



Norwegian
Communications
Authority

EFTA Surveillance Authority
Rue Belliard 35

1040 BRUSSELS
Belgia

Our ref.: 1501017-23 -
Our date: 30.7.2015

Contact: Eivind Skaar Briseid

Nkom's response to the Authority's request for information - draft decision concerning monitoring of compliance with the obligation of non-discrimination using margin squeeze test

The Norwegian Communications Authority ("Nkom") refers to the EFTA Surveillance Authority' ("the Authority") request for information dated the 27th of July 2015 regarding issues related to Nkom's notification of draft decision concerning monitoring of compliance with the obligation of non-discrimination using margin squeeze test for fibre-based broadband access.

In the following, Nkom will provide information and explanations on the issues raised by the Authority in its request (the Authority's text in italics):

1) Please provide details on the level of take-up of Telenor's VULA product in market 5 to date.

Nkom: Due to the quite recent availability of Telenor's fibre VULA product, the take-up is still limited. One of the alternative operators, NextGenTel, has as the first access seeker started to use the VULA product for fiber and has currently 7 handover points connected where it buys this type of wholesale access from Telenor. At the present there are about 57 000 VULA-connections available for the access seekers, of which NextGenTel is connected to 2404.

2) In the proposed definition of a portfolio of retail flagship products in Nkom's ERT (i.e. based on the most important fibre-based retail products offered by Telenor), please explain:

a. To what extent Nkom proposes to take into account the ability of alternative operators (relying on the VULA input) to compete in the

Norwegian
Communications Authority
Office address:
Nygård 1, Lillesand

Postal address:
P.O. Box 93
N-4791 LILLESAND
NORWAY

Tel +47 22 82 46 00
Fax +47 22 82 46 40
firmapost@nkom.no

NO 974 446 871
www.nkom.no

provision of retail products to certain customer segments/retail markets in Norway even if these products may not be amongst the most relevant or popular retail (flagship) products of the SMP operator;

Nkom: The portfolio approach gives Telenor the flexibility to set the retail prices and allocate costs across the identified flagship products. The basis for taking this approach is that the majority of Telenor's competitors have a similar product offering in the residential market as Telenor and that the approach gives the network operator more flexibility in testing certain retail price points and hence can stimulate NGA uptake, which would promote investments.

Alternative operators mainly relying on subsets of the identified flagship products could face a lower margin on some retail products than the overall margin indicated by the margin squeeze test based on the portfolio approach, and thus also by a margin squeeze test based on a (stricter) product by product margin squeeze test.

In the chosen approach this scenario is not considered as the majority of competitors has a product offering which is similar broad as Telenor's offerings, and secondly because considering subsets would imply using an additional product by product-test for retail products outside the defined flagship products. However such retail products could be provided based on the same wholesale input as flagship products. Hence this implies that the results of the stricter product by product could overrule the results from the portfolio test as it concerns the same wholesale service.

Nkom remarks that the non-discrimination obligation imposed on Telenor is not limited to the products that fall within the tested portfolio and further that Telenor to ensure compliance with the non-discrimination obligation in marked 4 and 5 is also imposed accounting separation for both fiber based LLU and broadband access.

b. The impact of the portfolio approach on alternative operators which may not compete across the range of the SMP operator's product portfolio, but which may offer a different range or subset of retail products. In your response, please also explain how the proposed ERT would ensure that competition is not restricted in related retail markets for which the VULA product is an input but which may not entirely mirror the definition of the (flagship) product portfolio in question; and

Nkom:

Alternative operators with a range of retail products outside the identified flagship products, might face a margin lower than the result of the portfolio approach indicates depending on the wholesale/retail price-ratio of the products within the portfolio approach and the ratio for the products not covered by the margin squeeze test. The difference in wholesale/retail price ratios may be due to allocation of costs or that the retail products have differing retail price points¹.

As the portfolio approach implies that the threshold for the test is set on basis of the total margin of portfolio, the test allows Telenor greater flexibility in setting the fibre based retail prices.

¹ If price points for these products are set lower than that of products covered by portfolio they can be expected to get high take up and thus become flagship products. Nkom has the freedom to include products that are likely to be flagship products in that they seem particularly important in the competitive landscape.

