



Norwegian
Communications
Authority

EFTA Surveillance Authority
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Saksbehandler: OSU, MFE, MMA

Exempt from public disclosure, see Act relating to the right of access to documents held by public authorities and public undertakings Section 13 and Act relating to procedures concerning the public administration Section 13 a.

Request for information pursuant to Article 5 (2) of Directive 2002/21/EC

The Norwegian Communications Authority (Nkom) refers to the EFTA Surveillance Authority's (the Authority) request for information dated 3 April 2020 regarding Nkom's notification of the draft decision of the wholesale market for access and call origination on public mobile telephone networks in Norway (former market 15).

In the following, Nkom will provide information and explanations on the questions raised by the Authority in its request.

1. In relation to exclusivity of negotiation and delivery (Section 7.1.7.3 of the draft remedies decision):
 - I. Nkom allows Telenor to prohibit the access buyer from having a simultaneous access agreement with another host operator only if the aim of the simultaneous access agreements is to achieve better network coverage (§197-198). In practice, how will Telenor be able to distinguish better network coverage from other potential objectives of the access buyer?

The access buyer has the right to parallel access agreements (§ 196). Nkom considers this an important right. However, the access obligation as such is not intended to

constitute a competitive advantage compared with Telenor (§ 197). Thus, Nkom acknowledges that Telenor should be able to require exclusivity, to a certain extent. §197 and § 198 are not intended to give Telenor a right to require exclusivity in situations where Telenor is of the opinion that the access buyer may otherwise offer better network coverage than Telenor itself. Thus, it is not for Telenor to examine the intentions of the access buyer. According to the draft decision, Telenor can only use exclusivity on SIM (§ 200) and brand level (§ 201). In addition, there are provisions in § 198 intended to prevent an access buyer from offering a retail customer to choose between several networks.

- II. Similarly, how will Telenor be able to assess whether or not the access buyer is providing coverage from Telenor's mobile network and other host network operators on the same SIM (§200)?

Nkom is not aware of a technical possibility to monitor whether a buyer of access is providing coverage in several mobile networks on the same SIM. However, in order to achieve benefits from providing multiple network coverage the access buyer would normally have to market this feature. Thus, providing such coverage would normally be transparent to other market players.

However, the level of transparency is more limited in segments where prices and other terms are set on a more individual basis e.g. the higher end of the business markets. This implies a reduced possibility to monitor compliance with a requirement not to provide multiple coverage on the same SIM.

On the other hand, the process of entering into an agreement in the higher end of the business markets often comprise a tender procedure. This will clarify the needs and demands of the retail customer, including demands for coverage. Thus, tender procedures will increase transparency.

Currently, Telenor has a provision requiring the access buyer to provide information in connection with an audit initiated by Telenor. The draft decision recognizes that Telenor may have a right to require information, see Section 7.1.7.5 of the draft decision. For instance, Telenor could require information regarding usage of SIM series. The draft imposes that any requirement that the buyer of access must share information with Telenor must be reasonable and proportional.

In the view of Nkom and given the current market conditions, any offer in the market providing multiple network coverage on the same SIM would run a great risk of being

detected. Furthermore, the consequences for an access buyer in breach of any such provision may be considerable. Not only would the access buyer risk not being able to obtain access or to lose access to Telenor's mobile network, he would also risk not being able to comply with his commitments to the retail customer.

Against this background, Nkom considers that providing multiple network coverage on the same SIM is not a viable business strategy.

2. Please explain the meaning of paragraph 217 of the draft remedies decision. Does Nkom mean that the access buyer will have to comply with minimum purchase conditions? If so, and if the migration period is shorter than the period considered in the minimum purchase conditions, will the access buyer still be obliged to comply with these conditions?

The draft obliges Telenor to meet any reasonable request for access to its mobile network and sets requirements for the terms for such access, including price terms. Telenor's reference offers shall reflect the regulated terms. The reference offer should not include minimum purchasing clauses. The draft does however not prevent Telenor and the access buyer from concluding an access agreement with price terms that differ from those in the relevant reference offer. An access seeker or buyer that accepts a minimum purchasing condition should thus be able to obtain more attractive price terms than those stemming from the relevant reference offer.

The draft requires Telenor to meet reasonable requests for other pricing structures than the structure in the reference offer (§ 503). The draft further states that wholesale offers with alternative pricing structures shall not entail higher access costs for the applicant than the reference offer. Nkom emphasizes that the draft does not allow Telenor to set minimum purchasing conditions as a requirement to provide alternative pricing structures.

Referring to the text above, an access buyer may have agreed to a minimum purchase commitment or other obligations in relation to Telenor. The meaning of paragraph 217 is to clarify that the access buyer does not avoid obligations it has assumed towards Telenor by migrating. Considering a minimum purchase agreement, Nkom is of the view that an access buyer will have to comply with minimum purchase conditions, provided that these conditions are not contrary to other provisions of the draft decision. Thus, an access buyer would normally be required to either fulfil a minimum purchase agreement or compensate Telenor for the part that it does not fulfil.

