

Appendix B1



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**Conclusions from PTA consultation on
Preliminary Draft analysis of the markets for
wholesale network infrastructure access at a fixed
location (M4) and for wholesale broadband
access (M5)**

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Introduction

This document contains an overview of the replies and comments received on the initial consultation by the Post and Telecom Administration (PTA) on the Preliminary Draft analysis of the markets for wholesale network infrastructure access at a fixed location (M4) also broadband access (M5). The first draft was submitted to stakeholders for consultation with a letter dated 7 March 2013 and thus completed on 7 May of the same year.

The following parties submitted comments on the Preliminary Draft.

- Fjaraskipti ehf. (Vodafone)
- Gagnaveita Reykjavíkur ehf. (GR)
- Inter, Association of resale parties of Internet services (Inter)
- IP-fjaraskipti ehf. (Tal)
- Míla ehf. (Mila)
- Competition Authority (SE)
- Siminn hf. (Siminn)

Comments from the above specified parties have been categorised by subject, section and paragraph. Endeavours have been made to identify all significant comments. At the end of each comment there is a summary of the position of the PTA and the action taken. The comments received can be found on the PTA website.¹

1 General comments

Mila finds it surprising that the PTA has not updated the analysis in accordance with the Settlement between Skipti hf., Siminn hf. and Mila ehf. On the one hand and the Competition Authority on the other which was published with the Competition Authority Decision no. 6/2013. Mila considers that a forward-looking analysis needs to take into account influencing factors covered by the Settlement, particularly with respect to obligations in the analysis that tackle vertical integration as the Settlement prevents such vertical integration. There will also be significant organisational changes within the Skipti Group which must be taken into account, among other things in separation of Siminn core systems and retail operations, and the markets M4 and M5 covered by the analysis cover exactly the same factors as the Settlement. This particularly applies where electronic communications systems covered by M5 are to be moved from Siminn hf. to Mila hf. Increased independence of Mila hf. and separation from Siminn pursuant to the Settlement, significantly impacts the subject of the analysis and the obligations that are to be imposed on Mila hf. Despite the fact of having been aware of the content of the Settlement the PTA proposed obligations, among other things on the grounds that they were necessary because of vertical integration within the Skipti Group.

¹ <http://www.pfs.is/>, under "Markaðsgreining" and "Samráð við hagsmunaaðila".

The position of the PTA

The PTA initiated the original consultation on 7 March 2013. The Competition Authority Decision no. 6/2013 which contains the above specified Settlement, was published on 26 March of the same year. The PTA had been working for a number of months on market analysis of the relevant markets and the Preliminary Draft was ready for consultation. The PTA could not know for certain if the above specified Competition Authority Decision would be published.

On 20 December 2013 the PTA opened a limited additional consultation for the relevant markets. There it was stated among other things that since the initial consultation was initiated the Settlement in question between Skipti and the Competition Authority had been made among other things where various tasks had been transferred from Siminn to Mila, including xDSL service that was dealt with in Market 5. For this reason and a result of other developments on the relevant markets, the PTA opened the additional consultation in question. It was now planned that Mila, instead of Siminn, would be designated as a company with significant market power on Market 5 and that the appropriate obligations would be imposed on that company. The market analysis and draft has been revised with this in mind.

The companies belonged to the same group prior to the above-mentioned Settlement being made on 8 March 2013 and remain so today in the understanding of competition law. This does not change with the Settlement. As previously stated the Settlement was not implemented when the Preliminary Draft was published for consultation and it was assumed that parts of the Settlement would be implemented during the 6 to 12 month period subsequent to the coming into force of the Settlement. Now it has come to light that this timeframe cannot be adhered to because of a number of important issues, for example the Mila development of its own MPLS system which was to be completed last 8 March and in addition to this Siminn appears to have been able to utilise wholesale switches, which were only envisaged for Access Option 1, for other services without the knowledge of Mila, many months after the transfer of xDSL systems should have been completed in September 2013. A certain period of time must also pass from the time that the agreement is fully implemented until the PTA can take a position on the extent to which the Settlement has influenced the relevant market. Should the Settlement be well implemented then there is a possibility that the PTA might expedite a revision of the analysis of the relevant markets.

As previously stated the PTA has updated the analysis with respect to operation of bitstream service (Market 5) which is now the responsibility of Mila instead of Siminn. The PTA considers that the Settlement has to some extent simplified the analysis and has made the boundaries between Markets 4 and 5 clearer than before but that it has not caused such material changes that there is a need to alter the main conclusions of the PTA Preliminary Draft Analysis.

Further explanations for the PTA position on this issue have been provided in the revised market analysis and in Appendix B2 where the main conclusions of the above specified additional consultation are expounded.

Siminn makes the general observation that the Skipti Settlement with the Competition Authority constitutes such fundamental changes to the market that it is almost unavoidable to conduct a total revision of the Preliminary Draft in the light of changed circumstances, among other things with respect to whether the Settlement reduces the need for obligations or the nature of obligations should they be required.

The position of the PTA

Reference is made to the PTA response on the same issue here above.

Vodafone makes the general observation on the Preliminary Draft market analysis that the company considers it important that market analysis of the relevant markets takes into account the new Settlement between Skipti hf. and the Competition Authority. Vodafone reserves the right to submit new comments should this be the case.

The position of the PTA

Reference is made to the PTA response here above on the same issue.

Siminn makes significant comments on the market for television distribution in support of its view that it is not necessary to rework Market 18 on TV distribution.

The position of the PTA

Siminn comments apply to the older Market 18 which is not under discussion here. For this reason Siminn comments on this issue will not be discussed here.

Mila considers that the lifetime of the last analysis was too long and not in accordance with requirements for market analysis at 2 to 3 year intervals. Many changes have taken place since the last analysis was made, for example major distribution of fibre-optic connections. Mila also mentions that 4G mobile phone service should enter the market during the expected lifetime of the analysis and encourages the PTA to closely monitor the rapid changes that one can expect in the coming months.

The position of the PTA

The PTA agrees that review of the relevant markets has taken too long but that this is not solely the fault of the PTA as it took the companies that were designated with significant market power, i.e. Mila and Siminn, a long time to fulfil the obligations that were imposed on them in previous analyses, including that of submitting cost analysis and revised reference offers to the PTA for scrutiny and endorsement. The PTA aims at more frequent review of analysis of the markets in question from this point on.

In the market analysis here under discussion the PTA deals in detail with market development from the years 2007-2008 to the present day, taking into account distribution of fibre-optic networks and mobile networks (for example 3G and 4G).

Mila comments on Article 20 in the Preliminary Draft in the Section on general discussion on the delineation of geographical markets and points out that access networks are operated separately for each area and are connected to the core network. Localised development of fibre-optic networks by municipalities solely in their areas support this view and indicate that Markets 4 and 5 are not a single geographical market.

Mila points out that the country was designated by law as a single tariff area for fixed line telephone services in 1999 and that charges for universal services according to electronic communications legislation now in force shall be the same throughout the whole country which influences the charge for access to local loops and has led to a standard charge for local loops for the whole country though costs indicate otherwise. It is not possible to draw the conclusion from a homogenous price that the whole country is a single market. Mila has repeatedly pointed out that local loops in the countryside are more expensive than in the Capital City Area. Mila competitiveness is thus weakened with homogenous pricing while parties such as Gagnaveita Reykjavíkur can operate in the most profitable areas.

The position of the PTA

In Section 1.4.3 on the delineation of geographical markets there is a general text on criteria and methodologies that can apply to geographical delineation in market analysis. With respect to Mila comments on the definition of geographical markets in connection with the relevant market, reference is made to discussion later in the document in Section 3 on the definition of geographical markets.

There it is stated that pricing by the market in Market 4 strongly indicates that this is an instance of a single geographical market for access to network infrastructure provided at a fixed location in this country. There is nothing to indicate that other network operators offer prices that vary by region and nor that they vary significantly from the Mila prices on the local loop market.

With respect to Market 5 it is stated in Section 3 that the same tariff for xDSL service applies to the whole country with Siminn, where it is technically possible to offer such service. Other service providers on the market in question offer a tariff independent of the location of the user in their distribution areas. In addition to this, the tariffs for broadband services provided with xDSL technology through copper local loops on the one hand and with fibre-optic technology on the other hand are similar.

Tal mentions that about 80% of the company's new customers are families or individuals that wish to purchase "the whole package" where they purchase in one package the home telephone, mobile phone, Internet and television (IPTV). It is Tal's experience that access to IPTV is an absolute prerequisite for such customers and for many others. Tal's experience is in accordance with what is stated in Article 143 in the Preliminary Draft of the analysis.

The position of the PTA

Tal's experience in this respect supports the PTA view that IPTV is an important component in service provided over bitstream.

2 Description and definition of the relevant service markets

Mila makes the comment on the definition of local loop in Article 34 in the Preliminary Draft that it is not clear whether it refers to one local loop for all inhabitants in a building with multiple residence or whether each apartment has its own local loop.

The position of the PTA

The PTA agrees that the wording is not clear enough. It is intended to mean that each apartment has its own local loop where there is a fibre thread in a cable in the same manner as in the copper line system where each apartment has its own local loop that are in the same cable when they enter the building. The wording will be adapted accordingly.

Mila mentions that with respect to Paragraphs 50 and 51 in the Preliminary Draft with respect to the EU Commission view that investment in Next Generation Networks is a key issue in the European Digital Agenda, that investments in VDSL and continued development of this technology, such as "vectoring", "bonding", "Phantom" and "G.fast" are categorised under Next Generation Access Networks and that must be kept in mind when assessing whether obligations for cost analysed tariffs shall be imposed. It is important to support investments in such Next Generation Access Networks and that they harmonise with the objectives of the Electronic Communications Plan. One cannot see in the PTA obligations that this has been done except in the case of the introduction of fibre-optic.

The position of the PTA

The PTA plans to impose price control on VDSL service. VDSL technology is considered to be a temporary solution in the development from ADSL technology over copper local loops to NGA networks via fibre-optic. The development of the VDSL systems is in the opinion of the PTA more related to an upgrade from ADSL systems than new development of local loop networks with fibre-optic cables as the former is based on the same copper local loops to each user, that is to say for that part of the local loop network where most of the cost is incurred in installing fibre-optic local loops. VDSL development thus in the opinion of the PTA does not entail the same investment risk as the development of fibre-optic local loops. The PTA for this reason considers there to be no reason to grant exemption from price control for bitstream services over VDSL connections. Though VDSL is considered to be an NGA access network, this does not alter the fact that Mila has significant market power on the relevant market and for this reason it is normal that appropriate obligations be imposed on the company.

Mila agrees with the PTA in Paragraph 54 in the Preliminary Draft that it is important that the regulatory framework be predictable and not continuously changing, for companies to be prepared to embark on investments. PTA Decisions must therefore be such that they can be complied with without being significantly burdensome. In addition to this Mila points out that according to Paragraph 59 it cannot be said too often that obligations should take into account incentives to invest.

The position of the PTA

Obligations are always to a greater or lesser degree burdensome for those parties on whom they are imposed. The PTA considers the obligations proposed in the Preliminary Draft to be normal in the light of the competition problem they are intended to resolve and that they are not excessively burdensome for companies with significant market power on the relevant market. When elaborating obligations the PTA furthermore takes into account the incentive to invest, no less than endeavouring to support active competition.

Mila mentions with respect to Article 60 in the Preliminary Draft, that the company understands this Article such that the five-year notice mentioned there applies to when a system is discontinued and that such a long period of notice can be acceptable if it is possible in the light of all circumstances. On the other hand, such a long period of notice could not apply in the case of normal system development.

The position of the PTA

The PTA can confirm that the Mila understanding is correct with respect to Paragraph 60 in the Preliminary Draft.

In the planned access obligation on the Market 4, it is stated that the obligations currently imposed on Mila for access to copper local loops shall not be withdrawn even were Mila to change the structure of its systems to the next generation of networks, for example if fibre-optic cable replaces copper local loops (migration), unless an agreement on the procedure for migration has been reached where the party leasing the local loop would thus be in a position to implement a new type of local loop instead of the older one when the migration takes place. Should such an agreement not be reached then Mila should 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 five years' notice. Deviation may be made from the above period of notice on receipt of advance endorsement by the PTA under more specifically defined circumstances.

Mila emphasises with respect to Paragraph 61 in the Preliminary Draft on the policy-making EU statement in July 2012 where the EU Commission declared that it no longer intended to recommend, as it had done previously, that the regulatory authorities introduce in almost all instances obligations on cost related tariffs for wholesale access to NGA, that VDSL was categorised as being a Next Generation Access Network. Mila therefore considers that cost-oriented tariffs should not be prescribed for broadband access other than ADSL.

EU recommendations were also becoming obsolete with respect to Paragraph 62. It was not acceptable that the PTA intended to use such a regulatory framework as reference. In imposition of obligations the PTA must have the flexibility to be able to amend or withdraw obligations as appropriate, particularly with respect to cost-oriented tariffs for access to Next Generation Access Networks.

The position of the PTA

The PTA refers to its position as stated in its response to the Mila comments on Paragraphs 50-51 here above. It should be pointed out that the policy-making declaration in question was the precursor for the EU Commission Recommendation from 11 September 2011 on the obligation for non-discrimination and for cost-orientated methodologies. The PTA has added text in Section 2.1.4 in Appendix A regarding that Recommendation. The PTA takes the Recommendation into account to the extent that it applies to Icelandic circumstances.

Siminn makes the comment on Paragraph 71, in the Section on IPTV, that there is lack of precision in the PTA discussion on Article 45 of the Media Act no. 38/2011, which prescribes that in the case of transmission rights it is more normal to use the words "may carry" instead of "must offer". In the provision in question there are instructions on the rights of an electronic communications company to demand provision of material from the media service provider and not on transactions between two electronic communications companies, and it is clear that each electronic communications company must come to an agreement with a media service provider on transmitting material over its systems.

The position of the PTA

The PTA considers there to be no lack of precision in this wording. The provision in question of Article 45 in the Media Act applies to the right of an electronic communications company to distribute material from a media service provider.

