



Fjarskiptastofa

Decision no. 5/2024 on designation of companies with significant market power and the imposition of obligations on the wholesale markets for local access provided at a fixed location (Market 3a) and central access provided at a fixed location for mass-market products (Market 3b).

(Case no. 2022020045)

(1) Electronic Communications Office of Iceland (hereafter “ECOI”) has, with reference to Article 44 of the Electronic Communications Act no. 70/2022, analysed the following markets that are defined in the ESA recommendations on the relevant market from 11 May 2016:

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

(2) This decision replaces the preliminary decision regarding the market analysis of markets 3a and 3b in case no. 9/2023, dated 15 September 2023, which replaced the Electronic Communications Office of Iceland (ECOI) Decision no. 5/2021, dated 19 October 2021, on the designation of undertakings with significant market power and the imposition of obligations on the wholesale markets for local access provided at a fixed location (market 3a) and central access provided at a fixed location for mass-market products (market 3b). In Decision no. 5/2021, ECOI maintained the designation of Mila ehf. (Mila), see Post and Telecom Administration (PTA) Decision no. 21/2014, as an undertaking with significant market power and imposed obligations on the company on the markets in question. ECOI furthermore designated Siminn hf. (Siminn) as having such status on the relevant markets and imposed limited obligations on that company, as the companies were then in the same company group and were vertically integrated, thus one economic unit in the understanding of competition law. The ECOI found it necessary to reanalyse markets 3a and 3b for the following reasons: The EFTA Surveillance Authority (ESA) comments regarding a need for a re-evaluation of geographic definitions of markets in regards to Decision no. 5/2021, the ruling of the Appellate Committee for Electronic Communications and Postal Affairs in case no. 3/2021, dated 29 December 2022, and because of significant changes to market circumstances that had taken place since Decision no. 5/2021 was made and published.

(3) The preceding ECOI analysis described in Decision no. 5/2021, key findings highlighted the absence of effective competition on related retail markets on a national level. ECOI found that there was substitutability between local loops and bitstream access over copper and fibre. In addition, ECOI found that competitive conditions were not sufficiently heterogeneous between areas nor sufficiently stable to justify a designation of geographical markets. While acknowledging slight variations in competitive conditions among municipalities, the

wholesale market's geographic scope remained national, notwithstanding specific considerations regarding the imposition of obligations for 17 municipalities, including the entire Capital City Area.

(4) November 15th, 2021, both Siminn and Mila lodged appeals over the aforementioned ECOI Decision with the Appellate Committee for Electronic Communications and Postal affairs (hereafter "The Committee"). The committee gave its ruling on December 29th 2022. In the ruling the Committee refrained from overturning the ECOI decision entirely but emphasized the necessity of conducting new market analyses for the specified markets. Pending the completion of such analyses, the obligations outlined in the appealed decision were to remain in effect, with adjustments prompted by Mila's sale to Ardian France SA (hereafter "Ardian"). Additionally, the Committee mandated ECOI to conduct the new market analysis by 15 September 2023.

(5) The conclusion of the committee paved the way for ECOI to initiate the market analysis at hand. Given the events that occurred for the 14-month period while the committee deliberated the appeal, the ECOI was faced with a new analysis of a market where conditions had changed significantly. In 2022, ECOI's preliminary investigation into the geographical analysis of the relevant markets, had already highlighted a need for a comprehensive reassessment, as ESA had pointed out in their comments on the previous market analysis on the relevant markets. The commencement of Mila's sale from the Siminn Group and connected impending significant changes in the electronic communications market further underscored the necessity for re-evaluation.

(6) As previously stated, the committee mandated that ECOI would finalize its decision by September 15th 2023. Unfortunately, ECOI was not able to meet this deadline as the preparation preceding this Decision took longer than expected. Defining markets can be a complex and time-consuming process by nature. Data collection from all active operators on the relevant wholesale markets and on the connected retail market calls for an extensive statistical processing. In particular, since consumer surveys had indicated there to be substitution between fixed access connections and mobile connections and thus called for additional data collection. The process of conducting a market analysis is susceptible to legal provisions and a formal process that, in conjunction with other requirements, requires a consultation period in both on a national level and in consultation with ESA and other national regulatory authorities in the EEA area. In both cases consultations require at least 30-day consultation period as per ESA's recommendation of 2 December 2009 on notification, time limits and consultation. In addition, and Art. 24(1) of the Electronic Communications Office of Iceland Act no. 75/2021. When the market analysis process has advanced to a certain point, all changes to the market analysis, for example those based on comments received in consultations, have the potential to prompt a new national consultation that stakeholders might comment on and ECOI must then respond to. Since the analysis takes a considerable amount of time and a market analysis describes the market situation based on the latest information at any given time, it may be necessary to make changes to the text or assumptions of the market analysis as it is being written. Therefore, the analysis is sensitive to any shifts within the telecommunications market, e.g. mergers of telecommunications companies, acquisitions of telecommunications infrastructure, new products, extensive service and cooperation agreements, the expansion of telecommunications networks or changes in market share figures, etc. It is therefore quite a challenge and takes time to keep

the text of marketing analysis up to date until a final decision has been made. In addition, the entire analysis must be translated.

(7) As the deadline the committee had granted ECOI approached, ECOI noted that certain undertakings assumed that if the date passed without a Decision from ECOI, no obligations would be enforced on the market. To alleviate any ambiguity regarding the prevailing legal status the ECOI issued a provisional Decision, stipulating the state of legal status after September 15th 2023 and until a new Decision had formally been published. The preliminary decision was published alongside the first consultation document of ECOI's new market analysis. Based on the preliminary conclusion of the market analysis of the local loop- and bitstream markets, which was stipulated in the consultation document, ECOI considered it appropriate to announce the repealing of obligations on Míla hf. in municipalities that had active competition in the opinion of the ECOI, and a reasonable transition period began at the date of the preliminary Decision. Such deadlines have generally been between 6-12 months in Decisions published by other NRA's within Europe. The preliminary Decision set out that the repeal of the obligations would come in to affect at the date of the conclusion of the market analysis. Nonetheless, ECOI considered it necessary to maintain the obligations on Míla hf. in other respects and provisionally until a final decision on the market analysis had been made. These are the same obligations that were imposed on Míla hf. by the decision of the Appellate Committee for Electronic Communications and Postal affairs of December 29, 2021. Originally, the preliminary Decision had a period of validity until March 1, 2024. Since the third national consultation was held on 23 January 2024, and that it had thereby become clear that the matter would drag on beyond 1 March, ECOI extended the validity of the preliminary Decision with a notification, dated 29 February 2024, until a final decision would be published, but no longer than 1 June 2024.

(8) When preparing this decision, ECOI opened consultation on the draft decision in three parts. The first consultation commenced on 15 September 2023, where the consultation draft covered related retail markets, analysis of the relevant service markets, geographic analysis, assessment of competitive status in the various geographic markets and designation of parties with significant market power in specific geographic markets.

(9) Consultation was then opened again on 29 November 2023, where the consultation draft related to a description of competition problems; a decision on whether parties with significant market power fulfilled legal provisions to be considered wholesale-only companies, and elaboration of obligations on those companies that were considered in the opinion of ECOI to have significant market power on specific geographic markets. In parallel to the second consultation, ECOI opened consultation on changes to designation of companies with significant market power on specific geographic markets. The reason for the consultation in question was the comments received from the prior consultation, and the revised retail data for part of the year 2023. ECOI investigated whether the above specified views and data would change anything with respect to the designation of parties a significant market power in any of the very large number of geographic markets in this case. The conclusion of the above specified investigation was that it was considered that there were grounds for amending assessment of significant market power on three of the geographic markets of the case, i.e. Súðavíkurbreppur, Vopnafjarðarhreppur and Fljótsdalshreppur variously on market 3a or 3b or on both of these markets. ECOI however considered, after a detailed additional investigation, that there were not justifiable grounds to amend the

assessment for Seltjarnarnesbær, where ECOI examined that municipality separately with a view to comments from Míla.

(10) The third consultation commenced on 23 January 2024, which was an additional consultation that related to very specific aspects of the market analysis. The consultation related to amendments to assessment of significant market power in Rangárþing eystra on market 3b, to assessment of whether Ljósleiðarinn and Tengir should be deemed wholesale-only companies and to amendments to the elaboration of obligations for notification of civil works and on the coming into force of that obligation vis-à-vis new parties.

(11) The first consultation was from 15 September until 16 October 2023 and the following parties delivered submissions on the preliminary draft:

- The Competition Authority
- Míla
- Ljósleiðarinn
- Tengir
- Nova
- Síminn

(12) The second consultation was from 29 November 2023 until 3 January 2024 and the following parties delivered submissions on the preliminary draft:

- Míla
- Ljósleiðarinn
- Tengir
- Nova
- Síminn

(13) The third consultation was from 23 January 2024 until 6 February 2024 and the following parties delivered submissions on the preliminary draft:

- Míla
- Tengir

(14) Market analysis on markets 3a and 3b have now been revised in accordance with changes to the designation of companies with significant market power in the above-mentioned geographic markets, changes that were published for consultation, and the decision on whether Tengir and Ljósleiðarinn are deemed to be wholesale-only companies, and minor changes to obligations including the obligation on notification of civil works. In other respects, ECOI assessment was that there was no reason for significant changes other than individual alterations to wording which are specified in more detail in Appendix B.

1 Definition of service markets

(15) According to article 8 of the regulation on implementation of market analysis no. 556/2023 and in the Commission guidelines on market analysis and assessment of significant market power, the point of departure for all analyses should be assessment of the relevant

retail markets with respect to demand and supply-side substitutability from the end user perspective, and account must be taken of expected developments in market circumstances over the planned duration of validity of the analysis. When the relevant retail market has been defined, with respect to the product types that belong to the market, an assessment shall be made of whether there is a risk of consumer interests being impaired as a result of lack of competition if no obligations were in place on the underlying wholesale markets.

(16) The conclusion is reached in ECOI market analysis that the following services belong to the retail market for broadband connections and service at a fixed location:

- Broadband connections over copper network with VDSL technology
- Broadband connections over fibre
- Broadband over cable systems
- Broadband over 4/4.5G and 5G (and future mobile phone generations) that are provided over electricity mains connected network routers.

(17) The ECOI conclusion according to this market analysis can be found in Appendix A with respect to market 3a, and it is as follows:

(18) Market 3a comprises access to physical connections in access networks in copper and fibre networks, along with corresponding virtual network solutions that fulfil the conditions described in the guidelines to the ESA recommendation on the relevant markets from 11 May 2016.

(19) The ECOI conclusion according to this market analysis can be found in Appendix A with respect to market 3b, and it is as follows:

(20) Market 3b comprises virtual solutions offered centrally in fibre networks, in copper networks to which VDSL equipment has been connected and in mobile network solutions on 4G/4.5G on 5G (and future mobile network generations) or electricity mains connected network routers at a fixed location of use, do not fulfil the conditions to be considered to belong to market 3a and they are used to provide central mass-produced bitstream service. ECOI considers that all connections to the networks in question that fulfil the above specified criteria belong to the relevant wholesale market and that there is no reason to segment sub-national markets by varying technical solutions. ECOI considers that there is substitutability between differing solutions on these networks and with this in mind one must also conclude that there is also substitutability in wholesale in the relevant market. Self-supply of companies and company groups in the relevant market are part of the market. Central access through cable systems, wireless access network with fixed use location (FWA), satellite and other kinds of mobile phone service than specified above does not belong to the relevant service market.

2 Geographic definition

(21) Among other things, in the light of comments from the EFTA Surveillance Authority (hereafter 'ESA') on the prior ECOI market analysis of the relevant markets in case no. 5/2021, with respect to the geographic analysis conducted there, ECOI considered there to be reason to define geographic conditions in detail on the market. The ECOI decision to embark on a detailed geographic analysis was also decided by increased deployment of fibre networks at

many locations in this country, on the growing share of Mila competitors, on the increased emphasis on deployment of networks in geographic analysis in the new Electronic Communication Act no. 70/2022, and in addition to this, ECOI took account of the increased importance of geographic analysis in market analysis of the relevant markets in Europe in recent times.

(22) In the ECOI market analysis in this case, the conclusion is reached that municipalities are the most appropriate units for creating a point of departure for the geographic analysis. On the basis of these basic units, 38 geographic markets were defined on market 3a and 43 geographic markets on market 3b.

(23) Geographic markets on market 3a are as follows:

- Area A: municipalities where competition probably prevails - the following 8 municipalities fulfil the conditions required to belong to this area:
 - Akraneskaupstaður
 - Borgarbyggð
 - Garðabær
 - Hafnarfjarðarkaupstaður
 - Hveragerðisbær
 - Kópavogsbær
 - Mosfellsbær
 - The City of Reykjavík

- Area B: municipalities where Mila has a high market share - the following 15 municipalities fulfil the conditions required to belong to this area:
 - Fjarðabyggð
 - Grundarfjarðarbær
 - Húnabyggð
 - Húnaþing vestra
 - Kaldrananeshreppur
 - Langanesbyggð
 - Skagabyggð
 - Skagafjörður
 - Snæfellsbær
 - Strandabyggð
 - Sveitarfélagið Hornafjörður
 - Sveitarfélagið Skagaströnd
 - Sveitarfélagið Stykkishólmur
 - Tálknafjarðarhreppur

- Vesturbyggð

- Area C: municipalities where Tengir has a high market share - the following 6 municipalities fulfil the conditions required to belong to this area:
 - Eyjafjarðarsveit
 - Dalvíkurbyggð
 - Grýtubakkahreppur
 - Hörgársveit
 - Svalbarðsstrandarhreppur
 - Þingeyjarsveit

- Municipalities not categorised as Area A, B or C - the following 35 municipalities do not fulfil conditions for being categorised in the above specified areas, or conditions are such that they require more detailed examination and are therefore each defined as an individual geographic market.
 - Akureyrarbær
 - Árneshreppur
 - Ásahreppur
 - Bláskógabyggð
 - Bolungarvíkurkaupstaður
 - Dalabyggð
 - Eyja- og Miklaholtshreppur
 - Fjallabyggð
 - Fljótsdalshreppur
 - Flóahreppur
 - Grindavíkurbær
 - Grímsnes- og Grafningshreppur
 - Hrunamannahreppur
 - Hvalfjarðarsveit
 - Ísafjarðarbær
 - Kjósarhreppur
 - Múlþing
 - Mýrdalshreppur
 - Norðurþing
 - Rangárþing eystra
 - Rangárþing ytra
 - Reykhólahreppur
 - Reykjanesbær.

