

Draft Decision no. XX/2021 on designation of undertakings with significant market power and the imposition of obligations on the wholesale markets for local access provided at a fixed location (Market 3A) and central access provided at a fixed location for mass-market products (Market 3b).

(1) The Electronic Communications Office of Iceland (ECOI)¹ has, with reference to Article 17 of the Electronic Communications Act no. 81/2003, as amended, analysed the following markets that are defined in the ESA recommendations on the relevant market from 11 May 2016:

- Wholesale market for local access with fixed connection (Market 3a).
- Wholesale market for central access provided at a fixed location for mass-market products (Market 3b).

(2) On 30 April 2020, the preliminary draft of market analysis of the above-specified markets was published for consultation to stakeholders, and they were invited to make comments on the preliminary draft and its planned conclusions. The notice for submission of comments from the consultation ended on 10 July 2020.

(3) The following parties submitted comments on the Preliminary Draft.

- Competition Authority (SE)
- Síminn hf. (Síminn)
- Mila ehf. (Mila)
- Sýn hf. (Vodafone)
- Gagnaveita Reykjavíkur ehf. (GR)
- Tengir hf. (Tengir)
- Nova hf. (Nova)
- Snæfellsbær
- Stykkishólmsbær
- Fjarðabyggð

¹ Formerly Post and Telecom Administration (PTA). The name change took effect on July 1, 2021.



(4) On 30 October 2020, the ECOI opened a limited additional consultation on specific issues in the preliminary draft. The consultation ended on 27 November 2020. The following parties submitted comments in the additional consultation:

- Competition Authority (SE)
- Síminn hf. (Síminn)
- Mila ehf. (Mila)
- Gagnaveita Reykjavíkur ehf. (GR)
- Nova hf. (Nova)
- Hringiðan
- Snerpa
- Tölvun

(5) The analysis of Markets 3a and 3b has now been revised in accordance with plans for changes that the ECOI notified in the additional consultation from 30 October 2020 and with respect to the comments from the consultation and the additional consultation that were taken into account. The revised analysis can be found in Appendix A to this decision. In Appendix A-1 one can find discussion on market analyses in Europe that relate to geographic definition of markets. In Appendix B, the comments received on the preliminary analysis and the position of the ECOI on these comments are discussed. In Appendix C, one can finally find comments received in the above-specified additional ECOI consultation and the position of the ECOI on these comments, and in addition to this the material content of the additional consultation in question is described.

1 Designation of undertakings with significant market power on the wholesale market for access through a fixed connection (Market 3a)

(6) Mila ehf was designated as having significant market power on the relevant market (then Market 4) in the Post and Telecom Administration (PTA) Decision no. 21/2014.

(7) The conclusion in the ECOI market analysis 2021 on Market 3a is as follows:

(8) Market 3a is composed of access networks (local loops) provided at a fixed location, both copper and fibre-optic (though not Mila P2P Ljósliða to companies), and related facilities, along with virtual solutions (VULA), which fulfil the same needs as local loop lease.

(9) The ECOI made a detailed geographic analysis of the markets in question by municipality and came to the conclusion that despite somewhat differing competitive conditions between municipalities, these were not sufficiently heterogeneous to justify segmented geographic markets. The ECOI however intends to impose varying obligations in 17 municipalities of 69, where about 70% of the country's population lives, and where in the opinion of the ECOI there is more competition than in other areas.

(10) Mila still has the greatest market share on the relevant market, i.e., about 57% of the market on the basis of the number of copper and fibre-optic local loops in use at a national level at the end of 2020, while GR comes next with a much smaller market share, i.e., 36%.



The Mila market share has dropped from being 83% at the end of 2013. The ECOI considers that although the market share has dropped significantly, it is still sufficiently high to give very strong indications of significant market power. There are further factors that support the conclusion on Mila significant market power, such as total size, profitability and the economic power of the Siminn Group, access barriers, including the vertical integration of the Siminn Group and the Mila economies of scale and scope and also the lack of competition. Mila still controls the only access network that virtually spans the whole country and has made major investments in fibre-optic networks during recent years. The Siminn Group position is still very strong and Siminn's market share on the downstream retail market has been relatively stable in recent years, at just under 46% at the end of 2020. It is the ECOI's conclusion that Mila still has significant market power on this market and that this will in all likelihood not change during the estimated lifetime of the analysis. Further grounds for this ECOI position can be found in Appendix A, particularly in Section 8.

(11) Having in mind market definition of a service market where copper and fibre-optic local loops are deemed to belong to the market, and the geographic market, which is considered to be the whole country, and having in mind analysis of competition on the relevant market in accordance with paragraph 2 of article 17, see article 18 of the Act on Electronic Communications, the ECOI designates Mila ehf. as continuing to have significant market power on the relevant market. The ECOI furthermore designates Siminn hf. as having significant market power on the relevant market, and the two companies jointly constitute a single economic unit in the understanding of competition law and of this market analysis.

2 Imposition of obligations on Market 3a

(12) With the PTA Decision no. 21/2014 dated 13 August 2014, obligations were imposed on Mila ehf. on the relevant market (then market 4) for access, non-discrimination, transparency, separation of accountancy, price control (with the exception of fibre-optic local loops) and cost accounting.

(13) With this decision, the ECOI maintains obligations on Mila. The obligations are in many respects the same as those that were previously applied, but with some additions and to a certain extent with changed structure. In the last analysis, the PTA did not impose an obligation on price control for the company's fibre-optic local loops, but a general non-discrimination obligation should apply with respect to price and other conditions for access. The ECOI now imposes an obligation that both Mila and Siminn, i.e., the Siminn Group, shall withstand an Economic Replicability Test (ERT) with respect to the Group's fibre-optic products. Furthermore, there are individual changes to the elaboration of obligations from the prior analysis, such as in a more detailed elaboration of the obligation for access to the company's ducts and conduits.

(14) The ECOI has decided to maintain and/or impose appropriate obligations on Mila and Siminn that are:

- Obligation for access (Mila)
- Obligation for non-discrimination (Mila, but the obligation also applies to Siminn with respect to ERT test)



- Obligation for transparency (Mila)
- Obligation for separation of accountancy (Mila, but the obligation also applies to Siminn with respect to ERT test)
- Obligation for price control (cost-orientation) on copper local loops (Mila)
- Obligation to withstand an ERT test with respect to fibre-optic local loops (Mila, but the obligation also applies to Siminn)
- Obligation for cost accountancy (Mila, but the obligation also applies to Siminn with respect to ERT test)

(15) In 17 specific municipalities where more competition pertains than elsewhere, obligations on access to ducts and conduits, obligation to advertise civil works and an obligation to inform with 5 years' notice on migration in network systems, will not apply.

(16) In the opinion of the ECOI these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and in the provisions of the Electronic Communications Act and that they are appropriate for the period that is expected to pass until the market will be analysed again. The ECOI considers that the obligations also take into account the nature of the potential and real competition problems that the ECOI has identified, see discussion in Section 10.2 in Appendix A and that are designed to resolve them. In the opinion of the ECOI, they are appropriate, justifiable, supported by arguments, transparent and in accordance with the objectives they are intended to achieve, i.e., to strengthen competition on the relevant market and on the downstream wholesale Market 3b and on related retail markets, to support continuing fibre-optic deployment, to support development of the internal market for electronic communications within the EEA and to protect users' interests. The obligations, in the opinion of the ECOI, do not go further than necessary or impose heavier burdens on the companies than is deemed necessary.

(17) With respect to further discussion on the obligations, the ECOI refers to the revised analysis on relevant market, see Section 10 in Appendix A to this decision. Further elaboration of the obligations to be found in Appendix A should be seen as part of this decision. The obligations replace the obligations imposed on Mila with the PTA Decision no. 21/2014.

(18) In accordance with Article 27 on the Electronic Communications Act, the ECOI has decided to impose the following obligations on Mila ehf. and Siminn hf. as a result of the designation of the companies as having significant market power on the relevant market. The obligations that apply for Siminn are an obligation to withstand and ERT test along with Mila, see further in Section 2.2 here below, specific obligations for separation of accountancy and cost accountancy, as will be deemed necessary for the implementation of the ERT test in question.

2.1 Obligation to provide access

(19) With the authority in article 28 of the Electronic Communications Act, the ECOI has decided to maintain the obligation on Mila to accede to normal and reasonable requests for local access to its copper and fibre-optic networks, whether it is shared or full access, and to related facilities and services at wholesale level.



