

Telenor Group response to the European Commission's public consultation on a revision of the Recommendation on relevant markets

Telenor welcomes the opportunity offered by the European Commission to share its views on the revision of the Recommendation on relevant markets for SMP regulation.

On an overall basis the current Recommendation adopted in 2007 has served the telecom industry and the consumers well. However, since 2007 the electronic communications market has been through profound changes and the industry trends are going to change the competitive landscape significantly in years to come. Thus, Telenor Group subscribe to the view that a revision of the current list of relevant markets is critically needed, and we welcome that this demanding work is now initiated by the Commission.

This document is structured in three parts. In section 1 an executive summary is provided. Then we comment briefly on two general issues, namely fixed-mobile substitution and the three criteria test. Finally, in section 3 the Telenor response to the questionnaire is included. We focus primarily on Question 7-11.

Our comments should be seen in context of the more comprehensive and detailed written response submitted by industry associations ETNO and GSMA respectively. On an overall basis Telenor supports these position documents although we take a slightly different view on some of the issues.

1. Executive Summary

For the purpose of a revised recommendation at EU level Telenor believes that the distinction between fixed and mobile services should remain valid as a starting point even though the Commission should explicitly state that the conclusion of such an analysis might differ at national level.

In general we believe the three criteria test has been an appropriate approach for identifying markets which should be subject to ex ante regulation. However, going forward the Commission should provide clearer guiding on how the test is to be applied in particular to avoid the pattern we have seen in most countries with NRAs being very reluctant to conclude that general competition law might be sufficient to solve identified competition problems.

Our recommendations on the current list of relevant markets are summarized below:

Fixed telephony services (market 1 and 2)

Telenor is of the opinion that market 1, which is the only retail market in the current list, should be removed. Following the removal of all other retail markets in 2007, competition law has basically proven to be sufficient to deal with potential competition problems at retail level in the electronic communications sector.

However, Telenor recognizes that there are potential competition problems which *might* justify ex ante regulation at wholesale level in some Member States when a revised Recommendation takes effect. Thus, as a consequence of removing retail market 1 from the list, Telenor recommend the Commission to consider defining a “new” relevant market for Wholesale Line Rental (WLR), in which mandatory access can be/remain imposed, as well as other regulatory remedies which are found to be proportionate, including carrier selection and carrier pre-selection.¹ This approach is likely to reduce the challenge seen in some markets with a ‘double regulation’ both on wholesale and retail level. The handling of the broadband markets should serve as an inspiration in this regard. However, wholesale regulation of fixed telephony services should not in any way hinder phasing out of the POTS platform which will take place in most European countries over the next years.

Voice termination services (market 3 and 7)

Telenor invites the Commission to consider removing the relevant markets for termination of calls (market 3 and 7) from a revised recommendation. The development since 2007 has created a situation where a forward looking analysis of the three criteria *might* lead to the conclusion that all criteria are no longer fulfilled. In particular, competition law could be sufficient to handle potential market failure. However, Telenor has some concern that competition law will not per se guarantee symmetrical termination rates between operators at national level. Thus, in order to mitigate the risk of having asymmetry (re)introduced and not solved by competition law, it is important to have safeguard measures available, e.g. Article 5 of the Access Directive. For this to become effective, the Commission should advise NRAs to apply the principle of symmetric rates under this Article.

In case the Commission reaches the conclusion that sector-specific SMP regulation of termination services is still warranted, Telenor would recommend what we will refer to as “EU rates”, i.e. price caps to be established at EU level (for FTRs and MTRs respectively), more or less the same approach as for wholesale rates for international roaming. In our view there are strong arguments for such an approach going forward:

- The principles for calculating relevant costs for termination services are basically the same within EU/EEA
- The price level has decreased significantly over the last years and it should be acceptable to introduce harmonised rates across EU/EEA
- The administrative cost for developing, implementing and updating (LRAIC) cost models at a national level is significant, including potential costs related to legal challenges of the output of the models and/or the NRA decision on glide paths. With decreasing price levels, the consumer benefit from such processes is limited. With prices set by the Commission at EU level these processes and costs will no longer be needed.
- “EU rates” will per se ensure symmetrical rates, both across Member States and between operators at national level.

