Annex 2

Result of the consultation of NPT's notification of decisions in the market for voice call termination on individual public mobile networks (market 7)

25 August 2010

Contents

1 Introduction

This document summarises the responses to the consultation to the Post and Telecommunications Authority's (NPT) notification of decisions in the markets for voice call termination on individual public mobile networks (market 7). The notification was circulated for national comment in the period 26 March to 10 May 2009.

The following submitted a response to the consultation:

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

NPT has also obtained additional information from Telenor, Tele2 and Network Norway. After the Consultation Closing Date Telenor commented on Tele2's and Network Norway's response to the consultation.

The statements from the various respondents to the consultation have been summarised by topic and in accordance with the individual sections in the notification. The most important and characteristic comments have been quoted as fully as possible. NPT briefly summarise its views on the relevant comments and how the Authority has dealt with the input.

NPT has noted all input, and, in the same manner as verbal feedback from meetings with operators and the like, they have been taken into account in the work on decisions in this market.

The individual responses to the consultation are available on NPT's website.[1]

2 Comments on description of competition problems

Assessment and conclusion in the notification of decisions
In section 4.3 on excessive pricing NPT wrote that none of the providers, Ventelo, TDC and Mundio Mobile, have set termination charges lower than the price cap.

Consultative input
Network Norway (page 6) Exempt from public disclosure [[redacted]]

NPT's assessment
NPT will refer to that Exempt from public disclosure [[redacted]

[1] See http://www.npt.no, under the menu selections SMP and nasjonale høringer (national consultations).

[redacted] Because of the comment NPT has clarified the text in section 4.3 of the decision.

3 Comments on obligation of non-discrimination

3.1 On-net calls

Assessment and conclusion in the notification of decisions
In the notification, NPT concluded that it would not be very appropriate to require the charge for terminating off-net calls to be equal to the implicit internal charge for terminating on-net calls.

Consultative input
Tele2 points out that "on-network discounts" create problems for competition in the mobile market in that customers are locked into the major network operators (pp. 23-24). The company therefore requests NPT to do a more thorough assessment of the issue and then assess whether an obligation of non-discrimination should also apply between on-net and off-net calls.

Network Norway believes the non-discrimination obligation must be expanded to cover on-net calls for Telenor and NetCom (pp. 4 and 31-35). NPT has apparently recirculated its own conclusions from the decision in former market 16 in 2007 and failed to assess changes that have taken place in the market since then. Network Norway therefore urges NPT to do a thorough analysis of the scope of price plans for on-net calls, the absolute difference between retail prices for on-net calls and the termination charge/retail price for off-net calls, the effect of price squeezes, the subsidising effects from smaller providers to large network owners, the competitive advantages for providers with a large customer base and competitive disadvantages for providers with a small customer base. The company also believes that NPT's description of the competition problems cross-subsidisation and price discrimination in today's market is insufficient, and this is assumed to have affected the conclusion that on-net calls shall not be subject to an obligation of non-discrimination (page 6).

NPT's assessment
NPT still contends that it would be rather inappropriate to require the charge for terminating off-net calls to be equal to the implicit charge for terminating on-net calls. Nor does it seem appropriate to impose a non-discrimination obligation for on-net calls on only a limited selection of network owners. In NPT's opinion the regulation in former market 15 will be more suitable for addressing the competition problems cited by Tele2 and Network Norway. NPT is imposing an obligation of non-discrimination and accounting separation on Telenor in market 15. In the statement of accounts Telenor is to report revenues that are billed to end users and revenues from interconnection to the same end users. To the extent Telenor largely uses "on-network discounts", the revenues will be similarly reduced. Telenor must then ensure that the access charges for both national roaming and MVNO access are set at a level providing sufficient margin. NPT will also point out that the reduction of the termination charges down to an efficient level will reduce the chances of such discrimination, as already presented in the notification of decisions.

NPT has not found grounds to amend the conclusion of the decision on this point.

3.2 Obligation of non-discrimination for the smaller providers

Assessment and conclusion in the notification of decisions
In the notification NPT concluded that it would not be necessary or proportionate to impose an obligation of non-discrimination on TDC, Ventelo and Mundio Mobile. For Tele2 and Network Norway NPT notifies that an obligation of non-discrimination will be imposed.

Consultative input
Tele2 believes an obligation of non-discrimination (page 23) must be imposed on TDC, Ventelo and Mundio Mobile. These operators are in practice being given a negotiating advantage when access prices are negotiated, compared with Tele2 and Network Norway. It is difficult for Tele2 to see the reasons for such an advantage.

Network Norway is of the opinion that it is unreasonable to impose an obligation of non-discrimination on the company since the MVNOs do not have a similar obligation imposed on them (pp. 29-30). The smaller players can use this to provide a competitively distorting offer of prices for calls from fixed to mobile by setting a low mobile termination price for fixed network operators who establish themselves as resellers of mobile services to the small operators. Since the small operators are MVNOs with Telenor, this means that all calls are carried on Telenor's network instead of the third network.

NPT's assessment
NPT wishes to point out that the market shares of the MVNOs are very small, and any competition-distorting effects of such discrimination will be very limited. Since NPT is planning a relatively quick reduction of the termination charges for the MVNOs down to an efficient symmetric level, the chances of engaging in price discrimination will be reduced.

NPT has not found grounds to amend the conclusion in the decision on this point[2].

4 Comments on obligation of transparency

Assessment and conclusion in the notification of decisions
In the notification NPT concluded that an obligation shall be imposed on providers to give advance notice to other providers of any changes in existing offers no later than two months before they are carried out.

Consultative input
Network Norway believes it should be specified in the decision that advance notification shall only be given to parties with whom the company has signed an interconnection agreement (page 30). It would be impractical to notify other providers. Providers who do not have an agreement on direct interconnection with Network Norway will purchase termination from Network Norway via their transit operator (e.g. Telenor) and will then be notified through this operator.

[2] See footnote No. 1 in the Market Analysis (Annex 1 to the decision) for discussion on Mundio Mobile

Furthermore, Network Norway believes that the decision should specify that advance notification of price adjustments according to the adopted price cap is unnecessary for the first adjustment following NPT's decision if the decision is appealed and the appeals case is concluded less than two months before the deadline for the first adjustment under the decision. Experience from earlier decisions indicates that such notification entails a number of practical challenges.

NPT's assessment
NPT agrees with Network Norway that it will be impractical to notify all providers directly about price changes. Nor has this ever been the intention. Network Norway (and all other providers) are required to disclose their mobile network termination rates. Publishing on the undertaking's own website is regarded as a satisfactory method of publication. It will then be natural to publish prices in advance on the same site. In addition, it would be natural for Network Norway to explicitly notify providers with whom the company has a direct interconnection agreement. NPT sees no need to clarify the decision on this point.

NPT is aware that there may be some practical challenges associated with notification of the first price reduction if any appeal is not finally decided. In the Authority's opinion, it is still necessary to require notification of price changes two months in advance. Providers have the opportunity to set their termination charges based on different price elements, assuming a weighted average of the various price elements do not exceed the maximum price per minute. While other providers know what the new price cap will be, they will need to know the concrete start-up and minute rates to set their own retail prices. NPT has therefore not changed its decision on this point.

5 Comments on the proposed price controls

5.1 Comments on the LRIC model

5.1.1 Errors in calculating the investment cost

Consultative input
Tele2 (page 17) and **Network Norway** (pp. 4 and 10) point out that in the LRIC model NPT has modelled a network with 1,209 base stations and a population coverage of 77%. This is largely a network without indoor coverage, and the proportion of calls transmitted through national roaming will then increase. The quality of such a network will be unacceptably low. If NPT corrects for errors in the number of base stations in the model, the relevant investment cost will be NOK 2.18 billion.

