications companies on the trunk line market are comparable at all locations in the country, the same technology and standards are on offer across the whole country, the number of retail parties selling electronic communications services is generally the same at most locations in the country and it is not possible to identify special groups of customers in separate geographical areas who have other needs than purchasers in other areas.

Mila maintains that the PTA should not have deviated from the geographical segmentation that was decided in 2007. The PTA reiterates that this PTA conclusion was based on very weak grounds and ESA pointed out that no research had taken place that could provide a basis for such geographical segmentation. In order not to delay the issue further, the PTA decided on the other hand to retain the proposed geographical segmentation as the conclusions of the market analysis would not in any event have been different than proved to be the case, that is to say that Mila/Siminn had significant market power on the relevant market. ESA decided for the same reason, or so it seems, to refrain from demanding that the PTA amend this conclusion and conduct a more detailed analysis on this issue.

It should also be noted that the above specified PTA Decision only covered geographical segmentation with respect to the Capital City Area on the one hand and to the countryside on the other. The conclusion did thus not cover the Fibre Optic Ring, and Vodafone had not received access to the Fibre Optic Ring when the analysis in question was made. When the PTA made the market analysis, neither the ERG Common Position from 2008 nor from BEREC from 2014 on geographical definition has been published. It is clear from reading those recommendations that circumstances in this country on the relevant market do not justify geographical segmentation of the market. Of the eleven states apart from Iceland that regulate the relevant market it is only the United Kingdom and Croatia that segment the market geographically. The United Kingdom does this for historical reasons related to the Hull area and such reasons clearly do not apply in this country. It is also clear from the ERG and BEREC data in question that the geographical segmentation of electronic communications markets is extremely rare in Europe. Where this is put to

the test, it is however mainly on the bitstream market (Market 5) and in a very few instances on the local loop market (Market 4).

Mila is the only party calling for geographical segmentation of the relevant market in Iceland. Other parties disagree as does the Competition Authority which agrees that this should be one market.

Finally, the PTA does not agree that this issue should have been submitted to a separate consultation. National consultation lasted for more than 2 months and one must consider the period of notice to have been sufficient for Mila to present its views on this issue as on other issues.

Mila states, in connection with Item 93 in the Preliminary Draft which discusses in a general manner the definition of geographical market, that Vodafone had significant network distribution and had been gaining significant business and thus providing Mila with competitive pressure Reference is made in this context to comments by the Vodafone CEO in the media that the company provided substantial wholesale services on its systems.

The position of the PTA

As has been stated, Vodafone only has about [5-10%][22] market share of the relevant market. The Vodafone market share. Did however increase slightly between the years 2013 and 2014, that is to say from [5-10%][23] to [5-10%][24]. That such a position should exert competitive pressure on a company with [75-80%][25] market share is not particularly credible. Nor can comments made in the media be the basis for market analysis. Such analysis must first and foremost be based on real data and facts. The reality is that Vodafone has on the contrary, been losing wholesale customers on the various electronic communications markets such as for example Tal (which is now been merged with 365 miðlar), which migrated to the Siminn system a few years ago. The collection of statistical data shows the share of those operating on the relevant market and references made to Appendix A in this connection. There it is stated that no company, with the exception of Mila, has more than [5-10%][26] market share on a national basis.

[22] Margins for confidentiality.
[23] Margins for confidentiality.
[24] Margins for confidentiality.
[25] Margins for confidentiality.
[26] Margins for confidentiality.

Mila rejects, in connection with Item 101 in the Preliminary Draft, which deals with the definition of geographical market, the PTA view that Vodafone was not a real network operator. Vodafone owned and operated a substantial trunk system, see the drawing from Vodafone on page 25.

The position of the PTA

The PTA judges that Vodafone strength on the market is limited by the company not having substantial access to its own networks, but rather bases its service first and foremost on access to networks owned by other parties. Vodafone is however a company operating on the relevant market with its own equipment and systems on networks that Vodafone rents from other parties. Vodafone, as previously stated has approximately [5-10%][27] market share on a national basis which could in no way be considered substantial market share. Nor can the position of a party on the relevant market which is based on a temporary lease agreements in any way be considered as strong as that of a party which has its own network and can make long-term plans further ahead than parties who lease a network.

Mila states in connection with Item 102 in the Preliminary Draft which deals with the definition of geographical market, that the company considers that with increased distribution of trunk line networks on the Fibre Optic Ring, one should precisely define the Fibre Optic Ring as a separate geographical area where there is effective competition and that the PTA should withdraw obligations on Mila in that area

The position of the PTA

In the Preliminary Draft, the PTA points out that a number of companies now offer service in wholesale trunk line connections, but also indicates that their share on the relevant market is still small and that Mila enjoys a dominant position with respect to market share by number of connections and by revenue. The Vodafone market share in the countryside is only about [5-10%][28] and [5-10%][29] on a national basis. Vodafone revenue from trunk lines in the countryside only derive in part from the Fibre Optic Ring. Mila has 5 threads on the Fibre Optic Ring while Vodafone leases access to one thread. The Orkufjarskipti market share, which is first and foremost in the countryside, is only [0-5%][30]. GR has [5-10%][31] market share which is almost entirely in the Capital City Area. According to the above it is clear that Mila has an overwhelmingly dominant position. Whether one considers the country as a whole or the Capital City Area or the Fibre Optic Ring.

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[31] Margins for confidentiality.

Mila rejects, in connection with Item 104 in the Preliminary Draft, which deals with the definition of geographical market, the PTA assertions and arguments. The GR distribution territory was large if judged on the basis of number of inhabitants in the territory. There it would be possible to skim off the cream as on the Fibre Optic Ring but other areas where there was no competition were so sparsely populated and expensive that they were in reality not sustainable for a single network. Urban areas had always subsidised inefficient locations in the countryside. Competitive pressure in these areas was clearly discernible in the opinion of Mila.

The position of the PTA

It could well be that Mila encounters some competitive pressure in some regions, particularly in the Capital City Area. If this were not the case, the company's position would be that of total monopoly, which it is in fact been a large number of areas. There is every likelihood that Mila would be deemed to have significant market power in the Capital City Area even were it designated as a separate geographical market. Mila market share in the in the Capital City Area in 2014 was [65-70%][32] which must be considered an extremely strong position. At the same time, GR had [30-35%][33] market share in the area and are much smaller service offer that Vodafone has a very limited trunk line offer in the Capital City Area which is just under [0-5%][34] market share. As is stated in Section 4.2 in Appendix A, there are many indications that Mila's position has recently been improving in the Capital City Area at the expense of GR and that this development will continue throughout the period of validity of this analysis. Mila market share has diminished to an insignificant degree in this area during the period of a little over 7 years that has passed since the previous analysis. The last analysis was based on data from the year 2005.The Mila market share has thus only dropped by about [..][35] percentage points over a nine-year period, that is to say from [85-90%][36] to [75-80%][37]. This was well within [..][38] percentage point per annum.

