



## **Decision no. 19/2014**

### **On the new Mila service for access nodes**

#### **I** *Introduction*

In the case here being resolved, the Mila ehf (Mila) request for Post and Telecom Administration (PTA) endorsement of amendments to the company's Reference Offer on bitstream access with respect to a new service planned to be offered through access nodes, is discussed. The new service offer is discussed in a separate appendix to the Reference Offer in question, i.e. Appendix 5.

With the PTA Decision no. 38/2012 the dispute between Fjarskipti ehf (Vodafone) and Mila concerning Vodafone access to Access Option 1 (A1) in bitstream to Mila was resolved. The PTA conclusion was that special access nodes were required for such access to become possible, inter alia because of security considerations. It was furthermore considered that Vodafone should participate in the costs of such an arrangement. A specific temporary price was prescribed which should be settled when the PTA final cost-analysed price was available.

In the PTA Decision no. 17/2014, which was processed in parallel to the case here under discussion, there is coverage of the above specified cost analysis and consequently on the prices that shall apply for access to the access nodes in question. Reference is therefore made to that Decision with respect to all matters relating to prices.

In the case here under discussion the matters covered will on the other hand relate to conditions other than prices for the service in question provided through access nodes. Three companies submitted comments in the national consultation on the planned Mila amendments to the Reference Offer in question. The comments from Siminn related entirely to prices and these comments are covered in the said Decision no. 17/2014. Símafélagið ehf took in general a positive position on the amendments in question but considered it normal that the new service should not be provided prior to a final decision by the PTA being available on possible amendments to access conditions. Vodafone comments were generally negative with respect to the new service where the company considered that Mila was not authorised to provide services through the access nodes

other than those related to A1 and that were discussed in the above specified PTA Decision no. 38/2012.

On 26 June 2014 the PTA submitted the draft Decision to the EFTA Surveillance Authority for consultation. On 28 July 2014 the Authority's comments were received. The comments can be seen in the Appendix to this Decision.

## II

### *Facts of the case*

#### ***2.1. The PTA Decision no. 38/2012 on Access Option 1 with Siminn (now Mila)***

With the PTA Decision no. 38/2012 from 14 December of that year, the PTA resolved the dispute between Vodafone and Siminn on the provision of bitstream according to A1 which was prescribed in the PTA Decision no. 8/2008 (now Market 5). In the Decision in question from 2008, Siminn was designated as having significant market power on the relevant market and appropriate obligations were imposed on the company. The Access Option in question allows for the delivery of bitstream in DSLAM or equivalent equipment at the location where the copper local loop connects to the telephone exchange distribution frame.

It was the decision of the PTA that Siminn should accede to Vodafone requests for access to A1 in xDSL, including VDSL with multicast and VoIP capability at cost-analysed prices without unnecessary delay. This meant that the access option in question was to include the possibility for Vodafone to set-up and control virtual channels with multicast capability and quality control which would suffice to operate the Vodafone IPTV system on the Siminn xDSL networks. In the case of VDSL, where DSLAM equipment is located in street cabinets, Siminn was authorised for the time being to provide the access in question in equipment in telephone exchanges where such equipment is categorised as equipment analogous to DSLAM in this connection. Such a solution should however not involve increased costs for Vodafone. A more detailed description of the access in question would be prescribed in the bitstream market analysis being prepared by the PTA (market 5).

The dispute related furthermore to the question of whether there was a need for a special access node<sup>1</sup> for the provision of the access in question and to the division of costs for the access node.

Siminn asserted inter alia that such an access node was necessary for the provision of xDSL service in A1 in order to create a homogeneous environment and to avoid the level of complexity arising from varying DSLAM equipment in the Siminn systems. In addition to this the ports in the DSLAM equipment were limited. Furthermore, such equipment mitigated the risk that a wholesale purchaser could interfere with service to other Siminn customers and in addition to this it would be possible to offer the access in

---

<sup>1</sup> Ethernet access nodes.

question to more service providers including to Siminn itself. Parties other than Vodafone had requested the access in question and for this reason it was unavoidable to use the access node to ensure non-discrimination.

Vodafone disagreed with this and considered that direct connection into DSLAM was not a problem as Vodafone already had an interface to enable such a connection. Vodafone would then install fibre-optic or Ethernet to Siminn cabinets and connect to its own service network. Access nodes were thus unnecessary, particularly at sparsely populated locations. Access nodes would not increase security, only costs.

In the PTA's draft Decision it was stated that there were conflicting views on this matter. In the first case there was the main principle of electronic communications legislation that a party requesting service should not need to pay for service other than the one he requested and only the costs directly related to his request. In the second case there was the Siminn view regarding a homogeneous environment and network security. Finally there was the view on non-discrimination with respect to possibilities for new customers in the light of limitations to free ports. The PTA considered it problematic to leave the decision to Siminn on the necessity for access nodes at locations where there were free ports, without Siminn participating in the attendant costs. It was the planned PTA conclusion to prescribe that Siminn would have the authority to decide whether it added access nodes at locations where ports were available. On the other hand, Siminn would be required to pay all costs for access nodes in such instances. Where ports were demonstrably not available, Vodafone would pay all verifiable costs for access nodes.

In Siminn's letter of objection it was stated that Siminn was responsible for security of its company systems and for proper function of its services. Neither Siminn competitors nor the authorities should have any say as to when Siminn implemented technical installation of its own equipment, particularly if such intervention led to more complex, expensive or less secure service. Such issues had to be a business decision of the electronic communications company in question. The PTA solution was unacceptable with respect to level of complexity and to security considerations, and it was in addition neither clear nor economic. It was unavoidable to have one solution that applied to all locations, or there would be dispute on all locations. In order to ensure customer security in its electronic communications networks, Siminn considered its only option to be to propose that costs for access nodes be distributed between companies in such a manner that Siminn participated in costs along with Vodafone. The Siminn share was distributed across all connections in Siminn systems in A3, despite the fact that the equipment was independent of that option. Siminn proposed that Vodafone pay ISK 250,000 set-up costs for each access node installed in all exchanges to which the company requested access, with the addition of ISK 16,255 monthly charge for a 1 Gb/s port to access node which would cover capex and opex of the access nodes.

In its letter of objection Vodafone presented no significant objections to the methodology proposed by the PTA for the use of the access nodes. The PTA then gave Vodafone the opportunity to express an opinion on the new Siminn proposal for a solution to the issue. In its answer Vodafone stated that it was prepared to endorse the use of the access nodes

in the capital city area given that certain conditions were fulfilled. It would however be normal that direct connections would be made to Siminn DSLAM outside the capital city area.

The PTA conclusion in the decision in question was that access nodes should be used in all instances as this solution was in some respects more suitable than the solution prescribed by the PTA in its draft Decision. The solution was simpler, more secure, more homogeneous and offered greater scalability, and was also in the opinion of the PTA more economical for Vodafone and for potential new parties, after Siminn had agreed to participate in costs.

When Vodafone had formally undertaken to order access nodes, no more than 3 months should pass until they were formally taken into use and formal supply of the service could commence. Within these time limits Siminn would need to order the access nodes in question, import them into the country, install them and prepare them for use. Siminn was however encouraged to expedite this process to the extent possible.

Vodafone should pay a specific start-up charge of ISK 250,000 for each access node to cover the cost of installation, finishing and definition of DSLAM VLAN set-up for the access node in question. In addition to this Vodafone should pay a monthly investment and operations charge to the amount of ISK 14,777 for 1 GB/s and ISK 18,538 for 10 GB/s. The charges in question took into account capex and opex which is split between two parties and includes inter alia purchase of access nodes, the annual licence fee, hosting of equipment and surveillance. The monthly charge in question should decrease proportionately with the advent of a new party in the service in question. The above specified cost should be entirely separated from monthly access charges for xDSL service. The prices in question were temporary prices which were to apply until the PTA had endorsed the Siminn cost-analysed prices. Should Vodafone make transactions with Siminn where the above specified temporary prices were used, the companies were to settle any possible difference when the final PTA decision on the prices was available. Such Settlement should be completed within a month from the time when the final PTA conclusion with respect prices was available.