Vodafone comments on Paragraph 78 in the Preliminary Draft and points out that the Competition Authority Decisions 10 and 12/2005 do not cover the merging of those companies named in the Paragraph and request amendment and PTA explanations of the text of the Paragraph.

The position of the PTA

The Competition Authority Decision no. 12/2005 concerns the former companies that are now Fjarskipti hf. and 365 miðlar ehf. The text of the Paragraph deals with the fact that the Competition Authority as early as the year 2005 considered that access for media to electronic communications for the distribution of their material and access for electronic communications companies to material that they could distribute over their networks, were extremely important issues in competition, both on the media and electronic communications markets. Bundling and exclusion were competition barriers that should be prevented. Though television distribution with IP protocol does not fit directly into the markets under analysis here, the situation on retail markets and the service provided through local loops and bitstream connections have an impact on the wholesale markets and it is normal that the PTA should include these Competition Authority Decisions in its discussion.

Mila notes that with respect to Paragraph 135 in the Preliminary Draft in the Section on the description of the wholesale market for broadband access (Market 5), that according to the Settlement between Sipti and the Competition Authority, Mila will from this point on offer Access Options 1, 2 and 3 while Siminn will offer Access Option 4. Mila considers that the PTA needs to word the definitions of Access Options in a clearer manner.

The position of the PTA

As previously stated, the PTA has updated the analysis taking into account the transfer of bitstream systems that concern Market 5, from Siminn to Mila. This transfer was to take place on 8 September 2013.

The definition of Access Options is the same as in the last analysis. One has to ensure that the wording is not too narrow in order that it can include normal technical development and the possibilities to provide access in accordance with market needs in each instance. The PTA therefore considers there to be no reason to alter definitions of the Access Options in question.

The obligation to provide Access Option 4 will be withdrawn as the PTA considers there to be no need to maintain this obligation. It had been imposed on Siminn and not on Mila. Internet service is not subject to access barriers if parties receive adequate access to Access Options 1-3. There has been no demand for Access Option 4 since the last analysis and according to the Settlement between Sipti and the Competition Authority, Siminn is obliged to offer Internet service in wholesale for resale.

Tal mentions in connection with Paragraph 144 in the Preliminary Draft that IPTV service is always tied to access to Internet service, either by ADSL or fibre-optic connection. Tal therefore believes that it is necessary to examine these two markets together, that is to say access to IPTV and the wholesale bitstream service, as each has a significant impact on the other.

The position of Siminn and Vodafone is extremely strong on both of the above specified markets and they have the possibility to limit competition with their conduct. Despite the fact that the Competition Authority imposed strong conditions on both Siminn and Vodafone, both companies bundle their IPTV service with access to ADSL or fibre-optic connections in such a manner that it is not possible to purchase IPTV service with these companies without also purchasing ADSL or fibre-optic access with the same company. Both companies have succeeded in asserting that technical problems prevent them from selling IPTV service without the purchase of ADSL or fibre-optic access from the same company.

The position of the PTA

The PTA is in this instance analysing wholesale broadband access (Market 5). The television distribution was previously Market 18 and the PTA analysed this market in 2008. At that time the conclusion was that there was active competition on the market. The PTA can however analyse this market again should the Administration consider that circumstances have changed. The PTA has not made a decision to do so at this point in time. The PTA considers it normal to wait and see whether the Decision on Market 5, where among other things access is prescribed to multicast and the

Settlement between Skipti and the Competition Authority can resolve the problem indicated by Tal in this instance.

The above specified comments from Tal correspond with the PTA conclusion that the Siminn position in retail TV service using IP technology has strengthened Siminn's position for wholesale bitstream service and Mila now takes over this strong position of its sister company Siminn and both are 100% owned by Skipti.

Tal's assertion is correct that in the case of Siminn/Mila xDSL and fibre-optic systems and of Vodafone ADSL system there has been an inseparable link between access to bitstream and access to the companies' IPTV systems. On the other hand there is not the same connection in the GR open network as bitstream access is in reality received from GR while the consumer is freer to choose each service, that is to say home telephone, Internet and TV each from separate parties. But as was stated in the previous comment from Tal there is a significant tendency among consumers to choose all services from the same party.

Mila mentions, with respect to Paragraph 165 in the Preliminary Draft and again in Paragraph 209 in the Preliminary Draft, in the Section on assessment of access technology and substitutability on Market 4 where copper local loops are discussed, that both ADSL and VDSL can each on their own be provided both from telephone exchanges and from street cabinets, but the PTA seems to assume that ADSL is provided from the telephone exchange and VDSL from street cabinets. Mila therefore emphasises that with respect to vectoring that the possibilities of applying vectoring are limited in the same manner even where more than one party is provided access to install VDSL equipment in a telephone exchange. At many locations in the countryside VDSL is provided from the telephone exchange. Subsequent to the coming into force of the Settlement between Skipti and the Competition Authority, Mila controls active equipment for the VDSL system. Mila has an incentive to provide equal access but has to pay attention to system integrity at the same time.

The position of the PTA

The above specified text is general discussion and should be interpreted as such. The PTA understands development of VDSL systems such as that currently being developed by Siminn and Mila. The PTA will review the wording and take care to express the issue clearly but one must realise that the wording applies to what is generally the case and will never cover all eventualities, but decisions and conditions of the PTA nevertheless cover all instances.

Mila makes the comment on Paragraphs 180 and 181 in the Preliminary Draft in the Section on assessment of substitutability of local loops with fibre-optic technology, that distribution of fibre-optic connections can hardly be considered limited when one has in mind that GR plans to complete distribution in Reykjavik in the year 2014.

The position of the PTA

Distribution of fibre-optic connections must be considered limited when one considers the country as a whole. The largest parties on the local loop market, Mila and GR, are not developing their fibre optic networks on a national basis and have no plans for

such development. Municipalities at many locations in the country are thus looking for solutions to developing their own fibre-optic networks in order to meet the needs of the inhabitants and companies in the municipality in question. The networks that have come into existence with such parties are not homogenous with respect to operating form, operators and access for service providers. GR will for example not develop its network throughout the whole Capital City Area, though the company plans to reach all homes in Reykjavik, as the company's plans do not cover Kópavogur, Garðabær or Hafnarfjörður except where whole districts have been developed in the very recent past. The GR fibre-optic network is still under development and company master plans allow for fibre-optic coverage for Reykjavík being completed at the end of 2014 but it is clear, according to the newest information from GR, that this will not be achieved until 2015 at the earliest. In March 2014 distribution in Reykjavik had however reached 95% of homes. GR has not published plans for those areas of the Capital City Area that have not been converted to fibre-optic.

The PTA therefore retains its wording "rather limited distribution" with respect to local loops using fibre-optic technology to households and companies. On the other hand it is the conclusion of the PTA in the market analysis of Market 4 that there is substitutability between copper and fibre-optic local loops.

Mila points out with respect to Paragraphs 229, 236, and 241 in the Preliminary Draft in the Section on assessment of substitutability of UMTS on the bitstream market that the PTA has issued frequency licenses for 4G services that will be developed during the lifetime of the analysis. This includes a frequency license where licence holders undertake to reach 99.5% of households and working premises with whole year operations with 10 Mb/s data transmission capacity of connections by the end of 2016 and with 30 Mb/s capacity by the end of 2020. The introduction of 4G can thus impact the bitstream market which means that there should be a review of the analysis with respect to this issue, sooner than later. Particularly as the timeframe for distribution to 99.5% of households and companies is within the estimated lifetime of the analysis and as the company 365 miðlar has announced that it intends to base distribution of TV material on the 4G system. Mila therefore considers that 4G is a substitute service for broadband connections through copper and fibre-optic in Market 5. 4G is also different from 3G in that 4G will only carry data and not telephone connections or SMS.

The position of the PTA

In the discussion on possible substitutability of 4G for bitstream service on telephone networks at a fixed location, the PTA mentions in Section 2.3.2.7 that it is still not clear to what extent consumers will use 4G technology and 4G handsets, and the PTA does not expect that the use of this service will be widespread in this country before the end of the period of validity of the analysis at the earliest. It is clear that the PTA is fully aware of the potential of 4G in this area and will closely monitor developments in the coming months and will review the analysis of Market 5 at an earlier date should the Administration considered there to be a need to do so.

Mila mentions with respect to Paragraph 242 in the Preliminary Draft that significant costs are required for migrating from ADSL to VDSL and from there to VDSL with vectoring. Fibre-optic was not in situ in all street cabinets but only where broadband equipment was previously installed. Distribution to those street cabinets is completed and in continued development there is rarely fibre-optic to street cabinets. The risk of this investment has to be taken into account when imposing obligations. Mila makes the same comments on investment risk with respect to Paragraph 246.

The position of the PTA

The PTA mentions in another place in the Preliminary Draft, for example in Paragraph 151, that the first distribution of the VDSL system had been in those districts where fibre-optic was already in situ because of prior development of Siminn Broadband. The wording will be adjusted in this Paragraph accordingly. With regards to investment risk, reference is made to a previous response with respect to Paragraphs 50 and 51 on pages 8-9 here above.

3 Definition of geographical market

Mila repeats its objection to the geographical definition with respect to Paragraphs 261 and 265 in the Preliminary Draft and rejects that a 60% share that is on the decrease is a dominant position in the Capital City Area. In the opinion of Mila there are two geographical markets and all development varies between districts, competition is active in the most profitable districts. Though development is not complete, it will be during the lifetime of the analysis. It is also reiterated with respect to Paragraph 268 that homogenous pricing is an argument for a single geographical market.

The position of the PTA

The wording about Mila's dominant position on the market in connection with the company's position in competition areas might be clearer and the PTA will redress this in the analysis document accompanying the Decision. Mila's position in the competition area is however extremely strong as before and Mila's dominant position at a national level is undisputed in the opinion of the PTA. It is not foreseeable that significant changes will take place in this respect during the lifetime of the analysis.

In the Capital City Area, where Gagnaveita Reykjavíkur (GR) is Mila's only competitor on the local loop market, the GR access network will not entirely reach all of the most economically advantageous market areas in the coming years. Although GR plans allow for coverage of all households in Reykjavik by the end of 2014 the company will in most instances in other Capital City Area municipalities only install its fibre-optic local loops in new build (Greenfield) districts. In most of the older districts in Reykjavik's neighbouring municipalities, GR will not install its local loops in the near future except in instances where there is construction for the renewal of utility ducts. This means that Mila will be the only company in the Capital City Area with a comprehensive local loop network. Cost figures have furthermore demonstrated that in many places in the countryside there are areas that are comparable to the Capital City Area with respect to economic viability, for example Akureyri. It is therefore not logical to divide the market geographically into the

Capital City Area on the one hand and the rest of the country on the other hand on the basis of the distribution of the GR access network or on cost criteria. In the EEA the leased line market in question has virtually nowhere been defined other than as covering the whole country. This is dealt with in detail in Section 3.2 in the Preliminary Draft.

Paragraph 268 in the Preliminary Draft deals with pricing of Mila competitors upon whom price control obligations or other obligations have not been imposed. Despite the lack of obligations under discussion their prices are comparable to those of the Mila which clearly indicates that this is a single geographical market.

The PTA reiterates that the Capital City Area is not homogenous in this understanding and that it is not possible to say that conditions for competition are uniform in all parts of the area. In the opinion of the PTA this will not be the case within the lifetime of the analysis as GR published plans do not cover Kópavogur, Garðabær or Hafnarfjörður except to a limited extent in the newest districts.

The PTA reiterates what was stated in Section 3.2 in the Preliminary Draft that when markets are defined geographically it is not necessary for the competitive conditions of electronic communications companies to be exactly the same. It suffices that they are similar or sufficiently alike and for this reason it is only areas where competition circumstances are really “different” that cannot be considered to be the same geographical market. Among the significant factors when assessing the geographical market in question are the nature and characteristics of the product or service in question, possible entry barriers and/or customer behaviour, the number of service providers, a clear difference in market share of companies in the area in question and surrounding areas or a significant price difference between areas. Then one can examine whether there is a difference in marketing and/or quality of service between geographical areas.

Taking all of the above into account the PTA considered that there was no reason to divide the geographical market. It is then most important in the opinion of the PTA that there should be no significant price difference between areas, if any, neither within Mila nor between Mila and other network operators.

Though in general terms one can say that there is no reason to divide the geographical market, the situation could arise that competition problems vary between different areas, which could have an impact on the nature of obligations. Such discrepancy is however not sufficient to justify geographical division of the relevant market.

<p>Mila, with respect to Paragraph 270 in the Preliminary Draft, rejects that a general reference to other markets in the EEA is sufficient grounds to draw the conclusion that the same applies to Iceland and refers to the investigation rule in Article 10 of the Administrative Procedures Act no. 37/1993.</p>

The position of the PTA

The PTA conclusion on a single geographical market is based on PTA research of the Icelandic market as is stated in Section 3.2 in the Preliminary Draft. The PTA reference to conclusions of other EEA states is for the purpose of information and

shows that the conclusions of PTA research are in accordance with conclusions of most other electronic communications regulatory bodies in Europe. The PTA conclusion on one geographical the whole country is thus not at all based on the position abroad but rather on the domestic position even though the PTA mentions at the end of its discussion that the conclusion harmonises with the position in most places in Europe.

Mila, with respect to Paragraph 271 in the Preliminary Draft, considers that it is not possible to reach 98% of households with broadband service through fixed local loops. Currently it is possible to reach 93-94% of households with xDSL service. To be able to reach more than that one needs more costly measures which are not economically feasible using market criteria. Mila points out that that this is a lower distribution than the 99.5% distribution requirement in the 4G frequency auction from 2013.

The position of the PTA

The PTA assertion that it is possible to serve about 98% of the country's households with broadband connections through fixed local loops does not mean that they are served in this manner today but rather that such is technically possible. The PTA considers it proper to reduce the proportion as a cautionary measure to "about 95%" having taken Mila's comments into consideration.

Mila mentions with reference to Paragraph 276 in the Preliminary Draft that in the cost analysis currently in force, VDSL applies only to the South West region of the country. Mila also points out that in figure 2.7 one can see that the companies with most customers in the countryside have the highest prices.

