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Draft Decision – Exception exempting Telenor from the requirement to provide access to copper lines for new orders (sales freeze)

1 Introduction

The Norwegian Communications Authority (Nkom) refers to the notification of a sales freeze for copper-based broadband of 13 May 2024. Nkom received two consultative comments on the notification from NextGenTel on 14 May 2024 and Global Connect on 3 June 2024 respectively, as well as supplementary comments from Telenor on 4 July 2024 on the consultative input received.

2 Legal basis

Section 4-1, first paragraph of the Electronic Communications Act gives the authority to order tenderers with strong market position to "comply with any reasonable request to enter into or amend an access agreement." Access means making facilities and/or services available to other providers on specific terms and conditions for the purpose of providing electronic communications services.

Telenor is required to provide access to the copper access network through the 2018 market decisions.¹ In continuation of Telenor's announcement to shut down the copper network by the end of 2022, Nkom made the copper decision on 2 September 2020. Nkom concluded that the access obligation to Telenor's entire copper-based access network should be maintained until 2 September 2025.

¹ *The decisions of 20 December 2018 on the designation of a tenderer with significant market power and the imposition of special commitments in the wholesale market for local access to fixed access networks (Market 3a) and in the wholesale market for central access to fixed access networks (Market 3b).*

3 Briefly about the content and purpose behind the notification

In the notice of 13 May 2024, Nkom announced an opportunity for Telenor to introduce a so-called "sales freeze" for copper-based broadband. This means that an exemption from the access obligation is established so that Telenor is exempted from the obligation to receive and carry out new orders of copper access for DSL and Operator Access.

The rationale and purpose behind this were mainly twofold. First, the number of new orders for copper access has been declining and is now at such a marginal level that Nkom believes it is proportionate to introduce a sales freeze, also considering that there is less than a year left until the copper network's end date of 2 September 2025. Second, a sales freeze on copper-based broadband will facilitate a more efficient and predictable 1:1 replacement of copper cables with fiber cables in common routes.

4 Comments on the notification

4.1 Global Connect

Global Connect had several specific comments on the announcement of a sales freeze. First, they believe that the purpose of the copper decision has never been to strengthen the access buyers' ability to win new customers in the "battle" with other players or to secure earnings from new sales, as the copper decision was intended to protect the existing customer base that is still dependent on the infrastructure during a transition period as a result of Telenor's decision to shut down the copper network.

Furthermore, Global Connect argues that even though the volume of new orders is low, this does not mean that new orders have a very modest impact on competition in the broadband market. For Global Connects part, the current orders do not reflect new sales, but the creation of new access to serve existing customers by, for example, a customer moving location or the need for redundancy. Global Connect also points out that if Nkom were to remove this possibility, it would weaken the company's ability to take care of customers who need to move access or changes. Larger corporate customers in particular have a basic expectation that the supplier can maintain the service offering at new locations.

Furthermore, Global Connect points out that if they are forced to maintain the service offering with the help of alternative infrastructure, it will impose significant additional costs on them and may also lead to the loss of the entire customer relationship. Global Connect also questions

what kind of costs Telenor has in having to maintain a value chain for new copper orders, and points out that it was a premise for the copper decision that Telenor should cover additional costs for a longer period of time to ensure the predictability of access buyers.

Global Connect also disagrees that the introduction of a sales freeze option will stimulate migration of the last copper customers. They argue that the remaining customer base consists mainly of end-users where there is no alternative infrastructure, so that completely new infrastructure must be established to continue the deliveries. According to Global Connect, Telenor's ability to introduce a sales freeze will not make it easier to migrate these end customers faster, it will only increase the likelihood that they will change supplier to, for example, E-commerce. Telenor as a result of weakened service offerings.

Global Connect also had some comments on the process itself prior to Nkom's notice of sales freeze of 13 May 2024 which Nkom sees no reason to go into further detail in this context.

4.2 NextGenTel

NextGenTel confirmed in an email dated 14 May 2024 from Lasse Andre Nordgulen that both NextGenTel and their sister company Bitpro had already stopped all new sales of copper-based access products as they stated in the meeting with Nkom. After reading Global Connects consultation input, NextGenTel added that – even though Global Connect has some good points for a customer base in the corporate market – they still consider copper-based access products to be "yesterday's technology", and that a controlled shift away from copper towards other modern access technologies is "both necessary and desirable".

4.3 Telenor's comments on the consultation comments

Nkom asked Telenor to comment on two specific matters based on Global Connects consultative input. The first concerned Telenor's view on the case where Global Connect wants to retain the possibility of creating new access to serve existing customers, for example if a customer moves location or needs redundancy.

In its response, Telenor refers to the fact that it has made an updated assessment of the extent to which the importance of being able to maintain the service offering at new locations for larger corporate customers is reflected in actual new orders. Telenor states here that Global Connect has ordered four new access points during the first six months of 2024, of which only two of these are for business customers.

In Telenor's opinion, this indicates that the need seems very limited compared to maintaining the possibility of new orders throughout the network.

With regard to the need to establish new access points to meet redundancy requirements, Telenor points out that establishing redundancy based on copper will be very short-term solutions that must be solved without the copper network by 2 September 2025. Whether the two accesses ordered so far this year have been used for this purpose, Telenor is not able to verify. Telenor also notes that of the four new orders from Global Connect so far this year, two of these have access to VULA.

The second issue concerned a specification of Telenor's costs for continuing to offer new sales of copper-based broadband. Telenor refers here to the submitted cost accounts for 2023, which show an annual (exempt from public disclosure) [REDACTED] related to the wholesale products in question. In addition, Telenor argues that they will have to maintain processes and expertise that would otherwise have been avoided.

