

Competition: Statement of Objections sent to Telenor

The EFTA Surveillance Authority

- Ensures that Norway, Iceland and Liechtenstein respect the EEA Agreement.
- Protects the rights of individuals and market participants.
- Ensures timely implementation of EEA law.
- Pursues breaches of EEA law.
- Enforces the rules concerning state aid.
- Takes action against breaches of the EEA competition rules.

Summary

On 1 February 2016 the Authority sent a Statement of Objections to Telenor Norge AS and Telenor ASA. The Statement of Objections sets out the Authority's preliminary view that Telenor has infringed Article 54 of the EEA Agreement through applying:

- i) a margin squeeze between wholesale access and origination prices and retail prices charged by Telenor for mobile broadband services to residential customers in Norway from January 2008 until the end of 2012, and
- ii) lock-in clauses in Telenor's retail contracts with business and government customers in Norway from January 2008 until the present.

What is a Statement of Objections?

A Statement of Objections is a formal step in the Authority's investigations into suspected violations of the EEA antitrust rules. The Authority informs the parties concerned, in writing, of the objections raised against them. The addressees can examine the documents in the Authority's investigation file and reply in writing to the Statement of Objections. They may also request an oral hearing to present their comments on the case.

The Authority takes a final decision only after the parties have exercised their rights of defence. Sending a Statement of Objections does not prejudice the final outcome of the procedure.

The Authority's preliminary conclusions

Following an inspection of Telenor in December 2012, finalised at the premises of the Authority in Brussels in March 2013, the Authority has carried out an extensive investigation of Telenor's conduct in three Norwegian markets: the market for wholesale mobile access and origination services, the market for mobile broadband services to

residential customers, and the market for mobile communications services to business customers.

Concerning the first two markets, the Statement of Objections sets out the Authority's view that the margin squeeze has likely prevented Telenor's wholesale customers from competing in the market for the provision of mobile broadband services to residential customers.

The wholesale prices Telenor charged to its wholesale customers (Network Norway, Ventelo, TDC and all service providers) were higher than the prices Telenor offered to its own residential mobile broadband customers. Thus, Telenor's wholesale customers could not sell mobile broadband services profitably to residential customers and were therefore prevented from competing in the market.

The Authority considers Telenor to be dominant in the market for wholesale mobile access and origination services. A margin squeeze imposed by a company dominant in the relevant wholesale market may constitute an abuse of a dominant position under Article 54 EEA.

As regards the market for mobile communications services to business consumers, the Statement of Objections sets out the Authority's view that, through clauses in its contracts, Telenor has likely prevented its competitors from entering and competing in that market. The clauses tie Telenor's subscribers to it for a period of (currently) 24 months and they impose a penalty fee of (currently) NOK 3000 per subscription in case of premature termination. This practice makes it very difficult for consumers to switch provider and makes it overly expensive for competitors to capture customers from Telenor.

The Authority considers Telenor to be dominant also in this market. A dominant player is prohibited under Article 54 EEA from applying anti-competitive practices which artificially raise the barriers to entry and expansion for its competitors in the same market where it is dominant.

Next steps

Telenor is invited to comment on the Statement of Objections by 11 April 2016 and will also have the right to be heard in an oral hearing.

If the Authority's preliminary conclusions are confirmed, it may adopt a decision requiring Telenor to cease the conduct identified as restrictive of competition and it may also impose a fine.

There is no legal deadline for the Authority to complete inquiries into potentially anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Authority, and the exercise of the rights of defence.

The competition rules in the EEA Agreement

The competition rules in the EEA Agreement correspond to those in the Treaty on the Functioning of the European Union (TFEU). **Article 54 EEA**, the equivalent of Article 102 TFEU, prohibits dominant undertakings from abusing their market power. That may be the case, for example, for certain practices aimed at eliminating competitors from the market.

The EFTA Surveillance Authority's role in the field of competition

The EEA competition rules are enforced across the EEA by the EFTA Surveillance Authority and by the European Commission. Responsibility for handling individual cases is divided between the Authority and the Commission on the basis of rules laid down in the EEA Agreement.

The Authority's main task in the field of competition is to ensure that undertakings active in the EFTA States (Norway, Iceland and Liechtenstein) comply with the EEA competition rules. For this purpose, the Authority enjoys the same investigative and enforcement powers as the European Commission, including the power to impose fines of up to 10% of global turnover on undertakings that act in contravention of the rules.

The purpose of imposing fines is to deter companies from infringing the competition rules. Fines are calculated in accordance with the Authority's [guidelines](#) on the setting of fines.

It is further incumbent upon the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

Further information about the EEA competition rules and the role of the Authority can be found on the Authority's website: <http://www.eftasurv.int/competition/>.