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Global Practice Guides

TMT

Law and Practice – Norway

Contributed by
Kvale Advokatfirma DA

2018

NORWAY

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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Kvale Advokatfirma DA's TMT team consists of nine partners (including two new arrivals in 2017) and seven other qualified lawyers. Its experts offers comprehensive specialist advice in both contentious and non-contentious matters across the whole range of the sector, including: telecommunication and internet (electronic communications); media and entertainment; electronic commerce (both B2B and B2C); outsourcing

and other IT contracts; digitalisation and Industry 4.0; cyber-security; data protection and other consumer protection issues; transactions within the TMT sector; patents, trade mark, design and copyright; dispute resolution relating to TMT and IPR. The TMT team works with Kvale's other practice areas – in particular the field of M&A – on both transactions and dispute resolution relating to TMT.

Authors



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1. General Structure of TMT Regulation and Ownership

1.1 Statutes, Laws and Legislation

The Electronic Communications Act (Ecom Act) and corresponding regulations (the Ecom Regulations, the Numbering Regulations, etc) is the key legislative instrument in the telecoms sector. The Ecom Act implements all relevant EU Directives in the Ecom sector, except the rules in the Bet-

ter Regulation Directive relating to BEREC (see upcoming changes below in section 8.2). All providers of electronic communications networks and electronic services are subject to the general rules (ie, technical regulations, consumer protection rules, etc). The incumbent operator, Telenor, is designated as having significant market power (SMP) and is

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subject to a number of ex ante obligations in several of the predefined markets stipulated in the EFTA Surveillance Authority's recommendation on relevant markets (corresponding to the EU Commission's recommendation).

The broadcasting sector is primarily regulated through the Broadcasting Act and secondary regulations relating to broadcasting and audio-visual on-demand services and the Media Ownership Act. The Broadcasting Act implements the Television Without Frontiers Directive (89/552/EEC) and the Audiovisual Media Service (AVMS) Directive (2013/13/EU).

A number of non-sector-specific acts are also of importance to the Telecom Media Technology (TMT) industries, in particular, the Personal Data Act (2000/31), the E-commerce Act (2002/35), the e-Signatures Act (2001/81) and the e-Money Act (2002/74) each of which implements relevant corresponding EU Directives. With regard to intellectual property, the most relevant is the Copyright Act (1961/2), which is currently under revision. The Ministry of Culture has proposed a new act that will fully replace the current Copyright Act; the draft bill is pending adoption by Parliament (*Stortinget*).

1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The public administrative regulatory bodies that have a role in making policy and regulating the TMT industries in Norway are:

- National Communications Authority (Nkom) and the Ministry of Transport and Communications (electronic communications);
- Data Inspectorate and the Privacy Appeals Board (processing of personal data);
- National Competition Authority (NCA) and the Ministry of Trade, Industry and Fisheries (competition law and policy);
- Norwegian Media Authority and the Ministry of Culture (media laws and policy);
- Norwegian National Security Authority (security issues relating to electronic communications infrastructure);
- Ministry of Local Government and Modernisation (coordinating ICT policies across different sectors) and the Agency for Public Management and eGovernment.

1.3 Developing Rules and Adopting Policies

The rules regulating the TMT industries are partly based on international law, mainly EU law, but also certain specific national laws. Since Norway is a member of EFTA/EEA, and not an EU member, EU legislation is not automatically binding in Norway. In order to become effective law in Norway, EU legislation must be made part of the EEA agreement

transposed into Norwegian law, by formal adoption as Norwegian law.

In addition, there are a number of administrative decisions that form current policy and/or rules. In the Ecom sector, the Nkom imposes specific rules for operators with SMP (Telenor, except in the markets for fixed and mobile termination, where all operators are designated as having SMP). The Data Protection Authority (DPA) has developed a number of authorised documents, containing detailed rules for processing of personal data. There are also a number of agreed documents, developed in co-operation between industry players and the Data Inspectorate and the Consumer Ombudsman to safeguard policy and especially consumer interests.

1.4 Ownership of Telecoms Media Technology Industries

Most companies in the TMT sector are privately owned. However, the largest telecommunication company (Telenor) and the largest broadcaster (NRK) are controlled by the Norwegian State. Telenor was partly privatised and listed in 2000 (Oslo and Nasdaq), but the Norwegian State has retained ownership of 54% as well as a government fund owning a further 4%. The Norwegian public broadcaster, NRK, is wholly owned by the state. The remaining commercial broadcasting and media companies are privately owned. A number of media companies receive public funding and subsidies, most notably selected print press. This is controversial, due to perceived political bias in which papers are subsidised, and raises questions about the independence of subsidised press.