Mila rejects, in connection with Item 109 in the Preliminary Draft, which deals with the definition of geographical market, the PTA view that a detailed analysis does not need to be made on the market. Given the data and criteria used by the PTA in the preliminary analysis to which Mila has raised significant objections, there is every indication that a more detailed analysis needs to be made before a final decision is taken.

[32] Margins for confidentiality.
[33] Margins for confidentiality.
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[36] Margins for confidentiality.
[37] Margins for confidentiality.
[38] Omitted for confidentiality.

The position of the PTA

The PTA refers to previous discussion on Mila comments on geographical segmentation. As has been stated, the PTA has revised the Section on the geographical market and has added information and arguments to those provided in the Preliminary Draft. This discussion can be found in Section 4 in Appendix A. Given Mila's strong position on the relevant market, regardless of whether one considers the country as a whole, the Capital City Area or the Fibre Optic Ring, there is no reason in the opinion of the PTA to embark on a more detailed analysis of geographical markets than has already been made and which can be seen in Section 4 in Appendix A. This is 16 pages of detailed discussion. This is in accordance with the Common Position of ERG from 2008 and of BEREC from 2014 on definition of geographical markets. It is clear that the conclusion of the market analysis with respect to the designation of a company with significant market power would be the same in all instances, that is to say that Mila would be the only company in that position.

5 The Three Criteria Test.

Mila mentioned that as the market for trunk segments of leased lines was not one of what are called the relevant markets pursuant to the ESA Recommendation, the PTA was required to provide specific arguments were the Administration to designate a company with significant market power on that market and to impose obligations on such a company. Three criteria were mentioned which all needed to be fulfilled before obligations could be imposed. These criteria were that high and non-transitory entry barriers prevented companies from considering it worthwhile to enter the market, the second criteria was that the market did not tend towards effective competition and the third criteria was that general competition rules did not suffice alone to provide restraint on the market.

The position of the PTA

This is all true and correct from Mila. With respect to arguments showing that all three conditions of the Three Criteria Test were fulfilled, the PTA refers to detailed discussion on 15 pages in Section 5 of the Preliminary Draft, see now the same Section in Appendix A.

Mila considered that on one of the geographical markets that the PTA had defined in the previous analysis, that is to say in the Capital City Area (Reykjavík, Hafnarfjörður, Garðabær, Kópavogur, Seltjarnarnes and Mosfellsbær), it was clear that the first two criteria were not fulfilled and for this reason it was not necessarily to discuss the third criteria in detail. The first criteria that needed to be fulfilled, was that high and non-transitory entry barriers prevented companies from considering it

worthwhile to enter the market. No legal or regulatory barriers existed and in the Capital City Area, GR clearly had easy access to funds and had now developed an extensive trunk line network which was such that it could provide competitive pressure on the market. The first criteria was therefore clearly not fulfilled in the opinion of Mila. This meant that one did not need to examine the second criteria which was that the market did not tend towards competition. The Mila market share had been decreasing, prices had also been on the decline on the market and Mila had supported this by taking the initiative in requesting a tariff review. A competitor had as stated previously, not found it difficult to duplicate a trunk line network and had provided competition in the region. All criteria for effective competition thus existed and the market clearly showed a tendency towards competition. The criteria were therefore not fulfilled in the opinion of Mila to impose obligations on this geographical market. With respect to the criterion regarding general competition law, it should be noted that pursuant to the Settlement between the Siminn Group and the Competition Authority from 2013, the Group and companies within the Group had been subjected to major obligations that related to access and non-discrimination which meant that rules in the field of general competition law were applied to introduce effective competition to this market.

Míla consider that given the information that the company could gather from the PTA market analysis, the Mila market share was less than [..%][39] on this geographical market and was on the decline. If one can rely on the conclusions of the analysis from 2007, where Mila was considered to have had up to 90% market share on this market, there was a significant reduction in market share which indicated effective competition on this market.

The position of the PTA

The PTA disagrees with Mila about the criteria of the Three Criteria Test not being fulfilled. With respect to arguments showing that all three conditions of the Three Criteria Test were fulfilled, the PTA refers to detailed discussion on 15 pages in Section 5 of the Preliminary Draft, see now the same Section in Appendix A.

Here Mila asserts that the conditions of the Three Criteria Test are not fulfilled in the Capital City Area. As previously explained, the PTA intends to define the geographical market as the whole country. This means that the Capital City Area is not a separate geographical market. It should also be noted that conditions for competition in the Capital City Area are not internally homogeneous, as the GR network has limited presence in parts of some municipalities, such as Hafnarfjörður, Garðabær, Kópavogur and Mosfellsbær.

[39] Omitted for confidentiality.

Despite the fact that the PTA intends to prescribe one geographical market, the Administration considers it appropriate to react to the Mila assertions on its market share in the Capital City Area, that is to say that the company now has less than [..%][40] where the share is declining and had just under 90% in the PTA, market analysis from 2007.

It should first be noted that the premises of this Mila assumption are incorrect. Mila is here comparing alleged company market share in the Capital City Area today with the total Mila market share in the whole country in the analysis from 2007, which was then [85-90%][41]. While at the same time the Mila share (previously Siminn) was about [70-75%][42] in the Capital city area. On the basis of data held by the PTA, the Administration the Mila market share in the Capital City Area was [65-70%][43] at the same time as GR market share was [30-35%][44]. It is clear that there is a significant difference in market share between these two companies in this area, which the PTA reiterates shall not be considered to be a separate geographical market. It is clear that with such a position, Mila would be designated as having significant market power on the relevant market where that market analyses separately. Deciding factors are among other things, market share, comparable pricing within and outside the area, lack of competition and entry barriers.

When one considers the country as a whole the GR market share is only [5-10%][45]. This is because the division of revenue on the market in question between the Capital City Area and the countryside is 24%/76% in favour of the countryside. It is therefore clear that most revenue on the relevant market is generated outside the Capital City Area, despite the fact that a large majority of users of electronic communications services live in the Capital City Area. This supports the previously mentioned ERG position from 2008 on geographical markets with respect to trunk segments of leased lines, that is to say that it could even be more appropriate to focus on destinations rather than on specific areas. This market is not specifically dealt with in the BEREC Guidelines on geographical segmentation from 2014 as these Guidelines relate first and foremost to the local loop market (Market 4) and the bitstream market (Market 5).

