

The EU telecommunications legislation for the Digital Single Market

The Nordic NRAs' viewpoints

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1 Introduction

The Nordic regulators for electronic communications prepared a common position on the Digital Single Market Strategy in August last year. Now the Nordic NRAs have agreed on some additional key regulatory issues. Some of the main targets for the future regulatory framework are to ensure competition and to promote connectivity to NGA networks. This can be achieved if regulation is made future proof. The Nordic regulators also agree that the regulatory burden should be reduced where possible.

This document has been prepared as a common effort by the communications regulatory authorities from the five Nordic countries: Erhvervsstyrelsen (Denmark), Viestintävirasto (Finland), Póst- og fjarskiptastofnun (Iceland), Nasjonal kommunikasjonsmyndighet (Norway) and Post- och telestyrelsen (Sweden).

2 New tools for market regulation

A rapid expansion of NGA networks has taken place in the Nordic countries and the market is characterised by a strong demand for speed and capacity. It is not only by the incumbent operator or other traditional operators that deploy infrastructure, but also by local and regional entities, such as municipalities and electricity companies. However, access to fixed networks would appear to remain a bottleneck resource also in the future, at least in parts of the market, and tools to address potential competition problems are needed.

The current SMP regime is not sufficiently tailored to meet the challenges we see in the Nordic countries. SMP regulation risks becoming difficult to apply in practice in a situation where we may see a decreasing substitutability between low capacity copper based broadband services (e.g. ADSL based services) and high capacity fixed broadband services (e.g. fibre or cable networks or services based on new technologies in the copper network like G.fast and vectoring). The roll-out of NGA networks differ from the rollout of the traditional copper network by being more demand-driven and thus takes place step by step in smaller areas. Thus, there are a large number of infrastructure owners with a varying geographical distribution, often as a patchwork of non-overlapping fibre networks where the overall market situation in any reasonable geographical market could signal effective competition. Applying the existing SMP regulation in these new market conditions may not be efficient in addressing competition problems. The bottlenecks will occur on a local level and the geographical distribution will often be scattered. Even in locally defined geographical markets it may be difficult to identify an SMP in a stable way. Symmetric regulation could be introduced in parts of the access network where there is no competing infrastructure where needed. It is important that NRAs pursue the lightest possible regulatory option and that all regulatory options emphasize the principle of proportionality. The Nordic regulators welcome new tools and an adaptation of the SMP regulation to the new market conditions.

On voice call termination the Nordic regulators would like to stress the need to have a forward-looking approach. The current development shows declining call termination volumes. Furthermore there is an increasingly large proportion of call traffic is being migrated from PSTN to IP networks. If voice call termination is still regarded as a bottleneck in the near future, it should be regulated in a simplified way. Symmetric regulation in the form of price caps at an European level would be a more efficient way of handling the lack of consistency in application of the current recommendation and overall a better way of reaching harmonization. A price cap regulation would need to be on an effective level, ensuring that no inefficiencies remain. This would involve greater security for end-users and more predictable and consistent rules for operators.

The Nordic regulators also call for a possibility to extend the periods for market analysis if the market is stable. The change would reduce the administrative burden for both operators and regulatory authorities.

3 Regulation of Over-The-Top (OTT) services

The OTT development has been intensive over the last couple of years. When the open Internet is used as distribution platform, the delivery of telecommunication and media services becomes global and consumers are no longer forced to buy these services together with the network service. This leads to a more competitive market situation at local level.

Previously, the aggregator or distributor role was linked to the network ownership, giving these companies a unique position as owners of a bottleneck resource. Today, we see a development, where the link between the aggregator and network ownership is disintegrating. This development removes the high entry barriers on delivery of content services as aggregator and it opens up for many companies to position themselves in the role as aggregator/content service provider. So far, it is the experience in the Nordic countries that the reduced vertical integration has a positive effect on market dynamics, innovation and investment.