NPT's assessment
In the wake of the consultation input NPT adjusted parts of the model for the hypothetical third operator, so that the modelled network better reflects Mobile Norway's business plan, particularly in terms of number of base stations, coverage quality and rollout. The adjusted model provides an investment cost for a hypothetical third player that is approximately of the same magnitude as the cost estimates from Network Norway and Tele2 show. At the same time a revised model with multiple base stations and improved coverage quality provides a somewhat lower LRIC cost for termination. The cause of the reduction in the efficient termination cost is that a natural consequence of the model adjustments is a technology shift

where a greater proportion of calls in the third network are based on 3G. This traffic means lower call-driven costs. NPT has made changes in the decision that reflect both the revised investment cost and the modified efficient termination charge.

5.1.2 Errors in the calculation of efficient LRIC price for the third network

Consultative input
Tele2 (pp. 17-18) and **Network Norway** (pp. 4 and 10-11) believe there are three errors in the calculation of the efficient LRIC price:

- Market shares for the third operator should be closer to Tele2’s and Network Norway’s real market share.
- Incoming voice calls per subscriber are set too low compared with Tele2’s and Network Norway’s real volumes.
- Data volumes for HSDPA will level off after the introduction of LTE networks in 2011, while the LRIC model assumes further growth.

NPT’s assessment
Concerning market shares, NPT has adopted a conservative approach so that the third operator’s market share is not immediately equal to Tele2’s and Network Norway’s total market share. The aim of such a conservative approach is to take into account the time it takes to produce and implement any new SIM card or other activities by moving customers from an MVNO system to a system for national roaming. However, NPT has taken parts of the input into account. The market share for the third player at start-up has been changed from 15% to 17%, which corresponds to Tele2’s and Network Norway’s overall market share at the end of 2009. Traffic figures updated up to May 2010 have been used as the basis for further examinations of traffic streams from other networks that are carried over the networks of Tele2 and Network Norway. The Authority has found reasons for accommodating the input so that the estimates for incoming voice calls per subscriber are adjusted up.

Data traffic is growing rapidly and projecting volume is very challenging. In December 2009 the Authority prepared a forecast for future growth. Now that the full-year figures for 2009 are now available, they show that the realized growth is 39% higher than forecast. It may indicate faster growth at an earlier stage, and, at the same time, levelling off at an earlier date. NPT has taken the input into account and finds it appropriate to model a data volume that stabilizes from 2011.

For these three above-mentioned comments reference is made to additional disclosures in Annex G to the model documentation for the LRIC model.

5.2 Use of the results of the LRIC model

Assessment and conclusion in the notification of decisions
In the notification NPT concluded that LRIC without mark-up of common costs, etc. should form the basis for the regulated termination charges in the next period. Pure LRIC based on a strict interpretation of the Commission’s recommendation may mean a disproportionately low cost for termination in the Norwegian market.

Consultative input
Telenor supports NPT’s conclusion not to use pure LRIC. However, the company disagrees with NPT’s justification to disregard the other common expenses (pp. 2 and 13). In Telenor’s

opinion NPT has not given a satisfactory explanation for changing the principle for determining a cost-oriented price. NPT has used LRAIC+++ in previous decisions, and that principle should be continued. The notified maximum price of 17 øre from 1 July 2013 is accordingly too low. Telenor's and NetCom's termination charges can in any event not be reduced further from current levels before the introduction of symmetry between the operators.

NetCom supports NPT's conclusion not to use pure LRIC (pp. 10-11). The Company believes, however, that as long as comparative models are not prepared for all operators, the results from the different models will not give NPT the necessary basis for defining efficient prices for all operators. The company, however, agrees with NPT that the results from the updated LRIC model do not provide a basis for asymmetric termination charges over time.

Norwegian Competition Authority believes that in the interest of harmonisation NPT should follow the Commission's recommendation that the pure LRIC should be used for price regulation (page 1). High termination charges could lead to reduced consumer welfare and competitive distortions between fixed and mobile markets and between providers with asymmetric market shares and traffic patterns. There is also reason to question the appropriateness of charging coverage-related costs to purchasers of termination.

NPT's assessment
NPT cannot see the comments bring in significant new elements and will therefore mainly refer to the opinions set out in section 6.4.3 in the decision. Since the rollout of mobile networks in Norway is driven more by coverage than traffic, the results using pure LRIC are lower in Norway than in many other countries. NPT therefore believes a longer time should be used on any introduction of pure LRIC in Norway. At the same time NPT believes it is necessary to move in the direction of the recommended model, and LRIC without mark-up for common costs, costs for localising handsets and business overhead costs are therefore a more accurate approach than LRAIC+++.

However, NPT has made adjustments to the LRIC model that largely accommodate input on preparing a carrier-specific model for the third developer as well. The information from this adjustment gives NPT an even stronger basis for determining an efficient termination charge.

NPT has not found reason to change its conclusion on establishing an efficient price based on the operator with the highest cost in the next regulatory period.

5.3 Basis of asymmetric termination charges

Assessment and conclusion in the notification of decisions
In the notification NPT designed glide paths which mean that Tele2 and the MVNOs TDC, Ventelo and Mundio Mobile will have symmetrical termination charges with Telenor and NetCom from 1 January 2012, while Network Norway will maintain higher termination charges than the other operators until 1 July 2012.

Consultative input
Telenor believes that a number of factors indicate that symmetrical termination charges should be introduced immediately. Firstly, Telenor points out that the clear legal basis is that termination charges shall be efficient and symmetrical if underlying objective cost differences beyond the control of the termination providers cannot be documented (pp. 2-3). This is stated

inter alia in the Commission's recommendation on regulation of termination charges. NPT has established that there are no objective cost differences between providers, and thus there is no authority for continued asymmetric regulation. Nor can requests for network rollout justify asymmetric regulation.

Telenor furthermore believes that a desire for network rollout cannot in any case justify the continuation of asymmetry since at the end of this period more has been transmitted than NPT's estimate of the cost of the third network (pp. 2 and 4). In total, Tele2 and Network Norway will have obtained additional termination revenues of approximately NOK 2.4 billion before the symmetric termination charges are introduced as notified.

Furthermore, Telenor has made an updated calculation showing that the economic losses arising from the decision amounts to approximately NOK 650 million per year (pp. 2 and 5-7). This is an efficiency loss, and NPT has not substantiated that any gains from increased competition may be of this magnitude. NPT has not made any assessments of the economic disadvantages or the potential economic benefits of continuing asymmetric regulation. NPT should clarify whether this is because the Authority does not consider it necessary to weigh the advantages against the disadvantages of the choice of remedies. Telenor also refers to the Transport Ministry's calculations in the 19 May 2009 decision and believes they have a number of weaknesses. In Telenor's opinion, it is *inter alia* inconsistent to compare consumer benefits with economic losses as the Ministry is doing. Telenor also believes an assumed price drop of 1 øre per call minute, SMS and MMS is unfounded. OECD comparisons show that Norway is already among the countries with the lowest prices. Without documentation substantiating that further rollout of the third network will lead to such price reductions, calculations of positive consumer effects will be speculation.

Telenor says that a basic premise for the proposed regulation from NPT is that there is not sustainable competition in former market 15 (pp. 8-9). A fundamental weakness of NPT's notification is that the Authority has not documented that existing market conditions in market 15 currently meet the three-criteria test. Telenor also believes that if the factual assumptions related to the market situation in market 15 that the Ministry of Transport assumed in its decision do not reflect today's facts, NPT must take the current situation into account. The Ministry's statements in the previous decision thus do not bind NPT today.