## ***2.2 The Settlement between Skipti and the Competition Authority***

With the Competition Authority's (CA) Decision no. 6/2013 from 26 March 2013 a Settlement was confirmed between Skipti hf., the parent company of Siminn hf. and Mila ehf., on the one hand and the CA on the other. The Settlement covered alterations to the structure of the Skipti Group and other measures to strengthen competition on the electronic communications market. With the Settlement, a large number of outstanding cases against Siminn and/or Mila which were being processed by the CA were dropped, and Skipti was required to pay a significant fine.

The Settlement in question required among other things that specific service and network operations which had previously been with Siminn were transferred to Mila, including xDSL service. The transfer of this service was to be completed within 6 months of the signing of the Settlement. The Settlement was signed on 8 May 2013 and the transfer of

systems and service was to be completed no later than 8 September of that year. This meant that the obligations previously imposed by the PTA on Siminn in connection with bitstream service were transferred to Mila from and including the above specified point in time.

### ***2.3 National consultation and Mila's cost analysis***

On 20 December 2013 the PTA opened national consultation on the Draft Decision concerning cost analysis for Mila bitstream access pursuant to A1 and A3, including the access nodes in question. There it was inter alia stated that the PTA planned to reduce start-up costs for access nodes from ISK 250,000 to ISK 220,000 and in addition to this any port in excess of the first port in access nodes would be less expensive than the first port.

It was finally stated that the PTA considered that in the next cost analysis for Access Options 1-3 the question would be examined as to whether one should view costs for access nodes as part of total costs for the Mila's access system and whether this cost should thus be included in the price for bitstream access, regardless of whether one or more parties requested access. It would be in Mila's hands to find an economic solution to the provision of bitstream access to more than one party in an adequate manner, whether this was done using an access node or in another manner. In addition to this, Access Option 2 could be a more attractive option in many parts of the countryside and could lead to a need for fewer access nodes.

This consultation is discussed further in the previously specified case being processed by the PTA in parallel to the case here in question.

### ***2.4 Vodafone comments on the Mila cost analysis***

With a letter dated 13 January 2014 the PTA received comments from Vodafone on the above specified draft Decision from the Administration with respect to cost analysis. It was stated that it was necessary to clarify for which provision of service Mila was authorised to use the access nodes. The PTA Decision no. 38/2012 dealt with a dispute between Vodafone and Siminn regarding delivery through A1 and there was an agreement between the companies to use access nodes for the delivery of such service. Access nodes have become part of delivery of Access Option 1 and are not intended for other services. For this reason the whole approach with respect to proportional reduction of costs is related to new parties that use the service in question and not to the total use of access nodes. Subsequent to local inspections of telephone exchanges, Vodafone suspected that companies in the Skipti Group were using the access nodes to provide service other than A1. It was requested that the PTA ascertain whether this was the case.

Should it prove to be the case that companies in the Skipti Group were using access nodes to provide other services, such as for example direct corporate connections or connections with mobile phone transmitters, then there were two issues that had to be examined in the opinion of Vodafone. On the one hand that Vodafone had not been notified about the services where it was possible to use access nodes and on the other

hand that division of costs should not be made according to the number of parties that use A1 but according to the total use of access nodes.

It came as a great surprise to Vodafone that the access node should be used in this manner and not solely for the parties that planned to use A1, as Decision no. 38/2012 appears to assume, but also for direct connections to each DSLAM. Vodafone pointed out that the DSLAM would be serial connected if it were not for the access node. Vodafone therefore wondered whether the access node was now an integral part of the access solution. If this were the conclusion then the PTA needed to view the cost analysis from this angle.

### ***2.5 PTA query to Mila on the use of access nodes***

In a letter from the PTA to Mila, dated 22 January 2014 the Administration requested specific information from Mila concerning the above comments from Vodafone. The question was asked whether Mila was using access nodes for services or goods other than the provision of access pursuant to A1, for example for direct corporate connections with Siminn or for A3.

### ***2.6 Mila's reply and updated cost analysis***

In a letter from Mila to the PTA, dated 4 February 2014, the company's reply to the above specified question from the Administration was received. It was stated that with the transfer of the Siminn access network service to Mila at the beginning of September in 2013, all equipment in connection with ISAM, ASAM, PON and access nodes had been transferred to Mila. At that time, records of connections with the equipment, other than copper local loops, had not been kept by Mila. When Mila recorded all connections through this equipment it had come to light that there were corporate connections to Siminn customers, connections to Siminn mobile phone transmitters and backbone connections to Siminn's IP network. This had come to light sometime around the turn of the year. Subsequently the number of connections had been examined more closely, when the connections had been set up and their locations. It had come to light that there were connections of this nature in [...] <sup>2</sup> of the [...] access nodes that had been installed in connection with A1. The Siminn staff that had transferred to Mila as a result of the structural changes had not changed their procedures for connecting into the access nodes. They considered that the terms and prices for the products in question would be ready in a short space of time as cost analysis of access to access nodes and thus of additional connections was in progress. For this reason they would not have specifically drawn the attention of senior management to this matter. The case had now been reported to the Surveillance Committee for Equal Access which operated according to the Settlement.

The Mila cost analysis in the autumn of 2013 had been based on the assumption that the list of connections had been exhaustive. Now it had come to light that corporate connections had not been included in the list of the number of connections. The cost

---

<sup>2</sup> Information removed due to confidentiality reasons.

model was now updated taking this into account and the monthly prices somewhat reduced.

Finally it was stated that Mila had been considering the best arrangement for this product and one could expect price and collection to change in the coming months. Mila proposed that future arrangements would be elaborated during the next cost analysis subsequent to the PTA Decision on Markets 4 and 5. As stated in the PTA Draft Analysis of those markets, there was support for A1 and A3 use of the access nodes being included in the monthly charge for those Access Options. Access options were in reality used for A1 and A3 in the sense that they were connected into A1 and in reality part of that service. A3 is composed of A1 and a transmission system.

### ***2.7 Mila's notification to the PTA on a new service for access nodes***

In a Mila letter to the PTA dated 7 February 2014, the Administration received a notification from the company on the planned provision of new service for access nodes. Reference was made to the fact that corporate connections and backbone connections were already connected into Mila's access nodes. These connections had been allowed for in an updated cost analysis and Mila had discontinued delivery of orders until the product had been defined and publicly offered.

It was stated that Mila had now made the decision to offer the product in question on the market despite the fact the PTA had not yet made a decision on the prices. In the opinion of Mila there was no reason to wait for the final decision as the prices would be adjusted were the PTA conclusion to be other than as shown in the updated cost analysis. Mila therefore requested PTA's authorisation to commence sale of the product with a reservation on the prices.

With respect to product description for the new product it was stated that when two or more companies provided service through A1 in the same DSL equipment, then an access node would be installed. The access node was intended to prevent interference in the parties' TV service. Should an electronic communications company decide to connect in another manner than through xDSL equipment (for example through fibre-optic) to the A1 backbone connection, there would be a possibility to purchase access to ports in the access node. The purpose of the connection could be to connect a company by fibre-optic to the backbone connection or a 3G/4G transmitter to the backbone connection.

It was finally stated that Mila requested reactions from the PTA with respect to the company's plans to introduce this product to the market immediately. Mila would delay further delivery of this product until authorisation had been received from the PTA and a request was made that the Administration expedited their decision to the extent possible as there was a plan to install access nodes in a specific municipality later in February 2014. As had been stated in the PTA draft of Market 5 there was willingness in the Administration to alter the arrangement for charging for use of access nodes. Mila agreed that it was necessary to alter this arrangement, particularly in the light of the fact that the use of access nodes was more widespread than had been assumed when the access nodes

were initially installed. On the other hand Mila emphasised that the company should be able to serve all of its customers equally with this product while it was on the market.

## ***2.8 The PTA reply to Mila with respect to notification of the new service***

In a letter from the PTA to Mila, dated 18 February 2014, the Administration replied to the company on the above specified notification of new service in access nodes. It was stated that the PTA would during the coming days open an additional consultation on further specified aspects in the Mila cost analysis of A1 and A3 as the new information mentioned above on the use of the access nodes made fundamental changes, in the opinion of the PTA, to the criteria applied by the PTA in its assessment of the Mila calculations and to the basic conclusion that had been published in the initial national consultation which had been completed last 13 January.