It should be noted that in the above specified BEREC Guidelines from 2014 it is a key issue in ensuring effective competition that there are more than two network operators in a given area in order to prevent undesirable oligopoly. There is still in fact, oligopoly in the Capital City Area with relatively little change having taken place in

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the internal market shares of Mila and GR in that region for many years and in addition to this there are indications that the Mila position is improving at the expense of the GR position and that it is likely that this development continue throughout the period of validity of this analysis. It should be noted that the Mila trunk line network covers the whole Capital City Area which is not the case with the GR trunk line network. The GR distribution in the Capital City Area is furthermore, first and foremost aimed at developing access networks in various districts. In order to develop such access networks, GR, has at many locations needed to construct a trunk line network in parallel, as the company has not had such a network in situ.

Mila considered that in what is called the Fibre Optic Ring there was also effective competition. There Vodafone had leased one thread owned by the State which met all of the company's needs, both for its own use and also to sell to others in wholesale. Vodafone had furthermore developed its own network outside the Fibre Optic Ring, such as in the West fjords and Snaæfelsnes. The company had recently announced in a news item that it operated substantial wholesale in its systems. In this connection one could note that Vodafone had made an agreement with Ríkisútvarpið ohf. (state broadcasting) on the operation of its digital distribution system during the next 15 years and this agreement was based on the company having at its disposal a trunk line network on the Fibre Optic Ring. As in the case of the Capital City Area, there were neither legal nor regulatory barriers in place, funding was no problem as long term lease of the thread was on particularly advantageous terms, Vodafone had not found it difficult to make investments to take advantage of the thread, both for its own use and also to provide service to others. There the company had made long-term agreements which indicated that its expectations were that this service would be profitable, even were the company required to pay market price for the lease should that be the conclusion of the ESA in a Mila appeal with respect to unlawful state aid. In addition to this, Vodafone had continuously been adding paths that were not part of the Fibre Optic Ring such as in Snæfellsnes and the West Fjords. In this connection, Mila considered there to be nothing to indicate that the PTA had investigated self-supply of other parties to the market, such as Vodafone. Without such investigation and comparison, Mila considered that the research was not reliable. In European electronic communications law it was emphasised that "self-supply" was a factor that must be included in analysis, see for example the Explanatory Note accompanying the newest EU Recommendation on the relevant market from 9 October 2014.

The position of the PTA

The PTA rejects that the Fibre Optic Ring forms a separate geographical market. It is clear that active composition does not exist there. Vodafone leases one of 8 threads in the Fibre Optic Ring from the State while Mila has 5 threads. There now remain 5 years of the lease agreement in question and it is not clear what will transpire at the end of that period. The Vodafone market share of the relevant market was only [5-

10%][46] in 2014 against [75-80%][47] for Mila. The Vodafone objective with the thread in question was first and foremost to assure connections for its own operations while Mila is by far the largest wholesaler of trunk line leasing in Iceland. Vodafone is a large purchaser of trunk line leasing from Mila while Mila does not purchase such connections from Vodafone. From the above it is clear that there is a huge gap between the positions of the companies on the relevant market as a whole. In addition to this the Mila position on the Fibre Optic Ring in question is much stronger than that of Vodafone.

With respect to the above specified agreement between Vodafone and RÚV (state broadcasting) on the operation of a digital distribution system, this refers to a market for TV distribution and not for trunk line lease. To be able to operate a network for TV distribution one does however among other things require access to trunk line leasing. Vodafone will therefore use its own trunk lines as they are available and where capacity is adequate. In other instances the company needs to purchase such connections from other parties, first and foremost from Mila in the countryside.

The PTA has examined the companies' self-supply and has come to the conclusion that such internal use is not considered to belong to the relevant market as such use is not considered a service on offer to external customers at wholesale level. In the same manner that Siminn internal use of its IP-MPLS network for transit of its own service through trunk lines is not part of the relevant market, internal use by Vodafone or by other analogous parties is not part of this market. This means that only service on offer to external parties at wholesale terms is considered to be part of the market. This also has the consequence that the size and potential market share of the Siminn Group is smaller by the amount of such internal use by Siminn of its own networks.

Obligations for among other things access and non-discrimination rest on Mila as a company with significant market power on the relevant wholesale market. This means that all Mila services offered to external and internal parties are on the same terms, and according to a transparent tariff and conditions. This means that all Mila services as a separate wholesale company are considered to be part of the relevant market.

Companies not designated as having significant market power are not subject to obligations. It is a decision of the company in question whether such internal use of trunk lines as mentioned above is sold according to a tariff for sales between departments or whether the costs of network operations are allocated to the company's products. There is thus no measure that can be used to assess turnover of such internal use. Connections, particularly on developed IP networks such as IP-MPLS, can also be used for a variety of services in parallel by dividing their capacity between virtual

[46] Margins for confidentiality.
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networks. The number of connections can therefore also be an inexact measure. The PTA considers it therefore clear that should it be decided that internal use belongs to the relevant market, investigations would demonstrate superior strength of the Siminn Group, as all of the trunk line networks employed by Siminn for internal use would be added to the market.

It seems clearly inevitable that Siminn would be designated as a company with significant market power, along with its subsidiary Mila which would mean that the Siminn trunk line system would be subject to obligations in the same manner as prescribed by the planned PTA conclusion in this market analysis, on the Mila trunk line system. In other words, it would not affect the conclusion whether such self-supply were included in the calculation or not.

Mila rejected that the party's operating on the relevant market did not provide Mila with sufficient competitive restraint. In this connection one could mention that it made no difference whether the party that provided competition old the network that he operated or whether he leased it from others, which the PTA considered important with respect to competitive restraint. This PTA view was not valid in the opinion of Mila as it is stated in Article 3 of the Access Directive that an operator could own the network or facilities in question or lease them in part or in full.

The position of the PTA

The PTA came to the conclusion in the Preliminary Draft that Vodafone was operating on the relevant market. It was stated that this company's market share had been about [5-10%][48] in 2014. On the other hand the PTA considered that this company's position on the relevant market was not as strong as that of companies that owned their own networks, and certainly not as strong as a company like Mila which enjoys an extremely powerful position on this market. There are now about 5 years remaining of the above specified lease agreement between Vodafone and the State on a thread in the Fibre Optic Ring. It is not clear what will transpire at the end of that period. The PTA therefore stands by its statements.

