



Post- og teletilsynet
Norwegian Post and Telecommunications Authority

Final decisions for designating undertakings with significant market power and imposing specific obligations in the markets for voice call termination on individual mobile networks (Market 16)

Supplementary decision for Network Norway, Ventelo, Barablu,
Tele2, MTU and TDC

17 November 2008

Contents

Summary	4
1 Introduction and background.....	8
1.1 Legal basis for regulation	9
1.2 The structure of the document	10
2 Designation of undertakings with significant market power	11
3 Regulatory basis for the choice of remedies	11
4 Current specific obligations	12
5 Possibilities of duplication of infrastructure in the markets for voice call termination on mobile networks	13
6 Competition problems.....	14
7 General – choice of remedies	15
7.1 General remarks on proportionality	15
7.2 Synergy among remedies	16
8 Explanation of the choice of specific obligations.....	16
8.1 Interconnection obligations for Network Norway, Ventelo and Barablu	16
8.2 Non-discrimination	20
8.2.1 Network Norway	21
8.2.2 Ventelo and Barablu	22
8.2.3 Proportionality and relationship to general competition law	23
8.3 Publication and reference offer.....	23
8.3.1 Proportionality and relationship to general competition law	25
8.4 Price controls	25
8.4.1 The need for price controls in the markets for termination of voice calls	25
8.4.2 Principles for price controls on the small operators.....	27
8.4.3 Clarification of reasonable price for small and new operators	29
8.4.4 Price controls on Tele2	38
8.4.5 Price controls on Network Norway.....	41
8.4.6 Price controls on Ventelo.....	43
8.4.7 Price controls on Barablu.....	44
8.4.8 Price controls on MTU	45
8.4.9 Price controls on TDC	47
8.5 Particulars regarding the proportionality of price controls and relationship to general competition law	48
8.5.1 Are price controls necessary?	48
8.5.2 Are there less intrusive alternatives?.....	48
8.5.3 Proportionality in a narrow sense.....	48
8.5.4 Price controls on Tele2	49
8.5.5 Price controls on Network Norway.....	50
8.5.6 Price controls on Ventelo and Barablu	50
8.5.7 Clarification of price controls on MTU and TDC.....	50
8.6 Further details on assumed impacts of the price controls	51
8.6.1 Assumed impact on consumers	51
8.6.2 Assumed impact on the undertakings.....	52
8.6.3 Other assumed efficiency gains	52
8.6.4 Overall assessment of assumed impacts.....	52
8.7 Assessment of the overall effect of the specific obligations on unregulated undertakings	53
8.7.1 Network Norway	53
8.7.2 Ventelo and Barablu	53

9	Notification of decisions on the imposition of specific obligations	54
9.1	Tele2 Norge AS	54
9.1.1	Price controls.....	54
9.2	Network Norway AS.....	55
9.2.1	Interconnection.....	55
9.2.2	Non-discrimination.....	55
9.2.3	Publication	56
9.2.4	Price controls.....	56
9.3	Ventelo AS	57
9.3.1	Interconnection.....	57
9.3.2	Publication	57
9.3.3	Price controls.....	58
9.4	Barablu Mobile Norway Ltd.....	59
9.4.1	Interconnection.....	59
9.4.2	Publication	59
9.4.3	Price controls.....	60
9.5	MTU Gruppen AS.....	61
9.6	TDC AS	61
10	Changes in existing obligations	62

Annex 1 - Analysis of the markets for termination of voice calls on individual public mobile communications networks

Annex 2 – Summary of responses to the consultation

Annex 3 – Comments from ESA

Summary

In light of the analysis of the markets for voice call termination on individual mobile networks (hereinafter voice call termination on mobile networks, Market 16), the Norwegian Post and Telecommunications Authority (NPT), pursuant to Electronic Communications Act § 3-3, designates Network Norway, Ventelo and Barablu as undertakings with significant market power in the markets for voice call termination on mobile networks. On 8 May 2007 the Authority designated also Telenor, NetCom, MTU, TDC and Tele2 as having significant market power in Market 16.

In the market analysis (see Annex 1), NPT identified a number of competition problems in the relevant markets for voice call termination on mobile networks. They are largely due to the absolute entry barriers in the relevant markets. As of today it is not possible for other undertakings to offer a competing product in the markets as they are defined, nor is it likely that this will happen within a reasonable time horizon. Combined with the calling party pays (CPP) principle, absolute entry barriers mean that the undertakings named above have little incentive to set efficient prices for the voice call termination product. This would have otherwise been the case in a market exposed to competition.

In light of the above, the Authority regulates the markets for voice call termination on mobile networks on the basis of Principle 2 in NPT's remedies document. That is, consumer interests are to be protected, since the duplication of infrastructure will not be able to remedy the competition problems in question. The goal for NPT when regulation termination rates is efficient and symmetric termination rates for all operators.

However, NPT believes that it is appropriate to view the use of remedies in Market 16 in the context of the goal of building infrastructure in the market for access to and call origination on mobile communications networks (Market 15). It is NPT's aim to achieve effective infrastructure-based competition that can be sustained without assistance from sector-specific competition regulation. Until it has been determined that there is effective competition in Market 15 or the market does not meet the criteria for *ex ante* competition regulation, the Authority will design its use of remedies to facilitate the establishment of mobile networks. The specific obligations in Market 16 should therefore not make it more difficult for new network operators to gain a foothold in the Norwegian mobile market.

This is a supplementary decision to the main decision 8 May 2007. Consequently, the obligations imposed in this decision are in accordance with the obligations in the main decision. Specifically, the principle of lenient regulation for new operators in a transitory period is followed up in this decision. On this basis NPT has concluded that the following specific obligations should be imposed on the various undertakings in the forthcoming regulatory period:

Regulation of Tele2

In the decision of 8 May 2007 NPT directed Tele2 to reduce its rates to an efficient level. This obligation was set aside by the Ministry of Transport and Communications in a decision of 13 February 2008 in view of new information that the company intended to climb the investment ladder by building its own mobile network in partnership with Network Norway. NPT has reconsidered whether there should be price controls, and believes that it is proportionate to

impose on Tele2 a reasonable price obligation in line with the signals given in the decision of 8 May 2007. However, several factors indicate a need to clarify the reasonable price obligation to follow up the principles that were applied at that time. Following an overall assessment of a number of criteria, NPT has concluded that a reasonable price for Tele2 cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 June 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
Tele2	1.155	1	0.90	0.75

Table 1a: Price cap per minute for termination on Tele2’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

Regulation of Network Norway

Network Norway has been offering mobile telephony based on a national roaming agreement with NetCom since September 2007 and after that with Telenor from 2008. Since NPT has concluded that the company has significant market power, Network Norway will continue to be obliged to meet any reasonable request for interconnection in the form of termination on its mobile network. The Authority will also direct the company to meet requests for purchase of termination from other mobile and fixed network operators. At the same time, NPT is imposing obligations to publish its rates and of non-discrimination on the company.

In line with the principles of regulating the termination rates of new entrants in NPT’s decision of 8 May 2007, NPT is imposing on Network Norway a reasonable price obligation. To follow up the principles that were given at that time, NPT believes it is necessary to clarify what it regards to be a reasonable price level until the end of 2010. Following an overall assessment of a number of criteria, NPT has concluded that a reasonable price for Network Norway cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 June 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
Network Norway	1.155	1	0.90	0.75

Table 2a: Price cap per minute for termination on Network Norway’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

Regulation of Ventelo

Ventelo launched services based on an MVNO agreement in spring 2007. In addition to meeting any reasonable request for interconnection in the form of termination on its mobile network, Ventelo is directed to meet requests for purchase of termination, and an obligation to publish rates.

In line with the principles of regulating new entrants in NPT’s decision of 8 May 2007, NPT is imposing on Ventelo a reasonable price obligation. To follow up the principles that were given at that time, NPT believes it is necessary to clarify what it regards to be a reasonable

price level until the end of 2010. Following an overall assessment of a number of criteria, NPT has concluded that a reasonable price for Ventelo cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
Ventelo	1.155	1	0.90	0.75

Table 3a: Price cap per minute for termination on Ventelo’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

Regulation of Barablu

Barablu launched services based on an MVNO agreement in spring 2007. In addition to meeting any reasonable request for interconnection in the form of termination on its mobile network, Barablu is directed to meet requests for purchase of termination, and an obligation to publish rates.

In line with the principles of regulating new entrants in NPT’s decision of 8 May 2007, NPT is imposing on Barablu a reasonable price obligation. To follow up the principles that were given at that time, NPT believes it is necessary to clarify what it regards to be a reasonable price level until the end of 2010. Following an overall assessment of a number of criteria, NPT has concluded that a reasonable price for Barablu cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
Barablu	1.61	1	0.90	0.75

Table 4a: Price cap per minute for termination on Barablu’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

Clarification of price controls on MTU and TDC

In the decision of 8 May 2007 NPT imposed an obligation on MTU and TDC to charge reasonable rates. However, several factors indicate a need to clarify the reasonable price obligation to follow up the principles that were applied at the time.

Following an overall assessment of a number of criteria, NPT has concluded that a reasonable price for MTU cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
MTU	1.26	1	0.90	0.75

Table 5a: Price cap per minute for termination on MTU’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

Likewise, a reasonable price for termination on TDC’s network cannot exceed the price caps in the following table:

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 – 30 June 2010	1 July 2010 – 31 December 2010
TDC	1.155	1	0.90	0.75

Table 6a: Price cap per minute for termination on TDC’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

NPT emphasises that prices in the glide paths should not be considered to be the efficient or cost oriented prices for any of the regulated operators. Efficient prices will be imposed after the transitory period.

The rates are not differentiated between operators. Differentiated rates could lead to differentiated retail prices for calling to the various networks. This would not be desirable in the light of transparency for end users. However, the length of the transitory period is differentiated between MNOs and MVNOs. MNOs will qualify for a longer transitory period, since they normally undertake larger investment in infrastructure than MVNOs.

1 Introduction and background

1. In Act No. 83 of 4 July 2003 relating to electronic communications (Electronic Communications Act) §§ 3-2 and 3-3, the Norwegian Post and Telecommunications Authority (NPT) is obliged to analyse the various markets for electronic communications and identify undertakings with significant market power. If one or more undertakings are designated as having significant market power, at least one specific obligation shall be imposed over and above the general obligations pursuant to the Electronic Communications Act with regulations. Through the regulatory framework, various specific obligations will be imposed on undertakings with significant market power in the markets for electronic communications networks and services, based a specific assessment of each individual market and the relevant undertakings' positions in this market. In what follows these will be referred to as specific obligations.
2. NPT has previously performed two analyses of the markets for call termination on mobile networks (market 16¹), dated 19 September 2005 and 8 May 2007, respectively. In view of the analysis from 8 May 2007, Telenor ASA (Telenor), NetCom as (NetCom), MTU Networks AS (now MTU Gruppen AS, MTU), Tele2 Norge AS (Tele2) and TDC Song AS (now TDC AS, TDC) were designated undertakings with significant market power. At the same time the Authority imposed a number of specific obligations on these operators.
3. The decision of 8 May 2007 did not include Network Norway AS (Network Norway), Ventelo AS (Ventelo) and Barablu Mobile Norway Ltd. (Barablu), because these undertakings had relatively recently launched services as a mobile network operator (MNO) or a mobile virtual network operator (MVNO). Furthermore, the price controls on Tele2 were set aside by the Ministry of Transport and Communications on an appeal on account of changed facts and returned to NPT for reconsideration.
4. In the analysis of the markets for voice call termination on individual public mobile communications networks (hereinafter voice call termination on mobile networks)² NPT has now concluded that Network Norway, Ventelo and Barablu have significant market power in their respective termination markets.
5. In the national consultation on 10 June 2008 NPT presented a draft decision on designation of providers with significant market power and imposition of specific obligations.
6. NPT received responses to the consultation from the Norwegian Competition Authority (NCA), Telenor, NetCom, MTU Gruppen, Tele2 and TDC. NPT has assessed the comments received (annex 2) and presented on this basis the draft decisions for notification, which designate undertakings with significant market power, impose new obligations and remove current ones.

¹ ESA's new Recommendation on relevant product and service markets was adopted 5 November 2008. This Recommendation replaces the original recommendation of 2004 which listed 18 markets relevant for ex-ante regulation. The new Recommendation reduces the number of markets to 7 and thereby aligns itself with the similar Recommendation revised by the Commission. This means that the markets for voice call termination on mobile networks are not longer market 16, but market 7. The definition of the market is not changed. This decision was notified to ESA prior to the new Recommendation. The relevant market is therefore referred to as market 16.

² See Annex 1.

7. The draft decision was translated into English and notified to the EFTA Surveillance Authority (ESA) on 2 October 2008, cf. Article 7 of the Framework Directive.³ NPT received ESA's comments on 3 November 2008.

8. In its comments ESA expressed that the framework provides room for promoting competition in the provision of electronic communications networks through asymmetric termination rates, in the manner NPT proposes. However, ESA expressed concerns about the possibility for new network operators to try to extend in time and scope the entry assistance. PT was therefore invited to:

- Closely monitor the fulfilment of the proposed plans for the roll-out of the new network, in accordance with what is communicated to NPT.
- Establish a clear time horizon for the elimination of asymmetric termination rates and thereby indicate when the goal of symmetric termination rates for all operators can be achieved. Moreover, NPT was asked to revise and clarify the wording in the draft decision and the decision of 8 May 2007 regarding the duration of the tolerated asymmetry of 5-10 years for MNOs and 3-4 years for MVNOs.
- Justify more clearly the level of asymmetry and explain the reasons for increased asymmetry in the middle interval of the glide path.
- Reduce the level of asymmetry more than what was proposed in the draft decision. However, it was not expressed what level ESA would consider as adequate or if a further reduction should apply to all operators.
- Carry out an assessment, also for other operators than Tele2, of the excess profits operators will gain due to the more lenient regulation compared to an obligation of efficient prices.
- Verify the realism in the cost estimates of building a new mobile network.
- Clarify the presentation of the calculation of the price caps and whether the prices are adjusted for inflation or not.

9. NPT has carefully assessed and taken the utmost account of the comments from ESA. The final decision is therefore more comprehensive on some points than the draft decision notified 2 October 2008.

10. The final decision will be appealable in the ordinary manner by operators with a legal interest in appealing, in accordance with the provisions of the Public Administration Act.

1.1 Legal basis for regulation

11. The regulatory framework for electronic communication is based on five directives adopted by the European Union (EU).⁴ The directives have been implemented in Norwegian

³ Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive).

⁴ Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive); Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive); Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive); Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

law through the Electronic Communications Act and associated regulations, including the Regulations of 16 February 2004 on electronic communications networks and services (Ecom Regulations).

12. In accordance with this regulatory regime, the obligations for undertakings with significant market power will be determined individually. This takes place following a specific assessment based on market analyses and with a limited forward-looking time horizon.⁵ Particular attention must be paid to the expected pro-competitive effect of the relevant remedies.

13. In choosing specific obligations NPT has taken into account the considerations contained NPT's revised remedies document of 5 December 2006.⁶ This document is based in turn on "Revised ERG Common Position on the Approach to remedies in the ECNS regulatory framework", formulated by the European Regulators Group for electronic communications networks and services (ERG).⁷ The guidelines and principles embodied in the ERG remedies document are intended to foster the development of the single market for electronic communications networks and services as well as facilitate uniform and consistent regulatory practice in the various member states.

1.2 The structure of the document

14. This decision consists of a main document with the obligations imposed, background and justification for them, and two annexes. Annex 1 contains an analysis of the markets for termination of voice calls on individual public mobile communications networks. Annex 2 contains a summary of responses to the consultation as well as NPT's assessments of input from the undertakings.

15. In Chapter 2 of this document, undertakings are designated as having significant market power in view of the market analysis in Annex 1. Chapter 3 provides a brief overview of the regulatory framework for the choice of remedies, while Chapter 4 provides an overview of the current specific obligations related to interconnection on mobile networks. Chapter 5 discusses the possibility of the emergence of sustainable competition in the relevant market, an issue that matters a great deal for the choice of specific obligations, see also NPT's remedies document. Chapter 6 provides a brief overview of the competition problems NPT has uncovered in the relevant markets for voice call termination on mobile networks. Chapter 7 provides a discussion of some general issues surrounding the choice of remedies. Chapter 8 is the most extensive chapter in the document. In it NPT accounts for its choice of use of remedies in view of the previous chapters and the market analysis in Annex 1. Based on this review NPT accounts for the notified specific obligations in Chapter 9 and notifies the removal of existing obligations in Chapter. Information on the consultation closing date appears in Chapter 11.

⁵ See further details about the time horizon in the ESA's guidelines for market analyses and assessment of significant market power, paragraph 20.

⁶ The document is published on NPT's website www.npt.no under the menu selection "Markedsregulering (SMP)"

⁷ This document was revised in May 2006 and is published on the ERG website: <http://www.erg.eu.int/>

2 Designation of undertakings with significant market power

16. In light of the analysis of the markets for voice call termination on individual mobile networks, pursuant to Electronic Communications Act § 3-3, NPT designates Network Norway, Ventelo and Barablu as undertakings with significant market power in the following respective markets:

- Network Norway: voice call termination on Network Norway's mobile communications network.
- Ventelo: voice call termination on Ventelo's mobile communications network.
- Barablu: voice call termination on Barablu's mobile communications network.

17. For further specifics, NPT refers to the analyses in Annex 1.

3 Regulatory basis for the choice of remedies

18. It ensues from Electronic Communications Act § 3-4 first paragraph that providers with significant market power shall have one or more special obligations imposed on them pursuant to §§ 4-1, 4-4, 4-5, 4-6, 4-7, 4-8 and 4-9. Relevant obligations for the markets for voice call termination on mobile networks are:

- Access obligations, cf. Electronic Communications Act §§ 4-1, 4-2, 4-4 and 4-5.
- Obligation of non-discrimination, cf. Electronic Communications Act § 4-7.
- Obligation to publish a reference offer, cf. Electronic Communications Act § 4-6.
- Obligation of transparency, cf. Electronic Communications Act §§ 4-6 and 4-8.
- Obligation of price controls and cost accounting, cf. Electronic Communications Act § 4-9.
- Obligation of accounting separation, cf. Electronic Communications Act § 4-8.

19. In special cases, obligations may also be imposed beyond what follows from these provisions, as long as the consultation procedure in Electronic Communications Act § 9-3 is complied with.

