

## **NORWEGIAN POSITIONS ON THE PROPOSALS FOR THE REVIEW OF THE EU 2003 REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS**

### **General considerations**

In general, the Norwegian view is that although some adjustments to the regulatory regime may be necessary, the regulatory Framework is principally sound. It provides the tools to allow for future efficient investment and innovation. Further regulatory amendments should therefore only be introduced in order to reduce the regulatory costs and administrative burdens.

Bearing this in mind, Norway questions the added value of the assistance from a new Authority in the exercise of the Commission's powers under Art. 7 of the Framework Directive. Furthermore, Norway does not support proposals which would extend the competences of the Commission in the market analysis process, especially the proposed extension of the Commission's veto to include remedies, and the power to take decisions on behalf of the NRAs if they do not complete market analysis within a certain deadline. The implementation of the regulatory framework for electronic communications is primarily a task for the NRAs, which are best equipped to assess and supervise national markets.

### **The proposal establishing the European Electronic Communications Market Authority (EECMA)**

Norway sees the need for enhanced harmonisation at the European level, regarding market analyses and remedies, but believes one should aim at finding efficient European solutions within today's framework, thus avoiding new bureaucratic regimes. It is the Norwegian view that the creation of a new Authority is unnecessary, ineffective and too costly.

The proposed role of the new Authority seems to extend beyond a pure advisory and policy shaping role, especially regarding market reviews. The proposal also entitles the Authority the right to deliver opinions to the Commission on its own initiative on several regulatory matters, included the definition on trans-national markets. Whether this is the most appropriate model is questionable. However, a new Authority regulating the single market would have a significant impact also for Norwegian providers and users – regardless of the organisation of the proposed Authority and the functions it may be entrusted with.

Although Norway recognises that implementation of the regulatory framework on national levels in some areas offers inefficient cross-border coordination mechanisms, the Commission has not convincingly presented the failures of the current system as serious enough to justify the set-up of a new Authority. It also seems contradictory to give deregulatory signals, such as reduction in the number of relevant markets, while simultaneously constructing a new and sizeable regulatory body that by itself could generate more regulation. In this context Norway finds the ongoing work in the ERG interesting, regarding enhanced cooperation within the existing ERG structure as an alternative model to a centralised European Authority. Based on this, Norway encourages the Commission to cooperate with the ERG to find a proportionate solution to further harmonise the electronic communications market within the existing ERG structure.

Compared with the existing ERG structure, a new Authority could imply reduced influence for the NRA's opinions on their home markets. Norway holds the view that it is important when applying regulatory framework, to take national conditions into account, in particular

when it comes to market analyses and remedies. This is of particular importance for Norway due to special topographic and demographic conditions. These conditions differ from most of the other EU and EEA-States conditions. Consideration of such conditions is relevant for the competition in the ecom market and influences the need for regulation. Furthermore, there is reason to believe that the NRAs are best suited to consider national market conditions.

To the extent that closer cooperation and harmonisation within the European ecom area to the benefit of the common market would result in any transfer of competence from the national administrations to the ERG/EECMA, this would raise particular concern in the EFTA/EEA States. This would need careful considerations and probably also more future oriented solutions based on the EEA-agreement. This provides the full understanding and faithful cooperation of the parties involved, and needs to be looked into once it becomes clear which solution is chosen.

### **Network and information security**

Norway would like to bring to attention that we are a full member of ENISA, except for the right to vote. Norway contributes to the work of ENISA both financially and by active representation in the various subgroups. If ENISA is substituted by the EECMA, this will have implications for the Norwegian participation. Norway assumes that the good cooperation in ENISA will continue, also within the possible framework of EECMA.

### **Functional separation as a remedy**

Norway is positive to the introduction of functional separation as a remedy in order to improve competition and abolish remaining bottlenecks in relevant markets. Norway supports the acknowledgement that functional separation should be seen as a last recourse remedy to be used when the establishment of other non-discriminatory remedies has failed. However, since the infrastructure competition in Norway is, due to a relatively strong regulation by the NRA, highly developed, there is no need for changes in the present regulation by introducing this remedy.

### **Radio Spectrum**

Norway supports in general the proposed spectrum management reforms, which contribute to a more efficient and flexible use of spectrum. However, the process of introducing spectrum liberalisation should be controlled, beneficial and predictable. Further on, Norway welcomes an EU initiative on the digital dividend. Recognizing that this is a challenging task, we believe in the importance of striking the right balance between on the one hand a harmonised approach, among other things in order to create a sufficient basis for economies of scale, and on the other hand a solution with enough inherent flexibility to cater for important and legitimate national differences. With respect to the possible band segmentation outlined in the recent Communication, Norway shares the view of the Commission that any two-way communication applications are best suited in the upper part of the UHF band. Consideration of the digital dividend by Norwegian authorities has been ongoing for a while, and recommendations for future use are planned for mid 2008. In this respect, Norway is looking forward to cooperate and contribute at the European level.

As regards the competences of the proposed Authority, Norway would like to point to the fact that quite a number of NRAs (constituent members of the authority) do not possess national spectrum competence. Whether spectrum issues are appropriate tasks for the Authority could therefore be questioned.