

Brussels, 30 March 2022  
Case No: 88321  
Document No: 1276924

Norwegian Communications Authority  
Postboks 93  
4791 Lillesand  
Norway

For the attention of:  
Mr Pål Wien Espen  
Director General

Dear Mr Espen,

**Subject: Wholesale local access provided at a fixed location and wholesale central access provided at a fixed location for mass-market products in Norway – Remedies – Decommissioning of POTS-only sites**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)<sup>1</sup>**

## **I. PROCEDURE**

On 10 March 2022, 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, *Nasjonale Kommunikasjonsmyndighet* (“NKOM”). It concerns the market for wholesale local access provided at a fixed location and the market for wholesale central access provided at a fixed location for mass-market products in Norway.<sup>2</sup>

The notification became effective on the same day.

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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 (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 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (“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. Directive (EU) 2018/1972 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, (“2016 Recommendation”).

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 3 to 18 February 2022.

On 16 March 2022, ESA sent a request for information (“RFI”) to Nkom (Doc No. 1275218), to which a reply was received on 18 March 2022 (Doc No. 1276536).

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 11 April 2022.

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, Nkom adopted decisions designating Telenor ASA (“Telenor”) as a provider with significant market power (“SMP”) in the wholesale markets for local and central access provided at a fixed location (markets 3a and 3b of the 2016 Recommendation) and imposing regulatory obligations, including an obligation for Telenor to grant access to its entire copper network (“the 2018 Decision”).<sup>3</sup>

Furthermore, in a decision of 2 September 2020,<sup>4</sup> Nkom amended the access obligation on Telenor to ensure that it maintains access to its copper-based network for a period of 5 years following the entry into force of its decision.

### II.2 Current notification

In the currently notified draft decision, Nkom proposes to amend Telenor’s obligation to provide access to its entire network and to allow Telenor to decommission a total of 542 Plain Old Telephone Service (“POTS-only”) sites, which have never been used for broadband services. Nkom believes that this change in market regulation will not be of any practical significance to the competition in the broadband market.

Ahead of the decommissioning, Telenor is required to post on its website for wholesale products ([www.telenorwholesale.no](http://www.telenorwholesale.no)) a complete and correct overview of the name, municipality, county, and geographical coordinates of the sites to be decommissioned, together with an indication of the date at which Telenor plans to decommission the individual sites.

In the reply to ESA’s RFI, Nkom stated that it will reconsider imposing on Telenor a one month notice period that will need to be respected prior to decommissioning the sites. This is in line with other notice periods imposed on Telenor in the 2018 Decision with regard to sites that were not used by access seekers. In addition, Nkom confirmed that if Telenor were to provide fixed wireless access (“FWA”) to the current POTS-only area in the future, it would be obliged to provide access to third parties to this FWA offering under the obligations currently in place.

## III. COMMENTS

ESA has examined the notified draft measure and has the following comment:

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<sup>3</sup> Notified to and assessed by ESA under Case No 82766. See also the ESA’s comments letter of 3 December 2018, [here](#).

<sup>4</sup> Notified to and assessed by ESA under Case No 85355. See also the ESA’s comments letter of 23 July 2020, [here](#).

### **Need to monitor and ensure an adequate notice period prior to decommissioning**

ESA acknowledges that the 542 POTS-only sites that are the subject of the current notification have never been used in the past to provide broadband services and agrees with Nkom and other stakeholders that the physical removal of those sites is justified. However, ESA would like to invite Nkom to monitor the decommissioning process and make sure that it concerns only the predefined sites. Furthermore, ESA is of the view that it is important for access seekers, and in line with the previous regulation in markets 3a and 3b, that an appropriate notice period is respected before any actual removal of sites takes place. This will allow third parties to monitor the process and ensure that the sites proposed for decommissioning by Telenor are those agreed in the present draft decision. Finally, Nkom should ensure that it has the ability to stop the decommissioning process if there are any doubts regarding whether the sites proposed by Telenor for removal correspond to the 542 POTS-only sites identified in the current draft decision.

### **IV. FINAL REMARKS**

On a procedural note, ESA recalls that any future amendments to, or more detailed implementation of, the draft remedies 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 regulatory authorities and ESA. It may adopt the resulting draft measure and, when it does so, shall communicate it to ESA.

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>5</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>6</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,

Valgerður Guðmundsdóttir  
Deputy Director  
Internal Market Affairs Directorate

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

*This document has been electronically authenticated by Filip Ragolle, Valgerdur Gudmundsdottir.*

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<sup>5</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 available [here](#) ("the Procedural Recommendation").

<sup>6</sup> The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.