20. In its remedies document, NPT has reviewed the principles that in general will guide the Authority in its choice of remedies:

Principle 1 The NRA must produce reasoned decisions in line with its obligations under the Directives.

Principle 2 The interests of consumers shall be protected when replication of infrastructure is not considered feasible.

Principle 3 In markets where NPT considers it likely that replication of infrastructure may be attained over time, NPT will ensure that its use of remedies supports the transition to a market with sustainable competition.

Principle 4 Remedies shall be designed to be incentive compatible.

21. In accordance with the general principles of administrative law and the proportionality principle in European Community law, any obligations NPT imposes on undertakings with significant market power shall be appropriate to, and not go further than necessary for, furthering the purposes of the Electronic Communications Act. The basic intent of the Electronic Communications Act is stated in § 1-1, which reads:

“The purpose of the Act is to secure good, reasonably priced and future-oriented electronic communications services for the users throughout the country through efficient use of society’s resources by facilitating sustainable competition, as well as stimulating industrial development and innovation.”

22. In addition to this provision, a special preamble has been placed in § 3-4 third paragraph. The rule points out specific, relevant considerations for imposing specific obligations:

“Obligations in accordance with the first and second paragraphs that are imposed in the individual case shall be appropriate to promote sustainable competition, as well as facilitating national and international development in the market. The Authority may amend obligations imposed.”

4 Current specific obligations

23. Barablu, Network Norway and Ventelo are currently not subject to specific obligations pursuant to Electronic Communications Act, Chapters 3 and 4.

24. NPT’s decision of 8 May 2007 was appealed against by Telenor, NetCom and Tele2 among other reasons with regard to price controls on Tele2 and the smaller operators. On 13 February 2008 the Ministry of Transport and Communications upheld the decisions vis-à-vis TDC and MTU. The price controls on Tele2 in the decision were set aside on the same date and returned to NPT for reconsideration on account of changed facts. The Ministry of Transport and Communications also set a new price cap at the current level until the Authority issues a new decision.

25. The obligations imposed on Telenor and NetCom by NPT 8 May 2007 are effective. NPT refers to that decision for details.

26. The following specific obligations apply today to MTU, Tele2 and TDC Song:

MTU:

- An obligation to meet any reasonable request for interconnection and to negotiate such agreements without undue delay, cf. Electronic Communications Act §§ 4-2 and 4-1.
- An obligation to publish interconnection rates, cf. Electronic Communications Act § 4-6. Moreover, the company shall send NPT a copy of all negotiated agreements for voice call termination on mobile networks, cf. Electronic Communications Act § 10-3.
- An obligation of a “reasonable price”, cf. Electronic Communications Act § 4-9.

Tele2:

- An obligation to meet any reasonable request for interconnection and to negotiate such agreements without undue delay, cf. Electronic Communications Act §§ 4-2 and 4-1.
- An obligation to formulate and publish a reference offer for interconnection, cf. Electronic Communications Act § 4-6. Moreover, the company shall send NPT a copy of all negotiated agreements for voice call termination on mobile networks, cf. Electronic Communications Act § 10-3.
- An obligation not to increase rates from the current level, cf. Electronic Communications Act § 4-9.⁸

TDC:

- An obligation to meet any reasonable request for interconnection and to negotiate such agreements without undue delay, cf. Electronic Communications Act §§ 4-2 and 4-1.
- An obligation to publish interconnection rates, cf. Electronic Communications Act § 4-6. Moreover, the company shall send NPT a copy of all negotiated agreements for voice call termination on mobile networks, cf. Electronic Communications Act § 10-3.
- An obligation of a “reasonable price”, cf. Electronic Communications Act § 4-9.

5 Possibilities of duplication of infrastructure in the markets for voice call termination on mobile networks

27. According to the account of Principles 2 and 3 in NPT’s remedies document, key to the choice of remedies will be whether or not replication of the infrastructure in the relevant market is feasible (*i.e.* whether or not bringing about sustainable infrastructure competition is likely). If the market is covered by Principle 2, it will normally be necessary and legitimate to operate with a stricter set of regulatory obligations.⁹

28. In the first decision in Market 16, NPT found that the service voice call termination on mobile networks occupies a unique position with regard to the choice between Principle 2 or 3. Even though it may be possible to achieve infrastructure-based competition in the mobile market in the form of several competing mobile networks, this will still not remedy the relevant competition problems in the termination markets. The reason for this is that it is not possible for anyone other than the undertaking that controls the physical or virtual network to offer termination to end users on that undertaking’s network. Thus, the undertakings find themselves in a monopoly situation as far as termination is concerned.

29. The fact that competition at the infrastructure level will not be suitable for remedying the potential competition problems identified in the termination markets, must in NPT’s opinion mean that the markets for voice call termination on mobile networks shall in principle be regulated according to Principle 2. On this basis NPT will have two main regulatory objectives. First, the Authority will seek to facilitate efficient use of the existing infrastructure to the greatest degree possible. Second, NPT will seek to facilitate sufficient earnings in the

⁸ See the Ministry of Transport and Communications’ decision of 13 February 2008 page 2. The obligation is in force until the NPT issues a new decision on price controls on the company.

⁹ See further details on Principle 2 in NPT’s remedies document.

existing infrastructure, so that incentives are provided for necessary maintenance, upgrades and new investment in the network.

30. At the same time NPT would refer to the decision of 8 May 2007 which states that the authorities must see the use of remedies in Market 16 in connection with the desire to facilitate the replication of infrastructure and sustainable competition in the market for access and call origination on public mobile telephone networks (Market 15). The purpose of the specific obligations that NPT imposed on Telenor in the decision of 23 January 2006 is to make it possible for new operators to build mobile networks in line with Principle 3. Even if it can be unprofitable to duplicate infrastructure in less densely populated areas, in NPT's view it will be possible to create network competition in densely populated areas. Such entries could eventually contribute to sustainable competition in the Norwegian mobile market.

31. In NPT's opinion, Markets 15 and 16 must continued be viewed in connection with the formulation of price controls for both existing and new operators. Norway is in a unique position among countries in Europe in that there are only two undertakings with nationwide networks. Thus, to ensure effective competition at the network level, there is a need for more mobile networks. The revenues from termination normally represent a large share of the total revenues of the operators, new operators in particular. For that reason it may be appropriate for new operators to get to keep a termination rate above the efficient level during a start-up period. Furthermore, the termination rates of established and large mobile providers will have a bearing on the costs of new entrants in the market. High prices of the major providers mean a high external cost of sales for new entrants.

6 Competition problems

32. Specific obligations imposed on undertakings with significant market power are to be suited to remedying actual or potential competition problems in the relevant market. Competition problems are understood to be any behaviour from an undertaking with significant market power intended to drive competitors out of the market, prevent potential competitors from entering the market and/or exploit consumers.

33. The competition problems in this market are described in Chapter 4 of the market analysis. For that reason this document contains only a brief summary of these competition problems:

- *Denial to interconnect:* Network Norway, Ventelo and Barablu may have incentives to deny interconnection in the form of termination. In particular this may be relevant vis-à-vis smaller operators or those of equal size, which in any case would not diminish the quality of their own mobile services. Both denial of direct and indirect interconnection may represent a considerable competition problem for those it affects, particularly smaller providers. The same applies to those cases where these operators refuse to purchase termination from other companies. Denial of interconnect will result in reduced user welfare in that the objective of end-to-end connectivity is not attained.
- *Excessive pricing:* In practice, excessive pricing is the key competition problem in the relevant termination markets. Network Norway, Ventelo and Barablu have both the ability and incentive to set termination rates that are higher than the underlying costs would warrant. This means that providers charge more than they would have done in a market with effective competition.

- *Cross-subsidisation:* The main reason for the competition problem “cross-subsidisation” is that Network Norway, Ventelo and Barablu have opportunities and incentives to overcharge for termination over time. Revenue from termination on mobile networks often subsequently used to subsidise an undertaking’s own operations in Market 15 or its other business areas. For example, healthy margins obtained from termination could be used to finance low retail prices in general or subsidise mobile phones. This cross-subsidisation means that end users at other providers (on both fixed networks and other mobile networks) may come to subsidise low retail prices for these operators’ customers. Even if such behaviour may be appropriate in the short term because entry barriers are lowered, over time it may lead to inefficient production and undesirable distortion of competition. In view of this NPT believes that in the longer term, it is undesirable to permit cross-subsidisation.
- *Price discrimination:* An undertaking may have an incentive to provide better terms to some external undertakings rather than to other external operators. If providers of termination discriminate among external undertakings, this may result in higher costs for some operators. This behaviour can ultimately lead to exclusion from the market, particularly if the traffic volume to the network in question is of a certain size. An undertaking with significant market power can also discriminate on price between on-net calls and calls from other mobile networks. Such pricing results in high costs for other operators for termination on the network in question. Thus, the corresponding retail prices will be high, or the competing undertakings may face so-called price squeezes. Such pricing may also function as an entry barrier.

34. NPT has assumed that the above-mentioned competition problem is also relevant for Tele2, TDC and MTU. See Chapter 6 of the decision of 8 May 2007 and Chapter 5 of the market analysis for a more detailed account of the Authority’s assessments.

7 General – choice of remedies

35. In the following NPT discusses certain issues of a general nature relating to the choice of remedies in the markets for voice call termination on mobile networks. We discuss the specific obligations in Chapter 8.

7.1 General remarks on proportionality

36. Furthermore, the proportionality principle is discussed in detail in Proposition No. 58 (2002-2003) to the Odelsting in the remarks on Electronic Communications Act § 3-4. They contain some commentary on the proportionality assessment the national regulatory authority is to perform when imposing obligations. Here it states:

“The obligations imposed shall be proportionate, non-discriminatory, be based on objective and fair criteria and be publicly available. Proportionate means that obligations imposed regarding access or significant market power with appurtenant conditions are to be suited to compensating for a lack of sustainable competition and are to help to promote consumer interests and, if possible, contribute to national and international development. The burdens of the remedies imposed are to be proportionate to what they seek to achieve. This also permits the authorities to link the obligations to certain parts of the relevant market if appropriate.”

37. This principle means that in selecting among several alternatives, all of which can promote the objectives equally effectively, NPT shall choose the least burdensome alternative for an undertaking with significant market power. Under the circumstances an absolute requirement will also have to be put in place not to impose obligations that are disproportionately burdensome.

38. The content of the proportionality principle is described in more detail in NPT's remedies document. There it states that the principle of proportionality implies that measures should be suited to realising the objective behind them, should not be in excess of what is necessary in the individual case and the benefits of the intervention are to outweigh the burdens.

39. However, neither the proportionality principle nor the principle of minimal regulation may be cited in support of the argument that NPT should not or does not have cause to impose burdensome obligations on undertakings with significant market power. The core of these principles is that one should not impose stricter obligations than necessary. However, the imposition of burdensome obligations, such as price controls, may very well be proportionate or necessary in markets where less burdensome obligations are not regarded to be adequate for reaching the objective of the regulation.

7.2 Synergy among remedies

40. The specific obligations that NPT can impose on undertakings with significant market power are largely closely related. The linkages between the various obligations are discussed in detail in the section 3.2 of the ERG remedies document, and NPT refers to the discussion there.

41. There are particular reasons to point out that, seen in isolation, the remedies accounting separation, cost accounting and publishing a reference offer etc. have little independent effect, but are primarily meant to support any obligations for non-discrimination and/or price controls.

8 Explanation of the choice of specific obligations

42. In this chapter, NPT addresses the special obligations that are to be imposed on Network Norway, Ventelo and Barablu. The Authority will also address price controls on Tele2 and clarify the price controls on MTU and TDC. The main purpose is to stipulate the obligations that address the objectives of the Electronic Communications Act and Principle 2 in NPT's remedies document, remedy the competition problems and are, at the same time, proportionate.

43. Instead of starting with the presumably mildest remedy – transparency – NPT has chosen to begin with a review of the need for access obligations (interconnection). This has been done because for practical purposes it will be hardly appropriate to discuss other remedies if it is not assumed at the same time that access obligations apply.

8.1 Interconnection obligations for Network Norway, Ventelo and Barablu

44. NPT believes that denial of access and/or delaying tactics in connection with request for termination are potential competition problems in the markets for voice call termination on mobile networks, see Chapter 6 and Annex 1. In the interest of facilitating end-to-end

connectivity, among others, NPT believes that it is vital to ensure that all operators are able to terminate calls with all mobile providers. This applies to calls from fixed and mobile networks alike. Furthermore, NPT believes that the interest of ensuring rapid entry into the market for new operators (and thus increasing competition) indicates that the specific obligations ought to counteract delaying tactics.

45. Legislators regarded it as especially important to reduce the chances of denials to interconnect. Providers with significant market power therefore have a mandatory obligation to meet any reasonable request for interconnection, cf. Electronic Communications Act § 4-2 third paragraph. The provision states:

“Within those areas in which the provider has significant market power, the provider shall meet any reasonable request to enter into or amend an agreement on interconnection. In the assessment of whether a request is reasonable, an evaluation shall be undertaken in accordance with § 4-1 second paragraph. A provider with significant market power as regards the products shall document and justify rejection of a request for interconnection.”

46. Since the obligation to offer access is directly pursuant to the Act and all providers assessed in these markets have significant market power, NPT does not need to impose interconnection by itself. Such requests will have to be assessed on a case-by-case basis in light of what constitutes a reasonable request. The obligation applies to both requests for direct and indirect interconnection (see the discussion of this in Chapter 6 and Annex 1).

47. Since Network Norway, Ventelo and Barablu are designated as undertakings with significant market power in the markets for voice call termination on mobile networks, the companies will have an obligation to meet all reasonable requests for interconnection, cf. Electronic Communications Act § 4-2 third paragraph. Since termination is an element of interconnection, the obligation also covers meeting reasonable requests for termination on an operator's own network.

48. The obligation to meet reasonable requests for interconnection follows directly from the Act. Nevertheless, the Authority would point out that such an obligation is deemed important and well justified vis-à-vis these three providers. To be sure, the companies have a small share of the total market at the network level, and will therefore normally have a self-interest in terminating calls from other networks. However, it is not a given that this will be the case with regard to traffic from each other or other smaller providers.

49. A decision on whether a request is reasonable must be based on the guidelines set forth in Electronic Communications Act § 4-1 second paragraph. The same viewpoints presented by NPT regarding the specific assessment of reasonability for Telenor in the decision of 8 May 2007 will also apply to the requests directed at Network Norway, Ventelo and/or Barablu.

50. NPT assumes that as a clear main rule, a normal request for interconnection in the form of termination on the networks will be reasonable. In the overall assessment pursuant to Electronic Communications Act § 4-2, consideration must also be taken of the fact that some requests may seem less reasonable when they are presented to small operators. NPT therefore believes that the threshold for access to the companies' networks may be generally higher than the threshold for interconnection with the larger providers (such as Telenor and NetCom).

51. With regard to additional factors 1-6 listed in § 4-1 second paragraph, the Authority has also made the following assessments:

- *Available capacity:*
Mobile providers size the capacity of their networks so that it is sufficient for terminating calls to their own customers. NPT therefore assumes that as a rule there will be capacity available for termination of calls from undertakings that want interconnection access. The terminating undertaking will also have a self-interest in being able to terminate calls to its own end users.
- *The provider's investments in relation to the risk with which the investments have been associated:*
In NPT's view, this will ordinarily be a question connected with the pricing of the termination service, not the actual question of access. The Authority assumes that the risk with which the investment has been associated will be taken into account in pricing the interconnection product. The required rate of return and the cost basis for the termination rates normally include a risk premium.
- *Sustainable competition:*
In reference to what has been said above about the importance of ensuring end-to-end connectivity, NPT believes that an interconnection obligation will promote sustainable competition. Furthermore, interconnection obligations will support the growth of new entrants who may be willing to invest in their own infrastructure. This applies to fixed and mobile networks alike.
- *The need to sustain the network's integrity:*
NPT cannot see how a need to sustain the network's integrity would be an argument against concluding an interconnection agreement. If necessary the companies can take this into account in their interconnection agreements.
- *Intellectual property rights:*
NPT cannot see how the interest of intellectual property rights would make it risky to conclude an interconnection agreement. If contrary to expectation this should prove to be the case, the need can be addressed in the interconnection agreement.
- *Establishment of pan-European services:*
NPT cannot see how an interconnection obligation would have any adverse impact on the establishment of pan-European services.

52. Furthermore, Network Norway, Ventelo and Barablu may have an incentive to refuse to conclude an agreement to send traffic to others.¹⁰ Such a form of denial to interconnect will potentially be particularly harmful to equal-sized and smaller competitors and will also be contrary to the objective of achieving end-to-end connectivity.

53. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is directing the companies to meet reasonable requests to enter into agreements for purchasing termination from other providers. The purchase obligation will also apply to necessary connection products that make it possible to link the networks together and exchange traffic in both directions.

¹⁰ See the discussion of denial to interconnect in Chapter 5 of Annex 1.

54. With regard to what is a reasonable request stated in Electronic Communications Act § 4-1 second paragraph, factors for assessment are set forth here that are more relevant for a weighing of interests of whether a request to receive traffic is reasonable. The weighing of interests is thus less suited to deciding when a seller's request that an undertaking enter into a termination purchasing agreement (sending traffic) is reasonable. Therefore, the assessment in purchase obligation situations will have to be based on factors for weighing other than those following from § 4-1 second paragraph. What is essential in such an assessment will be to prevent undertakings having an obligation imposed on them to conclude termination purchasing agreement on obsolete terms, primarily related to technical interface. In the Authority's view there should be a requirement for the obligation to enter into termination purchase agreements that the connection take place in a standard interconnection regime via a standard technical interface. For example, the connection must take into consideration the network's integrity, not require substantial adaptations such as the development of new support systems or have other major impacts on those who are requested to purchase termination.

Requests for access and timeliness

55. An undertaking without an incentive to provide access may employ delaying tactics to slow down the consideration of other operators' requests. Such potentially anti-competitive behaviour cannot be removed by an access obligation alone, and obligations of non-discrimination are not adequate either.

