

Brussels, 15 March 2024
Case No: 91640
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Norwegian Communications Authority
Postboks 93
4791 Lillesand
Norway

**Subject: Case 91640: Market 15/2004 – NOR – M15 Market Analysis and Remedies
Nkom's draft decision of 1 March 2024 in Case 2300455
Request for information pursuant to Article 5(2) of Directive 2002/21/EC¹**

On 1 March 2024, the EFTA Surveillance Authority ("ESA") received and registered your notification of the above-mentioned draft measures ("the Draft Decision"). This letter is a request for information, pursuant to Article 5(2) of the Framework Directive and Point 13 of ESA's Procedural Recommendation.²

I. Information Required

The purpose of this request is to provide ESA with information that will allow it to make its assessment of the notified draft measure in full knowledge of the facts and the economic context.

Please submit to ESA the information requested in the Annex, which forms an integral part of this letter.

ESA invites you to submit the said information as soon as possible, but no later than **Wednesday, 20 March 2024**.³

II. Confidential Information

Provided that you substantiate in writing that your submissions are confidential in accordance with EEA and national law on business confidentiality, ESA will ensure such confidentiality.⁴

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 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (the "Framework Directive").

² 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 5cl 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 ESA's website [here](#) ("the Procedural Recommendation").

³ In accordance with Point 13 of the Procedural Recommendation, the reply to a request for information should be submitted within three working days.

⁴ See Article 5(3) of the Framework Directive.

Should you have any queries related to the information requested, please do not hesitate to contact Mr. Luca Di Martile (ldi@eftasurv.int; +32 2 268 18 86).

Yours sincerely,

Filip Ragolle
Deputy Director
Competition and State Aid Directorate

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ANNEX

Requested information concerning Case No. 91640 – Market 15/2004 – NOR M15 Market Analysis and Remedies

1. **Differences between margin squeeze test for SPs and MVNOs.** ESA understands that there are two primary differences between the margin squeeze tests for MVNO access and for SP access.

First, the relevant margins are different. The SP access margin squeeze test uses gross margins, which only take into account the (mostly variable?) wholesale costs, without the relevant retail costs. The MVNO access margin squeeze test is based on full margins, which add to the gross margins the relevant retail costs.

Second, the level of aggregation of Telenor's retail products at which the test is carried out is different. The SP access margin squeeze test is carried out on a by product basis. This means that test is performed for each of Telenor's representative products. The MVNO access margin squeeze test, instead, is carried out at the "market" level. This means that the test will be performed on the aggregation (i.e. the average) of Telenor's representative products in the residential and business markets, respectively.

ESA understands that, as a consequence of the second difference, the sub-segmentation of Telenor's business product "Bedrift Total" into 7 segments is only relevant for the SP access margin squeeze test. The MVNO access test is carried out for the average of the representative business products as a whole.

Please confirm or correct ESA's understanding.

2. **The assumed 3% market share in the SP access margin squeeze test.** If ESA's understanding regarding in question 1 is correct, then the assumption regarding the market share of a putative SP operator seems redundant. That is, if the margin squeeze test is performed for each of Telenor's representative product and it is based on wholesale costs (i.e. without retail costs), the 3% market share assumption for SP should not affect the results of the test. Please explain if our understanding is correct.
3. **Fixed costs taken into account in the margin squeeze test.** As explained in question 1 (subject to confirmation), the margins used for the MVNO access margin squeeze test include the relevant retail costs, while the margins for the SP access margin squeeze test include only wholesale costs.

ESA understands that the main reason for this difference is to approximate the investments and associated running costs required to become an MVNO as opposed to an SP. That is, the investments required to build a proprietary core network.

ESA further understands, based on Annex 5, that the fixed costs component for the full margins are estimated by Analysis Mason. Analysis Mason approximate these costs based on a linear fit of Chilimobil's yearly fixed costs over the period 2018-2022 (derived from Chilimobil's public accounts). The estimated fixed costs amount to NOK 36.8 million.