The position of the PTA

This Paragraph deals in a general manner with pricing of xDSL service. There is more detailed discussion on cost-oriented prices for both ADSL and VDSL services in the Sections on price control (Section 8.5.5 and 10.5.5). It is clear that the PTA will prescribe that the Mila VDSL tariff shall apply to the whole country.

With respect to companies in the countryside, they are very small and far from being able to achieve the economy of scale enjoyed by companies with significant market power.

Mila disagrees with Paragraph 278 in the Preliminary Draft which states that there is no need for detailed analysis of geographical circumstances. Mila market share could drop to 50% in the areas where there is most competition and a greater service offer, i.e. both VDSL and fibre-optic.

Mila airs the question of how local parties, often smaller companies, are to compete with a company with national coverage as the local services of the larger parties are inevitably subsidised by services in urban areas as a consequence of a single geographical market.

The position of the PTA

The PTA conclusion is that the wholesale bitstream service is a single geographical market. Though market share may fluctuate in individual areas this does not change the overall position of the company on the relevant market, which is not likely to change in the estimated lifetime of this analysis, that is to say during the next 2-3 years. The PTA monitors market development and should there be a reason to review the analysis then this will be done at an earlier date than currently scheduled. The PTA will particularly have in mind the impact on competition of distribution of local fibre-optic networks and other access networks in its study of the relevant market.

Price control obligations on companies with significant market power cannot be based on possible uneconomic operations of individual local companies but rather on cost criteria with consumer interests in the forefront.

4 Analysis of the wholesale network infrastructure access at a fixed location, including shared or fully unbundled access (Market 4)

4.1 Market share

Mila considers with reference to Article 293 in the Preliminary Draft that it is not possible to use the number of connections for the purpose of providing a realistic picture of the position on the relevant market. It is clear that pricing for access is higher with GR than with Mila or Siminn when everything is taken into consideration. Mila cannot see that it is a case of internal sales when GR collect directly from users for access.

The position of the PTA

As is stated in the analysis, the PTA considers revenue figures to be less reliable as the GR pricing also covers the active part of access, which belongs to Market 5. That part of the revenue is therefore not comparable with Mila revenue from local loops.

Mila makes the comment on Paragraph 295 in the Preliminary Draft that an 800% increase in fibre-optic connections is not insignificant.

The position of the PTA

An increase from very small sizes becomes large in percentage terms even though it may not be significant in terms of number and thus has limited significance in overall comparison on the market.

4.2 Overall size of a company

Mila objects to the fact that in Paragraph 304 in the Preliminary Draft, the company is said to enjoy economy of scale. The economy of scale that the company could possibly enjoy in competition areas would be lost by virtue of support provided for uneconomic operations in the countryside which results in Mila not enjoying economy of scale. Mila refers to its recent application to the Universal Services Fund for operation of a copper system in sparsely populated areas and to prior applications which the PTA rejected.

The position of the PTA

Mila is so much larger than other companies on the relevant market that one has no option other than to consider that the company has the opportunity to use its size to its advantage. Mila is also the largest company group in the country in the field of electronic communications and is the country's largest network operator. In addition to this it enjoys support services from the parent company which provides such service to other subsidiaries, among others Siminn.

With respect to Mila's evaluation of uneconomical operations resulting from the Universal Services obligation, the PTA refers to its Decision no 29/2013 on the Mila

application for a Universal Services contribution to the operation of a copper system in sparsely populated areas, dated 17 December 2013. There the Mila application for Universal Services support was rejected for the time being but the company was given the opportunity to revise the application with reference to further specified PTA criteria.

Mila makes the comment on Paragraph 306 in the Preliminary Draft that Vodafone will probably build its own VDSL system at the most economically viable locations and has already announced that it will build its own VDSL system in the countryside.

The position of the PTA

Nothing has yet come from Vodafone to indicate that the company intends to build its own VDSL system. Quite to the contrary Vodafone has sought increased wholesale access; see the PTA Decision no 38/2012 on Access Option 1 with respect to the Vodafone application for intervention by the PTA for access to Siminn xDSL systems, now Mila.

4.3 Entry barriers

4.3.1 Control of infrastructure not easily duplicated

Mila states that in Paragraph 316 in the Preliminary Draft that the PTA has admitted that the networks that have been built by municipalities and by energy utility companies were not developed on competitive grounds but rather that funds were invested in them without a view to profit with the attendant distortion of competition. It is worthy of criticism that it has been permitted for many years that funds from monopoly operations have been used to develop networks in a competition environment, contrary to both the provisions of the Electronic Communications Act and competition legislation.

The position of the PTA

It is clear from the PTA discussion that it is referring to small operators with very limited distribution, from a few tens to a few hundred households where service has up to this point in time been limited. The PTA will edit the text in the Paragraph in question so that this cannot be misunderstood. The above specified developments are in accordance with electronic communications legislation where there is open access to the networks in question.

With respect to years of use of funds from monopoly operations one can only assume that Mila is referring to the electronic communications operations of Orkuveita Reykjavíkur. The PTA has repeatedly examined the operations and financing of GR in recent years, since the year 2006, and has come to the conclusion that GR operations are in accordance with Article 36 of the Electronic Communications Act with respect to separation between competition operations and monopoly operations. In the years 2008 and 2010 the PTA however needed to pronounce a ruling with respect to GR to the effect that GR remedied minor discrepancies in the separation in question.

4.3.2 Economy of scale

Mila points out with respect to Paragraph 332 that Vodafone received access to what is called the NATO fibre-optic cable against payment of a rental fee to the state which is in no way comparable to what parties on the market would need to receive as rental were they to enjoy normal returns on such investment. Such access could be used for development on Market 5. Tender conditions requiring equal access for electronic communications companies accompanied the tender description but Mila is not aware that they have in any way been followed up by the state and Vodafone conditions are not transparent and not in accordance with the conditions of the tender description.

The position of the PTA

In this instance there is no material comment made on the Preliminary Draft and thus no reason for the PTA to comment further except to emphasise that the call for tenders in question for the NATO fibre-optic cable was not conducted by the PTA. It is certainly correct when Mila says that the fibre-optic cable in question will undoubtedly be useful for Vodafone in development on Market 5 but it is clear that Vodafone will still need to lease many segments from Mila.

Mila points out, with respect to Paragraph 333, that GR has connections to 44,000 households which represent 37% of the country's households and 58% of households in the Capital City Area. Were one to consider the Capital City Area as a geographical market, GR would clearly be in a strong position.

The position of the PTA

Here Mila is using the number of connections to homes, not the number of customers and local loops in use. Using this metric Mila has connections to almost 100% of homes, whether one takes the country as a whole or the Capital City Area. The adoption of GR services is much less than the number of connections. This means there is no reason to alter the assertion in the Paragraph in question that the GR network still has a long way to go to approach the size of the Mila network, except in limited areas in the Capital City Area. For this reason Mila enjoys greater economy of scale than GR.

4.3.3 Economy of scope

Mila comments on Paragraph 338 and says that GR clearly enjoys economy by virtue of its ownership connection with OR which has allowed its subsidiary to develop its fibre-optic network system without any concern for return on capital. It is clear that this is extremely patient capital that is not subject to market principles. Mila mentions that the company is not aware of an investigation having been conducted on payments by GR to OR for use of facilities in electricity transformer and substations. In addition to this Mila rejects the assertion that GR does not offer electronic communications service at retail level as it collects fees directly from consumers. This is also mentioned in the comment on Paragraph 384.

The position of the PTA

GR funding does not relate to economy of scope. GR conducts much more limited electronic communications operations than Mila and the Skipti Group though one may assume that GR enjoys some kind of economy through support services purchased from its owner.

It is worth noting that GR has in recent years mostly funded development of its network systems from its operations and with loans taken on the finance market according to market criteria without special owner guarantees, with the exception of share capital increases which have been justified by a failure of expectations with respect to the initial foreign exchange indexed start-up loan from OR to GR from 2006 which increased abnormally subsequent to the collapse of the Icelandic financial system and of the ISK. The PTA assessment is that for the whole period from 2006, the rate of return requirement made for GR operations has been normal compared to what is generally the case with electronic communications companies. In addition to this the company's projections have been met and even improved on for the same period of time. The newest PTA Decision in this connection is Decision no 2/2014 from last 24 March. It should be noted that with the ESA Decision in case no. 59332 from 5 October 2011, the Authority rejected the Siminn claim that the initial provision of share capital by OR to Lina.Net (forerunner of GR) in 1999 and two share capital increases provided by OR to that company in the years 2000 and 2001 constituted unlawful state aid. ESA concluded that the measures had been taken in the manner of a market economy investor on the basis of plans for normal return on capital. It is thus clear that the Mila assertion that GR had no concern for normal return on capital is totally unfounded and has not been true from the time of the founding of the precursor of GR, Lina.Net, in 1999.

GR has been subject to PTA surveillance as previously stated and the PTA requires GR to define a rate of return in accordance with the fact that the company is operating on a competition market. This required rate of return was higher than the OR rate of return for its exclusive rights utility services.

In its scrutinise of GR operations the PTA examined all service agreements between GR and OR including lease of facilities and did not see a need to prescribe changes to them.

Although consumers pay access fees to GR, no real service is provided by GR to consumers. It is the service providers that sell their services to consumers and such sales operations initiate transactions between GR and consumers. The consumer receives a service from a service provider and pays that provider directly for the service. It is therefore clear that GR is not directly involved in retail sales of electronic communications services to consumers except with respect to the connection itself.

Mila points out with respect to Paragraph 342 in the Preliminary Draft that the company does not offer retail service and that subsequent to the Settlement it is not authorised to operate on the retail markets. Mila objects to the fact that distribution of local loops throughout the whole country is considered to give the company economy of scope as the company is obliged to provide this according to Universal Services obligations as economy of scale is not achieved, see comment 304. The scope is in

reality a hindrance because of how expensive it is to maintain service to sparsely populated areas where the costs of each individual local loop can be a multiple of such costs in profitable areas.

The position of the PTA

The PTA agrees with the Mila comment that distribution is considered to bring economy of scale and will make the necessary changes to the text which will be in accordance with the previous Paragraph in Section 4.4.5 on economy of scope where the factors included in economy of scope are covered, *that is that Mila has a more varied service offer than other companies that provide local loop service on the relevant market and has greater possibilities than others to leverage the economy that results from a larger number of products making better use of staff, facilities and support services.*

4.3.4 Vertical integration

Mila objects to the fact that in Paragraphs 366-370 in the Preliminary Draft there is no consideration given to the Settlement between Skipti and the Competition Authority where the company accepts conditions that very significantly decrease vertical integration to such an extent that it can no longer be considered a significant entry barrier to the market.

The position of the PTA

The Settlement in question was signed on 8 March 2013 and all xDSL networks and services were to be under the aegis of Mila half a year later, that is to say last 8 September. As the Settlement allowed for Siminn keeping the Group's IP-MPLS systems, Mila was given an extension until 8th of March 2014 to develop its own MPLS system. Such a system is a necessary backbone system for providing xDSL services. It is clear that Mila has not yet developed its own MPLS system and is thus still dependent on its sister company Siminn for such service. Then it came to light at the beginning of 2014 that Siminn staff had since last 8 September used part of the Mila xDSL system for purposes other than those on offer to other companies and in fact without the knowledge of Mila. In addition to this Vodafone has declared that the Settlement has not achieved its purpose and that it requires significant changes for it to be able to achieve its purpose. The above specified issues strongly indicate that the Settlement in question was not implemented in the manner agreed on. Its real impact is thus in no way evident at this stage, though admittedly the Settlement was a step in the right direction in the opinion of the PTA had it been implemented properly. In other respects the PTA refers to previous replies on the impact of the Group's Settlement with the Competition Authority.

Though the Group has acquiesced to the above specified Settlement, the PTA considers that the Group is still one economic unit in the understanding of competition law. Ownership and financial relations between the companies are undisputed, though the Settlement was intended to diminish their management connections.

Though a properly implemented Settlement should have reduced vertical integration within the Group, it is clear that such integration will never entirely disappear as a

result of such a Settlement. Vertical integration exists where the same party operates on more than one production and/or sales level, for example he manufactures goods, sells them to another party in wholesale and also sells the goods himself at retail level. It is clear that the Group continues to operate both at retail and wholesale levels and despite the Settlement it is in no way inconceivable that Mila and Siminn could individually hinder competition on the basis of a strong position on wholesale and retail markets. According to the Settlement the companies can still use the same support systems and can share various support services. The companies thus still form a vertically integrated company Group and Siminn is Mila's largest customer (over 70% of Mila's turnover).

The PTA will revise its text in Paragraph 370 in the Preliminary Draft with the above discussion on the Settlement in mind.

4.3.5 Pressure from substitute products

Mila objects to the fact that in Paragraphs 401 and 402 in the Preliminary Draft, it is stated that there are no other visible ways to fulfil requirements made to local loops than with copper or fibre-optic as progress and technical innovation are rapid in electronic communications.

The position of the PTA

It is true that in many fields in telecommunications there is very rapid development and progress. On the other hand it cannot be seen that during the lifetime of this analysis, products will appear that can be substitutes for copper or fibre-optic local loops that offer 50-100 Mb/s capacity to general users at a comparable price. It has been covered in previous replies that although data transfer with 4G service has been initiated, it is not yet a realistic option to local loops at a fixed location. Although Nova advertises 4G as an option, the capacity and pricing of the service are such that it is not possible to consider it as a substitute product that can fully and equally replace local loops at a fixed location. This could however change later though the PTA considers it extremely unlikely to happen during the lifetime of the analysis.

4.3.6 Conclusions on competition on the relevant market

Mila considers that in the light of the Settlement, Paragraph 407 in the Preliminary Draft no longer applies when one looks to the future.

The position of the PTA

The PTA reiterates its previous decision with respect to the above specified Settlement between Skipti and the Competition Authority. The Settlement has not been fully implemented and in addition to this the implementation of the Settlement has not been fully in accordance with what was agreed on. The time has thus not yet come to assess its impact and the possible revision of the analysis of the relevant market. In other respects reference is made to previous replies on the same issue here above.