56. In NPT's view, it will be more effective if in connection with an imposition of access obligations there is an additional obligation for negotiations on termination not to be dragged out. The Authority believes that Electronic Communications Act § 4-1 cf. § 4-6 provides sufficient authorisation for stipulating rules on timeliness. In addition, it is explicitly stated in Access Directive Article 12 (1) second paragraph that the national regulatory authority may impose such obligations on an operator. Such an obligation will also be in better compliance with Principle 4 of NPT's remedies document. An obligation to counteract delaying tactics can be formulated in various ways. NPT believes that the most expedient is to specify an obligation that termination agreements shall be negotiated without undue delay. This obligation should be combined with a documentation obligation, i.e. an obligation to account for the time spent on interconnection negotiations. Such documentation should be made available upon request to affected undertakings that claim that delaying tactics have been taking place. This will especially make it simpler for an undertaking to seek civil sanctions in cases where these are required.

57. Network Norway, Ventelo and Barablu may have incentives to use various delaying tactics. NPT therefore believes that it will be appropriate to stipulate an obligation that access agreements shall be negotiated without undue delay.

Conclusion

58. Since Network Norway, Ventelo and Barablu are designated as undertakings with significant market power in the market for voice call termination on mobile networks, the companies will have an obligation to meet all reasonable requests for interconnection, cf. Electronic Communications Act § 4-2 third paragraph.

59. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is imposing on Network Norway, Ventelo and Barablu an obligation to meet reasonable requests to enter into termination purchasing agreements from other undertakings, including the purchase of necessary connection products. The obligations apply to reasonable requests for entering into a termination purchasing agreement to fixed and mobile networks. The obligation applies

only to agreements on traffic from an operator's own end users. The obligation can be met by concluding a direct or indirect interconnection agreement. Reasonable request means a request to purchase a termination product in accordance with a standard interconnection regime, including a standard technical interface. Furthermore, a request will be reasonable only when the party invoking the purchase obligation also concludes a direct or indirect agreement that results in the reciprocal exchange of traffic. Price terms that are submitted to the buyer must be in accordance with orders issued under public law regarding what is a lawful termination rate.

60. If access is denied, Network Norway, Ventelo and Barablu will have to give the requester a documented and justified refusal of the request, cf. Electronic Communications Act § 4-2 third paragraph last sentence. The justification must contain all information necessary to evaluate the basis for the refusal, such as e.g. the reason access is denied, with the necessary technical documentation.

Proportionality and relationship to general competition law

61. The use of delaying tactics may possibly fall under Competition Act § 11. Even so, NPT is of the opinion that this provision will be less suited than a specific order as an effective remedy to this kind of problem. NPT therefore believes that general competition law on this point is not suitable for addressing the above interests to a sufficient degree.

62. Furthermore, NPT believes that an obligation to conclude negotiations without undue delay will be proportionate and is unable to see that a prohibition against delaying tactics will inflict on Network Norway, Ventelo and Barablu any loss of any economic interests worthy of protection.

63. Besides, in NPT's view, an obligation to meet reasonable requests for a voice call termination purchasing agreement from other undertakings will not be a disproportionate regulatory intervention. At the outset the obligation cannot be regarded as being particularly burdensome in that an undertaking normally will have an interest in traffic being able to be sent both ways. Those instances where the obligation might be burdensome cannot, in the Authority's view, be accorded decisive weight when the obligation is needed to ensure sufficient predictability that the interest of end-to-end connectivity is looked after.

8.2 Non-discrimination

64. In Chapter 6 and in the market analysis (Annex 1) NPT pointed out discrimination with regard to price and other matters between different internal and/or external undertakings as a potential competition problem. The same applies to differences in termination rates for on-net and off-net calls.

65. With regard to differences, if any, in termination rates, NPT believes that it would be rather impractical to require the rate for terminating on-net and off-net calls to be equal to the implicit termination rate for on-net calls. The potential competition problem at issue here is reduced when the prices for off-net calls are reduced. NPT therefore believes that direct regulation of the off-net price will be the most efficient remedy for remedying competition problems.

66. In the following discussion of discriminatory behaviour, we disregard any differences in termination rates for on-net and off-net calls.

67. To a certain degree, discriminatory behaviour can be redressed through price control and/or transparency obligations. For example, an obligation of cost-oriented prices can make it more difficult to make price distinctions without just cause. Moreover, an obligation of

transparency would make discriminatory practice more visible. Nevertheless, NPT believes that price controls and transparency obligations per se will not be sufficient to counteract the problem.

68. The authorisation for imposing non-discrimination obligations is found in Electronic Communications Act § 4-7:

“The Authority may direct a provider with significant market power to offer interconnection and access to external providers on non-discriminatory terms.

The Authority may direct a provider with significant market power to offer interconnection and access to other providers on the same or equivalent terms and of the same or equivalent quality as provided for internal operations, subsidiaries or partnerships.”

69. It follows from this provision that it is possible to impose a non-discrimination obligation in two contexts. The first paragraph of the provision empowers the Authority to direct an undertaking with significant market power to treat external users equally. This implies a prohibition against discriminating between external users. The provision’s second paragraph empowers the Authority to direct the undertaking to offer the same or equivalent quality and terms to competing undertakings as to its own or associated operations.

70. Pursuant to Electronic Communications Act § 4-7, special obligations may prevent transfer of market power from the wholesale to the retail market since the opportunity to be able to demonstrate exclusionary behaviour is reduced. In this context, exclusionary behaviour means attempts to prevent access and shut out competitors from markets by operating with prices and/or terms that favour an undertaking’s own operations. Examples of such exclusionary behaviour may be methods to increase competitors’ costs in order to reduce demand for their products and/or services.

71. The factors above suggest that the companies being assessed here should be directed not to discriminate with regard to price terms pursuant to Electronic Communications Act § 4-7. A possible exception may be undertakings with a limited retail volume, where price discrimination will not necessarily result in competition problems of significance.

72. With regard to non-price discrimination, NPT believes that regulation pursuant to Electronic Communications Act § 4-7 is the only one of the available remedies that effectively addresses such problems. Exemptions can be made for undertakings with limited retail volumes, where non-price discrimination will not necessarily result in competition problems of significance.

73. Non-discrimination does not necessarily imply that all businesses are to be given *identical* terms, but that any differences in the terms that are granted shall be based on objective criteria. The main point is that undertakings with significant market power are to treat similar situations in a similar manner with regard to price, information, and other terms, regardless of which operations they pertain to.

8.2.1 Network Norway

74. As its customer base expands, Network Norway may have an incentive to grant more favourable prices and terms to some operators than to others. For example, providers representing more of a competitive threat to the company may receive less favourable terms than others. In NPT’s view, over the course of the regulatory period the company will have such a large volume that it is necessary and proportionate to impose an obligation of non-discrimination. Network Norway had a market share of just over 6 % per June 2008 (based on

number of subscriptions) if Lebara's and OneCall's customers are included together with Network Norway's own customers.

75. The adverse impacts of discriminatory behaviour, such as increased prices in the retail market, may be felt today by smaller operators in particular. NPT is particularly concerned about the effect such discrimination may have on other MNOs. On this basis, the Authority believes that it is now necessary to impose an obligation of non-discrimination.

76. With regard to non-price discrimination, NPT deems an obligation of non-discrimination to be the most expedient way to curtail such behaviour. The obligation should therefore apply in respect of price as well as of other matters (e.g. different terms for access not satisfactorily justified in objective criteria). If the obligation were only related to price, it would still be possible for Network Norway to engage in considerable anti-competitive behaviour. We refer in this connection to the account in the market analysis (Annex 1).

77. In its decision of 8 May 2007 imposed the same obligation on Telenor, NetCom and Tele2. The discussions of the non-discrimination obligation appearing there, will also be relevant for the obligation the Authority is imposing on Network Norway.

78. To be sufficiently effective, NPT believes that an obligation of non-discrimination must apply both vis-à-vis external operations (Electronic Communications Act § 4-7 first paragraph) and in the relationship between an undertaking's own and external operations (Electronic Communications Act § 4-7 second paragraph). An example of discrimination between own and external operations would for be if Network Norway offered their own fixed network operations lower prices than other external operators. As is the case for Telenor and NetCom and Tele2, the obligation will not apply to any differences in termination rates for on-net and off-net calls.

Conclusion

79. Pursuant to Electronic Communications Act § 4-7, NPT is imposing a non-discrimination obligation on Network Norway for termination on its mobile network. To be sufficiently effective, NPT believes that an obligation of non-discrimination must apply both between external operations (Electronic Communications Act § 4-7 first paragraph) and between an undertaking's own and external operations (Electronic Communications Act § 4-7 second paragraph). Nevertheless, the obligation does not apply to any differences in termination rates for on-net and off-net calls, cf. the discussion on this topic above.

8.2.2 Ventelo and Barablu

80. Like Network Norway, Ventelo and Barablu may have an incentive to grant more favourable prices and terms to selected operators. Such favouritism will potentially distort competition. Both companies have lower volumes in terms of call termination. For that reason, any adverse impacts of discriminatory behaviour, such as increased prices in the retail market, may be more limited in scope. Moreover, Ventelo and Barablu will be subject to price controls in the form of a price cap, cf. Section 8.4 below, which will prevent the companies from setting unreasonably high termination rates for other selected operators.

81. Regardless, NPT believes that discriminatory behaviour by Ventelo and Barablu will do relatively little to influence the prices in the retail market, which is why it seems unnecessary to introduce an obligation of non-discrimination at this early date. However, NPT will monitor developments closely with a view to a possible future obligation of non-discrimination.

Conclusion

82. NPT regards it as unnecessary to impose an obligation of non-discrimination on Ventelo and Barablu.

8.2.3 Proportionality and relationship to general competition law

83. NPT cannot see how an obligation of non-discrimination would be disproportionate for Network Norway. To be sure, in practice this remedy may be perceived as a “best-terms” doctrine, in that if an undertaking negotiates better terms for itself, the companies will also have to give them to other operators. However, the disadvantages of this curtailment of providers’ latitude in individual negotiations do not exceed the benefits to competition. Nor can NPT see that there are other remedies for satisfactorily remedying market failure with respect to competition problems that have been pointed out regarding price discrimination.

84. Competition Act § 11 may also cover discriminatory terms. Nevertheless, NPT believes that this provision will not provide a satisfactory degree of protection against such behaviour. This is primarily because in order to apply Competition Act § 11 it must be demonstrated that the discrimination has, or has the capacity to produce, anti-competitive effects, thereby reducing predictability. Furthermore, sector-specific *ex ante* obligations permit frequent and quick intervention to a greater degree. NPT therefore believes that with regard to discrimination, general competition law is not suitable for addressing the above interests to a sufficient degree.

8.3 Publication and reference offer

85. According to Electronic Communications Act § 4-6, specific obligations can be imposed on undertakings to publish specified information and to prepare and publish standard offerings for electronic communications networks and services (reference offers). Such obligations are usually referred to as transparency obligations. In and of itself, transparency is rarely sufficient for remedying competition problems. Its main function is rather to make other remedies more efficient¹¹. For example, for access issues, it may help to simplify and speed up negotiations if the key terms for connection follow a reference offer that is publicly available. Furthermore, a transparency obligation will make it easier for other undertakings and NPT to monitor compliance with non-discrimination obligations.

86. All operators are subject to access obligations, see Section 8.1 above. This makes it relevant to consider obligations of transparency for Network Norway, Ventelo and Barablu as a way of making the obligation to meet reasonable requests for termination more effective.

87. A possible downside of transparency is that easily available information on prices may facilitate tacit collusion in a market. It is conceivable that a competitor may tailor his prices to those of the other operators in the market instead of calculating them from scratch. However, NPT believes that this issue is not very relevant in this connection. First, the market consists of few operators and the termination rates are already transparent. Second, the parties to an interconnection agreement will already have knowledge of the other party’s termination rates, because undertakings are dependent on such information in order to invoice one another. Third, the possibility of tacit collusion is reduced by the fact that NPT will be imposing price controls on the providers. NPT therefore believes that the potential harmful effects will be limited.

¹¹ See more on the relationship between transparency obligations and the other obligations in the ERG remedies document, pp. 42 ff.

88. The Authority deems directing Network Norway, Ventelo and Barablu to formulate reference offers as unnecessary, since in practice these undertakings assume Telenor's, NetCom's and Tele2's reference offers in their interconnection negotiations. NPT regards it as likely that this practice will not change substantially in the next couple of years. For that reason, failure to prepare and publish the full terms and conditions of a reference offer cannot be regarded as a real competition problem.

89. Consequently, the Authority believes that it will be sufficient that Network Norway, Ventelo and Barablu publish their termination rates.

90. NPT believes that a notice period that does not provide time to reflect rate changes in other operators' retail agreements may reduce predictability. It will in turn represent a potential competition problem for undertakings in the retail markets. In NPT's opinion, this situation dictates the necessity of also extending the general notice obligation in Electronic Communications Act § 2-4 second paragraph from one to two months to any price increases implemented by Network Norway, Ventelo and Barablu.

91. Since changes in factors other than price may also have major consequences for undertakings that purchase termination from these providers, this notice time limit should also include other changes to the termination product. NPT therefore believes that Network Norway, Ventelo and Barablu should be directed to notify other undertakings of any price increases and other changes in existing services that disfavour the other party to the agreement and/or its end users, no later than two months before the change is implemented.

92. In addition to functioning as support for the obligations mentioned above, an obligation of transparency may also function to remedy competition problems directly. Changes to agreed prices not being notified far enough in advance is a potential competition problem. One transparency obligation that is suited to remedying this problem directly is to require notice of price increases that provide sufficient time for the changes to be reflected in the retail prices of the undertakings affected. Pursuant to Electronic Communications Act § 4-6 first, cf. fourth, paragraph, NPT is empowered to stipulate an extended time limit for the notice, if this is necessary.

93. However, there will be no need to impose a duty to give notice as a separate specific obligation, if satisfactory requirements for notification follow from other provisions of the Electronic Communications Act. As mentioned in Section 4.1.6 of the market analysis (Annex 1), Electronic Communications Act § 2-4 and Ecom Regulations § 1-8 require providers to notify their end users at least one month in advance. The same obligation applies to providers that supply services to another provider. In practice, this will make it impossible for a provider to reflect price increases in its own retail prices if the termination rate change is notified according to the time limits in the regulations. Given the major importance termination rates have for pricing the call product as a whole, NPT believes that there is reason to consider extending the time limit for the notice between undertakings.

Conclusion

94. Pursuant to Electronic Communications Act § 4-6 third and fourth paragraphs, NPT is directing Network Norway, Ventelo and Barablu to publish their prices for termination on mobile networks. Publication on the companies' respective websites is regarded as a satisfactory method of publication. Standard rates and any discounts with related criteria shall be stated.

95. Pursuant to Electronic Communications Act § 4-6 first, cf. fourth, paragraph, NPT is directing Network Norway, Ventelo and Barablu to give advance notice to other undertakings of any changes in existing services that disfavour the other parties to their agreements and/or

their end users, no later than two months before the changes are implemented. Information regarding other changes in agreement terms shall be notified without undue delay after the changes have been decided on.

8.3.1 Proportionality and relationship to general competition law

96. NPT has considered whether it will be disproportionate to impose transparency obligations on Network Norway, Ventelo and Barablu. Even if the companies will incur some minor administrative expenses, NPT believes that the benefits of transparency far exceed such inconveniences. Besides, the Authority cannot see that the obligation outlined above will cause the companies to incur other appreciable costs or inconveniences.

97. On this basis, obligations of transparency are proportionate for all the companies.

98. NPT has assessed whether Competition Act provisions will be sufficient for addressing the considerations pointed out above in favour of transparency, but believes this is not the case. The main reason is that the Competition Act does not appear to address the need for predictability, for detailed rules and for frequent and quick intervention to the same degree as a sector-specific *ex ante* obligation of transparency. NPT therefore believes that general competition law on this point is not sufficiently suitable for remedying the relevant competition problems.

8.4 Price controls

8.4.1 The need for price controls in the markets for termination of voice calls

99. The rules empower the authorities to impose on undertakings with significant market power price obligations for *inter alia* interconnection pursuant to Electronic Communications Act § 4-9. This applies to cases where by maintaining a disproportionately high price level or by subjecting competing operators to margin squeezes the undertaking can exploit its market power to the detriment of end users. In the remarks on Electronic Communications Act § 4-9 in Proposition No. 58 (2002-2003) to the Odelsting the legislator explains what is meant by a disproportionately high price level (p. 106):

“The maintenance of a disproportionately high price level means that competition has not helped to lower retail prices sufficiently. In assessing whether the price level is disproportionately high, the authorities may compare the price levels in analogous markets, nationally or internationally.”

100. The competition problems in the market are discussed Chapter 4 of the market analysis (Annex 1). These are mainly associated with the ability and incentive of providers to charge excessive prices for termination of voice calls. The underlying reasons for this are that the mobile operator has a monopoly on terminating on his own network and that the entry barriers are absolute. Because it is the calling party who pays for the call, the undertaking does not have a sufficient incentive to set prices that are efficient in an economic sense. In the market analysis NPT shows how excessive pricing of Network Norway's, Ventelo's and Barablu's termination can have undesirable consequences with regard to resource use. Excessive pricing of termination results in costs being shifted to other undertakings and ultimately their end users. Eventually such excessive pricing and subsidisation from other undertakings can also help to bring about inefficient establishment and operation. In this way over time excessive pricing can result in an unwanted distortion of competition. From an *a priori* point of view price controls may seem necessary in order to prevent excessive pricing in this market.

101. In NPT's view, the first of the conditions/criteria in Electronic Communications Act § 4-9 first paragraph will be present at the outset: by maintaining a disproportionately high price level, providers of mobile termination are able to exploit their market power in the relevant markets to the detriment of end users. It is noted that pursuant to Electronic Communications Act § 4-9, the regulated undertaking does not actually have to charge a disproportionately high price in order for price controls to be imposed. It is sufficient that the undertaking with significant market power can potentially do it in the future. Electronic Communications Act § 4-9 is thus a provision that makes possible *ex ante* regulation of undertakings to prevent potential exploitation of significant market power to the detriment of end users.

102. In NPT's opinion, small/new network providers as well as MVNOs with significant market power will in principle have the same opportunity and incentive as the more established and larger providers to set prices that are inefficient from an economic standpoint. The companies have a monopoly on termination on their own networks, entry barriers are absolute and the calling party pays principle means that they have fewer incentives to lower the termination rate than they would have had in a market with functioning competition.

