



INFSO Desk
European Commission
BU25 02/061
Rue de la Loi 200
B-1049 Brussels
BELGIUM

Lyse Tele's response to the European Commission draft recommendation regarding the regulation of Next Generation Access Networks (NGA)

Lyse Tele refers to the European Commission's public consultation on regulated access to Next Generation Access Networks (NGA), with submission deadline of 14 November 2008.

Lyse Tele is a Norwegian communications company, whose broadband business is based on the deployment of fibre-to-the-home (FTTH) access networks. Although Norway is not a member state of the European Union, Lyse Tele expects the Commission's NGA regulation to have an impact on regulation of NGA in the entire European Economic Area. We would therefore like to comment on the Commission's draft recommendation.

1. About Lyse Tele

Lyse Tele is wholly owned by the energy company Lyse¹. Since 2002 Lyse Tele has been the most active operator in the deployment of FTTH access networks in Norway, and it was the first broadband operator to launch 'triple-play' offers comprising high-speed symmetric broadband internet, IPTV and IP-telephony services in Norway.

Lyse Tele has established a franchise concept, Altibox, which currently comprises 34 partners from different regions of Norway, as well as one from Denmark. As of November 2008, the Altibox franchise had connected 120,000 FTTH customers.

Most Altibox partners are owned by local or regional energy companies. This means that fibre deployment by Lyse Tele and its partners focuses on adding value to particular regions in Norway and creates long-term investment in those areas.

Lyse Tele is in the process of adding new services to its core triple play offer, and is one of the foremost innovators in the Norwegian broadband market.

¹ www.lyse.no

Lyse Tele AS

Post address	Visit address	Telephone	Website
Postbox 8124 N-4069 Stavanger Norway	Breiflåtveien 18 Mariero N-4017 Stavanger Norway	+47 51 90 80 00 Telefax +47 51 90 80 01	www.lyse.no



2. The Norwegian broadband market

Broadband coverage in Norway²

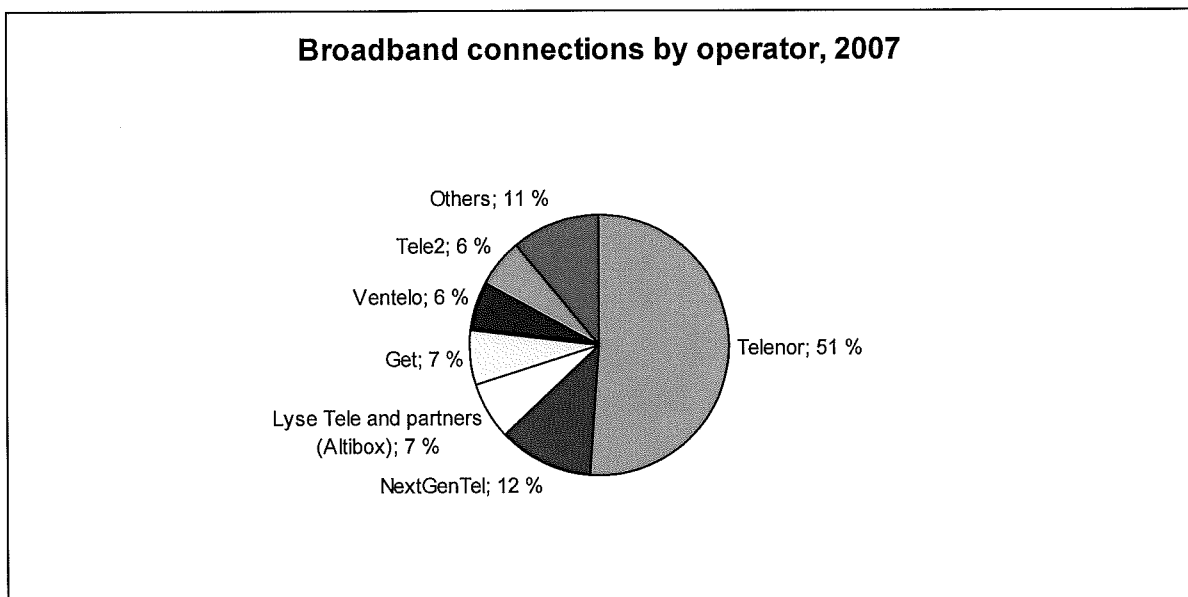
In March 2008 fixed-line broadband was available to 97.8% of households in Norway. Including mobile broadband access, this figure rises to 99.6%.