Telenor points out that with their networks Tele2 and Network Norway will be able to offer mobile broadband in competition with ICE and others. ICE offers only mobile broadband, but is a potential provider of voice. Telenor believes it distorts competition when the authorities make sure that one network operator's network is fully funded by termination charges while the other network operator must provide the funding itself. NPT has not made any assessments of the consequences asymmetric regulation will have for network operators who only offer mobile broadband or for the market in which mobile broadband is included. Nor has the impact of the distortion of competition on the achievement of the objective of the regulations been assessed. NPT's notification is therefore deficient.

Telenor points out that Tele2 and Network Norway are behind in network rollout compared with what they have promised earlier to the authorities (page 12). This may be an expression of a business calculation of that it is more profitable to use national roaming rather than build more base stations. Such a decision is completely independent of the asymmetric termination charge and asymmetry does not provide incentives for better coverage.

NetCom points out that the legal principle is that termination charges shall be efficient and symmetrical and that discrepancies can only be accepted if they can be adequately explained (pp. 3-6). The company refers to the Commission's recommendation on the regulation of termination charges and points out that the notified regulation is not fully in accordance with the recommendation. Providers benefit from asymmetric regulation for more than 4 years, nor can Netcom see that there are imperfections in the retail market that indicate that such regulation is necessary. NetCom also points out that asymmetric price regulation may affect existing operators' investment incentives, for example related to the rollout of the 4G network in Norway (pp. 6 and 15).

NetCom also thinks that former market 15 is now tending towards effective competition. The authorities' justification for applying asymmetric price controls on termination charges as a remedy for achieving sustainable competition in market 15 is therefore no longer sustainable (pp. 6-7). NetCom refers to NPT's draft decisions in market 15 and has a hard time seeing that asymmetric regulation of termination charges can be justified when NPT simultaneously finds reason to reduce the use of remedies in market 15 because the market is tending towards effective competition. Furthermore, NetCom believes that great interest in the vacant frequency resources in both the 800 and 1800 MHz band, compared with the existing provision of national roaming, means that asymmetric price controls are no longer deemed necessary in respect of the objective of infrastructure development.

NetCom also believes that the notified price controls are disproportionate and in violation of the purpose of the Electronic Communications Act (pp. 7-8). Asymmetric price controls will not remedy the competition problems of overpricing and cross-subsidisation. Since providers that will benefit from higher termination charges in the next regulatory period too have already received sufficient support to be able to establish themselves in the market, NetCom believes regulation goes beyond what is necessary to fulfil its purpose.

Furthermore, NetCom points out that in its decision of 19 May 2009 the Ministry set as the requirements for asymmetric regulation that development of a third mobile network will be in accordance with plans presented by Tele2 and Network Norway (page 8). In NetCom's opinion, NPT must verify whether or not the precondition of network development has been met. If the precondition has not been met, an explanation must be provided for why asymmetric price regulation for the benefit of these providers should nevertheless be maintained.

The **Norwegian Competition Authority** refers to several possible negative effects of allowing asymmetric termination charges over time and believes it is appropriate that NPT impose symmetric termination charges for the operators in the market as early as possible (p. 2).

NPT's assessment
NPT sees Telenor's and NetCom's comments to a large extent to be consistent with the arguments both companies made in their appeals against NPT's 17 November 2008 decision relating to price regulation of the smaller providers of mobile termination. These arguments were considered by both NPT and the Ministry of Transport and Communications in connection with the appeals, and NPT will therefore mainly refer to the Ministry's decision of 19 May 2009 in which neither Telenor's nor NetCom's appeals were allowed. In several contexts, both NPT and the Ministry have clearly expressed that symmetrical termination charges are the long-term goal, and NPT's decision means that this target will be reached

during the forthcoming regulatory period. Meanwhile, in its appeals decision the Ministry allowed Tele2 and Network Norway to meet its investment costs through additional termination revenue. Furthermore, asymmetric regulation is necessary for this to happen.

NPT has not seen any reason to make an assessment of the socio-economic disadvantages or potential economic benefits of continuing asymmetric regulation, as Telenor is calling for. This is because already in the previous period the Ministry of Transport and Communications decided that asymmetric regulation should be continued until Tele2 and Network Norway recoup their costs. In this connection the Ministry also concluded that the use of asymmetric regulation as a remedy is economically profitable when one wants to stimulate increased competition by building a third mobile network (section 3.12.1 in the decision vis-à-vis Tele2 and section 3.13.1 in the decision vis-à-vis Network Norway). Nor does NPT accordingly see any reason to go into detail on Telenor's statements concerning the Ministry's assumptions and calculations.

Regarding the comments that asymmetric regulation is not appropriate because it is no longer a basis for regulation of former market 15, NPT refers to the fact that the Authority carried out the three-criteria test and found that there is still a basis for regulation of this market in Norway. NPT is aware that Telenor and NetCom have a different view than NPT on the outcome of the three-criteria test and further need for regulation, but will refer here to the assessment in NPT's decision 5 August 2010 in the market for access and origination on mobile networks. ESA has also agreed that there is still reason to regulate former market 15 in Norway.

NPT sees no reason to consider separately whether competition is distorted when a player such as ICE, which exclusively offers mobile broadband, is not permitted to finance its network rollout by using additional income from termination. In previous decisions NPT and the Ministry of Transport and Communications permitted all new providers of mobile termination services that contribute to increased infrastructure competition (both MNOs and MVNOs) to charge higher termination charges than the established providers in a start-up period. Since ICE has chosen not to offer voice services on its mobile network, it has consequently not been appropriate to consider this issue for ICE. Should ICE decide in the future to offer termination of voice calls on its mobile network, NPT will undertake a specific assessment for ICE.

Concerning Telenor's and NetCom's comments about the progress of Tele2's and Network Norway's network rollout, NPT refers to the fact that the Authority regularly receives reports on the progress of the rollout, in line with the Ministry's 19 May 2009 decision. The maximum termination charge may be changed to the detriment of the companies if the rollout does not adequately meet the development pace requirements. NPT has so far not found any reason to change the price caps to the detriment of Tele2 and Network Norway due to lack of development. According to the Ministry's decision such reporting shall continue until the period of soft regulation has come to an end. In the decision NPT emphasised that the reporting requirements still apply and that price regulation can be changed to the detriment of Tele2 and Network Norway if the rollout requirements are not adequately met.

When it comes to NetCom's comment that the notified price regulation is disproportionate and in violation of the purpose of the Electronic Communications Act, NPT wishes to refer to the fact that the Ministry of Transport and Communications considered these issues in its decision of 19 May 2009, see section 3.5 and 3.6 in the Ministry's decision on NetCom's appeal. We also refer to the assessment of Tele2's and Network Norway's glide paths in section 5.6 below.

5.4 Relationship between access price and efficient termination charge

Assessment and conclusion in the notification of decisions

In the notification NPT laid down an efficient termination charge on the basis of results from the LRIC model. The efficient price is based on the player with the highest cost in the upcoming regulatory period. Access prices are not taken into account in the relevant termination cost.

Consultative input

Tele2 believes the efficient price for operators using national roaming or MVNO access must be set by doing a mark-up of the actual access prices these players have (page 18). NPT cannot set termination charges to a level as low as 17 øre in the current regulatory period without simultaneously regulating access prices (national roaming) to a level that is considerably below 17 øre (pp. 18-21). If the termination charge is regulated down to 17 øre, Tele2 will be put in a margin squeeze situation. The percentage of traffic transmitted through national roaming will determine how much money the company will lose. By abolishing price regulation in market 15, NPT removes a possible tool for preventing a margin squeeze. In Tele2's opinion, an obligation of non-discrimination and accounting separation will not be sufficient for preventing a margin squeeze. For example, it is conceivable to consider price regulation in market 15 where the price of national roaming is set at the efficient termination charge minus 20%. The only way to achieve a lower access price will be through negotiations. In that case, Tele2 and Network Norway must be given sufficient time to negotiate prices down. This is not possible with the proposed glide path. To avoid a margin squeeze NPT should not in the next regulatory period regulate the termination charge to below 50 øre. NPT can possibly combine this by only regulating until 1 January 2013 and doing a new assessment over the course of 2011/2012.