103. Even though the small operators also have a monopoly on termination on their own networks and significant market power, there are market discipline mechanisms affecting prices, as there are for all monopoly undertakings. As termination rates are set increasingly higher, the termination volume can fall, and the end result can be that the undertakings lose mobile customers on account of the cost of calling their customers. The loss of customers and call volume can thus limit how high a rate the small operators can permit themselves to charge. Even so, the market mechanisms do not suffice to prevent unreasonable pricing of termination.

104. For undertakings with high termination volumes, a price level above what can be regarded as efficient may cause considerable negative economic consequences. For undertakings with relatively small termination volumes, the economic loss caused by each individual undertaking will be more limited. However, the effects will quickly be magnified if the small undertakings are viewed as a group.

105. In the Authority's opinion, remedies such as reference offers, publication and non-discrimination are insufficient to counteract the competition problems in which price is the key parameter. NPT also agrees with the assessments in Section 5.5 (*Case 4: Termination*) in the ERG remedies document¹², which concludes that price controls are necessary for remedying these competition problems. The need for price controls is assessed for the individual provider in Section 8.4.4 ff.

106. Even if price controls should be deemed necessary in the markets for voice call termination on mobile networks, it is vital to ensure that methods for price controls are used that are proportionate and not needlessly burdensome on the undertaking in question. Furthermore, the remarks on Electronic Communications Act § 4-9 in Proposition No. 58 (2002-2003) to the Odelsting, state (p. 106):

“If pursuant to the provision's first paragraph the authority directs an undertaking to offer price-controlled access and imposes on it a method for calculating prices pursuant to the second paragraph, the method must enable undertaking to obtain a reasonable return on capital employed. The cost method that is chosen is to be appropriate with regard to the need for regulation and to foster sustainable competition, as well as maximise the benefits to the consumer.”

¹² ERG: Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework, May 2006, page 35.

107. All references to “rates”, “mobile termination rates” or similar, primarily apply to the variable call rates. In NPT’s opinion, these rates are of crucial importance for retail prices, and are consequently given the most attention in this notification. However, the rate for interconnection is also relevant. These rates are therefore also assessed in Sections 8.4.4 - 8.4.9.

8.4.2 Principles for price controls on the small operators

108. In the decision of 8 May 2007 NPT laid down several principles for regulating new and small operators in the regulatory period until 31 December 2010. The principles were applied to regulating TDC and MTU. This decision is, as mentioned previously, a supplementary decision for undertakings that have recently entered the market or had not launched services at the time of the previous decision, as well as new price controls on Tele2 and a clarification of the price controls on TDC and MTU. In this decision NPT has continued the main principles from the decision of 8 May 2007.

8.4.2.1 NPT’s decision in Market 16 of 8 May 2007

109. In the decision of 8 May 2007 NPT wrote that the goals of efficiency and consumer and economic welfare interests indicate that the small providers’ termination rates should eventually be at an efficient level. At the same time the Authority believed that strict regulation of the new entrants’ rates would be disproportionately burdensome and that it would make it more difficult to reach the goal of sustainable competition in Market 15. Furthermore, NPT was of the view that it would be unfortunate if an exemption from a price control obligation for small undertakings resulted in unfair and arbitrary pricing, so that an effective regulatory “stick to go with the carrot” was appropriate. In the decision NPT concluded that it might then be appropriate to introduce a relatively lenient form of price controls on new entrants. An obligation of *reasonable* termination rates could balance the interest of giving new entrants opportunities to gain a foothold against the interest of not setting prices unreasonably high.

110. In the decision NPT found that a reasonable price for a specific undertaking would have to be determined on the basis of an overall case-by-case assessment. The Authority wrote that several factors would have a bearing in such an assessment, including:

- *The established termination rate level.* In any assessment of what is a reasonable price, NPT will look at the established price level in the market at any given time. Telenor’s, NetCom’s and other small/new operators’ rates in recent years will be relevant as a comparison basis. A level lying considerably above established rates may be unreasonable.
- *Information on the cost basis.* If new operators can produce relevant information about costs, this could be an important input in assessing reasonable price.
- *Reasonable prices should provide room for a certain profit beyond a normal rate of return.* NPT wants to give new entrants that invest in their own networks incentives to undertake further investment in infrastructure and build up a sufficient customer base. In this market a reasonable price will therefore normally be higher than the price set for an efficient provider.
- *Volume growth.* Normally it can be expected that unit costs – and thus termination rates - will decrease over time as the customer base grows.

111. With regard to the length of the reasonable price period, NPT wrote the following in the decision (page 46):

“In the interest of consumer welfare and efficient use of resources, the eventual goal of price controls should be that all providers offer termination at efficient prices. Following a limited period of milder regulation similar regulation of termination rates should be imposed as for the established providers. In NPT’s opinion, the time when an obligation of efficient prices shall be imposed should depend on how long providers have been established in the market. In other words, time is a decisive criterion.”

112. Furthermore, the length of the reasonable price period was differentiated between MNOs and MVNOs. MNOs control their own infrastructure. They have invested in their own core network and radio access network. These operators are thus crucial for reaching the goal of more mobile networks and effective infrastructure competition in Norway. To provide incentives for necessary investment, NPT believed that these undertakings should be given a relatively long period of lenient regulation and assumed a period of 5-10 years from an obligation of efficient prices (page 47):

“A period of 5-10 years exempt from the obligation of efficient prices will balance the interest of providing incentives for investment against preventing inefficient establishments in the mobile market. NPT thus retains a certain amount of flexibility concerning when price controls and an obligation of efficient prices shall take effect, giving it the option of issuing the best possible decision in relation to achieving the goal of sustainable competition.”

113. With regard to MVNOs, NPT’s point of departure was that they should not be permitted over time to earn extraordinary profit margins (excess profits) on the production of termination, since this would be unfortunate from economic efficiency and welfare interests. NPT wrote the following in the decision (page 48):

“Today MVNOs are a relatively important provider group and competitive factor in the retail market. In NPT’s view they are also an important rung on the investment ladder. However, sustainable competition requires that after a certain period in the market they climb the investment ladder by investing in their own radio network wherever there is a reason. Regulation of the MVNOs’ termination rates could function as an incentive for already established MVNOs to climb the investment ladder by not treating them more mildly than others in the long term.”

114. NPT believed that the period of lenient regulation should be shorter than the corresponding period for MNOs, who normally undertake larger investment in infrastructure. NPT regarded three to four years after establishment as an MVNO to be a reasonable starting point for the stepwise reduction to an efficient price.

115. Moreover, NPT believed that MVNOs that establish themselves at new network providers should be viewed in connection with them with respect to the stepwise reduction to an efficient price. The MVNOs can be an important customer group for new MNOs and are an important factor in relation to establishing a real challenger to the established operators at the network level. In practice this means that MVNOs who establish themselves at network providers other than Telenor and NetCom may operate under an obligation of reasonable prices for a total of 5 to 10 years.

116. For mobile operators with a market share of around 1 per cent or lower measured in the number of end users, a general exemption was granted from the obligation of efficient prices (not limited in time).

8.4.2.2 The Ministry of Transport and Communications' appeal decision of 13 February 2008

117. Tele2 appealed against NPT's decision of 8 May 2007 to the Ministry of Transport and Communications. During the Ministry's consideration of the appeal it emerged that Tele2 had concluded a deal with Network Norway to purchase 50 % of the shares in the network company Mobile Norway AS. Furthermore, in the spectrum auction that concluded on 12 December 2007, Mobile Norway was awarded the fourth frequency for rolling out a 3G network in Norway. Tele2 informed the Ministry that from 1 October 2007 it was covering its share of the investment in and operation of the new mobile network.

118. Both NPT's decision of 8 May 2007 and the Ministry's decision of 3 September 2007 to not permit delayed implementation, assumed that the price controls on Tele2 would be reconsidered if the company chose to "climb the investment ladder". In light of this the Ministry found it necessary to reconsider the price controls on Tele2. The case was thus returned to NPT for a reassessment.

119. In its appeal against NPT's decision of 8 May 2007, Telenor contended that the Authority had undertaken "non-regulation" of TDC Song and MTU. However, the Ministry did not allow the appeal and agreed with NPT that it was appropriate to allow lenient regulation of the undertakings in question.

8.4.3 Clarification of reasonable price for small and new operators

120. NPT's regulatory goal is efficient and symmetric mobile termination rates for all operators. However, NPT believes that until it has been determined that there is infrastructure-based competition in Market 15, the regulation should not make it more difficult for new operators to gain foothold in the market. The Authority believes therefore that a limited transitory period with more lenient regulation for new operators, as described in the decision 8 May 2008, will be suitable.

121. As mentioned in Section 8.4.2.1, in the decision of 8 May 2007 NPT assumed that the determination of reasonable price should be done on the basis of an overall assessment if this proved to be necessary, for example in view of an appeal from other undertakings. In the period since the decision was issued the Authority has not assessed whether the relevant undertakings' prices are reasonable. The termination rates of the small/new operators have remained unchanged since the decision was issued. Several of the "assessment criteria" that NPT listed in the decision indicate that there is now a need to clarify what may be regarded as reasonable termination rates for the small/new operators in order to follow up the principles given.

122. In addition to the assessment criteria that were explicitly listed in the decision of 8 May 2007, it makes sense that factors such as harmonisation in EU/EEA countries and predictability are included in an assessment of reasonable price.

8.4.3.1 Information on the cost basis.

123. Neither Tele2, MTU nor TDC are obliged to implement a cost accounting system for termination. The same also applies of course to Ventelo and Barablu, which were not accorded SMP status until this decision. Even so, NPT does not have cost information for these undertakings.

124. If efficient price were to be calculated using the LRIC method on the undertakings covered by this decision, there is nothing to indicate that the price would be higher than an

efficient price for Telenor and NetCom¹³. NPT plans to update the LRIC model in the course of 2009. NPT will then either develop operator-specific models for all providers or develop a single model for a hypothetical efficient operator, which can be used for regulating all undertakings.

125. An updated model will take into account developments in equipment prices, and if those prices continue to fall, this will contribute to lower unit costs for termination. Furthermore, an updated model will presumably include 3G technology, and it is reasonable to assume that over time new technology will be more cost effective than older 2G technology.

126. Nor will low volume in the start-up phase necessarily affect unit costs calculated using a LRIC model. Such a model calculates the undertakings' unit costs over the useful life of the technology used, for example from the provider's start-up until the technology in question is phased out. As would be expected, a LRIC model will assume volume growth over time for new entrants. At the same time, the LRIC model for Telenor and NetCom showed that the two MNOs were capable of achieving the same economies of scale for the network and rollout costs they had had, despite absolute differences in traffic volume. Furthermore, economic depreciation will allocate investment costs over useful life, so that a low volume in a start-up phase will not result in high unit costs. The ERG discussed the effect of economic depreciation for new entrants in its Common Position on termination rates¹⁴ (ERG CP):

“In particular, some NRAs have developed economic tools such as economic depreciation, which, combined with traffic forecast, reduces the impact of year-on-year variations over time due to changing asset utilisation. As a result, the fact that a new entrant has a small scale at the beginning of its activity does not imply that the unit cost of termination rates for this operator is necessarily very high.”

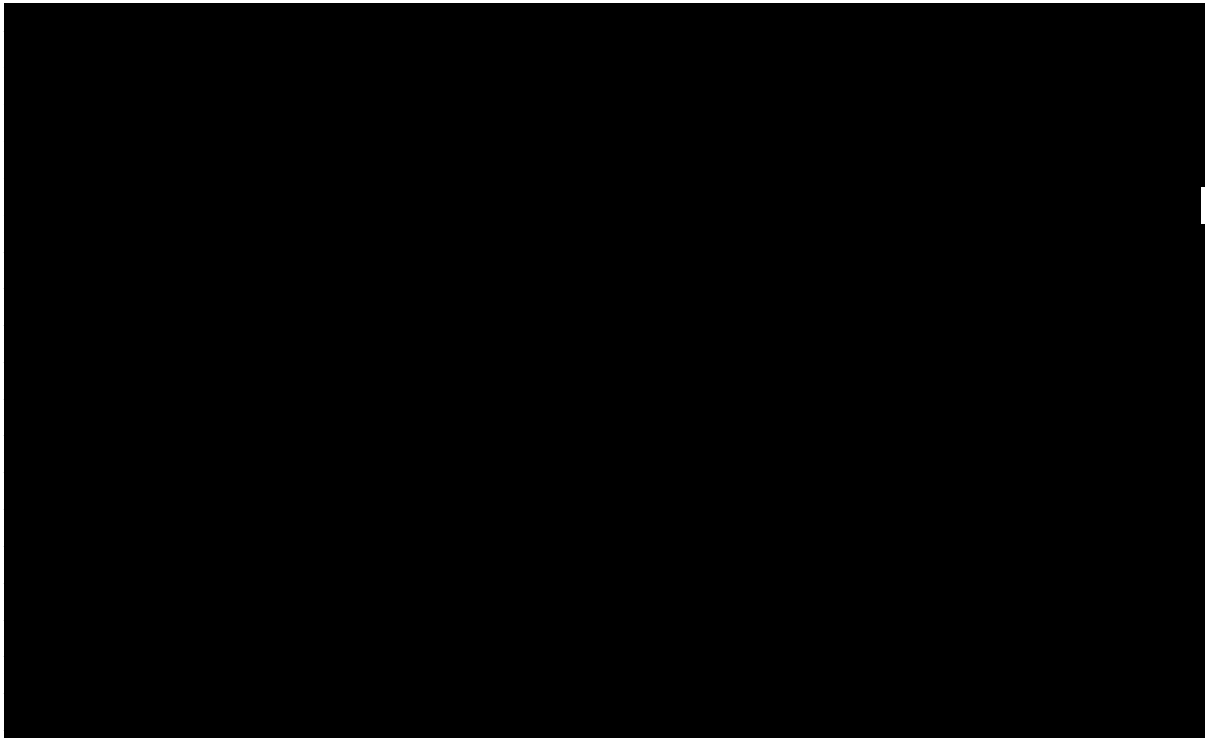
127. The small and new operators will not be regulated downward to an efficient level within this regulatory period. However, they can expect that an efficient price using an LRIC model will be calculated for them at a later date.

128. In the decision of 8 May 2007 NPT stated that volume growth would be of importance for the assessment of reasonable price. All undertakings have seen growth in the number of terminated minutes since May 2007. Therefore, in practice the cost per terminated minute will be lower today than when the decision on reasonable prices for small and new operators was issued. An increase in traffic will also have to be expected in the coming decision period until the end of 2010 that it reasonable to take into account.

129. Furthermore, the access prices these undertakings pay to Telenor and NetCom for national roaming or MVNO access are a substantial portion of the cost basis of the small operators. NPT has an overview of these prices. The figure below shows the trends in access prices since May 2006. The access prices are generally substantially lower than the termination rates, and in the Authority's estimation, there is little doubt that these undertakings today enjoy an ample profit margin on their call termination product. In this period the access prices have remained relatively stable, but with some minor rate reductions.

¹³ An efficient price for both undertakings is NOK 0.45 in 2010 calculated in 2005 NOK.

¹⁴ ERG: ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates, February 2008, page 89.



[exempt from public disclosure: Figure 1: Access prices for national roaming and MVNO access. Source: Prices collected from Telenor and NetCom]

130. Telenor has significant market power in Market 15, and NPT has directed Telenor to comply with reasonable requests for access by MVNOs. Furthermore, obligations of transparency, non-discrimination and accounting separation¹⁵ have been imposed on Telenor. Among other things, the obligation of non-discrimination means that the company must provide access at a price that at a maximum may be equal to the price the company charges its own retail business. The regulation of MVNO access is intended to ensure equal terms for MVNOs and Telenor's own retail business. The decision furthermore states, *inter alia*.¹⁶

“Consequently, the external provider will be able to compete on equal terms as the vertically integrated provider in the retail market. Provided that the external provider operates just as efficiently, it will not be subject to margin squeezes.”

131. Access to national roaming with Telenor is also subject to price controls. The Ministry of Transport and Communications reversed NPT's original decision on cost-oriented price for this form of access and directed Telenor to offer national roaming at rates based on retail-minus. The Ministry's reasoning for this was that the primary purpose of retail-minus regulation is to “create effective competition-neutrality between parties”¹⁷.

132. Telenor is thus responsible for ensuring that its access prices are at all times in line with the above-mentioned obligations and for adjusting its access prices if this is not the case.

133. NPT is monitoring the situation to ensure that the undertakings are not subjected to a margin squeeze on account of the access prices in Market 15. The level of the termination

¹⁵ NPT: Decision on principles for accounting separation in Market 15, 16 May 2007

¹⁶ NPT: The decision on designation of undertakings with significant market power and imposing specific obligations in the market for access and call origination on public mobile telephone networks (M15), 23 January 2006, page 40.

¹⁷ The Ministry of Transport and Communications' decision of 6 October 2006 following an appeal against the Norwegian Post and Telecommunications Authority's decision in Market 15 of 23 January 2006, page 23.

rates of the small and new operators has thus far ensured that these undertakings have not been subjected to a margin squeeze. However, reduced termination rates for the small and new operators increases the risk of margin squeezes. NPT will monitor the situation to make sure this does not happen and that Telenor adjusts its access prices in line with its obligations if this is needed.

134. For small and new operators, a large portion of traffic that has originated from its own end users will terminate on other networks. The fact that the termination rates of the established operators have been substantially reduced in recent years is also of great importance for their cost of sales. And indeed, reducing the cost of sales for new and small operators was a key consideration behind the rate reductions imposed on Telenor and NetCom on 8 May 2007.

135. The fact that these undertakings have not reduced their termination rates since the previous decision was issued, despite volume growth and reduced cost of sales, etc., suggests that the obligation of a reasonable price must be clarified to be effective. NPT also believes that the clarification ought to include rate reductions. This will not be in conflict with the principles of reasonable price that were set forth in the decision of 8 May 2007. On the contrary, it is necessary in order to follow up these principles.

8.4.3.2 The established termination rate level.

136. In the decision of 8 May 2007 NPT stated that it would look to what the established price level in the market at any given time. Telenor’s, NetCom’s and other small/new providers’ rates in recent years would be relevant as a comparison basis.

137. Since the small operators’ termination rates have remained unchanged in recent years, the gap with the established undertakings has widened. Today the small operators’ rates are about twice as high as those of the established undertakings. The figure below shows trends in termination rates in Norway from 2006 to today, and Telenor and NetCom’ maximum termination rate (symmetric) until the end of 2010.

