**Norwegian Ministry of Transport and Communications' views on the Review of the Electronic Communications Regulatory Framework**

# Introduction

Norway welcomes the Commission's Digital Single Market Strategy (DSM) and an ambitious overhaul of the electronic communications regulatory framework. A sound and future-proof regulatory framework is fundamental for the development of a true Digital Single Market in Europe. We therefore support the review and the need to update the regulatory framework, taking into account both technological development and development in markets for electronic communications and services in Europe and globally.

In this paper we set out the Norwegian thoughts and priorities for a revised framework.

# Objectives for a revised regulatory framework

The markets for electronic communications and services have undergone considerable changes since the last review (2009). The society and economy are becoming increasingly digital. People expect to be online everywhere and at all times.

To meet these market developments, we need to secure continued investments. A revised regulatory framework needs to support the industry to make the necessary investments in network and services. Competition is and remains the key driver for investments and innovation, although there will be certain limitation to the commercial offer of ubiquitous connectivity. In every country there are areas where it will not be commercial viable for operators to invest. The interest of competition will to some degree have to be balanced against the interest of investment.

The new regulatory framework will first take effect as of 2019/2020. It is hence important to design a regulatory framework today that is fit for tomorrow's reality. It needs to be sufficiently flexible, having regard to the technological development and differing local and national market conditions. The regulatory framework needs to allow the market to adopt, develop and invest in new technologies and services.

The starting point of this review should be to simplify the regulatory framework and to deregulated where the regulation has met its objectives. The principle of technology neutrality and minimum regulation should prevail. We need to make sure Europe has a fit-for-purpose electronic communications regulatory framework for 2020 and beyond.

# Network access regulation

Access to high capacity fixed network is becoming increasingly important as the use and demand for higher capacity networks extends to an increasing number of areas in the society. Competition and well-functioning markets should be the preferred means for securing end users' access to the full range of digital content and services being offered over the internet. Ex ante access regulation will therefore continue to be necessary to ensure competition as well as preventing anti-competitive behaviour resulting from bottlenecks. However, sufficient flexibility should be ensured to avoid access regulation having a long term negative or unintentional effect on future market participants or services.

The current SMP access regulation regime needs to be updated in order to be able to remedy the competition problems of tomorrow's market. For example, the emergence of local fibre operators will probably require a different set of regulatory tools to ensure efficient competition and investment. Analysing joint or single dominance for the many relevant geographic markets of access to NGA networks is bot unpractical and unproportionately resource consuming.

Symmetrical regulated access to NGA networks could be a practical and efficient solution for securing end-user choice and preventing abuse of market power. This could be a simple and predicable solution, particularly in geographical areas where infrastructure competition is unlikely to emerge. However, due regard has to be given to the possible implications on the incentives for investment.

At the same time, because market conditions vary to a large degree in different member states, the future regulatory regime should be set up in a flexible enough manner to be able to deal appropriately with these varying conditions.

# Spectrum management

We certainly support the goal of having an effective spectrum management in Europe. In this respect, the common approach should focus on general principles and objectives for spectrum policy. The RSPG provides an important arena for cooperation and coordination between EEA countries and conducts relevant and valuable work on the common European approach. Norway believes an enhancement of the role of the RSPG is desirable and would further this coordination in Europe. Spectrum allocation and usage conditions should be harmonized in Europe where appropriate and justifiable, for instance in relation to novel utilization of some frequency bands, but it should not be a default solution. In our view an improved European coordination of spectrum management is also achievable within the existing regulatory framework.

There are regional and national differences with respect geography, demography and market development which have an impact on how spectrum is best allocated, assigned and utilized. Hence, there is a need to maintain a necessary degree of flexibility in the spectrum management in order to make the most of this valuable natural resource. This is necessary in order to cater for differences in local or regional user demand and technological development as well as some other relevant national specificities, including borders with countries not part of the EEA. One size does not fit all.

The maximum benefit for society is achieved if the assignment of frequency resources is based upon a general approximation on the European level and optimized and adapted to existing national market conditions, which show significant differences across Europe. The decision on assignment conditions needs to remain a national competence. It is difficult to see how common spectrum assignment conditions can lead to a satisfactory solution for all the European markets and usage scenarios. However, we recognize that in some specific circumstances there might be merit in an enhanced coordination of the assignment of certain frequency bands on a regional basis where conditions relating to legacy use, market demand and the possibility to synchronize timing of an assignment procedure are quite similar. Such enhanced coordination can be achieved through voluntary cooperation.