It is important that both consumers and companies continue to benefit from this digital transformation and the regulation of the Digital Single Market should be fit to take this development into account and underpin further innovation.

The OTT development has happened at a very fast pace and is expected to continue to do so. In order to support market innovation, and new business models, the Nordic regulators recommend a cautious approach to regulation.

Therefore, the Nordic regulators recommend that possibilities to simplify, modernize and lighten existing regulation should be pursued to achieve a level playing field for all companies and reduce regulatory burdens where possible. We recommend a rule by rule assessment where it is carefully considered if rules are fit for purpose, and – if regulation is deemed necessary – it should be considered whether horizontal regulation is able to handle the issues or an extension of the sector specific telecom regulation to include other players is needed. When it comes to e-privacy there may be a wider scope for some provisions in the e-privacy directive to be applied to other services.

4 Spectrum harmonization

The Nordic regulators share the goal of ensuring that all citizens have rapid access to the next generation of mobile services. Spectrum is the essential – but finite resource – for wireless services and efficient use of spectrum is essential for meeting the demand for access and coverages and the introduction of next generation services like 5G mobile services. Effective spectrum management is critical to the Digital Single Market.

Spectrum management should ensure that the benefits of European and international harmonisation are achieved, for example through the development of equipment for a global market. The Nordic regulators acknowledge the importance of coordination and harmonization as an important part in the development of new mobile services. Its members are therefore active both on the global level, i.e. ITU and WRC, on the regional level in CEPT and on the EU/EEA level. The Framework already establishes important EU/EEA-wide common regulatory principles aimed at ensuring effective spectrum management at the European and national level, including the promotion of competition,

regulatory certainty, and technology and service neutrality. These have been important drivers for the development of wireless markets and services in Europe.

Harmonisation is already a reality at a European level. Member States actively co-ordinate use of spectrum through well-established processes at both global and regional levels. Additional mandatory harmonisation should be approached with caution, as we should be mindful of the risks of making sub-optimal use of this scarce resource, e.g. by harmonising spectrum that is not requested by the users in the market. The spectrum needs to deliver wireless services are not the same in every country, even where the services delivered are pan-European. In order to deliver the next generation of wireless services effectively to all European citizens, national authorities must retain sufficient flexibility to manage their spectrum in a way that responds to their national circumstances and particular needs. That said the Nordic regulators believe that further co-operation, which has already brought benefits, can be further developed, such as through the exchange of experiences and the development and dissemination of regulatory best practices within BEREC and RSPG and the timing for awarding spectrum to the operators, but not through further mandatory harmonisation.

The Nordic market is categorized by a high demand for wireless services and challenges in demography. The Nordic market is a forerunner when it comes to making spectrum available but also when it comes to developing new services to all citizens. The 4G networks are more or less covering all citizens and the market is in the forefront of developing 5G technology. For the continued development of the Nordic market it is vital that the harmonization measures do not hamper the continued development of markets, where the uptake is already high and where availability and coverage is already good.

The Nordic regulators would also like to point out that coordination of spectrum use with neighbouring states that are not part of the EU/EEA is necessary.

5 Better possibilities to switch service provider

European end-users continue to rate the market for electronic communication among the worst to act on in terms of ability to make informed decisions. Transparency needs to be complemented with measures to make it easier for end-users to switch providers after entering into an agreement. The Nordic NRAs believe that it would be helpful for end-users if the same rules on maximum commitment periods and notice periods would be applied on all services included in a bundle of which at least one is an electronic communication network or service, especially given the latest development towards more services competing with traditional electronic communication services. Emerging business models and offers therefore need to be included to this extent, in order to avoid creating more possibilities for unnecessary lock-in effects.

End-user protection is a highly prioritized issue in the Nordic countries, and Nordic end-users have high expectations of their telecom services. Therefore, the Nordic NRAs believes it is important that the new framework does not prevent the Nordic countries from maintaining a high level of end-user protection.