

Brussels, 22 September 2010  
Case No: 68322  
Event No: 565982

Post- og teletilsynet  
Postboks 93  
N-4791 Lillesand  
Norway

For the attention of:  
Mr. Willy Jensen, Director

Dear Mr. Jensen,

**Subject: Comments pursuant to Article 7(3) of Directive 2002/21/EC:**

- **Notification of draft national measures in the markets for voice call termination on individual mobile networks in Norway (Market 7)**

## 1 PROCEDURE

On 25 August 2010, the Authority received a notification of draft national measures in the field of electronic communications pursuant to Article 7 of the Framework Directive 2002/21/EC (FWD) (the “Notification”).<sup>1</sup> The Notification was made by the Norwegian national regulatory authority for post and telecommunications, *Post-og teletilsynet* (NPT). It concerns the markets for voice call termination on individual mobile networks in Norway (Market 7). The notification was registered on 25 August 2010 under case number 68322.

The market corresponds to Market 7 in the list of markets contained in the Annex to the Authority’s 2008 Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the FWD.<sup>2</sup>

National consultation pursuant to Article 6 of the FWD was carried out in the period from 23 March to 10 May 2010. The following parties submitted responses to the consultation.

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (Framework Directive), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted by Protocol 1 thereto and by the sectoral adaptations contained in Annex XI to that Agreement.

<sup>2</sup> EFTA Surveillance Authority Recommendation of 5 November 2008 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services); adopted by Decision NO 688/08/COL, OJ C 156, 9.7.2009, p.18.

- Norwegian Competition Authority
- NetCom AS
- Network Norway AS
- TDC AS
- Telenor Norge AS
- Tele2 Norge AS
- Ventelo AS

The responses to the consultation are available on the NPT's website.<sup>3</sup>

The relevant procedure which the Authority follows in examining notifications made under Article 7 of the FWD is laid down in that Article and in more detail in the Authority's Article 7 Recommendation<sup>4</sup> and the Authority's Decision No 191/04/COL of 14 July 2004. Pursuant to point 2 of the Article 7 Recommendation, the Notification shall be effected by electronic means. The NPT uploaded the Notification to the eCOM Online Notification Registry, which the Authority operates for this purpose.

The Notification consists of the following documents:

- Summary Notification Form (Event No 567352)
- Draft decision (Event No 567351)
- Market analysis (Event No 567348)
- Summary of responses received in the national consultation (Event No 567350)

Pursuant to point 10 of the Article 7 Recommendation, the Authority has five working days to verify the completeness of the Notification and, in particular, to check whether the Notification comprises all relevant documents required pursuant to point 6 of the Article 7 Recommendation.

The Authority's eCOM Task Force ran the completeness check, and found that the submitted documents appeared to conform to the requirements of the Article 7 Recommendation. It therefore registered the Notification on the eCOM registry as complete, making the non-confidential version available to the general public. The national regulatory authorities (NRAs) in the EFTA States were informed in order to allow them to submit comments.

The European Commission has also been informed of the Notification. It has access to the Authority's eCOM Registry. Under the working agreement with the Commission, the Commission in turn informs all NRAs in the EU Member States. Cross-pillar information exchange has therefore been provided for.

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<sup>3</sup> The individual responses to the consultation are available on NPT's website: See <http://www.npt.no>, under the menu selections "SMP" and "nasjonale høringer" (national consultations).

<sup>4</sup> 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 I thereto.

Pursuant to point 11 of the Article 7 Recommendation, following the completeness check and registration of a notification as complete, the Authority may seek further information or clarification from the NRA concerned. The NRA has three working days to supply the requested information, where this is readily available. Having examined the notified draft measures and supporting documents, the Authority has not found grounds to seek on a formal basis any further information or clarification from the NPT.

The EEA consultation period under Article 7 of the Framework Directive expires on 27 September 2010.

## **2 DESCRIPTION OF THE DRAFT MEASURE**

### **2.1 Market definition**

The relevant product market is that of voice call termination on individual mobile networks.

The market covers voice call termination on GSM, UMTS and virtual networks as well as termination on voice mail services. Time-metered traffic to mobile-based M2M subscriptions in the 4x, 58x, 59x and 9x number series are also included in the relevant market. SMS termination is excluded. Voice call termination on LTE (Long Term Evolution) networks is also excluded but, if it should be relevant within the time-frame of the analysis, the NPT will perform a specific assessment of whether it should be included.

On that basis, the NPT defines the following markets:

- Voice call termination on Telenor ASA's mobile communication network.
- Voice call termination on NetCom AS' mobile communication network.
- Voice call termination on Network Norway AS' mobile communication network.
- Voice call termination on Tele2 Norge AS' mobile communication network.
- Voice call termination on Ventelo AS' mobile communication network.
- Voice call termination on TDC AS' mobile communication network.