1.5 Limits on Participation

All TMT industries are open to competition. In the media sector and the telecommunications sector, certain services require authorisation (ie, a licence) but most services may be offered after a simple registration procedure. Since spectrum is a scarce resource, a spectrum authorisation is required to operate mobile, satellite and terrestrial broadcast communications services networks. The same applies to broadcasting services (TV and radio) transmitted through licensed networks. The licensing regime functions as a regulatory tool to prevent market concentration and thereby facilitate competition.

1.6 Restrictions on Foreign Ownership or Investment

There are no restrictions on foreign ownership in the TMT industries.

1.7 World Trade Organisation Membership

Norway is a member of the World Trade Organization, and has ratified GATS. Norway has committed to GATS supplement 1-4. The exemptions relate to the territory of Svalbard.

Norway has strong interests in exporting telecom services, especially within mobile services, where several Norwegian players operate globally. Accordingly, Norway's position when it comes to telecom services is that Member States remove all national restrictions, especially for cross-border services and establishments, as well to undertaking basic competition law principles.

1.8 Appellate Process

Any decision by the regulatory authorities mentioned above may be appealed to the ordinary courts or to specific administrative appeals bodies such as the:

- Ministry of Transport and Communications (decisions by Nkom);
- Media Appeals Board (decisions by the Media Authority);
- Privacy Appeals Board (decisions by the Data Inspectorate);
- Ministry of Trade (decisions by the NCA).

1.9 Annual or Recurring Fees

Companies that have been awarded rights to use spectrum (spectrum authorisations) must pay a licence fee and an administrative fee, in addition to the purchase price for spectrum. The licence fees are determined annually by the Norwegian Parliament, as part of the national budget process. The administrative fees are determined based on the total budgeted cost of operations for Nkom which in turn is charged (on a proportionate basis) to the companies holding spectrum as well as the registered service providers

2. Broadcasting/Media

2.1 Important Companies

The most important public broadcasters are NRK (state-owned public broadcaster with three main TV channels and three main radio channels), TV2 (with eight TV channels), Discovery Networks Norway (TV Norge, FEM, MAX, VOX, TLC and Eurosport) and Modern Times Group (TV3, TV6, ViaSat 4, P4 Radio Hele Norge and P5).

The most important distribution companies are Riks TV (DTT), Canal Digital (Cable and DTH), Get (Cable) Altibox (fibre and on-demand services) and Viasat (DTH).

The most important production companies are NRK, Rubicon TV, Monster, Strix and Mastiff entertainment.

Several providers also offer on-demand multi-channel distribution of content, the most notable are NRK, Viaplay (ViaSat), Sumo (TV2), Dplay and Eurosport Player (Discovery) and Altibox (Lyse). In addition, standalone players such as Netflix, HBO and Apple offer on-demand services.

Media companies who traditionally have had strong interests in printed media (newspapers and books) have expanded into digital media, and the largest companies are Schibsted (leading local newspapers in the biggest cities and national papers VG and Aftenposten), Egmont (TV2 and 50 other media companies) and Amedia (stake in digital news site Nettavisen and owns various local print papers connected to the Labour Party). The largest newspapers VG and Dagbladet have expanded their business to audio-visual content, especially VG through VGTV (app and webpage), which broadcasts both licensed and original content online.

2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

National and local television broadcasting services providing terrestrial networks require a licence. Each of the separate licences for radio broadcasting is issued for national channels (Radio Norge and P4 Radio Hele Norge) and local radio channels. The licences are awarded after an administrative licensing process, mainly based on 'beauty contests'. The location of the broadcaster and content requirements are usually the most important criteria. The same applies to national and local radio broadcasting licences.

A separate licence to operate DTT, covering both local and nationwide channels has been awarded. It was awarded after a public auction, and is held by Norges Televisjon (NTV) and expires in June 2021. The DTT licence specifies that three years prior to the expiry date, NTV shall discuss continuation or cessation of its business with the relevant ministries. However, there is no automatic renewal and the continuation of the DTT licence may be subject to a public auction, most likely based on a beauty contest.

