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Fjarskiptastofa
Sudurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr. Gíslason,

Subject: Mila wholesale tariff for access to rectifier equipment and weighted average cost of capital (WACC) - Remedies

Article 7(3) of Directive 2002/21/EC (“Framework Directive”)¹: No comments

I. PROCEDURE

On 29 August 2022, the EFTA Surveillance Authority (“ESA”) received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Fjarskiptastofa* (“ECOI”)², concerning remedies in the markets for wholesale local access provided at a fixed location, wholesale central access provided at a fixed location for mass-market

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12) as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (“the Framework Directive”). On 24 September 2021, the EEA Joint Committee adopted Decision (“JCD”) No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36 (“the Code”), into the EEA Agreement. Directive (EU) 2018/1972 will repeal, inter alia, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable.

² On 1 July 2021, the name of the national regulatory authority in Iceland was changed from Póst- og fjarskiptastofnun (the Post and Telecoms Administration or PTA) to Fjarskiptastofa (the Electronic Communications Office of Iceland or “ECOI”). For ease of reference, the new name ECOI will be used throughout this letter even when referring to activities pre-dating 1 July 2021.

products³, wholesale terminating segments of leased lines⁴ and wholesale trunk segments of leased lines in Iceland⁵.

The notification became effective on the same day.

Two national consultations were carried out by ECOI, pursuant to Article 6 of the Framework Directive. The first during the period 10 February to 3 March 2022 and the second during the period 7 to 28 July 2022.

On 8 September 2022, ESA sent a request for information (“RFI”) to ECOI (Doc No. 1311076), to which a reply was received on 13 September 2022 (Doc No. 1312273).

The period for consultation with ESA and the national regulatory authorities (“NRAs”) in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 29 September 2022.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The remedies imposed in the current draft notification stem from the obligations imposed by ECOI in the Decisions 8/2014 of 6 May 2014 (concerning the review of market 6 of the 2008 Recommendation)⁶, 21/2015 of 12 August 2015 (market 14 of the 2004 Recommendation)⁷ and 5/2021 of 19 October 2021 (markets 3a and 3b of the 2016 Recommendation)⁸.

In all of the reviews described above, ECOI designated Mila ehf (“Mila”) as having significant market power (“SMP”) in the relevant markets and imposed obligations regarding reasonable access, price control and cost accounting, non-discrimination, transparency and accounting separation.

II.2 Current notification

The current notification concerns ECOI’s price control on Mila’s rectifier equipment. Rectifiers are a piece of equipment located in exchanges which convert alternating current to high quality direct voltage needed for telecommunications equipment. Rectifiers allow telecoms companies to change their systems set-up with greater ease and to reduce power consumption.

³ Corresponding to markets 3a and 3b of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (the Framework Directive); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7 (“2016 Recommendation”).

⁴ Corresponding to market 6 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 (“the 2008 Recommendation”).

⁵ Corresponding to market 14 of the EFTA Surveillance Authority Recommendation of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, as incorporated into the Agreement on the Economic European Area (No 194/04/COL) (“the 2004 Recommendation”).

⁶ See ESA’s Decision in case 75278.

⁷ See ESA’s Decision in [case 77596](#).

⁸ See ESA’s Decision in [case 87359](#).

Historically, ECOI had not price-controlled access to Mila's rectifier equipment. In its response to ESA's RFI, ECOI indicated that there had not been any material request for access or dispute regarding prices for access to rectifiers in the past. However, following the move of all rectifiers from Síminn to Mila, the latter sent a request to ECOI for a significant price increase. For this reason, ECOI considered it necessary to conduct a cost analysis to assess Mila's new proposed prices.

ECOI pointed out that although alternative operators may rent space in Mila's exchanges and purchase their own rectifiers, these operators do not enjoy the same level of economies of scale as Mila, justifying price-controlling access to this equipment in Mila's facilities to ensure a level-playing field.

ECOI's analysis relies on Mila's regulatory accounts, which were also reviewed by a third party (Mannvit Consulting Engineers) on behalf of ECOI. The inputs to the cost calculation include Mila's (i) operating expenses ("OpEx"), (ii) capital expenditures ("CapEx") and (iii) a reasonable return, estimated as the weighted average cost of capital ("WACC"). The costs are then calculated for four different geographic areas and prices controlled accordingly in each of these areas⁹.

In terms of the OpEx, the price control allows for the recovery of (i) hosting costs (i.e. the rental space to host rectifiers and batteries); (ii) electricity costs (i.e. payments to electricity providers based on their prices); and (iii) other costs (such as, systems monitoring, surveillance, measurements, etc.). Any pay-related costs included in the cost calculation have been indexed using Iceland's wage index.

In relation to the CapEx, the cost basis used by ECOI is the replacement cost¹⁰ of the equipment given that alternative operators can choose between purchasing access to Mila's equipment or buying their own equipment. This approach is consistent with the Commission's Recommendation on non-discrimination and costing methodologies¹¹, in that replacement costs best reflect the underlying competitive process and, in particular, the replicability of the assets. The CapEx considered relates to rectifiers and batteries and ECOI has assumed a 10-year lifetime for the equipment. Similarly to the case concerning OpEx, costs are split across the different geographic areas.

The nominal pre-tax WACC applied to the CapEx has been calculated in line with the Commission's Notice on the calculation of the cost of capital¹² and using the inputs¹³ from BEREC's 2021 report on WACC parameter calculations¹⁴.

The proposed monthly prices for Mila's rectifier equipment are shown in the Table below:

⁹ Different costs and prices are calculated separately for (i) urban areas, (ii) rural areas, (iii) halls, and (iv) uninhabited areas.

¹⁰ The replacement cost is the cost of replacing the equipment with either the same asset or another asset of similar performance characteristics.

¹¹ Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, OJ L 251, 21.9.2013, p. 13–32, available [here](#).

¹² Communication from the Commission – Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector, OJ C 375, 6.11.2019, p. 1–11, available [here](#).

¹³ The only difference relates to the estimation of the risk-free rate, which ECOI estimates at 4.47%, compared to 4.39% in BEREC's report. ECOI explains in its reply to the RFI that the main reason for this difference is the use of different benchmark Government bonds. However, ECOI explains that for its 2022 report, BEREC are planning on using the same bonds used by ECOI in the current notification.

¹⁴ BEREC Report on WACC parameter calculations according to the European Commission's WACC Notice of 6 November 2019, BoR (21) 86, 10.06.2021, available [here](#).

Category	48 volt	Electricity f. 48 volt	Total ISK/kW per month
Urban area	26,700	12,700	39,400
Rural area	61,200	15,800	77,000
Halls	14,900	12,300	27,200
Uninhabited	142,600	16,700	159,300

ECOI indicates in its reply to the RFI that the significant change from the existing prices (approximately ISK 20,000 per KW/month) is due to the fact that the price had not been changed since 2001, while many cost drivers such as energy, housing and salaries have significantly increased since then.

III. NO COMMENTS

ESA has examined the notified draft measure and has no comments.

IV. FINAL REMARKS

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

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

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

Pursuant to Point 15 of the Procedural Recommendation¹⁵, ESA will publish this document on its eCOM Online Notification Registry. ESA does not consider the information contained herein to be confidential. You are invited to inform ESA within three working days¹⁶ following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,



Filip Ragolle
 Deputy Director for Competition and Regulation
 Competition and State Aid Directorate

¹⁵ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on ESA's website, [here](#) ("the Procedural Recommendation").

¹⁶ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.