(20) With respect to xDSL, other than VDSL, Mila shall accede to requests from electronic communications companies for the upper frequency range of copper local loops for data transmission even though the lower frequency range is not being used for voice telephony service.

(21) With respect to fibre-optic local loops, Mila shall among other things, provide access to the following service offer:

- *Fibre-optic local loop*: One optical fibre from the location of the optical distribution frame, where Mila has the last optical splitter to the demarcation box at the end user's access address. This location is called TOAL and is situated at a location where Mila has adequate capacity to provide P2P fibre-optic connection to end users.
- *Fibre-optic local loop on PON network*: Fibre-optic from the end user to a technical facility which houses the interface between the access network and trunk line network. This is a case of a standard fibre-optic local loop with optical splitter and backhaul fibre.
- *Backhaul fibre*: One or more optical fibres from telephone exchange/technical facility to FDP, for example for VDSL2 equipment in a street cabinet or optical splitter.

(22) Although the ECOI considers shared access to Mila, PON fibre-optic local loops unlikely during the lifetime of the analysis, because of technical difficulties with this, the ECOI nevertheless imposes an obligation on Mila for such access, should a reasonable, fair and normal request for access be made for this.

(23) A reasonable request for full or shared access to local loop is considered to be a request for a local loop that is not in use for another purpose on that day when new use is planned. One must keep in mind the right of each user to universal services through a network connection node and also the necessity to maintain network integrity.

(24) Mila is only authorised to limit access to and use of local loops on the basis of Essential requirements that relate to operational security of electronic communications networks in emergencies, to its integrity and in proven instances, the operational compatibility of service systems and protection of data.

(25) Where it is not possible to provide access to physical local loop, e.g., where VDSL service with vectoring is installed or in a fibre-optic sub loop in a Mila PON network, the VULA virtual solution which can perform the same functions shall be offered. It is dependent on endorsement by the ECOI that the virtual access is offered instead of physical access. VULA needs to fulfil conditions related to service and access and they are:

- Access at each location
- Access independent of the service provided on the line
- Specific and fixed definition of capacity of the line



- Full control of access and service/service definitions
- Full control of user endpoint equipment

(26) Where shared access is not technically possible, exemption is granted where open virtual access to a sub loop is offered.

(27) Should the situation arise that an electronic communications company request to install a new cable in a Mila ducts or conduits which was not fully used, on the market here under discussion, Mila shall accede to this request, given that it is normal and fair. Should a reasonable request to this effect be made by an interested network operator, that was deemed normal and fair, then Mila shall prepare a database, which contains precise information on the location and condition of the company's ducts and conduits. It shall show among other things, which ducts, and conduits are free in part or in their entirety and can thus be used for such access. The database shall among other things, show the above-specified information in map form. Mila shall give the ECOI and interested electronic communications companies access to the database in question. Should older cables that are no longer needed be in place in Mila's ducts and conduits, Mila shall remove them for a reasonable charge, if this could result in interested electronic communications companies being able to use the ducts or conduits in question. If an agreement is not reached, the ECOI can decide a normal recompense in this connection. Mila shall furthermore, in return for a fair charge, make necessary repairs and improvements to ducts and conduits so that they can be used for this purpose. If an agreement is not reached between Mila and the party making the request for installing fibre in a free duct or conduit, in return for a reasonable charge, the ECOI can decide that.

(28) The above-specified database shall be available no later than 3 months after the fair and reasonable request has been received from a network operator regarding such access in an area where no party has deployed a fibre optic network. Such a request shall be limited to a clearly delineated area, e.g., municipality or village/town or district at which the interest of the network operators in question is directed in each instance. In other areas where the obligation is in force, such a database shall be available no later than 12 months after a fair and normal request for its building has been made by an interested network operator with regards to a more specifically defined area.

(29) After having received the above-specified map data and the above-specified information on Mila ducts and conduits, the network operator who is interested in utilising free space in the ducts and conduits shall submit an order for access within one month from the time that he took delivery of the data and he shall specify, as precisely as possible, which ducts, or conduits access is requested for. Mila shall not commence work on its own deployment of optical fibres in the area in question, in which the network operator has shown interest subsequent to a request having been made that Mila provide the above-specified information and until the notice of one month has passed that the network operator has to decide whether he will use access to them. During the period in question, the requested ducts or conduits in the area are therefore reserved for the interested network operator. The period in question can be shorter than 4 months, all depending on how quickly Mila delivers the necessary information on those ducts and conduits that the request concerns, to the interested network operator. After an order has been made, Mila is unauthorised to install cables or perform any



work on the ducts and conduits covered by the order, that in any way would impair the network operator's requested access to those ducts and conduits.

(30) The obligation in question may however not prevent normal Mila use of its infrastructure or inhibit Mila fibre-optic rollout. If Mila has formally notified about fibre-optic rollout in the area in question, with at least 6 months' notice, the priority in question for the party requesting access does not apply. Mila needs to specify precisely which addresses are involved and the timing of the civil works. Mila is not authorised to notify about planned civil works with more than 12 months' notice in this connection. In order to prevent Mila abuse of this authorisation for priority, the ECOI can, having received a submission from a party interested in requesting access, evaluate whether Mila deployment plans are realistic. The ECOI can then among other things, request copies of agreements with contractors and financial plans for the civil works in question. Should ECOI deem that the plans for civil works in a specific area or areas are not realistic within the 12-month period, the ECOI can decide that that area or those areas, do not enjoy Mila priority for civil works.

(31) The ECOI can decide on whether the network operators request for access to Mila ducts and conduits is deemed fair and normal, should a dispute arise on that issue between Mila and the network operator in question.

(32) The ECOI also intends to maintain the obligation on Mila to offer co-location/joint utilisation to facilities related to the service provided over copper or fibre-optic local loops. A reasonable request for co-location/joint utilisation is considered to be a request for free space in Mila buildings and such a definition can also include a request that requires enlargement or rebuild of premises. Where the duty for joint utilisation or co-location requires changes or extensions then Mila shall accede to normal and reasonable requests. The obligation to offer joint utilisation or co-location is imposed on Mila for the facilities the company controls, including in buildings and other facilities. The obligation covers fair and reasonable requests but does not entail a significantly increased financial burden on Mila. Should agreement not be reached between the parties on access to joint utilisation or co-location the ECOI can decide a cost related price and reasonable conditions for access.

(33) Mila shall authorise open access for other companies to technical interfaces, communications protocols and other technologies that ensure interoperability of services (connections with other networks). Mila shall provide access to support systems and information necessary for the local loops to be useful for the purpose for which they were leased. Such access can among other things be in the form of operational support, database to gather information prior to orders being made, delivery, orders, maintenance, handling of faults and invoicing. Mila shall furthermore provide service providers with access to electricity in technical spaces if possible.

(34) Mila shall provide a list of planned civil works with six months' notice. This obligation covers both digging holes and ditches, but repairs or renewal of individual local loops is not covered by this obligation. The obligation is intended to cover overall development where no infrastructure is underground and to civil works and cable laying where infrastructure is in place and where conduits are being laid or fibre-optic cable being pulled through them to building and to other works related to development and rollout of fibre-optic networks. Mila is authorised to shorten the notice in the advertisement down to 3 months if the company



lays additional conduits in all parts of the works in question, that another electronic communications company can use at a later date.

(35) A Mila advertisement on planned civil works, and cable works must be sufficiently detailed for parties who plan development and/or deployment of networks to be able to acquaint themselves with the actual scope of the works. Among other things, the advertisement shall contain information on whether this is the installation of new infrastructure or whether existing infrastructure owned by the company is to be used, and all ditches and holes that are planned shall be specified along with information on planned connections of fibres and whether local loops will be laid to individual buildings (and then to what buildings).

(36) Mila shall elaborate a documented procedure that should be followed when the company receives a request for participation in civil works. Mila shall react to all such requests and provide detailed information on the civil works at the first opportunity, such as on more precise duration of the works, estimated cost of the works, further information on use of the company's facilities, etc.

(37) Furthermore, Mila shall inform parties to the market of all changes to the arrangements of local loop access that are likely to alter companies' competitiveness on the market with 5 years' notice. The ECOI can grant an exemption from the 5 years' notice in question. If such an exemption is considered normal and reasonable, the ECOI will open consultation with stakeholders. If no objections are raised and stakeholders have access to substitute products, and do not suffer any unnecessary damage when migrating between systems, the ECOI will endorse such an exemption.