However, the approach could give Telenor flexibility to set the prices of the underlying wholesale services, such that alternative operators will not be capable of recovering the corresponding wholesale costs. This could apply for non-flagship retail products as well as for flagship retail products with lower subscriber numbers since these have less impact on the total measured portfolio margin. Therefore, due to the requirement of non-discrimination, Nkom has set a threshold to the allowed wholesale pricing flexibility by requiring that Telenor's fiber based retail products should at least cover the corresponding wholesale cost. This requirement applies for both flagship and non-flagship products.

Nkom also remarks that the number of Fibre VULA wholesale services is quite limited so that most of the relevant residential products will be based on either VULA Basis 30 and 60 Mbps (and in the near future on 100), which will be set at a certain level via the portfolio test. In addition, prices of retail packages with different broadband speeds need to be consistent as well as consumers will choose those retail products with the best price/performance. Hence the chance that a squeeze will arise for non-flagship products based on wholesale input which are set for other flagship products seems to be quite low.

In Nkom's view it should also be noted that the portfolio approach covers 70 % of Telenor's fiber based retail products measured by revenue and that the portfolio in that respect covers a significant part of Telenor's retail offerings. The products covered by the portfolio approach should thus cover the larger parts of the relevant competitive arena. It should further be noted that Nkom's approach opens for including products which does not fall within the 70% threshold. This would particularly be relevant if there are reasons to believe that products that fall outside the portfolio definition could play an important role in the retail competition. At the present Nkom do not have indications that products which falls outside the portfolio approach is significantly harder to replicate than products which falls inside the scope for the test.

Nkom remarks that it is aware of that a number of alternative operators are active in the business segment. However, as explained in the consultation response, non-standardized business products are not part of the testing as those services tend to be customized and packaged with other IT-services and therefore are not suitable to test with a standard tool.

For the sake of clarity it should be noted that the non-discrimination obligation imposed on Telenor is not limited to the products that fall within the margin squeeze test. To ensure compliance with the non-discrimination obligation in marked 4 and 5, Telenor is also imposed accounting separation for both fiber based LLU and broadband access. When reporting accounting separation Telenor is required to make a split between its operation in the business and residential segments in order to assess those segments individually.

c. If Nkom has considered advertisement expenditure in its identification of relevant retail flagship products

Nkom: No, in our understanding the Recommendation gives the NRA freedom to either use importance of revenue or advertisement costs when defining the flagship products, and Nkom has chosen to use the revenue contribution.

3) Please explain in further detail why Nkom intends to apply the ERT only to ODPs with more than 1 000 connections. In your response, please clarify how this proposed approach is in line with the competition problems identified in Nkom's 2013/2014 market review, including its observation that competition problems may arise in discrete geographic areas where Telenor chooses to phase out its

copper-based access network and /or where fibre is the only infrastructure established in the construction of new residential and commercial buildings.

Nkom: Telenor is in a rollout phase in deploying its fibre network in Norway and hence does not cover all of Norway. Thus, there are areas where the network is available but where there are a limited number of connected homes. For an access seeker to access all areas and all fibre connected homes in Telenor's fiber network, it needs to connect to 76 ODPs. To some of these ODPs there are very few customers connected while others have thousands of connected homes. Connecting to each ODP costs the access seeker a certain basic amount of wholesale costs as there are minimum capacity requirement. Therefore, we believe it is an unrealistic assumption that all 76 ODPs should be included to calculate the required wholesale price to enable this.

The access seeker NextGenTel is currently targeting ODPs with more than 2000 homes connected. This information was used in addition to the modelled costs of an ODP when setting to the relevant threshold. For the current spread of connected homes over the 76 ODPs (see below) we found that using 2000 is quite restricted (only 9 ODPs). Also considering that we try to enable access seekers to access as much as connected homes possible we found it reasonable to set the threshold lower than 2000 and opted for 1000 connected homes, which allows to reach 68% (see graph below).