Mila considered it a striking and totally invalid view to measure market share on the basis of area and that this had not previously been seen in analyses of this kind. The PTA considered in its criteria in the preliminary analysis of the market that GR distribution in terms of an area could hardly be considered significant on a national basis. In such a large and sparsely populated country, where most of the inhabitants live in the area covered by GR distribution, such a methodology could not be considered reasonable and was categorically rejected by Mila. In addition to this Mila considered that, were one to use the existing geographical market segmentation as a

[48] Margins for confidentiality.

measure as all arguments supported in the opinion of Mila, then the methodology would be meaningless.

The position of the PTA

Mila is not correct in saying that the PTA uses area or a specific region as a measure for market share. The fact is that the PTA intends to prescribe that the geographical market is the whole country. The PTA stands by its statement that the distribution of the GR network can hardly be considered significant on a national basis. The company's network is first and foremost in or close to the Capital City Area in the South West part of the country. In support of this there is the fact that the GR market share is only about [5-10%][49] on a national basis and [30-35%][50] in the Capital City Area. The PTA reiterates that the Administration does not plan to prescribe the Capital City Area as a separate geographical market.

Mila considered that Orkufjarskipti, which was owned by monopoly holders on the energy market, also provided competition on the Fibre Optic Ring by selling excess capacity which was created when the company provided its owners with service on this market. Mila rejected the PTA assertion that Orkufjarskipti "did not in reality operate" as a service provider on the market for leased lines in the trunk line market. Orkufjarskipti leased facilities in its electronic communications network that it or its owners did not utilise, seemed also to provide municipalities with advice on development of fibre-optic access networks and behaved in all other respects like a service provider in operation with those rights and obligations that applied to an electronic communications company in operation. Although the Orkufjarskipti network was mostly off the beaten track, it connected the largest urban kernels in the country and was therefore extremely important when competition on the relevant market was analysed.

The position of the PTA

In its Preliminary Draft the PTA came to the conclusion that Orkufjarskipti did operate on the relevant market. The company has less than [0-5%][51] market share and the company's operations are thus very insignificant on the relevant market. The company's networks are mostly in the highlands and off the beaten track. The company's networks do however connect Reykjavík, Akureyri in the North and Reyðarfjörður in East Iceland. The wording that Orkufjarskipti "did not in reality, operate as a service provider on the relevant market" is thus not entirely appropriate. The PTA will amend this. The PTA will further refer to the fact that the company's operations are very insignificant on the relevant market.

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[51] Margins for confidentiality.

The company does not place significant emphasis on offering its services on the relevant market but generally does not decline to do so when other parties to the market request connections with the company. The purpose of the company is nevertheless first and foremost to provide services for its owners, that is to say the energy producer Landsvirkjun and the energy transmission company Landsnet.

Mila rejected the planned PTA conclusion that criteria were fulfilled to impose obligations on the relevant market. None of the three criteria were fulfilled and for this reason the PTA was unauthorised to impose obligations on parties to the relevant market. In the light of this fact, Mila demands that the PTA revise the Preliminary Draft with respect to geographical definition of markets and with respect to the conditions for imposition of obligations.

The position of the PTA

Reference is made to the detailed discussion in the Preliminary Draft, see now Appendix A, with respect to the Three Criteria Test, geographical definition of markets and imposition of obligations. Furthermore reference is made to additional arguments presented on this issue in this document.

Mila states in connection with Items 111-113 in the Preliminary Draft, which deals in a general manner with the Three Criteria Test, that a reduction in the Mila tariff at the initiative of the company indicates that competitive pressure exists.

The position of the PTA

The PTA does not doubt that Mila encounters some competitive pressure where some competition exists. Were this not the case then the company would have a total monopoly across the whole country. This is however not the case in all locations, both in the Capital City Area and on the Fibre Optic Ring. The PTA has however shown in detail that the company's position is very strong in all locations and that the position of competitors is at no location such that the strong Mila position is significantly threatened.

The assertion that Mila took the initiative in reducing prices on the relevant market is correct as far as it goes. Wholesale prices have been subject to obligations for many years and the PTA must endorse all price changes. It is therefore normal that Mila regularly submit revised cost analysis as the criteria for pricing change from time to time. It is however not possible to draw any conclusions on increased competition from these price changes.

Mila states in connection with Item 141 in the Preliminary Draft, which deals with economy of scale in connection with the first criterion of the Three Criteria Test on access barriers, that economy of scale was not a significant factor when Mila needed

to operate all fibre-optic and to invest at full price, while a competitor leased a thread well under market and cost value in the opinion of Mila.

The position of the PTA

The economy of scale enjoyed by Mila and the Siminn Group as a whole is indisputable because of their very varied service offer across the whole country and because of their large number of customers on the various electronic communications markets. The fact that competitors can enter the market, where it is most efficient does not diminish the economy of scale in question.

Mila states, in connection with Item 158 in the Preliminary Draft which deals with price development in connection with the second criterion of the Three Criteria Test with regards to the market not tending towards effective competition, that the company requested a reduction in tariff at its own initiative. Mila considers the price control obligation to be particularly burdensome as it took an excessively long period of time to receive a decision from the PTA on price changes. This applied equally to a reduction in price.

The position of the PTA

Mila's position as a company with significant market power on the relevant market imposes those restrictions that it is ensured that service on the market is neither over nor under-priced. These obligations require PTA monitoring of pricing of services which undeniably inhibits the company's reaction speed when changing prices. The PTA agrees that it is not desirable that the Administrations implementation of cost analysis should be subject to delay. The PTA points out that the last Mila cost analysis, on which the PTA plans to make a decision in parallel to the market analysis here under discussion, did not only constitute an update of costs but in addition, the company proposed amendments to very significant criteria in the calculations, for example with respect to varying data transfer speeds.

Despite the fact that Mila had demonstrated that total costs had dropped, which provided a basis for a reduction of unit price, the change in the weighting of data transfer speed had the effect that some items in the Mila tariff increased in price. The PTA therefore requested further data and calculations from Mila for the purpose of examining the impact that this amendment would have on Mila customers. It came to light that the Mila amendments meant that Mila's largest customers benefited most from the amendment at the cost of smaller companies. For this reason the PTA considered it necessary to review the Mila proposal which called for further work and processing time of the analysis.

Subsequent to a decision on the market here under discussion, along with accompanying cost analyses, the PTA plans to require annual updating of tariffs on

the relevant market in accordance with the development of quantities and costs. Such an arrangement should go some way to meeting the above mentioned Mila complaints.

Mila rejected, in connection with Item 170 in the Preliminary Draft which deals with potential competition in connection with the second criterion of the Three Criteria Test with regards to the market not tending towards effective competition, the PTA assertion that Vodafone did not provide competition on the market.