Furthermore, the arguments are in particular strong for MTRs as termination is an input or cost element needed to provide international roaming. Thus, this approach establishes an appropriate link.

In setting “EU rates” the Commission should take account of differences in cost level between countries and avoid FTR/MTR level below marginal cost in any country. Capacity cost is strictly larger than zero. Thus, “Bill and Keep” (B&K) for voice calls should not be imposed.

Fixed broadband services and leased lines (market 4, 5 and 6)

Telenor expects that the Commission analysis according to the prescribed methodology will find that regulation of wholesale broadband markets is still warranted due to potential competition problems at retail level that will prevail in the majority of Member States (absent regulation).

¹ WLR is already imposed in quite a few Member States, often as a remedy in current market 1.

While a relevant market for wholesale access to the fixed network must stay in the Recommendation, Telenor sees a need for reshaping of market boundaries. The revised Recommendation should in particular:

- A. Address that the focal point of competition and customer demand for services at the retail level is shifting (at different speed in EU/EEA countries) from providing ordinary internet access service (on top of voice service) to offering the customer access to new/upgraded networks capable of providing a far broader selection of services. The existence – and importance of facilitating - this trend to ultrafast broadband is also demonstrated by the specific targets defined by the Commission in this regard. Hence, the analysis of the retail broadband markets and the derived wholesale market definition(s) being defined by the Commission must reflect this development. Telenor suggests using the TV service as a de facto “segmentation tool” for the wholesale market(s) leading to a split between wholesale markets for access to high speed broadband (NGA) and the wholesale market for ordinary broadband access (legacy).
- B. Address the need for more geographic segmentation by taking full account of the competitive conditions both on retail and wholesale level from the advent of highly localized high speed broadband markets leading to fragmented local monopolies (i.e. exposure to service competition based upon regulated access to incumbents NGAN alone would only apply to a share of the market). Telenor suggests that the Commission analysis takes full account of the particular aspects of high speed broadband deployment and the related insufficiencies of the current approach to sub-national geographical markets in the SMP-framework. There is an increased role for symmetric regulation to substitute SMP regulation.
- C. Allow more flexibility for defining boundaries of markets in the transition to NGA: The revised recommendation should advise NRAs to define one joint wholesale broadband access market where appropriate while maintaining current wholesale markets 4, 5 and 6 as admissible (sub-) markets.

2. General issues

Fixed-mobile substitution

The effect of fixed to mobile substitution will continue to differ between Member States, but overall become even more significant than at present as mobile broadband connections reach higher bandwidth.

Fixed and mobile access can still be distinguished on the basis of their characteristics. Notably, customers of mobile services value mobility of their service not present in fixed access. Network capacity, available speeds and quality of service still differ between fixed and mobile access.

Whether or not one single retail market on voice and/or broadband could be defined will differ based on national circumstances. This has also been highlighted by BEREC in its report of last May 2012 on fixed mobile substitution. However, for the purpose of a revised recommendation at EU level Telenor believes that the distinction between fixed and mobile services (referred to as services provided to fixed and non-fixed locations) should remain valid as a starting point even though the Commission should explicitly state that the conclusion of such an analysis might differ at national level.

The three criteria test

In general we believe the three criteria test has been an appropriate approach for identifying markets which should be subject to ex ante regulation. However, going forward there might be a need for increased flexibility to do this assessment at national level. Consequently, the Commission should provide clearer guiding on how the test is to be applied (in order to ensure harmonised approach and consistency at national level), in particular to avoid the pattern we have seen in most countries with

NRAs being very reluctant to conclude that general competition law might be sufficient to solve identified competition problems.

3. Responses to the consultation questionnaire

On Questions 1-6 and 13-16 Telenor refers to the written responses provided by ETNO and GSMA respectively.

Furthermore, we will discuss current market 1 and 2 (fixed telephony) as a response to Questions 9 and 10 below. However, please note that we do not recommend both markets to be removed from the list.