National broadcasting that requires a licence has traditionally been subject to an annual fee. However, due to the major structural changes caused by global competition, technological development and media consumption, the current situation is that the government will for the first time offer one national television broadcaster and one national radio broadcaster subsidies for holding the licence. With regard to national television broadcasting, the licence-holder will receive an annual amount of NOK135 million. This is a major change in Norwegian media politics and has been heavily debated in 2017.

Other media services provided through networks without spectrum restraints (ie, cable TV or fibre networks) do not require a licence but must register with the Media Authorities.

2.3 Typical Term for a Licence/Authorisation to Provide Services

NRK's licence to broadcast national television and radio services follows directly from the Broadcasting Act.

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TV2's national television broadcast licence has since 1992 been renewed three times, each licence having a term of either seven or ten years. The previous licence was granted in 2009 and expired on 31 December 2016. After first refusing to apply for renewal, TV2, as the only company, applied for a new licence in September 2017, after negotiations with the government. The licence is likely to be granted and will have a term of five years. Licences for local TV have a term of ten years and local radio licences have a term of seven years. The DTT licence has a term of 15 years. The renewal process may vary and is often based on open competition with renewal not being a certainty. Commercial radio licence grants have been criticised for political bias.

The two licensed national radio broadcasters (Radio Norge and P4 Radio Hele Norge) have a licence term of ten years, both expiring in December 2017.

2.4 Transfer of Licences/Authorisations to Other Entities

Licences are transferrable under Norwegian law. The transfer of broadcasting licences was previously regulated in the Media Ownership Act, and this Act allowed the Media Authority to intervene in the event a change of ownership gave a single entity control of more than one third of the collective daily media, TV viewers or radio listeners in order to prevent concentration of ownership in a company active in each of the radio, television or daily media segments. The Media Ownership Act was repealed and replaced by the Openness in Media Ownership Act on 1 July 2016. The purpose of the Act is to ensure more openness around media ownership. The Media Authority plays a key role in enforcing the law, and its main task is to create greater transparency, awareness and knowledge about ownership in Norwegian media. The media companies are obliged to provide the Media Authority with any information they need for performing their duties. This includes providing both information concerning ownership in Norwegian media and information about partnerships that gives a contracting party influence over editorial content.

An important change is, however, that administrative proceedings relating to changes in ultimate ownership or mergers are now entirely delegated to the Competition Authorities, and the Competition Authority monitors and has the authority to intervene and prohibit mergers that strengthen or create a dominant position under general competition law.

2.5 Spectrum Allocated

TV and radio broadcasting are using a wide range of different frequencies, mainly in the lower spectrum. A wide range of frequencies is also allocated for broadcasting and media.

P4 Radio, SBS Radio Norge and NRK have low frequency bands between 87.5 MHz and 108 MHz. NRK has an exclusive right to use frequencies in the 426.65–452.3625 MHz spectrum.

The DTT network uses the 470–790 MHz band. In December 2015, the government decided that the 700 MHz band should be made available to mobile communications services, and not reserved for broadcasting purposes, before the DTT licence expires in 2021. It is expected that the frequencies below 694 MHz will be used for DTT after 2021.

NRK and TV2 use the 2356–2366 MHz spectrum

2.6 Restrictions on Common Ownership

Except for the limitations that follow from general competition law (described in section 2.4 **Transfer of Licences/Authorisations to Other Entities** above) there are no restrictions on common ownership in broadcasting/media companies.

The Nkom is the supervision body for certain predefined telecom markets while the Competition Authority monitors the overall competition situation in the market, including monitoring mergers or other changes in ownership based on the merger control regulations. The Competition Authority has been active within telecom, which is first and foremost the purview of Nkom.

2.7 Content Requirements and Regulations

Norwegian broadcasters, including the public broadcasters NRK, TV2, Radio Norway and P4, have to meet several content requirements and regulations. Broadcasters transmitting from Norway must observe the Norwegian rules whereas broadcasters transmitting from a foreign country are subject to the laws of the country they are established.

The Norwegian rules include those for the protection of minors, including watershed rules (no adult programmes before 21:00 and after 06:00, no programmes for 11 years or older before 19:00), as well as limitations on commercials directed towards children.

Broadcasters must also follow detailed advertising rules. In general, advertising must be made within advertising blocks and adhere to maximum exposure times. Advertisements may not exceed 15% of daily airtime, nor may they exceed 20% per hour. This means that only 12 minutes of advertising is allowed per hour.

