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EFTA SURVEILLANCE
AUTHORITY

Norwegian Communications Authority (Nkom)
Postbox 93
4791 Lillesand
Norway

For the attention of:
Ms Elisabeth Aarsæther
Director General

Dear Ms Aarsæther,

Subject: Wholesale call termination on individual public telephone networks provided at a fixed location in Norway

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

I. PROCEDURE

On 14 February 2019, the EFTA Surveillance Authority (“the Authority”) received a notification of a draft national measure in the field of electronic communications, pursuant to Article 7 of the Framework Directive from the Norwegian national regulatory authority, *Nasjonal Kommunikasjonsmyndighet* (“Nkom”). It concerns the market for wholesale call termination on individual public telephone networks provided at a fixed location in Norway².

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 5 November to 28 November 2018³.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12) as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (“the Framework Directive”).

² Corresponding to market 1 of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, (“2016 Recommendation”).

³ Nkom received no comments from market players during the national public consultation phase.

On 27 February 2019, the Authority sent a request for information to Nkom (Doc. No. 1052323), to which a reply was received on 1 March 2019 (Doc. No. 1056718).

The period for consultation with the Authority and the national regulatory authorities (“NRAs”) in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 14 March 2019.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

Nkom’s third review of the wholesale market for voice call termination on the public telephone network at a fixed location in Norway was notified to and assessed by the Authority under Case 78290.

Nkom defined the relevant product market as comprising the transmission of voice calls from the point for exchanging interconnection to end users that are connected to a fixed electronic communications network⁴. Traffic based on broadband telephony that is adapted for any-to-any connectivity as well as interconnection-related services were included. Nkom considered that the relevant geographic market was the individual network’s respective coverage area in Norway. Nkom designated the following undertakings as having significant market power (“SMP”) on the relevant market: Altibox AS, Intelecom Group AS, Intelligent telecom services AS, NextGenTel AS, Orange Business AS, Phonero AS, TDC Get, Telenor ASA, TeliaSonera Norge AS and Verizon Norway AS. Nkom imposed the following set of obligations on the SMP operators: (i) access/interconnection; (ii) non-discrimination; (iii) transparency and (iv) price control. As regards the transparency obligation, only Telenor ASA was subject to the obligation of preparing a reference offer, while all other SMP operators were ordered to publish their prices (and any discounts with related criteria). As regards the price control obligation, Nkom proposed to set, as of 1 April 2016, a price cap of 0.6 øre, calculated on the basis of a pure BU-LRIC model in line with the Termination Rates Recommendation⁵.

In its “comment letter”⁶, the Authority considered that the proposed implementation date delayed unnecessarily the application of cost-efficient fixed termination rates to the potential detriment of competition and consumers in the EEA.

II.2. Market definition

This is Nkom’s fourth review of the wholesale market for voice call termination on the public telephone network at a fixed location.

Similarly to its previous analysis, Nkom considers that the relevant product market includes: (i) traffic based on PSTN/ISDN, as well as broadband telephony that is arranged for any-to-any connectivity; (ii) conveyance of calls from the point for exchanging interconnection to

⁴ For calls taking place within a single provider’s network, the terminating part of the call within an interconnection area was included in the relevant market.

⁵ EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States. As regards Telenor ASA, the proposed price control obligation included an obligation to continue to keep cost accounts for interconnection.

⁶ Document No: 783223.

end-users that are connected to a fixed electronic communications network; (iii) termination of calls to end-users with service providers who have indirect interconnection via the service provider that controls the termination rate; (iv) interconnection-related services that are closely connected to the markets.

Nkom considers the geographical market to be national in scope.

II.3. Finding of significant market power

Nkom finds that Altibox AS, Broadnet AS, eRate AS, ICE Norge AS, NextGenTel AS, Orange Business Norway AS, Puzzel AS (formerly Intelecom Group AS), Telenor ASA, Telia Norge AS and Verizon Norway AS have SMP in their respective markets for call termination on individual fixed networks.

The main criteria considered by Nkom when reaching this conclusion on SMP designation include: the market shares (each provider has a 100% market share on its respective network), barriers to entry and potential competition (including the technical inability to terminate a call to another fixed termination point at least within the two-to-three year time horizon of the market analysis) and an absence of, or low, countervailing buyer power.

II.4. Regulatory remedies

Nkom proposes to impose the following set of obligations on all SMP operators: (i) access and interconnection; (ii) non-discrimination; (iii) transparency obligation in the form of publication of prices and advance notice in case of change to existing interconnection services; and (iv) price control. In addition to the above, Telenor shall be obliged to publish a reference offer and continue cost accounting for co-location services.

As concerns the proposed price regulation, Nkom continues to apply a pure BU-LRIC model for calculating termination rates⁷. The maximum termination rate per minute currently in place amounts to 0.6 øre (approximately EUR 0.06). After updating the model, Nkom concludes that the following price caps (excl. VAT) should apply: 0.5 øre (approximately 0.05 € cent) as of 1 July 2019; 0.5 øre as of 1 January 2020 and 0.4 øre as of 1 January 2021⁸. The price caps do not apply to calls originated in countries outside the EEA.

III. NO COMMENTS

The Authority has examined the notified draft measure and has no comments.

⁷ Nkom also proposes an obligation on all operators to set reasonable prices for interconnection and an obligation on Telenor to apply cost-oriented prices for co-location.

⁸ In its reply to the Authority's RFI Nkom explains that it does not foresee a glide path in introduction of rates. The date of entry into force is set to give sufficient time to make the final decision and for the Ministry to handle any complaints, but also for the providers to have enough time to adapt the new price cap.

IV. FINAL REMARKS

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


Nkom may adopt the draft national measure and, when it does so, shall communicate it to the Authority.

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

Pursuant to Point 15 of the Procedural Recommendation⁹, the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days¹⁰, following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information, which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,


Gunnar Thor Petursson
Director
Internal Market Affairs Directorate


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

⁹ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5c1 of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at <http://www.eftasurv.int/media/internal-market/recommendation.pdf> ("the Procedural Recommendation").

¹⁰ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.