The position of the PTA

The Vodafone market share does not indicate that the company is achieving significant results on the relevant market. The PTA also chooses to doubt that the company intends to place a strong emphasis on being a powerful wholesaler on the relevant market. The company's operations on the relevant market concern first and foremost the function of meeting its own needs, so that the company can provide services to end users.

Mila referred, in connection with Item 175 in the Preliminary Draft which deals with the second criterion of the Three Criteria Test with regards to the market not tending towards effective competition, to the following assertion by the PTA:

"One cannot draw many conclusions from Mila price development as the company is subject to price control. Price on the other hand is very stable and there is no sign of a price war on the market."

It should be pointed out that there is no likelihood that Mila would embark on a "price war" with competitors given the obligations that rested on the company and that gave the company little leeway on this market.

The position of the PTA

The PTA here refers to its position on the Mila comments to Item 158 which was discussed here above.

Mila states, in connection with Item 199 in the Preliminary Draft which discusses the third criterion of the Three Criteria Test concerning the ineffectiveness of general competition rules in introducing competition, that in order to justify continued obligations on Mila the PTA referred to its own decisions which mostly concerned regular surveillance of imposed obligations. In this way decisions were specified that related to the wording of reference offers, to price control and to decisions were specified which did not relate to leased lines but to hosting. In this way, the PTA could always justify the imposition of obligations by referring to interventions that resulted from the existence of a specialised obligations. This practice would mean that

it would never be possible to withdraw or diminish obligations as the PTA seems to have developed a system which sustained itself.

The position of the PTA

Reference is made here to PTA discussion where the conclusion is drawn that experience demonstrates that not all problems on the market could be solved with one decision but rather that regular intervention is by the PTA would be required. The PTA refers to 10 of its decisions in support of the above. While competition problems are as extensive as experience shows on the relevant market. It is not possible to expect that general competition rules will suffice to introduce or maintain effective competition. The CA and the PTA agree on this.

Mila pointed out, in connection with Item 206 in the Preliminary Draft which deals with the conclusions of the Three Criteria Test, that it had taken more than 2 years to receive a decision on tariff amendments from the PTA. In this instance Mila had submitted an analysis on 1 July 2009 and the Decision was not published until the end of May 2011 and came into force in August 2011. In addition to this an analysis had been sent to the PTA in December 2013 and a decision had not yet been received on that matter. It was therefore unfortunately the procedure in the Administration that took such a long time and this caused prices to change slowly.

The position of the PTA

The PTA can agree with Mila that cost analysis of the relevant market took a long time. As previously stated, the cost analysis which Mila refers to as having been received by the PTA in 2013 was being processed by the PTA in parallel to the market analysis here under discussion. The PTA had not wished to complete that cost analysis prior to completion of the market analysis as the older market analysis is now obsolete. In addition to this, it is a condition for imposition and elaboration of obligations on the relevant market that the market analysis shows that Mila still has significant market power on the relevant market. For this reason the PTA considered it appropriate to treat these decisions together.

Should these matters be resolved in the manner planned by the PTA, the Administration will review Mila cost analysis on the relevant market on an annual basis. Such an arrangement should go a long way towards meeting the above mentioned Mila complaints.

6 Market analysis and evaluation of significant market power

Mila pointed out, in connection with Item 215 in the Preliminary Draft, which deals with market share, that in this context one needed to ask whether information had been requested from the companies on revenue generated internally. Vodafone used its trunk line system for its retail services such as mobile phone, fixed line telephone and data transfer and for this reason one should take this into account in the same manner as sales from Mila to Siminn are included. Were Vodafone internal sales actually taken into the calculation then the Mila market share would in reality be much lower than the PTA, market analysis indicates. Mila demands that this be examined and the criteria reassessed on the basis of the results of such an investigation.

The position of the PTA

In the same manner that Siminn internal use of its IP-MPLS network for transit of its own service through trunk lines is not part of the relevant market, internal use by Vodafone is not part of this market. The service on offer to external parties at wholesale terms is considered to be part of the market. The share of the Siminn Group is thus also less to the amount corresponding to such Siminn internal use on its own networks Mila service as a separate wholesale company which offers the same service at the same terms to both internal and external customers is thus considered to belong to the relevant market.

7 Obligations

Mila considered that the PTA should at least withdraw obligations on the Capital City Area and in the Fibre Optic Ring as in those instances the conditions for imposing obligations were not met.

The position of the PTA

The PTA reiterates what was previously stated with respect to reasoning for the planned conclusion to define the geographical market as the whole country. As Mila has in the opinion of the PTA, significant market power on the relevant market, the PTA is authorised to impose appropriate obligations on Mila for the whole country, including in the Capital City Area and on the Fibre Optic Ring. It is however another matter, whether there is reason to elaborate obligations in those regions in a milder manner than otherwise. It is however the conclusion of the PTA that this should not be the case and the PTA proposes that the obligations that will be imposed on Mila cover all regions of the country in the same manner.

Mila considered that the obligations that the PTA planned to impose on Mila were in conflict with the principle of proportionality of the Administrative Procedures Act as they were unnecessarily numerous and burdensome and led to over-regulation which limited incentives to invest and at the same time inhibited effective competition and the increase of real options on this market. Mila considers that the PTA had to choose between imposing an Equivalence of Inputs (EoI) obligation or an obligation for price control.

In addition to this Mila considered that the periods of notice granted to the company prior to introduction of the complex and extensive obligations that the Administration planned to impose, were far too short. Mila considered it normal that the fulfilling of obligations based on Equivalence of Inputs required a minimum of 12 months' notice.

The position of the PTA

As is, reasoned in detail in Section 7 in the Preliminary Draft, see now the same Section in Appendix A, the PTA considers that the combination of obligations that it plans to impose on Mila on the relevant market is essential to mitigate the competition problems that have been identified on the relevant market and to support effective competition. The PTA considers that it has respected proportionality in this connection. The more serious the competition problems identified on a specific market, the more extensive the obligations necessary to impose on parties with significant market power to address the competition problems in question The market here in question is characterised by access barriers and by a very strong Mila position.

With the above in mind, the obligations that the PTA intends to impose on Mila are necessary in the opinion of the PTA. The obligations are analogous to obligations that have applied to Mila on the relevant market and in addition to this, a specific period of notice is now prescribed with respect to distribution, upgrading and/or decommissioning of networks and systems, requirements made for service level agreements, service level guarantees and for the making and publishing of key performance indicators. These new obligations are in accordance with developments in Europe during recent years, including the various recommendations from the EU Commission, ESA and BEREC. They are considered necessary to ensure non-discrimination between Mila and related parties on the one hand and unrelated parties on the other.

