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FjarSKIptastofa
Sudurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr. Gíslason

Subject: Wholesale local access provided at a fixed location and wholesale central access provided at a fixed location for mass-market products in Iceland

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)¹

I. PROCEDURE

On 14 September 2021, the EFTA Surveillance Authority (“the Authority”) received a notification of draft national measures in the field of electronic communications, pursuant to Article 7 of the Framework Directive, from the Icelandic national regulatory authority, *FjarSKIptastofa* (“ECOI”).² It concerns the markets for wholesale local access provided at a fixed location and wholesale central access provided at a fixed location for mass-market products in Iceland.³

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, 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.

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 notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, in two stages, first during the period 30 April to 11 June 2020 and later an additional national consultation on specific changes to the first draft analysis was carried out during the period 30 October to 13 November 2020.

On 28 September 2021, the Authority sent a request for information (“RFI”) to ECOI (Doc No. 1228479), to which a reply was received on 1 October 2021 (Doc No. 1231221).

The period for consultation with the Authority and the national regulatory authorities (“NRAs”) in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 14 October 2021.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the NRAs may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The full market reviews for the relevant markets were previously notified by ECOI to the Authority on 11 July 2014.⁴ At that time, the markets were defined as the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location and the market for wholesale broadband access, which were Markets 4 and 5 pursuant to the Authority’s 2008 Recommendation.⁵ In its final Decision No. 21/2014 on 13 August 2014, ECOI designated Míla as the operator with significant market power (“SMP”) and imposed obligations on Míla in both markets, including access, non-discrimination, transparency (publication of a reference offer), accounting separation and price control for wholesale access services.⁶

The Authority commented *inter alia* on the need to undertake a timely analysis and notification of the next market review, in line with the ECOI’s obligations under the EEA regulatory framework. Further, the Authority urged ECOI to ensure a prompt and timely implementation of all obligations proposed in the measures.

In the following years, ECOI notified numerous draft decisions elaborating on implementing aspects of the obligations imposed in Decision No. 21/2014. The Authority consistently commented on the need for timely enforcement and effectiveness of remedies.⁷

II.2. Market definition

Wholesale local access provided at a fixed location (Market 3a)

the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, (“2016 Recommendation”).

⁴ See the Authority’s comments letter of 11 August 2014, Case No 75750, Document No 715771.

⁵ Former Market 4 corresponds to Market 3a and former Market 5 corresponds to Market 3b, but the definition of the markets was to some extent altered with the Authority’s 2016 Recommendation.

⁶ The final decision concerning both markets is available [here](#).

⁷ For example, see the Authority’s comments letter of 26 April 2018 in Case No 81917, Document No 910341, the Authority comments letter of 29 May 2017 in Case No 80606, Document No 854999, and the Authority comments letter of 13 November 2017 in Case No 81255, Document No 881261. These examples are included for illustrative purposes and do not constitute an exhaustive list of notifications received during this period.

According to ECOI, the product market is composed of access networks (local loops, full and shared access) provided at a fixed location, both copper and fibre-optic and related facilities, along with virtual solutions (“VULA”) which fulfil the same needs as leasing the local loop. Cable TV and Wi-Fi networks do not belong to the market, due *inter alia* to their small scale in Iceland.⁸ ECOI considers that there is a chain of substitution between copper and fibre at the retail and wholesale levels.

Connections via the copper network are available to 86% of homes and companies in Iceland, while fibre-optic networks reached about 83% of homes and companies at the end of 2020. The proportion of copper local loops in use was about 36% with about 64% of fibre loops in use during the same period. ECOI predicts that more than 90% of households and companies in Iceland will have the option of a fibre-optic connection towards the end of 2023. ECOI estimates that Míla’s copper and fibre-optic coverage is around 95%. Fibre-optic providers other than Míla reached about 74% of the country’s households and companies at the end of 2020 and ECOI forecasts that this proportion will only increase by a few percentage points by the end of 2023.