- Seltjarnarnesbær
- Skaftárhreppur
- Skeiða- og Gnúpverjahreppur
- Skorradalshreppur
- Suðurnesjabær
- Súðavíkurreppur
- Sveitarfélagið Árborg
- Sveitarfélagið Vogar
- Sveitarfélagið Ölfus
- Tjörneshreppur
- Vestmannaeyjabær
- Vopnafjarðarhreppur

(24) Geographic markets on market 3b are as follows:

- Area A: municipalities where competition probably prevails - the following 10 municipalities fulfil the conditions required to belong to this area:
 - Akraneskaupstaður
 - Borgarbyggð
 - Garðabær
 - Hafnarfjarðarkaupstaður
 - Hveragerðisbær
 - Ísafjarðarbær
 - Kópavogsbær
 - Mosfellsbær
 - Reykjanesbær.
 - City of Reykjavík
- Area B: municipalities where Mila has a high market share - the following 13 municipalities fulfil the conditions required to belong to this area:
 - Fjarðabyggð
 - Húnabyggð
 - Húnaþing vestra
 - Kaldrananeshreppur
 - Langanesbyggð
 - Skagabyggð
 - Skagafjörður
 - Snæfellsbær

- Strandabyggð
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd
- Sveitarfélagið Stykkishólmur
- Tálknafjarðarhreppur
- Municipalities not categorised as Area A, B or C - the following 41 municipalities do not fulfil conditions for being categorised in the above specified areas, or conditions are such that ECOI deemed there to be reason to examine them individually and are therefore each defined as an individual geographic market.

- Akureyrarbær
- Árneshreppur
- Ásahreppur
- Bláskógabyggð
- Bolungarvíkurkaupstaður
- Dalabyggð
- Dalvíkurbyggð
- Eyja- og Miklaholtshreppur
- Eyjafjarðarsveit
- Fjallabyggð
- Fljóttdalshreppur
- Flóahreppur
- Grindavíkurbær
- Grímsnes- og Grafningshreppur
- Grundarfjarðarbær
- Grýtubakkahreppur
- Hrunamannahreppur
- Hvalfjarðarsveit
- Hörgársveit
- Kjósahreppur
- Múlaþing
- Mýrdalshreppur
- Norðurþing
- Rangárþing eystra
- Rangárþing ytra
- Reykhólahreppur
- Seltjarnarnesbær
- Skaftárhreppur
- Skeiða- og Gnúpverjahreppur

- Skorradalshreppur
- Suðurnesjabær
- Súðavíkurhreppur
- Svalbarðsstrandarhreppur
- Sveitarfélagið Árborg
- Sveitarfélagið Vogar
- Sveitarfélagið Ölfus
- Tjörneshreppur
- Vestmannaeyjabær
- Vesturbyggð
- Vopnafjarðarhreppur
- Þingeyjarsveit

3 Assessment of significant market power and imposition of obligations on market 3a

(25) Assessment of significant market power of the electronic communications companies in the above specified geographic markets showed that on market 3a, three companies have significant market power in more specifically defined areas.

(26) Mila has significant market power in the following 26 municipalities on market 3a:

- Bláskógabyggð
- Dalabyggð
- Fjallabyggð
- Fjarðabyggð
- Grindarvíkurbær
- Grímsnes- og Grafningshreppur
- Grundarfjarðarbær
- Húnabyggð
- Húnaþing vestra
- Kaldrananeshreppur
- Langanesbyggð
- Múlaþing
- Norðurþing
- Rangárþing eystra
- Skaftárhreppur
- Skagabyggð
- Skagafjörður
- Snæfellsbær
- Strandabyggð
- Suðurnesjabær
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd

- Sveitarfélagið Stykkishólmur
- Sveitarfélagið Vogar
- Tálknafjarðarhreppur
- Vesturbyggð

(27) In the following 8 municipalities, Tengir has significant market power on market 3a:

- Akureyrarbær
- Dalvíkurbyggð
- Eyjafjarðarsveit
- Grýtubakkahreppur
- Hörgársveit
- Svalbarðsstrandarhreppur
- Vopnafjarðarhreppur
- Þingeyjarsveit

(28) In the following municipality, Ljósleiðarinn has significant market power on market 3a:

- Sveitarfélagið Ölfus

(29) Before discussing the obligations to be imposed, one must determine whether companies that have been designated as having significant market power can be deemed to be wholesale-only in the understanding of article 59 of the Electronic Communication Act, and if an electronic communications company that has been deemed to have significant market power is considered to fulfil these condition of the law then ECOI has more limited options for elaboration of obligations than if the company does not fulfil the conditions. Should such a company fulfil the legal conditions then the only option for ECOI is to impose obligations for access, non-discrimination and fair and reasonable pricing.

(30) As previously stated, ECOI opened consultation on 29 November 2023 on the second part of the preliminary draft of the market analysis in question, i.e. with respect to a description of competition problems, a decision on whether parties with significant market power fulfilled legal provisions to be considered wholesale-only companies, and elaboration of obligations on those companies that were considered in the opinion of ECOI to have significant market power on specific geographic markets.

(31) In the consultation document the conclusion was reached that in order for a company to be deemed a wholesale-only company in the understanding of paragraph 1 of article 59, see paragraph 1 of article 44 of regulation no. 556/2023 on market analysis in the field of electronic communications, neither the company itself nor its controlling owner conduct retail operations in the field of electronic communications within the EEA. As Mila is in 90% ownership of Ardian France SA, which also has a 100% share in the Spanish electronic communications company Adamo, which among other things operates on the retail market in Spain, ECOI deemed Mila did not fulfil the legal conditions of article 59 of the Electronic Communication Act to be considered a wholesale-only company.

(32) The conclusion was then reached that both Ljósleiðarinn and Tengir fulfil these conditions to be considered wholesale-only companies in the understanding of article 59 of

the Electronic Communications Act. The conclusion was however reached that Austurljós did not fulfil the conditions to be deemed a wholesale-only company as Austurljós is a retailer of Internet service.

(33) In the light of comments received from Mila, Siminn and Nova on the above specified consultation on the second part of the market analysis draft, which lasted from 29 November 2023 until 3 January 2024, ECOI made a closer examination of whether Ljósleiðarinn, Tengir and Mila operate at retail level in electronic communications and thus would not fulfil the legal provisions of paragraph 1 of article 59 of the Electronic Communication Act to be deemed wholesale-only companies. It is therefore the ECOI conclusion that none of the companies designated as having significant market power fulfilled the conditions to be deemed wholesale-only companies. As previously stated, ECOI had come to the conclusion in the draft market analysis that Mila did not fulfil the legal conditions in question as a result of its ownership relationship with an electronic communications company within the EEA. A closer examination however showed that nor does Mila fulfil the conditions of article 59 of the Electronic Communication Act on retail operations in this country to be able to be deemed a wholesale-only company.

(34) With respect to competition problems on market 3a, it should be emphasised that obligations are imposed on companies with significant market power with the aim of combating real and/or potential problems in the field of competition on the relevant markets, and on corresponding wholesale markets and related retail market. Problems in the field of electronic communications, with the exception of problems that derive from market structure, refers to any kind of behaviour by a company with significant market power, which is intended to, or leads to any other electronic communications companies being forced out of markets, which prevents potential competitors from entering the market and/or damages consumers' interests. When obligations are applied pursuant to the Electronic Communications Act, where the methodology in market analysis is based on the main principles of competition law, the reason for such does not need to be that significant market power is in reality being leveraged, and even less that a competition infringement has been committed, but it suffices that competition problems could possibly arise from the prevailing circumstances and among other things because of specific market structure, that are detrimental to competition, for example lack of infrastructure competition in a specific area.

(35) With respect to competition problems on market 3b, such problems that are likely to occur on the relevant wholesale markets, including on the market for leased lines, and that can have an impact on the relevant wholesale market 3b, or on market 3a, if obligations were not in place on the market, that are for example manifested in denial of access, discrimination in pricing, cross subsidies, damaging under-pricing, delays in negotiations and delivery, abnormal demands on counterparty, discrimination in quality, discrimination in provision of information or abuse of information from a counterparty. A company with significant market power in a specific area can furthermore have both an opportunity and incentive to abuse its position with respect to purchasers in a specific area by over-pricing or discrimination in pricing. ECOI also comes the conclusion that Mila, Ljósleiðarinn and Austurljós could have the opportunity and incentive in those areas where they enjoy significant market power, to deny specific electronic communications companies access to market 3b, and as relevant to market 3a, or to offer access at unreasonable terms that could be equated to denial, for the purpose of making it difficult for them in competition on related markets, if obligations were not in

place to oblige the companies to provide access, either to market 3b or to market 3a. With the above in mind, ECOI, assesses that identified and potential competition problems still exist on the relevant markets in those geographic markets where effective competition does not prevail.

3.1 Imposition of obligations on Mila on market 3a

(36) As previously stated, it is the conclusion of ECOI market analysis on market 3a that Mila has significant market power in 26 municipalities. In the light of the potential and real competition problems that can occur and of the strong Mila position in the above specified municipalities, ECOI considers it necessary to impose obligations on the company for access, non-discrimination, and price control in the form of fair and reasonable tariff in the areas in question. ECOI considers it however necessary to impose a more detailed obligation on Mila for price control in all of these municipalities with the exception of Fjallabyggð, Norðurþing Rangárþing eystra, where an obligation will be imposed on Mila for price control for access to ducts and conduits. ECOI also considers it necessary to maintain obligations on Mila that the company tariff for access to company facilities be cost-oriented or decided on the basis of price benchmarking in all those municipalities where the company is considered to enjoy significant market power. ECOI will on the other hand not maintain obligations on Mila for transparency, separation of accountancy and cost accounting. It is therefore clear that Mila is being relieved of all obligations on market 3a in municipalities where up to 80% of the country's inhabitants live, and in addition to this, that there is a very significant relaxation of obligations in those municipalities, where Mila will still have significant market power on market 3a.

3.1.1 Obligation to provide access

(37) ECOI considers that access to civil engineering pursuant to article 47 of the Electronic Communication Act cannot on their own suffice to tackle identified competition problems. Such an access obligation will on the other hand, continue to be necessary, as will the obligation for access to networks and service pursuant to article 48 of the Electronic Communications Act.

(38) With the authority in articles 47 Article and 48 of the Electronic Communications Act, ECOI maintains the obligation on Mila to accede to reasonable requests or access to and use of civil engineering and local access to its copper and fibre networks, whether it is shared or fully unbundled access, and to related facilities and service at wholesale level. These obligations apply in those areas where Mila has been designated as a company with significant market power on market 3a. With respect to xDSL, other than VDSL, Mila shall accede to requests from electronic communications companies for the upper frequency range of copper local loops for data transmission even though the lower frequency range is not being used for voice telephony service. With respect to fibre local loops, Mila shall among other things, provide access to the following service offer:

- Fibre local loop: One optical fibre from the location of the optical distribution frame, where Mila has the last optical splitter to the demarcation box at the end user's access address. This location is called TOAL and is situated at a location where Mila has adequate capacity to provide P2P fibre connection to end users.

- Fibre local loop on PON network: Fibre from the end user to a technical facility which houses the interface between the access network and trunk line network. This is a case of a standard fibre local loop with optical splitter and backhaul fibre.
- Backhaul fibre: One or more optical fibres from telephone exchange/technical facility to FDP, for example for VDSL2 equipment in a street cabinet or optical splitter.

(39) Although ECOI considers shared access to Mila PON fibre local loops unlikely during the lifetime of the analysis, because of technical difficulties with this, ECOI plans nevertheless to impose an obligation on Mila for such access, should a reasonable request for access be made. Where there is no possibility to provide access to a physical local loop, Mila cannot however choose to provide virtual network access or adequate bitstream access according to Access Option 1. Mila shall however continue to provide access to the company's fibre local loops that have been deployed with state aid. Ljós lína are subject to obligations on Market 6 (now Market 4), and ECOI has now commenced preparation of analysis of that market.

(40) Should reasonable requests for other types of local access to the Mila fibre network be made, Mila shall accede to such requests if the access is technically and economically feasible. Should Mila refuse such an access request, this shall be notified to ECOI with appropriate reasons and ECOI will decide on whether the access in question shall be granted.

(41) If Mila decides to use the above specified authority to provide VULA or Access Option 1 then Mila is only authorised to limit access to and use of local loops on the basis of fundamental demands that relate to operational security of electronic communications networks in emergencies, its system and in proven instances the operational capability of service systems and protection of data.

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

(43) The above specified database shall be available no later than 3 months after a fair and reasonable request has been received from a network operator regarding such access in a specific area or areas. Such a request shall be limited to a clearly delineated area, e.g. municipality or village/town or district at which the interest of the network operators in question is directed in each instance.

(44) After having received the above specified map data and the above specified information on Mila ducts and conduits, the network operator who is interested in utilising free space in the ducts and conduits shall submit an order for access within one month of the time that he took delivery of the data and he shall specify, as precisely as possible, which ducts or conduits access is requested for. The total time period of this process shall then never exceed 4 months. Mila shall not commence work on its own deployment of optical fibres in the area in question, in which the network operator has shown interest subsequent to a request having been made that Mila provide the above specified information and until the notice of one month has passed that the network operator has, to decide whether he will use access to the ducts and conduits. During the period in question, the requested ducts or conduits in the area are therefore reserved for the interested network operator. After an order has been made, Mila is unauthorised to install cables or perform any work on the ducts and conduits covered by the order, that in any way would impair the network operator's requested access to those ducts and conduits.