Then it was stated that the PTA considered it a serious matter that this fact had not been made clear in the Mila cost analysis as it represented a fundamental change in the use of access nodes which was not in accordance with the PTA Decision no. 38/2012. Furthermore Mila was informed that the PTA had commenced an investigation on whether the above specified conduct by Mila (and as appropriate Siminn) constituted a breach of the non-discrimination obligation which rests on the company with respect to the offer of wholesale services and the breach of the transparency obligation by offering one party such a service without first updating the Reference Offer in accordance with the changes in question<sup>3</sup>.

Finally it was stated that the PTA furthermore intended to initiate national consultation on the amendments in question to the Mila Reference Offer for bitstream access, other than those related to the prices, during the coming days. Before the PTA initiated such consultation, the PTA requested that an application to this effect be received by the Administration which showed a product description and the conditions that were to apply to the new service. Finally the PTA instructed Mila not to process further requests for services other than A1 on the access nodes until a final decision had been made in the case or until the PTA specifically agreed to Mila being able to process such requests without the company being considered in breach of the above specified non-discrimination or transparency obligations. This could for example be subsequent to the completion of the national consultation in question should reasonable comments from parties to the market not oppose this.

## ***2.9 National consultation on amendments to the Mila Reference Offer***

On 21 February 2014 the PTA initiated national consultation on amendments to the Mila Reference Offer for bitstream access for additional services through access nodes, other than amendments related to prices. It was stated that on last 20 February the Administration had received a request from Mila for the Administrations agreement to amendments to the Reference Offer in question with respect to A1 and to specific

---

<sup>3</sup> The case in question concerning the possible Mila breach of the non-discrimination and transparency obligation will in all likelihood not be resolved until the end of the year 2014.



additional services using that option. This was an appendix which would be Appendix 5 to the above specified Reference Offer, given that the PTA endorsed the Mila plans.

In the Mila case it was stated that the appendix in question was intended to change the company's Reference Offer for bitstream access in accordance with the PTA Decision no. 38/2012. It should apply until the Reference Offer for bitstream access had been amended comprehensively subsequent to the PTA Decision on Markets 4 and 5.

In the PTA consultation document it was stated that the main change would be that it would be possible to use the access nodes in question in a more varied manner than had previously been intended, for example for direct corporate connections, backbone connections or connections to mobile phone transmitters. It was also intended that prices would change in accordance with the planned PTA decision on cost analysis for bitstream access pursuant to A1 and A3 which would be submitted for additional consultation that same day.

Then it was stated that as the main principle was that Mila was unauthorised to provide a new service that had not been agreed by the PTA and that had not been published in the Mila Reference Offer endorsed by the PTA, the PTA had instructed Mila not to provide the new service until the PTA had agreed to it. This could happen subsequent to a final decision from the PTA in the case being available or with a specific endorsement by the PTA subsequent to completion of the consultation process. Such agreement by the PTA was dependent on parties to the market declaring in the consultation that they did not oppose this.

Further detail on these issues is to be found in the Appendix 5 in question to the Mila Reference Offer for bitstream access on which there is dispute in the relevant subsections of Section IV in the PTA conclusion, here below. Issues not discussed there, or in the above specified case related to the prices, are therefore considered to be agreed.

### ***2.10 Comments from Símafélagið***

With a letter dated 25 February 2014, the PTA received comments from Símafélagið ehf subsequent to the above specified consultation. Símafélagið applauded the fact that all electronic communications companies would have the option of purchasing access to access nodes for purposes other than A1. This extended the Símafélagið distribution territory significantly, lowered the need for investment and facilitated marketing efforts. It was however extremely important to ensure that this was properly handled and that there was non-discrimination between parties. Because of the fact that it was still unclear as to how this service would be provided, Símafélagið considered it normal that Mila would delay providing this service until the PTA had finally agreed how it should be structured.

Specific Símafélagið comments will be covered in the relevant subsections in Section IV of the PTA conclusions here below.

### ***2.11 Comments from Vodafone***

With a letter dated 11 March 2014, the PTA received comments from Vodafone subject to the above specified consultation. Vodafone considered that many provisions in the Appendix 5 in question of the Mila Reference Offer for bitstream access were to a greater or lesser degree conducive to assuring a stronger competitive position for Siminn. Vodafone had from the year 2010 pressed for increased competition on the electronic communications market and considered that non-discrimination in the provision of xDSL service through Access Options 1-4 was an important factor in assuring competition. Vodafone totally opposed that the PTA provide an exemption to Mila for the provision of further services in addition to A1 until the PTA final decision was available.

Specific Vodafone comments will be covered in the relevant subsections in Section IV of the PTA conclusions here below.

### ***2.12 Comments from Siminn***

With a letter dated 12 March 2014, the PTA received comments from Siminn subsequent to the above specified consultation. The Siminn comments related first and foremost to the planned PTA amendments to pricing of ports in access nodes. For this reason there will be no further treatment of the Siminn comments in the case here under discussion and references made to the case being processed in parallel to this case and which relates to the Mila cost analysis and prices for the service in question.

### ***2.13 PTA query to Mila***

With a letter dated 17 March 2014, the PTA sent the above specified comments of Símafélagið, Siminn and Vodafone to Mila for the company's reaction and in addition the PTA posed certain questions for the company and requested the provision of specific documentation.

It was stated that before further action was taken in the case, Mila would have the opportunity to express an opinion on the comments made by the above specified parties. It was necessary that Mila commented on all the comments and that it take a specific position on whether the company accepted amendments proposed by the companies or not. Were Mila to reject the proposed amendments it was requested that this be done in a reasoned manner.

In addition to this the PTA requested documentation from Mila which showed that the company had collected costs from Siminn for the new use of access nodes from 8 September 2013. This particularly applied to the collection of charges for each port used by Siminn in the access nodes for purposes other than A1.

According to the Reference Offer, Mila also plan to offer access to its xDSL equipment where access nodes had not been installed. The PTA requested information on whether this equipment was already being used for services other than xDSL. If this was the case

then the PTA also requested information on the nature of this usage and on the payments that had been made in this connection.

The PTA was also curious to know whether that by offering access to free ports in xDSL equipment, Mila intended to provide access to xDSL equipment for A1 for more than one party without using access nodes.

Finally it was stated that it was clear on the basis of comments received that the PTA could not at this point in time withdraw instructions to Mila to refrain from providing further services on access nodes than services related to A1, in addition to services that are already been provided, prior to the PTA having finally endorsed such amendments to the Reference Offer.

#### ***2.14 Mila's replies and comments***

With a letter dated 7 April 2014, the PTA received Mila's letter of reply. Specific comments and replies will be covered in the relevant subsections in Section IV of the PTA conclusions here below.

### **III**

#### ***Planned Appendix 5 to the Mila Reference Offer for bitstream access***

In the introductory section of the Appendix 5 in question it is stated among other things that A1 shall be offered on Mila IP-DSLAM (ISAM) equipment for those counterparties that undertake to have at least 750 users within 12 months from the date of signing. The term of the agreement on A1 shall be 3 years.

Section 2 covers services. There it states inter alia that ports in the service are in access nodes which are installed in each telephone exchange and are connected into each Mila IP-DSLAM. The counterparty connects to those customers through access node, IP-DSLAM and local loop and can provide its own service through those channels. Internet, TV service (multicast and VOD) and VoIP can be transmitted through ADSL2+ and VDSL to connections in A1.

Should an electronic communications company choose to use its backbone connection for A1 with access node for service other than that which connects to xDSL, there is the option to purchase access to free ports in access nodes for other purposes.

Where access nodes have not been set up there is only one party connected into the xDSL equipment in question. In xDSL equipment there is usually a number of free ports. Mila authorises the use of these ports, if they are free for use, and the tariff for use of ports in access nodes also applies to these ports.

Should Mila choose to use other technology than access nodes to assure quality of connections with xDSL equipment, the same rules would apply for the use of such ports.

Mila reserves the right to retain ports in order to fulfil future needs of the xDSL system. On Mila's DSL connections there is a monitoring system (DLM) which monitors quality of connections and endeavours to minimise errors and to keep connections stable. The monitoring system assesses the most suitable line profile for each DSL connection and thus increases the quality of connections. It is therefore important that user endpoint devices fulfil standards specified in the technical conditions described in Appendix 2.

Section 3 covers the tariff for access nodes, ports, ADSL and VDSL connections, multicast and Access Option 1 and VoIP for A1.

