

Brussels, 18 November 2024  
Case No: 93009  
Document No: 1498097

Norwegian Communications Authority  
Postboks 93  
4791 Lillesand  
Norway

For the attention of:  
Mr. John-Eivind Velure  
Director General

Dear Mr. Velure,

**Subject: NOR - Markets 3a-3b/2016 - Remedies - Sales freeze on copper access**

**Article 7(3) of Directive 2002/21/EC (Framework Directive)<sup>1</sup>: No comments**

## I. PROCEDURE

On 21 October 2024, the EFTA Surveillance Authority (“ESA”) received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Norwegian national regulatory authority, *Nasjonal Kommunikasjonsmyndighet* (“Nkom”). The notification concerns an amendment to the copper access obligation of Telenor ASA (“Telenor”) that is currently applicable in the market for wholesale local access provided at a fixed location (market 3a/2016) and the market for wholesale central access provided at a fixed location for mass market products (market 3b/2016) in Norway.<sup>2</sup>

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<sup>1</sup> 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, referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to that Agreement by Protocol 1 thereto (“the Framework Directive”). On 24 September 2021, the EEA Joint Committee adopted Decision (“JCD”) No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36 (“the Code”), into the EEA Agreement. The Code will repeal, *inter alia*, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable.

<sup>2</sup> Corresponding to markets 3a and 3b of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*), adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7 (“the 2016 Recommendation”).

The notification became effective on the same day.

A national consultation was carried out by Nkom, pursuant to Article 6 of the Framework Directive, during the period 13 May 2024 to 3 June 2024.

Prior to the notification, ESA had an informal exchange of emails with Nkom relating to the scope and implications of the draft measure in question.<sup>3</sup>

The period for consultation with ESA and the national regulatory authorities (“NRAs”) in the EEA States pursuant to Article 7 of the Framework Directive expires on 21 November 2024.

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

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

On 20 December 2018,<sup>4</sup> Nkom designated Telenor as a provider with significant market power (“SMP”) in markets 3a-3b/2016 and imposed regulatory obligations on Telenor, including an obligation to grant access to its entire copper network. When reviewing the corresponding draft measure, ESA commented, *inter alia*, on Telenor’s decreasing interest in upgrading its legacy copper network and on the growth of fibre infrastructure and services.

In its decision of 2 September 2020,<sup>5</sup> Nkom amended the access obligation on Telenor to ensure that it would maintain access to its copper-based network for a period of 5 years following the entry into force of that decision, i.e. until 2 September 2025. In its comments on the corresponding draft measure, ESA emphasised, among other things, the need to ensure appropriate access remedies following Telenor’s announcement on the progressive decommissioning of the copper network.

Moreover, in its decision of 21 April 2022,<sup>6</sup> Nkom amended Telenor’s obligation to provide access to its entire network by allowing Telenor to decommission a total of 542 Plain Old Telephone Service (“POTS-only”) sites, which had never been used for broadband services. ESA’s comments on the corresponding draft measure invited Nkom to monitor the decommissioning process and ensure an adequate notice period prior to decommissioning.

Lastly, by decision of 8 June 2023,<sup>7</sup> Nkom further amended Telenor’s copper access obligation by allowing it to decommission, subject to certain requirements, empty copper exchanges as well as exchanges with up to 5 active accesses. ESA had no comments on that notification.

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<sup>3</sup> Nkom’s emails of 10 and 11 April 2024 and ESA’s emails of 11 April 2024 (Doc. No. 1498329).

<sup>4</sup> Draft decision notified to and assessed by ESA under Cases No 82766 and 82767. See ESA’s comments letter of 3 December 2018, [here](#).

<sup>5</sup> Notified to and assessed by ESA under Case No 85355. See ESA’s comments letter of 23 July 2020, [here](#).

<sup>6</sup> Notified to and assessed by ESA under Case No 88321. See ESA’s comments letter of 30 March 2022, [here](#).

<sup>7</sup> Notified to and assessed by ESA under Case No 90415. See ESA’s no-comments letter of 5 June 2023, [here](#).

## II.2 Current notification

In the notified draft decision, Nkom proposes to amend Telenor's obligation to provide access to its copper network by exempting it from the requirement to provide access to copper lines for new orders (sales freeze). The notified change will not affect current copper customers, as Telenor will still be required to maintain existing copper accesses.

Nkom points out that the number of new orders for copper access has been continuously declining and is now at such a marginal level that Nkom deems it 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. Moreover, a sales freeze on copper-based broadband will facilitate a more efficient and predictable 1:1 replacement of copper cables with fibre cables in common routes, thus potentially contributing to further fibre development (which would not be possible if those unused copper cables had to remain available for copper access).

In the national consultation, access buyers did not express concerns about the announced sales freeze, except for GlobalConnect. The latter argued in particular that new orders might be necessary to serve existing customers (notably, large corporate customers) who expect to retain copper services when they move to new locations or need redundancy. In response, Telenor submitted that GlobalConnect had ordered only four new access points during the first six months of 2024, of which only two for business customers. Telenor also noted that, with the upcoming switch-off, the copper network would very soon become unavailable to meet redundancy needs anyway.

Taking into account the comments of interested parties, and in the light of the principle of proportionality of regulatory obligations, Nkom considers that the benefits to competition of maintaining access to the copper network also for new sales are too small to outweigh the costs that Telenor would continue to incur in order to keep ensuring such access.

Furthermore, Nkom expects that the sales freeze 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. In this respect, Nkom refers to recital 72 of the recent European Commission's Gigabit Recommendation,<sup>8</sup> whereby '*[a]s 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.*'

In conclusion, Nkom views the exemption under discussion as a further step towards full decommissioning, in continuity with the previous instances where it relaxed the copper access obligation, as described in section II.1 above.

## III. NO COMMENTS

ESA has examined the notified draft measure and has no comments.

## IV. FINAL REMARKS

On a procedural note, ESA recalls that any future amendments to, or more detailed implementation of, the draft measures consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, Nkom shall take the utmost account of comments of other NRAs and ESA. It may adopt the draft measure and, when it does so, shall communicate it to ESA.

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<sup>8</sup> Commission Recommendation (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity, OJ L, 2024/539, 19.2.2024.

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

Pursuant to Point 15 of the Procedural Recommendation,<sup>9</sup> ESA will publish this document on its eCOM Online Notification Registry. ESA does not consider the information contained herein to be confidential. You are invited to inform ESA within three working days<sup>10</sup> 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 wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Filip Ragolle  
Deputy Director for Competition and Regulation  
Competition and State Aid Directorate

*This document has been electronically authenticated by Filip Ragolle.*

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<sup>9</sup> EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12 ("the Procedural Recommendation"), available on [ESA's website](#).

<sup>10</sup> The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.