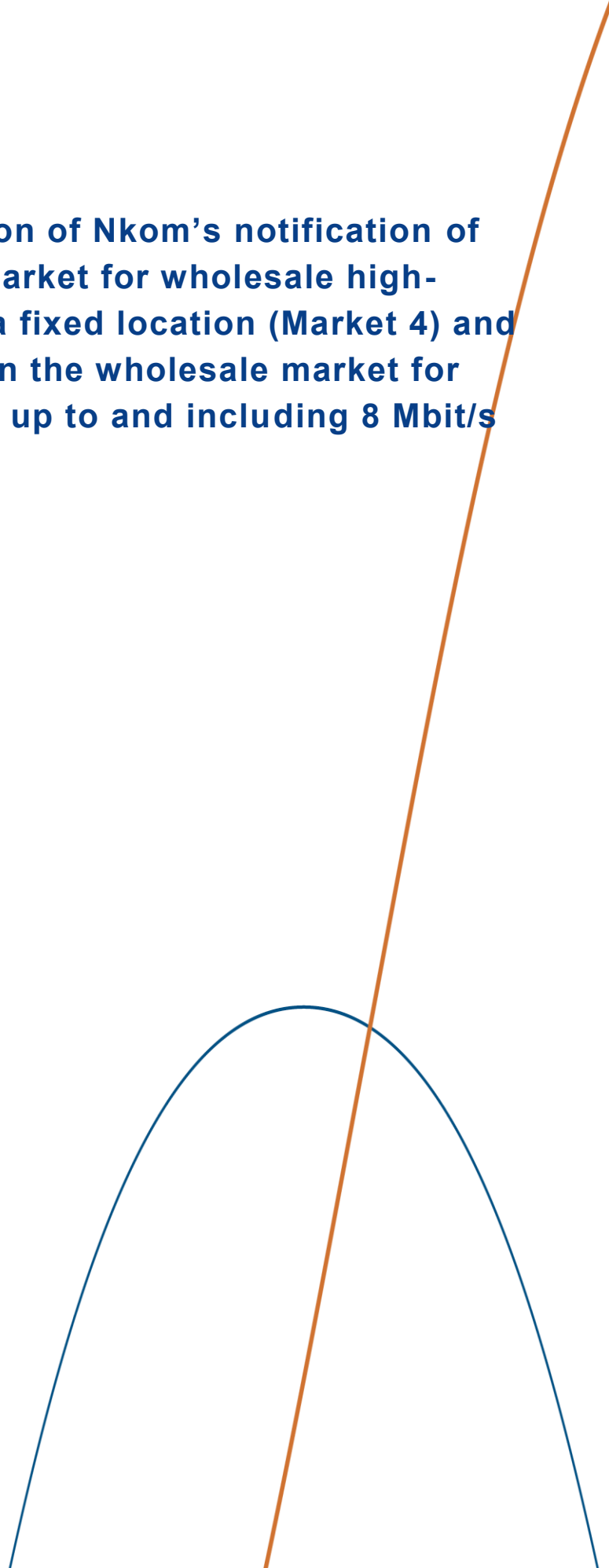


## **Annex 2**

**Results from the consultation of Nkom's notification of decisions concerning the market for wholesale high-quality access provided at a fixed location (Market 4) and the removal of obligations in the wholesale market for leased lines with capacities up to and including 8 Mbit/s (former Market 6)**

**20 December 2018**



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## 1 Introduction

This annex summarises the responses to the consultation of the Norwegian Communication Authority's (Nkom) notice of decisions concerning the market for wholesale high-quality access provided at a fixed location (Market 4) and the removal of obligations in the wholesale market for leased lines with capacities up to and including 8 Mbit/s (former Market 6). The notification was circulated for consultation from 12 January 2018 to 12 March 2018. Nkom has received responses from Broadnet AS (Broadnet), NextGenTel ASA (NextGenTel) and Telenor Norge AS (Telenor).