With respect to access nodes it is stated that the start-up charge for access to access nodes for A1 is ISK 93,000 per unit. The start-up charge for ports for other use than A1 shall be according to the Mila tariff for invoiced services and the same applies to alterations to the size of ports. Where there are two access nodes in a telephone exchange, a double start-up charge is paid. The counterparty is responsible for fibre-optic cable between access nodes and the party's own ports and bears all costs of such installation. Cable work shall be conducted by Mila staff or by other parties endorsed by Mila.

The monthly price for a 1 GB/s port in an access node shall be ISK 9,289 and ISK 14,862 for a 10 GB/s port. The counterparty shall pay for the number of ports to which he connects. Mila reserves the right to refuse a request for a 10 GB/s port if it were clear that a 1 GB/s port will suffice for the counterparty's traffic.

The start-up charge for each ADSL or VDSL connections shall be ISK 3,166 per month and ISK 912 for connections with the upper frequency range of the copper local loop. The speed of connections is based on standard line profiles supplied by Mila to the counterparty.

The counterparty can receive multicast possibilities activated on the DSL connections that he purchases from Mila in A1. The counterparty is solely authorised to sell the service to end users. The counterparty shall specify reserved bandwidth for multicast streaming to be connected into in the access nodes in each telephone exchange. Maximum bandwidth is 600 Mb/s. Mila reserves the right to review maximum bandwidth at any point in time. The monthly price for 1 MB/s multicast in A1 is ISK 13.63. In addition to this there is reserved bandwidth (MB/s) for multicast x the number of IP-DSLAM in the telephone exchange that are connected to the access node.

The counterparty can have VoIP possibilities activated on DSL connections which he purchases from Mila in A1. The counterparty is solely authorised to sell the service to end users. The monthly price per unit for VoIP in Access Option 1 is ISK 55.85. This is on the basis of VoIP functionality for each user.

Section 4 covers cancellation provisions. The general notice for cancellation of ports is one month subsequent to the 36 months minimum binding period.

Section 5 covers billed work. Mila charges for tasks not covered by the above specified tariff for billed work. Examples of this are enlargement of ports, alterations to definitions of multicast streaming, consultancy and services provided by experts, receipt and processing of faults through the Siminn service desk, introduction of service and testing.

Section 6 covers orders. The counterparty must specify his plans and requirements for connections at any given location. One must assume that the installation of equipment for ports (for A1) at any given location will take a minimum of 3 months from the time that a defined and confirmed order from the counterparty has been submitted. The delivery time for orders is however no longer than 6 months, given availability of necessary equipment. Should the delivery time exceed the six-month reference maximum then Mila shall explain the reasons for this to the counterparty and to the PTA.

In Section 7 one can see a technical description of A1. There it is stated among other things that the access layer to DSLAM in A1 is on the Mila Ethernet, where VLAN trunking is used for various services. In addition to this there is discussion on 1 GB/s and 10 GB/s ports. There it is stated that Mila will allocate an optic connection point in a fiber rack that connects to a Mila Broadband cabinet. The counterparty is responsible for acquiring a fibre-optic connection up to this connection point and bears the cost of that process. In those telephone exchanges which are not Mila Broadband cabinets, the counterparty is responsible for fibre-optic cable between the access node and its own ports and bears all costs of that process. Cable work shall be conducted by Mila staff or by other parties endorsed by Mila. This section also deals with the speed of lines, VLAN, Internet service, TV service, VoIP service and endpoint devices.

Finally, line profiles are dealt with in Section 8.

## IV

### *The conclusions of the Post and Telecom Administration*

#### **4.1 General**

In the relevant subsections here below, the PTA will cover item by item the comments received from Vodafone and Símafélagið with respect to the amendments Mila proposes to make to its Reference Offer for bitstream access with respect to new service planned to be provided through access nodes. In addition to this the Mila position on the above specified comments from parties to the market is described. Finally there is the PTA conclusion with respect to the matters of contention that exists.

Attention is here once again drawn to the fact that matters relating to the prices are dealt with in the PTA Decision no. 17/2014 of 23 July 2014.

#### **4.2 Use of access nodes for purposes other than A1**

##### **Comments from Vodafone**

In the Vodafone comments it was stated that it was clear that Siminn had used the access nodes that had been purchased for purposes other than the provision of A1, which had

been the assumption of the PTA Decision no. 38/2012. The Mila proposals for new service through access nodes which was explained in the planned Appendix 5 to the company's Reference Offer for bitstream access constitute adaptation to the breaching of the rules practised by the Skipti Group since access nodes were introduced. This was the opening of further use of the access nodes which in the opinion of Vodafone was not in accordance with the above specified decision. Such use would generate suspicion and would increase the level of complexity. Vodafone considered that prior to the PTA taking a specific position on the Mila request in question, the PTA needed to make a detailed assessment as to whether the access nodes could be used in this manner.

### **Comments from Símafélagið**

Símafélagið applauded the fact that all electronic communications companies would have the option of purchasing access to access nodes for purposes other than A1. This extended the Símafélagið distribution territory significantly, reduced the need for investment and facilitated marketing efforts. It was however extremely important to ensure that this was properly handled and that there was non-discrimination between parties.

### **The Mila view**

Vodafone had objected to a requirement being made for an access node where more than one party offered A1. Mila pointed out that according to the PTA Decision no. 38/2012, the conclusion had been that access nodes were necessary. Corresponding technical equipment is used where A1 is offered abroad, e.g. in the Belgacom Reference Offer for VDSL2 service. With the above mentioned decision it had been decided that access nodes were necessary to prevent interference with TV service. It therefore served no purpose to continue with this case as the PTA Decision had been made. Mila operated according to the framework that had been drawn up for A1 and according to available PTA decisions. Mila was on the other hand working towards the adoption of new equipment which it hoped would take over the role of access nodes. At this point in time however, system development had not yet reached the stage where it could take over and then there were of course reservations on tests showing that the system operated as it was hoped it would.

Vodafone furthermore maintained that one could conclude from the decision in question that access nodes should not be used for any purpose other than for A1. Mila pointed out that nowhere in the decision was this prescribed. By using the equipment more effectively, unit prices were reduced to all parties who used the system and this economy should at the end of the day be transferred to the consumer market. By making excess communications generally available, Mila considers that it is practising non-discrimination, in addition to providing economies for Mila and for those who use the system. Mila cannot see how this can be in conflict with the decision in question.

Mila also wish to point out that the start-up charge which Siminn and Vodafone paid today for set-up of access nodes were solely for costs with labour and installation and set-up of the equipment and of the ISAM equipment connected to it. The parties had thus not paid for the equipment as such but had only paid a normal fee for its use. The equipment was owned by Mila and Mila had full authority to use excess capacity in the equipment to

the advantage of all parties. It should be noted that analogous start-up charges were customary on the market and that they in no way resulted in rights of ownership for those parties who paid them.

### **The PTA conclusion**

In the Decision of the PTA no. 38/2012 there is inter alia discussion on the use of access nodes in A1 and that the arrangement where a special payment is made for access to these nodes is still fully in force. In parallel to this case a decision has been made on prices for access nodes, see aforementioned Decision no. 17/2014. In the Draft Decision on market analysis of Markets 4 and 5, which one can expect to be a final decision in August 2014, it is however prescribed that the cost arrangement for access nodes will be amended in such a manner that costs for access nodes will be incorporated into the standard monthly charge for bitstream access. Subsequent to that decision Mila will therefore be required to submit a new cost analysis to the PTA in accordance with the above. One can expect a new price arrangement to be implemented in the first half of 2015.

Apart from price arrangements for access nodes, Mila has full control of its systems structure. Mila can thus either continue to use the access nodes in question or can use other equipment which can meet the same needs as access nodes. The PTA will not have an opinion on such future development of Mila systems except to the extent that the Administration can, when reviewing Mila cost analysis, reject costs that are considered to be inefficient.

It is undisputed in the case that the access nodes installed by Mila subsequent to the PTA Decision in question no. 38/2012, were used by Siminn, Mila's sister company, for more varied purposes than had originally been the intention. A specific case is now being processed by the PTA on whether Mila breached the non-discrimination and/or transparency obligations that the company bears pursuant to the PTA Decision no. 8/2008 (now Market 5). When the case came up in January 2014, the PTA instructed Mila to refrain from processing further orders for other services than A1 on the access nodes in question until the PTA had reached a decision to the contrary.