The Settlement in question thus does not change the PTA conclusion that the Mila has competitive dominance on the Market 4.

Mila considers in connection with Paragraph 409 in the Preliminary Draft that GR is operating on a retail market with its service desk, repair service and marketing department.

The position of the PTA

As previously stated the PTA considers that GR is not in reality operating on the retail market. Although consumers pay access fees to GR, no real service is provided by GR to consumers. It is the service providers that sell their services to consumers and such sales operations initiate transactions between GR and consumers. The consumer receives a service from a service provider and pays that provider directly for the service. It is therefore clear that GR is not directly involved in retail sales of electronic communications services to consumers, that is to say services provided through fibre-optic connection.

5 Analysis of the wholesale bitstream access M5

5.1 General

Tal considers the current situation on Market 5 to be unacceptable for service providers like Tal and also for consumers who should be able to choose the provider from whom they purchase services regardless of who controls the distribution system. This limits Tal's possibilities to purchase wholesale access from more than one party and to switch from one wholesale to another without disrupting all of its operations which is what happened when the company moved its business from Vodafone to Siminn. In Tal's transactions with Vodafone the arrangement was such that despite the fact that Tal sold the Vodafone IPTV service to its customers, Vodafone collected the fees for this service from the customers. When Tal wished to transfer to Siminn, Vodafone refused to provide Tal with information on those of its customers that also had IPTV with Vodafone. This caused very significant disruption to Tal's services.

The position of the PTA

Up until the autumn of 2012, Tal, which does not have its own electronic communications network except to a very small degree, was a customer of the network operator Vodafone. Then Vodafone revoked the transactions because of alleged default on payment. Litigation has now commenced between the companies because of this revocation. Subsequently Tal made an agreement with Siminn and the transfer of Tal customers to the Siminn system was completed in March 2013. As Vodafone has not had significant market power on Market 5, the PTA could not intervene in the matter in any other way than to ensure a reasonable notice for transfer of Tal customers between the Vodafone and Siminn networks. Vodafone was thus in no way obliged to trade with Tal.

The above specified Tal experience is a clear example of the importance of maintaining the designation of Mila (previously Siminn) as a company with

significant market power on the relevant market. Tal could have ceased operations if no company had had significant market power and bore the appropriate obligations.

Further to this it is the opinion of the PTA that access to important retail service for bitstream, such as IPTV, strengthens the position of integrated retail and wholesale. One can also mention that Vodafone IPTV and Siminn IPTV do not have precisely the same television channels. Consumer choice of electronic communications access, that is to say xDSL from Mila, ADSL from Vodafone or fibre-optic from GR, thus impacts access to media material. Consumer choice of a specific IPTV service, that is to say from Siminn or Vodafone, "glues" the consumer to the bitstream service of the same party and thus limits possible access for other service providers to the consumer for the sale of other kinds of electronic communications services through the bitstream connection. It should however be noted that Tal and other telecommunications companies can have customers on the GR network for fixed line telephone and Internet service even though Vodafone handles television service with the customer in question through its IPTV system. This arrangement is thus not a problem with respect to providing data transmission service except for those customers that wish to buy all the services from the same electronic communications companies.

The PTA cannot however impose retail obligations on Mila on this market which could solve the problem mentioned by Tal. Tal complained formally about this conduct by Vodafone to the Competition Authority on 14 November 2012. In a letter from the Competition Authority to Tal and Vodafone dated 17th of May 2013 it is stated that no indications of unlawful entry barriers had come to light that would provide reason for action on the part of the Competition Authority in this matter. The Competition Authority thus considered there to be no grounds for initiating a formal investigation in the case.

The PTA on the other hand intends to impose the obligation on Mila to provide xDSL service with multicast to those who so choose. This will be useful for example for those network operators that plan to develop their own IPTV system. It is however clear that this is not realistic for smaller electronic communications companies because a certain economy of scale is required for such investment to be feasible. For this reason it is important that such smaller electronic communications companies can resell IPTV provided by the larger players. This has among other things been assured with the above specified Settlement between Skipti and the Competition Authority from 2013 with respect to the Siminn.

<p>Tal also further mentions an unnatural loss of customers which indicates that Vodafone had in an organised manner conducted a sales campaign targeted at these Tal IPTV customers and offered them to keep the IPTV and also to receive all of their electronic communications services from Vodafone.</p>
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The position of the PTA

The above specified comment from Tal is not materially covered by the Preliminary Draft. Tal has recently filed a case for damages against Vodafone for the above specified revocation and it is likely that this issue will be tested there.

Tal also specifically draws attention to the current situation with regards to the GR fibre-optic network where Vodafone is the only company that offers IPTV while Vodafone is by far the largest purchaser of the company's bitstream connections. Up to this point in time Vodafone has refused to provide Tal with wholesale access to IPTV to sell on the GR fibre-optic network which limits Tal's possibilities to operate on the electronic communications market and weakens the company's competitive position because it cannot offer the same range of services as its competitors. At the same time there are no technical hindrances to prevent two parties offering IPTV service at the same time and in parallel over the GR fibre-optic network and bitstream service. Tal requests that the Administration prevent Vodafone from enjoying a monopoly position on the GR fibre-optic connections and to ensure that other service providers can sell IPTV along with GR fibre-optic connections.

The position of the PTA

The above specified comment is not material, with respect to the analysis of the relevant market but it shows how important the IPTV factor can be on the domestic electronic communications market. The GR fibre-optic network is an open network, open to those electronic communications companies that wish to offer other services. On the other hand the PTA does not intend to impose obligations on GR or Vodafone for access or non-discrimination on Markets 4 or 5. On those markets it is Mila that in the opinion of the PTS has significant market power. IPTV service belongs to the previous Market 18 which covers TV distribution. That market is not under discussion here but it should be mentioned that in the year 2008 the PTA analysed that market and came to the conclusion that there was active competition on the market. It is however not inconceivable that this market will be revisited should this be considered necessary.

Tal makes no comment on the definition of Market 5 and considers it to be properly and normally defined. Tal agrees that Siminn has a dominant position on the relevant market and considers that Vodafone should be monitored more closely because of the company's strong position on Market 5 and neighbouring markets.

The position of the PTA

Tal's view strengthens the PTA conclusion to the effect that Mila (previously Siminn) has significant market power on Market 5. It is however the PTA assessment that Vodafone is not in such a position.

5.2 Market share

Mila comments on Paragraph 444 in the Preliminary Draft and considers that it would be more correct to use figures on turnover rather than number to measure market share.

The position of the PTA

The numbers of customers or sold units are generally considered the most reliable metrics in market share. The reasons why the PTA uses number rather than revenue are dealt with in the Preliminary Draft, where the main reason for this is the varying

revenue models of Mila, Vodafone and GR and uncertainty due to internal sales. A business relationship with a large group of customers is a significant measurement of the position of a company on the relevant market. This however does not mean that the share in total revenue on the market is not significant, but as is stated in the Paragraph in question in the Preliminary Draft, the PTA considers number to be more precise metric in this case than revenue, as measurement error in assessment of revenue makes such a comparison less exact than an exactly countable number of customers which is totally comparable over a given period. Revenue per customer is in addition a very similar quantity and it does not vary greatly between companies as there is neither a difference in the nature or the level of pricing between the companies. Uncertainty arising out of the assessment of the proportion of GR revenue that should be allocated to bitstream and the proportion allocated to local loops would weaken the accuracy of measurement of market share more than revenue figures would improve the accuracy of that measurement.

Mila mentions in connection with Paragraph 451 in the Preliminary Draft that the 365 hf. plans for 4G connections to 99.5% of the nation are within the estimated lifetime of the analysis.

The position of the PTA

Once again reference is made to prior discussion on this issue. The 365 hf. plans have not reached the implementation phase and it is uncertain what impact they will have on the relevant market. The company has notice until the end of 2016 to complete the development. Should the plans become reality it will then take a much longer time to assess the impact of the development. It is not possible to use plans and ideas as a basis for decisions but the PTA will closely monitor the development of this technology and will review the analysis at an earlier date should this be considered necessary.

Tal comments on Paragraph 446 in the Preliminary Draft and points out that Vodafone has 32% market share in retail sale of bitstream connections, as is shown in figure 6.2. As the analysis states, Vodafone is migrating to GR from Mila local loops and is the only company that sells IPTV through GR fibre-optic connections. In the opinion of Tal this needs to be examined particularly. It is not only Siminn that is much larger than the competitors but also Vodafone and Tal considers that that company can operate without concern for competitors, customers and consumers in accordance with Paragraph 1 of Article 18 of the Electronic Communications Act. This is at least Tal's experience of Vodafone conduct in connection with the transfer of Tal customers from Vodafone wholesale to Siminn.

The position of the PTA

Cases related to the transfer of Tal customers have received appropriate treatment within the PTA in the proper venue for such disputes. The PTA agrees with Tal that the Vodafone position is strong, but it is not so strong in comparison with the total size of the market and the size of the Skipti Group that it can be considered significant market power on the relevant market. Nor is there reason to assume that Vodafone and Siminn have demonstrated conduct on the market which one could attribute to companies with joint dominance in market power.

5.2.1 Control of infrastructure that is difficult to duplicate

Mila mentions with respect to Paragraph 475 in the Preliminary Draft that Siminn has no control over Mila facilities and that the Settlement with the Competition Authority means that Siminn has no special position with respect to other parties on the relevant market.

The position of the PTA

Once again reference must be made to the fact that the Settlement has not been fully implemented and there is certainly no experience of how effective it will prove in the solution of the problems that the Settlement is to tackle. As has been previously stated the Skipti Group has not implemented the Settlement in full in accordance with the initial intention, and in addition to this Vodafone and other electronic communications companies have expressed their disappointment with the Settlement. Siminn and Mila are still, and will be despite the Settlement, a single economic unit within the Skipti Group in the understanding of competition law and in the analysis of the relevant market this has to be taken into account. In other respects reference is made to previous replies on the Settlement.

5.2.2 Sunk costs

Mila disagrees with Paragraph 480 in the Preliminary Draft where the PTA states that it requires significant investment to develop one's own bitstream service on leased fibre-optic local loops and says that four parties are developing service on the Skeiða- og Gnúpverjahreppur municipality fibre-optic network.

The position of the PTA

According to information from Skeiða- og Gnúpverjahreppur municipality there are three parties offering services over the fibre-optic network of the municipality electronic communications company. Each company needed to bring its own equipment into the system centres of the access network, to acquire a backbone connection to these system centres and to provide customers with endpoint devices. The PTA stands by its assertion that this represents a significant investment for each user of the service regardless of whether it is a case of a small local network where the customers are a few behind each node point or service with national coverage where economy of scale is however achieved.

5.2.3 Economy of scale

Tal mentions in the connection with Paragraph 481 in the Preliminary Draft that IPTV is the most significant additional service provided on the bitstream market. It was difficult for Tal to acquire wholesale access to IPTV service and there is no realistic possibility for a new party to develop an IPTV system in competition with Siminn and Vodafone in such a small market.

The position of the PTA

The Tal view supports the PTA view of the importance of IPTV service on the retail market with respect to service provided over bitstream. The problem described by Tal

in its comments is under discussion in the Settlement between Skipti and the Competition Authority; see Competition Authority Decision no. 6/2013 where specific conditions are imposed on Siminn to sell its IPTV service in wholesale. According to the Settlement, Siminn is however not required to provide access to its IPTV service on other networks than the Skipti Group network, unless the company chooses to do so. On the other hand Vodafone has no obligation to provide access to its IPTV system for other electronic communications companies. As previously stated this problem will not be solved with this decision.

Mila points out that in Paragraph 508 in the Preliminary Draft the reference offer being referred to must be that of Mila and not of Siminn.

The position of the PTA

Mila's point is correct and this will be rectified in the Paragraph in question in the Preliminary Draft.

5.2.4 Service systems

Mila says that it is not clear which service system within the Skipti the PTA is referring to in Paragraph 516 in the Preliminary Draft and points out that such systems become obsolete over a period of 5-10 years.

The position of the PTA

The operation and development of sales systems, invoicing, line bookkeeping, CRM, fault diagnosis and other such general and specialised systems are certainly not simple operations. It is clear that it takes a long time to develop experience and knowledge, up to many years. The operation and capacity of the systems will become even stronger within a company when the systems develop or when they are replaced. Knowledge within a company is also strengthened with such tasks. The PTA considers therefore that investment in service systems can be an entry barrier for new companies, particularly if they do not receive direct access to Mila's core systems.

Mila also considers that arguments have not been provided in Paragraph 517 in the Preliminary Draft to support the contention that the Vodafone position in this respect is not as strong as that of Siminn. Vodafone has operated for many years on the relevant market.

The position of the PTA

As was stated above one can assess the long experience of Siminn, now the Skipti Group, in all aspects of electronic communications here in this country, as strength. Such strength also covers experience of operational service systems. The long continuous Siminn operational history must be assessed as strength on the relevant market, in excess of other smaller and younger electronic communications companies including Vodafone.

Mila points out in addition to this, with respect to Paragraph 517 in the Preliminary Draft that Vodafone had been financially restructured when the Preliminary Draft was published, but not the Skipti Group. Vodafone thus had a greater capacity for investment.

The position of the PTA

The Skipti Group has now gone through financial restructuring and the position of the Group is much stronger than it has been in recent years. The total size of the Skipti Group and its capacity to operate information systems and other developed service systems makes the Group stronger in this field in the opinion of the PTA than Vodafone when the Preliminary Draft was published. The fact that Skipti has now gone through substantial financial restructuring strengthens this view of the PTA.

5.2.5 Vertical integration

Mila mentions in connection with Paragraphs 519 and 523 in the Preliminary Draft that after the Settlement with the Competition Authority there is no longer vertical integration in the Skipti Group.

The position of the PTA

The Skipti Group as a whole has not changed with respect to ownership. Mila and Siminn are sister companies owned 100% by the same party, that is to say Skipti hf. and the Group is thus vertically integrated regardless of the Settlement. Although management separation has increased the ownership and financial relations between the companies in the Group are indisputable. The PTA still sees the Group as a single economic unit in the understanding of competition law. In other respects reference is made to previous replies on the impact of the Settlement.