Fixed-line broadband coverage is estimated to reach 98.8% of households by the end of the year. The estimated figure including mobile broadband is 99.8%.

The Norwegian broadband market: number of connections and market share by operator

By March 2008 take-up of fixed-line broadband had reached 66% (or circa 1.37 million)² of households in Norway. The number of households with a fixed-line broadband connection has more than doubled since 2004 and the growth in the number of connections looks set to continue, although the rate of growth has slowed recently.

Figures from the Norwegian Post- and Telecommunications Authority show that Telenor has 51% of all residential and business broadband connections. Five other operators, including Lyse Tele, each provide between 6% and 12% of connections. In addition there are a number of smaller operators, each of which provides less than 1% of total broadband connections.



² "Broadband – coverage analysis 2008", Teleplan on behalf of the Ministry of Government Administration and Reform, 18.04.2008

Lyse Tele AS

Post address
Postbox 8124
N-4069 Stavanger
Norway

Visit address
Breiflåtveien 18
Mariero
N-4017 Stavanger
Norway

Telephone
+47 51 90 80 00
Telefax
+47 51 90 80 01

Website
www.lyse.no

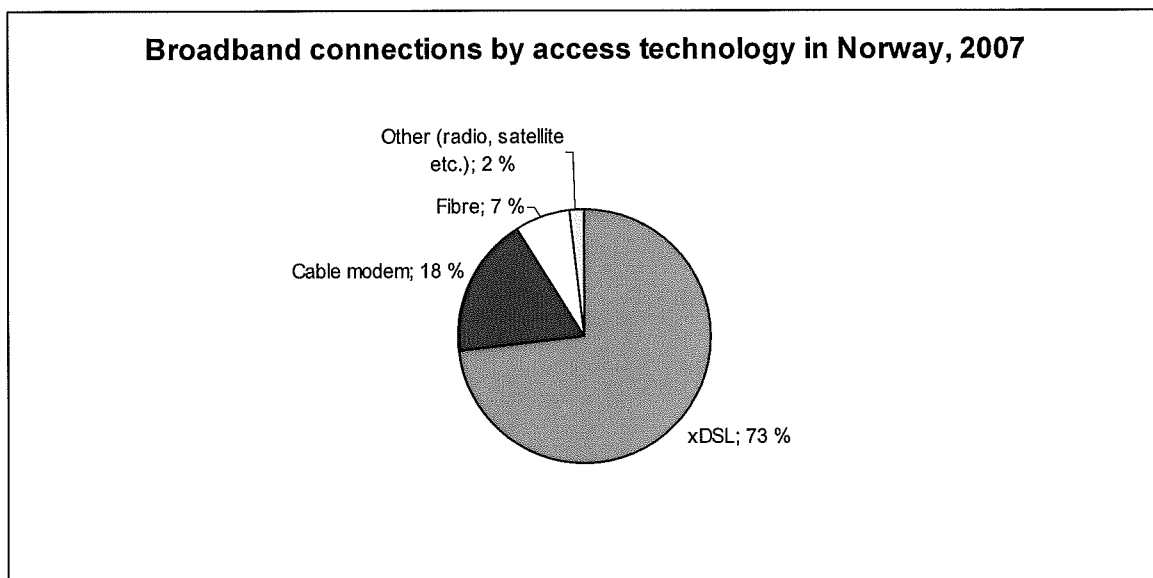
Share of broadband connections by access technology in Norway³

73% of broadband customers in Norway are connected via Telenor's copper access network, which most commonly provides an ADSL service. In addition to Telenor itself, NextGenTel, Tele2 and Ventelo are among those operators which offer broadband services over Telenor's copper network.

18% of broadband customers in Norway receive their service over Get or Canal Digital's cable TV network. Canal Digital is owned by Telenor.

FTTH constitutes 7% of broadband connections in Norway, and in 2007 was the access technology with the largest percentage growth in take-up. Lyse Tele and its Altibox franchise is by far the largest FTTH operator.

The remaining 2% of broadband connections are provided by fixed radio access or satellite.



3. Objective of the proposed NGA regulation

Lyse Tele fully supports the European Commission's wish to increase the pace and scope of fibre deployment in Europe, and shares the Commission's view that fibre infrastructure is important in ensuring the competitiveness of European countries and preventing the development of a digital divide based on geography and social conditions.