Question 7: In your opinion, should the scope of any relevant market(s) identified in the Recommendation be changed? If yes, please explain why, referring to the relevant market(s) concerned.

Question 8: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such changed scope on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market subject to a new scope.

Telenor answer:

Current markets 4, 5 and 6 (Fixed broadband services and leased lines)

Telenor expects that the Commission analysis according to the prescribed methodology will find that regulation of wholesale broadband markets is still warranted due to potential competition problems at retail level that will prevail in the majority of member states (absent regulation).

While a relevant market for wholesale access to the fixed network must stay in the Recommendation, Telenor sees a need for reshaping of market boundaries. The revised Recommendation should in particular:

- A. Address that the focal point of competition and customer demand for services at the retail level is shifting (at different speed in EU/EEA countries) from providing ordinary internet access service (on top of voice service) to offering the customer access to new/upgraded networks capable of providing a far broader selection of services. The existence – and importance of facilitating - this trend to ultrafast broadband is also demonstrated by the specific targets defined by the Commission in this regard. Hence, the analysis of the retail broadband markets and the derived wholesale market definition(s) being defined by the Commission must reflect this development. Telenor suggests using the TV service as a de facto “segmentation tool” for the wholesale market(s) leading to a split between wholesale markets for access to high speed broadband (NGA) and the wholesale market for ordinary broadband access (legacy).
- B. Address the need for more geographic segmentation by taking full account of the competitive conditions both on retail and wholesale level from the advent of highly localized high speed broadband markets leading to fragmented local monopolies (i.e. exposure to service competition based upon regulated access to incumbents NGAN alone would only apply to a share of the market). Telenor suggests that the Commission analysis takes full account of the particular aspects of high speed broadband deployment and the related insufficiencies of the current approach to sub-national geographical markets in the SMP-framework. There is an increased role for symmetric regulation to substitute SMP regulation.

- C. Allow more flexibility for defining boundaries of markets in the transition to NGA: The revised recommendation should advise NRAs to define one joint wholesale broadband access market where appropriate while maintaining current wholesale markets 4, 5 and 6 as admissible (sub-) markets.

A. Focal point of competition and customer demand is changing

Historically the broadband market could be analysed based upon the common use of the incumbents copper infrastructure to provide Internet access and some competing CATV infrastructure (if upgraded to allow delivery of broadband access in addition to linear TV distribution). Over time, triple play bundles including TV-, broadband- and voice services have been more widespread as upgraded cable networks and new FTTH networks impacted and shaped customer demand and the competition. In advanced markets (e.g. the three Scandinavian markets where Telenor conducts business) the fixed broadband market has thus developed into complex but diverse market structures. Some utilities companies have invested heavily in FTTH infrastructure in local areas/municipalities providing the end users with the full range of services. Most incumbents also have a strategy for some fibre deployment (FTTC/FTTH), and in greenfield projects the tendency in some Member States is that only fibre infrastructure is deployed – by incumbent or by another player. Accordingly the most important aspects of broadband market development that should be taken into account when defining the revised wholesale broadband market(s) are:

Existing versus non-existing infrastructure

- While there is national coverage of copper-based infrastructure in most markets, there is far from national coverage of NGA networks.
- Some areas are unlikely to be covered by fixed NGA networks at all.
- Some areas could be candidates for NGA coverage over time, and both current regulatory approach as well as certainty about regulatory treatment over time could have a significant impact on where NGA deployments are considered commercially attractive.

Different applications of FTTH infrastructure

- There is no deployment of FTTH for the purpose of providing low capacity broadband and/or telephony services. However, because of the economy of scale, FTTH facilities could also be used to provide voice telephony (replacing copper based POTS) and/or low-end broadband in areas where the demand for high-end broadband justifies such an investment. Such application of FTTH infrastructure also has to be taken into account in a robust market delineation and market analysis exercise.