(38) Applications sent electronically for local access and related facilities shall be processed by Mila as quickly as possible. Mila is unauthorised to give its departments and related companies priority in handling at the cost of other electronic communications companies. Denial of access shall be sent electronically and shall contain grounds for the decision. The grounds must contain all information required to enable assessment of the justification of the denial. Applications for access shall have access equal to that of companies within the Siminn Group to the Mila service system for the purpose of tracking their applications and also for information on maintenance and repair of local loops and on invoicing.

(39) Obligations on access to ducts and conduits, the Mila duty to advertise with respect to civil works and the rule on 5 years' notice to inform about, network migration, do not apply in those 17 municipalities where more competition pertains, and they are the following as of circumstances today: Reykjavíkurborg, Kópavogsbær, Seltjarnarnesbær, Garðabær, Hafnarfjarðarkaupstaður, Mosfellsbær, Akraneskaupstaður, Svalbarðsstrandarhreppur, Grýtubakkahreppur, Tjörneshreppur, Hveragerðisbær, Sveitarfélagið Ölfus, Flóahreppur, Ásahreppur, Fljótsdalshreppur, Rangárþing Ytra og Skeiða- and Gnúpverjahreppur. The ECOI will review annually this list of municipalities where lighter obligations apply, with respect to the criteria presented in Section 6 in Appendix A



2.2 Obligation for non-discrimination

(40) With the authority of article 30 of the Electronic Communications Act, the ECOI has decided to maintain the obligation on Mila to respect the non-discrimination against all electronic communications companies that purchase local access on a fixed line, regardless of whether it is a copper or fibre-optic network. All purchasers of such service shall, having taken circumstances into account, enjoy the same conditions (including prices) that apply for related parties or for those cooperating with Mila. The obligations shall furthermore apply to access to ducts and conduits. Quality of access provided to unrelated parties shall not be less than quality of access provided by Mila to related parties. The obligation for non-discrimination that the ECOI maintains on Mila is what is called Equivalence of Input (EoI) where the company is obliged to offer the same prices, use the same service procedures/service systems, the same time limits and publish the same information about the service to related and unrelated customers. Mila shall therefore provide access to unrelated parties to those systems that are used within the Siminn Group and that are necessary in connection with local access and access to ducts and conduits.

(41) Information on local access and service related to access and to access to Mila ducts and conduits shall be equally accessible to other electronic communications companies as to related parties. Among other things, information shall be provided on the length of local loops in each instance where known, that is to say distance of the end user in question from the next connection point. If a local loop is measured for some reason, published data shall be updated with the results of that measurement.

(42) The ECOI also maintains the obligation on Mila that unrelated parties be informed about distribution, enlargement or other developments of Mila local loop networks and its ducts and conduits with the same notice as parties related to Mila receive and this notice shall not be shorter than 6 months. This obligation does not apply in those 17 municipalities that the ECOI has assessed as constituting an area with more competition.

(43) Mila shall furthermore authorise related and unrelated parties alike to influence development of new wholesale products and planned interfaces.

(44) Mila shall take care that applications from unrelated electronic communications companies for local access and related service and for access to ducts and conduits be processed in as timely manner as those of related parties. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Mila is not authorised to make unreasonable demands on applicants as a condition for processing an application.

(45) In order to ensure that Mila fulfils the obligation in question the ECOI can perform a technical investigation as to whether unrelated parties can replicate the product offer of related parties in a sustainable manner (technical replicability), and should this not be the case, the ECOI can instruct Mila to change its product offer.

(46) The ECOI has decided to impose a new non-discrimination obligation on Mila and Siminn, which is an obligation for withstanding what is called an economic replicability test (ERT). The test will apply to fibre-optic local loops owned by or under long-term control of



Mila, and services of the Siminn group on downstream markets that are based on fibre-optic local loops. The obligation is intended to ensure a normal gap between price at wholesale level and price on downstream markets and to thus enable competitors on the downstream markets in question to compete on a level playing field, such that they can in an economically efficient manner replicate the main service offer of the Siminn Group. The obligation is not fully elaborated in this decision, but the ECOI will commence work on a separate decision on elaboration and introduction of the ERT test when this decision on obligations has come into force.

(47) The ECOI maintains the obligation on Mila to make service level agreements (SLAs) with all purchasers of local access. This obligation shall from then on, also cover access to ducts and conduits. Such agreements shall cover the various service issues that relate to non-discrimination with regards to local access and access to ducts and conduits, including orders, delivery, service access, transfer of service and repairs. All service level agreements shall be published on the Mila website.

(48) The ECOI also maintains the obligation on Mila to issue a special declaration on Service Level Guarantees (SLGs) and to issue a declaration on quality guarantee for access to ducts and conduits. Such SLGs shall cover all necessary service items that relate to non-discrimination with regards to local access and access to ducts and conduits, including orders, delivery, service access, transfer of service and repairs. Such service level guarantees shall among other things prescribe specific fines which Mila must pay to its counterparties should the service level guarantee not be honoured. Mila shall inform interested electronic communications companies about the content of the service level guarantee.

(49) Furthermore, the ECOI maintains the obligation on Mila that the company gather and regularly publish specific key performance indicators, including elements that relate to processing of orders, delivery of service, maintenance services and service switching - for internal transactions on the one hand and external on the other. Mila shall furthermore publish such information on access to ducts and conduits. Mila shall publish the information in question on a monthly basis on its website.

(50) The information gained by Mila from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply such information to related or unrelated parties, see article 26 of the Electronic Communications Act.

2.3 Obligation for transparency

(51) With article 29 of the Electronic Communications Act in mind the ECOI has decided to maintain the obligation on Mila for transparency when providing local access to copper and fibre-optic and open virtual access (VULA) where appropriate. Mila shall furthermore respect transparency with regards to access to ducts and conduits. Mila shall publish information related to local access and access to ducts and conduits, for example on registering its ducts and conduits, technical descriptions, characteristics of networks, terms and conditions for delivery and usage and tariff. Part of this obligation was that Mila was to issue a reference offer for local access related access and access to ducts and conduits which fulfil the conditions set by the ECOI, that will be maintained and updated as required and submitted to the ECOI



for scrutiny and endorsement. With respect to further elaboration, such as on the publishing of information and minimum content and breakdown of reference offer, reference is made to Section 10.7.3 in Appendix A.

2.4 Obligation on separation of accountancy

(52) Pursuant to Article 31 of the Electronic Communications Act no. 81/2003, the ECOI has decided to maintain the obligation on Mila for separation of accountancy. Furthermore, it could transpire that specific obligations may be defined that relate to Siminn separation of accountancy with respect to the ERT test and its implementation.

(53) Separation of accountancy constitutes as a minimum that the operation of the access network that belongs to Market 3a is separated in the accounts from other operations. The Mila wholesale prices and internal prices within the company shall be transparent, among other things to prevent unjustified subsidies. In its bookkeeping Mila shall separate revenue, costs, assets and liabilities for access to local loops and for its local loops service, along with access to facilities, ducts and conduits.

(54) Mila is obliged to provide the ECOI on an annual basis with a breakdown of the operational accounts and balance sheet for local access, which shows a division between copper local loops on the one hand and the fibre-optic on the other, along with a statement of the division of indirect costs that were not possible to assign through comparison with other cost items. Mila is furthermore obliged to provide the ECOI with itemised operational accounts and balance sheet for access and hosting and for access to ducts and conduits.

(55) Pursuant to article 25 of Regulation no. 564/2011 Mila shall send the ECOI the company's annual financial statements along with an itemised profit and loss account for the company's service components that relate to obligations for separation of accountancy. The accounts shall contain the following:

- The endorsement of a chartered accountant.
- The board's report.
- Separated profit and loss accounts.
- Settlement and reconciliation of internal sales.
- Reconciliation against the company's annual financial statements.

(56) Pursuant to article 24 of Regulation no. 564/2011 Mila shall annually prepare a report on bookkeeping arrangements. The report shall contain among other things the following:

- Accountancy rules.
- Rules for the division of costs and revenue.
- Rules on internal trading.
- Description of calculation methodology.
- Information on sizes and quantity figures, other than financial.
- A list of products, services, activities and network components.
- Rules on assessment of assets and depreciation.