Míla offers access to local loops on both its copper network (mainly using VDSL technology) and fibre network (mainly using GPON technology). Míla’s copper network covers almost the whole country (as noted above), while Míla’s fibre-optic local loops reached at least 47% of households and companies at end of 2020. In addition, Míla offers GPON service through fibre-optic systems owned by other parties, but not through the Gagnaveita Reykjavíkur (“GR”) fibre-optic network, except through a very small number of GR connections in parts of Árborg and Borgarbyggð.

At the end of 2020, GR’s point-to-point (“P2P”) fibre-optic network reached about 67% of households and companies (109,000). GR is a wholesale-only operator and its operational territory is Southwest Iceland including the Capital City Area – the most densely populated part of the country. GR does not provide direct access to passive local loops on Market 3a, but its local loops are nevertheless an underlying part of its service on Market 3b, which means that GR is operating on Market 3a in the form of internal sales to its own operations. According to ECOI, GR will continue development in its operational territory in the coming years, although with rather modest deployment plans during the lifetime of the analysis. ECOI also clarified in its reply to the RFI that it expects GR to remain reliant on access to hosting facilities in Míla’s telephone exchanges for the duration of the current market review.⁹

Tengir owns and operates a P2P fibre-optic network widely in North Iceland and offers access to both Markets 3a and 3b on its fibre network. Tengir’s fibre-optic network reached 6% of households and companies (9,500) at the end of 2020, and its deployment plans were also described as rather modest during the timeframe of this analysis.

Snerpa has deployed more than a thousand local loops in the Westfjords and uses them to provide its own retail service and bitstream service at wholesale level. Up to this point in time, Snerpa has not sold access to local loops without bitstream, but Snerpa local loops are nevertheless part of Market 3a as internal sales.

Lastly, a number of smaller fibre-optic networks have been built in sparsely populated areas with the support of state funds. These networks normally only offer passive access to fibre-optic local loops and are therefore mainly on Market 3a. Míla has access to almost all of those networks.

⁸ Kapalvæðing (“KV”) operates a cable system in Reykjanesbær which reaches just under 4,000 spaces in that town.

⁹ GR rents a significant amount of hosting in Míla’s facilities, both for inactive and active equipment, and these facilities are of high importance in supporting GR’s wholesale services.

The Síminn Group plans to decommission the public voice telephony system (“PSTN”), as voice using IP protocol (“VOIP”) takes over, and Míla announced (in autumn 2020) that it plans to phase out operation of the company’s copper access networks during the next 10 years. Nevertheless, ECOI is of the view that the technological developments and Míla’s decommissioning plans will not affect the conclusion that there is substitutability between copper and fibre-optic networks on the relevant market for the lifetime of this analysis.

Furthermore, ECOI conducted a consumer survey, the result of which confirms the substitutability between copper and fibre on the retail market.¹⁰

In terms of the geographical market definition, ECOI has analysed the market by municipality and concludes that differing conditions between municipalities were not significant enough to justify segmentation of the market. ECOI, nevertheless, intends to impose varying obligations in 17¹¹ out of 69 municipalities, where more efficient competition takes place.

ECOI has distinguished the more competitive areas based on the following criteria:

- Presence of a fibre-optic network that competes with Míla in the relevant area, which has distribution to at least 75% of households and companies; and
- Síminn’s market share on the retail market for broadband service is under 50%.

When reaching its conclusion on a national market definition, ECOI took a range of competitive parameters into account.¹² While ECOI observes a certain difference in market structure between areas, given substantial deployments of fibre-optic networks, it considers that this distinction is not reflected in differing market behaviour in a sufficiently clear manner and is thus not passed on to consumers in the form of variations in price, quality, service offer or other aspects. According to ECOI, the competitive conditions do not therefore merit geographical segmentation.