The matter for resolution here is on the other hand to answer the question of whether Mila is authorised to provide services other than A1 on the access nodes in question, for example direct corporate connections, connections with mobile phone transmitters and backbone connections with IP networks. Vodafone doubts that this is in accordance with the above specified PTA Decision no. 38/2012 and considers that this would constitute adaptation to breach of the rules by Siminn. Mila considers that nothing in the above specified decision would ban such conduct and Símafélagið applauds these increased possibilities for usage.

It is the opinion of the PTA that Mila should be authorised to provide more varied service through the access nodes than simply service related to A1, should this be done in a transparent manner and where full non-discrimination is practised between electronic communications companies. The PTA Decision in question no. 38/2012 does not forbid such increased use but nor does it specifically mention it. By using the equipment more

effectively, unit prices are reduced to all parties who use the system and this economy should at the end of the day be transferred to the retail market. This arrangement will benefit Vodafone in the same manner as other electronic communications companies. This increased service has been taken fully into account in the revised cost analysis which is discussed in the above Decision no. 17/2014. This means inter alia that the start-up charges for access nodes which Vodafone must pay Mila is reduced from ISK 250,000 to ISK 93,000. Mila must therefore reimburse Vodafone this difference when a final decision has been reached in the cost analysis case.

One must grant Mila full authority to use excess capacity in this equipment as with other company system development. The main issue is that non-discrimination and transparency are respected. As the PTA plans to ensure non-discrimination and transparency in the provision of service through the access nodes, the Administration is not afraid that there would be suspicion with respect to the provision of the service or that the level of complexity would be abnormally high. On the contrary, the PTA considers it important that Mila provide as varied a service as possible which should reduce the need for investment and simplify marketing efforts of parties not related to the Skipti Group.

It is the conclusion of the PTA that Mila should be authorised to provide services other than A1 through the access nodes given that full non-discrimination between electronic communications companies is respected with respect to the provision of the service and that it is sufficiently transparent. The revision of the Mila Reference Offer for bitstream access which here is under discussion is important to assure this non-discrimination and transparency.

#### ***4.3 Access nodes where more than one electronic communications company is connected to the xDSL equipment in question***

##### **Comments from Vodafone**

In the Vodafone comments it was stated that not only had Mila attempted to adapt its services to Siminn's operations in this respect but had also submitted a request that the use of access nodes would only be required where more than one party was connected into the relevant DSL equipment. Vodafone could only interpret this as being discrimination between parties to the market. From and including 1 September 2013 Mila had been required to provide all parties to the electronic communications market with equal success to the company's systems pursuant to the Settlement with the Competition Authority. It was clear from the above that Siminn had used A1 without having needed access nodes. Mila had thus provided Siminn with various services through A1 which had not been available to other electronic communications parties.

##### **The PTA conclusion**

The issues on which Vodafone registers complaints in this instance are fully in accordance with the above specified PTA Decision no. 38/2012 which is still fully in force. It was only expected that access nodes would be required where more than one party needed a connection into xDSL equipment. This was a compromise as there was a lack of space in most telephone exchanges. For this reason a simple arrangement was devised and division of costs was prescribed between parties. The PTA cannot see that



non-discrimination is being breached in this connection. In addition to this, pricing structure will be changed next year as was explained here above. Then all possible discrimination will be completely removed. Should Vodafone consider that the above specified Settlement between Skipti and the Competition Authority has been breached then the company should direct complaint at the Surveillance Committee for Equal Access which was founded subsequent to the Settlement.

#### ***4.4 No access node when one electronic communications company is providing xDSL service***

##### **Comments from Vodafone**

In the opinion of Vodafone the Mila proposal that it would not be necessary to install an access node when one party was providing xDSL service was a measure taken by the Skipti Group for the purpose of economy and at the same time to reduce services for other electronic communications companies. The reduction in service would be such that that Siminn could already provide all of its services through A1 without having to provide development plans and order access nodes with 3 month notice. The group thus leveraged its influence and endeavoured to force exemption clauses through Mila that would benefit Siminn operations. Such conduct could not be tolerated as it only served to cause further damage to competition on the market.

##### **The Mila view**

Mila claimed that it did not understand the Vodafone wording where it was said that Mila "submitted a request" that it should only be necessary to use access nodes where more than one party was connected into the xDSL equipment in question. According to the PTA Decision no. 38/2012 it was only necessary to install access nodes where more than one party was connected into the xDSL equipment in question, as the reason for the installation was to prevent interference. Where there was only one party then the risk of interference did not exist and thus there were no sensible arguments to support the installation of the necessary equipment. One has to do keep in mind that all costs in the Mila system ended finally with the consumers or lead to a reduction in service offer, particularly in less populated locations in the countryside. This was not a case of a request but rather compliance with the PTA Decision in question. All parties were now given access in the same manner as Siminn. There was no discrimination taking place because if party number 2 requested A1 then both parties were required to pay the start-up charge for access nodes.

##### **The PTA conclusion**

The PTA here refers to what has been stated above. This arrangement is in accordance with the above specified PTA Decision no. 38/2012.

#### ***4.5 The claim that Mila either discontinue the use of access nodes or install access nodes at all locations.***

##### **Comments from Vodafone**

In the opinion of Vodafone it would be very important were the use of access nodes to be discontinued immediately and all parties granted access to the Mila electronic

communications systems in the same manner as Siminn. Should the PTA not agree to this then Vodafone proposed that Mila install access nodes at all those locations where Siminn used A1, with attendant costs for Siminn. Such an arrangement would ensure that other electronic communications companies could at any point in time request connection into access nodes and the 3-6 month wait for activation would no longer be necessary. All electronic communications companies would then be competing on the same market.

#### **The Mila view**

With respect to the Vodafone claim for installed access nodes at all locations it would be appropriate to point out that it is clear that Vodafone would in all instances need to set-up backbone connections if the company intended to offer service through A1. With respect to delivery time for backbone connections then this could be a number of months, were it necessary to purchase equipment for the connections. Vodafone appears to request that Mila bear the cost of installing access nodes and connections for these nodes should Vodafone possibly wish to connect into the equipment without any obligation. Here Vodafone appears to equate service through A3, where existing equipment of a network operator is being used to provide service, with A1, where the network operator's service is only being used to a small extent. This was thus not a fair and normal request. It would be more normal were Vodafone to set-up connections to all locations where they intended to provide service and Mila at the same time installed access nodes. It cannot be considered a fair request that Mila expend costs in installing equipment where there is no guarantee that the customer will use it. Such would damage the electronic communications market as a whole and would be transferred to the consumer at the end of the day.

#### **The PTA conclusion**

The PTA agrees with Mila that the Vodafone claim that Mila should now install access nodes in all Mila telephone exchanges constitutes neither a fair nor normal request for access. An access request needs to be unambiguous and to be related to a specific location.

With respect to the Vodafone claim that Mila discontinue the use of access nodes, the PTA refers to the PTA position here above. The price structure for access nodes will change next year and all such costs will be included in the normal monthly charge for Access Options A1-3. Mila has also indicated that the company even intends to build on a solution other than access nodes in the future. As previously stated, the PTA does not intervene in Mila system design. The main focus of the PTA is to ensure that non-discrimination is practised with respect to access and that access is offered in a transparent manner and at a reasonable price. In addition to this Mila needs to minimise delivery time for access to the extent possible subsequent to an adequate request for access having been received from related or non-related parties requesting access.

#### ***4.6 Has Siminn paid for the use of access nodes?***

##### **Comments from Vodafone**

Vodafone requested that the PTA examined whether and in which manner Mila had collected costs for use of access nodes from last 1 September, particularly with respect to

the collection of charges for each port that Siminn had used in access nodes for purposes other than A1. According to the Mila tariff, a specific set-up charge should be collected for each port or connection and the sharing of one set-up option for more than one access port was not to be found in the tariff. Mila had not notified about the development of such a product and for this reason the collection of charges must be examined with this in mind.

#### **The Mila view**

The PTA had requested documentation on the collection of costs from Siminn for the new use of the access nodes. Mila had collected for the access nodes according to the temporary tariff but only using one price (1 GB/s port) for each location. Siminn had thus received an invoice to the same amount as that received by Vodafone. It had always been the intention to settle this matter when a final decision on the prices was made by the PTA. The additional port was initially intended to be much less expensive than the first port and for this reason it was foreseeable that Mila would need to reimburse Siminn with a significant amount if charges had been collected fully in accordance to the temporary tariff. In addition to this, Mila had not had all information about the number of connections until January 2014. It had never been the intention to give anything to Siminn in this connection. Settlement would be made with all parties when the final PTA decision on the prices was available. Had Mila known in the autumn of 2013 that there would be such a long delay for the final PTA decision then Mila would probably have organised its collection of charges in another manner.