# Communications Services

Services offered by Over-the-top (OTT) players are increasingly perceived by end-users as substitutes for traditional electronic communications services. Yet, at present these services are subject to different regulatory regimes and offer different level of protection to end-users. In many cases the OTT-players provide innovative new services that meet consumer and business demands. Careful consideration should therefore be given to the objective of fostering innovative and new services when considering whether to extend the present sector specific regulation to these services. Changes in technology will often lead to changes in market structure. It is important not to set up new regulation to protect existing actors from the competition of legitimate, new, more popular alternatives. The starting point should be to reduce the regulatory burden where this does not harm consumer interests or hinders the member states' ability to protect public security, rather than to increase it.

Norway has in general a high level of consumer protection. It is essential to maintain a regulatory framework that provides member states with the flexibility to allow to maintain or adopt more protective measures.

# Universal service

In an ever increasing digital society, it becomes important to safeguard access to the relevant electronic communications services. Market conditions and technological developments make it necessary to explore whether a universal service regime is the adequate solution to this challenge. Several of the services could be removed from the directive, as they no longer serve their initial purpose, such as access to payphones and directory enquiry services which are solved respectively through mobile communications services and by free apps.

However, it is necessary to secure access to broadband services capable of supporting minimum services and needs of the household and business users in both urban and rural areas. Each Member State should be left to decide needs, time schedule for availability, quality levels and preferred means of funding, based on national circumstances.

Any publicly supported roll-out of broadband services, whether being broadband services under a USO-regime or as a general state aid scheme, should be technologically neutral. The means of financing of such broadband roll out, whether it be by public funds, by end users, by the electronic communications sector and/or by other sectors, should be decided by each member state, as well as having the competence to roll back obligations that are no longer necessary.

The needs of special groups, e.g. disabled users, still need to be safeguarded. In the near future an increasing proportion of elderly people will be accustomed to using digital services, and simultaneously digitalisation will increase the range of public and commercial services offered online. As a result, accessibility for all is likely to play an increasingly important role. Mandating specific obligations on providers of electronic communications services for users with special needs, may not be the appropriate means to secure universal accessibility for this group of users. It should be analysed what type of safeguard mechanisms these different special user groups need and how these could most effectively be met. The aim should be to replace regulatory obligations imposed on one or more electronic communications providers by general law.

# Institutional set-up and governance

The unresolved situation of the EEA EFTA States participation in BEREC has been a concern to Norway for a long time. Currently there is a potentially un-harmonised implementation and application of the sector regulatory framework across the EEA. We believe that the upcoming review of the regulatory framework for electronic communications, should provide for an opportunity to reassess the EEA EFTA States' role in BEREC.

In order to address these concerns, Norway would like to urge the Commission to amend Article 4 of Regulation (EC) No 1211/2009 on BEREC based on the standard provisions on participation contained in a number of EU acts (se proposed text in Annex 1). The current Art 4(3) of the BEREC Regulation is not in line with this practice, and has prevented the EEA EFTA States from taking a formal part in BEREC, to the detriment of the homogeneity of the internal market. A new text should reflect that the EEA EFTA States are an integral part of the internal market and that, according to the EEA Agreement, the terms of their participation are to be negotiated and set out herein. Given their full financial contribution, the EEA EFTA States normally have full participation rights in EU bodies, except for the right to vote.

Having in mind BEREC’s role as a provider for premises and as a driver for harmonisation, as well as its growing importance for the development of the electronic communications market and the prospects of a strengthen BEREC, it becomes even more imperative to reach a formal and satisfactory solution for both parties to the question of the EEA EFTA States participation in BEREC.

Furthermore, it is our firm belief that the NRAs from the EEA EFTA States have an important role to play in BEREC inter alia with its experience from regulating well advanced electronic communications markets with a great take up of electronic communications services, and that this potential is not exploited fully within the current framework of participation.

**Proposal for an amendment to Regulation (EC) No 1211/2009**

Article 4 is amended as follows:

(a) Paragraphs 3 and 4 are replaced by the following:

‘3. NRAs from those States that are candidates for accession to the European Union shall have observer status and shall be represented at an appropriate level. BEREC may invite other experts and observers to attend its meetings.

4. BEREC shall be open to the participation of countries which have concluded agreements with the European Union by virtue of which they have adopted and apply Union legislation in the field covered by this Regulation.

Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in BEREC’s work, including provisions relating to financial contributions and staff.’

(b) Paragraph 5 is deleted.