In the Preliminary Draft the PTA however did not make a proposal that an Equivalence of Inputs (EoI) obligation be imposed on Mila on the relevant market as maintained by Mila. Obligations for making service level agreements, service level guarantees and key performance indicators are analogous to those obligations that were imposed on Mila on the wholesale market for terminating segments of leased lines (M6) in the spring of 2014. Mila has operated according to these obligations for

some time now, and has published them on its website. This means that this addition is not significantly burdensome as experience has been gained from implementation on the termination market. In reality such obligations have also rested on the company since August 2014 on the local loop market (Market 4) and on the bitstream market (Market 5).

The PTA furthermore points out that the price control obligation has been relaxed in order to meet considerations with respect to the lower weighting of distances - in the same manner as is proposed in the planned PTA Decision on the Mila tariff for Ethernet service, which is being processed in parallel to this market analysis. Mila has called for such an approach. In that tariff, the weighting of distance (charge per kilometre) has been reduced, which is in accordance with the PTA view that Mila should aim at amendments to the structure of charging such that there will be a fixed subscription charge independent of distance. It is furthermore expected that the latitude that Mila has in structuring its tariff will encourage the company to invest. The PTA has altered the wording of the obligation on price control in order that this be stated more clearly.

The PTA does not agree with Mila that a 6 month period of notice for introduction of the obligations is too short and nor that a 12 month period of notice is necessary. The PTA has always used a 6 month maximum period of notice as a reference in this connection and it cannot be seen that this market calls for a longer period.

Mila considered that the PTA was not, moderate in the imposition of the planned obligations and thus breached the principal of proportionality of the Administrative Procedures Act. The principle of proportionality requires that one should always go no further than necessary to achieve the required results. In the opinion Mila it would have sufficed to prescribe on access. The Siminn Group and the Competition Authority made a Settlement in the year 2013. With the Settlement and those organisational changes, conditions and restraint that resulted from the settlement, vertical integration in the Group that could benefit Siminn to greater extent than other companies on the market was prevented. Despite this fact the PTA based its decision on it being necessary to prescribe on specific access and related obligations with reference to vertical integration. With the organisational changes in question and with management and operational separation, it was however clear that vertical integration had been prevented. The Settlement would be in force during the normal lifetime of the analysis and Mila would insist that the PTA analysed the market at a minimum of 2-3 year intervals as prescribed by law. Additional obligations from the PTA were thus totally unnecessary and thus resulted in unnecessarily extensive imposition of obligations on the market. This would be contrary to the objective of the EU and the EEA that obligations should be reduced on the market. In addition to this Mila

considered that it was only justifiable to impose the Equivalence of Inputs (EoI) obligation when the obligation for price control was not applied.

The position of the PTA

The PTA rejects once again that the planned obligations that the PTA intends to impose on Mila on the relevant market in order to address the serious competition problems that have been identified, are not compliant with the principle of proportionality. The PTA refers to Section 7 on the Preliminary Draft, see the same Section in Appendix A, in support of its position. Furthermore, the PTA refers to its position on Mila comments that were discussed prior to this comment.

With respect to the Mila reference to the Settlement between the Siminn Group and the Competition Authority (CA) from 2013, the PTA refers to the discussion in Section 5.4.2 in the Preliminary Draft, see now the same Section in Appendix A. With respect to vertical integration, the PTA refers to Section 6.5.2 in the same document.

Mila considers that it would have been sufficient for the PTA to prescribe an obligation for access, because according to the Settlement, vertical integration could not benefit Siminn to greater degree than other unrelated electronic communications companies. The organisational changes and the managerial separation prescribed in the Settlement, prevented this. For this reason, additional obligations were absolutely unnecessary.

The PTA totally disagrees. The state of competition on the relevant market requires that the PTA impose obligations in addition to the obligation for access, including an obligation for non-discrimination and an obligation for price control. Despite the fact that Mila only handles wholesale services and Siminn the retail services this does not alter the fact that these two companies together form a vertically integrated company group. Siminn is Mila's largest customer and does virtually no business with other companies on the relevant wholesale market. It is clear that as both companies are part of the Siminn Group, ownership, management and financial connections between the companies are undisputed. At this point in time amendments are being made to the Settlement from 2013 such that now Siminn will be the parent company of Mila. It is clear that one should see the Group as a single economic unit in the understanding of competition law.

In the Settlement in question one can find general provisions on specific organisation of the Siminn Group, division of tasks and communications between Siminn and Mila and a ban on discrimination between related and unrelated parties. There are however no special provisions on the relevant market, nor provisions on price control and according to the Preliminary Draft is likely that the competition problem will increase on the relevant market if obligations are not imposed on Mila with respect to price on the relevant market. Then it is specifically prescribed in the Settlement in question

that it has no impact on the PTA jurisdiction with respect to issues covered by the electronic communications legislation.

There is not yet sufficient experience of the implementation of the Settlement in question for the PTA to consider relaxing obligations with reference to the Settlement. In addition to this the Group has not complied fully with the provisions of the Settlement and it is currently in the process of being amended. The CA agrees with this assessment by the PTA and in its comments it specifically points out that it supports the obligations that the PTA plans to impose on Mila on the relevant market. The PTA has also imposed various obligations on Mila since the Settlement came into force without this, having been considered unauthorised as a result of the Settlement in question. In this context one can mention the local loop market (Market 4), the bitstream market (Market 5) and the market for terminating segments of leased lines (Market 6).

With respect to the Mila comments to the effect that the Equivalence of Input obligation (EoI) was only authorised where an obligation for price control was not imposed, the PTA reiterates that the Administration does not plan to impose such an equivalence obligation on Mila. This is therefore a misunderstanding on the part of Mila.

Mila reiterated that investment in trunk line networks constituted a risk and was expensive. There was competition from other networks, among other things the GR fibre-optic network in the Capital City Area, from Vodafone on the Fibre Optic Ring and from Orkufjarskipti. For this reason Mila considers it extremely important to nurture an incentive for investment and development on these markets and that one should not go further in the imposition of obligations than necessary.

The position of the PTA

In its market analyses the PTA always emphasises that there should be a certain balance between the objectives of strengthening competition and creating an incentive for increased investment and development of networks. The PTA considers that it has kept to this narrow path in this market analysis, as in others. The PTA emphasises that the obligation for price control is elaborated in such a manner that Mila has certain leeway to form its tariff for trunk leased lines, among others with respect to the weighting of distance related charges and that reasonable recompense be paid for access. In this way it is prescribed that Mila investments and a reasonable return on sunk capital given the risk of the investment, shall be taken fully into consideration when elaborating the obligation.

The PTA considers that the competition referred to by Mila in the Capital City Area and on the Fibre Optic Ring is not at such a level that would justify relaxation of

obligations for those areas in particular, though it is not known what the future will bring.