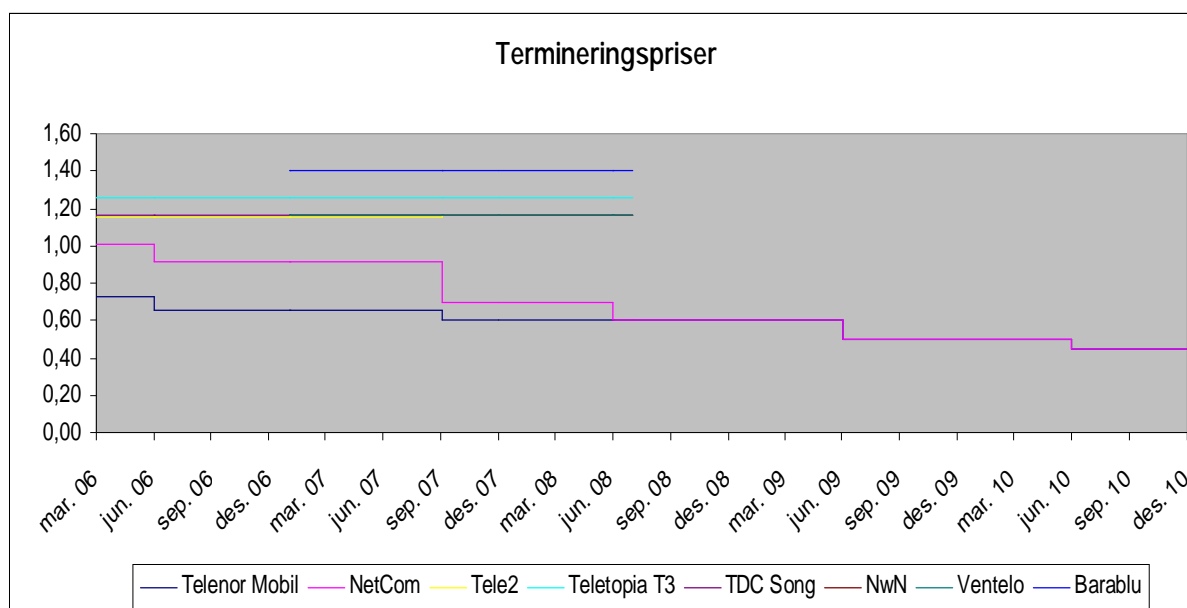


Figure 2: Mobile termination rates in Norway from March 2006 to August 2008. Further reductions imposed on Telenor and NetCom until end of 2010 are also included. The rates are per minute when call set-up charges are included.

138. NPT believes greater asymmetry has several undesirable consequences. Asymmetric rates in the termination market mean that operators with high termination rates are indirectly being subsidised by operators with low termination rates. Since the termination markets are monopoly markets, there is, in practice, little to prevent these undertakings from charging high rates, and the Calling Party Pays principle means that the customers of other undertakings ultimately have to pay excessively high termination rates. Thus, asymmetric rates represent a distortion of competition. To a certain extent this may be desirable so as to facilitate new entrants in the market. However, excessive asymmetry or asymmetry over too long a period may lead to undesirable distortion of competition. Ultimately high and persistent asymmetry can result in inefficient establishment and operation.

139. Furthermore, an increase in asymmetry may result in differentiated retail prices. The established undertakings may find it necessary to raise or refrain from reducing retail prices to call operators with high termination rates. For example, NetCom introduced a surcharge on the retail price for calling Tele2, Ventelo, Network Norway and providers on Network Norway's network of NOK 0.35 per minute (including VAT) from 1 June 2008. Such circumstances create less transparent retail prices, and in turn may result in there being fewer and shorter calls than what is optimal from an economic perspective.

140. Economic theory tends to recommend a symmetric termination rate based on an efficient operator. This may provide the right incentives for attaining cost-effectiveness, among other results.¹⁸ Undertakings that can produce at a lower cost than the given level can realise a profit that can be used for further investment and innovation.

141. In 2007 the ERG worked on the issue of symmetric rates for termination on mobile and fixed networks. The main conclusion of ERG CP is that termination rates normally should be symmetric¹⁹:

“Termination rates should normally be symmetric and asymmetry, acceptable in some cases requires an adequate justification.”

142. However, the ERG finds that asymmetric rates may be appropriate in certain instances²⁰:

“[...] under some circumstances asymmetric mobile termination rates may be justified for example to take into account differentiated conditions of spectrum allocation or to encourage the growth of a new entrant on the market, which suffers from a lack of scale due to late market entry where such promotion of competition is needed and justified. Indeed, asymmetric mobile termination rates allow higher expected profits in the short term and strengthen the relative competitive position of those MNOs permitted to charge higher MTRs, thereby leading to increased competition in the long term to the benefit of the end users. In other words, in certain circumstances it may be appropriate for a regulator to allow asymmetric rates for a limited time period [...]”

143. And further:

“In any case, regulators should bear in mind that asymmetric regulation is sustainable only on a transitional period, because asymmetric regulation can also result in a number of drawbacks [...]”

¹⁸ See ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates (ERG CP), page 3: “General economic principles of termination rates regulation”

¹⁹ See ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates (ERG CP), page 83:

²⁰ See ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates (ERG CP), page 83:

144. NPT believes that the adverse consequences of increased asymmetry and the recommendations from the ERG are evidence in favour of reducing the termination rates of the small and new operators.

8.4.3.3 *Harmonisation in Europe*

145. The European Commission’s draft recommendation on regulation of termination rates was circulated for comment in the period 26 June to 10 September 2008. The draft proposes among other things severely curtailing national regulatory authorities’ power to set asymmetric price controls in Market 16 (new Market 7) as a form of entry assistance to new undertakings. According to the draft, symmetric rates are to be implemented in Member States by 2011, regardless of how long the individual operator has existed in the market.

146. For now NPT is taking the Commission draft under advisement. The price controls in this decision follow from the main decision of 8 May 2007 and will in any case not be affected by this regulation. NPT has previously stated that the undertakings need to be prepared for a relatively speedy stepwise reduction to efficient prices after the period of reasonable rates. These signals are being amplified in view of the Commission’s draft.

147. Termination rates in EU/EEA countries have been substantially reduced in recent years. The most recent comparison from the ERG²¹ shows that Norway is no longer among the countries with the lowest termination rates. The trend towards reduced termination rates in Europe will continue into the near future. The figure below shows planned rate reductions in other European countries until December 2010. The European Commission’s expected recommendation will presumably reinforce this trend.

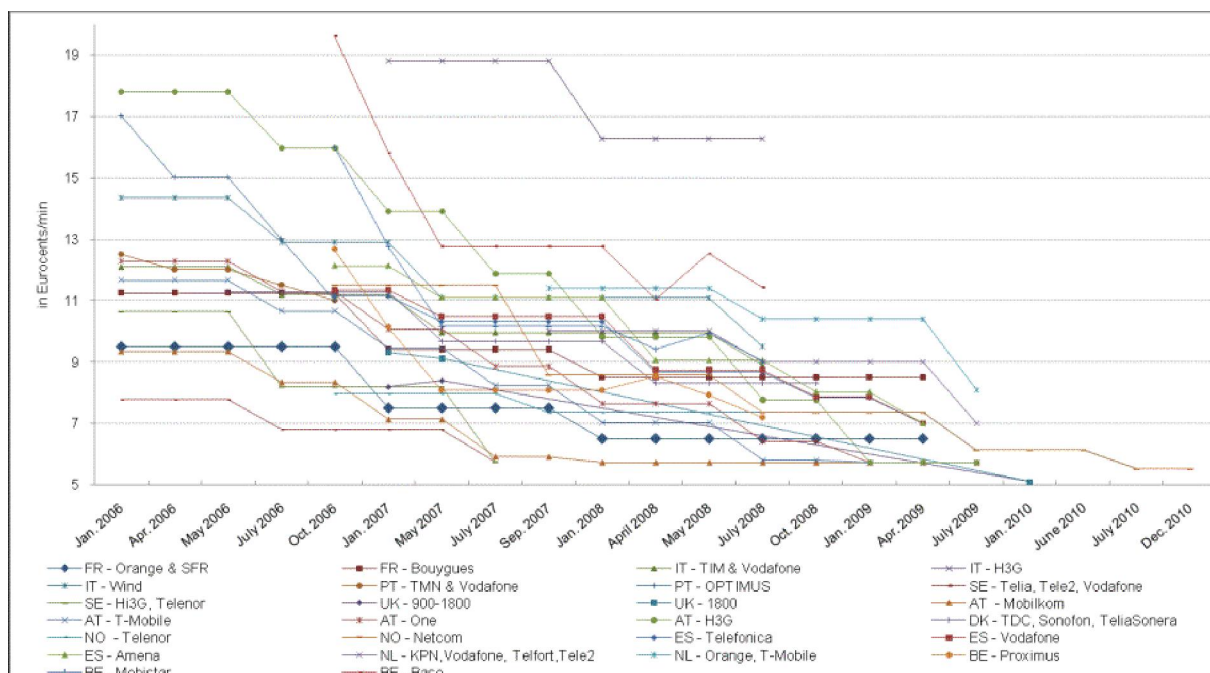


Figure 3: Termination rates in EU countries from January 2006 to December 2010. Source: Cullen²²

²¹ ERG MTR update snapshot 1st Jan 2008 is available at http://www.erg.eu.int/documents/docs/index_en.htm

²² <http://www.cullen-international.com/documents/cullen/prindex.cfm>

148. The trend is also towards symmetric termination rates in other countries. According to ERG CP at the end of 2007 there were only seven of a total of 98 operators²³ in Europe that charged termination rates that were over 50 % higher than that of the operator with the lowest termination rate. MTU, TDC and Tele2 were among the seven²⁴. The figure below shows asymmetry in per cent between the operators in Europe and the operator with the lowest termination rate in each country.

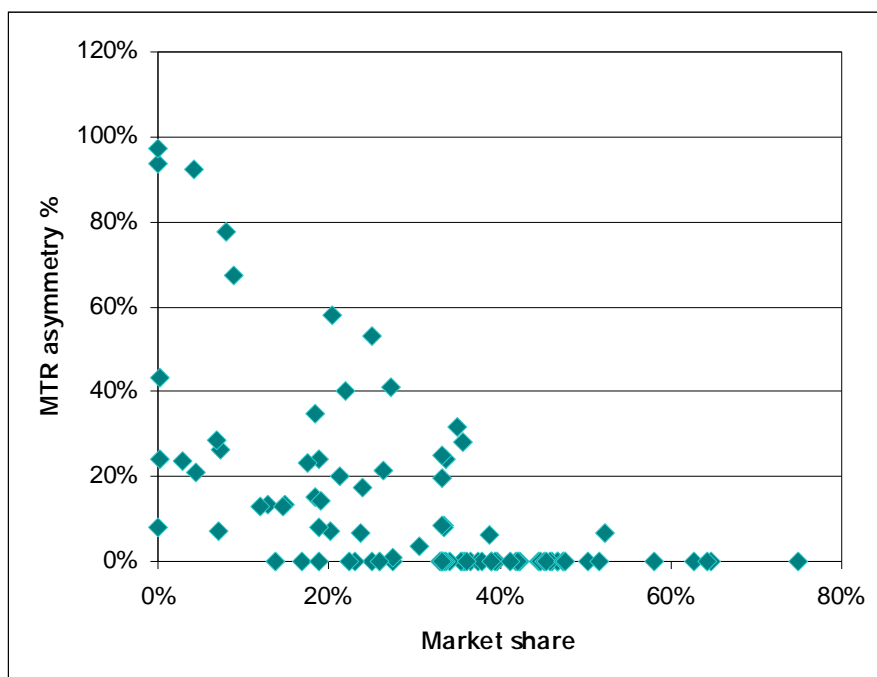


Figure 4: Asymmetry among European operators in % (compared with the operator with the lowest termination rate within a country) compared with market share. Source: ERG CP

149. The fact that Norway is no longer among the countries with the lowest termination rates and that in addition we are among the countries with the greatest asymmetry also suggests that a certain reduction in the small operators' termination rates is necessary in order to address the concern of harmonisation.

8.4.3.4 *Predictability*

150. A predefined price cap, rather than merely vague obligation of a “reasonable price” will yield greater predictability for relevant operators the obligation is imposed on and other operators that purchase termination from them. Furthermore, it provides more reliable information to undertakings considering entering the market.

151. Increased predictability by setting a price cap is particularly important in light of the amendments to law that entered into force on 15 January 2008. Electronic Communications Act § 10-12 now authorises the authorities to issue decisions on reimbursement. This means that if the authorities should conclude from an overall assessment that a provider's termination rate is not in line with an obligation of a reasonable price, the providers that paid the excessive price will be able to demand reimbursement. A process for assessing any

²³ See ERG CP on symmetry of fixed call termination rates and symmetry of mobile call termination rates (ERG CP), page 93.

²⁴ Network Norway, Ventelo and Barablu had recently entered the market on the date the data were compiled, so that these operators were not included in the calculation.

reimbursement claims will require substantial administrative resources from both NPT and the involved parties. Since reimbursement claims are not very relevant with a price cap, the Authority believes it is better to set a precise cap on termination rates than to operate with vaguer obligations of a “reasonable price”.

8.4.3.5 Details concerning the level of a reasonable price

152. In sum, NPT believes that the assessment criteria above warrant a reduction in the termination rates of the small and new operators. When the operators themselves do not reduce their termination rates as a consequence of the general obligation of a reasonable price, NPT regards it as necessary to clarify the obligation.

153. The ERG also recommends that national regulatory authorities specify the level of symmetry they allow and what should be regarded as a “reasonable price”²⁵:

“[...] NRAs should specify their understanding of ‘unreasonable’, as the lack of predictability is harmful for the market – for sellers as well as buyers of termination. Indeed, if pricing of call termination (or at least the level of asymmetry) is predictable enough, existing MNOs know what they can expect in terms of MTRs in case of a new entrant, and also new MNOs would have more evident expectations when undertaking market entry.”

154. If the small operators’ termination rates were to remain at the same level until 2010, the asymmetry in Norway would increase to over 150 %. With the adverse impacts of greater asymmetry as described above in mind, this would be a totally unacceptable situation.

155. The price controls should weigh too great a distortion of competition on account of asymmetric rates against continuing to give the small and new operators a period of lenient regulation in order to facilitate increased competition at the network level. NPT believes that a clarification of reasonable price that brings the termination rates down to the same price difference in per cent that existed when the decision of 7 May 2008 was issued will balance these considerations. In May 2007 the difference between Tele2’s, Ventelo’s and Network Norway’s termination rates and weighted average of Telenor’s and NetCom’s termination rates was around 50 %.

156. ERG CP also shows that there are very few countries with asymmetry over 50 %²⁶. For that reason ERG CP proposes this as the upper limit of a starting point for a reasonable price for new entrants. However, NPT believes that with the current price level of the small and new operators as a starting point, it is not proportionate or reasonable to reduce their termination rates directly to 50% asymmetry, but that this should be done in steps over the decision period. We would also point out that Norway is in a unique situation in that there are only two established mobile operators with nationwide networks. Therefore, to help to meet the authorities’ goal of facilitating infrastructure-based competition, NPT believes that it makes sense to allow the asymmetry in Norway to be relatively high compared with most other ERG countries.

157. The price caps for Telenor and NetCom are stated in the decision of 8 May 2007 in real prices based on 2005 NOK. This means that these rates will be adjusted for inflation before being reduced to the last step on the glide path. Thus, Telenor’s and NetCom’s nominal rates from 1 July 2010 will not be NOK 0.45 but somewhat higher. NPT will apply historical inflation figures for this adjustment. When calculating price caps for new operators NPT finds

²⁵ ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates (ERG CP), page 92:

²⁶ Seven out of 98 operators in the ERG MTR benchmark for January 2007 have asymmetry over 50 %.

it to be the most appropriate to take into consideration this inflation adjustment already on the decision date, since the regulatory period is relatively brief.

158. For the obligation of a reasonable price to be complied with, NPT believes that termination rates of small and new operators need to be reduced towards 50 % asymmetry compared with the rates Telenor and NetCom will have in 2010. This yields an inflation-adjusted price cap for small and new operators in 2010 of NOK 0.75.²⁷

159. NPT believes that the price reductions for each operator from today's level to NOK 0,75 is relatively large and should therefore be spread over the period of this decision with a glide path. In the following sections NPT will clarify further the price controls on each operator. The glide paths are developed with an intention to achieve symmetric prices between the operators included in this decision as quick as possible and also level out the absolute price reductions over time²⁸.

160. ESA has in its comments to the draft decision invited NPT to reduce the asymmetry further than proposed by NPT. NPT has done a new assessment of the proposed glide path, but the authority did not find sufficient ground for further reductions in the period of this decision. We refer mainly to the assessment carried out above. In particular, we will highlight that the special market situation in Norway with only two mobile networks with national coverage indicates that it is important to give incentives to the establishment of new mobile networks and thereby achieve more infrastructure-based competition in the long run. NPT also refers to the previous decision in market 16 of 8 May 2007. These two decisions should be read together. The glide path in this decision is designed on the basis of the regulation already imposed (clarification of reasonable price). In addition, NPT believes it is important that the decision can enter into force as soon as possible so the reduction in asymmetry can start on 1 February 2009 as proposed in the draft decision. Further reductions in asymmetry might require a new national consultation, which would delay the process.

161. NPT believes that a clarification of the price control as mentioned above will be a lenient form of price regulation. The price cap will enable the small and new operators to earn returns over the normal rate in line with what these operators were given to expect in the decision of 8 May 2007.

162. The purpose of lenient regulation is precisely to facilitate building of infrastructure. If the assumptions for NPT's choice of remedies and their design prove to be faulty and the remedies do not work as intended, NPT will have a chance to tighten the obligations. Reference is made to the preparatory work on the Electronic Communications Act and the commentary on § 3-4, which states the following:

“[...] obligations imposed may be changed whenever appropriate. Such a change may be made without a market analysis if the imposed obligations are ineffective. This means, for example,

²⁷ NPT has used historical figures for CPI calculation of inflation from 2005 (average) to August 2008. Norges Bank's calculator can be found at: <http://www.ssb.no/vis/emner/08/02/10/kpi/kpiregn.html>. This yields a symmetric termination rate for Telenor and NetCom in August 2008 of NOK 0.48. Furthermore, Norges Bank's target of 2.5% is used to estimate inflation until 2010. The nominal effective price in view of this is estimated to be NOK 0.50 in 2010. By allowing 50 % asymmetry, the rate for the small and new operators will be NOK 0.75 at the same point in time. If the nominal effective price for Telenor and NetCom in 2010 deviates substantially from NPT's estimate of NOK 0.50, NPT will adjust the price cap for 2010 for the new operators to achieve 50 % asymmetry. However, an adjustment as mentioned will only be relevant for the last step in the glide path for the new operators.