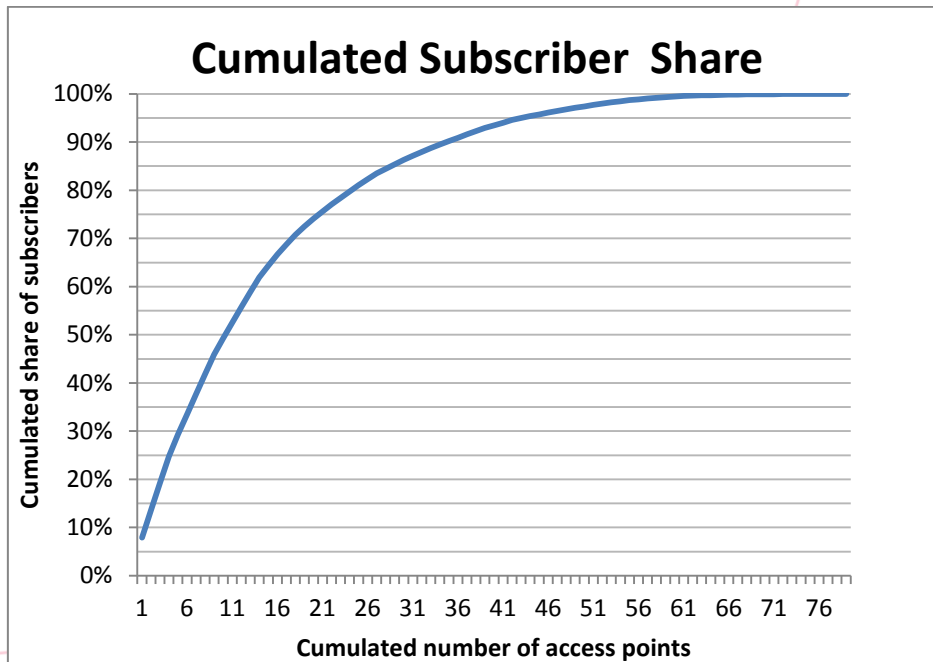
However, the used threshold is set trying to reach a balance between reasonable business behavior and normative prescription (highest coverage). Therefore, the threshold could in principle have been 1500 as well (14 ODPs). The current coverage of 68% of all connected homes based on the 17 ODP's, does in our opinion strike a reasonable balance.

In areas where Telenor has phased out its copper-based access network in favor of fibre, fibre access is the only manner to compete with Telenor on Telenor's fixed network. It is likely that these 'phased out' areas have a large number of connected homes/buildings to the relevant ODP point and therefore we expect especially these areas to comply with the relevant assumption set in the model.

Region	Region Summary	BNG Koplingspunkt	Antall OLT	Antall aksesser declining order
HORDALAND	0	BERGEN HEGGEBAKKEN	8	3981
AUST AGDER	0	ARENDAL	9	2862
AKERSHUS	0	ASKER	2	2840
VEST AGDER	0	TINNHEIA	9	2773
AKERSHUS	0	JESSHEIM	8	2264
HORDALAND	0	ÅSANE	10	2148
HORDALAND	0	KLEPPESTØ	1	2094
VEST AGDER	0	KRISTIANSAND/A	5	2078
AKERSHUS	0	LILLESTRØM	9	2013
BUSKERUD	0	ASKER	4	1678
VESTFOLD	0	TØNSBERG	8	1668