(57) Mila shall furthermore provide ECOI with the following information and data on the operation and balance sheet for the company's bitstream services for the year 2021, where copper and fibre-optic local loops shall be separated, and then annually while the obligation for separation of accountancy is in force on the company:

- Separate profit and loss account for Mila's local loop lease along with a statement of the division of indirect costs. The consolidated profit and loss statement for operational divisions shall reconcile with the base on which the cost analysis is based.
- The minimum itemisation in the profit and loss account shall be the following:
Breakdown of revenue and expenditure, on the one hand according to the general ledger accounts of the company's financial accounts and on the other hand a breakdown in the same manner as the Mila financial accounts system does for individual sub-accounts. There shall be a particularly clear breakdown that distinguishes between wholesale and retail and also shows internal transactions for each operational unit, both revenue and expenditure. Wholesale revenue shall be broken down to each individual service.
- A statement showing a breakdown for the services belonging to the relevant market and quantity figures, such as number of local loops in the relevant service.
- The company's depreciation list for the year in question shall show a breakdown of all booked assets attributable to Mila local loop lease.

(58) The operations and balance sheet of the company's local loop lease services shall be clearly separated from other related wholesale services, such as Internet service, distribution of television material and end user equipment. An itemised statement of related services shall be included with a statement of the company's local loop lease service with an analogous breakdown of individual revenue and cost items.

(59) The above-specified statement shall reach the Office no later than five months after the end of the financial year. Should Mila and Siminn accounting separation not be satisfactory, the ECOI reserves the right to submit demands at a later date for further separation of accountancy.

(60) Mila shall furthermore deliver a report from an independent auditor to the ECOI to show that there is correspondence between the Mila description to the ECOI on how costs are divided and the implementation of accounting separation by Mila. In the report the following shall be shown as a minimum:

- The conclusions of the party that conducted the audit.
- Statement of all instances of inconsistency.
- Proposals by the party conducting the audit for remedies, and their impact.
- Detailed description of how the audit was performed.
- Consolidated financial and bookkeeping information (for example an opinion with respect to the distribution of common costs and changes to assessment of assets as value in use).



(61) For more detailed elaboration of separation of accountancy, reference is made to Section 10.7.4 in Appendix A and to the Regulation no. 564/2011 on booking and cost analysis in operation of electronic communications companies.

2.5 Obligation for price control

(62) With reference to article 32 of the Electronic Communications Act the ECOI has decided to maintain an obligation on Mila for price control for wholesale access to the company's copper access networks provided at a fixed location and the companies fibre connections to street cabinets and related facilities. The tariff for the access in question that is provided over copper local loops shall be cost-oriented. This obligation applies also to VULA service on copper local loops.

(63) When deciding the price of local loop lease for copper local loops, Mila shall use historical costs allocated to the relevant service (HCA FAC). Mila shall submit the conclusion of the cost analysis for copper local loops to the ECOI for endorsement. The tariff shall then be reviewed regularly in accordance with an update of the cost analysis each instance. The ECOI plans to allow for 2-3 years between revisions of the tariff and in addition the tariff shall be increased annually using the consumer price index having taken into account the efficiency requirement that is decided with each review of the tariff. The first annual increase pursuant to the index will be implementable at the first turn of year subsequent to the next review of Mila tariff on this market. For more detailed elaboration of price control, among other things cost analysis, reference is made to Section 10.7.5 in Appendix A.

(64) In accordance with article 32 of the Electronic Communications Act, the tariff for lease of facilities, such as in telephone exchanges and technical spaces, and related service shall be cost-oriented. Mila shall submit the results of cost analysis of facilities and related service for copper local loops to the ECOI for endorsement. The ECOI now has the Mila cost analysis for hosting and access to electricity for processing and will decide when the next review will take place when a conclusion is reached in that analysis. The Mila tariff for ducts and conduits will be based on historical costs or benchmarking. For further elaboration of cost analysis for lease of facilities and related service, references made to Section 10.7.5.5 in Appendix A.

(65) An obligation on cost analysed tariff does not apply to Mila fibre-optic local loops, other than backhaul fibre connections for local loops (fibre connections to street cabinets). Mila pricing of the local loop shall, on the other hand be justifiable and fair and without discrimination. The obligation rests on Mila and Siminn to ensure that there is not too small a difference between price of wholesale procurements and the price on downstream markets, including the retail price of the most important subscription packages that contain Internet access. In this connection, the companies will be required to withstand an ERT test pursuant to a separate decision to that effect, see discussion in Section 10.7.2.6 in Appendix A. Mila and Siminn are furthermore banned from applying damaging under-pricing at wholesale and retail levels on the relevant and related markets. Mila is authorised latitude in pricing within the limits prescribed above, in order to support increased use of investments in fibre-optic connections. Mila shall publish a tariff for fibre-optic local loops and VULA service on fibre-optic local loops.



(66) Siminn will be required to ensure that the most important subscription packages that contain Internet connections are priced in a normal manner, and such that margin squeeze does not occur between the retail price and wholesale procurement.

(67) Mila and Siminn will be required to provide the ECOI with all necessary information to enable confirmation as to whether pricing in wholesale and retail are in accordance with the above.

2.6 Cost accounting

(68) With reference to article 32 of the Electronic Communications Act, the ECOI has decided to maintain an obligation on Mila for cost accounting for copper and fibre-optic local loops and related facilities, backhaul fibre connections for local loop access, hosting and access to ducts and conduits. Cost accounting shall capture, recognise, evaluate and distribute the relevant costs of services or goods in accordance with recognised rules.

Mila shall no later than 1 April 2022, submit to the ECOI a description of the above-mentioned cost accounting and publish the main cost categories, cost items and their relationship to cost drivers and to the rules used to allocate revenue and costs to the relevant units. Mila shall at the same time deliver a report to the ECOI from an independent auditor showing that there is correspondence between the Mila description to the ECOI of how costs are allocated and the implementation in Mila's cost bookkeeping system.

(69) It may be that specific obligations will be defined that relate to the cost accounting of Mila and Siminn, in connection with the decision on the ERT test and its implementation.

(70) For more detailed elaboration of cost accountancy, reference is made to Section 10.7.6 in Appendix A and to the Regulation no. 564/2011 on booking and cost analysis in operation of electronic communications companies.

3 Designation of undertakings with significant market power on the wholesale market for central access provided at a fixed location for mass-market products (Market 3b)

(71) Mila ehf was designated as having significant market power on the relevant market (then Market 5) in PTA Decision no. 21/2014.

(72) The conclusion in the 2021 ECOI market analysis with respect to Market 3b is as follows:

(73) Market 3b consists of various bitstream solutions which provide connections between end users and access points which are central in an electronic communications network and used to provide traditional Internet access, along with related service, such as IP telephone (VoIP) and IPTV.

(74) The ECOI made a detailed geographic analysis of the markets in question by municipality and came to the conclusion that despite somewhat differing competitive conditions between



municipalities, these were not sufficiently heterogeneous to justify segmented geographic markets. The ECOI however intends to impose varying obligations in 17 municipalities, where in the opinion of the ECOI more competition pertains than in other areas.

(75) Since a market analysis was made in the year 2014, the Mila market share on Market 3b has dropped from 65% to 57% at the end of 2020. The ECOI however considers that although market share has dropped somewhat, it is still sufficiently high to give a strong indication of significant market power. There are further factors that support the conclusion on Mila significant market power, such as total size, profitability and the economic power of the Siminn Group, access barriers, including the vertical integration of the Siminn Group and the Mila economies of scale and scope and also the lack of competition. Mila still controls the only access network that virtually spans the whole country and has made major investments in bitstream equipment for fibre-optic networks during recent years. The Siminn Group position is still very strong and Siminn's market share on the downstream retail market has been relatively stable in recent years, at just under 46% at the end of 2020. It is the ECOI's conclusion that Mila still has significant market power on this market and that this will in all likelihood not change during the estimated lifetime of the analysis. Further grounds for this ECOI position can be found in Appendix A, particularly in Section 9.

(76) With reference to market definition of service market, where bitstream connections over copper and fibre-optic local loops are deemed to belong to the market, and geographic market, which is considered to be the whole country, to analysis of competition on the relevant market and in accordance with paragraph 2 of article 17, see article 18 of the Act on Electronic Communications, the ECOI has decided to designate Mila ehf. as having significant market power on the relevant market. The ECOI furthermore decided to designate Siminn hf. as having significant market power on the relevant market, and the two companies jointly constitute a single economic unit in the understanding of competition law and of this market analysis.

4 Imposition of obligations on Market 3b

(77) With the PTA Decision no. 21/2014 dated 13 August 2014, obligations were imposed on Mila ehf. on the relevant market (then market 5) for access, non-discrimination, transparency, separation of accountancy, price control (with the exception of bitstream service over fibre-optic local loops) and cost accounting.