The TV Service as a 'segmentation tool'

- Telenor is of the view that there should be defined two different retail markets for broadband: One for 'basic' broadband, and one for 'high-end' broadband, where the core criterion to define a broadband connection as 'high-end' is whether it's suitable to serve as the primary platform for the TV distribution need of a typical household. The reason for this suggested segmentation criterion is that:
 - i. One single speed/capacity for delineation is unlikely to remain stable over time
 - ii. The offering of triple play with TV has in many markets been driving the NGA deployments
 - iii. The capacity requirements for a platform to serve as the primary TV platform for the household is likely to develop over time and will hence make the delineation more future proof.
- Even when two such separate segments cannot be identified in the retail market, the corresponding wholesale markets should still be analysed for the existence of such separate submarkets:

- There may be a chain of substitution for retail customers across different broadband speeds that complicate the suggested market delineation at retail level. However, the build/rent/'do-nothing'-decision from a potential provider of broadband services is very different from the decision making of a single retail customer.
 - i. It's about control of own infrastructure (copper operational control remains with incumbent)
 - ii. For a potential wholesale customer, it's an option to establish own FTTH infrastructure - it's in practice not an option for an entrant to establish new copper infrastructure
 - iii. It's about improved operational stability
 - iv. It's about being able to present a 'future proof' solution to end customers
 - v. It's about avoiding doing investments in a copper oriented platform where there are indications that it will be closed down in more and more places over time.
 - vi. For the retail customer, only infrastructure present at her specific location is relevant. For the wholesale customer who is aiming at expanding customer base, it may not necessarily be important whether the customers are in area A or in area B: The location issue may be less of an issue in the wholesale market than in the retail market.
- As seen from a potential wholesale customer, both FTTH and copper can be used to provide low-end broadband. FTTH and CATV, but only to a limited extent copper infrastructure (VDSL), can be used to deliver high-end broadband: If the services provided are different - at retail or wholesale level - then the services should not be in the same product market.
- On the wholesale side, NGA infrastructure will be seen by a potential wholesale customer as a substitute for low-capacity copper infrastructure. But copper will not be seen as a substitute for high-capacity NGA infrastructure: One-way substitutability does not give reason to conclude that wholesale access or retail services based upon those two technologies are in the same product market.

B. Particular aspects of high speed broadband deployment and insufficiencies of SMP regulation

The 'Homes Passed' scenario complicates the assessment of 'parallel competing infrastructure': In some areas there may be only one single fibre connection to network termination point (NTP) in the household, while there may be several independent providers with infrastructure available along the road: A rather limited investment – or an agreement to rent the existing fibre drop – could facilitate service delivery based on infrastructure from other network owner(s): The entry barriers would be significantly reduced compared to a situation with no competing infrastructure available.

To address this, Telenor consider that ducts and fibre drops of a local network resembles an economic bottleneck. – i.e. it is likely that only service provider(s) with either own infrastructure, or an access agreement with the infrastructure owner in the local area, are capable of delivering broadband services to an individual end customer at a specific location. Hence, access should be granted to competing network operators/service providers independent of whether the ducts/fibre drops are owned by any provider of electronic communications services or by another infrastructure owner.

Two different types of competition which are seen in the high speed broadband market both have to be analysed:

- One is the retail competition arising from existing, competing broadband infrastructures in an area: One or more FTTH networks, CATV networks, maybe VDSL ready copper lines and mobile broadband.
 - In this analysis, the impact from "homes passed" has to be analysed.
- Another, but related type is the "landgrabbing" competition for infrastructure deployment. While this kind of 'geographic landgrabbing' competition clearly has an impact on the retail competition

between existing infrastructures as discussed above, it's still another kind of competition than the one which is seen among different existing platforms.

While quite a few households today have access to both copper access and FTTH, the parallel copper facilities are expected to be closed down over time leaving only one high capacity infrastructure in place. Furthermore, to the extent that copper and FTTH do coexist, copper will usually not be able to provide high-end broadband. Thus, while there may be competition for providing low-end broadband, it will generally not be the case for high-end broadband.

It is crucial to take into account the impact on the competitive conditions both on retail and wholesale level from the highly 'localized' markets combined with local monopolies, a situation very different from the national narrowband and broadband internet access market arising from the historical national legal monopoly on telephony infrastructure.