HORDALAND	0	BLOMSTERDALEN	2	1617
HORDALAND	0	LODDEFJORD	3	1554
ØSTFOLD	0	ASKIM	6	1547
AUST AGDER	0	GRIMSTAD	4	1200
ØSTFOLD	0	MOSS	4	1187
BUSKERUD	0	HØNEFOSS	3	1037
OPPLAND	0	GJØVIK	4	990
ØSTFOLD	0	SARPSBORG	4	869
HORDALAND	0	SOTRA	4	810
TELEMARK	0	SKIEN	3	767
ØSTFOLD	0	HALDEN	3	745
OSLO	0	KASTELLET	2	675
AKERSHUS	0	SANDVIKA	1	667
NORDLAND	0	MO RANA	4	661
HEDMARK	0	HAMAR	4	635
AKERSHUS	0	MOSS	1	586
OSLO	0	SLEMDAL	1	479
BUSKERUD	0	GOL	2	464
SOGN OG FJORDANE	0	FLORØ	1	463
HORDALAND	0	SLETTEBAKKEN	1	422
VEST AGDER	0	RANDESUND	2	415
VEST AGDER	0	FARSUND	4	401
VEST AGDER	0	MANDAL	1	376
OPPLAND	0	HAMAR	1	354
VESTFOLD	0	LARVIK	3	352
OSLO	0	ULLERN	1	350
VESTFOLD	0	HOLMESTRAND	1	344
NORDLAND	0	BRØNNØYSUND	1	314
AKERSHUS	0	SKI	3	279
BUSKERUD	0	LARVIK	1	277
VESTFOLD	0	SANDEFJORD	2	277
HEDMARK	0	KONGSVINGER	2	205
NORDLAND	0	SANDNESSJØEN	1	204
VESTFOLD	0	HORTEN	2	185
SOGN OG FJORDANE	0	FØRDE	1	181
TROMS	0	TROMSØ/SA	1	180
SOGN OG FJORDANE	0	SOGNDAL	1	165
TELEMARK	0	YTRE VINJE	1	159
BUSKERUD	0	GEILO	1	145
AKERSHUS	0	STABEKK	2	144

TELEMARK	0	PORSGRUNN	2	138
TROMS	0	HARSTAD	1	131
BUSKERUD	0	DRAMMEN	1	128
AKERSHUS	0	KOLBOTN	1	102
ØSTFOLD	0	FREDRIKSTAD	2	96
AKERSHUS	0	STOVNER*	1	85
MØRE OG ROMSDAL	0	SPJELKAVIK	3	80
SØR-TRØNDELAG	0	LERKENDAL	2	66
TELEMARK	0	NOTODDEN	1	57
SØR-TRØNDELAG	0	ORKANGER	1	53
NORDLAND	0	MOSJØEN	1	39
BUSKERUD	0	HOKKSUND	1	26
SOGN OG FJORDANE	0	NORDFJORDEID	2	26
FINNMARK	0	HAMMERFEST	1	24
SØR-TRØNDELAG	0	TRONDHEIM	1	18
OSLO	0	BRYN	1	16
MØRE OG ROMSDAL	0	MOLDE	1	15
OSLO	0	STAVANGER	2	12
OPPLAND	0	LILLEHAMMER	2	11
MØRE OG ROMSDAL	0	ÅLESUND	1	8
OSLO	0	FAGERBORG	1	7
MØRE OG ROMSDAL	0	KRISTIANSUND	2	5
OPPLAND	0	HØNEFOSS	1	5
TROMS	0	TROMSØ	1	5
OSLO	0	BRYNE	1	4
OSLO	0	FORUS VEST	1	2
AUST AGDER	0	TVEDESTRAND	1	1
SØR-TRØNDELAG	0	STJØRDAL	1	1



4) Please confirm the average customer lifetime for copper-based broadband services that Nkom intends to take into account in the ERT and how this is considered an appropriate reflection at this stage of the likely customer lifetime for fibre-based services.

Nkom: Based on the current information received from the Norwegian operators Telenor estimated that the customer lifetime of their fibre customers is around 170 months (measured by 1/churn percentage). For copper based broadband the average customer lifetime for Telenor is around 67 months. The provided information from the alternative operators indicated an average lifetime for fibre based services of 38 months. The average lifetime for Telenor’s copper based broadband (67) and the alternative operators fibre lifetime (38) is 53 months. We expect that the underlying platform is not significantly changing customer switching behavior and therefore we proposed to use 60 months in the tool, which is around the average of Telenor’s and the alternative operators customer lifetime for fibre based retail products, and slightly adjusted in a conservative direction to assure that the goal of ensuring replicability is obtained. The proposed measure gives Nkom flexibility to adjust the relevant average customer lifetime provided that there is sufficient justification for making the adjustment.