(78) With this decision, the ECOI maintains obligations on Mila. The obligations are in many respects the same as those that were previously applied, but with some additions and to a certain extent with changed structure. In the last analysis, the PTA did not impose an obligation on price control for bitstream connections on the company's fibre-optic local loops, but a general non-discrimination obligation would nevertheless apply with respect to price and other conditions for access. The ECOI now adds an obligation both on Mila and Siminn, i.e., the Siminn Group, to withstand an Economic Replicability Test (ERT) with respect to the Group's fibre-optic products. There are furthermore individual additions and amendments in the elaboration of obligations, from prior analysis, such that Mila may not retract bitstream equipment and bitstream service on fibre-optic networks of unrelated parties where the



company has leased dark fibre, against the will of the network operator in question, while Siminn has not made an agreement on bitstream access to such networks. For a reasonable charge, Mila shall furthermore install bitstream equipment on fibre-optic networks of unrelated parties that so request, with whom Siminn has not made an agreement on bitstream access.

(79) The ECOI has decided to maintain and/or impose appropriate obligations on Mila and Siminn that are:

- Obligation for access (Mila)
- Obligation for non-discrimination (Mila, but the obligation also applies to Siminn with respect to ERT test)
- Obligation for transparency (Mila)
- Obligation for separation of accountancy (Mila, but the obligation also applies to Siminn with respect to ERT test)
- Obligation for price control (cost-orientation) on connections in the copper network (Mila).
- Obligation to withstand an ERT test with respect to bitstream connections over fibre-optic local loops (Mila, but the obligation also applies to Siminn)
- Obligation for cost accountancy (Mila, but the obligation also applies to Siminn with respect to ERT test)

(80) In 17 specific municipalities where more competition pertains than elsewhere, the obligation to inform with 2 years' notice on migration in network systems will not apply.

(81) In the opinion of the ECOI these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and with the provisions of the Electronic Communications Act and they are appropriate for the period that is expected to pass until the market will be analysed again. The ECOI considers that the obligations also take into account the nature of the potential and real competition problems that the ECOI has identified in Section 11.2 in Appendix A to this draft decision, that they are designed to resolve. In the opinion of the ECOI, they are appropriate, justifiable, supported by arguments, transparent and in accordance with the objectives they are intended to achieve, i.e., to strengthen competition on the relevant market and on related retail markets, to support continuing fibre-optic deployment, to support development of the internal market for electronic communications within the EEA and to protect users' interests. The obligations, in the opinion of the ECOI, do not go further than necessary or impose heavier burdens on the companies than is deemed necessary.

(82) With respect to further discussion on the obligations, the ECOI refers to the revised analysis on relevant market, see Section 11 in Appendix A to this decision. Further elaboration of the obligations to be found in Appendix A should be seen as part of this decision. The obligations replace the obligations imposed on Mila with the PTA Decision no. 21/2014.

(83) In accordance with Article 27 on the Electronic Communications Act, the ECOI has decided to impose the following obligations on Mila ehf. and Siminn hf. as a result of the



designation of the companies as having significant market power on the relevant market. The obligations that apply to Siminn are an obligation to withstand an ERT test along with Mila, see further in Section 4.2 here below, along with specific obligations for separation of accountancy and cost accountancy, as will be deemed necessary for the implementation of the ERT test in question.

4.1 Obligation to provide access

(84) With the authority in article 28 of the Electronic Communications Act, the ECOI has decided to impose an obligation on Mila to accede to all normal and reasonable requests from other electronic communications companies for central access, see definition of service Market 3b. The access here in question is on the one hand to bitstream on the upper frequency range of copper local loops (ADSL, VDSL og SHDSL) and on the other hand, access to bitstream over fibre-optic local loops, for the purpose of enabling other electronic communications companies to provide their users with access to various kinds of broadband service. Bitstream access shall be offered with at least the following quality definitions:

- First, access that uses significant bandwidth but without any quality definition (e. best effort) for general Internet service.
- Second, access that uses little bandwidth but makes high-quality requirements for fixed telephony services over IP (VoIP).
- Third, access that uses significant bandwidth and makes high-quality requirements for TV distribution and video over IP (IPTV, VoD) where among other things multicast is used and the appropriate communication protocols.

(85) Mila shall also, if this is requested, handle the sending of bitstream through its backbone network to a location where the electronic communications company in question has a connection with the Mila network.

(86) Electronic communications companies shall have the possibility of delivery of bitstream at various locations in the network and shall have the option of changing possibilities for delivery as required:

- In DSLAM or equivalent equipment at the place where the copper local loops connect to the telephone exchange distribution frame and/or telephone exchange fibre-optic distribution frame, street cabinet or other equipment space (Access Option 1).
- By ATM/IP transit in the Mila trunk line network, i.e., where Mila handles transit of signals from DSLAM and/or fibre-optic distribution frame to the connection point of another electronic communications company to the ATM/IP trunk line network (Access Option 2).
- After transmission with ATM/IP on the Mila/Siminn network to the connection point of another electronic communications company with the latter network (Access Option 3).



(87) The ECOI will also maintain an obligation on Mila to provide co-location/joint utilisation of equipment of other electronic communications companies and access to other facilities necessary for the bitstream access to be fully used and serve the intended purpose, including connections from Mila connection points to connection points of wholesale purchasers and the related equipment.

(88) Mila shall also provide access to support systems and information necessary for bitstream access to be useful for the purchaser, and to the same kind of service units used by the Siminn Group. Such access can among other things be in the form of operational support, a database to gather information prior to orders being made, delivery, orders, maintenance, handling of faults and invoicing.

(89) Those obligations that now rest on Mila for access to the company's bitstream systems shall not cease to apply even though Mila migrates its systems to the next generation of networks, for example if access to VDSL replaces access to ADSL or access by fibre-optic connection instead of an xDSL connection, unless agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration takes place. Should such an agreement not be reached then Mila shall inform parties to the market of all changes to the arrangements of bitstream access that are likely to alter companies' competitiveness on the market with 2 years' notice. Deviation may be made from the above period of notice on receipt of advance endorsement by the ECOI. If such an exemption is considered normal and reasonable, the ECOI will open consultation with stakeholders. If no objections are raised and stakeholders have access to substitute products, and do not suffer any unnecessary damage when migrating between systems, the ECOI will endorse such an exemption. This obligation shall not apply in the 17 municipalities where more competition pertains and they are the following as of circumstances today: Reykjavíkurborg, Kópavogsbær, Seltjarnarnesbær, Garðabær, Hafnarfjarðarkaupstaður, Mosfellsbær, Akraneskaupstaður, Svalbarðsstrandarhreppur, Grýtubakkahreppur, Tjörneshreppur, Hveragerðisbær, Sveitarfélagið Ölfus, Flóahreppur, Ásahreppur, Fljótisdalshreppur, Rangárþing Ytra og Skeiða- and Gnúpverjahreppur. The ECOI will review annually this list of municipalities where lighter obligations apply, with respect to the criteria presented in Section 7 in Appendix A.

(90) In order to support increased efficiency in the provision of wholesale bitstream service, Mila shall be authorised, with prior endorsement from the ECOI, to withdraw the offer of Access Option 1 for specific geographic areas where Access Option 2 is a more economic option. If efficiency of this changed arrangement is a result of a request by an electronic communications company for access to the Mila system (Access Option 1 or 2), the electronic communications company's request must be fair and normal. The same can be said about the Mila request to the ECOI to withdraw service through Access Option 1 because of the availability of Access Option 2 in the area in question. Should Mila request to withdraw the offer of Access Option 1 in specific areas, this change in system topology shall be submitted to consultation with stakeholders. Mila shall notify those who use Access Option 1 on such a plan with adequate notice which shall not be shorter than 6 months. Mila shall endeavour to proceed in such a manner that such a party does not suffer significant financial damage or discomfort. Access Option 2 shall fulfil all of the same requirements that are made to Access



Option 1 with respect to service offer, quality control, multicast, communications protocols etc.

(91) The ECOI imposes on Mila the obligation to not retract its bitstream equipment or service from the fibre-optic networks of other network operators than Mila, from whom Mila has leased dark fibre, against the wishes of the network operators in question, while Siminn does not provide service over bitstream systems of such operators. To prevent such parties from being able to increase the charges that Mila needs to pay for such access in an abnormal manner, Mila can refer the question to the ECOI about whether their charges or conditions are fair and normal. The ECOI decides such a matter with a decision. If the ECOI considers price or other conditions set by the parties in question to be abnormal, Mila is free of this obligation, should the network operators in question not comply with the ECOI decision.