The NPT concludes that the relevant geographic markets are limited to the individual mobile networks' respective footprints in Norway, including coverage achieved through national roaming agreements, MVNO (Mobile Virtual Network Operator) agreements etc.

### **2.2 Significant market power**

The NPT designates each of the six companies that offer call termination in their mobile communication networks as undertakings with significant market power (SMP) on each respective relevant market. Telenor ASA, NetCom AS, Network Norway AS, Tele2 Norge AS, Ventelo AS and TDC AS are each the only provider of voice termination services on their respective networks, which correspond to the relevant markets; therefore, each of those companies has a 100% market share in call termination in its own mobile network.

The NPT is of the view that the relevant markets are characterised by absolute entry barriers, and that potential competition is not foreseeable within the time horizon of the analysis. It considers that the competitive conditions in the market do not appear to generate any pressure on prices for call termination in mobile networks, and that

countervailing buying power will not be able sufficiently to curtail the SMP undertakings' exercise of buyer power for call termination on their own networks.

### **2.3 Remedies**

Due to the absolute entry barriers on the relevant market, the NPT has identified the following competition problems:

- Denial to interconnect
- Excessive pricing
- Cross-subsidisation
- Price discrimination
- Non-price discrimination

On that basis, the NPT intends to impose the following regulatory remedies on the operators designated as possessing SMP.

#### ***2.3.1 Access/Interconnection***

The NPT proposes that all providers be subject to an obligation to meet all reasonable requests for interconnection and to conclude negotiations on entering into or amending agreements on termination on their mobile networks without undue delay. Upon request, providers will be required to document the time spent in connection with the relevant contract negotiations and to send the NPT a copy of the relevant documentation (although the documentation obligation will not apply if the request was made later than three months after the relevant negotiations were concluded).

If access is denied, a documented and justified refusal of the request must be sent to the party requesting access, containing all information necessary for evaluating the basis for the refusal and the necessary technical documentation.

#### ***2.3.2 Non-discrimination***

The NPT proposes to impose an obligation of non-discrimination in connection with termination on mobile networks on Telenor ASA, NetCom AS, Tele2 Norge AS and Network Norway AS. To be sufficiently effective, NPT believes that an obligation of non-discrimination must apply both between external operations and between an undertaking's own operations and its external operations. However, the non-discrimination obligation will not apply to any differences in termination charges for on-net and off-net calls.

The NPT believes that it is not necessary or proportionate to impose a non-discrimination obligation on TDC and Ventelo: these providers have significantly less volume than the other providers regarding call termination; therefore, the adverse impacts of any discriminatory behaviour by them will be more limited. In addition, their capacity to discriminate on price will be gradually reduced as asymmetric termination charges are phased out and prices are reduced to an efficient level.

#### ***2.3.3 Reference offers and publication (transparency)***

##### ***Telenor and NetCom***

The NPT proposes to impose an obligation on Telenor and NetCom to prepare and publish reference offers for interconnection on their mobile networks. The reference offer must be adequately divided into individual elements with appurtenant terms based on the needs of

the market, so that the other party is not forced to accept services, functions or benefits that are not requested. The agreement must be regularly updated and must contain all information important for the services that are offered.

The reference offer must contain all information vital to the service to be provided, including information on:

- the interconnection service being offered
- general contractual terms and conditions
- termination charges
- price elements and the services the individual price elements cover
- any discounts and criteria for discounts
- the methods for calculating any offerings without a fixed price
- geographical supply area
- any significant capacity limitations on delivery
- characteristics of a technical and physical nature, including interfaces used at network termination points, as well as the standards used
- points of interconnection
- agreed quality level
- provisions regarding reasonable compensation for failure to meet agreed quality levels

Telenor and NetCom will also be required to give advance notice to other providers of any changes to existing services no later than two months before the changes are implemented, and to send copies of all agreements on termination on mobile networks to the NPT. Submission to the NPT must be carried out without undue delay and no later than two weeks after the date of signature. Telenor and NetCom must also inform the NPT of any changes to agreements at least two months before they are implemented.

#### *Tele2, Network Norway, TDC and Ventelo*

The NPT proposes to impose an obligation on Tele2, Network Norway, TDC and Ventelo to publish their prices for termination on mobile networks (standard rates and any discounts, with related criteria). They must give advance notice to other providers of any changes in existing services no later than two months before the changes are implemented and send the NPT any agreements on termination on mobile networks with parties other than Telenor and NetCom. Submission to the NPT must be carried out without undue delay and no later than two weeks after the signature date. The providers must also inform the NPT of any changes to agreements and, as regards termination-related changes, no later than two months before they are implemented.