In its reply to the Authority’s RFI, ECOI has committed to revisiting its geographic assessment for Markets 3a and 3b by the end of 2022 and to subsequently notify any necessary amendments to the market definition, SMP assessment and remedies to the Authority.

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

This market consists of various virtual solutions offered in copper or fibre-optic networks, which provide connections between end users and central access points in an electronic communications network for mass-market internet access, along with related services,

¹⁰ According to the consumer survey, a large proportion of consumers are not aware of the type of underlying network supporting their broadband connection. In addition, Síminn, Vodafone and Nova apply a retail pricing policy where the price is independent of the speed of the access network and is based instead on included data volume per month.

¹¹ Corresponding to 70% of the total population, i.e. The City of Reykjavík, Kópavogsbær, Seltjarnarnesbær, Garðabær, Hafnarfjarðarkaupstaður, Mosfellsbær, Akraneskaupstaður, Svalbarðsstrandarhreppur, Grýtubakkahreppur, Tjörneshreppur, Hveragerðisbær, Sveitarfélagið Ölfus, Flóahreppur, Ásahreppur, Fljótsdalshreppur, Rangárþing Ytra and Skeiða- and Gnúpverjahreppur. ECOI will update the list annually, starting in early 2022.

¹² ECOI took into account the following indicators: access barriers by area; number of significant competitors by area; retail and wholesale market shares by area; pricing and possible price difference at wholesale and retail levels by area; other aspects, including marketing policy, marketing behaviour, the service offer, quality of connections and nature of demand by area.

such as VoIP and IPTV. Cable TV and Wi-Fi networks are excluded from the market definition. For the same reasons as for Market 3a, ECOI considers that there is a chain of substitution between copper and fibre at the retail and wholesale levels.

Míla offers three kinds of central access with fixed-line connections for mass-produced products (bitstream access). In ADSL systems, 12 Mb/s is the maximum bandwidth on offer, in VDSL systems it is 50 Mb/s or 100 Mb/s if vectoring is applied to the line, and 100, 500 and 1000 Mb/s (1 Gb/s) connections are available for GPON.¹³

GR offers central access to its network, which can be connected to at two connection points in Reykjavík. 1 Gb/s connections are on offer to end users. This constitutes a standardised Market 3b access product, as access is provided centrally and the purchasers have limited possibilities to control the network.

Tengir also offers active central access which belongs to Market 3b.

As for Market 3a, ECOI reached the conclusion in its geographic market definition that, despite somewhat differing competitive conditions between municipalities, there is no justification for defining subnational markets at this time (while committing, as noted above, to review this part of its analysis again in 2022). ECOI has distinguished the more competitive areas based on the same criteria as for Market 3a, and also intends to impose varying obligations in the 17 more competitive areas identified.¹⁴

II.3. Finding of significant market power

Wholesale local access provided at a fixed location (Market 3a)

At *retail level* Síminn is the largest company on the broadband market with over 65,000 customers and a share of just over 46% nationally at the end of 2020 (40% in GR's operational territory and over 70% in Tengir's area), having decreased slightly from about 52.7% at the end of 2006.¹⁵

Sýn (Vodafone) was the second-largest company during the same period. At the end of 2017, the company completed its purchase of 365 Miðlar broadcasting and electronic communications services and the company's market share increased accordingly. Vodafone's market share subsequently decreased by 2.7% in 2018, by 4.2% in 2019 and by 1.7% in 2020, and stood at just under 28% nationally (albeit significantly larger in GR's operational territory according to ECOI) down from 37% at the end of 2017.

Nova, which operated for a long time on the mobile phone market, grew rapidly since commencing a fixed-line internet service in 2016 with a market share of just under 15% at the end of 2020.

Hringdu grew steadily for the first 5-6 operational years and in recent years held a fairly stable, but growing market share at just over 7%, reaching 8.6% of the market at the end of 2020. A number of smaller companies operate on the retail broadband market, but their share is very small, a total of 2.8%, having declined in recent years from a relatively stable level previously at just under 5%.