3. Please provide the basis for your calculations in paragraph 499 of the draft remedies decision regarding the likely decline in wholesale prices for national roaming.

Nkom has used the margin squeeze model developed for the upcoming regulation to calculate the maximum linear access price for data for national roaming that could pass the margin squeeze test. The calculation is based on the following assumptions:

- requirement of linear access prices for national roaming;
- requirement that access prices for national roaming must not exceed access prices for MVNO;
- requirements for margin squeeze tests for MVNO access in the upcoming regulation;
- data from the latest round of margin squeeze testing, autumn 2019.

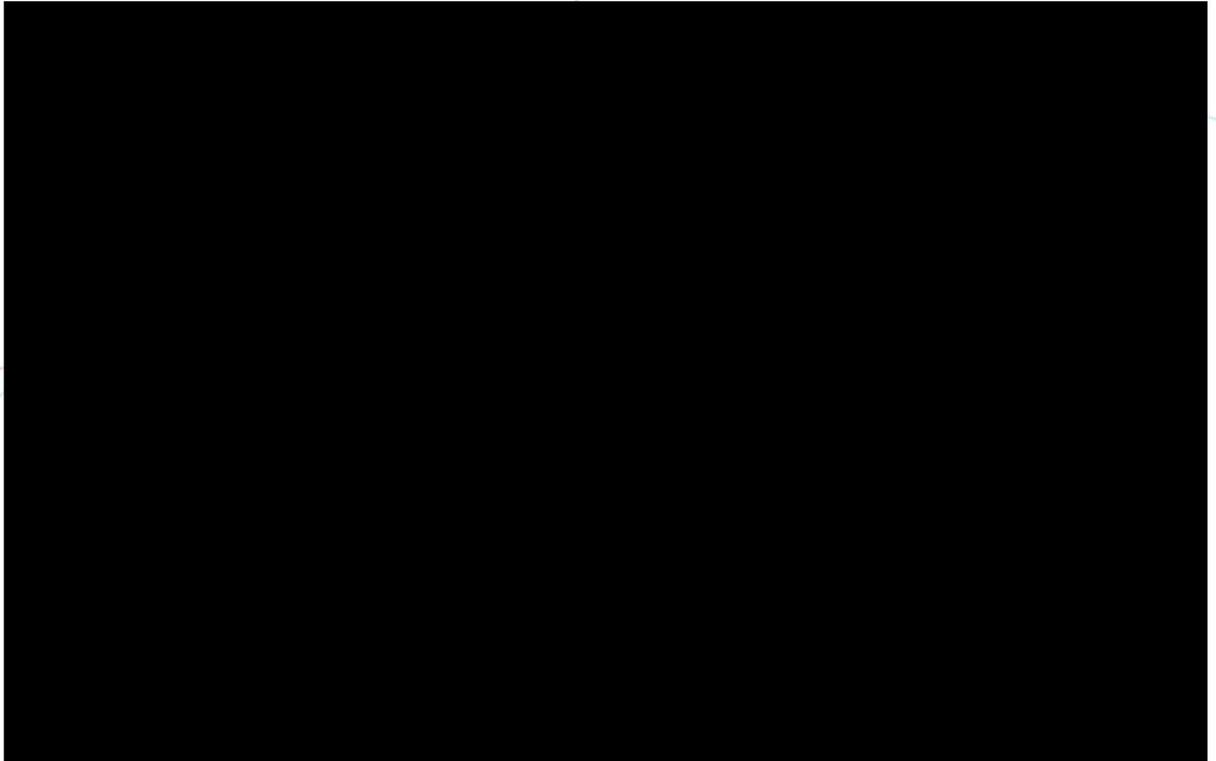
There are a number of combinations of access prices for voice, SMS and data that could pass the margin squeeze test. Nkom cannot predict how Telenor will adjust the access prices in the upcoming regulation. However, to find the maximum linear access price for data, Nkom has assumed that the access prices for voice traffic and SMS traffic is set to zero, which means that all access cost could be retrieved from data traffic¹. To pass the margin squeeze test, based on the assumptions above, the maximum linear access price for data could be Exempt from public disclosure: [REDACTED]. Nkom has also calculated what the linear access price for data could be if the access prices for voice traffic and SMS traffic were equal to the current access prices for MVNO. In that case, the linear access price for data for national roaming could be Exempt from public disclosure: [REDACTED]. These calculations are the basis for Nkom's expected linear access prices for national roaming in the upcoming regulation.

Nkom has compared these estimated linear access prices to the current access prices in Telenor's reference offers. The current access cost Exempt from public disclosure: [REDACTED]

[REDACTED]



The figure below compares the access costs based on Telenor's current reference offers for national roaming and MVNO, with the access cost based on the estimated linear access prices for data. The figure shows that linear access price for data would be more favourable for consumption up to at least Exempt from public disclosure: [REDACTED]. The figure is exempt from public disclosure.



Please feel free to contact us if you have any further questions or need for clarification.

Kind regards

Hans Jørgen Enger
Director

Inger Vollstad
Head of Section

Electronically approved. No signature required.