#### **2.3.4 Price controls**

The NPT takes the view that remedies such as reference offers, publication and non-discrimination are insufficient to counteract competition problems related to excessive pricing, and that price regulation is therefore necessary.

In reaching its proposed decision, the NPT takes account of both its own and the Ministry of Transport and Communications' earlier decisions regarding Market 7, and the importance of a third competing mobile network for the development of the Norwegian mobile market, currently being developed by Tele 2 and Network Norway.<sup>5</sup> In that regard,

<sup>5</sup> See for example the Ministry of Transport and Communications decision of 19 May 2009.

the NPT takes account in particular the Ministry's view that an appropriate target for price regulation of Tele2 and Network Norway would allow additional income from termination equal to the investment cost of rolling out a new mobile network covering 75% of the Norwegian population by the end of 2011.<sup>6</sup> Against that background, the NPT has set the maximum rates for Tele 2 and Network Norway such as to allow them the opportunity to recoup their share of the relevant investment costs, with symmetry being achieved as quickly as possible thereafter.

As regards the calculation of costs, the NPT considers that LRIC (Long Run Incremental Cost) is a recognised and well-documented method for calculating the costs on which the operators would base pricing in a market with effective competition. However, it notes that there are many indications that the results based on a pure LRIC approach are relatively low in Norway compared with other countries in the EEA. This is because Norway has a large land area with scattered settlements and therefore relatively high coverage costs compared with some EEA States. Therefore, the NPT believes that more time is needed in Norway to phase in rates based on pure LRIC than referred to in the European Commission's Recommendation on the regulation of termination charges on fixed and mobile networks.<sup>7</sup>

The NPT therefore concludes that LRAIC (Long Run Average Incremental Cost), without mark-up for common costs, costs for localising handsets and business overhead costs, should form the basis for the regulated termination charges in the next regulatory period. The NPT will make a new calculation based on pure LRIC by the end of 2013.

On that basis, the efficient price for termination of voice calls on mobile networks will total NOK 0.15 (2009 kroner value) in 2013.

	<b>Current price at the end of 2010</b>	<b>1 January 2011 - 30 June 2011</b>	<b>1 July 2011 - 31 December 2011</b>	<b>1 January 2012 - 30 June 2012</b>	<b>1 July 2012 - 31 December 2012</b>	<b>1 January 2013 - 31 December 2013</b>
<b>Telenor</b>	<b>0.50</b>	<b>0.30</b>	<b>0.30</b>	<b>0.30</b>	<b>0.20</b>	<b>0.15</b>
<b>NetCom</b>	<b>0.50</b>	<b>0.30</b>	<b>0.30</b>	<b>0.30</b>	<b>0.20</b>	<b>0.15</b>
<b>Tele2</b>	<b>0.90</b>	<b>0.50</b>	<b>0.30</b>	<b>0.30</b>	<b>0.20</b>	<b>0.15</b>
<b>Network Norway</b>	<b>0.90</b>	<b>0.90</b>	<b>0.80</b>	<b>0.65</b>	<b>0.20</b>	<b>0.15</b>
<b>TDC</b>	<b>0.75</b>	<b>0.40</b>	<b>0.30</b>	<b>0.30</b>	<b>0.20</b>	<b>0.15</b>
<b>Ventelo</b>	<b>0.75</b>	<b>0.40</b>	<b>0.30</b>	<b>0.30</b>	<b>0.20</b>	<b>0.15</b>

Maximum prices per minute for termination in the period 1 January 2011 to 31 December 2013. All prices are in NOK (excluding VAT).

<sup>6</sup> See for example the Ministry of Transport and Communications decision of 19 May 2009.

<sup>7</sup> Commission's Recommendation dated 7 May 2009:

[http://ec.europa.eu/information\\_society/policy/ecomm/doc/implementation\\_enforcement/article\\_7/recom\\_termination\\_rates\\_en.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/recom_termination_rates_en.pdf). The Recommendation provides that NRAs should ensure that termination charges are set at a cost-effective symmetric level by 31 December 2012. However, in particular cases, NRAs can permit new providers a transitional period of up to four years.

Network Norway and Tele2 are required to report on the progress of the rollout of the third mobile network on a half-yearly basis, as of 1 January with a 15 January deadline and as of 1 July with a 15 July deadline. Maximum prices may be changed to the detriment of Network Norway and Tele2 if the NPT finds that the development of the third mobile network does not adequately meet the conditions for the development pace and coverage.

The NPT also proposes to impose an obligation on Telenor, Netcom, Network Norway, Tele2, TDC and Ventelo to charge reasonable prices for interconnection. What can be regarded as a reasonable price will be decided on a case-by-case basis.