Mila objects to the 86% proportion of broadband users that the PTA says have IPTV Set-Top-Boxes in Article 524 and considers this figure to be too high. The correct figure is that only 65% of connections now have IPTV.

Siminn makes the same comment and mentions that by total number of high-speed network connections the proportion of such users with IPTV STB's is about 67%.

The position of the PTA

The text of the Preliminary Draft uses the figures provided by the electronic communications companies to the PTA in its regular collection of statistical data on the electronic communications market. This proportion is the number of IPTV STB's as a proportion of the xDSL and fibre-optic connections paid for by households, as the IPTV service is first and foremost a consumer service. At the end of 2012 this proportion was 89% which shows that IPTV service is still in rapid and steady growth. On the other hand the PTA can agree that this proportion could to some degree be overestimated. If one uses the proportion of IPTV STB's to all xDSL and fibre-optic connections to both companies on the residential market then the proportion of connections with IPTV decoders is now 68%. The proportion of IPTV users among bitstream connections is on the other hand never a criteria in decisions or

obligations in the analysis but is on the other hand presented as part of the argument for the need for an obligation for non-discrimination as access to IPTV is an important factor in consumers' decisions to purchase when choosing a service provider on the Internet and data transmission market. This argument still holds regardless of which proportion is used. The PTA will however reword the above specified Paragraph in accordance with this discussion.

Mila comments on Paragraphs 519 - 532 in the Preliminary Draft in their entirety and mentions that after the Settlement with the Competition Authority, Siminn will not operate on the wholesale market with respect to access to core systems and that this needs to be included in the criteria when discussing vertical integration. Assertions and arguments in the Preliminary Draft on this issue are thus obsolete and factually incorrect.

The position of the PTA

Once again reference is made to previous replies in connection with the Settlement in question. Despite the Settlement, Siminn and Mila are a single economic entity in the understanding of competition law as part of the Skipti Group. Skipti operates vertically in all sections of the electronic communications market and is thus vertically integrated as before, though with the Settlement with the Competition Authority there are even stronger obligations imposed on the Group to prevent such vertical integration being used to strengthen or maintain significant market power at the cost of competitors. Whether the obligations in the Settlement suffice for this purpose has not yet come to light.

Mila comments on Paragraph 526 in the Preliminary Draft and says that the conjectures that appear there do not belong in analysis of M4 and M5.

The position of the PTA

The PTA disagrees. The strong Siminn position in service such as IPTV which is provided over the Group's bitstream connections has an impact on assessment of vertical integration within the Group. The fact that the offer of Siminn IPTV service is only available over bitstream within the same group may be considered to be vertical integration, even bundling, both at wholesale and retail levels. The same can be said about Siminn Internet service which is also only available through the Group's bitstream connections.

5.2.6 Conclusions on barriers to entry

Mila states that Paragraph 539 in the Preliminary Draft no longer applies after the Settlement with the Competition Authority.

The position of the PTA

Again the PTA refers to previous replies on vertical integration here above.

Mila makes the comment on Paragraph 570 in the Preliminary Draft that Vodafone has a carrying layer that reaches most urban areas in the country with access to NATO threads in the fibre-optic cable that runs round the country.

The position of the PTA

Vodafone is as before very dependent on Mila for connections to all of its service locations, particularly in the countryside, which are not at the node points on the fibre-optic cable that runs round the country. At such locations Vodafone needs to rely on connections from other parties, Mila in the large majority of instances. Although Vodafone has strengthened its position on the backbone for leased lines it cannot be seen that this will have a significant impact on wholesale bitstream service during the lifetime of the analysis. Vodafone has also sought increased access to the Mila bitstream system as Vodafone intends to connect to the Mila bitstream system using Access Option 1.

6 Evaluation of significant market power on M5

Tal agrees with the PTA analysis of the bitstream access where it concludes that competition is not active in that service, and states that it would have wished to see analysis of joint market dominance as Tal is aware of indications of tacit coordination between Siminn and Vodafone on the relevant market. Indications of this are among other things considerable concentration and similar market share, economic and formal connections between the companies, transparent market and homogenous products, stable demand and comparable cost structure of the companies and entry barriers.

The position of the PTA

In the analysis the PTA examined the Vodafone position and came to the conclusion that there were no indications of joint dominance of Mila and Vodafone. Market share of the companies is not similar and there are no economic and formal relations between the companies. In addition to this the PTA has not observed any kind of tacit agreement between the companies on the bitstream market.

7 Imposition of obligations on Market 4

7.1 Competition problems on Market 4

Mila comments on Paragraph 599 in the Preliminary Draft and says that it does not mention why electronic communications companies other than Siminn have not felt able to provide service in Úlfarsárdalur, where the only connection is the Mila fibre-optic local loops. Mila states that the explanation is to be found in the fact that the area is sparsely populated and that other service providers see no profit in serving the area.

The position of the PTA

It has been stated by other service providers that technical and financial barriers prevent them using the Mila fibre-optic local loops in question and thus contribute to competition in the districts in question. One could assume that this problem will be solved as bitstream service has now been transferred to Mila from Siminn in accordance with the Settlement between the Group and the Competition Authority.

Mila, with respect to Paragraph 600 in the Preliminary Draft, rejects that market development does not indicate that competition has become active, among other things in the light of the GR development under the protection of all our monopoly, development of networks by municipalities and the allocation of frequency licenses for 4G. Mila particularly rejects that the incentive to sell wholesale products outside obligations is not great.

The position of the PTA

Mila market share of the local loop market, which is 83%, shows the company's dominant position. GR has independent funding as has previously been stated and has been subject to scrutiny by the PTA for a long time. Municipalities across the country are developing localised networks which must be considered small in comparison with the size of the Mila local loop network. Municipality networks range from a few dozen households in size, for example the Öraefa network and up to nearly 1000 households at Sauðárkrókur, a network which Mila has now made an agreement to purchase.

4G service is not operating at full capacity and the impact of 4G is not clear at this point in time and it is unlikely that the impact will be significant during the lifetime of this analysis. Reference is made to previous replies on 4G, among other things that the service seems rather to be an additional service than substitute service on this market here under discussion. With respect to the Mila offer of products outside obligations, the PTA assertion refers to the local loop market. It cannot be seen that Mila is systematically entering new markets or developing products apart from those that meet the needs of the Group in each instance.

7.2 Obligations in force

7.2.1 Obligations that were imposed on Siminn with the PTA Decision no. 26/2007

Vodafone mentions in connection with Paragraphs 609-611 of the Preliminary Draft on the impact of obligations in force on M4, that it is important to maintain obligations and not least to ensure compliance. Vodafone mentions that all plans for changes and future development are deliberately withheld from electronic communications companies other than Siminn and considers it important that there is cooperation with parties to the market on ensuring that development of systems such as access networks does not constitute conduct that has a negative impact on some companies.

The position of the PTA

The above supports the PTA proposals for the necessity of obligations on the relevant market as presented in the Preliminary Draft. The PTA however does not take a position on the Vodafone assertion on alleged behaviour by Siminn and Mila as one does not need such conduct to be able to justify the imposition of the obligations in question. The organisation of the market and the position of the Skipti Group on the relevant market suffice in this respect.

Vodafone considers it important in connection with Paragraphs 612 and 613 in the Preliminary Draft on the necessity for maintaining obligations on M4, that information flow is increased with an obligation on Mila to provide information to a third party in order that the company in question can influence Mila plans and development.

The position of the PTA

The above supports the PTA proposals for obligations on the relevant market as presented in the Preliminary Draft.

7.2.2 The necessity of maintaining obligations

Mila rejects the PTA assertion in Paragraph 612 in the Preliminary Draft that Mila has shown reluctance in leasing facilities. Hosting is an important part of Mila operations but abnormal requirements for the hosting environment have been set. Mila also considers it inappropriate to involve a dispute between Siminn and Vodafone on measures in Access Option 1, in the analysis of local loops.

The position of the PTA

Markets 4 and 5 are closely related and therefore analysed together. Conduct of the Skipti Group in one of its component parts influences the position of other parts of the Group on related markets. The Group is vertically integrated through these markets.

The PTA considers that a clearer picture of the subject of the Paragraph in question will be portrayed by changing its wording to the effect that it will refer to access

instead of facility so that will be perfectly clear that it refers to the leasing of local loops and related facilities and specifically not to hosting in premises. Mila reluctance to lease access to the local loop market can be deduced from the fact that the share of the Group's competitors in leased local loops has not been on the increase despite obligations imposed in the last analysis. The main competitor has in recent months increasingly turned to Mila competitors while the Siminn position is unchanged on the Mila network.

7.3 Imposition of obligations on Market 4

7.3.1 Access to specific network elements or facilities, including unbundled access to local loops

Mila mentions that investments in "Next Generation access networks" are substantial and risky and encourages the PTA to take care when imposing obligations that it is not lessening incentives to invest.

Mila considers that the PTA has gone too far in the imposition of obligations and gives as an example the obligations for both access to ducts (passive remedies) and virtual unbundled local access, VULA (active remedies). Mila considers that the elaboration of the VULA obligations creates uncertainty which lessens the investment incentive, that periods of grace for elaboration of technical solutions are too short while the notice with respect to innovations in service offer and distribution of networks is too long.

The position of the PTA

The PTA endeavours to organise its obligations on the Market 4 in such a manner that they support active competition while at the same time encouraging investment in Next Generation Access Networks. The PTA endeavour to support such investments is among other things are manifested by the fact that price control obligations are not imposed on fibre-optic.

The obligation for access to facilities to develop electronic communications structures is general and universal. In the obligation for VULA is temporary while there are no technical possibilities for more than one network operator having VDSL in the same street cabinet. The obligation on VULA will therefore be discontinued should such an arrangement become possible. The obligation for access to ducts and facilities is extremely important and not least in the environment of Next Generation Networks. The obligation on VULA also serves Mila interests for a homogenous technical environment with respect to distortion, crosstalk and such problems, particularly with respect to the possibility of applying vectoring in the development and updating of the VDSL system.

The PTA took into account the Mila comments with respect to periods of notice and initiated a special additional consultation on those changes to the Preliminary Draft which was published on 20 December 2013 and lasted until 24 January 2014. There the PTA proposed that periods of notice for notification of innovations should be shortened from 12 months to 6 months and the period of notice for quality references

and for quality of service level guarantees should be lengthened from 3 months to 6 months. Reference is made to a document on additional consultation and to appendix B2 where the comments from the additional consultation are covered.

Vodafone considers, with respect to the discussion in Paragraph 617-619 in the Preliminary Draft, it to be extremely important that Vodafone costs for services from Mila for access to local loops is examined and that it be particularly considered whether it is possible to find an arrangement that can save costs.

The position of the PTA

One can assume that Mila will seek the most economic solutions in each instance in its operations and with the Equivalence of Inputs - EoI obligation, all purchasers of Mila service are to be treated equally with respect to access to Mila service systems and processes. The PTA scrutiny of the Mila cost analysis for specific services is first and foremost intended to confirm that costs are allocated with recognised methodology were furthermore a comparison is made with an economically operated electronic communications network.

Mila is happy with what is said in Paragraph 632 in the Preliminary Draft with respect to exemption from the obligation for access to parts of the local loop, that virtual unbundled local access (VULA) is on offer, but points out that this exemption must also apply equally to telephone exchanges and street cabinets as VDSL equipment can be located in a telephone exchange. In addition this exemption must apply from the telephone exchange so that it can be possible to use vectoring technology on all local loops that carry VDSL.

The position of the PTA

The PTA wishes to note that this exemption applies to facilities that are equivalent to facilities in street cabinets that can be located in telephone exchanges or in technical space from where the VDSL service is provided into a local loop depending on which is considered most economically in each instance.

Mila comments on Paragraph 633 in the Preliminary Draft and marks items in the Paragraph.

With item 2 the comment is made that it is very unclear and that retailers wish to adjust settings and quality definitions depending on the type of service.

With respect to item 3 Mila considers that the PTA needs to explain more clearly what it means. It is not possible to guarantee line speed with the customer, nor the quality of endpoint devices. Such a requirement could lead to Mila having to install its own endpoint equipment with all customers as the connection point with the retailer.

With respect to item 4, Mila states that it is technically impossible for each service provider to be able to alter settings on an xDSL line and that such an arrangement could cause distortion on adjacent lines and in addition to this Mila cannot accept that parties other than Mila experts have access to control systems. Access control to

control systems do not offer such an arrangement. It is proposed that customers can decide the amount of capacity allocated to various services.

With respect to item 5 one must examine this obligation particularly in the light of the Settlement and of the changed division of tasks between Siminn and Mila.

The position of the PTA

With respect to open virtual access, VULA, the PTA considers it normal to make stricter requirements that Mila must fulfil as on the other hand a substantial exception is granted to Mila from requirements for access by the company's competitors to part of the local loop.

The purpose of the obligation for VULA is that instead of building their own VDSL systems, electronic communications companies are granted access to the SMP party's system in such a manner that resembles as much as possible him having his own VDSL equipment. Against this the PTA is prepared to provide this exception from the obligation to provide open access to part of the local loop (sub-loop unbundling).

This obligation makes the requirement to Mila as the operator of xDSL wholesale service, to provide its purchasers with an interface service that makes this possible.

It is recognised that in this instance, a problem is being solved on the local loops with service that is provided on wholesale bitstream and that VULA is seen as a temporary solution until the technology has been developed to the extent that many VDSL or other such NGN/NGA systems can operate in parallel on copper local loops.

With respect to point 2 the meaning here is that bitstream which is provided to one party for transmission of a specific kind of service, for example IPTV, is the same kind as is provided to the IPTV service owned by the Group, so that there is no discrimination between service providers depending on the kind of service they are offering. The wording of the item is to this effect.

