

Brussels, 31 March 2025  
Case No: 93666  
Document No: 1526986

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 and 3b/2016 - Remedies - Repeal of certain copper obligations**

**Article 32(3) of Directive (EU) 2018/1972 ('the Code')<sup>1</sup>: No comments**

## I. PROCEDURE

On 6 March 2025, the EFTA Surveillance Authority ('ESA') received a notification of a draft national measure in the field of electronic communications pursuant to Article 32(3) of the Code from the Norwegian national regulatory authority, *Nasjonale 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>

The notification became effective on the same day.

A national consultation was carried out by Nkom, pursuant to Article 23 of the Code, during the period 13 January 2025 to 27 January 2025.

The period for consultation with ESA, BEREC and other national regulatory authorities ('NRAs') pursuant to Article 32(3) of the Code expires on 7 April 2025.

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<sup>1</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36, corrected by Corrigenda OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36), as referred to at point 5c of Annex XI to the EEA Agreement and as adapted by Protocol 1 to that Agreement and by the sectoral adaptations contained in Annex XI to that Agreement.

<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*), as adapted by Protocol 1 thereto and by the sectoral adaptations contained in Annex XI to that Agreement (OJ L 84, 30.3.2017, p. 7 and EEA Supplement No 20, 30.3.2017, p. 1) ('the 2016 Recommendation').

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

On 20 December 2018,<sup>3</sup> Nkom designated Telenor as a provider with significant market power ('SMP') in Markets 3a and 3b/2016 and imposed regulatory obligations on Telenor, including an obligation to grant access to its entire copper network. 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>4</sup> Nkom amended the access obligation imposed 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 its copper network.

In its Decision of 21 April 2022,<sup>5</sup> Nkom amended Telenor's obligation to provide access to its entire copper 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.

By Decision of 8 June 2023,<sup>6</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 only up to 5 active accesses. ESA had no comments on that notification.

Lastly, by Decision of 25 November 2024,<sup>7</sup> Nkom again amended 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 did not affect existing copper accesses. ESA had no comments on that notification.

### II.2 Current notification

In the notified draft measure, Nkom envisages limited amendments to Telenor's copper access obligation. Namely, Nkom proposes to: (i) remove the 3-month notice period that Telenor currently has to observe before it can decommission an empty copper exchange; and (ii) allow Telenor to shut down the parts of the copper network no longer in use.

Regarding (i), the notified change implies that Telenor will be able to decommission an exchange immediately after it has become empty. Empty exchanges are those without equipment for the provision of xDSL services or where existing equipment is not in use because there are no broadband customers who receive broadband over the exchange. However, Telenor would still be required to publish and update a list of empty exchanges.

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<sup>3</sup> Notified to and assessed by ESA under Cases No 82766 and 82767. See ESA's comments letter of 3 December 2018 [here](#). Nkom's final decisions are available in the eCom Registry, [here](#) and [here](#).

<sup>4</sup> Notified to and assessed by ESA under Case No 85355. See ESA's comments letter of 23 July 2020 [here](#). Nkom's final decision is available in the eCom Registry, [here](#).

<sup>5</sup> Notified to and assessed by ESA under Case No 88321. See ESA's comments letter of 30 March 2022 [here](#). Nkom's final decision is available in the eCom Registry, [here](#).

<sup>6</sup> Notified to and assessed by ESA under Case No 90415. See ESA's no comments letter of 5 June 2023 [here](#). Nkom's final decision is available in the eCom Registry, [here](#).

<sup>7</sup> Notified to and assessed by ESA under Case No 93009. See ESA's no comments letter of 18 November 2024 [here](#). Nkom's final decision is available in the eCom Registry, [here](#).

Concerning (ii), this change does not affect access seekers' current position, but rather it formally limits Telenor's access obligation to the parts of its copper network that are 'still in use'. Active and passive accesses 'still in use' are those where the access buyer still pays rent for access, regardless of whether there is traffic or not. The latter clarification was requested by GlobalConnect and Nkom considers it necessary to avoid that accesses used as backup connections, and therefore potentially without traffic, are shut down. If, however, there is doubt as to whether a copper access is 'still in use', the access must be maintained until the relevant access buyer confirms in writing that the access is no longer in use.

According to Nkom, both adjustments are a natural and logical consequence of the sales freeze already implemented in the Decision of 25 November 2024 (see above), which entails that the unused parts of the copper network are no longer available for access. Hence, it is no longer justified to maintain the abovementioned notice period, nor more generally to require Telenor to maintain the copper network beyond the part still in use.

### 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 measure consulted on in the current notification will require re-notification in accordance with Article 32(3) of the Code.

Pursuant to Article 32(8) of the Code, Nkom shall take the utmost account of comments of other NRAs, BEREC and ESA. It may adopt the resulting draft measure and, where it does so, shall communicate it to ESA. Pursuant to Article 32(9) of the Code, Nkom shall communicate to ESA and to BEREC all adopted final measures which fall under points (a) and (b) of Article 32(3) of the Code.

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>8</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>9</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>8</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 and EEA Supplement No 56, 13.10.2011, p. 10) ('the Procedural Recommendation').

<sup>9</sup> The request should be submitted through the eCom portal, for the eCom Task Force's attention.