(92) The ECOI furthermore imposes an obligation on Mila to connect its bitstream equipment with Tengir fibre-optic local loops, and with those of other network operators that may be in the same position as Tengir, if Tengir or the relevant electronic communications company so requests, given that the network operator in question pays the cost of such installation and a reasonable additional operating cost which may be created for Mila by this, while Siminn does not connect to the fibre-optic system of the network operators in question in a specific area. The ECOI can decide what reasonable start-up and operational costs shall be in such instances, should it be disputed between the parties.

(93) Applications sent electronically for bitstream access and related facilities shall be processed by Mila as quickly as possible. Mila is unauthorised to give its departments and related companies priority in handling at the cost of other electronic communications companies. Denial of access shall be sent electronically and shall contain grounds for the decision. The grounds must contain all information required to enable assessment of the justification of the denial. Applications for access shall have access equal to that of companies within the Siminn Group to the Mila service system for the purpose of tracking their applications and also for information on maintenance and repair of local loops and on invoicing.

4.2 Obligation for non-discrimination

(94) With the authority of article 30 of the Electronic Communications Act, the ECOI has decided to maintain the obligation on Mila to respect non-discrimination against all electronic communications companies that purchase central access on a fixed line, regardless of whether it is a copper or fibre-optic network. All purchasers of such service shall, having taken circumstances into account, enjoy the same conditions (including prices) that apply for related parties or for those cooperating with Mila. Quality of access provided to unrelated parties shall not be less than quality of access provided by Mila to related parties. The obligation for non-discrimination that the ECOI maintains on Mila is what is called Equivalence of Input (EoI) where the company is obliged to offer the same prices, use the same service procedures/service systems, the same time limits and publish the same information about the service to related and unrelated customers. Mila shall therefore provide unrelated parties with access to those systems that are used within the Siminn Group and that are necessary in connection with central access.



(95) The Mila bitstream unit is not authorised to discriminate in any manner by underlying network with respect to price or other possible charges, processing of work requests with respect to connection or configuration of equipment. The Mila bitstream unit shall thus process requests about connections and configuration of connections through fibre-optic networks of unrelated parties in the same manner as with its own local loops. Costs, delivery times, complexity and inconvenience vis-à-vis service providers and/or end users shall be the same. Mila is unauthorised to assume that Mila local loops are default choice for an underlying local loop when a request for connection comes from a sales representative of another network operator or service provider or if an end user requests that a local loop from an unrelated party be the underlying network.

(96) Information on central access and related service shall be equally accessible to other electronic communications companies as to related parties.

(97) The ECOI maintains the obligation on Mila that unrelated parties be informed about distribution, enlargement or other development of networks and Mila central access services with the same notice as parties related to Mila receive and this notice shall not be shorter than 3 months. Mila should furthermore give related and unrelated parties equal opportunity to influence development of new wholesale products and planned interfaces.

(98) Mila shall take care that applications from unrelated electronic communications companies for potential central access and related services should be processed in as timely manner as those of related parties. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Mila is not authorised to make unreasonable demands on applicants as a condition for processing an application.

(99) In order to ensure that Mila fulfils the obligation in question the ECOI can perform a technical investigation as to whether unrelated parties can replicate the product offer of related parties in a sustainable manner (technical replicability), and should this not be the case, the ECOI can instruct Mila to change its product offer.

(100) The ECOI imposes a new non-discrimination obligation on Mila and Siminn, which is an obligation to withstand what is called an economic replicability test (ERT). The obligation will apply for central access to fibre-optic local loops owned by or under long-term control of Mila, as well as on fibre-optic networks owned by third parties where Mila leases black fibre and installs its bitstream equipment, and the Siminn's Group services in related retail markets where the said bitstream service is used. The obligation is intended to ensure a normal gap between price at wholesale level and price on downstream markets and to thus enable competitors on the downstream markets in question to compete on a level playing field, such that they can in an economically efficient manner replicate the main service offer of the Siminn Group. The obligation is not fully elaborated in this analysis, but the ECOI will commence work on a separate decision on elaboration and introduction of the ERT test when this decision on obligations has come into force.

(101) The ECOI will maintain the obligation on Mila to make service level agreements (SLAs) with all purchasers of central access. Such agreements shall cover the various service issues



that relate to central access including orders, delivery, service access, transfer of service and repairs. All service level agreements shall be published on the Mila website.

(102) In addition, the ECOI maintains the obligation on Mila to issue a specific declaration on quality guarantees (Service Level Guarantees (SLGs)). Such service level guarantees shall cover all necessary service issues that relate to non-discrimination in central access, including orders, delivery, service access, service switching and maintenance. Such service level guarantees shall among other things prescribe specific fines which Mila must pay to its counterparties should the service level guarantee not to be honoured. Mila shall inform interested electronic communications companies about the content of the service level guarantee.

(103) Furthermore, the ECOI will maintain the obligation on Mila that the company gather and regularly publish specific key performance indicators, including criteria that relate to processing of orders, delivery of service, maintenance services and service switching - for internal transactions on the one hand and external on the other. Mila shall publish the information in question on a monthly basis on its website.

(104) The information gained by Mila from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply the information to related or unrelated parties, see article 26 of the Electronic Communications Act.

4.3 Obligation for transparency

(105) With reference to article 29 of the Electronic Communications Act the ECOI has decided to maintain the obligation on Mila for practising transparency when providing central access on copper and fibre-optic. Mila shall publish information relating to central access, for example on registering local loops, technical descriptions, characteristics of networks, terms and conditions for delivery and use and tariff. Part of this obligation is that Mila is to issue a reference offer for central access which fulfils the conditions set by the ECOI which shall be maintained and updated as required and submitted to the ECOI for revision and endorsement. With respect to further elaboration, such as on the publishing of information and minimum content and breakdown of reference offer, reference is made to Section 11.7.3 in Appendix A.

4.4 Obligation for separation of accountancy

(106) With the authority in Article 31 of the Electronic Communications Act the ECOI has decided to maintain an obligation on Mila for separation of accountancy. Among other things, it could transpire that specific obligations may be defined that relate to Siminn separation of accountancy with respect to the ERT test and its implementation.

(107) Separation of accountancy with Mila shall constitute as a minimum that the operation of bitstream access is separated in the accounts from other operations. The Mila wholesale prices and internal prices within the company shall be transparent, among other things to prevent unjustified subsidies. In its bookkeeping, Mila shall separate revenue, costs, assets and liabilities for access to bitstream and to its bitstream service.



(108) Mila is obliged to provide the ECOI on an annual basis with a breakdown of the operational accounts and balance sheet for central access, which shows a division between bitstream access over copper local loops on the one hand and over fibre-optic on the other, along with a statement of the division of indirect costs that were not possible to assign through comparison with other cost items. Mila is furthermore obliged to submit to the ECOI separate profit and loss and balance sheet accounts for access to facilities (hosting).

(109) Pursuant to article 25 of Regulation no. 564/2011, Mila shall submit to the ECOI, the company's annual financial statements along with an itemised profit and loss account for the company's service components that relate to obligations for separation of accountancy. The accounts shall contain the following:

- The endorsement of a chartered accountant.
- The board's report.
- Separated profit and loss accounts.
- Settlement and reconciliation of internal sales.
- Reconciliation against the company's annual financial statements.

(110) Pursuant to article 24 of Regulation no. 564/2011 Mila shall annually prepare a report on bookkeeping arrangements. The report shall contain among other things the following:

- Accountancy rules.
- Information on rules for the division of costs and revenue.
- Information on rules concerning internal transactions.
- Description of calculation methodology.
- Information on sizes and quantity figures, other than financial.
- A list of products, services, activities and network components.
- Rules on assessment of assets and depreciation.

(111) With reference to the above Mila shall furthermore provide the Administration with the following information and data on the operation and balance sheet for the company's bitstream services for the year 2021 and then annually while the obligation for separation of accountancy is in force on the company. There should be separation between access with xDSL technology on the one hand and fibre-optic on the other:

- Separate profit and loss account for Mila's bitstream services along with a statement of the division of indirect costs. The consolidated profit and loss statement for operational divisions shall reconcile with the base on which the cost analysis is based.
- The minimum itemisation in the profit and loss account shall be the following:
Breakdown of revenue and expenditure, on the one hand according to the general ledger accounts of the company's financial accounts and on the other hand a



breakdown in the same manner as the Mila financial accounts system does for individual sub-accounts. There shall be a particularly clear breakdown that distinguishes between wholesale and retail and shows internal transactions for each operational unit, both revenue and expenditure. Wholesale revenue shall be broken down to each individual service.