With respect to item 3, there are increasing requirements on consumer protection on the bitstream market that will be imposed on retailers of such service. Those requirements relate among other things to promises of capacity instead of "up to" references in definitions of subscription options. Wholesale of bitstream must meet such requirements if the retailer is to be able to do so. When these requirements have been activated then both wholesalers and retailers will need to categorise their connections according to the bit rate that the connection can transmit and they will need to make agreements on assured provision of such minimum capacity. Competitors of the Group shall receive the same agreements as Mila offers to Siminn.

With respect to item 4, parties who lease bitstream connections need access to control systems for the connections they lease. This is necessary for them so the leasing party is able himself to provide his own customers with service, so that the requirement for access that resembles operation of his own system is fulfilled. The PTA understands the existence of technical problems for such retailer access to control Sections of Mila xDSL systems. The wording of the item is deliberately kept open to allow further elaboration, as the main issue is non-discrimination between all parties.

With respect to item 5, it leaves the possibility open that Mila, as the operating party and the wholesale of the xDSL system, may possibly need to limit the provision of service to specific endpoint equipment which will be decided by Mila. The same applies as to item 4, that the leasing party will have access which is as close as possible to him operating his own system, including a certain control over endpoint equipment so that he can himself provide customers with his service. Again the PTA is aware of technical problems and reminds that the key issue here is non-discrimination in access between service providers within the Skipti Group and external parties to such endpoint equipment. If endpoint equipment of the retailer in question fulfils technical requirements of the VULA solution then there is nothing to stop him using his own equipment.

Vodafone comments on Paragraph 639 in the Preliminary Draft and considers it necessary to impose obligations on shared access to fibre-optic local loops. It would be a step backwards with respect to copper local loops if one had to pay for access to two fibre-optic local loops were a customer to choose to purchase electronic communications services from two electronic communications companies.

The position of the PTA

As has previously been stated the wording on fibre-optic local loops is considered unclear in some paragraphs in the Preliminary Draft, for example in Paragraph 642. The PTA will clarify this. On the other hand, up to this point in time it has been technically difficult or impossible to share access to one fibre-optic thread so this wording of the Paragraph still stands. Shared access to fibre-optic local loops must therefore be provided with VULA technology through bitstream service with varying virtual networks for each service provider.

Mila totally rejects the provision on joint use of fibre-optic local loops as presented in Paragraph 642 in the Preliminary Draft as it is not compatible with the structure of access to copper local loops.

The position of the PTA

As has been stated here above in the comment to Paragraph 34, the wording of the Preliminary Draft is not in all respects sufficiently clear and this will be remedied in the final edition of the analysis.

7.3.1.1 Co-location or sharing

Mila rejects the fact that in Paragraph 650 in the Preliminary Draft, in the obligation on co-location and hosting it is specified that a fair request can require the enlargement or new building of premises and refers in this connection to the fundamental principle of administrative law in Article 12 of Act no. 37/1993.

The position of the PTA

A request for hosting in premises that are fully deployed can constitute a fair and normal request as the objective is to have facilities in accordance with total needs at

any given time and in addition to this it is clear that the leasing parties participate in the cost of such construction of additional facilities through rental charges or participation in costs. It is clear that there is little equality with respect to external parties if Mila can say that there is no available space when Siminn fully uses the space in specific telephone exchanges. It can be normal for Mila to embark on enlargement or alterations if it is clear that such an investment would be repaid in the form of hosting charges over a reasonable period of time.

Mila comments on Paragraph 651 in the Preliminary Draft with respect to the fact that Mila should publish in advance a list of planned civil works with one year's notice. Mila makes its plans for the coming year in the autumn and they are endorsed in December with an implementation period which commences immediately in December. Mila also has to take into account municipality planning which is where the decisions are actually made on greenfield districts. There are a number of other instances which are not clear one year ahead such as renewal subsequent to earthquake or decisions made by municipalities on civil works renewal projects. Mila considers it sufficient to impose an obligation for non-discrimination with respect to information.

The position of the PTA

The PTA considers that all things being equal, a period of notice of one year as preparation time for construction such as civil works and duct installation is normal. The manner in which Mila has, up to this point in time, handled its planning is not an argument for continuing with the same arrangement as obligations on parties with significant market power are normally not based on such practices and Mila will have to manage its planning in such a way that it is compatible with fair and normal obligations.

On the other hand the PTA understands that Mila does not control all factors that influence the timing of civil works. In order to accommodate Mila to some extent the PTA will amend the provision in question such that Mila shall publish a list of planned civil works with 6 months' notice. One must consider civil works and duct installation that has been decided with short notice as being exceptional. In the event of such exceptions then of course the same non-discrimination applies as does in all cases relating to provision of information by wholesale parties with significant market power.

7.3.1.2 Technical migration

Mila makes the comment on Paragraph 659 in the Preliminary Draft that it should speak of a reference offer and not a service agreement.

The position of the PTA

The wording has been revised in accordance with the above specified observation.

7.3.1.3 Summary

Mila points out that in Article 660 in the Preliminary Draft an obligation on virtual access (VULA) is imposed which in reality belongs to Market 5.

The position of the PTA

Mila's understanding is correct. The problem on Market 4 is resolved temporarily with wholesale service provided on Market 5. Open Virtual access (VULA) and proper operation of this access is a condition for the PTA to be able to grant an exemption from the obligation for sub-loop unbundling. This obligation on Market 5 is easier to implement for Mila now that bitstream service is also within the company subsequent to the Group's Settlement with the Competition Authority.

Vodafone makes a comment on Section 8.4.2, among other things on Paragraph 660 in the Preliminary Draft on VULA. The conditions must apply equally to all parties including Siminn, among other things with respect to costs of wholesale switches should this be required. Costs related to this must be in the hands of Mila and must be divided equally between all parties. Vodafone raises the question of whether it is not necessary for the PTA to stop further action by Siminn and Mila in their development as the action taken since January 2013 seems to have been intended to gain a certain advantage on the market.

The position of the PTA

With respect to the Vodafone comments, the PTA refers to the Administration's Decision no. 38/2012 on Access Option 1 where among other things cost analysis is prescribed for access and thus also wholesale switches. Then it was the conclusion of the PTA that Siminn (now Mila) could set up equipment, called wholesale switches, in those telephone exchanges where Vodafone (or other external electronic communications companies) requested the Access Option in question. The initial investment costs for this would be divided between the Group and the external parties making the request and in addition to this a monthly charge would be made. A temporary charge for the wholesale switches in question was decided and the finalisation would be made when the PTA had finally decided a price for them. The PTA has now made considerable progress in cost analysis of the wholesale switches in question and one can expect that a final Decision on price will be announced at the same time as the final Decision on Markets 4 and 5.

At the beginning of 2014 it came to light that Siminn had used the wholesale switches in question for other purposes than was intended in the above specified PTA Decision, including after 8 September 2013, when control of the xDSL system should have been transferred from Siminn to Mila. The PTA will examine this alleged breach by the Group in a separate case. These measures by Siminn meant that the PTA reviewed its Preliminary Draft of the above specified cost analysis which lead to a significant reduction in prices for the wholesale switches in question.

Non-discrimination in pricing is part of the obligations proposed by the PTA in the Preliminary Draft. With respect to the Vodafone comment about stopping Siminn and

Mila activities in development of the VDSL system in the year 2013, it seems that this matter was resolved in the latter part of 2013, among other things as the PTA prescribed that the Group should postpone development for a number of months at the beginning of 2013 so that Vodafone could be prepared to take part in the development.

The PTA reiterates that the PTA Decision no. 38/2012 stated clearly that Siminn should participate in the cost of the wholesale switching. This did not change after Mila took over operation of the Group's xDSL system from Siminn in September 2013 in accordance with the Settlement between Skipti and the Competition Authority.

7.3.2 Obligation for non-discrimination

Mila objects with respect to Paragraph 617 in the Preliminary Draft to the imposition on the company of the duty to provide information on the length of local loops in each instance. The length of local loops is not registered for all local loops though it is possible to measure individual local loops as requested.

The position of the PTA

The PTA will change the obligation in such a manner that Mila will be required to publish known lengths of local loops. Should a local loop be measured for some reason then information on this will be added to the register.

Inter makes comments on Paragraph 670 and 833 in the Preliminary Draft where it is stated that Mila shall provide information on the length of local loops in each instance, that it is not stated from which demarcation point the measurement is made and Inter proposes that the text of the Paragraph be changed in such a manner that it is stated that the measurement is from the distribution frame to the house intake box. If another point is used then this should be specified.

The position of the PTA

The PTA refers to the reply to Mila comment on the same issue here above where it is stated that the line length is not known in all cases and that there are problems in meeting this registration requirement.

Inter makes the comment with Paragraph 617 in the Preliminary Draft that information flow to Mila customers seems to be inadequate and not based on equality under the current circumstances. It seems that orders are not allocated a number until the line has been registered in the line bookkeeping and nor is information available until after the connection has been implemented, unless the end user also has a telephone number with Siminn. Inter-proposes that the following text be added to Paragraph 617:

"When an order is submitted for a local loop, the automatic reply shall show a reference number for the order which can be used for further queries about the order. Then with the minimum of delay aligned number shall be issued for the local loop in

question and the estimated connection points in the house intake box should be specified. Should it subsequently come to light that other connection points need to be used then information on this shall be provided as soon as possible. Also in such instances it shall be ensured that the in-house cables of the specified customer, should they be in place, are connected to the line in the house intake box. The electronic communications company shall be given the opportunity of having the in-house cable tested and repaired if necessary as soon as the line and is connected and for this service it is authorised to charge a fee from the tariff according to the EoI obligation , for example ISK 1000".

The position of the PTA

The PTA considers the wording of the Inter proposal to be unnecessarily detailed and that the EoI obligation as worded in the Preliminary Draft will suffice. There it is prescribed that all companies shall receive the same treatment in accordance with the EoI obligation.

Mila objects to the content of Paragraph 671 in the Preliminary Draft which makes a requirement for notification of distribution, building and other development of the companies local loop network with one year's notice. The market calls for a shorter period of notice and it is not possible to accept notice longer than 3-4 months.

The position of the PTA

Here the PTA can agree that the same should apply as to Paragraph 651 in the Preliminary Draft and that the general period of notice shall be 6 months. Building and development of the local loop network is an important part of the electronic communications network and equal access for all parties is important and in this connection that purchasers of local loop lease have notice to prepare themselves for changes on the relevant market. A shorter period of notice than 6 months will be an exception and non-discrimination must of course be practised between internal and external parties in such instances as is always the case.

Mila objects to the provision presented in Paragraph 672 in the Preliminary Draft and considers it to be unclear and difficult to implement and also unnecessary in the light of the Settlement with the Competition Authority.

The position of the PTA

The PTA has the right according to the law to conduct any investigation that the Administration feels to be necessary. This also applies to a technical and economic investigation as to whether unrelated parties can replicate the product offer of related parties in a sustainable manner - technical and economic replicability test.

Mila considers that because of the publishing of key performance indicators, as prescribed in Paragraph 677 in the Preliminary Draft, one would need to consider carefully which information may be made public in the light of the provisions on confidential information, and which information it is unauthorised to publish in this manner.

The position of the PTA

This instance prescribes the publication of global figures, averages and totals which are not broken down into individual Mila customers. For this reason the provision on confidential information does not apply. The publication of such information on key performance is an important factor in whether a Mila customer on the relevant market can compare figures for the service he has received from Mila with total figures on the relevant market. In this way parties can monitor whether the obligation for non-discrimination is respected by Mila.

Vodafone considers with respect to Paragraph 677 in the Preliminary Draft that key performance indicators should be broken down into categories of sparsely populated areas, more inhabited areas and the Capital City Area.

The position of the PTA

The question of whether such categorisation should be considered necessary and objective can be resolved in consultation on the reference offer. The PTA will examine this issue more carefully when scrutinising the revised Mila reference offer on local loop leasing subsequent to the Decision which will be taking here.

7.3.3 Obligation for transparency

Mila objects to the notice as presented in Article 694 in the Preliminary Draft that Mila has to provide a new reference offer for the relevant market. Three months' notice is too short and the PTA has up to this point in time given 6 months from the publication of the Decision subsequent to market analysis, to issue a new reference offer for the relevant market.

The position of the PTA

One could agree that 3 months is short notice. The Paragraph in question will be changed to give a six-month period of notice in this connection.

7.3.4 Obligation for price control

Mila agrees with the PTA in connection with Paragraph 726 in the Preliminary Draft that Mila bookkeeping is such that operational costs for local loops are not broken down with respect to whether they apply to operation of the upper frequency range or lower frequency range. As these are the same line it can hardly be seen that it is possible to break down this cost in a sensible manner. It is nevertheless a fact that use of the upper frequency range makes more demands on the line than if only the lower frequency range is used. It is not possible to provide service on the upper frequency range if the line is longer than a specific distance and furthermore it is a fact that the quality of lines varies and this has a significant impact on whether it is possible to use the line for xDSL service or not. It is also clear that complaints about lines are much more numerous in the cases of lines where the upper frequency range is being used. In the opinion of Mila it is therefore clear that the cost of operating lines where the upper

frequency ranges used is more than if the line is only used for the lower frequency range. The extent to which this operational costs is higher is however not clear.

The position of the PTA

With unchanged arrangement for calculation of access to copper local loops which is proposed in the draft, the wholesale fee paid to Mila for access to the local loop is independent of how the local loop is used. The total fee paid by Mila will thus always be equivalent for the fee for full access. This means that the cost of using the local loop, whether it is the upper or lower frequency range that is used (or both) is divided equally by the total number of leased access.

In the large majority of states within the EEA there is no distinction made between whether a user uses solely the lower frequency range or the upper and lower frequency ranges, when the monthly charge for unbundled access is decided. In this way the cost of operation of a line which results from use of the upper frequency range is divided between all users, regardless of how the line is used by the user in question. In the existing arrangement the cost for the lower frequency range is divided on all users whether it is in use or not but with the amendments proposed by the PTA this will also apply to the upper frequency range.

Mila says, with reference to Paragraph 727 in the Preliminary Draft, that in Europe the price for shared access to local loops is normally about 20% of the price of copper local loops and in this connection Mila refers to a report from Cullen International (Table 8, Local loop unbundling – Prices; February 2012). This price is an additional price for local loops, that is to say payment is made for the local loop if another party uses the same local loop for data transmission he pays an additional 20% charge for that. In the current Mila tariff a basic price is paid for the lower frequency range.