¹³ Access Options 1, 2 and 3 are the connections relevant to Míla's Market 3b bitstream services through the company's copper (ADSL and VDSL) and fibre-optic (GPON) networks.

¹⁴ See footnote 11.

¹⁵ In July 2020, Síminn concluded an agreement with GR to provide services via the GR fibre-optic network. On 25 August 2021, Síminn started providing its services over GR's network. ECOI considers that this agreement will lead to the Síminn market share reaching over 50% towards the end of the lifetime of this analysis. However, ECOI expects that the vast majority of Síminn customers will remain on the underlying Míla network.

The retail market for internet services is characterised by large packaged solutions or product bundles, mostly offered by Síminn and Vodafone. Television service is the main selling point of the bundles. In recent times, Síminn has held its ground quite well, despite the powerful entry of Nova, while Vodafone has been losing significant market share.¹⁶

Síminn is the only electronic communications company in the country that offers service with close to national coverage. Vodafone, Nova and Hringdu provide retail service in the most populated areas and are significant wholesale customers of GR, whilst also offering services over the Míla network in some areas.¹⁷

At wholesale level, ECOI explains that Míla's market share at national level has dropped from 83% in 2014 to 57% (with GR at 36% and Tengir at 5% market share) at the end of 2020. Despite this significant decrease in market share, ECOI considers that it is still sufficiently high (with the rate of decline expected to slow in light of Míla's fibre deployment plans) to give strong indications of SMP. ECOI also notes the risk of wholesale customer shifts disrupting market shares. Other factors also support the conclusion of Míla having SMP, such as access barriers and lack of competition. Míla still controls the only access network that has close to national coverage and has made major investments in fibre-optic networks during recent years. The Síminn Group position is still very strong and Síminn's retail market share has been relatively stable in recent years (as discussed above). ECOI thus decides to designate Míla as an operator with SMP on the market.

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

ECOI observes that, since the last market analysis conducted in 2014, Míla's market share dropped at national level from 65% to 57% (with GR at 40%, and Tengir at just over 2%) at the end of 2020. ECOI however considers that, despite this decline, Míla's market share is still sufficiently high (and like Market 3a above, is expected to remain high in light of Míla's fibre deployment plans) to give a strong indication of SMP. ECOI notes again the risk of wholesale customer migration disrupting market shares. Other factors also support ECOI's SMP conclusion, such as access barriers and lack of competition. Míla still controls the only access network that spans the whole country and has made major investments in bitstream equipment for fibre-optic networks during recent years. The Síminn Group position is also still very strong, as noted above. ECOI concludes that Míla still has SMP on the market.

II.4. Regulatory remedies

Wholesale local access provided at a fixed location (Market 3a)

ECOI intends to impose on the Míla/Síminn Group the following set of remedies: (i) access obligation (Míla); (ii) non-discrimination obligation (Míla, but the obligation also applies to Síminn in connection with the Economic Replicability Test ("ERT")); (iii) transparency obligation (Míla); (iv) obligation for price control on copper local loops and

¹⁶ As regards advantages in TV content, ECOI notes that Síminn's acquisition of broadcasting rights for English football for 2019-2025 has strengthened its position. Bundles including TV and electronic communications services are popular and Síminn has a substantial lead on its competitors with its Heimilispakkinn quad-play bundle which also includes the Sjónvarp Símans Premium content.

¹⁷ Vodafone offers service in the Capital City Area and at many locations in the countryside. Nova and Hringdu mainly offer service in the Capital City Area and widely in Southwest Iceland, and also in larger urban areas in the countryside. A number of local service providers offer service predominantly in their local territory, such as Snerpa in the Westfjords, KV in Reykjanesbær and Tölvun in the Westman Islands.

related facilities (Míla);¹⁸ (v) obligation to withstand an ERT with respect to fibre-optic local loops (Míla, but the obligation also applies to Síminn);¹⁹ (vi) cost accounting obligation (Míla, but the obligation also applies to Síminn in connection with the ERT).