Network Norway refers to previous statements from NPT stating that lower termination charges could result in price squeezes in relation to the access price that NPT can regulate in market 15 (pp. 4 and 25-28). The company believes that NPT is obligated to ensure the continuation of balanced regulation of the two markets. The draft decision on market 15 amends the proposed regulation of market 15 on several points, particularly since NPT is planning not to continue retail-minus regulation. NPT must therefore consider another form of price regulation than retail-minus to ensure that the access price reflects underlying costs, particularly with regard to the correlation between national roaming and termination charges. It also appears very unclear what NPT believes should be the specific assessment topics for uncovering whether price squeezes occur when termination charges are reduced.

Ventelo believes that any reduction of its termination charges must require Telenor to reduce the access prices in the MVNO agreement accordingly, either voluntarily or through follow-up from NPT (pp. 1, 3). If termination charges are regulated down to a symmetrical level of 17 øre, there is a considerable chance that the price the MVNOs must pay to the network operator will be higher than the termination income. NPT does not intend to regulate the access price for MVNOs. In Ventelo's opinion regulation of market 7 must be increasingly viewed in the context of regulation of former market 15.

TDC believes that the access price Telenor charges should not under any circumstance be higher than the termination charge (p. 7). The effect of a higher access price than termination charge would be a price squeeze. The combination of inadequate regulation of access and the proposed regulation of termination also opens up the possibility that Telenor may offer on-network calling that will represent a price squeeze.

Ventelo (pp. 6-7) and TDC (p. 8) believe that there is a need for a link between Telenor's access prices and regulation of termination charges. Access prices must be reduced at the latest simultaneously with the entry into effect of the new price cap. In the companies' opinion, prices in market 15 must be regulated to prevent the occurrence of margin squeezes. One way to prevent a margin squeeze can be to connect Telenor's access prices for termination directly to Telenor's LRIC costs to produce the same service, including a reasonable margin mark-up.

NPT's assessment
NPT agrees that the regulation of market 7 and former market 15 must be viewed in context. The Authority is aware that current access prices for national roaming and MVNO access are significantly higher than the efficient termination charge that all providers should be regulated down to. However, the reduction to efficient price will not take place before 1 January 2013, and NPT expects the access prices will be significantly reduced by that time. In the new regulation of market 15 NPT is calling for an obligation of non-discrimination and accounting separation for Telenor. In the financial statements Telenor is required to report what Telenor's internal retail business would have paid their network operators if they had established a standard MVNO agreement or national roaming agreement with them. The cost is calculated by multiplying the volume of voice calls, SMS and data traffic that is relevant in the various accounting statements and that are generated by and terminated to end users under the current respective prices in the MVNO agreement and national roaming agreement. Telenor must then ensure that the access charges for both national roaming and MVNO access are set at a level providing sufficient margin. In NPT's opinion this is sufficient for ensuring that providers who buy access are not put in a margin squeeze as a whole.

Regarding comments that are directly related to the regulation of market 15, NPT sees no reason to comment on them here. Views on the use of remedies in market 15 are considered in conjunction with the process toward new regulations in the market.

5.5 Price controls for Telenor and NetCom

5.5.1 Glide path for Telenor and NetCom

Assessment and conclusion in the notification of decisions
In the notification NPT proposed a glide path where Telenor's and NetCom's maximum prices are reduced to 30 øre from 1 January 2011. The next reduction to 25 øre will be 1 July 2012, and the final reduction to 17 øre will take place on 1 January 2013.

Consultative input
Tele2 cites that in its 19 May 2009 decision, the Ministry of Transport and Communications pointed out that Telenor and NetCom are also receiving substantial additional income for the period up to 31 December 2010 (page 21). This additional income is not taken into account by NPT when Telenor and NetCom are regulated down from 2011 onwards. The companies are being allowed further additional income, and this cannot be justified under the purpose of the

Electronic Communications Act and the objective of increased competition. Tele2 believes NPT should consider a faster reduction for these companies down to an efficient price.

Network Norway believes that Telenor's and NetCom's termination charges must be reduced down to an efficient price from 1 January 2011 (pp. 4 and 30-31). Since the efficient price is based on the maximum LRIC cost, Telenor and NetCom will enjoy a positive effect because the price cap will be set higher than the LRIC results based on actual data about Telenor's and NetCom's networks. NPT must also estimate Telenor's and NetCom's additional income since they will not immediately be regulated down to the efficient price corresponding to the 19 May 2009 decision of the Ministry of Transport and Communications.

Ventelo believes both Telenor's and NetCom's termination charges should be lowered to 25 øre or lower within the first 6-month period (page 7). This will give consumers an immediate benefit while lessening the burden of overall regulation on smaller players.

TDC believes Telenor and NetCom must be ordered to reduce their prices down to 17 øre already 1 January 2011 (page 9). A higher level causes the other players further losses while providing the two dominant players a superprofit that is detrimental to competition.

NPT's assessment
As stated in the decision, the glide paths for the different providers are determined by a balancing of various considerations. The socio-economic benefits of reduced termination charges for Telenor and NetCom must be balanced against the economic interests of the regulated providers. Furthermore, the asymmetry is reduced while Tele2 and Network Norway are allowed additional income from termination until the investment costs of network development are covered. In NPT's opinion the difference between the various providers' termination charges provides the best basis for calculating the additional income. A faster reduction of Telenor's and NetCom's termination charges would therefore lead to faster reduction of other providers' termination charges. Since the difference in termination charges has the greatest importance, there is little point in NPT's opinion to estimate the additional income of Telenor and NetCom against what is considered at any given time to be an efficient price.

NPT cannot see that the comments have added any significant new elements, and NPT still believes that the glide paths for Telenor and NetCom balance the different objectives in an appropriate manner.

However, NPT has adjusted the glide paths so that the termination charge in 2013 reflects the updated efficient LRIC.

5.6 Price controls for Network Norway and Tele2

5.6.1 Relevant investment cost

Assessment and conclusion in the notification of decisions
In the notification NPT said that the investment cost should be calculated on the basis of updated LRIC models. One should then look at the cost of going from being an MVNO to becoming a national operator with its own radio network. The total investment cost then amounts to NOK 1.44 billion.

Consultative input
Tele2 (pp. 3-4 and 11) and **Network Norway** (pp. 2 and 14-17) believe the notification changes the prerequisites that are assumed in the Ministry of Transport and Communications' decision of 19 May 2009 where the Ministry accepted Network Norway's and Tele2's business plan. The relevant investment cost is thus exempt from public disclosure [[redacted]]. Since the Ministry has accepted the planned mobile network and its costs, NPT cannot make assumptions based on a different hypothetical mobile network with fewer base stations and lower costs.

Furthermore, Tele2 (page 18) and Network Norway (page 11) believe that NPT has not included all relevant costs associated with migration from MVNO to national operator with its own radio network. This includes costs for new billing-related systems, system integration costs and network operation costs.