Telenor also pointed out that maintaining empty lines for copper today is an obstacle to using these in connection with further fiber development, ref. the possibility of temporarily replacing copper cable with fiber cable in connection with common routes.

5 Nkom's assessments

The copper decision from 2020 was intended to ensure that access buyers had predictable access to the copper-based access network in order to safeguard competition considerations. At the same time, Nkom has been concerned with proportionality and the balance against Telenor's interest in discontinuing the copper network, and thus not going further in requiring access than the purpose implies.

The use of copper access and the number of new orders has fallen sharply over time. The number of new orders is now at a marginal level. As stated in the consultation comments, NextGenTel has already stopped all new sales of copper-based access products, while Telenor states that Global Connect has ordered four new access products during the first six months of 2024, two of which are for business customers.

Over the past couple of years, Nkom has found reason to ease the scope of the access obligation in the copper decision. In a decision of 21 April 2022, it was stipulated that the access obligation shall apply with the exception of a specified number of exchanges in Telenor's copper

access network that have only been used for telephony, so-called "POTS-only" exchanges. In a decision of 8 June 2023, Telenor's obligation to access the copper access network was limited by exempting so-called "empty exchanges" and exchanges with five or fewer active wholesale access from the access obligation.

Furthermore, in a letter to Telenor dated 13 March 2024, Nkom has accepted, on specified terms, including an agreement with the relevant wholesale customer, a temporary handling of 1:1 replacement of copper cable with fiber cable in Telenor's fiber projects that are dependent on joint guidelines with third parties. This means that Telenor's obligations in the copper decision to maintain access to the entire copper access network, with the exception of the adjustments made in the decisions mentioned above, continue to apply in full also to the geographically limited fibre projects until 2 September 2025.

The fact that this obligation should continue to apply, in the unlikely event that one or more access purchasers request copper access at the addresses in question, was a prerequisite for Nkom's approval of such a temporary handling of 1:1 replacement.

By exempting Telenor from the obligation to offer and carry out orders for new copper cables in the future, a more efficient and predictable replacement of copper cables with fibre cables in common routes will be achieved. This is because Telenor will not have to offer copper access to addresses that have undergone such a replacement/modernization.

Nkom also expects that the possibility of introducing a sales freeze on copper will to some extent stimulate migration of the remaining copper customers by contributing to increased awareness of the fact that the copper network's lifespan is coming to an end. Nkom also refers to the fact that the use of sales freeze is discussed in the new recommendation from the EU on gigabit connectivity², paragraph 72, as a regulatory instrument to achieve a gradual phasing out of obligations related to the copper network:

As part of the gradual relaxation of regulatory obligations before the lifting of all obligations, a commercial closure of the legacy network encourages migration and can constitute a relevant intermediary step towards full switch-off."

² Commission Recommendation (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity, page 16.

Global Connect states that they still need to be able to create new access to serve existing customers, for example when a customer moves location. Nkom refers here to information from Telenor that Global Connect has only ordered four new copper access points during the first half of 2024. Given the low volume and trend of new orders as well as the end date for the copper network are relatively close, Nkom cannot see that this need can be given much weight. Nkom also believes that the low volume of new orders and the limited remaining lifetime of the copper network mean that the benefits to competition of maintaining the possibility of new orders throughout the copper network are disproportionate to the disadvantage this will have for Telenor.

With regard to the need to establish new access points to meet redundancy requirements, Nkom agrees with Telenor that establishing redundancy based on copper will now be a short-term solution, and one that must be solved in some other way by 2 September 2025. Nkom therefore believes that this consideration cannot be given much weight either, and also refers to the low number of new orders for copper access.

Nkom also refers to the fact that neither NextGenTel nor other access buyers have objected to Telenor now being exempted from offering the establishment of new copper access.

Against this background, Nkom believes that it is proportionate to exempt Telenor from the obligation to accommodate and carry out new orders for copper access for DSL and Operator Access. Nkom sees this as a natural step in continuation of the other easing Nkom has made in the scope of the access obligation in the copper decision over the past couple of years, and also considers this to be in line with the EU's recommendation on gigabit connectivity.

6 Decision

Pursuant to Section 4-1 of the Electronic Communications Act, and on the basis of the decisions in Markets 3a and 3b with subsequent amending decisions and the notice of 8 May 2024, Nkom makes a decision to stop sales of copper access.

The decision means that Telenor is exempted from the access obligation under the copper decision in that way that the company is not obliged to execute orders for access to DSL and Operator Access that have been received after the entry into force of this decision.



7 Notification to ESA

ESA received draft decision ...

8 Entry into force and deadline for appeals

In order for this decision to have the desired effect, and because the date of the copper network's end date of 2 September 2025 is still approaching, Nkom believes it is necessary for this decision to enter into force from the date of the decision.

The decision can be appealed, cf. Section 11-6 of the Electronic Communications Act and Section 28 of the Public Administration Act. The deadline for appealing the decision is three weeks from the date on which notification of the decision has been received by the party concerned, cf. Section 29, first paragraph, of the Public Administration Act.

Any appeal must be addressed to the Ministry of Digitalization and Public Administration and sent to the National Communications Authority, cf. Sections 28 and 32 of the Public Administration Act.

It follows from Section 11-8, first paragraph, of the Electronic Communications Act that lawsuits concerning individual decisions made pursuant to or pursuant to this Act, must be raised within six months after the decision was made. The time limit for filing an appeal is interrupted by an appeal against the decision and does not run for as long as the appeal is processed is ongoing, cf. Section 11-8, second paragraph of the Electronic Communications Act.

Best regards,

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The document has been approved electronically and processed without a signature.