Obligations imposed on the SMP operator are stricter than was the case in the previous market review. In addition to the newly-imposed obligation to conduct an ERT, the obligation for access to ducts and conduits is more prescriptive with regard to the publishing of information on ducts and conduits and on planned civil works. In 17 municipalities where more efficient competition was identified, the following will not apply: (i) obligations on access to ducts and conduits, (ii) obligation to advertise civil works and (iii) obligation to give 5 years notice concerning migration of network systems.

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

ECOI intends to impose on the Míla/Síminn Group the following set of remedies: (i) access obligation (Míla); (ii) non-discrimination obligation (Míla, but the obligation also applies to Síminn in connection with the ERT); (iii) transparency obligation (Míla); (iv) obligation for price control on bitstream provided over copper local loops and related facilities (Míla);²⁰ (v) obligation to withstand an ERT with respect to fibre-optic local loops (Míla, but the obligation also applies to Síminn);²¹ and (vi) cost accounting obligation (Míla, but the obligation also applies to Síminn in connection with the ERT).

ECOI acknowledges that the proposed obligations are somewhat more wide-reaching than before, in particular concerning the obligation on the Síminn Group to conduct an ERT with respect to fibre-optic local loops and services provided over them. However, in 17 municipalities with more efficient competition, the obligation to give 2 years' notice regarding migration of network systems will not apply.

III. COMMENTS

The Authority has examined the notified draft measures and has the following comments:

Need to clarify instability of local competitive developments in geographic market definition

According to established case law, the relevant geographic market comprises an area in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas where the prevailing conditions of competition are

¹⁸ The tariff for access provided over copper local loops shall be cost-oriented. When deciding the price, Míla shall use historical costs allocated to the relevant service. ECOI plans to allow for 2-3 years between tariff revisions and the tariff shall also be increased annually using the CPI.

¹⁹ The ERT will be prescribed further in a separate decision, which will be conducted subsequent to relevant consultation procedures. In its reply to the Authority's RFI, ECOI explains that the reasoning behind the ERT is the strong position of the Síminn Group on the electronic communications market, its status as the only vertically-integrated operator on the market and economies of scope used by Síminn in its bundling. At retail level, Síminn has increased its national market share in fibre internet connections rapidly in the last years (from 9.6% in 2016 to 34.3% in 2020). ECOI believes this increase will continue given Míla's plans to continue its roll-out of fibre together with the contract with GR and that the increase will be more intensive in the GR area. Furthermore, as noted in footnote 16 above, Síminn's Heimilispakkinn bundle has been very successful and, according to ECOI, is difficult to replicate by competitors.

²⁰ See footnote 18.

²¹ See footnote 19.

appreciably different. Areas in which the conditions of competition are heterogeneous do not constitute a uniform market.²²

In addition, “[a]ccount has to be taken of the scope of the potential SMP operator's network and whether that potential SMP operator acts uniformly across its network area or whether it faces appreciably different conditions of competition to a degree that its activities are constrained in some areas but not in others.”²³ Ultimately, it has to be established whether services in different areas do indeed constitute a real alternative source of supply.²⁴

NRAs should assess competitive conditions in a forward-looking manner, by looking at structural and behavioural indicators, taking into account in particular, in line with Article 64(3) of the Code,²⁵ the importance of infrastructure-based competition. Such indicators can include *inter alia* network footprint, the number of competing networks, their respective market shares, trends in market shares, localised or uniform pricing behaviour, characteristics of demand and customer switching and churn.²⁶

ECOI emphasises two key indicators guiding its geographic market definition, namely: a) the presence of a fibre-optic network that competes with Míla in the relevant area, which has distribution to at least 75% of households and companies; and b) Síminn's market share on the retail market for broadband service is under 50%. In addition, ECOI notes other factors supporting its conclusion of a national market definition such as lack of clear differences in quality/functionality of connections, marketing policies or the nature of demand, as well as the fact that communication providers have uniform retail pricing nationwide. Further, while Míla's wholesale pricing of its fibre services (both for fibre local loops in Market 3a and for Access Options 1 and 3 in Market 3b) varies by area, with lower monthly prices in the Capital City Area and in Akureyri, ECOI largely attributes such variations to cost-related factors.