²⁸ More explanations regarding the shape of the glide paths and the levels of asymmetry during the period of this decision is given in the summary of the consultation (Annex 2) chapter 3.6.3.

that the use of remedies may be tightened if the remedies imposed prove not to work as assumed.”

163. NPT will closely monitor the rollout plans of the new network owners. Asymmetric regulation is not appropriate if it proves not to help to bring about infrastructure competition. For the time being, NPT has no reason to believe that Tele2, Network Norway and MTU will not continue to build networks, which is why NPT is planning more lenient regulation of these operators. If this still does not turn out to be the case, NPT will consider changing its use of remedies.

8.4.4 Price controls on Tele2

164. Tele2 concluded the first MVNO agreement in the Norwegian mobile market and began to provide mobile telephony based on this agreement (including termination on its virtual network) on 1 December 2003. Previously, the company offer mobile telephony service to end users through a resale agreement with Telenor. In the beginning, the termination rate on Tele2’s virtual mobile network was NOK 1.14 per minute, but was later adjusted downward to NOK 1.04 per minute. A set-up charge of NOK 0.23 comes in addition. Tele2 concluded a new roaming agreement with NetCom in spring 2007. By the end of March 2008, all customers had been migrated to NetCom’s network.

165. When Tele2 was designated an undertaking with significant market power on 19 September 2005, the company had a market share of 4.5 % measured in the number of end users²⁹. At that point in time, NPT did not find it necessary to regulate Tele2’s rates. In the meantime, the company’s market share had risen to 8.8 % by the end of 2007³⁰. By the same date its share of terminated minutes came to around 11 % and its share of total revenue related to termination was just under 15 %.

166. In the decision of 8 May 2007 NPT argued for starting to regulate Tele2’s termination rates downward to an efficient level. The Authority imposed a price cap of NOK 1.00 per minute from 1 October 2007. From 1 July 2008 the price cap was to be reduced to NOK 0.85, and this price cap was to continue until 1 July 2009. In the period until 1 July 2009 NPT was intending to elucidate further the basis for setting efficient prices for MVNOs and, if necessary, issue a new decision with further reductions after 1 July 2009. Today there are no grounds for saying that an efficient price for Tele2 will diverge from the efficient price of the host operator.

167. In the decision of 8 May 2007 the Authority promised to reconsider the price controls if Tele2 should choose to climb the investment ladder over the course of the regulatory period. In this case the company could receive an extended period of lenient regulation in the form of an obligation of reasonable prices. In view of this, the Ministry of Transport and Communications returned the decision to NPT when it learned during its consideration of the appeal that Tele2 had concluded a deal to purchase 50 % of Mobile Norway AS.

168. The Ministry assumed that Tele2 would not be allowed to raise its termination rate until NPT had issued a new decision in the case. In light of this the company has been allowed to maintain a termination rate of NOK 1.155 until today. NPT regards this price cap to be a very lenient form of regulation that has already yielded a considerable advantage to Tele2. Based

²⁹ Source: The Norwegian Telecom Market 2004, NPT.

³⁰ Market share is based on the number of subscriptions, source: The Norwegian Market for Electronic Communication Services 2007, 27 May 2008.

assess the proposal. If necessary, the Authority may require changes to the proposal submitted prior to approval if NPT does not find substantiation that the proposal is under the price cap. For the rate reduction for 1 February 2009, Tele2 must therefore submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

176. The clarification of reasonable price in this decision is considerably more lenient than what NPT imposed on Tele2 on 8 May 2007. In addition to the advantage of a price cap of NOK 1.155 until the first rate reduction in accordance with the new decision, Tele2 will enjoy considerable benefits from more lenient regulation in line with this notification than what was decided by NPT on 8 May 2007. If it is assumed that the company would have been regulated down to NetCom's rates after the regulatory period in the decision of 8 May 2007 (i.e. after 30 June 2009), the benefit of lenient regulation from October 2007 up to December 2010 will amount to over NOK 440 million.

177. Furthermore, NPT believes that the notified regulation appears all the more lenient if it is compared with other alternatives. If Tele2 had not been regulated in accordance with a reasonable price obligation, it would have made sense to apply the same stepwise downward adjustment as NetCom from October 2007. Tele2's advantage from a more lenient regulation than NetCom in the period from October 2007 to December 2010 comes to just over NOK 700 million³⁴.

178. NPT has received an overview from Mobile Norway of the number of base stations that the company plans to build by 2011 and what this rollout is estimated to cost. [Exempt from public disclosure:

[REDACTED]

] NPT has compared the cost estimates from Mobile Norway against similar network investments in the LRIC model. NPT has not found any substantial differences in the calculations.

179. NPT believes that it will not be reasonable for Tele2 to cover the entire investment through extra revenue from termination.

[REDACTED]

180. Network Norway's rollout plans are the reason Tele2 is receiving an extended period of lenient regulation. If the company nevertheless does not build infrastructure as NPT has been given to expect and the imposed remedy thus does not prove to work as intended, NPT will reconsider the price regulation. NPT is empowered to tighten obligations, as the preparatory works for the Electronic Communications Act and commentary on § 3-4:

“Obligations imposed may be changed whenever appropriate. Such a change may be made without a market analysis if the imposed obligations are ineffective. This means, for example, that the use of remedies may be tightened if the remedies imposed prove not to work as assumed.”

181. NPT will closely monitor the rollout plans of Tele2. For the time being, NPT has no grounds to believe that Tele2 will not continue to build a network. If this still does not turn out to be the case, NPT will consider changing its use of remedies.

³⁴ Calculated from 2007 to December 2010. The entire period using traffic data from 2007.

182. In view of this, NPT believes that the clarification of a reasonable price for Tele2 in this decision is in keeping with the regulation Tele2 was given to expect if it should choose to climb the investment ladder. By the end of 2010 Tele2 will have had about seven years with exemption from an obligation of efficient prices. The company will then be within the maximum exemption period NPT has indicated for new network owners and must expect reductions to efficient prices relatively quickly after the lifetime of this decision, most probably during 2011.

8.4.4.1 Rates for interconnection (traffic capacity and other rates)

183. In principle, rates for interconnection (traffic capacity and other rates) are set according to commercial negotiations between the parties. Like other operators Tele2 has both the incentive and opportunity to charge excessive prices for these types of products. For that reason, NPT sees a need for these prices too to be regulated and therefore is imposing a requirement on Tele2 that the prices for interconnection shall be *reasonable*.

184. What can be regarded as a reasonable price will have to be decided on a case-by-case basis. If necessary, for example should cases arise in the future where negotiations are unsuccessful or NPT receives complaints, NPT will assess whether the specific price is reasonable. Actual costs related to interconnection will be key in such an assessment.

8.4.5 Price controls on Network Norway

185. Network Norway launched commercial services in February 2007 based on a national roaming agreement with NetCom. In addition, the company signed a national roaming agreement with Telenor in April 2008. Network Norway currently charges a termination rate of NOK 1.155 per minute³⁵. Together with Tele2 the company owns Mobile Norway. See a detailed description of the network company in the market analysis. [Exempt from public disclosure:

[REDACTED]

186. In the previous analysis, Network Norway was not included since it had just launched services when NPT issued the decision of 8 May 2007. In the meantime, the company quickly increased its customer base by acquiring both OneCall and Lebara.

187. The general principles concerning regulation of small and new operators in the decision of 8 May 2007 gave new network owners to expect a period of 5-10 years of a reasonable price obligation. NPT believes that reasonable price cannot be interpreted as a static obligation that means a given rate will be reasonable forever.

188. The assessment criteria in Section 8.4.3 of this decision state that to be in conformity with a reasonable price obligation, Network Norway's termination rate is to be reduced over the course of the regulatory period. The cost information NPT has, indicates that the costs connected with termination are far lower than the current termination rate. As described in Section 8.4.3.1 an efficient price for termination on Network Norway's network will not be higher than the efficient price for Telenor and NetCom. The fact that Network Norway is rolling out only in the most profitable areas supports this as well. Furthermore, the access price for national roaming is substantially lower than the termination rate the company charges today. Volume growth should also be taken into account when assessing a reasonable price. The growth that Network Norway has enjoyed since start-up indicates that a reduction

³⁵ The rate includes call set-up charge based on a two-minute call.

in its termination rate is reasonable, given the effect that its volume growth has had on its unit cost.

189. NPT believes that to meet the reasonable price obligation, Network Norway's termination rates must be reduced in line with what appears in Section 8.4.3. In view of this, NPT has set a price cap, which appears in Table 2b.

190. The price caps are stated in current prices.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Network Norway	1.155	1.00	0.90	0.75

Table 2b: Price cap per minute for termination on Network Norway's mobile network in the period 1 February 2009 to 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

191. The price cap represents a rate reduction of NOK 0.155 on 1 February 2009, after that, reductions on 1 July 2009 and 1 July 2010 of NOK 0.10 and NOK 0.15, respectively. On 1 July 2010 Network Norway's termination rate will be 50 % higher than the efficient price that Telenor and NetCom will be able to charge on the same date.

192. It is Network Norway's responsibility to document to NPT that the actual termination rates will not exceed the price cap during a certain period. For that reason, at least three months prior to a rate change, the company must submit proposed new rates and the weighting on which the rates are to be based, with documentation for the selected weighting. The weighting is to be based on traffic statistics from the most recent available full-year figures³⁶. NPT will then assess the proposal. If necessary, the Authority may require changes to the proposal submitted prior to approval if NPT does not find substantiation that the proposal is under the price cap. For the rate reduction for 1 February 2009, Network Norway must therefore submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

193. Furthermore, NPT believes that the notified regulation appears all the more lenient if it is compared with other alternatives. NPT has estimated the advantage from a more lenient regulation in accordance with the glide path below compared to NetCom's glide path. Network Norway's market share by the end of June 2008 (including OneCall and Lebara), adds up to about 6 % based on number of subscriptions. The advantage of lenient regulation in the period from 1 February 2009 to 31 December 2010 amounts to NOK 200 million³⁷. Network Norway has in addition had an advantage of higher termination rates prior to the price control in this decision.

194. NPT believes that the clarification of a reasonable price for Network Norway in this decision is in line with the regulations new entrants with access based on national roaming were given to expect in the decision of 8 May 2007. By the end of the lifetime of this decision Network Norway will have had about four years with exemption from obligation of efficient prices. In the decision 8 May 2007 NPT set forth that new network operators could expect a period of 5-10 years with exemption from an obligation of efficient prices. NPT will in its next decision in market 16 evaluate when and how fast a reduction to efficient price should take place for Network Norway.

³⁶ For the 1 February 2009 rate reduction, full-year figures for 2007 will be used.

³⁷ Number of subscriptions in June 2008 is the basis for the calculations in 2009 and 2010. Figures for 2008 are not included, because the big changes in volume during the year would cause too many assumptions in the calculation. Network Norway's market share was below 0.5 % in the beginning of 2008 and increased during the first half of 2008 to 6 % after all the customers of OneCall and Lebara were included.

8.4.5.1 Rates for interconnection (registration rate, primary system access and other rates)

195. In principle, these rates are to be set according to commercial negotiations between the parties. Like other operators Network Norway has both the incentive and opportunity to charge excessive prices for these types of products. For that reason, NPT sees a need for these prices too to be regulated and therefore is imposing a requirement on Network Norway that the prices for interconnection shall be *reasonable*.

196. What can be regarded as a reasonable price will have to be decided on a case-by-case basis. If necessary, for example should cases arise in the future where negotiations are unsuccessful or NPT receives complaints, NPT will assess whether the specific price is reasonable. Actual costs related to interconnection will be key in such an assessment.

8.4.6 Price controls on Ventelo

197. On 20 October 2005 Ventelo signed an MVNO agreement with Telenor. The company was previously a service provider with Telenor. The share of mobile-terminated traffic terminating at Ventelo was just over 1 % for 2007. Ventelo has also charged a termination rate of NOK 1.155 since it began as an MVNO.

198. In the previous analysis, Ventelo was not included since the company had just launched services when NPT issued the decision of 8 May 2007. The general principles for regulation of small and new operators in NPT's decision of 8 May 2007 gave MVNOs to expect a period of 3-4 years of a reasonable price obligation. If Ventelo were to enter into an MVNO agreement with network owners other than Telenor and NetCom, the "reasonable price" period could be extended.

199. The discussion of reasonable price in Section 8.4.3 of this decision suggests that to be in conformity with an obligation of a reasonable termination rate, Ventelo's termination rate is to be reduced over the course of the regulatory period. In view of this, NPT has set a price cap, which appears in Table 3b.

200. The price caps are stated in current prices.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Ventelo	1.155	1	0.90	0.75

Table 3b: Price cap per minute for termination on Ventelo's mobile network in the period 1 February 2009 - 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

201. It is Ventelo's responsibility to document to NPT that the actual termination rates will not exceed the price cap during a certain period. For that reason, at least three months prior to a rate change, the company must submit proposed new rates and the weighting on which the rates are to be based, with documentation for the selected weighting. NPT will then assess the proposal. If necessary, the Authority may require changes to the proposal submitted prior to approval if NPT does not find substantiation that the proposal is under the price cap. For the rate reduction for 1 February 2009, Ventelo must therefore submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

202. NPT believes that the clarification of a reasonable price for Ventelo in this decision is in line with the regulations new entrants with MVNO access were given to expect in the decision of 8 May 2007. By the end of the lifetime of this decision Ventelo will have had about four years with exemption from an obligation of efficient prices. This corresponds to


what NPT referred to in the decision 8 May 2007 as the length of the transitory period for operators not contributing to infrastructure-based competition. Ventelo must therefore expect fast reductions to efficient price, most probably during 2011.

8.4.6.1 Rates for interconnection (registration rate, primary system access and other rates)

203. In principle, these rates are to be set according to commercial negotiations between the parties. Like other operators Ventelo has both the incentive and opportunity to charge excessive prices for these types of products. For that reason, NPT sees a need for these prices too to be regulated and therefore is imposing a requirement on Ventelo that the prices for interconnection shall be *reasonable*.

204. What can be regarded as a reasonable price will have to be decided on a case-by-case basis. If necessary, for example should cases arise in the future where negotiations are unsuccessful or NPT receives complaints, NPT will assess whether the specific price is reasonable. Actual costs related to interconnection will be key in such an assessment.


8.4.7 Price controls on Barablu

205. Barablu signed an MVNO agreement with Telenor on 1 November 2006 and launched services in July 2007. The company currently has just over [exempt from public disclosure: ] customers. Barablu has a termination rate of NOK 1.61³⁸.

206. In the previous analysis, Barablu was not included since it had not launched services when NPT issued its decision. Even so, the general principles concerning regulation of small and new operators in NPT's decision indicated that Barablu could expect a period of 3-4 years of a reasonable price obligation.

207. Barablu currently has a termination rate that is nearly 170 % higher than Telenor and NetCom's termination rate. In view of the undesirable consequences of excess pricing and high asymmetry, NPT believes that the current termination rate at Barablu is far above what is reasonable.

208. Barablu has also set its termination rate substantially higher than Tele2, TDC and Ventelo. NPT believes that at the outset there is no justification for Barablu being able to charge a higher termination rate than other small, new MVNOs, since it is the same service that they provide and the same factor inputs that they use.

209. However, NPT realises that the access prices the various undertakings have negotiated can vary and to a certain extent this may result in a need for higher termination rates for some operators. [Exempt from public disclosure: ]

NPT will monitor the situation to ensure that Telenor ensures that Barablu's access price is at all times in line with the obligation of non-discrimination and that Barablu is not subjected to a margin squeeze. As long as these obligations are met, NPT is unable to see any justification for Barablu charging a higher termination rate than other undertakings with MVNO access.

³⁸ The rate includes call set-up charge rate based on a two-minute call.

210. In view of this NPT will follow the general principles for a reasonable price on which this decision is based. NPT is thus imposing a price cap on Barablu that will follow the steps in the table below.

211. The price caps are stated in current prices.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Barablu	1.61	1	0.90	0.75

Table 4b: Price cap per minute for termination on Barablu’s mobile network in the period 1 February 2009 - 31 December 2010. Today’s current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

212. It is Barablu’s responsibility to document to NPT that the actual termination rates will not exceed the price cap during a certain period. For that reason, at least three months prior to a rate change, the company must submit proposed new rates and the weighting on which the rates are to be based, with documentation for the selected weighting. NPT will then assess the proposal. If necessary, the Authority may require changes to the proposal submitted prior to approval if NPT does not find substantiation that the proposal is under the price cap. For the rate reduction for 1 February 2009, Barablu must therefore submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

213. NPT believes that Barablu’s termination rate should be brought down as quickly as possible to the level that has been notified for the other undertakings covered by the notification. This will involve a relatively large rate reduction for Barablu from 1 February 2009. However, Barablu has benefited immensely from a higher termination rate than all the other operators since its start-up.

214. NPT believes that the clarification of a reasonable price for Barablu in this decision is in line with the regulations new entrants with MVNO access were given to expect in the decision of 8 May 2007. By the end of the lifetime of this decision Barablu will have had about 3.5 years with exemption from an obligation of efficient prices. This corresponds to what NPT referred to in the decision 8 May 2007 as the length of the transitory period for operators not contributing to infrastructure-based competition. Barablu must therefore expect fast reductions to efficient price, most probably during 2011.

8.4.7.1 Rates for interconnection (registration rate, primary system access and other rates)

215. In principle, these rates are to be set according to commercial negotiations between the parties. Like other operators Barablu has both the incentive and opportunity to charge excessive prices for these types of products. For that reason, NPT sees a need for these prices too to be regulated and therefore is imposing a requirement on Barablu that the prices for interconnection shall be *reasonable*.