(45) The obligation in question may however not prevent normal Mila use of its infrastructure or inhibit Mila fibre rollout. If Mila has formally notified about fibre rollout in the area in question, with at least 3 months' notice, the priority in question for the party requesting access does not apply. Mila needs to specify precisely which addresses are involved and the timing of the civil works. Mila is not authorised to notify about planned civil works with more than 12 months' notice in this connection. In order to prevent Mila abuse of this authorisation for priority, ECOI can, having received a submission from a party interested in requesting access, evaluate whether Mila deployment plans are realistic. ECOI can then among other things, request copies of agreements with contractors and financial plans for the civil works in question. Should Mila deem that the plans for civil works in a specific area or areas are not realistic within the 12-month period, ECOI can decide that that area or those areas, do not enjoy Mila priority for civil works.

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

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

on access to sharing or co-location ECOI can decide a cost related price and reasonable conditions for access.

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

(49) Mila shall provide a list of planned excavation and duct activities (civil works) with 3 months' notice in those areas where the company is deemed to have significant market power. This obligation covers both digging holes and ditches, but repairs or renewal of individual local loops is not covered by this obligation. The obligation is intended to cover overall development where no infrastructure is underground and to civil works and cable laying where infrastructure is in place and where conduits are being laid or fibre cable being pulled through them to a building and to other works related to development and rollout of fibre networks Mila is authorised to shorten the notice in the advertisement down to 2 months if the company lays additional conduits in all parts of the works in question, that another electronic communications company can use at a later date.

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

(51) Mila shall elaborate a documented procedure that should be followed when the company receives a request for participation in civil works. Mila shall respond to all such requests and provide detailed information on civil works at the first opportunity, such as on precise project duration, estimated project costs, on further information about use of the company's facilities etc. Mila shall also make agreements with a company that seeks access pursuant to point c of paragraph 2 of article 48 of the Electronic Communication Act in those areas where the company has significant market power on market 3a.

(52) In order that the obligation for sharing of civil works be useful for the purpose of enhancing deployment of fibre networks and for encouraging competition in infrastructure, the obligation does not apply in those areas where infrastructure is already in place, i.e. ducts or conduits owned by an electronic communications company other than Mila that can be used by such parties for deploying fibre in competition with Mila.

(53) In the ECOI Decision no. 5/2021 and the prior Post and Telecom Administration Decision no. 21/ 2014, it was stated that the obligations that rested on Mila for access to copper local loops should not be withdrawn even where Mila changed the structure of its

systems to the next generation of networks, for example if fibre cable replaced copper local loops (migration), unless an agreement on the procedure for migration had 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 took 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 5 years' notice. As a special legal provision has now come into force with respect to when a company with significant market power, see article 60 of Electronic Communication Act no. 70/2022, plans to decommission or replace parts of a copper network that is covered by obligations that have been imposed on the company, ECOI considers there to be no need to retain the above specified obligation on Mila notifications for this in those areas where Mila is considered to have significant market power, and certainly not in those areas where the company is not deemed to have such significant market power.

(54) Finally, account is taken of a new provision in point d of paragraph 2 of article 48 of the Electronic Communication Act to the effect that ECOI can require of an electronic communications company that it does not withdraw access to facilities that has already been granted. ECOI considers it necessary to impose on Mila an obligation pursuant to point d of paragraph 2 of article 48 to refrain from withdrawing access to facilities that has already been granted in those areas where Mila is deemed to have significant market power on the relevant market. Mila shall continue to provide access to ducts and conduits, hosting and local loop lease access that the company already provides in those areas where the company is deemed to have significant market power, both on copper and fibre networks, except if the access seeker in question accepts such a withdrawal.

(55) Should a recent request come from Mila for withdrawal of the above specified access, and the access holder does not accept such withdrawal, ECOI can endorse this with a special administrative decision if arguments to support this are stronger than the interests of the relevant access holder for unchanged access.

3.1.2 Obligation for non-discrimination

(56) With the authority of article 50 of the Electronic Communications Act, ECOI maintains the obligation on Mila to respect non-discrimination vis-à-vis all electronic communications companies that purchase local access on a fixed line and related facilities, regardless of whether it is a copper or fibre network. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms, including prices. The quality of access provided should be of symmetrical quality to all Mila customers. The obligations shall furthermore apply to access to ducts and conduits, facility lease and advertisements on fibre deployment. The obligation for non-discrimination that ECOI maintains on Mila is what is called Equivalence of Input (EoI) where the company is obliged to offer the same prices, use the same service procedures/service systems, the same time limits and publish the same information about the service to all customers. Mila shall therefore provide access to all parties to those systems that are used within the company and that are necessary in connection with local access and access to ducts and conduits.

(57) Information on local access and service related to access and to access to ducts and conduits to lease of facilities shall be equally accessible to all electronic communications companies. Among other things, information shall be provided on the length of local loops in

each instance where known, that is to say distance of the end user in question from the next connection point. If a local loop is measured for some reason, published data shall be updated with the results of that measurement.

(58) ECOI maintains the obligation on Mila that all parties be informed about distribution, enlargement or other development of networks and Mila access services with the same notice and this notice shall not be shorter than 3 months.

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

(60) ECOI maintains the obligation on Mila to make service level agreements (SLAs) with all purchasers of local access. Such agreements shall cover the various service issues that relate to non-discrimination with regards to local access and access to ducts and conduits and facility lease, including orders, delivery, service access, transfer of service and repairs.

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

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

(63) The information gained by Mila from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply information from related or unrelated parties, see article 42 of the Electronic Communications Act.

(64) ECOI believes that the demand for non-discrimination obligation is both reasonable and normal. There is no indication that it creates significant costs or inconvenience for the company, given the advantages that the obligation brings to competition. ECOI therefore considers it necessary to strengthen competition on the market for local access in those areas where Mila has significant market power, including access to ducts and conduits and facility lease, and on downstream markets, by imposing obligations on non-discrimination which cover at least the above specified aspects.

3.1.3 Price control

(65) The obligation imposed on Mila with this decision for price control pursuant to article 52 of the Electronic Communication Act, see article 38 of the regulation on market analysis in the field of electronic communications no. 556/2023, will represent a significant relaxation from the prior market analysis with respect to copper networks, but the obligation will be somewhat more stringent with respect to fibre networks.

(66) In those areas where Mila is deemed to have significant market power, Mila can have the possibility and incentive to demand excessively high prices. This particularly applies in those markets where there is little or no competitive pressure in place and where consumers have little opportunity to use comparable electronic communications service from other network operators.

(67) One must on the other hand take into account the severance that took place in the ownership ties between Mila and Siminn and thus ECOI considers it appropriate to apply less stringent measures with respect to Mila tariff on the relevant market 3a than those which currently apply to the company with respect to the copper network, and it is the ECOI conclusion that the Mila tariff for local loops shall be fair and reasonable in those geographic markets where Mila has significant market power. Mila will therefore be authorised to decide the wholesale prices that the company collects on this market with the reservation that the pricing is fair and reasonable. Then ECOI will not intervene in Mila pricing except in the event of a reasoned complaint from a party to the market or at his own initiative if special circumstances are deemed to justify this. If ECOI comes to the conclusion that the pricing would not be considered fair and reasonable, ECOI will decide price for the service in question which will then apply with respect to the product in question. In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Mila shall notify ECOI about all tariff changes covered by the obligation.

(68) Then all obligations, including the obligation for price control, will be lifted from Mila on the relevant market in areas where close to 80% of the country's inhabitants live, i.e. in those areas where ECOI has deemed that effective competition prevails. The only obligation now to be prescribed will be for fair and reasonable pricing on Mila local loops on the company's copper networks in those areas where the company has significant market power, whereas up to this point in time and obligation has rested on the company for cost analyses prices across the whole country for its copper networks.

(69) As previously stated an obligation for fair and reasonable pricing will be imposed on Mila for Mila's local loop lease on the company's fibre networks in those areas where the company has significant market power.

(70) In the decision on whether Mila pricing is fair and reasonable, ECOI will take into account the considerations that result from the Electronic Communication Act and from the main principles of competition law. ECOI, among other things will take a number of elements into account when deciding whether price is considered fair and reasonable.

1. Whether price for the service has changed abnormally with respect to general price development and that non-discrimination is respected.

2. Whether the prices in accordance with benchmarking with comparative market areas in this country where there is greater competitive pressure in place. Average monthly prices for access to local loops will be taken into consideration, in those areas that are considered comparable and the Authority is also authorised to take into account start-up charges if they vary.
3. Whether prices in accordance with cost of providing the service on the relevant geographic market in an efficient manner, with the addition of reasonable profitability from investment having taken risk into account.

(71) On the other hand, ECOI will assess each complaint individually and the circumstances that prevail on the relevant market. ECOI considers it normal to first take into account points 1 and 2 before it is decided to embark on detailed and time-consuming analysis of costs of the relevant service. ECOI can decide that a maximum price shall be in accordance with benchmarking or limited to an increase in index while such cost analysis is conducted.

(72) As stated here above, it is specified in electronic communications legislation that the burden of proof for charges being based on real costs, rests on the company in question. ECOI can furthermore require an electronic communications company to prepare a cost model for calculation of prices. ECOI considers it normal that if Mila asserts that price which is based on benchmarking or is decided on the basis of arising index, is lower than the cost to the company on the relevant market, then it is in Mila's hands to prove that this is the case, based on data from the company's bookkeeping. Mila shall then submit cost analysis in accordance with ECOI requirements.

(73) In those cases where Mila has acquired an electronic communications network by purchasing it or where state support has been used in developing the network, Mila shall submit a purchase agreement which states purchase price and/or information on public support that was provided. ECOI can require that information from Mila bookkeeping is broken down by municipality, which means that the company is required to use such bookkeeping.

(74) In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Mila shall notify ECOI about all tariff changes covered by the obligation.

(75) Up to this point in time and obligation for price control has rested on Mila for lease of facilities and access to ducts and conduits, and despite the discussion here above, ECOI considers it necessary to maintain the obligation in question on Mila for cost-oriented tariff with respect to lease or facilities and access to related facilities in all those municipalities where Mila is deemed to have significant market power. There are various competition problems that can be related facilities and access and it is therefore is important in the opinion of ECOI that effective obligations rest on Mila with regard to such facilities, and in addition to this such facilities at acceptable terms can be of key importance, as appropriate along with access to ducts and conduits, for deployment of fibre at locations where it is not already in place or to a small degree and as appropriate to support infrastructure competition.

(76) ECOI also considers it necessary to impose an obligation for price control on Mila with respect to access to Mila ducts and conduits in 23 of those 26 municipalities where the

company is considered to have significant market power, that is with the exception of the municipalities Fjallabyggð, Norðurþing and Rangárþing eystra. In these three municipalities, the obligation for fair and reasonable prices applies to access to ducts and conduits.

(77) The reason for a less stringent obligation being imposed on Mila for access to ducts and conduits in the above specified three municipalities is that in those locations, parallel coverage of fixed line networks is significantly higher than in the other 23 municipalities, that is to say between 40-60%. This means that the need for such a more burdensome tariff obligation is not as urgent in those municipalities. It shall however be mentioned that an obligation for access, obligation for non-discrimination and obligation for fair and reasonable pricing with respect to such access does applying these municipalities with respect to access to Mila ducts and conduits.

(78) ECOI considers the obligation for fair and reasonable tariff to be justifiable, transparent, reasoned, in accordance with the nature of identified competition problems, designed to resolve those problems, in accordance with those objectives that the obligations are intended to achieve, to support investment and competition in high-speed networks, and that they are not in excess of proportionality.

3.2 Imposition of obligations on Tengir on market 3a

(79) Tengir has significant market power in eight municipalities on market 3a, and in the 8 municipalities in question, obligations have rested on Mila on market 3a from prior analyses. The obligations that have been in force on Mila are withdrawn, the withdrawal will come in to affect 15 days after the date of this decision. Now the case will be that there will be obligations on Tengir instead of those that applied to Mila in the areas.

(80) In the light of the potential and real competition problems that can occur and of the strong Tengir position on the relevant market in the eight municipalities where the company is deemed to enjoy significant market power, ECOI considers it necessary to impose obligations on the company for access, non-discrimination, and price control in the form of fair and reasonable tariff.

3.2.1 Obligation to provide access

(81) ECOI considers that access to civil engineering pursuant to article 47 of the Electronic Communication Act cannot on their own suffice to tackle identified competition problems. Such an access obligation will on the other hand, continue to be necessary, as will the obligation for access to networks and service pursuant to article 48 of the Electronic Communications Act.

(82) With the authority in articles 47 and 48 of the Electronic Communications Act, ECOI imposes the obligation on Tengir to accede to normal and reasonable requests for access to and use of civil engineering and local access to its fibre networks, whether shared or fully unbundled access, and to related facilities and service at wholesale level.

(83) ECOI therefore imposes the obligation on Tengir to provide local access to its fibre network on the relevant market in those areas where Tengir is considered to have significant market power. The accessing question also covers local loop access in instances of state-supported fibre networks, access to ducts and conduits, facility lease and access to other

critical facilities that relate to the above specified access. In the opinion of ECOI it is quite possible for Tengir to provide such access given the capability available at the company, as it has provided such local loop access up to this point in time. ECOI considers obligations to be in the interests of competition in the long-term and that they will be conducive to, or at least ensure the continuation of, an increase in the offer of electronic communications services in the area where Tengir has significant market power.

(84) The company shall not retract the access that has already been provided, unless a recent request is received which ECOI can accept with a special administrative decision should the arguments support this. ECOI considers it not to be as burdensome to impose such an obligation on Tengir, Mila and Ljósleiðarinn in those areas where the companies have significant market power on market 3a, where neither Mila nor Ljósleiðarinn offer access to dark fibre, except to a very small degree on the corporate market and in state-supported networks. Should reasonable requests for other types of local access to the Tengir fibre network be made, Tengir shall accede to such requests if the access is technically and economically feasible. Should Tengir refuse such an access request, this shall be notified to ECOI with appropriate reasons and ECOI will decide on whether the access in question shall be granted.

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

(86) The above specified database shall be available no later than 3 months after a fair and reasonable request has been received from a network operator regarding such access in a specific area or areas. Such a request shall be limited to a clearly delineated area, e.g. municipality or village/town or district at which the interest of the network operators in question is directed in each instance.