- A statement showing a breakdown for the services belonging to the relevant market and quantity figures, such as number of connections in the relevant service.
- The company's depreciation list for the year in question showing a breakdown of all booked assets attributable to Mila access to bitstream service.
- The operations and balance sheet of the company's bitstream services shall be clearly separated from other related wholesale services, such as Internet service, distribution of television material and user equipment. An itemised statement of related services shall be included with a statement of the company's bitstream service with an analogous breakdown of individual revenue and cost items.

(112) The above-specified statement shall reach the ECOI no later than five months after the end of the financial year. Should Mila and Siminn accounting separation not be satisfactory, the ECOI reserves the right to submit demands at a later date for further separation of accountancy.

(113) Mila shall furthermore deliver a report from an independent auditor to the ECOI to show that there is correspondence between the Mila description to the ECOI on how costs are divided and the implementation of accounting separation by Mila. In the report the following shall be shown as a minimum:

- The conclusions of the party that conducted the audit.
- Statement of all instances of inconsistency.
- Proposals by the party conducting the audit for remedies, and their impact.
- Detailed description of how the audit was performed.
- Consolidated financial and bookkeeping information (for example an opinion with respect to the distribution of common costs and changes to assessment of assets as value in use).

(114) For more detailed elaboration of separation of accountancy, reference is made to Section 11.7.4 in Appendix A and to the Regulation no. 564/2011 on booking and cost analysis in operation of electronic communications companies.

4.5 Obligation for price control

(115) With the authority in article 32 of the Electronic Communications Act the ECOI has decided to impose an obligation on Mila for price control, i.e., for a cost-oriented tariff for wholesale bitstream access provided over copper local loops and for related facilities.

(116) Mila shall therefore submit to the ECOI for endorsement, a wholesale tariff for access to bitstream at differing locations on the network with differing standards, such as ADSL and VDSL technology. In addition to this Mila shall submit to the ECOI for endorsement a wholesale



tariff for hosting equipment of other electronic communications companies and for access to other facilities related to bitstream and access to support systems and information necessary for a customer to be able to utilise bitstream. The tariff shall be cost-oriented.

(117) When deciding prices for the above-specified bitstream service, Mila shall use historical costs allocated to the relevant service (HCA FAC). Emphasis shall be placed on determining the division of costs of the company's bitstream service at wholesale level between general bitstream service (best effort) on the one hand and priority service on the other hand (IPTV, VoD and VoIP). Mila shall submit the conclusion of the cost analysis to the ECOI for endorsement. The tariff shall then be reviewed regularly in accordance with an update of the cost analysis each instance. The ECOI plans to allow for 2-3 years between revisions of the tariff and in addition the tariff shall be increased annually using the consumer price index having taken into account the efficiency requirement that is decided with each review of the tariff. The first annual increase pursuant to the index will be implementable at the first turn of year subsequent to the next review of Mila tariff on this market. For further elaboration of cost analysis for bitstream access in wholesale provided over copper local loops and related facilities, references made to Section 11.7.5 in Appendix A.

(118) An obligation for cost-oriented tariff does not apply to central access on Mila fibre-optic local loops. Mila pricing of central access on the fibre-optic local loops shall, on the other hand be justifiable and fair and without discrimination. The obligation rests on Mila and Siminn to ensure that there is not too small a difference between price of wholesale procurements and the price on downstream markets, including the retail price of the most important subscription packages that contain Internet access. In this connection, the companies will be required to withstand an ERT test pursuant to a separate decision to that effect, see discussion in Section 11.7.2.6 in Appendix A. Mila and Siminn are furthermore banned from applying damaging under-pricing at wholesale and retail levels on the relevant and related markets. Mila is authorised latitude in pricing within the limits prescribed above, in order to support increased use of investments in fibre-optic connections. Mila shall publish a tariff for central access to fibre-optic local loops.

(119) Siminn will be required to ensure that the most important subscription packages that contain Internet connections are priced in a normal manner, and such that margin squeeze does not occur between the retail price and wholesale procurement.

(120) Mila and Siminn will be required to provide the ECOI with all necessary information to enable confirmation as to whether pricing in wholesale and retail are in accordance with the above.

(121) Cost analysis for lease of facilities and related service provided for Mila bitstream service, shall be in accordance with that specified in Section 10.7.5.5 in Appendix A.

4.6 Cost accounting

(122) With reference to article 32 of the Electronic Communications Act, the ECOI has decided to maintain an obligation on Mila for cost accounting of those elements of electronic communications operations needed to provide bitstream access to copper and fibre-optic



local loops. Cost accounting shall capture, recognise, evaluate and distribute the relevant costs of services or goods in accordance with recognised rules.

(123) Mila shall no later than 1 April 2022, submit to the ECOI a description of the above-mentioned cost accounting and publish the main cost categories, cost items and their relationship to cost drivers and to the rules used to allocate revenue and costs to the relevant units. Mila shall at the same time deliver a report to the ECOI from an independent auditor showing that there is correspondence between the Mila description to the ECOI of how costs are divided and the implementation in Mila's cost bookkeeping system.

(124) It may be that specific obligations will be defined that relate to the cost accounting of Mila and Siminn, in connection with the decision on the ERT test and its implementation.

(125) For more detailed elaboration of cost accountancy, reference is made to Section 11.7.6 in Appendix A and to the Regulation no. 564/2011 on booking and cost analysis in operation of electronic communications companies.



Decision

- (1) Market 3a, wholesale market for local access provided at a fixed location comprises access to copper and fibre-optic local loops.**
- (2) The geographic definition of Market 3a is the whole country.**
- (3) On Market 3a, the ECOI designates Mila ehf. and Siminn hf. as having significant market power, in accordance with paragraph 2 of article 17, see article 18 of the Act on Electronic Communications no. 81/2003.**
- (4) On Market 3a, the ECOI imposes the following obligations on Mila ehf. with reference to articles 27-32 of the Act on Electronic Communications no. 81/2003 and with reference to further description in this decision and in Appendix A to this decision:**
 - a. Obligation to provide access. Mila shall accede to normal and fair requests for local access at wholesale level to its copper and fibre-optic networks, whether this is full or shared access. Access shall furthermore be provided to related facilities and service. Where it is not possible to provide access to a physical local loop, Mila shall offer VULA virtual solution which conform the same functions. Mila shall provide access to ducts, conduits and civil works and cable laying projects. Information shall be published on ducts and conduits, civil works and cabling projects and changes to the arrangement for access, in the manner described in Section 2.1 in this decision. The obligation to provide access to ducts and conduits, the Mila duty to advertise with respect to civil works and the rule on 5 years' notice to inform about migration of network systems does not apply in those 17 municipalities where more competition pertains, and they are the following as of circumstances today: Reykjavíkurborg, Kópavogsbær, Seltjarnarnesbær, Garðabær, Hafnarfjarðar-kaupstaður, Mosfellsbær, Akraneskaupstaður, Svalbarðsstrandarhreppur, Grýtubakkahreppur, Grýtubakkahreppur, Tjörneshreppur, Hveragerðisbær, Sveitarfélagið Ölfus, Flóahreppur, Ásahreppur, Fljótsdalshreppur, Rangárþing ytra og Skeiða- and Gnúpverjahreppur. The ECOI will review annually this list of municipalities where lighter obligations apply, with respect to the criteria presented in Section 6 in Appendix A**
 - b. Obligation to respect non-discrimination vis-à-vis all electronic communications companies that purchase local access provided at a fixed location or access to related facilities. Equivalence of Input (EoI) shall be in place, and also equal access to information, and equal opportunities to influence development of wholesale products. Unrelated parties shall be able to replicate the product offer of related parties in a sustainable manner (Technical Replicability). Mila and Siminn shall withstand an economic replicability test (ERT) with respect to fibre-optic local loops owned by or under long-term control of Mila, and to services of the Siminn Group on downstream markets based on fibre-optic local loops. Mila is obliged to make service level agreements (SLA) with all purchasers of access and to publish information on quality guarantees (SLG). Mila shall collect and publish on a monthly basis, specific key performance indicators (KPI).**



- c. **Obligation for transparency.** Mila shall issue a reference offer on local access, related facilities and access to ducts and conduits. Mila shall among other things publish information on registration of local loops and ducts and conduits, technical descriptions, characteristics of networks, terms and conditions for delivery and on usage and tariff.
- d. **Obligation for separation of accountancy.** Mila is required to deliver annually to the ECOI separate profit and loss accounts and balance sheet for local access, which shows the division between copper local loops, fibre-optic local loops, access to facilities (hosting) and access to ducts and conduits, along with the opinion of an independent auditor on the implementation of separation.
- e. **Obligation for price control.** The tariff for access to copper local loops, fiber connections to street cabinet, VULA on copper local loops and facilities related to local access on copper local loops shall be cost-oriented. They shall be based on historical costs which are allocated to the appropriate services (HCA FAC). The Mila tariff for ducts and conduits will be based on historical costs or benchmarking.
- f. **Mila pricing of the local loops shall be justifiable and fair and without discrimination.** Care should be taken that there is not too small a difference between the Mila price of wholesale procurements and the Siminn price on downstream markets, including the retail price of the most important Siminn subscription options that contain Internet access. In this connection, the companies will be required to withstand an economic replicability test (ERT) pursuant to separate decision to this effect. Mila is furthermore banned from applying damaging under-pricing. Mila shall publish a tariff for fibre-optic local loops and VULA service on fibre-optic local loops.
- g. **Obligation on cost accountancy for copper and fibre local loops and related facilities, backhaul fiber connection for local loop access, hosting and access to ducts and conduits.** A description of cost accounting and a report from an independent auditor on correspondence between the description and execution shall be delivered to the ECOI.

