

Brussels, 14 June 2011
Case No: 69961
Event No: 599214

Post- og teletilsynet
Postboks 93
4791 Lillesand
Norway

For the attention of:
Mr Willy Jensen, Director

Dear Sir,

Subject: Wholesale market for voice call termination on individual mobile network of Lycamobile in Norway
Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)¹

I. Procedure

On 13 May 2011, the EFTA Surveillance Authority (Authority) registered a notification from the Norwegian national regulatory authority, *Post- og teletilsynet* (NPT), concerning the wholesale market for voice call termination on individual mobile network of Lycamobile Norway Ltd in Norway (Lycamobile)².

The national consultation on the proposed decision³ was carried out in the period between 2 and 23 March 2011. The deadline for the consultation with the Authority under Article 7 of the Framework Directive expires on 14 June 2011. On 31 May 2011, the Authority sent a request for information to NPT. The reply was received on 6 June 2011.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Authority may make comments on notified draft measures to the NRA concerned.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (Framework Directive).

² Corresponding to market 7 of 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 of 7 March 2002 on a common regulatory framework for electronic communications networks and services); adopted by Decision No. 688/08/COL; OJ C 156, 9.7.2009, p.18.

³ In accordance with Article 6 of the Framework Directive.

II. Description of the draft measure

II.1. Previous notifications

The previous reviews of the market for voice call termination on individual mobile networks were notified to and assessed by the Authority under Cases No. 58296 (in 2005), 61794 (in 2007), 60558 (in 2008) and 68322 (in 2010)⁴. In the latter, NPT set mobile termination rates (MTRs) on the basis of a glide-path which anticipated a symmetric target rate of 0.15 NOK to be reached by all operators as of 1 January 2013⁵.

II.2. Market definition

As regards the product market definition, the network of Lycamobile constitutes a distinct product market, regardless of the technology used (both 2G and 3G networks are included)⁶. According to NPT, the relevant geographic market corresponds to the geographic coverage of the operator's network and is national in scope.

II.3. Finding of significant market power (SMP)

NPT proposes to designate Lycamobile as an operator with SMP on its mobile termination market. The main criteria considered by NPT in reaching its conclusion on designation are: (i) market shares (Lycamobile has a 100% market share on its own network), (ii) entry barriers, (iii) lack of countervailing buyer power, (iv) lack of potential competition as well as (v) the level of prices and the price development.

II.4. Regulatory remedies

NPT proposes to impose the following remedies on Lycamobile⁷:

- (i) access obligation;
- (ii) transparency obligation (publication of termination charges);
- (iii) price control.

NPT does not consider it necessary or proportionate to impose a non-discrimination requirement due to the fact that Lycamobile is a relatively small provider of voice call termination⁸.

As to the price control, NPT intends to impose on Lycamobile the same glide-path (for the period between 1 July 2011 – 31 December 2013) as established in its former decision on

⁴ See the Authority's comments letter of 22 September 2010 (Event 565982) and NPT's decision of 27 September 2010.

⁵ This decision was appealed by TDC AS, Telenor Norge AS, NetCom AS, Network Norway AS and Tele 2 Norge AS. The Authority was informed by NPT in its reply to the request for information that on 11 May 2011, the Norwegian Ministry of Transport and Communications issued a decision, amending the price control remedy with respect to the level of termination rates for Network Norway and Tele2, allowing them to employ asymmetric and higher termination rates than those originally set by NPT until 31 December 2012. This decision has not been officially notified to the Authority.

⁶ According to NPT, Lycamobile entered into an MVNO agreement with NetCom at the end of 2009 and into direct interconnection agreements with Telenor and NetCom in spring 2010. In 2010, the operator introduced its mobile retail offer and started providing the service of mobile call termination on its network.

⁷ As stated by NPT, the time horizon of the currently notified draft measure is approximately two years.