(87) After having received the above-specified map data and the above-specified information on Tengir ducts and conduits the network operator who is interested in utilising free space in the ducts and conduits shall submit an order for access within one month of the time that he took delivery of the data and he shall specify, as precisely as possible, which

ducts or conduits access is requested for. Tengir shall not commence work on its own deployment of optical fibres in the area in question, in which the network operator has shown interest subsequent to a request having been made that Tengir provide the above-specified information and until the notice of one month has passed that the network operator has to decide whether he will use access to them. During the period in question, the requested ducts or conduits in the area are therefore reserved for the interested network operator. The period in question can be shorter than 4 months, all depending on how quickly Tengir delivers the necessary information on those ducts and conduits that the request concerns, to the interested network operator. After an order has been made, Tengir is unauthorised to install cables or perform any work on the ducts and conduits covered by the order, that in any way would impair the network operator's requested access to those ducts and conduits.

(88) The obligation in question may however not prevent normal Tengir use of its infrastructure or inhibit Tengir fibre rollout. If Tengir has formally notified about fibre rollout in the area in question, with at least 3 months' notice, the priority in question for the access seeker does not apply. Tengir needs to specify precisely which addresses are involved and the timing of the civil works. Tengir is not authorised to notify about planned civil works with more than 12 months' notice in this connection. In order to prevent Tengir abuse of this authorisation for priority, ECOI can, having received a submission from a party interested in requesting access, evaluate whether Tengir deployment plans are realistic. ECOI can then among other things, request copies of agreements with contractors and financial plans for the civil works in question. Should Mila deem that the plans for civil works in a specific area or areas are not realistic within the 12-month period, ECOI can decide that that area or those areas, do not enjoy Tengir priority for civil works.

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

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

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

faults and invoicing. Tengir shall furthermore provide lessees with access to electricity in technical spaces if possible.

(92) Tengir shall provide a list of planned excavation and duct activities (civil works) with 3 months' notice in those areas where the company is deemed to have significant market power. This obligation covers both digging holes and ditches, but repairs or renewal of individual local loops is not covered by this obligation. The obligation is intended to cover overall development where no infrastructure is underground and to civil works and cable laying where infrastructure is in place and where conduits are being laid or fibre cable being pulled through them to a building and to other works related to development and rollout of fibre networks Tengir is authorised to shorten the notice in the advertisement down to 2 months if Tengir lays additional conduits in all parts of the works in question, that another electronic communications company can use at a later date.

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

(94) Tengir shall elaborate a documented procedure that should be followed when the company receives a request for participation in civil works. Tengir shall respond to all such requests and provide detailed information on civil works at the first opportunity, such as a more detailed work schedule, estimated cost of the civil works, and further information on utilisation of the company's facilities etc. Tengir shall also make agreements with company in good faith, that Seek access pursuant to point C of paragraph 2 of article 48 of the Electronic Communication Act in those areas where the company has significant market power on market 3a.

(95) In order that the obligation for sharing of civil works be useful for the purpose of enhancing deployment of fibre networks and for encouraging competition in infrastructure, the obligation does not apply in those areas where infrastructure is already in place, cable routes or ducts owned by an electronic communications company other than Tengir that can be used by such parties for deploying fibre in competition with Tengir.

(96) Finally, account is taken of a new provision in point d of paragraph 2 of article 48 of the Electronic Communication Act to the effect that ECOI can require of an electronic communications company that it does not withdraw access to facilities that has already been granted. ECOI considers it necessary to impose on Tengir an obligation pursuant to point d of paragraph 2 of article 48 to refrain from withdrawing access to facilities that has already been granted in those areas where Mila is deemed to have significant market power on the relevant market. Tengir shall continue to provide access to ducts and conduits, hosting and local loop lease access that the company already provides in those areas where the company is deemed to have significant market power networks, except if the access seeker in question accepts such a withdrawal.

(97) Should a reasoned request come from Tengir for withdrawal of the above specified access, and the access holder does not accept such withdrawal, ECOI can endorse this with a special administrative decision if arguments to support this are stronger than the interests of the relevant access holder for unchanged access.

3.2.2 Obligation for non-discrimination

(98) With the authority of article 50 of the Electronic Communications Act, ECOI imposes the obligation on Tengir to respect non-discrimination vis-à-vis all electronic communications companies that purchase local access on a fixed line through the Tengir fibre network and related facilities. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms, including prices. Equal quality of access shall furthermore be provided to all Tengir customers. The obligations shall furthermore apply to access to ducts and conduits, facility lease and advertisements on fibre deployment. The obligation for non-discrimination that ECOI imposes on Tengir is what is called Equivalence of Input (EoI) where the company is obliged to offer the same prices, use the same service procedures/service systems, the same time limits and publish the same information about the service to all customers. Tengir shall therefore provide access to all parties to those systems that are used within the company and that are necessary in connection with local access and related facilities and access to ducts and conduits.

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

(100) ECOI imposes the obligation on Tengir that all parties be informed about distribution, development or other improvements to networks and to Tengir access services with the same notice and this notice shall not be shorter than 3 months.

(101) Tengir shall take care that applications from all electronic communications companies for local access and related services and for access to ducts and conduits and facility lease are processed in an equally timely manner. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Tengir is not authorised to make unreasonable demands on applicants as a condition for processing an application.

(102) The information gained by Tengir from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply information from related or unrelated parties, see article 42 of the Electronic Communications Act.

(103) ECOI believes that the demand for non-discrimination is both reasonable and normal. There is no indication that it creates significant costs or inconvenience for significant market power operators, given the advantages that the obligation brings to competition. ECOI therefore considers it necessary to strengthen competition on the market for local access in those areas where Tengir has significant market power, including access to ducts and conduits

and facility lease, and on downstream markets, by imposing obligations on non-discrimination which cover at least the above specified aspects.

3.2.3 Obligation for fair and reasonable pricing

(104) In paragraph 2 of article 59 of the Electronic Communications Act which deals with wholesale companies, it states that should ECOI come to the conclusion that the conditions prescribed in paragraph 1 of article 59 are fulfilled, the Authority can only impose obligations pursuant to articles 48 on access and 50 on fair and reasonable pricing, should this be considered justifiable on the basis of market analysis. As stated previously, it was initially the ECOI exposition that Tengir fulfilled the legal condition of the above specified article 59 of the Electronic Communication Act, but in an additional consultation which was published on 23 January 2024, ECOI announced a change in this position. This means that all possible obligations are available to ECOI vis-à-vis Tengir, as long as they are justifiable and in accordance with proportionality and with other main principles that must be adhered to when imposing obligations.

(105) It was stated in the ECOI analysis that in those areas where Tengir is considered to have significant market power, Tengir market share is large and on the increase. Parallel fibre coverage is also limited in these areas with the possible exception of Akureyri. An incentive exists for a company in such a strong position to maintain excessively high prices. For this reason, ECOI has decided to impose an obligation on Tengir for fair and reasonable pricing on market 3a.

(106) Fair and reasonable pricing is a broad concept which is to be interpreted in accordance with electronic communications legislation and with the main principles of competition law. ECOI will therefore take into account the general views and objectives of the Electronic Communication Act, and also the main principles of competition law when deciding whether the Tengir tariff is deemed to be fair and reasonable.

(107) In the opinion of ECOI, the obligation for fair and reasonable pricing does not mean that ECOI needs to endorse the Tengir tariff before it comes into force on the relevant markets.

(108) Tengir will therefore be authorised to decide the wholesale prices that the company collects on this market as before, but with the reservation that the pricing is fair and reasonable. Then ECOI will not intervene in Tengir pricing except in the event of a reasoned complaint from a party to the market or at its own initiative if special circumstances are deemed to justify this. If ECOI comes to the conclusion that the pricing would not be considered fair and reasonable, ECOI will decide price for the service in question which will then apply with respect to the product in question.

(109) In the decision on whether Tengir price is fair and reasonable, ECOI will take into account the specified considerations in electronic communications legislation and also the main principles of competition law. ECOI, among other things will take a number of elements into account when deciding whether price is considered fair and reasonable.

1. Whether price for the service has changed abnormally with respect to general price development and that non-discrimination is respected.

2. Whether the prices in accordance with benchmarking with comparative market areas in this country where there is greater competitive pressure in place. Average monthly prices for access to local loops will be taken into consideration, in those areas that are considered comparable and the Authority is also authorised to take into account start-up charges if they vary.
3. Whether prices in accordance with cost of providing the service on the relevant geographic market in an efficient manner, with the addition of reasonable profitability from investment having taken risk into account.

(110) On the other hand, ECOI will assess each complaint individually and the circumstances that prevail on the relevant market. ECOI considers it normal to first take into account points 1 and 2 before it is decided to embark on detailed and time-consuming analysis of costs of the relevant service. ECOI can decide that a maximum price shall be in accordance with benchmarking or limited to an increase in index while such cost analysis is conducted.

(111) As stated here above, it is specified in electronic communications legislation that the burden of proof for charges being based on real costs, rests on the company in question. ECOI can furthermore require an electronic communications company to prepare a cost model for calculation of prices. ECOI considers it normal that if Tengir asserts that price which is based on benchmarking or is decided on the basis of arising index, is lower than the cost to the company on the relevant market, then it is in Tengir's hands to prove that this is the case, based on data from the company's bookkeeping. Tengir shall then submit cost analysis in accordance with ECOI requirements. In those cases where Tengir has acquired an electronic communications network by purchasing it or where state support has been used in developing the network, Tengir shall submit a purchase agreement which states purchase price and/or information on public support that was provided. ECOI can require that information from Tengir bookkeeping is broken down by municipality, which means that the company is required to use such bookkeeping.

(112) In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Tengir shall notify ECOI about all tariff changes covered by the obligation.

3.3 Imposition of obligations on Ljósleiðarinn on market 3a

(113) Ljósleiðarinn has significant market power in one municipality on market 3a, i.e. in Sveitarfélagið Ölfus, obligations have been in force on Míla on the relevant market since the prior analysis. The obligations that have been in force on Míla are now withdrawn, which will take place 15 days after the date of this decision. Instead, obligations will come into force that are imposed on Ljósleiðarinn.

3.3 1 Obligation to provide access

(114) ECOI considers that access to ducts and conduits is on its own not sufficient, as it has not been used much in this country at this point in time, but ECOI considers that it could be important to support fibre rollout where this is not in place and as appropriate support infrastructure competition where such is economically feasible. ECOI considers it important to impose a detailed access obligation on Ljósleiðarinn on the basis of articles 47 and 48 or the Electronic Communication Act in the area where the company is deemed to have significant market power. This access also covers local loop lease in the case of state-

supported fibre networks, at least with regards to the bitstream access that the company has already provided on market 3b in the case of fibre local loops that have not been developed with state aid, access to ducts and conduits, facility lease and access to other vital facilities related to the above specified access options. In the opinion of ECOI it is quite possible for Ljósleiðarinn to provide such access given the capability available at the company. ECOI considers obligations to be in the interests of competition in the long-term and that they will encourage an increase in the offer of electronic communications services in the area where Ljósleiðarinn has significant market power.

(115) The above means that the ECOI imposes an obligation on Ljósleiðarinn to accede to all normal requests from electronic communications companies for the access in question, along with access to related facilities and service in those areas where the company has significant market power on market 3a. A reasonable request for access to a local loop is considered to be a request for a local loop that is not in use for another purpose on that day when new use is planned. The company shall not retract the access that has already been provided, unless a reasonable request is received which ECOI can accept with a special administrative decision should the arguments support this.

(116) The access that Ljósleiðarinn offers today constitutes bitstream access that is provided in connection points in the CCA. ECOI then imposes an obligation on Ljósleiðarinn to provide local access to its fibre network on the relevant market in the area where Ljósleiðarinn is deemed to have significant market power, in the case of a state funded fibre network, unless the access seeker rather requests bitstream access. In the case of those fibre local loops that Ljósleiðarinn has deployed in the area without state support, Ljósleiðarinn can choose to provide local access or adequate bitstream access.

(117) If Ljósleiðarinn decides to use the above specified authority to provide bitstream access in instances of fibre local loops that have been built with state aid, Ljósleiðarinn is only authorised to limit access to and provide use of local loops on the basis of fundamental demands that relate to operational security of the electronic communications network in cases of emergency, its system and in proven instances the operational capability of service systems and protection of data.

(118) The obligation to offer sharing or co-location is imposed on Ljósleiðarinn for the facilities the company controls, including in buildings, ducts and conduits and other facilities. The obligation covers fair and reasonable requests for access to Sveitarfélagið Ölfus and does, as stated before, entail a significantly increased financial burden on Ljósleiðarinn.

(119) ECOI imposes an obligation on Ljósleiðarinn that the company shall publish a list of planned civil works with 3 months' notice in that area where the company is deemed to have significant market power on the relevant market.

(120) In order that the obligation for sharing of civil works be useful for the purpose of enhancing deployment of fibre networks and for encouraging competition in infrastructure, the obligation does not apply in those areas where infrastructure is already in place, cable routes or ducts owned by an electronic communications company other than Ljósleiðarinn that can be used by such parties for deploying fibre in competition with Ljósleiðarinn.

(121) With reference to point i in paragraph 2 of article 48, ECOI also imposes the obligation on Ljósleiðarinn that the company provide access to support systems, operational systems or analogous software necessary for local loops to be used for the purpose for which they were leased and to ensure competition in offer of electronic communications service.

(122) ECOI finally considers it necessary to impose on Ljósleiðarinn an obligation pursuant to point d of paragraph 2 of article 48 to refrain from withdrawing access to facilities that has already been granted in those areas where Ljósleiðarinn is deemed to have significant market power on the relevant market. Should a reasoned request come from Ljósleiðarinn for withdrawal of the above specified access, and the access holder does not accept such withdrawal, ECOI can endorse this with a special administrative decision if arguments to support this are stronger than the interests of the relevant access holder for unchanged access.

3.3.2 Obligation for non-discrimination

(123) It is clear that in order for an obligation for access to return the desired results, the access obligation must be imposed in parallel with an obligation for non-discrimination. ECOI believes that the obligation for non-discrimination is also best suited to tackle the problems that arise in connection with discrimination with respect to price and access conditions. ECOI imposes the obligation on Ljósleiðarinn to respect non-discrimination against all electronic communications companies that purchase local loop or bitstream access on a fixed line network, in those areas where the company is deemed to have significant market power. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms (including those relating to prices).