The Authority has concerns regarding the extent to which ECOI's indicators provide a sufficiently comprehensive insight into whether or not Míla faces appreciably different conditions of competition in certain municipalities in Iceland, in particular in the GR operating area.

While the Authority acknowledges the relatively modest number of competing networks at wholesale level in Iceland, it is conscious of the fact that Míla's main competitor is a wholesale-only operator. The Authority considers that ECOI's assessment should have examined more closely the distinct incentives that wholesale-only competitors have relative to vertically-integrated incumbents when it comes to fostering retail competition.

²² The Authority's Guidelines of 14 July 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications networks and services (2006/C 101/O 1), (“the SMP Guidelines”), paragraph 57.

²³ Explanatory Note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector, SWD (2014) 298, (“the Explanatory Note”), page 13.

²⁴ Point 29 of EFTA Surveillance Authority Notice on the definition of relevant market for the purposes of Community competition law, Decision No. 46/98/COL, OJ L 200/46 of 16.07.98.

²⁵ Decision of the EEA Joint Committee (“JCD”) No 275/2021 of 24 September 2021 incorporates 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, 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.

²⁶ The Explanatory Note, pages 13-14. See also Commission Decision of 17.9.2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure) Cases IE/2021/2332-2333: markets for retail fixed telephony services and wholesale fixed access and call origination in Ireland, C(2021) 6690 final, pages 24-25, available [here](#).

The Authority also observes certain municipalities in which Síminn's retail market share is below levels usually associated with potentially harmful market power (even as low as <35% in some instances), and where ECOI anticipates that Míla's wholesale market share will also fall below traditional indicators of SMP over the forthcoming three-year period, e.g. in Reykjavíkurborg, Seltjarnarnesbær and Sveitarfélagið Ölfus.

At the same time, ECOI has repeatedly expressed concerns regarding the immature and unstable nature of such local competitive trends. It has emphasised the need to monitor whether recent developments, such as *inter alia* Síminn's initiation of retail services via the GR network and a deceleration in the infrastructure deployment plans of competitors, will lead to a reversal of the competitive evolution observed in the GR operating area in past years. Furthermore, ECOI notes the risk of a material change in the competitive landscape if significant wholesale customers were to switch from the GR network to the Míla network.

Against this background, the Authority takes particular note of the commitment provided by ECOI in the course of discussions on the present notification to revisit its assessment of the geographic market definition in 2022.²⁷ The Authority underlines the importance of this exercise and of ensuring that the criteria employed allow for a sufficiently nuanced appreciation of competitive trends at municipality level. If such filtering criteria or thresholds are too high-level, this risks potentially overlooking important developments in more competitive municipalities.

Furthermore, as to wholesale customer migration risks, the Authority would like to stress that countervailing buyer power of significant wholesale customers can also exert a positive disciplining influence on the market. Any materially adverse market developments stemming from unforeseen wholesale contract changes may also be addressed via an accelerated market review process focusing on the changes in question.

Finally, the Authority also calls on ECOI to elaborate in its final decision why, based on the information currently available, it projects a reversal of competitive trends in those municipalities experiencing a more noticeable competitive dynamic. In particular, the Authority calls on ECOI to include in its final decision the information and assumptions underpinning its current pessimistic projections for municipalities where incumbent market shares fall appreciably below traditional indicators of SMP. In this regard, the Authority also urges ECOI to specify precisely why it expects that Síminn's initiation of services on the GR network will contribute to this deterioration in competitive conditions.