With Mila the price for the upper frequency range is now 33% of the price for the lower frequency range and in the case of full access then charge which is 33% higher than for the lower frequency ranges pay. Mila considers therefore that collection for local loops have been according to the practice in Europe. In the opinion of Mila the planned amendment by the PTA is different to what is practised in Europe. This change has furthermore the effect that the price for the local loop which is used solely for the lower frequency range will increase by about [...] ² given the existing cost base. This will thus have a negative impact on those who solely used the lower frequency range. Against this there is the fact that the price of the lower frequency range will drop if the upper frequency ranges also in use. The price for the upper frequency range when it is used in parallel to use of the lower frequency range, will increase by about [...] ³ which in the opinion of Mila is far too big a change for the product and it is not possible to foresee the impact that this could have on Mila competitiveness in the Capital City Area where competition is active. The consequence could be that revenue in the Capital City Area could drop significantly, which would call for a need for an increase in prices which would be particularly disadvantageous for the countryside where there is little if any active competition.

² Removed for reasons of confidentiality.

³ Removed for reasons of confidentiality.

Mila considers it important that the PTA examine well the structure of tariffs in Europe and take them into account when deciding changes to the structure of tariffs in this instance. Mila considers there to be two possible options: To change the proportion between shared access and the lower frequency range as is proposed by the PTA. Mila proposes that the proportion be 0.3/0.7 instead of 0.4/0.6 or that the same tariff structure should be maintained and the proportion between shared access and the lower frequency range been changed from 0.33 to for example 0.2 and to have the price for full access at 1.2*local loop price (price for lower frequency range). In the opinion of Mila this methodology is more in accordance with Mila real costs for operating local loops depending on whether the lower frequency range is used solely or whether the upper frequency range is also in use.

The position of the PTA

The implementation of the division of costs between varying types of access to copper local loops in shared access is not homogenous in countries in the EEA.

In some instances a special cost is calculated which is added if access is divided between electronic communications companies. In such cases this cost is usually borne by the party that leases access to the upper frequency range. Then it varies whether the party that leases access to the upper frequency range pays only this additional cost or whether he also pays a share in access to the local loop.

- In Ireland the party that leases the lower frequency range bears the cost for full access to the local loop (upper and lower frequency ranges) in the case of shared access. The party that leases the upper frequency range only pays the additional cost that results from shared access and this cost is approximately 7.8% of the price for full access.⁴
- In Norway the arrangement is that in the case of shared access then the parties that lease access to the local loop share the cost of full access. The party that leases the upper frequency range bears in addition a special course for initiating and operating shared access less a special cost for initiating and operating full access. The monthly charge for the upper frequency range in this instance is 56.8% of the charge for full access, of which the additional cost for shared access is 6.8%.⁵

In other cases a special additional charge for shared access is not calculated. An example of this is Denmark where the parties that lease access to the local loop share the cost of full access. The monthly charge for the upper frequency range is in this instance 50% of the price for full access and the monthly charge for the lower frequency range is thus also 50% of the price for full access.

As can be seen from the examples cited here above it can in no way be asserted that in general a 20% charge is imposed for shared access on top of the charge for full access. The charge for shared access in the EEA ranges from 2% to 71% of the price for full access and, as is mentioned here above, it varies greatly how this is structured

⁴ Cullen International, May 2013; Table 8 – Local loop unbundling – Prices.

⁵ Post- og teletilsynet; Decision on the designation of undertakings with significant market power and imposing specific obligations in the wholesale full and shared access to fixed access networks (Market 4); page 39: <http://eng.npt.no/ikbViewer/Content/111264/Vedtak%20M4%20-%20oversettelse.pdf>

and whether the price for access to the lower frequency range is correspondingly reduced.

The PTA proposes in the draft that there should be no distinction made between whether a user uses solely the lower frequency range or the upper and lower frequency ranges, when the monthly charge for unbundled access is decided. The PTA considers that such implementation will make the tariff for local loop leasing simpler and more transparent.

With the amendments proposed by the PTA, the wholesale charge on each user will be the same regardless of the manner in which the local loop is accessed and of whether there is shared access or not.

From the point of view of the user it should not matter how the use is split between the upper and lower frequency ranges in shared access. The wholesale price for the upper and lower frequency ranges as a whole which is received by the user is the same, that is to say the price for full access, whether the DSL part is 33%, 40% or 50%.

Mila maintains that the price for the upper frequency range when it is used in parallel to use of the lower frequency range, will increase by about [...] ⁶ and considers that this will have a negative impact on Mila competitiveness in the Capital City Area. On the contrary the PTA considers that one can expect that if the upper and lower frequency ranges are both in use then this will lower the price to the user (if the reduction in wholesale is passed on to the user). It does not matter to the user how the division is between the retail parties with whom he does business if the wholesale price is passed directly to him. With this change the price for the upper frequency range will increase while the price for the lower frequency range should drop more, in ISK, than the amount of the increase, so that the overall conclusion with respect to the user is a reduction for full access. The PTA does not agree that this change will cause a reduction in the Mila revenue. The PTA considers on the other hand that it is likely that these changes will have a positive impact for Mila as uncertainty in revenue flow will be less when Mila revenue from local loops becomes independent of how the local loops are used.

Those users that solely use the lower frequency range will admittedly see an increase of more than 20%, that is to say just over ISK 200, in their monthly payments with this change. The PTA has estimated that this is approximately one third of users and this proportion has been on the decrease in recent years. The majority of users should on the other hand see a reduction of almost 10% in local loop lease which is about ISK 100 reduction per month.

Mila requests that the PTA take into account tariffs development in Europe. This is precisely the grounds for the currently proposed changes. With this change, payment will always be made for full access regardless of whether the lower frequency range of the local loop is used solely or both the upper and lower frequency ranges which is in accordance with practice in most states in Europe.

⁶ Removed for reasons of confidentiality.

From the point of view of the user the PTA considers it to be unjustified to impose a special additional charge when access to the local loop is shared. Such a charge could have an impact on a user's decision with respect to choice of service provider which means that he would be less likely to choose separate service providers for the offer and lower frequency ranges.

Mila considers, with reference to Paragraph 735 in the Preliminary Draft, that it is necessary to keep the option open for the PTA to be able to apply other calculation methodologies than solely historical costs. Operational costs of the preceding year are in most instances lower than operational costs of the current year as a result of inflation. It is thus in the opinion of Mila necessary that the PTA has the option of being able to correct prices for historical operational costs, taking into account price changes, particularly when inflation is high. Nor is it correct close the possibility of lowering the cost base if it is foreseeable that real cost will drop, for example because of lower prices for procurements. It is proper to have in mind that calculated prices should be sufficient to cover current costs and not costs as they were in the past as the PTA must do if it has been decided that calculation methodology shall solely relate to historical costs.

In the opinion Mila it is necessary to have the option of correcting prices of investments to current value and not to relate to prices of the preceding year for the same reason. In some instances one could achieve a more correct picture by using other calculation methodologies, such as replacement cost for valuation of the initial costs of investments. Mila points out that in the analysis of hosting the reference was replacement cost and not historical cost. In addition to this Mila considers it normal that in the light of the fact that there is a steady reduction in the number of local loops, while operational costs are not reduced in the same proportion, then the reference should be the position of line equivalents at the point in time when the analysis is made and not the average of the preceding year as this can lead to price being decided which is too low from the outset.

The position of the PTA

According to Article 32 of the Electronic Communications Act the PTA can demand that an electronic communications company make a cost model for the calculation of prices where varying methodologies are applied. The PTA can take into account the operations of analogous service that is considered to be efficiently operated and can take into account tariffs in analogous competition markets and it may use cost analysis methodologies that are not related to methodologies employed by the electronic communications company in question. For this reason the PTA can decide to use other methodologies than historical costs during the coming years should this be considered necessary. Regulation number 564/2001 on bookkeeping and cost analysis in the operations of electronic communications companies gives a certain flexibility, for example with respect to methodologies used when evaluating investments, see Article 14 in the Regulation and prior implementation of cost analysis.

The PTA considers that the cost analysis prescribed in Paragraph 735 in the Preliminary Draft will continue to serve the objectives of the electronic communications regulatory framework where in the choice of methodology the emphasis is placed on the methodology providing the opportunity for a conclusion

which is normal and fair to both parties and pricing which is not greatly in excess of real costs while at the same time ensuring normal return on investments. Repeated benchmarking of the conclusions of the Mila cost analysis during the past years with countries in the EEA also confirms that price decisions have been analogous with general practice in the EEA. The newest price decision which was published in the PTA Decision no. 15/2013 on the Mila cost analysis of local loop leasing also harmonises well with the objectives presented in the new Recommendation⁷ from the EU Commission, and ESA has requested from the PTA that the instructions provided in the Recommendation be taken into account.

The PTA rejects the adjustment of operational costs in accordance with price changes and considers annual review to be more normal methodology, as operational costs do not necessarily follow price development as experience has shown in recent years. The PTA considers it more normal to pay more attention to the real development of line equivalents at Mila which have a direct impact on unit price, see the PTA Decision no 15/2013.

Vodafone comments on Paragraph 735 in the Preliminary Draft and considers it to be unclear whether Mila prices for access to copper local loops can increase when usage decreases and considers it important that the text of the analysis is clear that such is not authorised.

The position of the PTA

The reduction of local loops in use is one of many factors which can have an impact on the price of local loops. When using historical costs as a basis as has been done it becomes inevitable to take into account real usage of the network in question when deciding prices.

7.3.5 Obligation for cost accounting

Vodafone comments on Paragraph 744 in the Preliminary Draft and considers it important to impose price control on Mila with respect to the price for access to fibre-optic local loops and points out that this service has only been on offer to Siminn up to this point in time.

The position of the PTA

The PTA refers to the arguments presented in Section 8.4.5 on the obligation for price control with respect to fibre-optic local loops. The PTA intends to impose obligation on Mila to provide open access to the company's fibre-optic local loops, as well as obligations for non-discrimination (including EoI), transparency, separation of accountancy and cost accounting, as stated in the Administration's Preliminary Draft. At the same time the PTA reserves the right to apply a margin squeeze test should there be suspicion of abnormal pricing. The PTA considers that the above specified obligations are adequate to ensure non-discrimination in access and in pricing for access to fibre-optic local loops.

⁷ Commission Recommendation of 11.9.2013 on Consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.

8 Imposition of obligations on Market 5

Tal agrees with the obligations that the PTA intends to impose on Siminn on Market 5 and considers them to be normal and necessary. Tal furthermore points out that it is important for the PTA to be prepared to react quickly to all Siminn attempts to postpone and delay granting the access that the company is obliged to provide, for example to provide access regardless of the service provided on the line. The PTA should not give Siminn unlimited time to submit draft wholesale tariff and should impose fines on the company where time limits are not respected.

The position of the PTA

In general it is the PTA policy that companies should operate in accordance with the obligations that are imposed on them and that the processing of cases should be rapid and effective. With respect to fines, the PTA is only authorised to impose penalties per day of delay among other things to bring pressure to bear on the Administration's decision being complied with. The PTA thus does not have general authority to fine like most of the PTA fellow regulatory bodies in Europe. Despite having lobbied strongly for this rights the Icelandic legislature has not provided the PTA with such authority to fine.

8.1.1 Competition problems on the market in question

Mila states that the wording of Paragraph 775 in the Preliminary Draft on the Settlement with the Competition Authority, needs rewording.

The position of the PTA

Mila has taken over operation of the bitstream systems from Siminn and the text of the analysis has been changed to this effect.

Mila points out with respect to Paragraph 780 in the Preliminary Draft that Market 18 covered television distribution and not obligations on delivery of television material into other distribution systems.

The position of the PTA

Vertical integration of Siminn IPTV service with Siminn bitstream service is a problem on Market 5. This has the effect of strengthening Internet service and Siminn retail of IPTV which one could compare with the effect of bundling.

Inter comments on Paragraph 780 and the Preliminary Draft with respect to the relationship between IPTV service and the bitstream market and maintains that it is necessary to receive confirmation on whether and in what manner Internet service providers have the right to distribute Siminn TV through their electronic communications systems, because while there is no obligation, other service providers will not be able to compete with Siminn in the sale of Internet service with TV service as an option. Inter considers that as the likelihood of competition in bitstream service in VDSL systems is less than before then it is necessary that Siminn is obliged

to deliver network service providers white label access to Siminn TV or under a trademark that is not that of Siminn.

The position of the PTA

The comment from Inter supports the PTA view that Siminn IPTV service at retail level underpins vertical integration with the Group's bitstream systems. The distribution of TV material is however outside the analysed markets and this supports the PTA view that if the problems related to TV distribution are not resolved soon then it will be necessary to consider a review of the prior Market 18 which covers TV distribution.

It should be pointed out that pursuant to Article 15 of the Settlement between Skipti and the Competition Authority, Siminn shall provide wholesale access to the companies IPTV service on a non-discriminatory basis. The obligation refers to access for electronic communications companies to the TV service in question through the active Siminn access system and through the Mila passive access network. Siminn shall furthermore offer wholesale access to the TV service in question for other active access systems on the Mila access network on fulfilment of specific conditions. Siminn is then not obliged to deliver TV through other access networks than the Mila access network. Siminn shall also publish a reference offer for the access forms that are on offer for Siminn TV.

Tal requests of the PTA, taking into account Paragraph 780 in the Preliminary Draft and taking into account how important access to IPTV service is for those companies that wish to compete in the provision of service through bitstream access, that it immediately commence analysis of Market 18 and that it specifically examine whether Siminn and Vodafone have joint market dominance on that market.