(124) ECOI then makes the requirements that quality of access provided to each party be no less than that of services provided by Ljósleiðarinn to priority purchasers or parties that have strong commercial ties with the company. ECOI imposes on Ljósleiðarinn what is called the Equivalence of Input (EoI) obligation. Equivalence of Input means that Ljósleiðarinn is obliged to offer the same price, use the same service procedures/service systems, the same time limits and to publish the same information about the service (among other things development and distribution information) to all customers.

(125) The information gained by Ljósleiðarinn from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply information from related or unrelated parties, see among other things article 42 of the Electronic Communications Act.

(126) ECOI finally imposes the obligation on Ljósleiðarinn that all parties be informed about deployment, development or other development of the company's local loop networks with the same notice and this notice shall not be shorter than 3 months.

3.3.3 Obligation for fair and reasonable pricing

(127) In paragraph 2 of article 59 of the Electronic Communications Act which deals with wholesale companies, it states that should ECOI come to the conclusion that the conditions prescribed in paragraph 1 of article 59 are fulfilled, the Authority can only impose obligations pursuant to articles 48 on access and 50 on fair and reasonable pricing, should this be

considered justifiable on the basis of market analysis. As stated previously, it was initially the ECOI position that Ljósleiðarinn fulfilled the legal condition of the above specified article 59 of the Electronic Communication Act, but in an additional consultation which was published on 23 January 2024, ECOI announced a change in this position. This means that all possible obligations are available to ECOI vis-à-vis Ljósleiðarinn, so long as they are justifiable and in accordance with proportionality and with other main principles that must be adhered to when imposing obligations.

(128) It has been stated in the ECOI analysis than in Sveitarfélagið Ölfus where Ljósleiðarinn is deemed to have significant market power market power, Ljósleiðarinn market share is very substantial and has increased steadily. The conditions there are also such that parallel coverage of fixed line networks and of two fibre networks is quite limited, although it is greater than in most of the municipalities where Mila has significant market power. Ljósleiðarinn fibre deployment is significantly greater than that of Mila in the municipality and the most significant factor is that Ljósleiðarinn deployment reaches the rural area where it is very unlikely that parallel networks will be developed. An incentive exists for a company in such a strong position to maintain excessively high prices. For this reason, ECOI has decided to impose an obligation on Ljósleiðarinn for fair and reasonable pricing on market 3a in the municipality.

(129) Fair and reasonable pricing is a broad concept which is to be interpreted in accordance with electronic communications legislation and with the main principles of competition law. ECOI will therefore take into account the general views and objectives of the Electronic Communication Act, and also the main principles of competition law when deciding whether the Ljósleiðarinn tariff is deemed to be fair and reasonable.

(130) In the opinion of ECOI, the obligation for fair and reasonable pricing does not mean that ECOI needs to endorse the Ljósleiðarinn tariff before it comes into force on this market.

(131) Ljósleiðarinn will therefore be authorised to decide the wholesale prices that the company collects on this market as before, but with the reservation that the pricing is fair and reasonable. Then ECOI will not intervene in Ljósleiðarinn pricing except in the event of a reasoned complaint from a party to the market or at its own initiative if special circumstances are deemed to justify this. If ECOI comes to the conclusion that the pricing would not be considered fair and reasonable, ECOI will decide price for the service in question which will then apply with respect to the product in question.

(132) In the decision on whether Ljósleiðarinn price is fair and reasonable, ECOI will take into account the specified considerations in electronic communications legislation and also the main principles of competition law. ECOI, among other things will take a number of elements into account when deciding whether price is considered fair and reasonable.

1. Whether price for the service has changed abnormally with respect to general price development and that non-discrimination is respected.
2. Whether the prices in accordance with benchmarking with comparative market areas in this country where there is greater competitive pressure in place. Average monthly prices for access to local loops will be taken into consideration, in those areas that are

considered comparable and the Authority is also authorised to take into account start-up charges if they vary.

3. Whether prices in accordance with cost of providing the service on the relevant geographic market in an efficient manner, with the addition of reasonable profitability from investment having taken risk into account.

(133) On the other hand, ECOI will assess each complaint individually and the circumstances that prevail on the relevant market. ECOI considers it normal to first take into account points 1 and 2 before it is decided to embark on detailed and time-consuming analysis of costs of the relevant service. ECOI can decide that a maximum price shall be in accordance with benchmarking or limited to an increase in index while such cost analysis is conducted.

(134) The burden of proof for charges being based on real costs rests on the company in question. ECOI can furthermore require an electronic communications company to prepare a cost model for calculation of prices. ECOI considers it normal that if Ljósleiðarinn asserts that price which is based on benchmarking or is decided on the basis of arising index, is lower than the cost to the company on the relevant market, then it is in Ljósleiðarinn's hands to prove that this is the case, based on data from the company's bookkeeping. Ljósleiðarinn shall then submit cost analysis in accordance with ECOI requirements. In those cases where Ljósleiðarinn has acquired an electronic communications network by purchasing it or where state support has been used in developing the network, Ljósleiðarinn shall submit a purchase agreement which states purchase price and/or information on public support that was provided. ECOI can require that information from Ljósleiðarinn bookkeeping is broken down for Sveitarfélagið Ölfus, which means that the company is required to use such bookkeeping for the municipality.

(135) In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Ljósleiðarinn shall notify ECOI about all tariff changes covered by the obligation.

4 Assessment of significant market power and imposition of obligations on market 3b

(136) On market 3b, the ECOI assessment of competitive conditions on the geographic markets has shown that three companies have significant market power in certain specific areas.

(137) In the following 31 municipalities, ECOI considers that Mila has significant market power on market 3b.

- Akureyrarbær
- Dalabyggð
- Dalvíkurbyggð
- Eyjafjarðarsveit
- Eyja- og Miklaholtshreppur
- Fjallabyggð
- Fjarðabyggð
- Grindavíkurbær

- Grundarfjarðarbær
- Húnabyggð
- Húnaþing vestra
- Kaldrananeshreppur
- Langanesbyggð
- Múlaþing
- Norðurþing
- Reykhólahreppur
- Skaftárhreppur
- Skagabyggð
- Skagafjörður
- Snæfellsbær
- Strandabyggð
- Suðurnesjabær
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd
- Sveitarfélagið Stykkishólmur
- Sveitarfélagið Vogar
- Tálknafjarðarhreppur
- Vestmannaeyjabær
- Vesturbyggð
- Vopnafjarðarhreppur
- Þingeyjarsveit

(138) In the following municipality, ECOI considers that Ljósleiðarinn has significant market power:

- Sveitarfélagið Ölfus

(139) In the following municipality, ECOI considers that Ljósleiðarinn has significant market power:

- Fljótsdalshreppur

(140) Míla, Ljósleiðarinn and Austurljós are those companies that have been designated as companies with significant market power on market 3b, but none of the companies fulfil the legal conditions of article 59 of the CA to be deemed wholesale-only companies. For this reason, all possible obligations vis-à-vis the companies are available to ECOI, as long as the main principles of legislation governing the imposition of obligations are fulfilled, including for proportionality.

(141) Obligations are imposed on companies with significant market power with the aim of combating real and/or potential problems in the field of competition on the relevant markets, and on corresponding wholesale markets and related retail market. Problems in the field of electronic communications, with the exception of problems that derive from market structure, refers to any kind of behaviour by a company with significant market power, which is intended to, or leads to any other electronic communications companies being forced out

of markets, which prevents potential competitors from entering the market and/or damages consumers' interests.

(142) The ECOI market analysis has demonstrated both potential and real competition problems on market 3b, and also on the related market 3a and on related retail markets. Problems that are likely to occur on the relevant wholesale markets, including on the above specified market for leased lines, and that can have an impact on the relevant wholesale market 3b, or on market 3a, if obligations were not in place on the market, can for example be manifested in denial of access, discrimination in pricing, cross subsidies, damaging underpricing, delays in negotiations and delivery, abnormal demands on counterparty, discrimination in quality, discrimination in provision of information or abuse of information from a counterparty. A company with significant market power in a specific area can furthermore have both an opportunity and incentive to abuse its position with respect to purchasers in a specific area by over-pricing or discrimination in pricing. ECOI also comes to the conclusion that Mila, Ljósleiðarinn and Austurljós could have the opportunity and incentive in those areas where they enjoy significant market power, to deny specific electronic communications companies access to market 3b, and as relevant to market 3a, or to offer access at unreasonable terms that could be equated to denial, for the purpose of making it difficult for them in competition on related markets, if obligations were not in place to oblige the companies to provide access, either to market 3b or to market 3a. With the above in mind, ECOI assesses that identified and potential competition problems still exist on the relevant markets in those geographic markets where effective competition does not prevail.

4.1 Imposition of obligations on Mila on market 3b

(143) Mila has significant market power in 31 municipalities on market 3b, and in the light of the potential and real competition problems that can occur and of the strong Mila position on the relevant market in the geographic markets where the company enjoys significant market power, ECOI considers it necessary to impose obligations on the company for access, non-discrimination, and price control in the form of fair and reasonable tariff. ECOI will on the other hand not maintain obligations on Mila for transparency, separation of accountancy and cost accounting. It is therefore clear that Mila is being relieved of all obligations on market 3b in municipalities where up to 80% of the country's inhabitants live, and in addition to this, that there is a very significant relaxation of obligations in those municipalities, where Mila will still have significant market power.

4.1 1 Obligation to provide access

(144) The Mila position is extremely strong on the relevant market and on adjacent market 3a, particularly in specific areas. The Mila position is furthermore very strong on terminating segments of leased lines in this country across the whole country. The Siminn position is furthermore extremely strong on downstream retail markets for broadband service. Siminn has up to this point in time, in most instances only used the Mila bitstream system on the residential market where the characteristics of vertical integration between the companies is still manifest because of the wide-reaching long-term service agreement between the companies.

(145) The strong Mila position causes both potential and real competition problems on the relevant market, but in the opinion of ECOI, access barriers on the wholesale market for central access to fixed line networks continue to characterise the market in those areas where

Mila has significant market power, unless access obligation is imposed on the Mila bitstream system. ECOI considers that consumer interests will be improved with increased access, as that would give more companies the option of providing Internet service and other related retail service.

(146) It should also be emphasised that access to ducts and conduits belongs to market 3a, while lease of facilities belongs to both market 3a and 3b. ECOI therefore plans to impose an obligation on Mila to accede to all normal and reasonable requests from other electronic communications companies for central access, see definition of service Market 3b. The access in question is on the one hand access to bitstream which is through the upper frequency range of copper local loops and other hand, access to bitstream through fibre local loops for the purpose of enabling other electronic communications companies to provide their users with access to various kinds of broadband service, including internet access, VoIP voice services and IPTV television distribution. Included here are couple local loops with VDSL equipment and bitstream access over fibre.

(147) When elaborating this access option, ECOI considers it normal to take the efficiency point of view into account. In the case of Access Option 1 it could for example prove economic to provide access from some kind of node point where connections from many street cabinets/ connection points were collected together. Such an implementation could thus have the characteristics of varying Access Options, for example it could be at a level which one could consider to be between Access Options 1 and 2.

(148) In addition to traditional Internet service one can in this respect mention IPTV service which among other things uses IGMPv2 communication protocols for transmission of TV programmes and RTSP for viewing video on demand (VoD). Mila shall also accede to requests for access to bitstream service that fulfils normal and reasonable requirements for another kind of communication protocol, quality control and performance guarantee. Mila should also, if this is requested, handle the sending of bitstream through its backbone network to a location where the electronic communications company in question has a connection with the Mila network.

(149) In addition to the obligation to provide separate access in the form of bitstream access, the obligations is imposed on Mila with reference to points g, j, and h in paragraph 2 of article 48 of the Electronic Communications Act, to provide at wholesale terms, hosting of equipment of other electronic communications companies and access to other facilities necessary for bitstream access to be fully used and to serve the intended purpose, including connections from Mila connection point to the connection points of wholesale purchasers and related equipment.

(150) In addition to the above specified obligation for access to lease of facilities, ECOI considers it necessary to maintain the access obligation on Mila in the areas in question with respect to central access (bitstream) access to copper and fibre local loops over those networks and access to other vital facilities. These are not new obligations - except to the extent that Access Option 4 is added again, which rested on the Siminn Group between the years 2008-2014 - but existing obligations are being maintained while they will however only apply in the 31 municipalities in question. ECOI considers that these access obligations, in addition to being justifiable, transparent, reasoned, in accordance with the nature of

identified competition problems, designed to resolve those problems, in accordance with those objectives that the obligations are intended to achieve and that they are not in excess of proportionality. ECOI considers the obligations particularly necessary to ensure competition in service between retailers in the areas in question, as at most locations, Mila is the only or at least by far the largest bitstream provider in these areas. ECOI considers that obligations do not prevent investments in high-speed networks in the relevant areas, but where infrastructure competition develops over time, it would be possible to withdraw such access obligations.

(151) With Access Option 4, retailers are enabled to access fully ready Internet access for resale, the same as is available to Siminn. Mila took over the technical operations needed to provide this service from Siminn some time ago, so there is considerable experience of this within the company, as Mila operates this for Siminn. ECOI therefore assesses that the obligation is not burdensome for Mila and thus not in excess of proportionality. The potential gain for consumers from more varied retail competition is greater than the cost or inconvenience for Mila for this access option. As such an access option will be sold to those access seekers that so request at fair and reasonable rates, it will not result in a burdensome cost for Mila.

(152) ECOI also considers it necessary to make arrangements such that Mila will not retract bitstream access that the company has provided on networks where the company has acquired local loop access to dark fibre, while Siminn does not provide service over bitstream systems from such parties, so that customers of all service providers will continue to have a choice of underlying electronic communications network as the Mila fibre rollout progresses. ECOI imposed this obligation on Mila with the ECOI Decision no. 5/2021 and it is therefore in force vis-à-vis Mila and thus not a new obligation.

(153) Those obligations that now rest on Mila for access to the company's bitstream systems shall not cease to apply even if Mila changes the structure of its systems, except when agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration has taken place. Should such an agreement not be reached then Mila shall inform parties to the market of all changes to the arrangements of bitstream access that are likely to alter companies' competitiveness on the market with 2 years' notice. Deviation may be made from the above period of notice on receipt of advance endorsement by ECOI.