Mila pointed out that as stated in Article 1 of the Electronic Communications Act no. 81/2003, it was the objective of the legislation to ensure efficient and secure electronic communications and to strengthen effective competition on the electronic communications market. The objective of the electronic communications legislation was also to increase competition in development of an electronic communications networks, as this would lead to greater geographical distribution and would increase choice for users. In Sub-paragraph c of Item 2 in Article 8 of the Framework Directive it was prescribed that electronic communications surveillance in each member state should support competition by encouraging investments in electronic communications infrastructure and should support innovation. In the opinion of Mila it was important that one should not go further than necessary when imposing obligations on parties to the market. The measures that the PTA might choose to apply may not go further than necessary to achieve the objectives of the law and reference is made in this connection to the principle of proportionality in the Administrative Procedures Act and to the provisions of the Electronic Communications Act on obligations, keeping in mind the initial investment of the owner and the risk taken. Reference was furthermore made to the recommendations of the EEA Directive to the effect that all imposed obligations should be based on the nature of the defined competition problem and should be designed to address that problem. They should be transparent, justifiable, reasoned and in accordance with the objectives that they are intended to achieve. Obligations must not go further than necessary and may not impose heavier burdens on the companies than is deemed necessary. In order to respect the homogeneity, obligations also needed to be in accordance with what is done elsewhere under similar circumstances so that homogeneity in the in internal market should not be put at risk. It was clearly problematic for the PTA to assess market circumstances and subsequently the remedies that should be applied. It was therefore even more important that the Administration respected proportionality and did not exceed its authority.

In the light of the fact that competitors have become stronger in those areas where competition is active and that prices have dropped it is hard to understand that obligations should be increased from the previous analysis.

The position of the PTA

The PTA refers here to its position on the previous three comments made by Mila here above, as there is little new in the last Mila comment that has not already been answered here above.

With respect to the Mila reference to the fact that it was important that obligations were in accordance with what is done elsewhere in states in the EEA and under similar circumstances, the PTA can agree. The PTA always strives to act according to recommendations and guidelines from the EU Commission, ESA and BEREC, and in addition to this the PTA closely monitors how obligations are imposed by other states. The obligations that the PTA plans to impose on Mila on the relevant market are fully in accordance with obligations of other electronic communications regulatory bodies in the EEA and with development in the imposition of obligations that has taken place in the past months and years. Nor does Mila indicate any particular obligation to support its case. One must therefore dismiss this Mila comment as unfounded.

Mila comments on Item 405 in the Preliminary Draft and states that it does not offer IP-MPLS service and therefore this does not apply here. With respect to WDM, this product is not part of the Mila product offer and is not relevant here.

The position of the PTA

The Item in question can be found in Section 7.4.5 in the Preliminary Draft which contains discussion on the obligation for price control. The PTA considers the products in question to be part of the relevant market and defines them, even though Mila does not offer these products to external parties at this point in time. It is clear that Mila uses wavelength division multiplexing (WDM) for its own use, and as a base for services that are subject to price control obligations. It is therefore necessary for Mila to cost analyse WDM as the conclusion is used to decide price for leased lines and other service as appropriate. Cost analysis of WDM shall therefore be part of the next Mila cost analysis of the trunk line market.

Mila comments on Item 295, which covers competition problems on the relevant market and considered that the PTA did not respect the facts and that in addition to this the premises of the case were incorrect. The case revolved around the issue that Mila was not the proper counterparty initially but rather the State who owns the thread. The PTA has accepted that it is in the hands of the State to be a party to the case as the party to the agreement for Vodafone.

In addition to this Mila objected to the judgemental tone of the PTA comment on and willingness to provide service. Had Mila not been able to provide service then this had been for perfectly valid reasons. If all requests for access, were examined and assessed then such an assertion would in no way hold. Mila willingly delivered services that could be provided as the company naturally wished to sell as much of its services is possible.

The position of the PTA

In the Item in question the PTA states that in PTA Decision no. 34/2010 an instance had been dealt with, where Mila had denied access to facilities that were necessary for Vodafone for the company to be able to utilise the NATO thread in question in the Fibre Optic Ring that the company had leased from the State. The conclusion of this matter had been that the Vodafone claim had properly been directed at Mila as the party controlling the facilities that were necessary for it to be able to utilise the fibre-optic thread in question. Mila was obliged to provide Vodafone with access to equipment to enable the company to connect the company's electronic communications network to the thread in question.

The PTA stands by its assertion in the Item in question that Mila (and previously Siminn) has in various instances shown unwillingness to offer those products in wholesale that competitors need. The examples speak for themselves and they relate among other things to dark fibre, DWDM and IP/MPLS. The PTA has in recent months received a number of reports related to problems of this kind, without this having led to specific treatment of the cases by the PTA. The Vodafone accompanying documents to their comments bear witness to this. The PTA therefore totally disagrees that a description of facts constitutes a judgementally worded generalisation.

Mila comments on Item 334 which deals with access obligation with respect to notification of planned civil works and conduit work, and considered that the wording was unclear, wide reaching and thus burdensome and that it lacked the clarity that one should expect of administrative decisions. There was no definition of what the civil works constituted nor of what the scope of the operations needed to be for them to be governed by this provision.

The position of the PTA

This paragraph is the same as in comparable obligations on Markets 4 and 6 and the PTA considers the paragraph to be logical and normal. With respect to the local loop market and the market for terminating segments of leased lines, the PTA has previously explained to Mila that this refers to planned operations and not to reaction or repairs for servicing of individual local loops. Civil works are less common on the trunk line market than on the termination market, or on the local loop market and for this reason it is normal that planned civil works in connection with trunk lines are notified. Reactions to faults are clearly not covered by such a period of notice.

Mila commented on Item 339 which deals with access obligation with respect to a period of notice for changes to system design that are likely to alter competitiveness of companies on the market, and totally rejected this period of notice. This was a burdensome and unclear obligation which would tie the company's hands in all

forward-looking development and would give the PTA the opportunity to define this wording as they pleased such that all technical changes and normal upgrades of Mila products and systems could be covered by it. In the opinion of Mila this obligation was totally lacking in clarity and did not hold. In addition to this the wording made it easier for the PTA to interpret the provision in each instance to suit its own needs.

The position of the PTA

This obligation for a five-year period of notice for notification of decommissioning of systems is a last line of defence against a situation where Mila might decommission a system or service that the company's customers rely on and where agreement is not reached on migration to a new system. This obligation is analogous to obligations on the markets for local loops, terminating segments of leased lines and bitstream service with respect to the period of notice for decommissioning of service or networks.