216. What can be regarded as a reasonable price will have to be decided on a case-by-case basis. If necessary, for example should cases arise in the future where negotiations are unsuccessful or NPT receives complaints, NPT will assess whether the specific price is reasonable. Actual costs related to interconnection will be key in such an assessment.

8.4.8 Price controls on MTU

217. NPT issued a decision on significant market power for MTU in Market 16 on 8 May 2007. At the same time, an obligation was imposed on MTU of reasonable prices in line with

amounts to NOK 12 million³⁹. The figure doubles if the advantage of higher termination rates from 1 October 2007 is included.

226. NPT believes that the clarification of a reasonable price for MTU in this decision is in line with principles for assessing reasonable price set forth in the decision of 8 May 2007. If MTU's time of launch is considered to be the starting point (and not Teletopia's), MTU will have had about three years with exemption from obligation of efficient prices by the end of the lifetime of this decision. In the decision 8 May 2007 NPT set forth that new network operators could expect a period of 5-10 years with exemption from an obligation of efficient prices. NPT will in its next decision in market 16 evaluate when and how fast a reduction to efficient price should take place for MTU.

227. An obligation of reasonable prices for interconnection was imposed on MTU in the decision of 8 May 2007. This obligation remains in effect.

8.4.9 Price controls on TDC

228. NPT issued a decision on significant market power for TDC in Market 16 on 8 May 2007. At the same time, in line with the principles in the decision, an obligation of reasonable prices was imposed on the company. TDC started up as an MVNO on Telenor's network in March 2006 and currently charges a termination rate of NOK 1.155 per minute⁴⁰.

229. The discussion of reasonable price in Section 8.4.3 of this decision suggests that to be in conformity with an obligation of a reasonable termination rate, MTU's termination rate is to be reduced over the course of the regulatory period. In view of this, NPT has set a price cap, which appears in Table 6b.

230. The price caps are stated in current prices.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
TDC	1.155	1.0	0.90	0.75

Table 6b: Price cap per minute for termination on TDC's mobile network in the period 1 February 2009 - 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

231. It is TDC's responsibility to document to NPT that the actual termination rates will not exceed the price cap during a certain period. At least three months prior to any rate change, the companies must submit proposed new rates and the weighting on which the rates are to be based, with documentation for the selected weighting. NPT will then assess the proposals. If necessary, the Authority may require changes to the proposal submitted prior to approval if NPT does not find substantiation that the proposal is under the price cap. For the rate reduction for 1 February 2009, TDC must therefore submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

232. NPT believes that the clarification in this decision is in line with principles in the decision of 8 May 2007. By the end of the lifetime of this decision TDC will have had about five years with exemption from an obligation of efficient prices. This is longer than what NPT referred to in the decision 8 May 2007 as the length of the transitory period for operators not contributing to infrastructure-based competition. TDC must therefore expect fast reductions to efficient prices, most probably during 2011.

³⁹ The calculation is based on number of terminated minutes in 2007. Volume increase for the next years is not included.

⁴⁰ The rate includes call set-up rate based on a two-minute call.

8.5 Particulars regarding the proportionality of price controls and relationship to general competition law

8.5.1 Are price controls necessary?

233. In Sections 8.1-8.4 NPT concluded that regulation is necessary for remedying several competition problems in Market 16. For the competition problems that are discussed in Chapter 5 of the market analysis (Annex 1) and Chapter 6 of this document, price is the most important variable. Excessive prices may lead to considerable losses in efficiency and welfare and be a barrier to entering the Norwegian markets for electronic communication. Price controls are a remedy that can be aimed directly at this strategic variable, right at the heart of the problem, so to speak. As such this form of regulation is an effective remedy. Potential competition problems such as excessive pricing and price discrimination may have a considerable adverse impact with regard to resource use. Over time, excessive pricing can ultimately result in inefficient establishment and operation.

234. Competition Act § 11 will limit the competitive freedom of dominant undertakings with respect to choice of price strategies. Nevertheless, the provision does not authorise direct price controls by the competition authorities. Specific orders regarding price will not be relevant until there are violations of Competition Act § 11, and then pursuant to Competition Act § 12. In NPT's view, the need for predictability in the market and quick interventions from the authorities argue in favour of the view that in this instance, general competition law is insufficient for achieving efficient termination rates on the companies' mobile networks.

8.5.2 Are there less intrusive alternatives?

235. With respect to the question of whether less intrusive alternative obligations will be sufficient, NPT is of the opinion that regulation in the form of reference offers, publication and non-discrimination will normally not remedy competition problems where price is the most important parameter. Reference is made here *inter alia* to the assessments in Section 5.5 ("Case 4: Termination") in the ERG remedies document.

8.5.3 Proportionality in a narrow sense

236. Even if price controls are regarded to be the most burdensome of the available remedies, NPT believes that the disadvantages of the obligation are proportionate to the benefits the authorities seek to attain.

237. Termination revenue represents a substantial share of mobile operators' total revenues. The price cap being imposed on the operators in this decision may result in relatively large reductions in revenue from termination. In and of itself, the price cap could be a very burdensome obligation for Tele2, Network Norway, Ventelo and Barablu since the companies will not be free to set their own rates. The same applies to the clarification of the existing obligation NPT has imposed on MTU and TDC. In earlier complaints about decisions to impose special obligations, other companies, such as Telenor and NetCom have argued that the revenues lost by the regulated operator shall be accorded considerable weight when the authorities assess whether or not it is proportionate to impose price controls.

238. However, the reduction in revenue from termination must be held up against the gains regulation affords in the short and long terms. As shown in Section 8.6, reductions in termination rates provide a basis for lower retail prices, especially for fixed network subscribers. Furthermore, it makes possible more economically efficient pricing, since the services (e.g. the various traffic flows) will be priced more according to what the underlying

costs warrant. As mentioned above, excessive pricing may in the long run have undesirable consequences in the form of establishment and operation.

239. With respect to the magnitude of the revenue loss, NPT would note that price controls pursuant to the Electronic Communications Act are imposed when a dominant operator demands or will be able to demand excessive prices from its customers because the company exercises market power. Any future loss of revenue due to price caps will consequently be a direct result of the company demanding too high a price from customers. If the magnitude of the revenue loss had been decisive for whether price controls are disproportionate, the authorities would have had less authority to impose specific obligations the higher the company set the price above the level that promotes the objective of the Act. In other words, the difference in amounts between the efficient price and the price a dominant company actually charged could be so big that it would not be possible to intervene by means of price controls.

240. Proportionality in a narrow sense can warrant giving an operator a certain amount of time to adapt to revenue reductions as a result of price controls. Instead of directly lowering the termination revenues down to a cost-oriented level, in its decision on the regulation of Market 16 of 8 May 2007 NPT imposed on these operators a price cap with a glide path. As previously mentioned a loss of revenue by the providers is counteracted by corresponding potential savings by customers and consumers. Nevertheless, NPT believes that the proportionality principle dictates that price controls entailing substantial revenue reduction for providers should be carried out over time by means of a glide path instead of one large, immediate price reduction.

241. Nor can NPT see that the choice of price control methodology will make the decision disproportionately burdensome. Price cap regulation gives the operators greater predictability and is in principle not very resource-intensive for the regulated provider to comply with.

Conclusion

242. NPT believes the proposed price controls on Tele2, Network Norway, Ventelo, Barablu, TDC and MTU are proportionate because the regulation is required to meet the objective of the Electronic Communications Act, the method is not more intrusive than the alternatives and the remedy by itself is in proportion to the objective.

8.5.4 Price controls on Tele2

243. As the above makes clear, NPT is of the opinion that it is necessary to clarify the termination rate for Tele2. The Authority will not reduce these rates to an efficient level in the course of this decision's time horizon, because the company is rolling out its own infrastructure. NPT believes this is a proportionate obligation and cannot see that there are any alternative methods that sufficiently guarantees that Tele2 will set a reasonable price for voice call termination.

244. With regard to the relationship between ends and means, NPT has taken into account the fact that Tele2 will have relatively high expenditures connected with rollout of its network until 2010. For that reason the company has received a longer period of exemption from an obligation of an efficient termination rate than MVNOs.

245. NPT believes that the proposed price controls on Tele2 are in proportion to the need to remedy excessive pricing. As long as Tele2 does not reduce its termination rate on its own initiative, NPT believes that it is necessary to clarify that rate. Both the established level of termination rates and information about its cost basis indicate that Tele2 must reduce its termination rate so that they can be considered reasonable in the coming period. Furthermore,

the rates are not being reduced to an efficient level, but to what NPT believes to be a reasonable level. Tele2's prices will therefore not reach an efficient level before the next regulatory period regardless. This gives the company time to rebalance revenues and costs.

Conclusion

246. NPT believes the proposed price controls on Tele2 will be proportionate because the regulation is required to meet the objective of the Electronic Communications Act, the method is not more intrusive than the alternatives and the remedy viewed in isolation is in proportion to the objective.

8.5.5 Price controls on Network Norway

247. NPT believes it will be necessary to clarify a price cap for Network Norway to avoid an unreasonably high level of termination rates. Price controls are the only remedy capable of effectively dealing with the underlying competition problem of excessive pricing. In keeping with the signals given to new network owners in the decision of 8 May 2007, Network Norway's termination rate was not regulated to an efficient level, but to a level the Authority considers reasonable based on an overall assessment of a number of criteria (see Section 8.4.3). NPT believes that this intervention is needed to prevent excessively strong distortion of competition and subsidisation from other networks.

Conclusion

248. NPT believes the proposed price controls on Network Norway will be proportionate because the regulation is required to meet the objective of the Electronic Communications Act, the method is not more intrusive than the alternatives and the remedy viewed in isolation is in proportion to the objective.

8.5.6 Price controls on Ventelo and Barablu

249. NPT believes it will be necessary to impose price controls on both Ventelo and Barablu to avoid an unreasonably high level of termination rates. This is the only remedy capable of effectively dealing with the underlying competition problem. In keeping with the signals given to new MVNOs in the decision of 8 May 2007, Ventelo's and Barablu's termination rates were not regulated to an efficient level, but to a level the Authority considers reasonable based on an overall assessment of a number of criteria (see Section 8.4.3). NPT believes that this is a necessary intervention to prevent excessively strong distortion of competition and subsidisation from other networks. This is a less intrusive obligation than reducing rates to an efficient level and a relevant alternative for remedying excessive pricing in a market where operators enjoy a monopoly on the sale of services on their networks.

Conclusion

250. NPT believes the proposed price controls on Ventelo and Barablu will be proportionate because the regulation is required to meet the objective of the Electronic Communications Act, the method is not more intrusive than the alternatives and the remedy viewed in isolation is in proportion to the objective.

8.5.7 Clarification of price controls on MTU and TDC

251. As mentioned above, NPT believes it will be necessary to clarify the price control obligations the Authority has imposed on MTU and TDC in order to comply with the reasonable price obligation that was specified in the decision of 8 May 2007. The Authority is of the opinion that a price cap is necessary in order to prevent unreasonable excessive pricing. Despite the fact that NPT believes there is a need to clarify the reasonable price obligation,

the Authority continues to regard the regulation as lenient and far less intrusive than reducing rates to an efficient level.

Conclusion

252. NPT believes the proposed price controls on MTU and TDC will be proportionate because the regulation is required to meet the objective of the Electronic Communications Act, the method is not more intrusive than the alternatives and the remedy viewed in isolation is in proportion to the objective.

8.6 Further details on assumed impacts of the price controls

253. Assumed impacts of the notified use of remedies are accounted for in part under the individual specific obligations in the previous sections. We refer also to Chapter 4 regarding competition problems in Annex 1 (the market analysis). The use of remedies is intended to rectify potential competition problems in the market. This section will look more closely at a number of probable impacts. However, the impacts will depend *inter alia* on market behaviour and external factors that are difficult to foresee completely. Moreover, NPT expects in addition that the short-term effects (within the regulatory period) will be different from the effects in the longer term. Some of these effects are also difficult to quantify. They pertain, for example, to undesirable distortion of competition as a result of the price controls. Furthermore, the quantified effects are largely merely a redistribution between undertakings and between consumers. The effects are less a consequence of economic efficiency gains.

254. The price controls imposed on Telenor and NetCom in the decision of 8 May 2007 are helping to lower entry barriers for new market entrants. New mobile operators can be expected to have large portions of their traffic to the already established undertakings. Thus, the price controls on the established undertakings will help to reduce the external cost of sales for new entrants substantially. In that way, new entrants will be able to reduce their retail prices and make them better positioned to compete for end users. Thus, the regulation of the small operators needs to be viewed in light of the regulation of Telenor and NetCom.

255. NPT will not quantify the impact on all undertakings covered by this decision, only Tele2. In general, the small operators that are regulated will see a reduction in revenues, but it is difficult to determine exact quantities for the impacts, among other reasons because of a lack of figures and of big changes in traffic volumes from year to year. For that reason the estimates will be needlessly speculative and uncertain.

8.6.1 Assumed impact on consumers

256. Price controls in the decision will lead to more efficient use of the resources and greater consumer welfare, particularly as a result of the opportunities for reduced retail prices for calls from fixed networks (including VoIP) to mobile. In the same manner as with the decision of 8 May 2007, NPT expects Telenor and other fixed-network providers to lower their retail prices for calls from fixed to mobile networks as a result of the reductions in termination rates.

257. If the retail prices for calling from fixed network/VoIP to Tele2's mobile network are reduced in the same amount as the company's termination rate, a NOK 0.405 reduction in termination rates will mean around NOK 60 million in saved costs for fixed network/VoIP customers, calculated on the basis of traffic volume in 2007 and excluding VAT.

258. As pointed out in the decision of 8 May 2007, greater uncertainty attaches to the short-term performance of the retail prices for calling between mobile networks as a consequence of such a decision to reduce termination rates. When the revenues from mobile termination are

reduced, the regulated undertakings can choose to rebalance their rates to reduce the revenue shortfall (also known as the “*waterbed effect*”). This may result in the regulated undertakings raising some retail prices. Despite the fact that this can result in higher retail prices for their own end users in the short run, such a rebalancing may yield more economically efficient pricing, in the services (e.g. the various traffic flows) will be priced more according to what the underlying costs warrant. For example, end users on fixed networks and end users with the established mobile operators will be doing less to “subsidise” lower retail prices for customers of the small and new mobile operators.

8.6.2 Assumed impact on the undertakings

259. The gains for consumers correspond to reduced future revenues for the mobile operators being regulated downward. For Tele2 a NOK 0.405 reduction in its termination rate will mean an annual reduction of just over NOK 220 million in revenues for the company if the entire reduction is taken over the course of one year (based on traffic volume in 2007). In 2007 Tele2 reported total termination revenue of NOK 645 million for its Norwegian mobile business. For undertakings with lower traffic volume, but which must make the same reduction in rates, the absolute revenue reductions will be smaller. Barablu and MTU currently charge higher termination rates than Tele2, Network Norway, TDC and Ventelo will therefore have to reduce their termination rates more than the latter operators. For that reason the reductions will be relatively larger for Barablu and MTU.

260. However, it must be taken into consideration that the small operators will see reduced external cost of sales as a result of the reduction of termination rates on other operators’ networks. If the rate reductions imposed on Tele2 in the period 2007 to 2010 are taken in the course of a year, it will receive over NOK 105 million in reduced costs per year from termination with Telenor and NetCom, so that the net reduction for the company will be just over NOK 115 million (using the same assumptions as above). The effect of a reduced cost of sales resulting from the reduced termination rate with the other operators comes in addition.

261. As mentioned, the calculations above assume that the entire price reduction takes place over one year. However, the decision plans for the reductions to be allocated over the period from January 2009 to July 2010. NPT expects lower revenues in this period to be offset to a certain degree by higher traffic volumes to and on the mobile networks, *inter alia* as a result of the rate reductions. It is difficult to predict exactly how big the growth in traffic to mobile networks will be as a consequence of the rate reductions, among other reasons because NPT does not have relevant estimates of price elasticity from the Norwegian market. Even if total revenues cannot be expected to rise in step with traffic growth (owing to fixed rates connected with subscriptions, etc.), these forecasts nuance the estimates of annual revenue reductions.

8.6.3 Other assumed efficiency gains

262. As pointed out in section 4.1.3 of Annex 1 (the market analysis), excessive termination rates in the long run can lead to an undesirable distortion of competition in the overall mobile market. Permitting providers to engage in excessive pricing and cross-subsidisation can also result in persistent inefficient production, which is not desirable with respect to the use of economic resources. NPT believes that the price controls in this decision will prevent a strong distortion of competition and facilitate more efficient use of resources in the mobile market.

8.6.4 Overall assessment of assumed impacts

263. In view of the above, NPT concludes that the assumed impacts of the decision conform with the objectives underlying Principle 2 whereby consumer interests and efficient use of resources shall be addressed when duplication of infrastructure is not deemed to be feasible.

Even if the price controls will result in a net loss for the undertakings being regulated, the benefit to the consumer and efficiency gains will weigh more heavily.

8.7 Assessment of the overall effect of the specific obligations on unregulated undertakings

264. As part of its proportionality assessments, in the following sections NPT undertakes an assessment of the overall effect of the specific obligations imposed on Network Norway and Barablu.

8.7.1 Network Norway

265. The obligations being imposed on Network Norway represent a relatively heavy regulatory burden viewed in the aggregate. Nevertheless, we believe that it will be proportionate to impose all of these obligations. NPT believes that it is important not to obstruct the further development of Network Norway's competitiveness in the market through overburdensome regulation. Nevertheless, relatively strict regulation of the undertaking is important to prevent exploitation of market power and ensure better competitive conditions among operators. NPT believes that these considerations are sufficiently addressed through the specific obligations to be imposed on the company. NPT believes that the burden that the overall effect of the notified obligations represents cannot be considered to be disproportionate.

8.7.2 Ventelo and Barablu

266. Until a need to regulate should prove relevant to a greater degree than today, NPT has chosen to regulate Ventelo and Barablu somewhat more leniently than Network Norway in that it is not imposing an obligation of non-discrimination on these undertakings. Regardless, it will be the price controls that are the most burdensome for them. Even if an obligation of a price cap for termination is burdensome viewed in isolation, the Authority is still of the opinion that the obligations being imposed on these undertakings in the aggregate are not disproportionate in relation to the competition problems they remedy.