4.1.2 Obligation for non-discrimination

(154) ECOI believes that the obligation for non-discrimination is best suited to tackle problems that arise in connection with discrimination with respect to price and access conditions. ECOI therefore maintains the obligation on Mila to respect non-discrimination against all electronic communications companies that purchase bitstream access on a fixed line network, regardless of whether it is copper or fibre in those areas where the company is deemed have significant market power. All purchasers of such service shall, having taken circumstances into account, use the same conditions (including prices) that apply for related parties or for those cooperating with Mila.

(155) It is taken into consideration that Mila provides first and foremost bitstream access through copper and fibre local loops of its own company, but however provide such service

through the fibre networks of other network operators such as e.g. Tengir in North Iceland and smaller local networks. ECOI proposes therefore the obligation on the Mila bitstream unit that it is not authorised to discriminate in any manner by underlying network with respect to price or other possible charges, processing of work requests with respect to connection or configuration of equipment. This shall mean that the company's bitstream unit shall process requests about connections and configuration of connections through fibre networks of unrelated parties in the same manner as with its own local loops. Costs, delivery times, complexity and inconvenience vis-à-vis service providers and/or end users shall be the same. Mila is unauthorised to assume that Mila local loops are default choice for an underlying local loop when a request for connection comes from a sales representative of another network operator or service provider or if an end user requests that a local loop from an unrelated party be the underlying network.

(156) ECOI also maintains the Equivalence of Input (EoI) obligation on Mila. ECOI considers that this obligation is more useful for ensuring complete non-discrimination than what is called the Equivalence of Output (EoO) obligation, and this obligation has furthermore been in force vis-à-vis Mila since 2014 and therefore it should therefore not be unnecessarily burdensome to continue to work according to that obligation.

(157) ECOI furthermore maintains the obligation on Mila that all parties be informed about distribution, enlargement or other developments of networks and Mila central access services (and related service and other innovations) with the same notice. This notice shall be no shorter than 3 months. Information shall among other things contain planned prices, conditions, technical specifications, scheduled distribution plans, updated position on distribution and planned connection points. Such information is particularly important with respect to migration technical development and upgrading of bitstream systems and with respect to distribution of bitstream through fibre local loops.

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

(159) ECOI makes the requirement on Mila that it make a service level agreement with all purchasers of bitstream access which among other things shall prescribe the quality of service and issues that relate to non-discrimination. Agreements shall cover the various service issues that relate to central access, including orders, delivery, service access, transfer of service and repairs.

(160) In addition to the obligation to make service level agreements ECOI maintains the obligation on Mila to issue a specific declaration on service level guarantees, SLGs. Such service level guarantees shall cover all necessary service issues that relate to bitstream access including orders, delivery, service access, transfer of service and repairs.

(161) Part of the non-discrimination obligation imposed on Mila requires that Mila collect and regularly publish specific Key Performance Indicators, KPIs. ECOI monitors that Mila collect and regularly publish the above specified key performance indicators.

(162) Collection of data can be onerous for Mila, ECOI however considers that measuring these criteria is important for the market and furthermore necessary for Mila in its own operations. Publishing the above specified information is important for a competition on the relevant market and supports compliance with the demand for non-discrimination and that all parties can rely on this compliance. There is also the fact that this obligation already rests on Mila and has done so for many years. Now it applies on the other hand only in those areas where Mila is deemed to have significant market power.

(163) ECOI considers it necessary to prescribe equality between access options 1-4 when it comes to bundling service which constitutes each access option. As Access Option 4 is a bundle of wholesale service that includes Access Option 3 with Internet access, including the international gateway, ECOI considers it necessary to prescribe that pricing and conditions for procurements for Access Option 4 which together form the bundle, are also available as individual products, on those terms that enable access seekers to replicate the Mila bundle by purchasing discrete and delimited wholesale services and use with their own electronic communication service in a competitive manner.

4.1.3 Obligation for fair and reasonable pricing

(164) In most of the areas where Mila has been designated as a company with significant market power on market 3b, the Mila market share is large and there has been little or no decline in this share in recent times. In most instances Mila is furthermore the only bitstream provider in the areas in question. An incentive exists for a company in such a strong position to maintain excessively high prices. For this reason, ECOI has decided to impose an obligation on Mila for and reasonable pricing for those products belonging to market 3b.

(165) In the opinion of ECOI, the obligation for fair and reasonable pricing does not mean that ECOI needs to endorse the Mila tariff before it comes into force.

(166) Mila will therefore be authorised to decide the wholesale prices that the company collects on this market with the reservation that the pricing is fair and reasonable. Then ECOI will not intervene in Mila pricing except in the event of a reasoned complaint from a party to the market or at his own initiative if special circumstances are deemed to justify this. If ECOI comes to the conclusion that the pricing would not be considered fair and reasonable, ECOI will decide price for the service in question which will then apply with respect to the product in question.

(167) In the decision on whether Mila price is fair and reasonable, ECOI will take into account the considerations in the Electronic Communication Act and also the main principles of competition law. ECOI, among other things will take a number of elements into account when deciding whether price is considered fair and reasonable.

1. Whether price for the service has changed abnormally with respect to general price development and that non-discrimination is respected.

2. Whether the prices in accordance with benchmarking with comparative market areas in this country where there is greater competitive pressure in place. Average monthly prices for access to local loops will be taken into consideration, in those areas that are considered comparable and the Authority is also authorised to take into account start-up charges if they vary.
3. Whether prices in accordance with cost of providing the service on the relevant geographic market in an efficient manner, with the addition of reasonable profitability from investment having taken risk into account.

(168) On the other hand, ECOI will assess each complaint individually and the circumstances that prevail on the relevant market. ECOI considers it normal to first take into account points 1 and 2 before it is decided to embark on detailed and time-consuming analysis of costs of the relevant service. ECOI can decide that a maximum price shall be in accordance with benchmarking or limited to an increase in index while such cost analysis is conducted.

(169) As stated here above, it is specified in electronic communications legislation that the burden of proof for charges being based on real costs, rests on the company in question. ECOI can furthermore require an electronic communications company to prepare a cost model for calculation of prices. ECOI considers it normal that if Mila asserts that price which is based on benchmarking or is decided on the basis of arising index, is lower than the cost to the company on the relevant market, then it is in Mila's hands to prove that this is the case, based on data from the company's bookkeeping. Mila shall then submit cost analysis in accordance with ECOI requirements. ECOI can require that information from Mila bookkeeping is broken down by municipality, which means that the company is required to use such bookkeeping.

(170) In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Mila shall notify ECOI about all tariff changes covered by the obligation.

4.2 Imposition of obligations on Ljósleiðarinn on market 3b

(171) Ljósleiðarinn has significant market power in one municipality on market 3b and in that municipality, obligations have been in force on Mila since the prior analysis. The obligations that have been in force on Mila in the municipality and this shall be withdrawn 15 days after the date of this decision.

(172) In the light of potential and real competition problems that can arise and of the strong Ljósleiðarinn position on the relevant market in the municipality where the company enjoys significant market power on the relevant market, ECOI considers it necessary to impose on the company an access obligation, non-discrimination obligation and an obligation for fair and reasonable tariff.

4.2 1 Obligation to provide access

(173) The Ljósleiðarinn strong position on the wholesale market for central access to fixed line networks in Sveitarfélagið Ölfus results in certain entry barriers to the relevant market in this area. In the opinion of ECOI, access barriers will continue to characterise market conditions on the market for bitstream access in wholesale and on downstream markets in those areas where the bitstream operator has been deemed to have a dominant market position, unless an access obligation is imposed on the bitstream system such a party with respect to access to such a system. ECOI considers that consumer interests will be improved

with increased access, as that would give more companies the option of providing Internet service and other related retail service.

(174) ECOI plans to impose an obligation on Ljósleiðarinn to accede to all normal and reasonable requests from other electronic communications companies for central access. The access in question is access to bitstream through fibre local loops for the purpose of enabling other electronic communications companies to provide their users with access to various kinds of broadband service, including Internet service, VoIP telephony service and IPTV television distribution.

(175) In addition to traditional Internet service one can in this respect mention IPTV service which among other things uses IGMPv2 communication protocols for transmission of TV programmes and RTSP for viewing video on demand (VoD). Ljósleiðarinn shall also accede to requests for access to bitstream service that fulfils normal and reasonable requirements for another kind of communication protocol, quality control and performance guarantee.

(176) Ljósleiðarinn shall in addition to this provide the same bitstream service that it has provided up to this point in time for transfer to a central connection point of another electronic communications company to the Ljósleiðarinn network. This access option can be assessed as very analogous or of the same type as Access Option 3 as it is defined.

(177) With elaboration of this access option, ECOI considers it normal that account is taken of efficiency considerations and that Ljósleiðarinn will not be required to change its business model and its products offer.

(178) The obligation is imposed on Ljósleiðarinn to expedite processing of applications for bitstream access and related facilities to the extent possible, where they are sent electronically. Ljósleiðarinn is unauthorised to give a company or companies, priority in handling at the cost of other electronic communications companies. Denial of access shall be sent electronically and shall contain grounds for the decision.

(179) Those obligations that rest on Ljósleiðarinn for access to the company's systems of systems system in the relevant area shall not cease to apply even if Ljósleiðarinn changes the structure of its systems, except when agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration has taken place. Should such an agreement not be reached then Ljósleiðarinn shall inform parties to the market of all changes to the arrangements of bitstream access that are likely to alter companies' competitiveness on the market with 2 years' notice. Deviation may be made from the above period of notice on receipt of advance endorsement by ECOI.

4.2.2 Obligation for non-discrimination

(180) ECOI believes that the obligation for non-discrimination is best suited to tackle problems that arise in connection with discrimination with respect to price and access conditions. ECOI imposes the obligation on Ljósleiðarinn to respect non-discrimination against all electronic communications companies that purchase bitstream access on a fixed line network, regardless of whether it is copper or fibre in those areas where the company is

deemed to have significant market power. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms including with respect to prices.

(181) The information gained by Ljósleiðarinn from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply information from related or unrelated parties, see among other things article 42 of the Electronic Communications Act.

(182) ECOI makes the requirements that quality of access provided to unrelated parties be no less than that of services provided by Ljósleiðarinn to priority purchasers or parties that have strong commercial ties with the company. ECOI therefore imposes the Equivalence of Input (EoI) obligation on Ljósleiðarinn. ECOI considers that this obligation is more effective for ensuring complete non-discrimination than what is called an Equivalence of Output obligation. Ljósleiðarinn has never practised any kind of internal procedures for retail arm, but has only dealt with wholesale, so it should not be unnecessarily burdensome to operate in accordance with the non-discrimination obligation.

(183) Equivalence of Input means that Ljósleiðarinn is obliged to use the same price, the same service procedures/service systems, the same time limits and to publish the same information about the service (among other things development and distribution information) to all customers. In this way all customers receive access to the same information, the same delivery and ordering service and receive the same treatment within the same time limits. The same applies to notification of faults and solutions and access for the staff of customers to Ljósleiðarinn's information systems which are used for service to end users.

(184) Information on bitstream access and access related service shall be accessible for all electronic communications companies in the same manner. ECOI considers it particularly important that Ljósleiðarinn does not have the opportunity to discriminate in an irregular manner between customers with respect to innovations on the market. As related retail markets are in continuous development, all parties need to be certain that the appropriate wholesale products are available with adequate notice in order that they can offer new, improved and less expensive retail service (for example more capacity in Internet access) at the same time as priority purchasers or parties that have strong commercial connections with Ljósleiðarinn. ECOI imposes the obligation on Ljósleiðarinn that all parties be informed about distribution, enlargement or other developments of networks and Ljósleiðarinn central access services (and related service and other innovations) with the same notice. This notice shall under no circumstances be shorter than 3 months.

(185) Information shall among other things contain planned terms, technical specifications, scheduled distribution plans, updated position on distribution and planned connection points. Such information is particularly important with respect to migration technical development and upgrading of bitstream systems and with respect to distribution of bitstream through fibre local loops. Ljósleiðarinn shall give all parties the opportunity to influence development of new wholesale products and planned interfaces. Ljósleiðarinn may not refuse to develop new service at the request of a party simply because a priority purchaser or a party with strong

commercial connections with the company has not requested such service. Such a request by a party shall however be reasonable and normal.

(186) Ljósleiðarinn shall take care that applications from all electronic communications companies for bitstream access or related service be processed in as timely a manner. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Ljósleiðarinn is not authorised to make unreasonable demands on applicants as a condition for processing an application.

4.2.3 Obligation for fair and reasonable pricing

(187) In the municipality where Ljósleiðarinn has been designated as a company with significant market power, the market share is considerable and has grown steadily. The conditions there are also such that parallel coverage of fixed line networks and of two fibre networks is quite limited, though it is greater than in most of the municipalities where Mila has significant market power. Ljósleiðarinn fibre deployment is significantly greater than that of Mila in the municipality and the most significant factor is that Ljósleiðarinn deployment reaches the rural area where it is very unlikely that parallel networks will be developed. For this reason ECOI has decided to impose an obligation on Ljósleiðarinn for fair and reasonable pricing on those products that belong to market 3b in accordance with obligations on Ljósleiðarinn to provide access.

(188) Ljósleiðarinn will be authorised to decide the wholesale companies that the company collects on this market with the reservation that the pricing is fair and reasonable. Then ECOI will not intervene in Ljósleiðarinn pricing except in the event of a reasoned complaint from a party to the market or at its own initiative if special circumstances are deemed to justify this. If ECOI comes to the conclusion that the pricing would not be considered fair and reasonable, ECOI will decide price for the service in question which will then apply with respect to the product in question.

(189) In the decision on whether Ljósleiðarinn price is fair and reasonable, ECOI will take into account the specified considerations in electronic communications legislation and also the main principles of competition law. ECOI, among other things will take a number of elements into account when deciding whether price is considered fair and reasonable.

1. Whether price for the service has changed abnormally with respect to general price development and that non-discrimination is respected.
2. Whether the prices in accordance with benchmarking with comparative market areas in this country where there is greater competitive pressure in place. Average monthly prices for access to local loops will be taken into consideration, in those areas that are considered comparable and the Authority is also authorised to take into account start-up charges if they vary.
3. Whether prices in accordance with cost of providing the service on the relevant geographic market in an efficient manner, with the addition of reasonable profitability from investment having taken risk into account.