5) Please explain the envisaged procedures for ensuring ongoing compliance with the ERT and whether Nkom has taken the following elements from the Commission’s Recommendation into account:

- a. NRAs should carry out the ERT no later than three months after the launch of a relevant retail product and should conclude the ERT as soon as possible, and in any case within four months from starting the procedure; and

Nkom: When new retail products are launched on the market and Nkom foresees that they will become a flagship product, it might consider labelling these products as flagship products as well. In such a case the weights of the individual 'flagship product' as part of the portfolio will be determined with a future looking perspective. For this scenario, Nkom has maximum of 3 months according to the Recommendation. Thereafter, every 6 months the current status of the portfolio of flagship products is tested again.

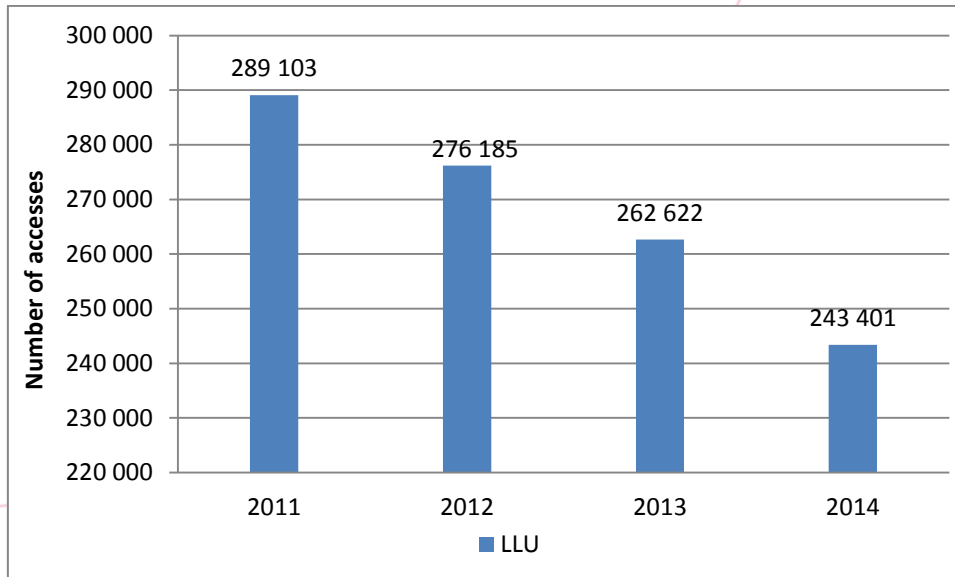
b. NRAs should clarify their enforcement powers, including the actions they will take in case they consider that an offer which is not economically replicable would significantly harm competition.

Nkom: As stated in the draft decision, it will normally be appropriate to require correction of Telenor's access prices, cf. Electronic Communications Act § 10-6, if Nkom based on the margin squeeze test determines that Telenor does not meet the non-discrimination obligations. If Telenor does not comply with the requirements set for the use of the margin squeeze tool, and thus does not comply with the obligation of non-discrimination, Nkom will have to reassess the imposed use of remedies, including an assessment of the need to impose cost-oriented prices.

6) As regards Fibre LLU, it is noted in Appendix 4 - 'Consultation responses on the updated draft principles for margin squeeze tests for fibre access and the draft model in Market 4 and 5" (page 14) that at the time of Nkom's market review there were still 10 000 LLU connections and that currently there are only 2 000 left. Please explain the reason for this decline in Fibre LLU connections and please also provide details on the development of Copper LLU connections during the corresponding period.

Nkom: Telenor's fiber network is mainly based on GPON-technology. However, Telenor bought a point-to-point (PTP) network consisting of 10 000 connections (Los Bynett) in 2012. At the time Nkom conducted the market review (2013) there were about 12 000 PTP-connections in Telenor's network, in addition to the GPON-network. During the spring 2015 Telenor informed that the 10 000 PTP-connections (old Los Bynett) will be converted to GPON during 2015 and early 2016. Telenor has informed that it will be possible to obtain VULA-access on these connections when they are converted to GPON.

The figure below shows the development of Copper LLU-connections from 2011 to 2014:



Yours sincerely

Kenneth Olsen (p.p.)
Chief Adviser

Eivind Skaar Briseid
Senior Adviser