At the same time, Lyse Tele believes that the strong emphasis given to harmonisation in the consultation document is in conflict with the ultimate objective of NGA regulation, namely the quickest possible deployment of fibre access networks in European countries. This is because the proposed regulation:

- Is based on a 'one size fits all' approach, and does not take into account national market conditions and potential developments;
- Creates uncertainty with regard to the future conditions for NGA deployment, and thereby reduces the incentives to invest in fibre deployment; and

³ "Broadband – coverage analysis 2008", Teleplan on behalf of the Ministry of Government Administration and Reform, 18.04.2008

Lyse Tele AS

Post address
Postbox 8124
N-4069 Stavanger
Norway

Visit address
Breiflåtveien 18
Mariero
N-4017 Stavanger
Norway

Telephone
+47 51 90 80 00
Telefax
+47 51 90 80 01

Website
www.lyse.no



- Does not support network infrastructure competition, which is a key component of the electronic communications sector's current regulatory framework.

The sections that follow expand on each of these three points.

4. 'One size fits all', or NGA regulation based on national market conditions and developments

The electronic communications sector's existing regulatory framework is based on the European Commission (or the EFTA Surveillance Authority in the case of EFTA countries) recommending relevant markets for national regulatory authorities' (NRAs) own SMP analysis. In those relevant markets where an NRA identifies one or more SMP-operators, the NRA considers appropriate remedies based on a 'regulatory toolbox' which is defined by the Commission.

In its draft NGA recommendation the Commission is proposing a model which is at odds with the current regulatory framework. In markets 4 and 5 the Commission would withhold from NRAs the ability to select remedies according to national market conditions, and to identify national competition problems. This is despite the fact that in its draft recommendation the Commission acknowledges the large variation in market conditions and NGA deployment scenarios among individual European countries:

"There are a lot of possible scenarios for future Next Generation Access (NGA), network roll-out, and competitive outcomes are likely to vary both between and within Member States"⁴

The consultation document places a strong emphasis on harmonisation. However, it does not present a clear argument as to why harmonisation is more important than the consideration of national market developments, and national competitive conditions, in meeting the ultimate objective of increasing the pace and scope of fibre deployment in Europe.

The Commission seems to assume that in all European countries it is the incumbent that is the largest FTTH operator, and the driving force behind fibre deployment. That is not the case. We would argue that there is a large difference between the regulatory requirements in a country such as Norway, where a new broadband operator without a copper access network is leading fibre deployment, compared with a country where the incumbent exploits its strong position in the copper access network to monopolise the deployment of fibre. This distinction should be made particularly clear in the Commission's final recommendation to NRAs.

In our view the Commission's proposed NGA regulation should be restricted in its application to countries where the incumbent's strong position with regard to the copper access network is also reflected in the fibre access market. In countries where an operator other than the incumbent is the market leader in the fibre access market, and where there are competing FTTH operators, we believe that unbundling of the fibre access network should not be made compulsory.

5. Providing incentives to invest in fibre infrastructure

The objective of the proposed NGA regulation is to increase the pace and scope of investment in fibre access networks in Europe. Given that most European countries find themselves in an early phase of fibre deployment, and considerable investment is required to make up the ground that the USA and several Asian countries have

⁴ Draft Commission recommendation (3), p.3

Lyse Tele AS

Post address	Visit address	Telephone	Website
Postbox 8124	Breiflåtveien 18	+47 51 90 80 00	www.lyse.no
N-4069 Stavanger	Mariero	Telefax	
Norway	N-4017 Stavanger	+47 51 90 80 01	
	Norway		



gained, it is especially important to provide a regulatory framework which encourages investment in fibre infrastructure. This view is also expressed in the consultation document:

“... in order to provide regulatory certainty to investors and foster investment”⁵

Consequently it appears peculiar that the Commission proposes NGA regulation that imposes unbundling of the fibre access network without taking into account national market developments and competitive conditions. In our view such an imposition will have a negative effect on the incentives to invest in fibre in Europe.

In making the case to impose unbundling on fibre access networks in Europe, the Commission itself refers to the USA's head start with respect to fibre deployment. We believe it is appropriate at this point to note that it is only after the Federal Communications Commission (FCC) resolved not to impose unbundling of the fibre access network in 2003 that FTTH deployment really took off in the USA. Verizon, the second biggest telecoms operator in the USA and the country's market leader as far as fibre deployment is concerned, has on many occasions referred to the fact that it was this FCC decision which lay the foundation for its aggressive fibre deployment strategy. As a result we ask the Commission to consider carefully the impact that compulsory unbundling of the fibre access network will have on the incentives to invest in it.