With respect to the xDSL equipment in telephone exchanges where access nodes had not been installed, there was ISAM equipment where Siminn had previously installed connections and Mila had taken over this equipment. The same applied to collection for that the equipment as for access nodes where the intention was that these transactions would be settled when the conclusion of the cost analysis was available.

#### **The PTA conclusion**

The above specified response from Mila shows that the company has not discriminated between related and unrelated parties with respect to collection of charges for access to ports that are here under discussion. Settlement will take place subsequent to the said Decision no. 17/2014 in the cost analysis case. The PTA makes no criticism of the Mila implementation in the light of the length of delay of the case

### ***4.7 Assessment of necessity of ports***

#### **Comments from Símafélagið**

In the Símafélagið comments it is stated that in the section on tariffs it was specified that Mila reserved the right to refuse a request for a 10 GB/s port if it was clear that a 1 GB/s port will suffice for the counterparty's traffic. Símafélagið considered it inappropriate for it to be a matter of assessment for Mila to determine the size of port required in each instance. It must be a normal request that the electronic communications company in question could determine the size of its backbone connection as it wished, and pay a higher charge for a larger port should this be requested. The likely reason for the Mila reservation in question was that there are a limited number of 10 GB/s connections in

each individual access node. One could also point out the fact that in the same product line from the same manufacturer there are larger access nodes with the possibility for a greater number of ports and this did not represent a significant difference in investment costs. Should there be excess demand for 10 GB/s ports at larger locations it would simply be possible to replace the equipment and increase the number of ports in accordance with the demand. It would thus be possible to increase the number of ports at each location in a simple manner which would render the reservation in question unnecessary for Mila.

#### **The Mila view**

Mila considers it necessary to retain this provision in the Reference Offer. Such requirements often occurred at short notice, particularly as Mila did not control the volume of traffic into the equipment. The fact that Mila would need to purchase new equipment to increase connection into DSL equipment was a more significant task than to increase a connection that existed in an access node that already existed.

#### **The PTA conclusion**

The reservation in question can be found in subparagraph 2 in section 3 (Tariff) in the Appendix 5 in question to the Mila Reference Offer for bitstream access.

The PTA points out that the matter under discussion here is solely A1 for xDSL bitstream service and technical implementation of such access. Should an electronic communications company choose to use its backbone connection for A1 with access node for service other than that which connects to xDSL, there is the option to purchase access to free ports in access nodes for other purposes.

Mila shall guarantee its customers in A1 the capacity required in any instance so that they can provide service for their xDSL customers in an adequate manner. Mila on the other hand is not authorised to determine a purchaser's system structure and to control the kind of port delivered to him. Should the situation arise where 10 GB/s ports are not free, then Mila may not reject such a request for A1 which is normal and reasonable though it may be necessary to delay delivery while new equipment is being acquired. The PTA shall be informed without delay about such postponements.

#### ***4.8 Mila reservation on retaining ports in order to fulfil future needs of the xDSL system.***

##### **Comments from Vodafone**

Mila reserves the right to retain ports in order to fulfil future needs of the xDSL system. Siminn had presented the same argument in its case prior to the PTA Decision no. 38/2012, i.e. that it was necessary to install access nodes to ensure operational compatibility of the xDSL system. It was not possible to interpret the reservation in question other than that Mila was maintaining the same arguments and thus ensuring that no other electronic communications companies could connect into the Mila xDSL system without paying for access nodes. The Mila case maintained that it was not possible to connect to the electronic communications companies into the Siminn xDSL system without an access node. As Siminn was already providing its service across the whole

country on A1 without an access node there would always be need for an access node to ensure the future needs of the xDSL system, as another electronic communications company that might connect into the Mila xDSL system without an access node would be putting the future of the system at risk.

#### **The Mila view**

Mila reserved the right to retain ports to fulfil further needs of the xDSL system and Vodafone criticise this and linked it to the preparations for the PTA Decision no. 38/2012. Mila could not see how preparation for that decision could be related to this. Mila's reason for this condition was simply that this service was conceived to make better use of equipment, but backbone traffic into DSLAM always needed to have priority as the fundamental reason for installing DSLAM was for the xDSL system and not for other service. This service was planned to use excess capacity in equipment and the main reason for the installation of the equipment was of course always to prevent the risk of interference.

#### **The PTA conclusion**

The PTA agrees with Mila that the above specified Mila reservation for retaining ports in order to be able to fulfil future needs of the xDSL system is not related to the PTA Decision in question no. 38/2012. One must consider that such a reservation is normal in the operation of a network operator if all non-discrimination is to be observed between related and unrelated parties. Mila could need to prioritise in its system structure. On the other hand Mila must be careful not to apply provisions like this when demand is such that it is clear that the company must further develop its system.

### ***4.9 Can other technology replace access nodes?***

#### **Comments from Vodafone**

In the Vodafone comments it is stated that in Paragraph 4 of Section 2 of the Appendix 5 in question, it is stated that should Mila choose to use another technology than access nodes to assure quality of connections with xDSL equipment, then the same rules will apply to the use of those ports. Vodafone requested further explanations on what Mila meant by "the same rules" and requested further explanations on the technology the company plans to apply

#### **The Mila view**

Vodafone requested explanations as to what was meant by the same rules with respect to technology other than access nodes that Mila might choose to use to ensure quality in xDSL equipment. This refers to the same price and the same conditions applying in both instances.

#### **The PTA conclusion**

The PTA considers this reservation not unreasonable and makes no criticism of the reservation

#### ***4.10 Is it possible to purchase more than one VoIP option through A1?***

##### **Comments from Vodafone**

It was not stated in the Mila tariff whether it was possible to purchase more than one VoIP option, activated on an xDSL connection through A1. This needs to be answered.

##### **The Mila view**

Mila said that this would be rectified and that it would be specified that the price related to one VoIP connection at a unit price. This means that it would be possible to purchase additional VoIP connections at the same unit price.

##### **The PTA conclusion**

According to the above it will be possible to purchase more than one VoIP connection at the same unit price as the first VoIP connection.

#### ***4.11 Limitations on use of multicast and VoIP***

##### **Comments from Vodafone**

Mila plans to only authorise sale of multicast service through A1 to end users. Vodafone pointed out that Tal was already purchasing IPTV service from Siminn in wholesale and Siminn purchased A1 and A3 from Mila for the purpose of providing Tal with IPTV service. These limitations on use need to be lifted.

##### **The Mila view**

Mila said that it would take the Vodafone comments into account with respect to limitation of sale to end users and agreed to amend the provision to this effect. The same applied to provisions on limitation on VoIP to end users and that provision would be deleted.

##### **The PTA conclusion**

According to the above the condition that the counterparty may only sell multicast and VoIP to end users will be removed. This means that the counterparty may sell the service in question to other electronic communications companies in wholesale.

#### ***4.12 May electronic communications companies that use A3 not offer Vodafone IPTV service?***

##### **Comments from Vodafone**

Electronic communications companies that purchased A3 from Mila and wished to be able to provide their customers with Vodafone IPTV service may only provide the service where Vodafone has ordered an access node. On the other hand the same parties could provide their customers with Siminn IPTV service across the whole country. It is clear that in this instance the principle of non-discrimination has not been respected.

##### **The Mila view**

This must be a misunderstanding by Vodafone. The existence of an access node has no relevance in this instance. The reason why electronic communications companies that

purchase A3 from Mila and wish to provide their customers with IPTV service from Vodafone but could not do so at all locations was simply that Vodafone did not distribute TV service across the whole country. For this reason it was not possible to purchase Vodafone TV through A3, but this had nothing to do with access nodes. It would be appropriate to note that Siminn itself provided transmission of its own TV service across the whole country. Mila purchased service from Siminn for A3 but it did not include leased line costs for TV transmission

#### **The PTA conclusion**

The above specified answer from Mila demonstrates that the company does not discriminate between related and unrelated parties that purchase A3 service in an unreasonable manner with respect to the provision of IPTV service.