For its part **Telenor** (additional comments) believes that the Ministry of Transport and Communications' decision cannot be interpreted to mean that the Ministry has intended to bind future administrative authorities (both their own and NPT's). In the company's view, it is furthermore highly doubtful whether the Ministry is authorised to bind NPT's (and their) future exercise of authority on such a dynamic area, and it refers in addition to the limitations in the Ministry's power to issue instructions under Electronic Communications Act Section 10-2. When it comes to investment costs and the use of LRIC, the company points out that in its appeal decision the Ministry did not undertake any fundamental assessment of various options for calculating the investment cost with the result that one cannot deduce from the decision that the Ministry has intended in a binding way to set aside any calculation based on LRIC.

NPT's assessment
In light of the comments received, NPT undertook a new assessment of the investment cost that should be used. The Authority has concluded at approximately the same costs as the Ministry used in its decision. The decision is therefore changed on this point. NPT's revised conclusion is based *inter alia* on an update of the LRIC model so that it also calculates the costs of an operator with a profile that is closer to the actual rollout that is performed by Network Norway and Tele2. The results of the model will show that the costs for such an operator are approximately of the same magnitude as the cost estimates from Network Norway and Tele2 show.

Since NPT does not directly want to use the cost of migrating from MVNO to the national network operator as the basis for the investment cost, the comments related to the migration costs are of less relevance. NPT therefore sees no need to comment on them separately.

5.6.2 Method for calculating the additional income

Assessment and conclusion in the notification of decisions
NPT said in the notification that the additional income from termination for Network Norway and Tele2 should be calculated based on the difference in the fixed termination charge between the different players. NPT has estimated additional income from 1 October 2007 for both Tele2 and Network Norway.

Consultative input

Tele2 believes that in the notification NPT re-examined the additional income estimates for the period 1 October 2007 to 31 December 2010 that the Ministry of Transport and Communications assumed in its decision of 19 May 2009 (pp. 4-6 and 11). In the period 1 October 2007 to 31 January 2009, the Ministry estimated additional income by looking at the relief Tele2 has achieved by climbing the investment ladder. This provides additional income of NOK 170 million that the Ministry has decided with final and binding effect. Moreover, for the period 1 February 2009 to 31 December 2010 the Ministry estimated additional income on the basis of the difference between Tele2's termination charge and the efficient termination charge (NOK 0.50) in this period. The Ministry based the calculation on traffic figures from January and February 2009 and has on the basis of these estimated the number of terminated minutes for 2009 and 2010, with no volume growth. The Ministry's decision paves the way for changes in additional income as a result of volume increases. In Tele2's opinion, however, NPT's forecast, derived from the LRIC model for traffic terminated in 2010, is too high. NPT should instead obtain actual figures from Tele2 and use these as a basis for the forecast for 2010.

Since NPT only looks at costs to go from one MVNO to a national network operator, Tele2 believes that additional income should be calculated from the difference between Tele2's price and the MVNOs' price (page 18). There will then be a correlation between the cost elements NPT omits and how additional income is calculated.

Network Norway also believes NPT's calculation of additional income represents a significant departure from the Ministry's decision 19 May 2009 (pp. 2-3 and 15-19). NPT is bound by the constraints expressed in the appeals decision. In Network Norway's opinion NPT cannot take additional income prior to 1 January 2009 into account because the Ministry has determined that additional income before this time is not relevant. NPT's calculation represents an unfair difference in the calculation of Network Norway in relation to other mobile operators.

Furthermore, Network Norway denies that additional income from 1 February 2009 to 31 December 2010 is as high as NPT has assumed. In particular, this applies to the calculation for 2010 where the traffic forecasts from the LRIC model are used. Additional income must be calculated based on actual volume figures for Network Norway until March 2010 and then based on the company's own forecasts to the end of 2010. Network Norway also believes that additional income should be calculated based on the difference between Network Norway's and the MVNOs' price cap until the MVNOs have symmetry to avoid Network Norway's additional income being eaten up by the benefits the other players have by being above the efficient price during the period.

NetCom said that the period for calculating the additional income is too short, especially for Tele2 (page 13). Tele2 has been able to charge considerably higher termination charges than Telenor and NetCom since 2004. Network Norway has also received additional income for a longer period than that which forms the basis for the calculations in the notification. The company launched commercial services already in February 2007.

NPT's assessment

The Ministry of Transport and Communications distinguished between Tele2 and Network Norway in its decisions of 19 May 2009 concerning the period of time for calculating additional income. For Network Norway the Ministry found that additional income should be calculated for the period 1 February 2009 until 31 December 2010 and continue into the new regulatory period. For Tele2, the Ministry stated that it would also be relevant to consider the additional income Tele2 achieved in the period from 1 October 2007. After a re-evaluation, NPT concluded that the periods of additional income calculations should follow the same time interval that the Ministry assumed so that additional income for Network Norway is first calculated from the time the company was required to adjust their termination charges downward. NPT has therefore updated the decision so that the estimates of additional income for Tele2 are made from 1 October 2007 and for Network Norway from 1 February 2009.

Regarding the actual method for calculating additional income, the Ministry of Transport and Communications used different methods in different time periods. In the period 1 February 2009 to 31 December 2010 the calculations are based on the difference between the price cap and efficient price in the period (inflation-adjusted LRIC price of NOK 0.50 per minute). The Ministry based itself on the collected traffic figures for January and February 2009 and assumed no traffic growth in the period. For Tele2, the Ministry has stated that estimates for the period 1 October 2007 to 1 February 2009 that quantify the regulatory relief Tele2 has achieved by climbing the ladder of investment "have relevance". According to the Ministry's appeals decision such a calculation gives Tele2 NOK 170 million in additional income in this period.

After a reassessment NPT still believes the Ministry's decision does not specify an absolute principle for calculating the additional income. For example, it makes little sense to utilise NOK 0.50 as a basis for efficient price for a calculation of additional income in the upcoming regulatory period. Since for much of the period all providers will have higher termination charges than estimated efficient price, NPT still believes it would be most appropriate to use the size of the asymmetry between the different players. Moreover, NPT believes the method should be the same for the entire period, i.e. from 1 October 2007 for Tele2 and from 1 February 2009 for Network Norway and on into the next adjustment period until the investment cost is recouped.

In addition, the calculations of Tele2's additional income for the period 1 October 2007 to 1 February 2009 must in NPT's opinion be based on actual traffic figures. It should be noted here that in its appeals decision the Ministry did not do an independent assessment of the additional income in this period, but instead used the figures supplied by NPT. These figures were based on traffic figures for 2007. It is obvious that in a subsequent decision NPT must be able to assume an additional income calculation based on actual traffic figures when the result one should arrive at is the real additional income the company has had. This means additional income for Tele2 will be higher for the period 1 November 2007 to 1 February 2009 than the NOK 170 million the Ministry referred to in its decision.

On the other hand, both Tele2 and Network Norway's additional income will be lower for the period 1 February 2009 to 1 July 2009 since Telenor's and NetCom's termination charges were then NOK 0.60, i.e. above the efficient price of NOK 0.50 used by the Ministry. Furthermore, this method means that the additional income for both companies over the next period will be substantially lower than if one were to use the efficient price for new LRIC calculations.

Moreover, NPT believes it is appropriate to update the calculations so that they are made on the basis of the latest available data for traffic volume. NPT has therefore obtained new traffic data from Tele2 and Network Norway for the first five months of 2010. Forecasts in the LRIC model are also updated based on new traffic figures for the last half of 2009 and the first five months of 2010.

With respect to NetCom's comment that the additional income should be calculated further back in time, NPT can again demonstrate that in its 19 May 2009 decision the Ministry defined the relevant periods for calculating the additional income for Tele2 and NetCom from 1 October 2007 and 1 February 2009, respectively. NPT agrees with NetCom that both Tele2 and Network Norway have had higher termination charges than Telenor and NetCom even before the starting points in question and that they therefore can be said to have received additional income in the past too. This Ministry also knew this at the time it made the decision, and NPT therefore finds that the issue has been considered by the Ministry. NPT has no basis to deviate from the Ministry's assessments of this point.