⁸ The main reason is that the negative consequence of any discriminatory behavior by Lycamobile (also stated for TDC and Ventelo in their SMP decision) will be limited as the operator terminates fewer calls than the four largest operators. The traffic flows in 2010 show that approx. 17% of the traffic in Lycamobile's network is termination minutes, while more than 80% is origination minutes.

the market for voice call termination for the operators TDC and Ventelo⁹.

The following evolution of maximum price caps¹⁰ for Lycamobile is foreseen:

	01 July 2011 – 31 December 2011	01 January 2012 – 30 June 2012	01 July 2012 – 31 December 2012	01 January 2013 – 31 December 2013
Lycamobile	NOK 0.30 (ca. 3.8eurocents/minute ¹¹)	NOK 0.30	NOK 0.20 (ca. 2.5 eurocents/minute)	NOK 0.15 ¹² (ca. 1.9eurocents/minute)

III. Comment

On the basis of the present notification and the additional information provided by NPT, the Authority has the following comment:

Transparency and coherence in the notification of EEA mobile termination rates to the Authority

The Authority wishes to underline that in order to ensure that decisions at national level do not have an adverse effect on the single market, national regulators should notify certain decisions to the Authority and other national regulators to give them the opportunity to comment. In this context, cost-oriented price caps, glide-paths or mobile termination rates determined in any other way constitute regulatory obligations referred to in Article 16 of the Framework Directive and have an effect on trade between the EEA States. Therefore, these draft measures are required to be notified under Article 7(3) in conjunction with Recital 15 of the Framework Directive.

Against this background the Authority reminds NPT that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification, and in particular any changes to the currently notified glide-path, will require re-notification in accordance with Article 7(3) of the Framework Directive to the Authority.

In this regard it should be recalled that also under the Authority's Recommendation on notifications, time limits and consultations provided for in Article 7 of the Framework Directive (Procedural Recommendation¹³), price

⁹ See NPT's decision of 27 September 2010, notified to and assessed by the Authority under Event No. Event 565982. As to Network Norway, a different glide-path was set by NPT, leading to the following values (as of 1 July 2011 and afterwards increasing every six months): 0,80; 0,65; 0,20 and 0,15 NOK). NPT allowed Network Norway to charge higher MTRs until 30 June 2012 (and Tele2 until 30 June 2011) as it intended to give these operators additional income to cover the costs of rolling out a new mobile network covering 75% of the Norwegian population by the end of 2011.

¹⁰ All prices are quoted without the VAT.

¹¹ Based on the exchange rate of 9 June 2011 (EUR 1 = NOK 7.87), see: <http://www.ecb.int/stats/exchange/eurofxref/html/eurofxref-graph-nok.en.html>

¹² This final step of the glide-path will be inflation-adjusted by NPT. It shall be applicable until a new decision is made by the regulator.

¹³ EFTA Surveillance Procedural Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5c1 of Annex XI to the Agreement on

levels, amendments to the methodologies used to calculate costs or prices as well as the determination of glide-paths are considered to be material changes to the nature or scope of a remedy that have an appreciable impact on the market and should therefore be notified by the standard notification procedure.

IV. Final remarks

Pursuant to Article 7(5) of the Framework Directive, NPT shall take the utmost account of comments of other NRAs and the Authority and may adopt the resulting draft measure and, where it does so, shall communicate it to the Authority.

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

The Authority also wishes to remind NPT of the possibility of the short notification procedure in particular in accordance with Point 6 (a-d) of the Procedural Recommendation.

Pursuant to Point 15 of the Procedural Recommendation, 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, you are invited to inform the Authority within three working days¹⁴ following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you would like to be deleted prior to publication. You should provide reasons for any such request.

Yours faithfully,



Olafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate



Per Andreas Bjørgan
Director
Competition and State Aid Directorate

the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, not published yet, available on the Authority's website, <http://www.eftasurv.int/media/internal-market/recommendation.pdf>.

¹⁴ The request should be submitted through the eCOM Registry or by facsimile to +32 2 286 1800, marked for the attention of the eCOM Task Force.