(5) On Market 3a, the ECOI imposes the following obligations on Siminn hf. with reference to articles 27, 30, 31 and 32 of the Act on Electronic Communications no. 81/2003 and with reference to further description in this decision and in Appendix A to this decision:

- a. **Obligation to respect non-discrimination with respect to an economic replicability test (ERT) for service provided over fibre-optic local loops owned by or under long-term control of Mila.**
- b. **Obligation for separation of accountancy in connection with the economic replicability test.**
- c. **Obligation for price control with respect to an economic replicability test (ERT) for service provided over fibre-optic local loops owned by or under long-term control of Mila.**
- d. **Obligation for cost accounting with respect to an economic replicability test (ERT) for service provided over fibre-optic local loops owned by or under long-term control of Mila.**



(6) Market 3b, wholesale market for central access provided at a fixed location for mass-market products comprises virtual solutions offered centrally in copper or fibre-optic networks, that do not fulfil the conditions to belong to Market 3a and that are used to provide mass-market bitstream service.

(7) The geographic definition of Market 3b is the whole country.

(8) On Market 3b, the ECOI designates Mila ehf. and Siminn hf. as having significant market power, in accordance with paragraph 2 of article 17, see article 18 of the Act on Electronic Communications no. 81/2003.

(9) On Market 3b, the ECOI imposes the following obligations on Mila ehf. with reference to articles 27-32 of the Act on Electronic Communications no. 81/2003 and with reference to further description in this decision and in Appendix A to this decision:

- a. Obligation to provide access. Mila shall accede to all reasonable and fair requests from other electronic communications companies for central wholesale access, see definition of service Market 3b, whether the access is provided over copper or fibre-optic local loops. Mila shall also, if this is requested, handle the sending of bitstream through its backbone network to a location where the electronic communications company in question has a connection with the Mila network. Mila shall furthermore provide access to related facilities and service that are needed in connection with central access. Changes to arrangements for bitstream access shall be notified in the manner described in Section 4.1, but the duty to notify changes to arrangements for bitstream access with two years' notice does not apply to those 17 municipalities where more competition pertains, and they are the following as of circumstances today. Reykjavíkurborg, Kópavogsbær, Seltjarnarnesbær, Garðabær, Hafnarfjarðarkaupstaður, Mosfellsbær, Akraneskaupstaður, Svalbarðsstrandarhreppur, Grýtubakkahreppur, Tjörneshreppur, Hveragerðisbær, Sveitarfélagið Ölfus, Flóahreppur, Ásahreppur, Fljótsdalshreppur, Rangárþing Ytra og Skeiða- and Gnúpverjahreppur. The ECOI will review annually this list of municipalities where lighter obligations apply, with respect to the criteria presented in Section 7 in Appendix A. Mila is unauthorised to retract its bitstream equipment or service from the fibre-optic networks of other network operators than Mila, from whom Mila has leased dark fibre against the wishes of the network operators in question, while Siminn does not provide service over bitstream systems of such operators. Mila shall connect its bitstream equipment with the fibre-optic local loops of other network operators, as described in more detail in Section 4.1.**
- b. Obligation to respect non-discrimination vis-à-vis all electronic communications companies that purchase central access to a copper or fibre-optic network. Equivalence of Input (EoI) shall be in place, and also equal access to information, and equal opportunities to influence development of wholesale products. Unrelated parties shall be able to replicate the product offer of related parties in a sustainable manner (Technical Replicability). Mila and Siminn shall withstand and economic replicability test (ERT), with respect to central access to fibre-optic local loops owned by or under long-term control of Mila, as well as on fibre-optic**



networks owned by third parties where Mila leases black fibre and installs its bitstream equipment, and the Siminn's Group services in related retail markets where the said bitstream service is used. Mila is obliged to make service level agreements (SLA) with all purchasers of access and to publish information on quality guarantees (SLG). Mila shall collect and publish on a monthly basis, specific key performance indicators (KPI).

- c. **Obligation for transparency.** Mila shall publish a reference offer on central access and related facilities. Mila shall among other things publish information on registration of local loops, technical descriptions, characteristics of networks, terms and conditions for delivery and on usage and tariff.
- d. **Obligation for separation of accountancy.** Mila is required to deliver annually to the ECOI separate profit and loss accounts and balance sheet for bitstream access, which shows the division between bitstream access over copper local loops, bitstream access over fibre-optic local loops and access to facilities (hosting), along with the opinion of an independent auditor on the implementation of separation.
- e. **Obligation for price control.** The tariff for bitstream access over copper local loops and related facilities shall be cost-oriented. They shall be based on historical costs which are allocated to the appropriate services (HCA FAC).
- f. **Mila pricing of bitstream access provided over fibre local loops shall be justifiable and fair and without discrimination.** Care should be taken that there is not too small a difference between the Mila price of wholesale procurements and the Siminn price on downstream markets, including the retail price of the most important Siminn subscription options that contain Internet access. In this connection, the companies will be required to withstand an economic replicability test (ERT) pursuant to separate decision to this effect. Mila is furthermore banned from applying damaging under-pricing. Mila shall publish a tariff for central access on fibre-optic local loops.
- g. **Obligation for cost accounting for central access to copper and fibre-optic local loops and related facilities.** A description of cost accounting and a report from an independent auditor on correspondence between the description and execution shall be delivered to the ECOI.

(10) On Market 3b, the ECOI imposes the following obligations on Siminn hf. with reference to articles 27, 30, 31 and 32 of the Act on Electronic Communications no. 81/2003 and with reference to further description in this decision and in Appendix A to this decision:

- a. **Obligation to respect non-discrimination with respect to an economic replicability test (ERT) for service provided over Mila bitstream connections on fibre-optic local loops owned by or under long-term control of Mila, as well as on fibre-optic networks owned by third parties where Mila leases black fibre and installs its bitstream equipment, and the Siminn's Group services in related retail markets where the said bitstream service is used.**
- b. **Obligation for separation of accountancy in connection with the economic replicability test.**



- c. **Obligation for price control with respect to an economic replicability test (ERT) for service provided over Mila bitstream connections on fibre-optic local loops owned by or under long-term control of Mila.**
- d. **Obligation for cost accounting with respect to an economic replicability test (ERT) for service provided over Mila bitstream connections on fibre-optic local loops owned by or under long-term control of Mila.**

(11) This decision comes into force from the day that it is published and will be in force until otherwise decided by the ECOI.

(12) This Decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs, see Article 20 of Act no. 75/2021 on the Electronic Communications Office. 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 ECOI. Costs for an appeal are according to Paragraph 5 of Article 20 of the same Act, and in addition to this a special appeal charge must be paid 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. Pursuant to paragraph 4 of Article 20 of the same act, a party can also refer it decision from the ECOI directly to the courts without the case being first put to the Appellate Committee. Such cases shall be brought within three months from the time that the party in question received information about the decision made by the Office. Appeal does not postpone the legal impact of decisions by the Office. Appeal direct to the courts hinders the Appellate Committee being authorised to take a case for processing.

Reykjavik, 14 September 2021

Hrafnkell V. Gíslason

Óskar Hafliði Ragnarsson

Attached:

Appendix A - Analysis of Markets 3a and 3b

Appendix A-1 Discussion on market analyses in Europe with respect to geographic definition of markets
Appendix B - Comments by stakeholders and the conclusions from consultation on the preliminary draft

Appendix C - Comments by stakeholders and the conclusions from additional consultation