5.6.3 Design of the glide path going forward

Assessment and conclusion in the notification of decisions
In the notification NPT designed glide paths which mean that Tele2 and Network Norway have symmetrical termination charges with Telenor and NetCom from 1 January 2012 and 1 July 2012, respectively.

Consultative input
Tele2 believes the Ministry of Transport and Communications has provided clear guidelines for how the glide path will look like from 2011 onwards (pp. 6-7). The correct starting point for NPT is that Tele2 will reach the crossing point between investment cost and additional income by 2012 at the earliest. NPT can in principle push the date forward to after 2012, but has no opportunity to make changes to Tele2's detriment, see the principle in Public Administration Act Section 35.

Network Norway points out that the Ministry of Transport and Communications Network has adopted a target suggesting that Network Norway shall have asymmetric prices until 2013 and that the company's prices shall then be reduced "relatively quickly" toward a symmetrical level (pp. 3, 7-8 and 19-20). NPT changes this target by determining symmetric prices "as soon as possible" after the start-up period. Network Norway has been granted a transitional period of 5 years and 5 months, and the other mobile operators have had a longer glide path than this. As a minimum requirement Network Norway must have the same regulatory exemption period that Tele2 has had. Network Norway also believes that NPT seems to focus solely on short-term effects of reduced retail prices, instead of ensuring healthy, sustainable competition in the long term.

Furthermore, Tele2 (pp. 7 and 10) and Network Norway (pp. 3 and 24-25) believe that the design of the glide path eliminates the possibility that a more extensive rollout than 75% coverage will have an effect on termination charges beyond 2012/2013, which the Ministry has paved the way for in its decision.

Tele2 (pp. 7-10) and Network Norway (pp. 20-21) believes that NPT, in violation of the Ministry's requirements, has assumed that the symmetric prices based on LRIC should be introduced as soon as possible. The speed of the reduction is seen in the context of the glide path other players have had. Reference was made to NetCom's glide path and glide paths in Ireland and Italy. To Tele2's knowledge no other European operators have had similar sharp and abrupt reductions in termination charges as NPT proposes in the notification. Network

Norway believes it is irrelevant to make comparisons with countries that have already introduced symmetry.

Tele2 also believes that the glide path NPT has proposed is contrary to the purpose of the Electronic Communications Act and contrary to the fundamental requirement of predictability (pp. 11-12). NPT does not put enough emphasis on the key remedy for achieving the overarching purpose of the Electronic Communications Act. The proposal will in turn threaten the third network and thus the overall objective of effective competition.

Network Norway also believes that the notification represents an unreasonable discrimination between Network Norway and the MVNOs in that the MVNOs, which do not have the same costs as Network Norway, will be able to use the additional income arising from the asymmetry for marketing and customer acquisition (pp. 3 and 24).

Telenor points out that Tele2 and Network Norway together receive more than what the network in question costs (pp. 11-12). In Telenor’s opinion, the total additional income companies receive must be applied when considering whether there are grounds for further asymmetry. There is no basis for claiming that both parties will receive a minimum of additional income equivalent to half the investment each. In any case, Tele2 must be regulated down to the symmetric level from the beginning of the next regulatory period since the company then will have had more than its share of investment in the network.

NetCom refers to the ERG Common Position concerning the regulation of termination charges, which *inter alia* states that at the end of 2007 only 7 of a total of 98 providers had termination charges that were over 50% higher than the provider with the lowest termination charges (pp. 8-10). Although notified price controls are generally going in the right direction, it is a paradox that the asymmetry for Network Norway increased from 44% to 57% in the first six months compared with NetCom and Telenor. NetCom also points out that symmetric prices have already been achieved in Sweden and Finland and will be achieved significantly faster in Denmark than in Norway. The objective of harmonisation therefore suggests that the asymmetric regulation must be phased out faster than the notification schedule.

NetCom also refers to the fact that in NPT’s 8 May 2007 decision the company was ordered to equalise its cost difference with Telenor over the course of half a year, while Tele2 and Network Norway were given 1 and 1.5 years, respectively (pp. 11-12). In the interest of equal treatment asymmetric price regulation must be phased out sooner than announced.

Furthermore, NetCom points out that the estimated additional income for Tele2 and Network Norway for the period 1 October 2007 to 31 December 2010 exceeds the net investment cost of NOK 1.44 billion NPT has assumed (pp. 12 and 13). There is therefore no basis for maintaining the asymmetric price regulation for these providers into the next period. In NetCom’s opinion, the Ministry of Transport and Communications’ plan calls for the total additional income to equal the investment cost, and not necessarily that the companies are to individually recoup their share. NPT also adopted an alternative which means that Tele2 and Network Norway are being credited with an investment cost that is higher than the companies’ actual investment.

Ventelo believes there is no basis to discriminate between Tele2 / Network Norway and MVNOs (page 8). All players are necessary to ensure the development of a third network. NPT has also announced that all companies should be regulated down to the same efficient price within the regulatory period. Ventelo therefore asks that the same reduction in effect for Ventelo be imposed on Network Norway.

NPT's assessment

On the basis of consultation comments received and new traffic data from Tele2 and Network Norway NPT has made new estimates of additional income, see section 5.6.2 above. The new estimates also affect the design of the glide paths, especially for Network Norway, and this is adjusted in the decision.

In NPT's opinion the specification of 2012 and 2013 by the Ministry of Transport and Communications as the estimated times for when the investments can be expected to be recouped are not binding guidelines that NPT must take into account in the design of the glide paths. The Ministry has done calculations based on assumptions and preconditions and made its estimates on their basis; see also the Ministry's formulations in the decisions:

> "*Tele2/Network Norway is* ***likely****, based on calculations made in sections 3.12.3 / 3.13.3* ***subject, among other things, to volume growth*** *during 2012/2013 to achieve additional income equivalent to the investment cost assumed in this decision.*" (NPT's emphasis)

The key point of the Ministry's decision is that both companies are to recoup their investment costs through additional income from termination, and that factors including volume development for providers, the efficient price level and design of the glide paths for all providers will then be able to affect the length of the period needed to recoup the investment costs.

The Ministry has further assumed that the reduction to efficient price, possibly to the glide paths of other operators should be "relatively quick". Meanwhile, the Ministry has stated that additional income early in the development period must be assumed to be more important than late in the period. This indicates that the size of the asymmetry should be gradually reduced, and NPT has designed the glide paths accordingly. Tele2 will almost have covered the investment costs already at the end of 2010. To ensure that the company will not be given additional benefits the termination charges are reduced from 1 January 2011. The company is however given time until 1 July 2011 before the prices are reduced down to the same level as Telenor and NetCom. For Network Norway there is rationale to sustain significantly higher termination rates a bit into the next regulatory period. Since nearly two years remains until Network Norway have covered their investment costs, NPT finds that the corporation has sufficient time to prepare for the new and lower level of termination. NPT therefore believes the company's termination rate at the time when additional income equals their share of investment costs can be reduced down to the other providers' glide paths without any additional time for adjustment.

NPT does not agree with Tele2 and Network Norway that asymmetry must last until the end of the next regulatory period to keep open the possibility that a more extensive rollout than 75% coverage will have an effect on termination charges beyond 2012/2013. The Ministry has only hinted that this will be considered later if Tele2 and Network Norway should demonstrate the ability and willingness to build networks with coverage beyond 75%. That does not mean that companies will automatically be able to earn additional income if such a situation should arise, nor that the asymmetry must be maintained in case providers wish to build a larger network in the future.