Sub-national geographic markets have proven very impractical for ex ante regulation. Telenor suggests addressing bottlenecks and competition problems related to the localized monopolies through symmetric regulation. Residual competition problems should be solved by SMP regulation, but in general we believe that wholesale markets downstream to access imposed by symmetric regulation (e.g. civil engineering infrastructure) would likely not fulfill the three criteria test.

C. Defining the boundaries of the markets in the transition to NGA

The relevant wholesale products within the scope of current market 4 and 5 in view of competition on a fixed broadband or multi-play retail access market could be (physical) network infrastructure access at a fixed location ('LLU' / ducts) and wholesale broadband access ('bitstream access'). In addition dedicated point to point capacity with quality features in some form has so far been regarded a relevant product (wholesale leased lines).

Market and technology developments in the transition to NGA raise the question whether the current delineation of markets 4, 5 and 6 is still valid. In particular, certain fibre technologies, as well as cable networks, do not permit physical unbundling, or do not allow it at the network layer where LLU is currently offered.

- Sub-loop unbundling is no longer possible in case VDSL Vectoring is deployed.
- GPON fibre to the home can no longer be physically unbundled before the splitter (which in case of FTTB is normally located in the basement of the building) and unbundling of the splitter (co-location and patching) has adverse impact on cost efficient network deployment and operation.
- 'Virtual' unbundling (VULA) is an active product and can be offered at different levels of the network, potentially providing for a link in a chain of substitution between different wholesale products currently placed in markets 4 and 5.

In particular when and where these types of fiber infrastructures become determining for broadband competition, maintaining a separate, technology neutral unbundling market may lead to the imposition of regulation on the 'wrong' layer of the network, leading to inefficient investments, over-regulation and a loss of consumer benefits. A market analysis based on the retail market in that case is likely to conclude that an active wholesale product would be most efficient, as well as sufficient to ensure effective downstream competition.

On the contrary, in ADSL-driven broadband markets where significant unbundling-based competition is in place and is expected to continue, different demand-side structures (where LLU is used by competitors to provide own bitstream services on the merchant market) and differences in prices of products and value remaining with the regulated operator indicate that markets 4 and 5 will remain separate for the relevant time period. The same applies in markets where point-to-point fibre unbundling is to become the relevant wholesale offer on a future fibre access market or where (potentially symmetric) access to the splitter in a GPON environment ensures effective competition downstream.

Telenor also acknowledges that there in some Member States could be a need for remedies that cater for the multiple backhaul needs in an NGN environment. A product market to this order would encompass FttB, mobile backhaul / dark fibre mobile base station and dark fiber backhaul from any PoP in the alternative operator's infrastructure.

Where access to passive infrastructure and/or the terminating segment has been mandated and significant demand for such access exists, such access may either fall into current market 4 where the NRA still identifies separate markets 4 and 5, or may be designed as a separate, symmetric regulatory obligation that should be based on Article 12 of the Framework Directive. Given the different needs for investment by access seekers for connecting to an active access product at a higher level of the network and for providing broadband services based on duct access or access to the terminating segment next to the customer's premises and the different price for such products, NRAs are likely to conclude that demand side substitution between, e.g., a VULA product and unbundled access to in-house-cabling in a GPON roll-out does not exist. To prevent the imposition of multiple access layers, NRAs should follow an appropriate geographic segmentation of markets and/or remedies.

Since the appropriate market definition between markets 4 and 5 will not only differ between Member States but may also change over time as NGA roll-out and take-up advances in different national markets, the revised recommendation should impose neither separate markets for unbundling and bitstream access nor a joint market covering all wholesale broadband access products.

The recommendation could include the option to define a common wholesale broadband access market comprising both current markets 4 and 5, or keeping current markets 4 and 5 as markets. This would give an important signal to NRAs to move to a joint wholesale access market where appropriate in the light of national circumstances without having to justify this as a national exception, and without triggering potential Commission or BEREC intervention.