### 3 COMMENTS

The Authority has examined the Notification and has the following comments pursuant to Article 7(3) FWD.

In line with the Authority's practice, the practice of the European Commission and the European Regulators' Group (now the Body of European Regulators for Electronic Communications (BEREC)), termination rates should normally be symmetrical and based on costs calculated on the basis of an LRIC model.<sup>8</sup> In that light, the Authority welcomes the NPT's proposal to introduce symmetrical termination rates based on costs calculated on the basis of an LRIC model by the end of the proposed regulatory period (1 January 2013). Indeed, symmetry will be achieved for all operators other than Network Norway by 1 July 2011; and for all operators by 1 July 2012.

The Authority has accepted in the past that the NPT's goal of promoting competition based on infrastructure can be considered as legitimate and as falling under the competences attributed to the NPT under the regulatory framework. In that light, it has accepted that higher termination rates may be used to finance the deployment of a third mobile network in Norway. However, the Authority has also stressed that additional income obtained through termination rates should not go beyond what is necessary.

The Authority has also expressed concerns as to the possibility of new network operators attempting to extend in time and scope entry assistance. The Authority understands that the roll-out has in fact been delayed by at least 12 months.

Given that the higher prices Network Norway and Tele2 are allowed to charge for termination in their mobile networks are solely for the purposes of financing the investment costs of the new network, it is vital to ensure that those companies meet their obligations in that regard. Therefore, it is crucial that the NPT continue to monitor closely the fulfilment of the proposed plans for the roll-out of the new network and to react in a timely and appropriate manner, including with sanctions if necessary, if those plans are not fulfilled.

The Authority notes that the NPT has recognised these concerns, and has provided in the proposed measures that the termination rates may be changed to the detriment of Network

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<sup>8</sup> Authority's comments letters of 4 May 2007 and 3 November 2008 pursuant to Article 7(3) of Directive 2002/21/EC on the Norwegian wholesale markets for voice call termination services on individual mobile networks; Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L 124/67, 20.05.2009; ERG (07) 83 final 080312 Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates, adopted by the ERG Plenary on 28 February 2008.

Norway and Tele2 if the NPT finds that the deployment of the third mobile network does not meet the conditions laid down (in particular in relation to timing and coverage).

The Authority considers that it would be appropriate in such circumstances to reduce substantially the termination rates applicable to those companies.

The proposed measures also refer to the possibility, in the event that Network Norway and Tele2 fail to meet their obligations, for other companies to recover the excessive termination rates already paid, with the assistance of the method used in the proposed measures for calculating the additional income.

Provided that if need be the NPT follows through on the above measures in a timely and efficient manner, the Authority considers that the proposed measures appear sufficient to address the concerns expressed above.

The Authority also notes that the proposed reduction in termination rates makes it even more crucial to ensure that prices in the wholesale market for mobile access and call origination (former Market 15) are not excessive.

Finally, on a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the present notification will require re-notification in accordance with Article 7(3) of the Framework Directive. Whether such re-notification of the remedies also necessitates a re-assessment and re-notification of the underlying SMP findings will depend on the circumstances of the individual case.

#### **4 FINAL REMARKS**

Pursuant to Article 7(5) of the Framework Directive, the NPT may adopt the resulting draft measure and shall communicate the final measure to the Authority.

The Authority's position on this Notification is without prejudice to any position the Authority may take in respect of other notified draft national measures.

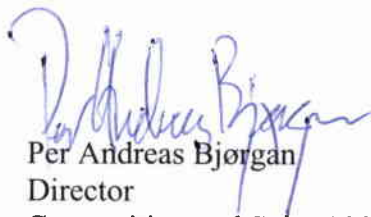
Pursuant to point 15 of the Authority's Recommendation on Article 7,<sup>9</sup> the Authority will publish this comments letter on its eCOM Online Notification Registry. The Authority does not consider the information contained in this letter to be confidential. However, the NPT is invited to inform the Authority within three working days following receipt of this letter if it considers, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which the NPT would like to be deleted prior to publication. The NPT should provide reasons for any such request. The request should be submitted through the eCOM Registry or by facsimile to +32 2 286 1800, marked to the attention of the eCOM Task Force.

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<sup>9</sup> EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, adopted by Decision No 493/09/COL of 2 December 2009, not published yet. The Recommendation is available on the Authority's website: <http://www.eftasurv.int/media/internal-market/recommendation.pdf>



Yours sincerely,



Per Andreas Bjorgan  
Director  
Competition and State Aid Directorate



Hallgrímur Ásgeirsson  
Director  
Internal Market Affairs Directorate