NPT does not agree with Telenor and NetCom that the total additional income for Tele2 and Network Norway is to be used when considering whether there are grounds for further asymmetry. The Ministry issued separate decisions for Tele2 and Network Norway for 19 May 2009, and the calculation of additional income is done separately for the two companies. Concerning the decision regarding Network Norway the Ministry also states the following:

> "*Under the present conditions the Ministry believes that* ***when Network Norway's additional income from the termination is deemed to equal the investment cost of the company*** *for the construction of networks … it would be reasonable for the termination charge to be reduced down relatively quickly to an efficient level …*" (NPT's emphasis)

NPT does not agree with Ventelo that there is no basis to treat Tele2/Network Norway and the MVNOs differently. Tele2 and Network Norway are investing in the development of a third mobile network, including necessary radio coverage, which the MVNOs are not doing. The price regulation of the various companies takes account of this. In its 19 May 2009 decision the Ministry of Transport and Communications has also assumed that Tele2 and Network Norway are to be regulated differently than MVNOs.

NPT has updated the decision to include additional examples of other European regulation of the termination charges to a relatively small, symmetric level.

5.6.4 Proportionality assessment

Assessment and conclusion in the notification of decisions
In the notification NPT estimated a net income reduction for Tele2 and Network Norway in the period 2011 to 2013. Although price regulation entails a significant income reduction for both companies, it must be viewed in the context of the fact that for years the companies have benefited from lenient regulation.

Consultative input
Tele2 strongly disagrees that the proposed price controls are proportionate (pp. 13-15). The notification will lead to large reductions in termination revenue for the new network developers. This may in turn threaten the achievement of the goal of a third competitive network in Norway. The effects should be considered in connection with Telenor's, NetCom's and Tele2's results for 2009 and a net income reduction for Tele2 of NOK 1 billion will threaten Tele2's business.

Tele2 believes it also is relevant to refer to the review the Ministry of Transport and Communications did in 2006 in connection with the reduction of NetCom's termination charges. The Ministry then did an assessment of the impact of a weakened Netcom on competition, and in light of the assessment the Ministry revoked the latest price reduction down to 83 øre that NPT had imposed. Tele2 cannot see that NPT has made any assessment of the effect on competition in the mobile market that Tele2 and Network Norway will be as financially weakened as the notification envisions.

Network Norway raises questions about why the cost savings for the company during the period 2011-2013 is NOK 1,100 million, while it is only NOK 900 million for Tele2 (page

21). In the company's opinion, there is reason to believe that NPT has calculated too high cost savings for Network Norway.

Moreover, Network Norway believes that the notification represents a transfer of funds to NetCom and Telenor while Network Norway will see reduced revenues that have a net effect of NOK 1 billion (pp. 22-24). The notified decision is therefore disproportionately burdensome for Network Norway and will involve a deterioration of the business model for Network Norway. NPT has considered the question of proportionality too superficially and the Authority must elaborate what weight it places on the various instruments. Network Norway also believes that the tightening in market 7 and removal of retail-minus regulation as a whole is not suited for achieving the targets that the Ministry laid down in its appeals decision of 19 May 2009. NPT is therefore requested to investigate and describe the consequences of the interactive effect between the regulation of these markets.

Telenor believes NPT has turned the starting point for the principle of proportionality around by basing itself on what a reduction of current excessive pricing will mean for the players (pp. 2 and 10-11). When the clear general rule is symmetric regulation, the assessment must be based on symmetric regulation. Continuation of the asymmetry will be a benefit to the recipients of additional income for termination and a burden to payers of excessive pricing. Telenor therefore disagrees that the notified regulation is burdensome for Tele2 and Network Norway. Nor can Telenor see that a rapid reduction of the termination benefit would threaten the existence of the foundation for the players.

NPT's assessment
With the adjustments NPT has made of the glide paths, the Authority believes that the decisions are fully in line with the Ministry of Transport and Communications' decision of 19 May 2009. The Ministry also considered proportionality for Tele2 and Network Norway in their decisions. Both providers will cover their investment costs through additional income from termination, and in line with signals from the Ministry's decision both must expect rapid reduction towards the efficient price after the investment costs are recouped. NPT therefore believes the proposed regulation is proportionate.

NPT does not agree with Telenor that the assessment of proportionality must be based on a hypothetical situation of symmetric regulation. The consequences for the affected providers must be evaluated based on the actual, concrete situation that exists in the market.

5.7 Price controls for the MVNOs

Assessment and conclusion in the notification of decisions
In the notification NPT proposed a glide path where the MVNOs TDC, Ventelo and Mundio Mobile have symmetric termination charges with Telenor and NetCom from 1 January 2012.

Consultative input
Telenor believes soft regulation of the MVNOs until 1 January 2012 is longer than the companies can be said to legitimately expect based on previous decisions (pp. 2 and 12-13). It is not relevant cost differences or other circumstances that may provide a basis for further asymmetry. TDC and Ventelo became established in the autumn of 2005. NPT has planned a reduction period that is considerably longer than was notified to the companies in 2007.

NetCom points out that TDC and Ventelo have had additional income from termination since 2005 and Mundio Mobile since 2007 (pp. 13-14). Notified price controls will mean that these companies will have an exemption for efficient prices far beyond what they have been promised earlier (three to four years).

NetCom also refers to the fact that in NPT's 8 May 2007 decision the company was ordered to equalise its cost difference with Telenor over the course of half a year, while the MVNOs were given one year (pp. 11-12). In the interest of equal treatment asymmetric price regulation must be phased out sooner than announced.

Ventelo (page 4) and **TDC** (4-5) point out that the presence of MVNOs is important for competition in the mobile market. Termination has been and remains an important source of income for all the smaller players. If asymmetric termination charges in favour of MVNOs are removed, there is much to indicate that it will be more convenient to enter into a service provider agreement, or withdraw from the market.

Furthermore, Ventelo (page 5) and TDC (page 5) do not agree that MVNOs will have the same efficient costs as a host provider. NPT does not take into account that an MVNO must deal with Telenor's access prices. The prices are not commercially negotiated, as NPT assumes, but is a result of Telenor's market power. Ventelo and TDC therefore request NPT to clarify the statement that it is not appropriate to include commercially negotiated access prices in the relevant termination cost.

Furthermore, Ventelo (page 6) and TDC (page 8) point to the fact that Electronic Communications Act Section 4-9 sets as an absolute condition for price regulation that a player can maintain a disproportionately high price level. If Telenor's access prices are near or above MVNO termination charges, the companies' price level will be disproportionately high.

Instead, Ventelo believes NPT should fix a linear glide path for Ventelo in the period until 1 January 2013 (page 7). This will result in lower losses in the short term and thus not affect the company's competitiveness in the same degree as the notified regulation.

TDC believes NPT should change its glide path so that there will be small adjustments at the beginning and that any symmetry is not applicable from 2013 (p. 9). This will result in lower losses in the short term and thus not affect competitiveness to the same degree as the notified regulation.

NPT's assessment

NPT's decisions in former market 16 of respectively 8 May 2007 regarding TDC and 17 November 2008 regarding Ventelo, stated that companies can expect to be regulated down to the efficient price during 2011. In line with that NPT finds it appropriate that the MVNOs shall also be given predictable conditions and time to adjust, a glide path is planned that will provide symmetry between the MVNOs and Telenor and NetCom from July 2011. NPT cannot see that the comments add significant new elements and has not found any reason to change the glide paths for TDC and Ventelo. NPT had therefore taken into account the comments from Telenor and NetCom.

5.8 Consequences for providers

Assessment and conclusion in the notification of decisions

In the notification NPT estimated the net effect for the involved providers. Among other things NPT has concluded that the notified regulation will have an overall positive effect of NOK 160 million on Telenor's mobile operations.