Nkom invited the operators to comment on the received responses by 4 April 2018. Nkom received comments on the consultation responses from Broadnet, Get AS / TDC AS (Get TDC), NextGenTel and Telenor.

The statements from the various respondents to the consultation are summarised below. Nkom also states its views on the relevant comments and how we have dealt with them. The individual responses to the consultation have been posted on Nkom's website.<sup>1</sup>

## 2 Market definition

### 2.1 The retail market for high-quality access products.

#### ***Assessment in the notice of decisions***

Nkom has defined a retail market for high-quality access products that is separate from the retail market for standardised broadband access. All types of capacity and data communication products that are offered to companies that require access products with greater functionality/quality than standard broadband subscriptions are included in this market.

#### ***Consultation comments***

**Telenor** is of the view that the approach of defining and describing two separate retail markets for standardised broadband access and high-quality access is appropriate for the Norwegian market. In addition to VPN services and capacity services, Telenor is of the view that a service that provides the customer with dedicated internet access can be designated as a high-quality service when the service has the following advanced product characteristics:

- Guaranteed SLS
- Dedicated Level 2 VLAN with direct access to the provider's internet node
- Monitoring of own line

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<sup>1</sup> <https://www.nkom.no/marked/markedsregulering-smp/anbefaling-2016/marked-4>

- Cisco-class routers

Telenor considers Nkom's categorisation and analysis of what constitutes standard fixed broadband access and what constitutes high-quality access to differ from Telenor's understanding of this when concerning dedicated internet access. It is Telenor's view that this type of service should be considered high-quality access. Standardised broadband access products that principally provide "best effort" internet access will, in Telenor's opinion, not be included in the retail market for high-quality access products.

### ***Nkom's assessment***

Nkom agrees that access products which provide high-quality, dedicated internet access are included in the retail market for high-quality access products. Such products are often supplied over individual fibre access solutions that are developed due to demand from companies with special requirements. Nkom has specified this in the market analysis for Market 4.

## **3 Three-criteria test for Market 4**

### ***Assessment in the notice of decisions***

Nkom has conducted a three-criteria test to determine whether the market for wholesale high-quality access provided at a fixed location qualifies for sector-specific ex ante regulation in Norway. Nkom has found that the second criterion has not been satisfied, i.e. that the market is moving in the direction of sustainable competition. The three-criteria test is therefore not satisfied and Nkom has given notice that Market 4 will not be regulated.

### ***Consultation comments***

**Telenor** is of the opinion that it is correct to conduct a three-criteria test of Market 4. Nkom's review of the first two criteria correlate well with Telenor's experience of the competitive situation in this wholesale market. Telenor supports Nkom's conclusion that there is no need for regulation.

However, Telenor is of the view that the first criterion in the three-criteria test has also not been satisfied. Telenor's competitors have, for many years and with considerable success, established their own fibre infrastructure for providing high-quality access products to businesses. Broadnet is one such type of competitor that has established considerable local and national infrastructure and the company's position in the market for VPN products demonstrates that the barriers to entry Nkom still claims to see do not exist in reality.

**Broadnet, NextGenTel and Get TDC** had no remarks to make to Nkom's notification to not regulate Market 4 and to remove the regulation in the former Market 6.

***Nkom's assessment***

In the assessment of the first criterion, Nkom has acknowledged, among other things, that Broadnet and Altibox have established extensive fibre networks in large parts of the country and that this demonstrates that the barriers to entry have been reduced in recent years. The analysis also shows that Telenor is still the only provider in the Norwegian market with continuous, nationwide trunk and access infrastructure. Market 4 is national and Telenor's nationwide infrastructure enables services to be offered in the entire country to companies that desire high-quality access solutions with geographically spread locations. An operator such as Broadnet will still be dependent on purchasing terminating segments of leased lines from Telenor at many locations. Nkom cannot see that Telenor's argument includes factors that are not already part of Nkom's assessment of the first criterion and Nkom therefore upholds the conclusion that the first criterion in the three-criteria test is satisfied.