#### ***4.13 Double start-up charge***

##### **Comments from Símafélagið**

In the section on tariff it was specified that a double start-up charge had to be paid in a telephone exchange with two access nodes. Presumably this means that one has to pay start-up charge for access to each individual access node and not one start-up charge for access to both. This has to be clearly stated and also the arrangement for payment of start-up fee in the case of more than two parties. It would be most normal that the access nodes at each location were connected together and that one would only need one port to connect all of them.

##### **The Mila view**

In the case of Símafélagið it was stated that in the Draft PTA Decision there was no mention of the need to pay a double start-up charge in the telephone exchange with two access nodes, as at no location were there more than two access nodes installed in the same telephone exchange. Mila considers it likely that Símafélagið is referring to the following sentence:

*"The start-up charge is composed of costs for set-up and connection of the first port in each access node for Access Option 1. The start-up charge for each port in excess of the first port is collected according to the Mila tariff for billed hours and service."*

The start-up charge takes into account the work required for connecting and setting up A1 and this work is considerably more than e.g. in the case of corporate connections. This work was often conducted in the night. When customers requested additional ports, the work involved with such connections varied significantly and for this reason it had been decided to charge by billed hours.

##### **The PTA conclusion**

According to the Mila cost analysis for access nodes, which the PTA endorsed with amendments in the said Decision no. 17/2014, a start-up charge shall be paid for each individual access node for work in setting up and connecting ports. This means that the Mila implementation is in accordance with the cost analysis.

#### ***4.14 Sharing of ports with other uses***

##### **Comments from Símafélagið**

In the tariff Section it was stated that the start-up charge for ports for use other than A1 should be according to the Mila tariff for billed hours and service. Símafélagið considered it normal that the option should be offered for joint use of A1 ports for other services. Set-up for such purposes was quite simple to implement and required very little adaptation to the existing arrangement. Such joint use would have the effect of significantly reducing costs for electronic communications companies for interconnection with Mila access nodes and would benefit all parties. Reference is made to this early in the document but it was not clearly specified at any point in the document.

##### **The PTA conclusion**

In general Mila should accede to normal and reasonable requests for service on the markets where the company is subject to the obligation for access, such as on the wholesale market for bitstream. For this reason the PTA considers it normal that Símafélagið approach Mila if the company requests another kind of implementation of the Mila service than is on offer according to the Reference Offer as it is assumed that the service offer can develop in accordance with market requirements.

#### ***4.15 Sharing of ports with other usage***

##### **Comments from Símafélagið**

In the section on tariffs it was not specified whether one should also pay a start-up charge for access to access nodes for A1 if the intention was solely to use the access to be able to provide service other than ADSL or VDSL, such as Internet connections to companies or connections to mobile phone transmitters. It would be normal that a start-up charge of ISK 93,000 would only be paid once for each access node and where the intention was not to use A1 on the access node in question then this should be taken into account in the calculation of the start-up charge, as it is based on the costs of work with connecting and completing A1.

##### **The Mila view**

Access nodes were only intended for parties that already had A1 connections into such a node. MPLS-TP products were indicated for other needs.

##### **The PTA conclusion**

The PTA points out that in this instance it is only A1 for xDSL bitstream service which is under discussion which means that there is no case of it being possible to use access solely to provide services other than xDSL

#### ***4.16 Implementation of cable instalment***

##### **Comments from Símafélagið**

In the tariff section it was specified that cable instalment should be implemented by Mila employees or by other parties agreed by Mila. Símafélagið experience of an analogous



arrangement for the laying of backbone connections for fibre-optic from Mila connection cabinets to customers' connections space/cabinets was that there was always a significant difference between estimated costs from Mila on the one hand and from independent contractors from other electronic communications companies on the other hand. This comparison was significantly disadvantageous to Mila. For this reason it is very desirable that electronic communications companies are authorised to use their own contractors, given that professional implementation is assured.

#### **The Mila view**

Mila did not oppose that a customer's contractor should implement the cable installation should the customer consider this more economic. There was however the condition that the contractor was endorsed by Mila. Because of security issues it was necessary that all such activities were conducted with prior endorsement from Mila.

#### **The PTA conclusion**

Mila agreed with Símafélagið that it was desirable that electronic communications companies could approach parties other than Mila to implement such cable installation work. On the other hand it must be considered reasonable that Mila can ensure that the work is conducted rationally and that Mila can have a say in which parties are competent to perform such work in a professional manner such that electronic communications security is not at risk. For this reason there is no need to change this provision as it is prescribed that Mila can accept that other parties conduct the work. On the other hand it is clear that it is possible to refer a dispute on this issue to the PTA and that Mila needs to justify a denial with reasonable arguments.

### ***4.17 Completion of connections for other uses***

#### **Comments from Símafélagið**

Where access is purchased to free ports in access nodes for purposes other than for A1, it needs to be specified more precisely the manner in which such connections should be completed. Were the intention for example to connect fibre-optic connections to companies who trade with the electronic communications company in question then it had to be clear how such fibre-optic connections should be ordered and whether the electronic communications company needed to bear the cost of the fibre-optic trunk line into the cabinet which hosted the access node or whether the option was available to use existing Mila fibre-optic threads. Should this be a possibility then it would need to be explained what would happen were no thread available, i.e. whether Mila was obliged to increase the number of threads and who should bear the cost of such an increase in the number of threads.

#### **The Mila view**

The cost of setting up an additional fibre-optic trunk line was not included in the existing cost analysis of access nodes. One needed to examine the cost analysis and if the PTA accepted that such costs would be included in the analysis then Mila would bear the cost of the trunk lines. Otherwise the electronic communications company in question would need to bear the cost.

**The PTA conclusion**

This cost is not included in the existing cost analysis of access nodes. Mila shall on the other hand accede to normal and fair requests for access where payments shall be made in accordance with labour and other outlay costs. Should a dispute arise with respect to access and/or costs then Símafélagið can refer such a dispute to the PTA for resolution. One must keep in mind that access to ports in access nodes is based on the customer in question already having access to A1, as has been previously stated.

***4.18 Further implementation of other uses*****Comments from Símafélagið**

No definition has been made as to the form of other connections than A1. More precisely, the service available on such connections has not been specified<sup>4</sup>. It would be desirable that this was further specified.

**The Mila view**

This provision was included with the intention that Mila could upgrade and change its system design without needing to change the Reference Offer. In general Mila pointed out that the PTA planned to amend the cost analysis for access nodes. In addition to this, Mila considered that the MPLS-TP product that had been presented on Mila's website on 4 April 2014 reduced the need for corporate connections in access nodes. For this reason Mila considered it desirable to merge the tariff for access nodes with the MPLS-TP tariff and to merge the equipment under the MPLS-TP product.

**The PTA conclusion**

The PTA considered desirable that the Reference Offer is as detailed as possible with respect to services on offer at any given time but that it can never be exhaustive. It is assumed that Mila customers can approach the company for further information and implementation of the relevant services. Further to this there has to be latitude to develop implementation of services while at the same time respecting non-discrimination between the company's customers. Should be a demand for other usage where it would be fair and normal for Mila to react, then in the same way it is important that the Reference Offer be amended and updated accordingly.

***4.19 Termination notice on A1 ports*****Comments from Vodafone**

It is assumed that termination notice for ports was one month. One should however note that an electronic communications company using an access node was committed to paying for at least 36 months. Siminn, which provides service at some locations through A1 without an access node, could therefore terminate its service with one month's notice, while other electronic communications companies were committed for 36 months. Vodafone requested answers from the PTA as to whether the Administration considered it normal that a company that participated in proportional investment cost of an access

---

<sup>4</sup> There was the question of whether priority marking was respected for traffic, one or more VLAN, what type of traffic was permitted etc.

node was committed to payments for 36 months for an access node if the electronic communications company in question considered it at a later point to be more economical to transfer to another service level, for example A3.

### **The Mila view**

Mila pointed out that in this instance measures were being taken to recover outlay costs. This charge was collected from all customers where access nodes were installed. It should be pointed out that there were very few commitments in the current Reference Offer which means that there was a significant risk that Mila would not recover outlay costs. It should be noted that in the Belgacom Reference Offer for a VDSL service the period of commitment for VDSL connections was one year. In addition to this, Vodafone bears only 10% of the investment cost of access nodes according to the Reference Offer which can hardly be considered significant.