The provision in question is furthermore, in accordance with common practice in Europe. The PTA considers it necessary to have such a provision but does not expect that such a long period of notice will be applied in practice. The period of notice does not apply if companies agree on migration to a new system in a shorter period of time. Furthermore, the PTA can rule on a dispute between parties in this connection and thus shorten the period of notice. The PTA certainly does not make arbitrary decisions on such issues but rather calls for the views of all parties, provides the right to object, investigates the case in an adequate manner and respects the principal of proportionality before the final decision is made. This decision can of course be appealed to the Appellate Committee for Electronic Communications and Postal Affairs and/or the courts.

Mila commented on Item 350 which deals with the non-discrimination obligation with respect to the period of notice for civil works. Mila refers to the following wording by the PTA:

"The PTA plans to impose the obligation on Míla that unrelated parties be notified on distribution, construction or other development of Míla leased line services with the same notice as parties related to Míla receive. This notice shall under no circumstances be shorter than six months. Information shall among other things contain planned prices, conditions, technical specifications, scheduled distribution plans, updated position on distribution and planned connection points.

Mila objects to this obligation as it is far too unclear, dependent on interpretation in each instance and enables the PTA to make an arbitrary decision.

The position of the PTA

The PTA considers that the 6 month period of notice for development of service on the trunk line market cannot be any shorter if competitors of the Siminn Group are to

be able to prepare their own retail products that are based on wholesale products on the trunk segments of leased lines. The development of trunk line connections represents a significant investment and the PTA considers that 6 months is the minimum period of notice for parties unrelated to the Siminn Group to enjoy parity with related parties. The paragraph deals with distribution, building and other development. The PTA considers that if a new service is put on the market, then this is an example of building and if new technical solutions are offered or new items offered in the tariff for existing service, then this is an example of another development of service. If an existing service is offered at a location where it has not previously been on offer, that is to say increased distribution of an existing product, the PTA can agree that a 6 month period of notice is more than necessary and will shorten this period of notice to at least 3 months. A comparable obligation with the same period of notice already rests on Mila for wholesale of terminating segments of leased lines (Market 6) and on the local loop market (Market 4).

Mila commented on Item 351 which deals with the non-discrimination obligation with respect to technical and/or economic replicability. Were the PTA conclusion to be such that unrelated parties could not replicate the product offer of related parties for technical or economic reasons, the PTA could order Mila to change its product offer and/or offer new wholesale products such that unrelated parties could replicate the product offer of related parties with normal commercial criteria. Mila did not understand the purpose of this provision. By related parties the PTA was probably referring to parties within the Siminn Group. All obligations have been lifted from Siminn with respect to Market 14 and it is difficult to imagine the circumstances where Mila could become obliged to build up a system to replicate Siminn product offer, for example with IP service. This obligation was unclear and in no way supported with examples or guidelines as to what was meant.

The position of the PTA

The PTA points out that this refers to the service that Mila provides to related parties. Should it come to light that related parties enjoy an economic or technical advantage in the wholesale service provided by Mila, then the PTA can order Mila to alter its service or product offer. This of course does not mean that Mila would have to build a system that replicates the Siminn product offer. This means that the wholesale product offer provided by Mila should make it possible for unrelated parties to compete with the retail service offered by Siminn to the extent that it is based on a specific wholesale solution from Mila.

Mila commented on Item 356 which deals with the non-discrimination obligation with respect to the publication of key performance indicators. In the opinion of Mila this obligation calls much too far and breaches the principle of proportionality of the Administrative Procedures Act. Faults, interference or loss of connection could occur

for a number of reasons, and in some instances it would be difficult to determine whether loss of connection had occurred because of faults in the equipment of a service provider or service purchaser. A system fault could have an impact on very many customers at the same time which could be several hundred leased lines in the connections with the widest bandwidth. A process would need to be established to ensure proper diagnosis and registration of the causes of lack of connection or of interference. The service provider and the service purchaser would need to agree on the registration of such events. This would then increase the cost and level of complexity in diagnosis of faults and subsequent treatment. Were this obligation to be imposed on Mila, it would take more than 6 months to bring it into operation. Mila strongly objected to such a short period of notice for bringing into service.

The position of the PTA

Mila already has a monitoring system in its operation and work processes with respect to diagnosis and repairing of faults. In this instance, the PTA is imposing an obligation for reporting for diagnosis of events in system operations. None of the Items that the PTA proposes should be measured for key performance indicators should be new in Mila operations, though, such gathering information and report writing on these issues could be and innovation in Mila operations. It cannot be seen that this should take longer than 6 months of preparation. Mila has already introduced such a system for the market for terminating segments of leased lines and should have completed the introduction for the local loop and bitstream markets.

This obligation is in accordance with developments in non-discrimination obligations in Europe. The publication of conclusions of measurements of key performance indicators will help to cast light on whether the non-discrimination obligation is respected by Mila. In this way Mila's counterparties can compare the service they receive with the service received by companies related to Míla on the one hand and with the average in the sector on the other. In this way Míla counterparties can determine whether they are being discriminated against. This is why the obligation is important.

Mila commented on Item 370 which deals with the transparency obligation with respect to information that shall be published in a reference offer. Mila pointed out that obligations to publish information on repair time for leased lines of the same type could be very misleading. Leased lines were often assembled from many varied system units, they passed through a number of transit systems on the route, such as copper systems, wireless systems and SDH systems and they originated and or terminated in Mila premises or in the premises of the service purchaser. It was more likely that a long leased line would suffer interference or faults than a line of the same type which travelled a shorter distance. Comparison without taking into consideration the level of complexity in the path of a leased line was therefore very misleading.

The position of the PTA

The PTA can see nothing to stop Mila publishing terms and conditions for repair time of leased lines of the same type in its reference offer as it says in the Draft "from the time that notification of fault has been received by the company in question until the time when 90% of all leased lines of the same type had been repaired and users, as appropriate, have received a notification to this effect."

Mila commented on Item 405, which deals with the obligation for price control with respect to the listing of the main types of trunk line lease. Mila rejected that IP-MPLS and ATM were included under the Mila leased line offer. Mila did not have and has never had infrastructure that could provide such a type of service. In addition to this, WDM technology had only been used as a local sublayer for other Mila leased line service and not sold as a wholesale product

The position of the PTA

The PTA considers the products in question to be part of the relevant market and defines them, even though Mila does not offer these products at this point in time. Should Mila, during the lifetime of the analysis, come to offer such products, then the analysis and the obligations specified in the Decision will apply to the products without the PTA needing to make a separate analysis. With regards to WDM technology, the PTA refers to the Administration's reply here above with respect to comments on Item 405.