Consultative input

Telenor says NPT's description gives a wrong picture of the proposed price regulation (pp. 2 and 5). Once the correct starting point is symmetric regulation, the consequences of the regulation must be weighed against a situation of symmetry and not up to the current situation of high asymmetry. The consequences are therefore the opposite of what NPT argues. For providers who continue to extract excessive prices the notification will be positive, while for providers like Telenor and NetCom the notification will be negative.

NetCom believe NPT's estimates for the individual provider are encumbered by major uncertainties (page 14). In NetCom's opinion the positive net effect for Telenor is higher than that set out in the notification if the effect of Telenor's fixed network operations is taken into consideration.

Ventelo believes NPT is wrong when in the notification the Authority concludes that the net result effect for the period 2011 to 2013 will be approximately equal to zero (pp. 5-6). There is balance at the overall level with respect to incoming and outgoing traffic on Ventelo's network, but there are major differences at the operator level. In Ventelo's calculations, the notified regulation will represent a loss of approximately Exempt from public disclosure [[redacted]] in the period 2011-2013.

TDC believes NPT is wrong when in the notification the Authority concludes that the net result effect for the period 2011 to 2013 will be approximately equal to zero (pp. 5-6). The notified price cap, put together with the proposed obligations on other players, will have immediate and very negative consequences for TDC and other challengers. The only sure consequence of the notified regulation will be that Telenor's competitiveness will be significantly strengthened at the expense of the other players.

NPT's assessment

NPT disagrees with Telenor that the consequences of regulation must be measured against a hypothetical situation of symmetric regulation. The consequences for the affected providers must be evaluated based on the actual, concrete situation that exists in the market.

NPT disagrees with NetCom that the positive net effect for Telenor will be higher than that stated in the notification. As stated in the notification, NPT believes it is most likely that the reduction in the mobile termination rates will benefit fixed telephony customers in the form of reduced retail prices for calls from fixed to mobile networks. The net effect of Telenor's fixed network activities will therefore be approximately equal to zero. NPT has updated the decision with examples of earlier reductions in retail prices in connection with reductions in termination charges in mobile networks.

Ventelo and TDC did not have special justification or documentation that shows why NPT's calculations are not correct. NPT has therefore no basis for changing the principles of these calculations.

NPT has also updated the calculations in the decision to take into account the adjusted glide paths and changes in traffic forecasts in the LRIC model.

5.9 Consequences for retail prices

Assessment and conclusion in the notification of decisions

In the notification NPT points out that there is uncertainty associated with the impact of the decision on the development of retail prices for calls between different mobile networks. Providers may choose to rebalance their retail prices to offset part of the revenue shortfall on the termination side. For traffic from fixed networks NPT expects providers to reduce their retail prices for calls to mobile networks as a result of reductions in termination charges.

Consultative input

Tele2 says it is obvious that the challengers, especially Tele2 and Network Norway, must increase their retail prices to survive in the market if the income reduction is carried out in accordance with the notification (page 16). This will lead to churn for Telenor and NetCom, and the consequence of the notification is thus weakened competition. The consequences will be increased retail prices in both the short and long term, which is not in keeping with the purpose of Electronic Communications Act Section 1-1.

Network Norway is sceptical of NPT’s assumption that retail prices from fixed to mobile networks will be reduced correspondingly by the reduction of termination charges in mobile networks and asks NPT to explain further how the Authority can draw such a conclusion (page 22). Furthermore, Network Norway is sceptical that the retail prices of Telenor and NetCom for calls to the other players’ networks will be reduced. The companies’ pricing structure makes subsequent inspection impossible of whether the reduction in termination charges actually results in reduced retail prices for calls from Telenor and NetCom.

Telenor believes that the natural reference is the efficient symmetric price, and NPT’s notification therefore entails a significant loss of end users. In Telenor’s opinion, one must therefore assume that the overall negative impact for consumers must be at least equal to the rollout cost for the third network.

Ventelo cannot see that a reduction in termination charges will lead to a corresponding reduction in retail prices in the mobile market (pp. 4-5). The reduction in termination charges will result in MVNOs having weakened finances to engage in price competition. Nor is it clear that Telenor and NetCom will have any incentive to reduce retail prices. Regardless, the negative competitive consequences of strict regulation will exceed the benefit of consumers possibly enjoying lower prices in the short term.

NPT’s assessment

As stated in the notification, NPT believes that there is great uncertainty associated with the impact the decision will have on the development of retail prices for calls between the different mobile networks. NPT has pointed out that providers will be able to rebalance retail prices to compensate for parts of the income shortfall on the termination side. In NPT’s opinion this will provide pricing that better reflects the underlying costs, which will entail more economically efficient pricing. NPT pointed this out in the notification and cannot see that the comments from Tele2, Network Norway and Ventelo represent any new aspects that are relevant to this assessment. In reality, these companies are arguing for permanent asymmetry in termination charges. Both NPT and the Ministry of Transport and

Communications have rejected such regulation and have clearly expressed that symmetrical termination charges at an efficient level are the long-term goal.

When it comes to traffic from fixed to mobile networks, the experience of previous reductions in termination charges on mobile networks indicate that similar reductions are made in retail prices. NPT has updated the decision with examples of such price reductions.

NPT disagrees with Telenor that the consequences of regulation must be measured against a hypothetical situation of symmetric regulation. The consequences for the end users must be evaluated based on the actual, concrete situation that exists in the market.

5.10 Does NPT regulate against "bill and keep"?

Consultative input
Tele2 refers to statements in the media by NPT's director general and interprets these as meaning that NPT may have already decided the end result, i.e. the termination price of 0 ("bill and keep"). This explains the very aggressive price reductions contained in the notification. In that case Tele2 believes this is premature. The company also shows that the ERG consultation document on "bill and keep" is not fully processed. "Bill and keep" is not consistent with the current regulation where Article 13 in the Access Directive makes a requirement that any price regulation shall ensure the regulated provider a reasonable return on its investment.

NPT's assessment
In connection with this decision NPT has neither considered nor decided whether "bill and keep" can be an appropriate form of regulation in the future. "Bill and keep" is therefore not discussed in the decision. The starting point for price regulation set forth in section 6.4.1 of the notification, and the Commission's recommendation on the use of pure LRIC as a method for calculating the efficient cost has been one of the factors NPT has looked at. When Tele2 characterises price reductions as very aggressive, NPT wishes to point out that the Authority has actually adopted a cautious approach by not using pure LRIC as a target in the coming period, see section 6.4.3 in the decision.

5.11 Entry into force of the first price adjustment

Assessment and conclusion in the notification of decisions
In the notification NPT plans the first reduction of the price cap for all providers to go into effect from 1 January 2011.

Consultative input
Network Norway points out that Telenor and Netcom in 2009 declined to do post-calculations of the difference between the regulated price in NPT's decision and possibly higher termination charges if there was a finding in favour of Network Norway after 1 February 2009 (page 29). After this became known, the Ministry of Transport and Communications concluded that the consideration of reversibility cannot be given weight in the direction of not granting deferred implementation. Network Norway believes it will be an asset that the first reduction of the price cap will not happen until at least four months after the decision date. Alternatively, NPT may decide to do a post-calculation among the interconnection parties if a later appeals decision changes the time or price cap adjustment that has been carried out in accordance with the decision.

NPT's assessment

After NPT has adjusted the glide paths in the decision, the glide path for Network Norway implies that the company's termination charges will first be reduced from 1 July 2011. NPT assumes that in case of an appeal against NPT's decision the Ministry will decide the appeal at a time which means that the issues Network Norway raises will not be relevant for the company.