



Norwegian
Communications
Authority

Summary Notification Form

Market 5 – Wholesale broadband access

“Monitoring of compliance with the obligation of non-discrimination using margin squeeze test for fibre-based broadband access”

Date of Notification 6 July 2015

This form specifies the summary information to be provided by national regulatory authorities to the EFTA Surveillance Authority (ESA) when notifying draft measures in accordance with Article 7 of Directive 2002/21/EC (Framework Directive) and the annex to ESA Recommendation of 2 December 2009 on notifications, time limits and consultations.

Under the obligation in Articles 15 and 16 of the Directive 2002/21/EC (Framework Directive) and Electronic Communications Act §§ 3-2 and 3-3, the Norwegian Communications Authority (Nkom) conducted the third analysis of the market for wholesale broadband access (Market 5). The draft decision was notified to ESA 8 November 2013, and Nkom's decision was made 20 January 2014.

This draft decision is based on Nkom's decision 20 January 2014, and in accordance with the obligation on non-discrimination imposed on Telenor ASA (Telenor).

Nkom's draft decision on monitoring of compliance with the obligation of non-discrimination using margin squeeze test for fibre-based broadband access was subject to a national consultation in the period from 8 May to 1 June 2015. The comments received have been evaluated and relevant comments have been incorporated into the attached proposed decision and annexes.

Comments to this draft measure may be sent to Mr. Eivind Skaar Briseid (esb@nkom.no) and Ms Christina Tetlie (cte@nkom.no).

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SECTION 1

Market definition

Please state where applicable, and give reference to the relevant section/paragraph:

1.1	The affected relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?	Section/ paragraph
	Not applicable, as the draft decision does not include market definition	
1.2	The affected relevant geographic market	
	Not applicable, as the draft decision does not include market definition	
1.3	A brief summary of the opinion of the national competition authority where provided;	
	Not applicable, as the draft decision does not include market definition	
1.4	A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagree with it)	
	Not applicable, as the draft decision does not include market definition	
1.5	Where the defined relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons which justified the proposed market definition by reference to Section 2 of the Authority's Guidelines on the definition of the relevant market and the assessment of significant market power ¹ , and the three main criteria mentioned in recitals 6 to 16 of the Recommendation on relevant markets.	
	Not applicable, as the draft decision does not include market definition	

¹ Authority guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services.

SECTION 2

Designation of undertakings with significant market power

Please state where applicable, and give reference to the relevant section/paragraph:

2.1	The name(s) of the undertaking(s) designated as having individually or jointly significant market power. Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power;	Section/ paragraph
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	
2.2	The criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power;	
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	
2.3	The name of the main undertakings (competitors) present/active in the relevant market;	
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	
	The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers).	
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	
Please provide a brief summary of:		
2.5	The opinion of the national competition authority, where provided;	
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	
2.6	The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).	
	Not applicable, as the draft decision does not include a designation of undertakings with significant market power.	

SECTION 3

Regulatory obligations

Please state where applicable, and give reference to the relevant section/paragraph:

3.1	<p>The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive));</p> <p>Telenor was designated as having significant market power in Nkom`s Market 5 decision of 20 January 2014. According to the Electronic Communications Act § 3-4 first paragraph, providers with significant market power shall be subject one or several specific obligations imposed by § 4-1 and §§ 4-4 for 4-10.</p> <p>Nkom has imposed an obligation on Telenor to provide access on non-discriminatory terms of Market 5, cf. Electronic Communications Act § 4-7. The obligation applies to both copper and fiber-based access.</p> <p>Telenor was obliged to prepare and report accounting separation for fiber in Market 5, cf. Electronic Communications Act § 4-8. It was also stated that as a complement to the accounting separation there would be developed a margin squeeze test as a tool to further evaluate the fulfillment of the obligation of non-discrimination, ref. Section 7.6.4 in Market 5 decision, paragraph 324. Other parts of the decisions also provided that the requirement for non-discrimination will be monitored through the margin squeeze test. Nkom refers in this connection to paragraph 229 in Market 5 decision, where Nkom considers the need to impose price controls pursuant to the Electronic Communications Act § 4-9. It follows therefore that a margin squeeze test will be used as a supplement to the accounting separation when considering whether Telenor complies with the non-discrimination obligation.</p>	Section/ paragraph
		Draft Decision, Section 3
3.2	<p>The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found;</p>	



	<p>In the Market 5 decision, section 7.4 on non-discrimination, paragraph 272, Nkom writes:</p> <p><i>"A margin squeeze test for fiber-based Broadband access will give NPT an additional tool to monitor the non-discrimination obligation. NPT follows in large extent ESAs argument that accounting separation alone is not necessarily sufficient to ensure predictability with regard to non-discriminatory prices for fiber-based Broadband access. NPT will therefore start working on developing a margin squeeze test immediately after this decision enters into force."</i></p> <p>The determination of principles and methods for the use of margin squeeze tests as a tool to monitor compliance with the obligation of non-discrimination should be regarded as an individual decision.</p>	Draft decision, Section 3
3.3	<p>If the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate which are the 'exceptional circumstances' within the meaning of Article 8(3) there of which justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.</p>	
	Not applicable	



SECTION 4

Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable, and give reference to the relevant section/paragraph:

4.1	Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive);	Section/ paragraph
	Not applicable	
4.2	The name(s) of the undertaking(s) concerned;	
	Not applicable	
4.3	Which are the international commitments entered into by the EFTA State that need to be respected;	
	Not applicable	