9 Notification of decisions on the imposition of specific obligations

267. Against the background of the review above, NPT has concluded that undertakings with significant market power in the markets for voice call termination on mobile networks should be subject to several specific obligations. First, the Authority is imposing new price control obligations on Tele2. They come in addition to the obligations the Authority imposed on the company in the decision of 8 May 2007. Second, NPT believes that it is necessary to impose on the three undertakings that were not regulated previously (Network Norway, Ventelo and Barablu) a set of specific obligations that will remedy the competition problems identified. Third, it is necessary to clarify parts of the price controls that were imposed on MTU and TDC. In this chapter the specific content of the relevant obligations is imposed.

9.1 *Tele2 Norge AS*

268. NPT is imposing the following specific obligation on Tele2 Norge AS in the market for voice call termination on Tele2 Norge's mobile network:

9.1.1 Price controls

269. Pursuant to Electronic Communications Act § 4-9, the Norwegian Post and Telecommunications Authority is imposing on Tele2 Norge AS an obligation of a reasonable price for voice call termination on mobile networks. A reasonable price shall not exceed the price caps in accordance with the table below. The rates apply to termination of voice calls on Tele2's mobile network, as well as voice mail services connected with Tele2 Norge AS's mobile network.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Tele2	1.155	1	0.90	0.75

Table 1c: Price cap per minute for voice call termination on Tele2 Norge AS's mobile network in the period 1 February 2009 - 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

270. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

271. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per minute rate, etc.).

272. Pursuant to Electronic Communications Act § 10-3, NPT is directing Tele2 Norge AS to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by NPT before rate changes can be implemented. The Authority may demand changes in the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate

reduction for 1 February 2009, Tele2 Norge AS must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

273. Pursuant to Electronic Communications Act § 4-9, NPT is directing Tele2 Norge AS to have reasonable prices for interconnection to mobile networks (registration rate, primary system access and other rates).

9.2 Network Norway AS

274. NPT is imposing the following specific obligations on Network Norway AS in the market for voice call termination on Network Norway AS's mobile network:

9.2.1 Interconnection

275. Since Network Norway AS has been designated as an undertaking with significant market power in the market for voice call termination on mobile networks, the company will have an obligation to meet all reasonable requests for interconnection, cf. Electronic Communications Act § 4-2 third paragraph.

276. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is imposing on Network Norway AS an obligation to meet reasonable requests to enter into termination purchasing agreements from other undertakings, including the purchase of necessary connection products. The obligations apply to reasonable requests for entering into a termination purchasing agreement to fixed and mobile networks. The obligation applies only to agreements on traffic from an operator's own end users. The obligation can be met by concluding a direct or indirect interconnection agreement. Reasonable request means a request to purchase a termination product in accordance with a standard interconnection regime, including a standard technical interface. Furthermore, a request will be reasonable only when the party invoking the purchase obligation also concludes a direct or indirect agreement that results in the reciprocal exchange of traffic. Price terms that are submitted to the buyer must be in accordance with orders issued under public law regarding what is a lawful termination rate.

277. If access is denied, Network Norway AS shall give the requester a documented and justified refusal of the request, cf. Electronic Communications Act § 4-2 third paragraph last sentence. The justification must contain all information necessary to evaluate the basis for the refusal, such as e.g. the reason access is denied, with the necessary technical documentation.

278. Pursuant to Electronic Communications Act § 4-2 third paragraph cf. § 4-1, NPT is directing Network Norway AS to conclude without undue delay negotiations on entering into or amending agreements for termination on its mobile network. Network Norway AS is obliged upon the request of the other party to document time spent vis-à-vis that party. NPT is to receive a copy of such requested documentation. The obligation to document time spent does not apply to requests made later than three months after the relevant negotiations were concluded.

9.2.2 Non-discrimination

279. Pursuant to Electronic Communications Act § 4-7 first and second paragraphs, NPT is imposing on Network Norway AS an obligation of non-discrimination for termination on mobile networks. To be sufficiently effective, NPT believes that an obligation of non-discrimination must apply both between external operations (Electronic Communications Act § 4-7 first paragraph) and between an undertaking's own and external operations (Electronic

Communications Act § 4-7 second paragraph). Nevertheless, the obligation does not apply to any differences in termination rates for on-net and off-net calls.

9.2.3 Publication

280. Pursuant to Electronic Communications Act § 4-6, NPT is directing Network Norway AS to publish its prices including any discounts for termination on mobile networks. Publication on Network Norway AS's website is regarded as a satisfactory method of publication. Standard rates and any discounts with related criteria shall be stated.

281. Pursuant to Electronic Communications Act § 4-6 first, cf. fourth, paragraph, NPT is directing Network Norway AS to give advance notice to other undertakings of any changes in existing services that disfavour the other parties to its agreements and/or their end users, no later than two months before the changes are implemented. Information regarding other changes in agreement terms shall be notified without undue delay after the changes have been decided on.

282. Pursuant to Electronic Communications Act § 10-3, NPT is directing Network Norway AS to send NPT any termination on mobile networks-related agreements with parties other than Telenor ASA, NetCom AS or Tele2 Norge AS. Submission to NPT shall take place without undue delay and no later than two weeks after the signature date. Network Norway AS is furthermore obliged to inform NPT about changes in the agreements. The information shall make clear where in the agreement the changes have been made and what they consist of. NPT shall be informed of changes that disfavour contractual partners and/or their end users by no later than two months before they are implemented, and in other respects without undue delay after the changes have been decided on.

9.2.4 Price controls

283. Pursuant to Electronic Communications Act § 4-9, NPT is imposing on Network Norway AS an obligation of a reasonable price for voice call termination on mobile networks. A reasonable price may not exceed the price caps in accordance with the table below. The rates apply to termination of voice calls on Network Norway AS's mobile network, as well as voice mail services connected with Network Norway AS's mobile network.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Network Norway	1.155	1	0.90	0.75

Table 2c: Price cap per minute for voice call termination on Network Norway AS's mobile network in the period 1 February 2009 - 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

284. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

285. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per minute rate, etc.).

286. Pursuant to Electronic Communications Act § 10-3, NPT is directing Network Norway AS to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by the Authority before rate

changes can be implemented. NPT may require changes to the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate reduction for 1 February 2009, Network Norway AS must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

287. Pursuant to Electronic Communications Act § 4-9, NPT is directing Network Norway AS to have reasonable prices for interconnection to mobile networks (registration charge, primary system access and other rates).

9.3 Ventelo AS

288. NPT is imposing the following specific obligations on Ventelo AS in the market for voice call termination on Ventelo AS's virtual mobile network:

9.3.1 Interconnection

289. Since Ventelo AS has been designated as an undertaking with significant market power in the market for voice call termination on mobile networks, the company will have an obligation to meet all reasonable requests for interconnection, cf. Electronic Communications Act § 4-2 third paragraph.

290. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is imposing on Ventelo AS an obligation to meet reasonable requests to enter into termination purchasing agreements from other undertakings, including the purchase of necessary connection products. The obligations apply to reasonable requests for entering into a termination purchasing agreement to fixed and mobile networks. The obligation applies only to agreements on traffic from an operator's own end users. The obligation can be met by concluding a direct or indirect interconnection agreement. Reasonable request means a request to purchase a termination product in accordance with a standard interconnection regime, including a standard technical interface. Furthermore, a request will be reasonable only when the party invoking the purchase obligation also concludes a direct or indirect agreement that results in the reciprocal exchange of traffic. Price terms that are submitted to the buyer must be in accordance with orders issued under public law regarding what is a lawful termination rate.

291. If access is denied, Ventelo AS shall give the requester a documented and justified refusal of the request, cf. Electronic Communications Act § 4-2 third paragraph last sentence. The justification must contain all information necessary to evaluate the basis for the refusal, such as e.g. the reason access is denied, with the necessary technical documentation.

292. Pursuant to Electronic Communications Act § 4-2 third paragraph NPT is imposing on Ventelo AS an obligation to conclude without undue delay negotiations on entering into or amending agreements for termination on its virtual mobile network. Ventelo AS is obliged upon the request of the other party to document time spent vis-à-vis that party. NPT is to receive a copy of such requested documentation. The obligation to document time spent does not apply to requests made later than three months after the relevant negotiations were concluded.

9.3.2 Publication

293. Pursuant to Electronic Communications Act § 4-6, NPT is directing Ventelo AS to publish its prices including any discounts for termination on mobile networks. Publication on

Ventelo AS's website is regarded as a satisfactory method of publication. Standard rates and any discounts with related criteria shall be stated.

294. Pursuant to Electronic Communications Act § 4-6 first, cf. fourth, paragraph, NPT is directing Ventelo AS to give advance notice to other undertakings of any changes in existing services that disfavour the other parties to its agreements and/or their end users, no later than two months before the changes are implemented. Information regarding other changes in agreement terms shall be notified without undue delay after the changes have been decided on.

295. Pursuant to Electronic Communications Act § 10-3, NPT is directing Ventelo AS to send NPT any termination on mobile networks-related agreements with parties other than Telenor ASA, NetCom AS or Tele2 Norge AS. Submission to NPT shall take place without undue delay and no later than two weeks after the signature date. Ventelo AS is furthermore obliged to inform NPT about changes in the agreements. The information shall make clear where in the agreement the changes have been made and what they consist of. NPT shall be informed of changes that disfavour contractual partners and/or their end users by no later than two months before they are implemented, and in other respects without undue delay after the changes have been decided on.

9.3.3 Price controls

296. Pursuant to Electronic Communications Act § 4-9, NPT is imposing on Ventelo AS an obligation of a reasonable price for voice call termination on mobile networks. A reasonable price may not exceed the price caps in accordance with the table below. The rates apply to termination of voice calls on Ventelo AS's mobile network, as well as voice mail services connected with Ventelo AS's mobile network.

	Currently	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Ventelo	1.155	1	0.90	0.75

Table 3c: Price cap per minute for voice call termination on Ventelo AS's mobile network in the period 1 February 2009 - 31 December 2010. Today's current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

297. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

298. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per minute rate, etc.).

299. Pursuant to Electronic Communications Act § 10-3, NPT is directing Ventelo AS to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by the Authority before rate changes can be implemented. NPT may require changes to the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate reduction for 1 February 2009, Ventelo AS must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

300. Pursuant to Electronic Communications Act § 4-9, NPT is directing Network Norway AS to have reasonable prices for interconnection to mobile networks (registration charge, primary system access and other rates).

9.4 Barablu Mobile Norway Ltd.

301. NPT is imposing on Barablu Mobile Norway Ltd. the following specific obligations in the voice call termination market on Barablu Mobile Norway Ltd.'s mobile network in Norway:

9.4.1 Interconnection

302. Since Barablu Mobile Norway Ltd. has been designated as an undertaking with significant market power in the market for voice call termination on mobile networks, the company will have an obligation to meet all reasonable requests for interconnection, cf. Electronic Communications Act § 4-2 third paragraph. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is imposing on Barablu Mobile Norway Ltd. an obligation to meet reasonable requests to enter into agreements for purchasing termination from other providers.

303. Pursuant to Electronic Communications Act § 4-2 second paragraph, NPT is imposing on Barablu Mobile Norway Ltd. an obligation to meet reasonable requests to enter into termination purchasing agreements from other undertakings, including the purchase of necessary connection products. The obligations apply to reasonable requests for entering into a termination purchasing agreement to fixed and mobile networks. The obligation applies only to agreements on traffic from an operator's own end users. The obligation can be met by concluding a direct or indirect interconnection agreement. Reasonable request means a request to purchase a termination product in accordance with a standard interconnection regime, including a standard technical interface. Furthermore, a request will be reasonable only when the party invoking the purchase obligation also concludes a direct or indirect agreement that results in the reciprocal exchange of traffic. Price terms that are submitted to the buyer must be in accordance with orders issued under public law regarding what is a lawful termination rate.

304. If access is denied, Barablu Mobile Norway Ltd. shall give the requester a documented and justified refusal of the request, cf. Electronic Communications Act § 4-2 third paragraph last sentence. The justification must contain all information necessary to evaluate the basis for the refusal, such as e.g. the reason access is denied, with the necessary technical documentation.

305. Pursuant to Electronic Communications Act § 4-2 third paragraph, NPT is imposing on Barablu Mobile Norway Ltd. obligation to conclude without undue delay negotiations on entering into or amending agreements for termination on its mobile network. Barablu Mobile Norway Ltd. is obliged upon the request of the other party to document time spent vis-à-vis that party. NPT is to receive a copy of such requested documentation. The obligation to document time spent does not apply to requests made later than three months after the relevant negotiations were concluded.

9.4.2 Publication

306. Pursuant to Electronic Communications Act § 4-6, NPT is directing Barablu Mobile Norway Ltd. to publish its prices including any discounts for termination on its virtual mobile network. Publication on Barablu Mobile Norway Ltd.'s website is regarded as a satisfactory method of publication. Standard rates and any discounts with related criteria shall be stated.

307. Pursuant to Electronic Communications Act § 4-6 first, cf. fourth, paragraph, NPT is directing Barablu Mobile Norway Ltd. to give advance notice to other undertakings of any changes in existing services that disfavour the other parties to its agreements and/or their end users, no later than two months before the changes are implemented. Information regarding other changes in agreement terms shall be notified without undue delay after the changes have been decided on.

308. Pursuant to Electronic Communications Act § 10-3, NPT is directing Barablu Mobile Norway Ltd. to send NPT any termination on mobile networks-related agreements with parties other than Telenor ASA, NetCom AS or Tele2 Norge AS. Submission to NPT shall take place without undue delay and no later than two weeks after the signature date. Barablu Mobile Norway Ltd. is furthermore obliged to inform NPT about changes in the agreements. The information shall make clear where in the agreement the changes have been made and what they consist of. NPT shall be informed of changes that disfavour contractual partners and/or their end users by no later than two months before they are implemented, and in other respects without undue delay after the changes have been decided on.

9.4.3 Price controls

309. Pursuant to Electronic Communications Act § 4-9, NPT is imposing on Barablu Mobile Norway Ltd. an obligation of a reasonable price for voice call termination its mobile network. A reasonable price may not exceed the price caps in accordance with the table below. The rates pertain to voice call termination on Barablu Mobile Norway Ltd.'s mobile network, as well as voice mail services connected to Barablu Mobile Norway Ltd.'s mobile network.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
Barablu	1.61	1	0.9	0.75

Table 4c: Price cap per minute for voice call termination on Barablu Mobile Norway Ltd.'s mobile network in the period 1 February 2009 - 31 December 2010. The current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

310. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

311. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (rate per call, peak and off-peak per minute rate, etc.).

312. Pursuant to Electronic Communications Act § 10-3, NPT is directing Barablu Mobile Norway Ltd. to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by the Authority before rate changes can be implemented. NPT may require changes to the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate reduction for 1 February 2009, Barablu Mobile Norway Ltd. must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

313. Pursuant to Electronic Communications Act § 4-9, NPT is directing Barablu Mobile Norway Ltd. to have reasonable prices for interconnection to mobile networks (registration rate, primary system access and other rates).

9.5 MTU Gruppen AS

314. NPT is clarifying the price controls the Authority imposed on MTU Gruppen AS in the decision of 8 May 2007 by imposing a price cap for voice call termination on MTU Gruppen AS's mobile network. This means that a reasonable price may not exceed the price caps in accordance with the table below. The rates apply to termination of voice calls on MTU Gruppen AS's mobile network, as well as voice mail services connected with MTU Gruppen AS's mobile network.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
MTU	1.26	1	0.90	0.75

Table 5c: Price cap per minute for voice call termination on MTU Gruppen AS's mobile network in the period 1 February 2009 - 31 December 2010. The current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

315. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

316. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per minute rate, etc.).

317. Pursuant to Electronic Communications Act § 10-3, NPT is directing MTU Gruppen AS to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by the Authority before rate changes can be implemented. NPT may require changes to the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate reduction for 1 February 2009, MTU Gruppen AS must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

318. Pursuant to Electronic Communications Act § 4-9, NPT is directing MTU Gruppen AS to have reasonable prices for interconnection to mobile networks (registration rate, primary system access and other rates).

9.6 TDC AS

319. NPT is clarifying the price controls the Authority imposed on TDC AS in the decision of 8 May 2007 by imposing a price cap for voice call termination on TDC AS's mobile network. This means that a reasonable price may not exceed the price caps in accordance with the table below. The rates apply to termination of voice calls on TDC AS's mobile network, as well as voice mail services connected with TDC AS's mobile network.

	Current rate	1 February 2009 – 30 July 2009	1 July 2009 - 30 June 2010	1 July 2010 – 31 December 2010
TDC	1.155	1	0.90	0.75

Table 6c: Price cap per minute for voice call termination on TDC AS's mobile network in the period 1 February 2009 - 31 December 2010. The current rate includes a share of the call set-up charge based on a two-minute call. All prices are in NOK (excluding VAT).

320. The price cap applies per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per-minute rates etc.). The weighting shall be based on actual call volume and patterns in the previous year.

321. NPT will be able to issue new decisions on price controls at the end of the price cap period, or decide to remove price controls. Until a new decision is issued, the rate shall not exceed NOK 0.75 per minute, calculated as a weighted average of various price elements (charge per call, peak and off-peak per minute rate, etc.).

322. Pursuant to Electronic Communications Act § 10-3, NPT is directing TDC AS to inform the Authority of proposals for new rates and the weighting on which they are to be based, including documentation for the weighting chosen, at least three months before the rate change. Such proposals must be approved in advance by the Authority before rate changes can be implemented. NPT may require changes to the proposal submitted prior to approval if NPT does not find it substantiated that the proposal is under the price cap. For the rate reduction for 1 February 2009, TDC AS must submit new rates and the weighting on which the rates are to be based as soon as possible and no later than 1 December 2008.

323. Pursuant to Electronic Communications Act § 4-9, NPT is directing TDC AS to have reasonable prices for interconnection to mobile networks (registration rate, primary system access and other rates).

10 Changes in existing obligations

324. Current specific obligations relating to price controls for Tele2 Norge AS, MTU Gruppen AS and TDC AS in the markets for voice call termination on mobile networks (cf. Chapter 4) will be replaced when imposition of new obligations takes effect. In other respects the specific obligations that NPT imposed on the companies in its decision of 8 May 2007 will continue to be in force.

325. This decision, and thus the obligations, takes effect as soon as the decision is final. If during any appeal, implementation of the decision is postponed, the removal of existing obligations is postponed until a final decision on the appeal, cf. Electronic Communications Act § 11-6.