### **The PTA conclusion**

In the Appendix 5 in question to the Mila Reference Offer of bitstream access one can find the following provision on the period of notice for termination and the duration of the agreement.

In Paragraph 4 of Section 1 (introduction) it states:

*"The term of the agreement on A1 shall be 3 years."*

In Section 2 (Tariff) it states:

*"The counterparty shall pay a monthly charge for an access node for a minimum of 36 months."*

In Section 4 (Termination provision) it states:

*"The general notice for termination of ports is one month, see however the provision on minimum time here below."*

*If the counterparty decides to discontinue use of a specific access node then the counterparties shall pay Mila the remaining monthly charges for that access node, where payment is made for one access node for a minimum of 36 months."*

Section 1.5 in the Reference Offer currently in force on bitstream access prescribes on the termination of an agreement. Then it is stated that each party can revoke an agreement with 3 months' notice from the end of the month.

The PTA does not agree with Mila that there is a reason to have a special termination provision for access nodes. For this reason the general 3 months termination provision in Section 1.5 in the Reference Offer also applies to access nodes.

The PTA cannot see the reason to treat access nodes in a manner other than other service items in the provision of A1. And other arrangement could create an incentive for Mila to organise its system development in an inefficient manner. Mila has declared that the

company may even consider discontinuing the access node arrangement in the near future. It is normal that all Mila system development take into account current demand and that the price for its bitstream access be collected to the extent possible through monthly access charges. It is also significant in this connection that Mila is now being authorised to use the access nodes in question for more varied needs than was allowed for initially. For this reason the PTA can see no arguments to support special treatment for access nodes with respect to contractual duration.

Taking the above into account, Mila is obliged to remove the above specified provision in Paragraph 4 of Section 1 on the 3 year contractual duration for A1 and from Section 2 on the minimum 36 month payment of the monthly fee for access nodes. The provisions of Section 4 of Appendix 5 on the termination of agreement shall be worded in such a manner that the general provisions of Section 1.5 in the Reference Offer apply to termination.

#### ***4.20. Summarised PTA conclusion***

It is the opinion of the PTA that Mila should be authorised to provide more varied service through the access nodes than simply service related to A1, should this be done in a transparent manner and where full non-discrimination is practised between electronic communications companies. The PTA Decision no. 38/2012 does not prohibit such usage although the said Decision does not specifically deal with it. By using the equipment more effectively, unit prices are reduced to all parties who use the system and this economy should eventually be transferred to the retail market. This increased service has been taken fully into account in the revised cost analysis which was under discussion in the PTA Decision no. 17/2014.

One must grant Mila full authority to use excess capacity in this equipment as with other company system development. The main issue is that non-discrimination and transparency are respected. As the PTA plans to ensure non-discrimination and transparency in the provision of service through access nodes, the Administration is not afraid that there would be suspicion with respect to the provision of the service or that the level of complexity would be abnormally high. On the contrary, the PTA considers it important that Mila provide as varied a service as possible which should reduce the need for investment and simplify marketing efforts of parties not related to the Skipti Group.

It is the conclusion of the PTA that Mila should be authorised to provide services other than A1 through access nodes given that full non-discrimination between electronic communications companies is respected with respect to the provision of the service and that it is sufficiently transparent. This can inter alia be direct corporate connections, connections with mobile phone transmitters and backbone connections with IP networks. The revision of the Mila Reference Offer for bitstream access which here is under discussion is important to assure this non-discrimination and transparency.

Mila shall guarantee its customers in A1 the capacity required in any instance so that they can provide service for their xDSL customers in an adequate manner. Mila on the other

hand is not authorised to determine its purchasers' system structures<sup>5</sup> and to control the kind of port delivered to them. Should the situation arise where 10 GB/s ports are not free, then Mila may not reject such a request for A1 which is normal and reasonable though it may be necessary to delay delivery while new equipment is being acquired. The PTA shall be informed without delay about such postponements.

It will be possible to purchase more than one VoIP connection at the same unit price as the first VoIP connection.

The condition that Mila counterparty may only sell multicast and VoIP to end users will be removed. This means that the counterparty may sell the service in question to other electronic communications companies in wholesale.

It is desirable that parties requesting access can turn to parties other than Mila for cable installment for connections to access nodes. On the other hand it must be considered reasonable that Mila can ensure that the work is conducted rationally and that Mila can have a say in which parties are competent to perform such work in a professional manner such that electronic communications security is not at risk. Such a reservation is in accordance with Article 67 of the Act on Electronic Communications. There is a provision for Mila being able to endorse other parties to perform the task. It is possible to refer a dispute on this issue to the PTA and Mila needs to justify a denial with reasonable arguments.

The PTA does not agree with Mila that there is a reason to have a special termination provision for access nodes. For this reason the general 3 month termination provision in Section 1.5 in the Reference Offer also applies to access nodes. The PTA cannot see the reason to treat access nodes in a manner other than other service items in the provision of A1. Another arrangement could create an incentive for Mila to organise its system development in an inefficient manner, even to the effect that varying contractual duration could influence the choice of technical solution for further development of the network. Mila has declared that the company may even consider discontinuing the access node arrangement in the near future. It is normal that all Mila system development take into account current demand and that the price for its bitstream access be collected to the extent possible through monthly access charges. It is also significant in this connection that Mila is now being authorised to use the access nodes in question for more varied needs than was allowed for initially. For this reason the PTA can see no arguments to support special treatment for access nodes with respect to contractual duration. Taking the above into account, Mila is obliged to remove the above specified provision in Paragraph 4 of Section 1 on the 3 year contractual duration for A1 and from Section 2 on the minimum 36 month payment of the monthly fee for access nodes. The provisions of Section 4 of Appendix 5 on the termination of agreement shall be worded in such a manner that the general provisions of Section 1.5 in the Reference Offer apply to termination.

---

<sup>5</sup> A normal exception to this would be measures where Mila makes requirements to prevent interference in a fixed network.

With the PTA Decision no. 8/2008, on the designation of undertaking with significant market power and imposition of remedies on the wholesale market for bitstream access, the Administration imposed inter alia access, transparency and non-discrimination obligations on Siminn. The said obligations have not been transferred to Mila subsequent to the above Settlement between Skipti Group and the Competition Authority. The PTA has drafted a new market analysis for market 5, the analysis has undergone two national consultations and a decision in this respect is expected in August 2014 subsequent to consultation with the EFTA Surveillance Authority (ESA) and other national regulatory authorities on the European Economic Area. According to the PTA's findings in that draft measure it is necessary to maintain the above obligations on Mila regarding the bitstream services, including the services in question in the case here under discussion. Further justification can be found in the said draft market analysis.

### *Decision*

**Mila is authorised to provide more varied service through access nodes than service related to Access Option 1 for bitstream access which was discussed in the PTA Decision no. 38/2012, provided that this is done in a transparent manner and where full non-discrimination is respected between electronic communications companies. This can inter alia be direct corporate connections, connections with mobile phone transmitters and backbone connections with IP networks.**

**Mila shall guarantee its customers in Access Option 1 the capacity required in any instance so that they can provide service for their xDSL customers in an adequate manner. Mila on the other hand is not authorised to determine a purchaser's system structure and to control the kind of port delivered to them. Should the situation arise where 10 GB/s ports are not free, then Mila may not reject such a request for A1 which is normal and reasonable though it may be necessary to delay delivery while new equipment is being acquired. The PTA shall be informed without delay about such postponements.**

**It will be possible to purchase more than one VoIP connection at the same unit price as the first VoIP connection.**

**The condition that Mila's counterparty may only sell multicast and VoIP to end users shall be removed.**

**The general 3 month termination provision in Section 1.5 in the Reference Offer shall also apply to access nodes.**

**This Decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs see Article 13 of Act no. 69/2003 on the Post and Telecom Administration. The appeal shall have reached the Appellate Committee within four weeks from the time that the party in question became aware of the Decision of the Post and Telecom Administration. Costs for an appeal are according**

**to Paragraph 5 of Article 13 of the same Act, and in addition to this there is a special appeal charge to the amount of ISK 150,000, pursuant to Article 6 of Regulation no. 36/2009 on the Appellate Committee for Electronic Communications and Postal Affairs.**

*Reykjavik, 29 July 2014*

---

Björn Geirsson, on the behalf the the  
Director of the PTA

---

Óskar H. Ragnarsson

Appendix:  
ESA´s comments letter