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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/EC**[1]

On 01 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 **Friday, 15 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

*This document has been electronically authenticated by Filip Ragolle.*

## ANNEX

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

1. **Saga Mobil's margin squeeze claim**. ESA was approached by service provider Saga Mobil about an alleged margin squeeze by Telenor. Saga Mobil further explained its allegation in a call with ESA. The allegation is primarily related to the business market, which Saga Mobil particularly targets. Essentially, Saga Mobil claims that for bilaterally negotiated contracts, its costs (i.e. Telenor's wholesale price) are often above what Telenor is offering to its end-users (business customers). Saga Mobil did not provide any concrete evidence of its allegations to ESA at this stage.

    a. Saga Mobil claimed that they discussed their claims against Telenor with Nkom. However, they do not feature in Annex 3, i.e. the summary of consultations. Did they not participate in the public consultation?

    Please provide an overview of Saga Mobil's engagement with Nkom about its margin squeeze claims, and if any actions were taken to address them.

    b. Furthermore, Saga Mobil claims that one of the undue advantages that Telenor has is its **greater visibility of customers' consumption data**. Essentially, the claim has two legs.

    First, because of its size on the retail business market (larger customer base), Telenor has an overall data advantage as it observes the consumption patterns of a large number of business customers. Telenor can use this information to its advantage, by better tailoring its offers to the customers' consumption patterns.

    Second, Telenor has also visibility on Saga Mobil's customers' consumption patterns, because Saga Mobil uses Telenor's network. In theory, Telenor could use this information to target Saga Mobil's customers with tailor-made offers. However, Saga Mobil admitted they do not know if Telenor uses the data in this way.

        i. In relation to the first leg of the claim, have any other SPs or MVNOs reported Telenor's data advantage as a potential issue? Has Nkom had any internal discussion or assessment about the extent of such advantage?

        ii. In relation to the second leg of the claim, we note that paragraph 223 of Nkom's Draft Decision addresses the issue of Telenor's information sharing, stating that Telenor cannot disclose access seekers' information to 'unauthorized persons'. However, the wording is somewhat generic. Is this sufficient to prevent Telenor's retail arm from using data generated by access seekers and available to Telenor's wholesale arm? Are there other provisions or laws preventing Telenor to exploit access seekers' data to its own advantage?

    c. Compared to previous Nkom's decisions, the current draft includes more granular applications of the margin squeeze test by segmenting Telenor's bilaterally negotiated offers to business customers into 7 separate groups.

ESA raised this with Saga Mobil, but they questioned whether this would work in practice. Did Nkom have any contact with Saga Mobil about this new approach?

2. **Reciprocal pricing for co-location**. We understand that the obligation on reciprocal pricing for co-location is currently pushed back in time, waiting for a more concrete proposal from Telenor and presumably a new consultation of the market. We note that the timeframe of the current market analysis is three years. Against this background, please elaborate on the expected timing of this upcoming new regulation. Is Nkom's plan to notify this obligation to ESA?

3. **Pricing parity clause between SPs and MVNOs**. After having explained the two approaches to the margin squeeze test relating to respectively SPs and MVNOs, paras 455 and ff of the Draft Decision explain that, in any event, Telenor's prices to MVNOs should not be less attractive than for SP. This requirement appears to cast doubt on the effectiveness of the margin squeeze test. Indeed, one would expect that a properly designed margin squeeze test would not need further rules on price levels. Please further elaborate on this, and explain the cases mentioned in the text where the prices for SPs were more favorable compared to those to for MVNOs.

4. **Changes to Telenor's wholesale prices**. The Draft Decision (paras 480 and ff) explains that in case Telenor fails the margin squeeze test, it should not attempt passing it by increasing its retail prices, but rather it should decrease its wholesale prices.

   However, how this provision can be monitored or enforced is not immediately clear. In the mobile industry, retail price levels are typically changed with the introduction of new tariffs, rather than by changing the prices of existing tariffs. Therefore, in setting the prices for its new tariffs at the retail level, Telenor will also consider that its retail price will affect how stringent the regulation is going to be on its wholesale price. This suggests that Telenor has the ability, and presumably the incentives, to set the retail price of its new retail tariffs 'high enough' to meet the margin squeeze test at the wholesale level upstream, without adjusting its wholesale price downward.

   In this context, please explain whether and how Nkom is planning to monitor and enforce this provision.

5. **Reporting of Volume Discounts**. Paras 406-411 describe how Telenor should handle volume discounts, and how they should be reported. The discussion is, however, somewhat unclear.

   a. First, it is not clear whether the volume discounts discussed in 406-411 refer to the "network operator costs", the subject of the preceding paragraph 405.

   b. Second, para 407 mentions that a higher discount will make it easier for Telenor to achieve a positive result in the financial statement. How so? A discount is typically intended as a revenue loss for the operator.

   c. Paras 410-411 refer to 'positive result' and 'negative or weak result', but which test is being applied? The margin squeeze test or another test?

6. **Numerical example of the margin squeeze test**. Annex 4 to the Draft Decision reports the margin squeeze test model, in Excel. The model is only a skeleton, which will be fleshed out with actual data on a rolling basis during the timeframe of the decision. We understand, however, that Nkom already carried out some

numerical examples based on previous data from Telenor. If possible, could you please share one of those numerical examples? It would be easier for ESA to review the model with actual data included.

7. **Tefficient report**. Para 444 refers to a report prepared by Tefficient for the Ministry of Local Government and Regional Development. Footnote 62 contains the link to the report, which however seems broken. Could you please provide the Tefficient report?

8. **Representativeness of Telenor's tariffs for the margin squeeze test**. Para 452 of the Draft Decision states an efficient SP is geared towards offering products in *limited parts* of the retail market. Further, para 454 emphasizes that the margin squeeze test tailored for SP aims at ensuring that access seekers with SP agreements are not excluded from any *niches* of the retail market.

   However, the margin squeeze test includes Telenor's tariffs accounting for around 70% of Telenor's subscriptions in the retail market, and ESA understand that these are the 'top' 70%, including the most popular tariffs first.

   Please comment on whether this creates an inconsistency with the stated aim for the test, as Telenor's tariffs accounting for at least the top 70% of subscriptions are arguably tariffs aimed at the mass market, rather than niches.