Need to ensure that remedies are justified and proportionate in all areas

In relation to the 17 municipalities where ECOI has identified a more competitive trend, the Authority has reservations regarding the extent to which the proposed geographic variations in remedies are sufficiently adapted to, and reflective of, the underlying market conditions in those areas. As for the geographic market definition above, the Authority acknowledges ECOI's views regarding the instability of recent competitive developments in certain municipalities. Where NRAs cannot clearly identify substantially and objectively different conditions, which are sufficiently stable over time, it is recognised that the existence of geographically-differentiated constraints, such as differing levels of infrastructure competition, may be more appropriately taken into account at the remedies stage by imposing a geographically-differentiated set of obligations.²⁸

At the same time, each obligation requires a justification that the remedy in question is appropriate and proportionate in relation to the nature of the competition problem

²⁷ As reflected in the below comment on "Reassessment of the geographical market analysis and notification to the Authority".

²⁸ The Commission's Explanatory Note, page 14.

identified.²⁹ In this regard, the Authority urges ECOI to explain in its final decision how the proposed remedies for those more competitive municipalities are justified and proportionate based on the nature of the specific underlying competition problems identified in those areas. In particular, the Authority invites ECOI to elaborate why almost a full set of remedies, including more extensive obligations (namely an ERT with respect to fibre-based services) than currently in place, is proportionate and justified in those municipalities identified as exhibiting a more competitive evolution.

Reassessment of geographical market analysis and notification to the Authority

As discussed in the comment on the geographic market definition above, and mindful of the evolving market context, the Authority underlines the importance of ECOI's commitment to revisit its geographical market analysis by 2022 with a view to assessing whether its assumptions of a reversal of recent competitive trends in certain municipalities remain valid. Subsequently, ECOI commits to formally notifying to the Authority any possible amendments to the geographical market, including those that would justify geographic segmentation of the market (together with any possible implications for the SMP analysis/remedies) and in any event to discuss with the Authority the conclusion of such market analysis. The Authority urges ECOI to conduct its assessment and engage in an early dialogue with the Authority, as soon as the new market data is available and/or the market situation evolves, and in any event for the exercise to be completed no later than the end of 2022.

Market review timing and timely enforcement and effectiveness of remedies

The Authority notes that ECOI's last review of Markets 3a and 3b dates back to 2014, implying a significant delay of seven years in the review cycle for these markets. If an NRA does not analyse the relevant markets at regular intervals, or considerably delays the enforcement of imposed remedies on the SMP undertaking, this may harm competition on those markets and reduce legal certainty for market participants with regard to the applicable regulatory conditions. Therefore, it is imperative that NRAs undertake market reviews at regular intervals to ensure that any decisions to impose, maintain, amend or withdraw obligations, as foreseen in Article 16(2) of the Framework Directive and Article 67(5) of the Code, are taken on the basis of up-to-date and relevant market analyses. The Authority therefore strongly urges ECOI to undertake a timely analysis and notification of the next full reviews of the markets in question, in line with ECOI's obligations under the EEA regulatory framework.

²⁹ In line with Article 8(4) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L108, 24.4.2002, p.7, as referred to at point 5cj of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol I ("the Access Directive").

IV. FINAL REMARKS

On a procedural note, the Authority 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 NRAs and the Authority. It may adopt the resulting draft measures and, when it does so, shall communicate it to the Authority.

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

Pursuant to Point 15 of the Procedural Recommendation,³⁰ the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days³¹ 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,

Valgerður Guðmundsdóttir
Deputy Director
Internal Market Affairs Directorate
Directorate

Emily O'Reilly
Deputy Director for Competition
Competition and State Aid

This document has been electronically authenticated by Emily O'Reilly, Valgerdur Gudmundsdottir.

³⁰ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Framework Directive, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at <http://www.eftasurv.int/media/internal-market/recommendation.pdf> ("the Procedural Recommendation").

³¹ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.