(190) On the other hand, ECOI will assess each complaint individually and the circumstances that prevail on the relevant market. ECOI considers it normal to first take into account points 1 and 2 before it is decided to embark on detailed and time-consuming analysis of costs of the relevant service. ECOI can decide that a maximum price shall be in accordance with benchmarking or limited to an increase in index while such cost analysis is conducted.

(191) The burden of proof for charges being based on real costs rests on the company in question. ECOI can furthermore require an electronic communications company to prepare a cost model for calculation of prices. ECOI considers it normal that if Ljósleiðarinn asserts that price which is based on benchmarking or is decided on the basis of arising index, is lower than the cost to the company on the relevant market, then it is in Ljósleiðarin's hands to prove that this is the case, based on data from the company's bookkeeping. Ljósleiðarinn shall then submit cost analysis in accordance with ECOI requirements. ECOI can require that information from Ljósleiðarinn bookkeeping is broken down for Sveitarfélagið Ölfus, which means that the company is required to use such bookkeeping for that municipality.

(192) In order that ECOI can monitor compliance of the obligation for fair and reasonable tariff, Ljósleiðarinn shall notify ECOI about all tariff changes covered by the obligation.

4.3 Imposition of obligations on Austurljós on market 3b

(193) Austurljós has significant market power in one municipality, i.e. in Fljótsdalshreppur, and in that municipality obligations have been in force on Mila since the prior ECOI analysis. The obligations that have been in force on Mila are now withdrawn, which will take place 15 days after the date of this decision. Obligations will instead be imposed on Austurljós, as this company does not fulfil the conditions to be deemed a wholesale-only company in the understanding of article 59, which means that ECOI has more varied measures at its disposal to tackle defined competition problems, having taken into account the main principles that apply to the imposition of obligations, including proportionality.

(194) In the light of potential and real competition problems that can arise and of the strong Austurljós position on the relevant market in the municipality where the company enjoys significant market power, ECOI considers it necessary to impose on the company an access obligation and a non-discrimination obligation. ECOI will on the other hand not impose an obligation on the company for fair and reasonable pricing, among other things in the light of the fact that this is a very small company and that the area in question is very sparsely populated and rural. In addition to this, Austurljós is dependent on the municipality for access to the municipality's fibre network which was built as a community project with state support.

4.3 1 Obligation to provide access

(195) The Austurljós strong position on the wholesale market for central access to fixed line networks in Fljótsdalshreppur, though it is a sparsely populated and rural area, results in certain entry barriers to the relevant market in this area. Development of a new bitstream system in the relevant area constitutes significant investment costs, as economy of scale is not in place, and it is the ECOI opinion that it will not be easy to embark on installation of such systems in competition with the Austurljós bitstream systems. In the opinion of ECOI, access barriers will continue to characterise market conditions on the market for bitstream access in wholesale and on downstream markets in this area, where the bitstream provider has been deemed to have a dominant market position, unless an access obligation is imposed on

bitstream systems of such a party, with respect to access at that location. ECOI considers that consumer interests will be improved with increased access, as that would give more companies the option of providing Internet service and other related retail service. It should be noted that Austurljós is a vertically integrated company that also has a growing market share on the relevant retail market.

(196) ECOI has assessed whether the access requirement is technologically and financially realistic and whether it would be realistic for a competitor to set up his own infrastructure in competition, considering market developments and the nature of the access in question. In the light of experience, ECOI considers it quite feasible for Austurljós to grant the access that is proposed and furthermore it considers it justifiable with respect to the initial investment by Míla. Austurljós is already providing bitstream access in the municipality. ECOI considers obligations to be in the interests of competition in the long-term and that they will encourage an increase in service offers.

(197) ECOI imposes an obligation on Austurljós to accede to all normal and reasonable requests from other electronic communications companies for central access, see definition of service market 3b. The access in question here is bitstream access over fibre local loops owned by Fljótsdalshreppur, for the purpose of enabling other electronic communications companies to provide their users with access to various kinds of broadband service, particularly Internet service.

(198) Access shall be on offer for bitstream access that uses significant bandwidth but without any quality definition (best effort) for general Internet service. If Austurljós were to commence offering bitstream with another kind of quality definition, such as for carrying VOIP voice telephony service or IPTV television distribution, then the obligations that rest on Austurljós for bitstream service will also apply to such an additional offer in Fljótsdalshreppur.

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

(200) Those obligations that now rest on Austurljós for access to the company's bitstream systems shall not cease to apply even though the company changes the structure of its systems except when agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration has taken place. Should such an agreement not be reached then Austurljós shall inform parties to the market of all changes to the arrangements of bitstream access that are likely to alter companies' competitiveness on the market with 2 years' notice. Deviation may be made from the above period of notice on receipt of advance endorsement by ECOI. If Austurljós request for such an exemption is considered normal and reasonable, ECOI will open consultation with stakeholders. If no objections are raised and stakeholders

have access to substitute products, and do not suffer any unnecessary damage when migrating between systems, ECOI will endorse such an exemption.

(201) Should Austurljós make changes to its systems it is important that:

- System downtime should be at a minimum for those wholesale customers operating on the relevant market segment.
- Costs resulting from the migration should not be so great as to act as an entry barrier to what results from the migration.
- An integrated process for migrating all parties should be in place with care taken to ensure non-discrimination between all parties on the market.
- The time taken for migration should be at a minimum given the type and scope of the project.

4.3.2 Obligation for non-discrimination

(202) Even though companies have been ensured bitstream access at the same terms, companies with significant market power can try to discriminate on other grounds and in this way increase their costs or part of them in order to cause them problems and even push some of them out of the market, and thus for example give preferential treatment to own retail operations. Such practices could for example be in the form of varying quality of service, differing service offers, varying processing of applications, inadequate information (among other things on new service and/or planned distribution networks), unreasonable conditions for agreements and demands that other unrelated service is purchased at the same time.

(203) ECOI believes that the obligation for non-discrimination is admirably suited to tackle the problems that arise in connection with discrimination with respect to price and access conditions. As an example of varying quality one could mention discrimination between electronic communications companies with respect to connection time of local loops, for example between its own company and unrelated parties. Discrimination can also manifest itself in varying prices and/or conditions for access to information systems and in parties being provided access to systems of varying ages and capacity.

(204) The information gained by Austurljós from other companies when making agreements for access, or completion of agreements, shall solely be used for the purpose provided for and shall at all stages be treated as confidential. It is unauthorised to supply information from related or unrelated parties, see among other things article 42 of the Electronic Communications Act.

(205) ECOI emphasises that the obligation on Austurljós to respect non-discrimination against all electronic communications companies and its own retail operations that purchases fixed line bitstream access in the area in question. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms.

(206) ECOI makes the requirements that quality of access provided to unrelated parties be no less than that which applies to services provided by Austurljós to itself and to parties with whom the company has strong commercial connections.

(207) Information on bitstream access and access related service shall be accessible for all electronic communications companies in the same manner. ECOI considers it particularly important that Austurljós does not have the opportunity to discriminate in an irregular manner between customers of other electronic communications companies and its own retail operations with respect to innovations on the market. As related retail markets are in continuous development, all parties need to be certain that the appropriate wholesale products are available with adequate notice in order that they can offer new, improved and less expensive retail service (for example more capacity in Internet access) at the same time as Austurljós's own retail operations or the parties that have strong commercial connections with Austurljós. ECOI therefore imposes the obligation on Austurljós that all parties be informed about deployment, enlargement or other development of networks and central access to Austurljós (and related service and other significant innovations) with the same notice. This notice shall under no circumstances be shorter than 3 months.

(208) Information shall among other things contain planned terms, technical specifications, scheduled distribution plans, updated position on distribution and planned connection points. Such information is particularly important with respect to technical development or updating of bitstream systems and also with respect to distribution of bitstream through fibre local loops.

(209) Austurljós shall take care that applications from all electronic communications companies, including its own bitstream operations, for bitstream access or related service be processed in as timely a manner. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Austurljós is not authorised to make unreasonable demands on applicants as a condition for processing an application.

The Decision

1. Market 3a, a wholesale market for local access with the fixed connection comprises access to physical connections in access networks in copper and fibre networks, along with corresponding virtual network solutions that fulfil the conditions described in the guidelines to the ESA recommendation on the relevant markets from 11 May 2016.
2. Geographic markets on market 3a are as follows:
 - Area A: municipalities where competition probably prevails - the following 8 municipalities fulfil the conditions required to belong to this area:
 - Akraneskaupstaður
 - Borgarbyggð
 - Garðabær
 - Hafnarfjarðarkaupstaður
 - Hveragerðisbær
 - Kópavogsbær
 - Mosfellsbær
 - The City of Reykjavík
 - Area B: municipalities where Mila has a high market share - the following 15 municipalities fulfil the conditions required to belong to this area:
 - Fjarðabyggð
 - Grundarfjarðarbær
 - Húnabyggð
 - Húnaþing vestra
 - Kaldrananeshreppur
 - Langanesbyggð
 - Skagabyggð
 - Skagafjörður
 - Snæfellsbær
 - Strandabyggð
 - Sveitarfélagið Hornafjörður
 - Sveitarfélagið Skagaströnd
 - Sveitarfélagið Stykkishólmur
 - Tálknafjarðarhreppur
 - Vesturbyggð
 - Area C: municipalities where Tengir has a high market share - the following 6 municipalities fulfil the conditions required to belong to this area:
 - Eyjafjarðarsveit
 - Dalvíkurbyggð
 - Grýtubakkahreppur

- Hörgársveit
 - Svalbarðsstrandarhreppur
 - Þingeyjarsveit
- Municipalities not categorised as Area A, B or C - the following 35 municipalities do not fulfil conditions for being categorised in the above specified areas, or conditions are such that they require more detailed examination and are therefore each defined as a separate geographic market.
 - Akureyrarbær
 - Árneshreppur
 - Ásahreppur
 - Bláskógabyggð
 - Bolungarvíkurkaupstaður
 - Dalabyggð
 - Eyja- og Miklaholtshreppur
 - Fjallabyggð
 - Fljótsdalshreppur
 - Flóahreppur
 - Grindavíkurbær
 - Grímsnes- og Grafningshreppur
 - Hrunamannahreppur
 - Hvalfjarðarsveit
 - Ísafjarðarbær
 - Kjósarhreppur
 - Múlaþing
 - Mýrdalshreppur
 - Norðurþing
 - Rangárþing eystra
 - Rangárþing ytra
 - Reykhólahreppur
 - Reykjanesbær.
 - Seltjarnarnesbær
 - Skaftárhreppur
 - Skeiða- og Gnúpverjahreppur
 - Skorradalshreppur
 - Suðurnesjabær
 - Súðavíkurhreppur
 - Sveitarfélagið Árborg
 - Sveitarfélagið Vogar
 - Sveitarfélagið Ölfus
 - Tjörneshreppur
 - Vestmannaeyjabær
 - Vopnafjarðarhreppur

3. Market 3b comprises virtual solutions offered centrally in fibre networks, in copper networks to which VDSL equipment has been connected and in mobile network solutions on 4G/4.5G on 5G (and future mobile network generations) or electricity mains connected network routers at a fixed location of use, do not fulfil the conditions to be considered to belong to market 3a and they are used to provide central mass-produced bitstream service. Geographic markets on market 3b are as follows:

• **Area A: municipalities where competition probably prevails - the following 10 municipalities fulfil the conditions required to belong to this area:**

- Akraneskaupstaður
- Borgarbyggð
- Garðabær
- Hafnarfjarðarkaupstaður
- Hveragerðisbær
- Ísafjarðarbær
- Kópavogsbær
- Mosfellsbær
- Reykjanesbær.
- City of Reykjavík

• **Area B: municipalities where Mila has a high market share - the following 13 municipalities fulfil the conditions required to belong to this area:**

- Fjarðabyggð
- Húnabyggð
- Húnaþing vestra
- Kaldrananeshreppur
- Langesbyggð
- Skagabyggð
- Skagafjörður
- Snæfellsbær
- Strandabyggð
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd
- Sveitarfélagið Stykkishólmur
- Tálknafjarðarhreppur

• **Municipalities not categorised as Area A, B or C - the following 41 municipalities do not fulfil conditions for being categorised in the above specified areas, or conditions are such that ECOI deemed there to be reason to examine them individually and are therefore each defined as an individual geographic market.**

- Akureyrarbær
- Árneshreppur
- Ásahreppur

- Bláskógabyggð
- Bolungarvíkurkaupstaður
- Dalabyggð
- Dalvíkurbyggð
- Eyja- og Miklaholtshreppur
- Eyjafjarðarsveit
- Fjallabyggð
- Fljótsdalshreppur
- Flóahreppur
- Grindavíkurbær
- Grímsnes- og Grafningshreppur
- Grundarfjarðarbær
- Grýtubakkahreppur
- Hrunamannahreppur
- Hvalfjarðarsveit
- Hörgársveit
- Kjósarhreppur
- Múlaþing
- Mýrdalshreppur
- Norðurþing
- Rangárþing eystra
- Rangárþing ytra
- Reykhólahreppur
- Seltjarnarnesbær
- Skaftárhreppur
- Skeiða- og Gnúpverjahreppur
- Skorradalshreppur
- Suðurnesjabær
- Súðavíkurhreppur
- Svalbarðsstrandarhreppur
- Sveitarfélagið Árborg
- Sveitarfélagið Vogar
- Sveitarfélagið Ölfus
- Tjörneshreppur
- Vestmannaeyjabær
- Vesturbyggð
- Vopnafjarðarhreppur
- Þingeyjarsveit

4. On market 3a, the Electronic Communications Office of Iceland designates Mila, Tengir and Ljósleiðarinn as having significant market power on the basis of article 45 of Act no. 70/2022, see article 17 of the regulation on market analysis in the field of electronic communications no. 556/2023 in further specified municipalities.