Question 9: On the basis of the three criteria test carried out at EU level, should any of the markets listed in the Recommendation be removed from the list in the revised Recommendation? If yes, please provide comprehensive reasoning thereof.

Question 10: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such removal of markets on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market you propose to delete from the list.

Telenor answer:

Market 1 and market 2 (fixed telephony services)

Telenor is of the opinion that market 1, which is the only retail market in the current list, should be removed. Following the removal of all other retail markets in 2007, competition law has basically proven to be sufficient to deal with potential competition problems on retail level in the electronic communications sector.

The Explanatory Note to the 2007 recommendation was very clear on the fact that regulation of retail services is really the last resort. In this regard the following paragraph (page 19) is relevant:

"NRAs have powers as a last resort and after due consideration to impose retail regulation on an undertaking with significant market power. However, regulatory controls on retail services should only be imposed where NRAs consider that relevant wholesale or related measures would fail to achieve the objective of ensuring effective competition."

In the period a revised recommendation will be in place, the importance of fixed telephony services is expected to decrease further:

- A larger share of the total number of voice telephony minutes are expected to be carried over mobile networks and over IP-based voice services in fixed and mobile broadband networks.
- Social networking sites are expected to fulfil an increasing share of the communication needs, be it through text based communication or built-in voice or video communication facilities.

Nevertheless, Telenor recognizes that there are potential competition problems which *might* justify ex ante regulation at wholesale level in some Member States when a revised Recommendation takes effect. It's also acknowledged that LLU may not be a feasible wholesale product to provide fixed telephony services in all Member States. However, when now the wholesale line rental (WLR) concept has been successfully introduced in most Member States, it's in Telenor's view important to take the impact of such a regulatory intervention at wholesale level properly into account when assessing the need for a continued regulation at retail level.

In our view, the widespread existence of a WLR offering implies that the retail market for access to fixed telephony services is removed from the recommendation. Rather, a separate market for Wholesale Line Rental should be defined, in which mandatory access can be imposed, as well as other regulatory remedies which are found to be proportionate, including carrier selection and carrier pre-selection. This approach is likely to reduce the challenge seen in some markets with a 'double regulation' both on wholesale and retail level. The handling of the broadband markets should serve as an inspiration in this regard.

In many European markets the incumbent has started a process to over time phase out the POTS platform (PSTN/ISDN). In Norway Telenor is planning to complete this process over the next 4-5 years. Wholesale regulation of fixed telephony services as mentioned above should not in any way hinder such a development.

Telenor also suggests that the recommendation should explicitly provide for the opportunity to analyse 'access' and 'call origination' as a single market in Member States where the far majority of customers take access and call origination from the same provider, cf. recent decision by OPTA of the Netherlands.² And a final note on the relationship between "access" and "call origination": It should be possible to offer calls to end-users via carrier (pre)selection without WLR being used for the same customer. This is actually not the case in Denmark and should be commented on by the Commission.

Market 3 and 7 (termination services)

Telenor invites the Commission to consider whether the relevant markets for termination of calls into individual fixed and mobile networks (market 3 and 7 respectively) can be removed from a revised recommendation, based on a forward looking analysis. In case the Commission reaches the conclusion that sector-specific SMP regulation of termination services is still warranted, Telenor suggests harmonised "EU rates" to apply in a symmetric manner between operators and across national markets. Our positions are explained in more detail below.

² [https://circabc.europa.eu/d/d/workspace/SpacesStore/5843b5bc-d294-435b-bb5c-72f8bce25193/NL-2012-1306%20Acte\(4\)_EN%2Bdate%2Bnr.pdf](https://circabc.europa.eu/d/d/workspace/SpacesStore/5843b5bc-d294-435b-bb5c-72f8bce25193/NL-2012-1306%20Acte(4)_EN%2Bdate%2Bnr.pdf)

Europe has a long tradition of cost oriented interconnection regulation. Most NRAs have LRAIC models in place. Furthermore, the Recommendation on regulatory treatment of fixed and mobile termination rates (FTRs and MTRs) in the EU, which was issued by the Commission back in May 2009 has played a vital role in ensuring that termination rates are implemented at a cost-efficient, symmetric level, formally by end of 2012. This has resulted in a tremendous decrease, in particular for MTRs, over the last years. Furthermore, most interconnection relationships are fairly stable and often the traffic is relatively balanced between operators.