Furthermore we ask the Commission to review carefully the expected impact of unbundling regulation on emerging infrastructures, such as the fibre access networks, as compared with the unbundling of access networks which have been fully deployed for many years, such as the copper access networks. It cannot be assumed that compulsory unbundling of fibre access networks will have the same positive impact that it had on the copper access networks. This is because the networks are at completely different stages of development. As far as the copper access networks are concerned, unbundling was important in creating service competition within the established networks. By contrast the most important consideration for the fibre access networks is that infrastructure deployment continues apace, and that there are incentives for a quick and comprehensive infrastructure deployment in the next few years.

We also note that there has been no unbundling regulation imposed on European cable TV networks, many of which have become multi-service networks in the last few years, supporting internet access and telephony services in addition to television. We ask the Commission to explain why it is proposing to impose unbundling on the fibre access network when the cable TV network is not subject to similar regulation, despite the fact that it was established several decades before the fibre access network, is used as an access network for the same services that are distributed over fibre, and moreover has a higher market share. This type of asymmetry in regulation of the electronic communications network does not support the Commission's wish to increase the rate of fibre deployment in Europe, but instead puts fibre operators at a competitive disadvantage compared with cable TV operators, something that will reduce the incentives to deploy fibre in European countries.

6. Greatest possible network infrastructure competition is the overarching goal

The consultation document refers to the overarching objective of network infrastructure competition, which forms the basis of the electronic communication sector's current regulatory framework.

“The existing regulatory framework places emphasis on the role of network infrastructure competition”⁶

⁵ Draft Commission recommendation (4), page 3

⁶ Draft Commission recommendation (7), page 4

Lyse Tele AS

Post address	Visit address	Telephone	Website
Postbox 8124	Breiflåtveien 18	+47 51 90 80 00	www.lyse.no
N-4069 Stavanger	Mariero	Telefax	
Norway	N-4017 Stavanger	+47 51 90 80 01	
	Norway		



Consequently one would expect NGA regulation to encourage operators other than the incumbent to deploy fibre access networks in order to create the most competitive infrastructure market possible. However, by proposing NGA regulation which will encourage service competition based on the incumbent's access networks, as opposed to infrastructure competition, the draft recommendation is putting forward regulation that will simply lead to the incumbent's monopoly of infrastructure being transferred from the copper to the fibre access networks.

We ask the Commission to explain why it appears to believe that the fibre access network is by definition a natural monopoly in all European countries, without having taken national market conditions into account. In addition we would ask why the Commission is choosing not to encourage the greatest possible network infrastructure competition in those countries where new market entrants without a copper access network lead in the deployment of fibre.

We fail to understand why the Commission is choosing to reduce investment incentives for those FTTH operators which can break up the access monopolies that national incumbents have held in the fixed network for so many years, and question how the Commission's proposed approach can begin to support the goal of catching up with the USA's and Asia's head start in fibre deployment. Indeed, new entrants in the fibre access network not only have the potential to break up the infrastructure monopoly for internet access and telephony, but also to increase competition in the TV distribution market, which in many European countries has been dominated by cable TV operators until now.

7. Summary

Lyse Tele believes that NGA regulation should not place such strong emphasis on harmonisation, because this reduces the incentive to invest in fibre, and will hinder the development of network infrastructure competition in the fibre market in those European countries where it is possible. Such NGA regulation will have the opposite impact to its intended one, and will slow down fibre deployment rather than encourage it. It is of great importance for the pace and scope of fibre deployment in European countries that NRAs must be able to adjust NGA regulatory remedies according to their own market conditions.

This requires that in its final recommendation on NGA regulation the Commission makes a clear distinction between those countries where the incumbent is also the FTTH market leader, and those countries where more recent broadband operators without a copper access network lead in fibre deployment.

Your sincerely,

Eirik Gundegjerde
CEO, Lyse Tele

13 November 2008

Cc: Norwegian Post- and Telecommunications Authority
Norwegian Ministry of Transport and Communications

Lyse Tele AS

Post address	Visit address	Telephone	Website
Postbox 8124	Breifåtveien 18	+47 51 90 80 00	www.lyse.no
N-4069 Stavanger	Mariero	Telefax	
Norway	N-4017 Stavanger	+47 51 90 80 01	
	Norway		