As explained above, ESA understands that these costs will be used in the context of the MVNO access margin squeeze test, in order to approximate their running

costs of building a core network. However, ESA understands that Chilimobil is not an MVNO, it is an SP. Therefore, its fixed costs (and estimation thereof) are unrelated to the investments required to become an MVNO.

Please explain the apparent inconsistency.

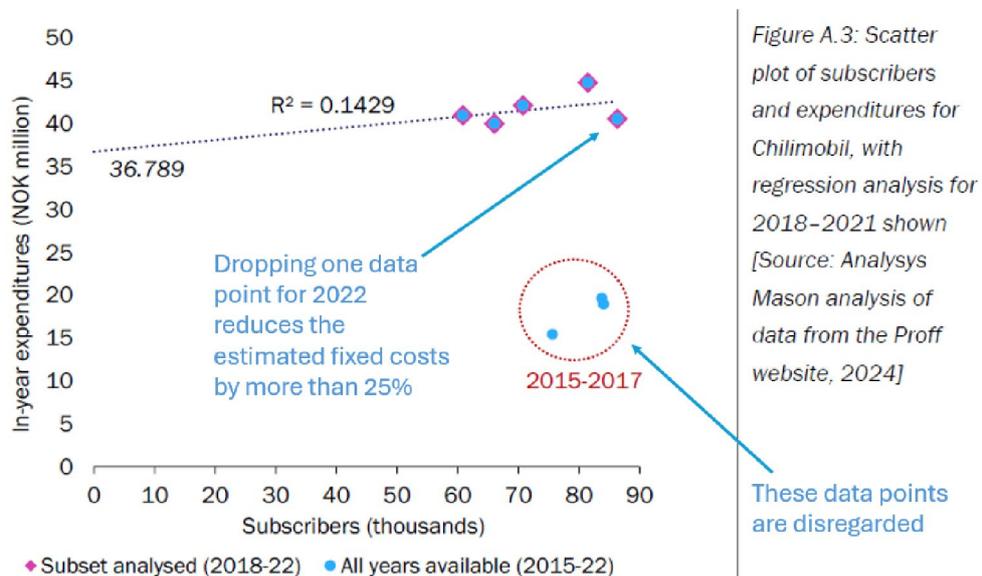
4. **Sensitivity of Analysis Mason fixed costs estimates.** Analysis Mason attempted multiple analyses to estimate the fixed costs, which led to very different results. This suggests that their analysis is not very robust.

First, Analysis Mason used a cross-section of costs from multiple operators, estimating the fixed costs to be approximately [REDACTED]. Analysis Mason argues that the data underlying this analysis are unreliable because they do not take into account the CAPEX of the operator. ESA notes, however, that the CAPEX depreciation element in Chilimobil's fixed cost estimates is small, it amounts to 0.1%-6.5% over the period 2018-2022.

Then, it used a similar methodology as the one applied on Chilimobil's data, on Unifon's data. This analysis led to a fixed costs estimate of approximately NOK 49.9 million. ESA appreciates Analysis Mason's argument that Unifon is primarily serving business customers, and may have higher fixed costs, but notes that the estimate is significantly higher than the fixed costs estimated in the first analysis.

Moreover, the analysis on Chilimobil's data appears to be very sensitive to the data used. First, as Analysis Mason uses only data from 2018 to 2022, disregarding the data for 2015-2017. Second, by dropping only one data point for 2022, the estimates fixed costs decrease by approximately 26%, to NOK 27.2 million (from NOK 36.8 million of the original estimation). The figure below illustrates these points (comments in the figure were added by ESA).

Furthermore, the linear fit for the data of 2018-2022 is very poor, with an R2 of 14.3%. Whereas dropping 2022 significantly improves the R2 to 80%. ESA acknowledges, however, that the R2 is likely severely impacted by the very few data points used in the analysis, which make it not very reliable.



Note: Comments in the figure added by ESA.

Please comment on whether and how Nkom took the uncertainties of the analysis into account.