The position of the PTA

With the resolution of the Vodafone complaint with the PTA Decision no 38/2012 on Access Option 1 and the obligations that are proposed here to be imposed on Mila for access to wholesale bitstream service, Vodafone can now distribute its IPTV service through the Siminn, now Mila bitstream system, by purchasing a bitstream access with multicast. In addition to this obligations were imposed on Siminn for wholesale access to the companies IPTV system in the Settlement between Skipti and the Competition Authority as is stated here above. Customers of the retailers that connected through the Mila systems will then be able to choose whether they purchase IPTV service from Siminn or Vodafone through the connection. Siminn has also notified resale of its IPTV service. There is therefore a hope that access for service providers to IPTV will improve in the near future. Should this not suffice and should general competition rules not suffice then the PTA will reconsider whether there is a need to review Market 18 and make a new market analysis of that market.

Vodafone objects to Paragraph 780 in the Preliminary Draft with respect to competition problems on M5 where the view is aired that Siminn and Vodafone may have joint market dominance over the TV distribution market. Vodafone considers this not to be the case.

The position of the PTA

Should there be a need at a later date for a special analysis of the former Market 18 then this will come to light.

Mila mentions with respect to Paragraph 781 in the Preliminary Draft that bitstream is bound by price obligations and that the company cannot lower its price below that which the PTA has decided subsequent to cost analysis. The fact that prices have not dropped subsequent to competition is not in the sphere of influence of Mila or schema because of the relevant Markets 4 and 5.

The position of the PTA

The Mila tariff shall be based on the company's costs. Should the company see a possibility for economies in order to react to competition, the company can submit reviewed cost analysis for the service in question. Though the company is subject to an obligation for price control, such an obligation does not hinder the company from showing initiative in economising and lowering of prices in order to improve its competitive position.

8.1.2 Obligation to provide access

Vodafone considers that in Paragraph 804 in the Preliminary Draft, a 4th definition needs to be added that a virtual network, VLAN, needs to be provided, which would have the objective of being used in special instances that require varying quality settings.

The position of the PTA

Paragraph 805 in the Preliminary Draft does cover the possibility that parties can agree on other quality settings. General standards with respect to fair and normal requests apply in this respect.

Mila comments on Paragraph 805 in the Preliminary Draft and doubts that the method mentioned is a sensible approach to pricing in access networks.

The position of the PTA

In this instance Mila may have misunderstood the text of the Preliminary Draft. Quantity measurement is not being recommended in this instance when the possibility for varied pricing of bitstream service by bandwidth load is mentioned. The price could well be a fixed monthly price which could vary for bitstream for IPTV, VoIP or general Internet service or for any other of the services that can possibly be provided over bitstream in the future, depending on the bandwidth load requirements or quality requirements of each service.

Mila mentions with respect to Paragraph 806 in the Preliminary Draft that the PTA must ensure future development of networks with clear rules and must ensure that the

incentive to invest is not inhibited with an unclear and constantly changing regulatory framework.

The position of the PTA

The PTA agrees with Mila in this respect. The PTA does not consider this to be a material comment from Mila. The PTA precisely endeavours to ensure future development of networks and to encourage investment, without the competition consideration being subordinated.

Mila mentions that Paragraph 809 in the Preliminary Draft must be reviewed with the Settlement in mind.

The position of the PTA

The PTA reiterates previous replies here above with respect to the impact of the Settlement between Skipti and the Competition Authority on the planned PTA Decisions on Markets 4 and 5.

Mila states that Paragraph 810 in the Preliminary Draft on open virtual access needs to be examined specifically in the light of the new division of tasks subsequent to the Settlement.

The position of the PTA

The PTA will rectify the text in the analysis in the light of the fact that Mila has taken over the role of Siminn on the market for wholesale bitstream service. In other respects reference is made to the PTA discussion on VULA in the Section on obligations on Market 4 here above.

Mila wonders with respect to Paragraph 811 in the Preliminary Draft on the arrangement of Access Options, whether this arrangement is obsolete. Mila also considers that the obligations on ATM should be withdrawn, except for Access Option 3, as it is not sensible to make further investments in such equipment.

The position of the PTA

Should it come to light that the market makes other demands for Access Options than are specified here, the PTA will of course not prevent Mila from making a new reference offer which would then be submitted to the appropriate consultation procedure with stakeholders on the relevant market.

With respect to access through connections with ATM technology, there are no requirements made for development of bitstream service through ATM connections, but while the service is on offer then appropriate obligations will apply. In the text of the analysis there is nothing that obliges Mila to offer service through ATM connections throughout the whole lifetime of the analysis. Should Mila see an opportunity for economies by discontinuing use of its ATM equipment and harmonising all services over IP based equipment and if consultation with parties to

the market agree with this, then Mila is welcome to make changes to the reference offer to this effect.

Inter comments on Paragraphs 813 and 832 in the Preliminary Draft and mentions that here there needs to be a specific mention that as Siminn provides level II technical assistance only after level I technical assistance has categorised the need for such assistance then other electronic communications companies need to have the same access to level II technical assistance and to the Siminn service desk and at the same time as the Siminn service desk has such access. Inter proposes that the following text be added to Paragraph 832 or 833: *"Should certain involvement of Mila or Siminn staff be required to diagnose faults, it shall be ensured that other electronic communications companies have the same access at the same service times as our on offer for the Siminn service desk. Should the case be that the Siminn service desk can for example have direct telephone contact with a technician responsible for equipment or for lines, it shall be ensured that other electronic communications companies are offered the same and that they are informed of this."*

The position of the PTA

The PTA considers the Inter proposal for change of wording to provide too exact instructions and that the obligation for non-discrimination as presented in the text of the Preliminary Draft will suffice. It is clearly stated that all companies that purchase wholesale access shall receive the same treatment.

Mila states that it is not clear why VULA access is prescribed as a condition for Access Option 3 in Paragraph 813 in the Preliminary Draft as it is sufficient to practise non-discrimination.

The position of the PTA

The above specified text took into account the Access Option that was in use at the time that the text of the Preliminary Draft was written. In the light of changed circumstances with respect to current use of varying Access Options, the text will be updated to the effect that VULA access is provided regardless of the Access Option.

Mila states with respect to Paragraph 814 in the Preliminary Draft that Siminn did not have control of these facilities and that probably this should apply to Mila.

The position of the PTA

Siminn, as a seller of bitstream in wholesale prior to the Settlement being made, is with this Paragraph made responsible for the purchasers receiving the facilities necessary for their bitstream access meeting all their intended user requirements. Facilities does not only refer to space in premises but to all network facilities. Subsequent to the Settlement being made between the Group and the Competition Authority this obligation is now fully in the hands of Mila.

Inter makes the comment with respect to Paragraph 814 in the Preliminary Draft that connections from the xDSL system core to a network provider was provided by Siminn through the Siminn IP network and at retail terms to network providers. Inter considers this to be abnormal and that network providers should receive such connections at wholesale with the possibility of a reserve route should this be at all possible. In the Paragraph the wording might be clearer to the effect that electronic communications companies shall have choice with respect to connection route and facilities when they connect to bitstream access. Inter proposes that the following text be added:

"Electronic communications companies shall be authorised to use other communications routes than those owned by Siminn or Mila to connect to BRAS or wholesale switching should that be required and facilities for this shall be offered at the same terms as if they were owned by Siminn. No barriers to access shall be raised, including special charges for connections with ports or interconnection with the backbone network for BRAS."

The position of the PTA

With the Paragraph in question the PTA is precisely assuring the issue on which Inter comments. It may be that one can consider Paragraph 814 in the Preliminary Draft to be not sufficiently clear in this respect and the PTA plans to alter the wording of the Paragraph to make it clearer.

Mila comments with respect to Paragraph 815 in the Preliminary Draft that penalties for default in the reference offer can lead to the provision of service being discontinued on this basis.

The position of the PTA

The PTA is not cancelling or banning such provisions in a reference offer, only prescribing that service with a wholesale purchaser will not be discontinued without endorsement by the PTA.

Mila, with respect to Paragraph 818 in the Preliminary Draft, objects to the prescribed two-year period of notice. In this manner customers are possibly being tied to obsolete technology and Mila proposes a six-month period of notice and mentions that the fast development in VDSL would not have been possible with such a condition.

The position of the PTA

In this instance Mila misunderstands the provision. This does not refer to the transfer of individual customers between systems, from older technology to new, but rather notification about the total phasing out of system or about changes that cause a change in competitiveness of companies on the relevant market. For example Siminn had announced that the operation of ADSL would be discontinued and all customers would be moved to VDSL. A six-month period of notice for purchasers of wholesale bitstream to react to such notifications is totally unacceptable. Nothing in this provision delays Mila from developing new systems or new technology and offering it

on the relevant market. In the same way the opportunity is offered for shorter notice than 2 years after having received endorsement from the PTA.

8.1.3 Obligation for non-discrimination

Mila makes the general comment on Paragraphs 796 to 938 in the Preliminary Draft (particularly Paragraph 802) that these Paragraphs need to be rewritten in accordance with the organisational changes that result from the Settlement. A simple change of parties will not suffice as the criteria have so significantly changed.

The position of the PTA

The criteria have not changed; changes with respect to customers other than a change of parties have not yet taken place on the relevant market. Should such changes in the position of customers call on material changes to the analysis and to the relevant obligations, the PTA will review the analysis. As has been stated on numerous occasions here above, the impact of the Settlement has not yet manifested itself except to a very limited degree and furthermore its implementation has not been according to plan.

Mila makes detailed comments on Paragraphs 834 to 836 in the Preliminary Draft. Here they will be briefly summarised and answered.

All provisions on imposed obligations must be reworked because of organisational changes that have resulted from the Settlement between the Group and the Competition Authority.

Obligations must be changed in such a manner that access to the sub-loop will be totally cancelled and instead distribution requirements will be introduced with a period of notice for VDSL with vectoring along with strict requirements for non-discrimination and access requirements which put service providers in a position analogous to having their own equipment in street cabinets. Mila understands that with the VULA obligation the PTA is attempting to follow this route. Mila proposes a provision for absolute equivalence and for fulfilling this with the EoI equivalence obligation.

Mila needs to address integrity of the network and this could detract from the willingness to invest if instructions on access meant that it would be possible to receive access to individual street cabinets.

The position of the PTA

As stated before the PTA disagrees with Mila with respect to the need for rewriting as a result of the Settlement between the Group and the Competition Authority. Reference is made to discussion in Appendix A in Sections 8.4 and 10.4 on the impact of the Settlement and the change in parties of Mila and Siminn on the bitstream market, along with detailed arguments to this effect here above.

With the above proposals for altered obligations, Mila is in fact requesting that the company be granted a monopoly on the development of VDSL service. Mila is afraid that "islands" will be formed in the network with varying technology and service with the results that a homogenous NGN/NGA national network will not come into existence. For this reason Mila will have less incentive to invest.

The PTA cannot accept such an arrangement, as it does not harmonise with the objectives of strengthening competition and development of bitstream service, and furthermore it would be contrary to open access to local loops and the non-discrimination consideration. A VDSL operator, such as Mila, is granted three-month priority rights to specific areas should the company have notified such intentions to develop VDSL service. It is not possible to refer to considerations on network integrity except in instances supported by argument because otherwise such considerations could prevent or access and interconnection of electronic communications networks.

8.1.4 Obligation for price control

Vodafone requests, with respect to obligations on price control (Paragraph 882 in the Preliminary Draft), that the PTA reviews its position on not imposing a price control obligation on fibre-optic local loops.

The position of the PTA

The PTA refers to previous replies on the same issue here above.

Mila considers with respect to Paragraph 900 in the Preliminary Draft that it is important for the PTA to make and publish benchmarking with services elsewhere in Europe. Mila considers it important to look to other countries with respect to pricing in this context. Mila considers it sensible to have such tariffs in mind though they may not be the basis for Mila unit prices.

In addition to this it is important to see how specific services are elaborated in varying Access Options 1-4, see VoIP, IPTV and Internet.

The position of the PTA

As stated in Paragraph 900 in the Preliminary Draft, the tariff for the relevant DSL bitstream services shall be cost-oriented. This Paragraph also contains PTA discussion on the authority that the PTA has pursuant to the Electronic Communications Act when prices for these services are decided.

The services on offer on this market in neighbouring countries vary greatly and even though the PTA work to examine the development taking place in respect to price and product offer, the PTA does not plan to make and publish benchmarking except where the PTA considers this necessary when reviewing Mila cost analysis.

Mila considers, with reference to Paragraph 903 in the Preliminary Draft, that it is necessary to keep the option open for the PTA to be able to apply other calculation methodologies than solely historical costs. Operational costs of the preceding year are in most instances lower than operational costs of the current year as a result of inflation. It is thus in the opinion of Mila necessary that the PTA has the option of being able to correct prices for historical operational costs, taking into account price changes to the date of calculation, particularly when inflation is high. Nor is it correct close the possibility of lowering the cost base if it is foreseeable that real costs will drop, for example because of lower prices for procurements. In the same manner you considers it necessary to keep options open to use other methodologies than replacement cost of operational assets when evaluating investments.

The position of the PTA

According to Article 32 of the Electronic Communications Act the PTA can demand that an electronic communications company make a cost model for the calculation of prices where varying methodologies are applied. The PTA can take into account the operations of analogous service that is considered to be efficiently operated and can take into account tariffs in analogous competition markets and it may use cost analysis methodologies that are not related to methodologies employed by the electronic communications company in question. For this reason the PTA can decide to use other methodologies than historical costs during the coming years should this be considered necessary. Regulation no. 564/2011 on bookkeeping and cost analysis in the operations of electronic communications companies provides a certain flexibility for example with respect to methodologies used when evaluating investments, see Article 14 in the Regulation and prior implementation in cost analysis.

The PTA considers that the cost analysis prescribed in Paragraph 903 in the Preliminary Draft will continue to serve the objectives of the electronic communications regulatory framework where in the choice of methodology the emphasis is placed on the methodology providing the opportunity for a conclusion which is normal and fair to both parties and pricing which is not greatly in excess of real costs while at the same time ensuring normal return on investments. Repeated benchmarking of the conclusions of the Mila cost analysis during the past years with countries in the EEA also confirms that price decisions have been analogous with general practice in the EEA.

The PTA rejects the adjustment of operational costs in accordance with price changes and considers annual review to be more normal methodology, as operational costs do not necessarily follow price development as experience has shown in recent years.