5. Mila has significant market power in the following 26 municipalities on market 3a:

- Bláskógabyggð
- Dalabyggð
- Fjallabyggð
- Fjarðabyggð
- Grindavíkurbær
- Grímsnes- og Grafningshreppur
- Grundarfjarðarbær
- Húnabyggð
- Húnaþing vestra
- Kaldrananeshreppur
- Langanesbyggð
- Múlaþing
- Norðurþing
- Rangárþing eystra
- Skaftárhreppur
- Skagabyggð
- Skagafjörður
- Snæfellsbær
- Strandabyggð
- Suðurnesjabær
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd
- Sveitarfélagið Stykkishólmur
- Sveitarfélagið Vogar
- Tálknafjarðarhreppur
- Vesturbyggð

6. On Market 3a the Electronic Communications Office of Iceland imposes the following obligations on Mila hf. in the above specified 26 municipalities, with reference to articles 46-52 of the Act on Electronic Communications no. 70/2022 having taken into account reference to further description in this decision and in Appendix A to this decision:

- a. **Obligation to provide access.** Mila shall accede to reasonable for local access at wholesale level to its copper and fibre networks, whether this is fully unbundled or shared access. Access shall furthermore be provided to related facilities and service. The obligations imposed on Mila to provide shared access to PON fibre local loops, should a, reasonable access request be received to this effect. Where there is no possibility to provide access to a physical local loop, Mila cannot however choose to provide virtual network access or adequate bitstream access according to Access Option 1. Mila shall however continue to provide access to the company's fibre local loops that have been deployed with state aid. If an electronic communications company requests to install a new cable in a Mila duct or conduit on the market now under discussion which was not fully used, Mila should accede to this request, given that it was reasonable. Should a request to this effect be made by an interested network operator, that was deemed normal and fair, then Mila should prepare a

database, which contained precise information on the location and condition of the company's ducts and conduits. The above specified database shall be available no later than 3 months after a fair and reasonable request has been received from a network operator regarding such access in a specific area or areas. Míla shall provide a list of planned civil works with 3 months' notice in those areas where the company is deemed to have significant market power.

- b. **Obligation for non-discrimination.** Mila shall respect non-discrimination with respect to all electronic communications companies that purchase local access on a fixed line, regardless of whether it is a copper or fibre network. The obligations shall furthermore apply to access to ducts and conduits, facility lease and advertisements on fibre deployment. Equivalence of Input EoI, shall be in place, and also equal access to information, and equal opportunities to influence development of wholesale products. Mila is obliged to make service level agreements, SLA, with all purchasers of access and to publish information on quality guarantees, SLG. Mila shall collect and publish on a monthly basis, specific key performance indicators, KPI.
- c. **Price control.** The obligation for fair and reasonable pricing is imposed on Mila for Mila's local loop lease on the company's copper and fibre networks in those areas where the company has significant market power. An obligation for cost-oriented tariff for lease of facilities and access to related facilities is continued in all those municipalities where Mila is considered to have significant market power. An obligation for price control is imposed on Mila with respect to access to Mila ducts and conduits in 23 of those 26 municipalities where the company is considered to have significant market power, in all except Fjallabyggð, Norðurþing and Rangárþing eystra.

7. In the following 8 municipalities, Tengir has significant market power on market 3a:

- Akureyrarbær
- Dalvíkurbyggð
- Eyjafjarðarsveit
- Grýtubakkahreppur
- Hörgársveit
- Svalbarðsstrandarhreppur
- Vopnafjarðarhreppur
- Þingeyjarsveit

8. On Market 3a the ECOI imposes the following obligations on Tengir hf. in the above specified 8 municipalities. with reference to articles 46-52 of the Electronic Communications Act no. 70/2022, having taken into account reference to further description in this decision and in Appendix A to this decision:

- a. **Obligation to provide access.** Tengir shall provide local access to its fibre network on the relevant market in those areas where Tengir is deemed to have significant market power. The company shall not retract the access that has already been provided, unless a recent request is received which the Electronic Communications Office of Iceland can accept, with a special administrative decision should the

arguments support this. Should reasonable requests for other types of local access to the Tengir fibre network be made, Tengir shall accede to such requests if the access is technically and economically feasible. Should Tengir refuse such an access request, this shall be notified to ECOI with appropriate reasons and ECOI will decide on whether the access in question shall be granted. Tengir shall offer access to facilities related to service providers over Tengir fibre local loops. If an electronic communications company requests to install a new cable in a Tengir duct or conduit on the market now under discussion which was not fully used, Tengir should accede to this request, given that it was reasonable. Should a request to this effect be made by an interested network operator, that was deemed normal and fair, then Tengir shall prepare a database, which contains precise information on the location and condition of the company's ducts and conduits. The above specified database shall be available no later than 3 months after a reasonable request has been received from a network operator regarding such access in a specific area or areas. Tengir shall provide a list of planned civil works with 3 months' notice in those areas where the company is deemed to have significant market power. Obligations for notification of civil works on Tengir will not come into force until 6 months after the coming into force of the decision subsequent to this market analysis.

- b. **Obligation for non-discrimination.** Tengir shall respect non-discrimination vis-à-vis all electronic communications companies that purchase central access provided at a fixed location on Tengir fibre networks. The obligations shall furthermore apply to access to ducts and conduits, facility lease and advertisements on fibre deployment. Equivalence of Input EoI, shall be in place, and also equal access to information, and equal opportunities to influence development of wholesale products.
 - c. **An obligation for fair and reasonable pricing is imposed on Tengir in those eight municipalities where the company enjoys significant market power.**
9. **On Market 3a the ECOI imposes the following obligations on Ljósleiðarinn ehf. in Sveitarfélagið Ölfus. with reference to articles 46-52 of the Electronic Communication Act no. 70/2022, having taken into account reference to further description in this decision and in Appendix A to this decision:**
- a. **Obligation to provide access.** Ljósleiðarinn shall accede to normal and fair requests at wholesale level for access to its fibre networks in the form of bitstream access. Access shall furthermore be provided to related facilities and service. Ljósleiðarinn shall provide local access to its fibre network on the relevant market in the area where Ljósleiðarinn is deemed to have significant market power, in the case of a state funded fibre network, unless the access seeker rather requests bitstream access. Ljósleiðarinn should also provide access to support systems, operational systems or similar software necessary for the local loops to be utilised for the purpose for which they were leased. Ljósleiðarinn shall provide a list of planned civil works with 3 months' notice. Finally, Ljósleiðarinn shall not withdraw access to facilities that has already been granted. Obligations for notification of civil works on Ljósleiðarinn will not come into force until 6 months after the coming into force of the decision subsequent to this market analysis.

- b. **Obligation for non-discrimination.** Ljósleiðarinn shall respect non-discrimination with respect to all electronic communications companies that purchase local access on a fixed line, in the area where the company enjoys significant market power. All purchasers of such service shall, having taken circumstances into account, enjoy the same terms (including copper local that relating to prices). This also applies to access to Ljósleiðarinn ducts and conduits, hosting and other critical facilities connected to market 3a. ECOI hereby imposes on Ljósleiðarinn what is called an Equivalence of Input (EoI) obligation. All parties shall also be informed about deployment, enlargement or other development of the company's local loops in the area in question with the same notice.
- c. **An obligation for fair and reasonable pricing is imposed on Ljósleiðarinn in the municipality where the company enjoys significant market power.**

10. In the following 31 municipalities, the Electronic Communications Office of Iceland considers that Mila has significant market power on market 3b.

- Akureyrarbær
- Dalabyggð
- Dalvíkurbyggð
- Eyjafjarðarsveit
- Eyja- og Miklaholtshreppur
- Fjallabyggð
- Fjarðabyggð
- Grindavíkurbær
- Grundarfjarðarbær
- Húnabyggð
- Húnaþing vestra
- Kaldrananeshreppur
- Langanesbyggð
- Múlaþing
- Norðurþing
- Reykhólahreppur
- Skaftárhreppur
- Skagabyggð
- Skagafjörður
- Snæfellsbær
- Strandabyggð
- Suðurnesjabær
- Sveitarfélagið Hornafjörður
- Sveitarfélagið Skagaströnd
- Sveitarfélagið Stykkishólmur
- Sveitarfélagið Vogar
- Tálknafjarðarhreppur
- Vestmannaeyjabær
- Vesturbyggð

- Vopnafjarðarhreppur
- Þingeyjarsveit

11. On Market 3b the Electronic Communications Office of Iceland imposes the following obligations on Mila in the above specified 31 municipalities. with reference to articles 46-52 of the Electronic Communications Act no. 70/2022 having taken into account reference to further description in this decision and in Appendix A to this decision:

- a. Obligation to provide access.** Mila shall accede to all reasonable requests from other electronic communications companies for central access. Mila shall furthermore provide access to support systems and other information necessary for bitstream access being fully utilised and serving its intended purpose, and also hosting. This includes connections from Mila connection points. Mila also had to provide central access (bitstream) to copper and fibre local loops over those networks, along with access to other vital facilities. Mila was to add a new access option, Access Option 4, for providing bitstream. With Access Option 4, retailers are enabled to access fully ready Internet access for resale, the same as is available to Siminn. Mila shall not retract bitstream access that the company has provided on networks where the company has acquired local loop access to dark fibre, while Siminn does not provide service over bitstream systems from such parties, so that customers of all service providers will continue to have a choice of underlying electronic communications network as the Mila fibre rollout progresses.
- b. Obligation for non-discrimination.** Mila shall respect non-discrimination against all electronic communications companies that purchase bitstream access on a fixed line network, regardless of whether it is copper or fibre in those areas where the company has significant market power. All purchasers of such service shall, having taken circumstances into account, use the same conditions (including prices) that apply for related parties or for those cooperating with Mila. Mila shall not discriminate in any manner by underlying network with respect to price or other possible charges, processing of work requests with respect to connection or configuration of equipment. ECOI maintains the Equivalence of Input (EoI) obligation on Mila. Mila shall make service level agreements, SLAs, with all purchasers. Mila shall also issue a specific declaration on quality guarantees, service level guarantees - SLGs. Pricing and conditions for procurements for Access Option 4 that together form the bundle shall be such that they are also available as individual products at those terms that enable access seekers to replicate the Mila bundle by purchasing separate and limited wholesale service and using their own electronic communications service in a competitive manner.
- c. An obligation for fair and reasonable pricing is imposed on Mila in those areas where the company enjoys significant market power on market 3b.**

12. On Market 3b the Electronic Communications Office of Iceland imposes the following obligations on Mila in Sveitarfélagið Ölfus with reference to articles 46-52 of the Act on Electronic Communications no. 70/2022 having taken into account reference to further description in this decision and in Appendix A to this decision:

- a. **Obligation to provide access.** Ljósleiðarinn shall accede to all normal and reasonable requests from other electronic communications companies for central access. Ljósleiðarinn shall also accede to requests for access to bitstream service that fulfils normal and reasonable requirements for another kind of communication protocol, quality control and performance guarantee. Ljósleiðarinn shall provide the same bitstream service as the company has provided up to this point in time i.e. transfer to a central connection point of another electronic communications company on the Ljósleiðarinn network. Those obligations that rest on Ljósleiðarinn for access to the company's bitstream systems in the relevant area shall not cease to apply even if Ljósleiðarinn changes the structure of its systems, except when agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration has taken place.
 - b. **Obligation for non-discrimination.** Ljósleiðarinn shall respect non-discrimination with respect to all electronic communications companies that purchase bitstream access on a fixed line, in the area where the company enjoys significant market power. All purchases of such service should use the same conditions, having taken circumstances into consideration. The Electronic Communications Office of Iceland imposes on Ljósleiðarinn what is called the Equivalence of Input (EoI) obligation. Information on bitstream access and access related service shall be accessible for all electronic communications companies in the same manner.
 - c. **An obligation for fair and reasonable pricing is imposed on Ljósleiðarinn in the municipality where the company enjoys significant market power.**
- 13. On Market 3b the Electronic Communications Office of Iceland imposes the following obligations on Austurljós ehf. in the Fljótsdalshreppur. with reference to articles 46-52 of the Act on Electronic Communications no. 70/2022 having taken into account reference to further description in this decision and in Appendix A to this decision:**
- a. **Obligation to provide access.** Austurljós shall accede to all normal and reasonable requests from other electronic communications companies for central access, see definition of service market 3b. The access in question here is bitstream access over fibre local loops owned by Fljótsdalshreppur, for the purpose of enabling other electronic communications companies to provide their users with access to various kinds of broadband service, particularly Internet service. Applications sent electronically for bitstream shall be processed by Austurljós as quickly as possible. Austurljós is unauthorised to give its departments and related companies priority in handling at the cost of other electronic communications companies. Those obligations that now rest on Austurljós for access to the company's bitstream systems shall not cease to apply even though the company changes the structure of its systems except when agreement has been reached on the migration process and the party leasing the access is thus prepared to receive a new kind of access instead of the older one when the migration has taken place.
 - b. **Austurljós shall respect non-discrimination with respect to all electronic communications companies and to its own retail operations that purchase fixed line**

bitstream access in the area in question. All purchases of such service should use the same conditions, having taken circumstances into consideration. Information on bitstream access and access related service shall be accessible for all electronic communications companies in the same manner. Austurljós shall take care that applications from all electronic communications companies, including its own bitstream operations, for bitstream access or related service be processed in as timely a manner. Should there be a problem in processing an application, this shall immediately be notified to the applicant in writing or in an electronic manner and reasons shall be provided for the delay. Austurljós is not authorised to make unreasonable demands on applicants as a condition for processing an application.

14. The obligations imposed on the companies that have been designated as having significant market power, and that have not been subject to obligations previously, come into force 15 days after the date of this decision, with the exception that an obligation for notification of civil works on Ljósleiðarinn and Tengir comes into force 6 months after the publication of this decision.
15. In those municipalities where the Electronic Communications Office of Iceland assesses that effective competition prevails, or where parties other than Mila now have significant market power, obligations have applied to Mila up to this point in time. These obligations are now withdrawn in the relevant municipalities and The withdrawal shall come in to effect 15 days after the date of the final decision in this case.

Reykjavík, 14 May 2024

Hrafnkell V. Gíslason

Óskar Hafliði Ragnarsson

Attached:

Appendix A - Analysis of Markets 3a and 3b

Appendix B - Comments by stakeholders on the preliminary draft

Appendix C – Update of markets share data

Appendix D - ESA Opinion