Telenor believe this development has created a situation where a forward looking analysis of the three criteria might lead to the conclusion that all criteria are no longer fulfilled. In particular, competition law could be sufficient to handle potential market failure. However, Telenor has some concern that competition law will not per se guarantee symmetrical termination rates between operators at national level (for FTRs and MTRs respectively). Telenor firmly believes symmetrical rates are beneficial because it leads to:

- i. Efficient competition
- ii. Efficient production
- iii. Efficient regulatory processes

This is basically in line with the Commissions position on the same issue. Thus, in order to mitigate the risk of having asymmetry (re)introduced and not solved by general competition law, it is important to have safeguard measures available, e.g. Article 5 of the Access Directive. In case operators are not able to agree on the terms and conditions of termination in future negotiations, they will not have to rely on the Competition authorities alone but can still get support from the NRA using its powers under Article 5 in the Access Directive. Application of the provision is linked to the control of access to end-users, which is the case for termination. For this to become effective, the Commission should advise NRAs to apply the principles of symmetric rates under this Article.

In case the Commission reaches the conclusion that sector-specific SMP regulation of termination services is still warranted, Telenor would recommend what we will refer to as “EU rates”, i.e. price caps to be established at EU level (for FTRs and MTRs respectively), more or less the same approach as for wholesale rates for international roaming. In our view there are strong arguments for such an approach going forward:

- The principles for calculating relevant costs for termination services are basically the same within EU/EEA (follows from the Recommendation)
- The price level has decreased significantly over the last years and it should be acceptable to introduce harmonised rates across EU/EEA
- The administrative cost for developing, implementing and updating (LRAIC) cost models at a national level is significant, including potential costs related to legal challenges of the output of the models and/or the NRA decision on glide paths. With decreasing price levels, the consumer benefit from such processes is limited. With prices set by the Commission at EU level these processes and costs will no longer be needed.
- “EU rates” will per se ensure symmetrical rates, both across Member States and between operators at national level, cf. discussion above.

Furthermore, the arguments are in particular strong for MTRs as termination is an input or cost element needed to provide international roaming. Thus, this approach establishes an appropriate link.

In setting “EU rates” the Commission should take account of differences in cost level between countries and avoid FTR/MTR level below marginal cost in any country. Member States with high price level should be granted a transition phase to avoid radical changes in termination rates which might have negative consequences at retail level and reduce incentives for infrastructure investment. Telenor is by principle objecting to the idea of a regulatory imposed “Bill and Keep” (B&K) for voice

calls. In competitive markets, prices reflect costs, and capacity cost is strictly larger than zero. Thus, regulatory determined termination rates should always be above zero. This should also be applied by the European Commission if a wider mandate for setting rates is implemented.

Question 11: On the basis of the three criteria test carried out at EU level, should any of the markets regulated by NRAs on the basis of national circumstances (such as SMS termination or broadcasting transmission services) be added to the list in the revised Recommendation from an *ex ante* perspective? If yes, please provide comprehensive reasoning thereof.

Telenor answer:

Telenor does not see a need for adding new product markets to the list of relevant markets. In this regard, we refer to the reasoning provided by ETNO and GSMA.



If you have questions related to this response from Telenor Group, please contact:

Sverre Holt-Francati, Vice President, Head of Group Regulatory
shf@telenor.com

About Telenor Group

Telenor Group is a global provider of electronic communications networks and services. We have a leading Nordic position in mobile, broadband and TV services and a strong mobile position in Hungary, Serbia and Montenegro. Telenor also has a strong presence in Russia and in Asia. Telenor offers a variety of services on all platforms, including mobile voice and data communications services throughout its footprint, and telephony, broadband as well as television distribution services over digital terrestrial, cable and satellite networks in the Nordics.

For more information about the Telenor Group, please visit: www.telenor.com