Surreptitious advertisement and advertisement of harmful and illegal substances is prohibited (gambling, alcohol, tobacco). No products and/or services may be referred to and/or shown in broadcasting programmes in a manner designed to promote sales, and there are detailed rules relating to sponsorship – for instance, sponsor presentations

are limited to three consecutive sponsors not lasting more than ten seconds each. Radio advertisements must be kept separate from ordinary programmes.

Political advertisements are prohibited in TV and radio, and political parties may not sponsor broadcasting programmes.

Further, broadcasters are subject to rules that requires certain pre-produced content to be subtitled and also certain live content when this is technically feasible. In addition, broadcasters and other media services must adhere to ethical rules, adopted and governed by industry representatives (PFU- *Pressens Faglige Utvalg*).

2.8 Difference in Regulations Applicable to Broadcasting Versus Cable

The Audiovisual Media Service (AVMS) Directive (2013/13/EU) was implemented in Norwegian law in 2013. Since then, traditional television broadcasting services and on-demand services have been subject to similar rules, laid down in the Broadcasting Act. In addition to implementing the Directive, several other changes were made in the Broadcasting Act. Among other things, the changes made it possible to mandate must-carry obligations on all distribution platforms.

2.9 Transition from Analogue to Digital Broadcasting

The nationwide analogue terrestrial broadcasting was gradually replaced by a DTT network from 2007 up until an analogue switch-off in 2009. The DTT network is operated by Norges Televisjon – NTV (owned in equal shares by NRK, Telenor and TV2) and has a population coverage of 95%.

Norkring (owned by Telenor) owns and operates the largest transmission network for terrestrial broadcasting in Norway, and offers services based on both analogue and digital technology.

The Parliament decided in 2011 to switch off FM radio from 2017, and thereafter all public service broadcasting will be digital. Local radio stations will have the opportunity to continue to use the FM broadcast band until 2022.

2.10 Extent to Which Local Government Regulation is Pre-Empted

Not applicable for Norway.

3. Telecoms

3.1 Important Companies

Company	Revenues (2016)	Fixed (market share)	Mobile (market share)	Fixed Broad-band (market share)
Telenor	NOK 32.164 million	68.8 %	49.6 %	44.9 %
Telia	NOK 9.057 million	7.1 %	38.9 %	
Get/TDC	NOK 3.092 million	5.1 %		18.4 %
Next GenTel	NOK 1.358 million	4.6 %		6.9 %

3.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

In order to provide telecommunications services, a simple registration with Nkom is required. Provision of mobile and satellite services require a spectrum authorisation, which is awarded through a spectrum auction process. The time frame for spectrum auctions varies, depending on which spectrum blocks are being awarded commercial attractiveness, number of interested parties, interference issues, etc. The cost also varies depending on the spectrum. Wireless spectrum authorisations are normally awarded for 15-20 years at a time.

3.3 Transfer of Telecoms Licences/Authorisations to Other Entities

Spectrum authorisations are transferable but all transfers must be approved by the Ministry of Transport and Communications. If a spectrum authorisation is transferred to a party not holding a similar spectrum, the process is normally swift. In order to prevent excessive allocation of spectrum or inefficient use, the Ministry may refuse a transfer or set specific criteria for the transfer.

3.4 Regulations for Network-to-Network Interconnection and Access

Any telecom provider who offers termination of calls in fixed and mobile networks must meet all reasonable requests for interconnection (for termination of calls) and publish an interconnection offer and tariffs for termination of calls reference. In addition, all operators are subject to price regulation with predefined maximum tariffs. The maximum tariffs are set by Nkom based on a "pure LRIC" model.

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Disputes relating to interconnection or access are resolved either by Nkom (provided that the issue is regulated by the Ecom Act or decisions are in accordance with the Act) or by the ordinary courts. The Ecom Act prevents SMP operators with access obligations laid down in accordance with the Ecom Act from agreeing on arbitration in advance, but the parties to access or interconnection may agree on arbitration after the dispute has arisen.

3.5 Accounting, Functional and Legal Separation

Telenor has been designated as having SMP in six separate markets, defined in accordance with the EU Commission's recommendation on relevant markets in the electronic communications sector. The markets are:

- termination of calls in fixed and mobile networks (markets 3 and 7);
- call origination and access to mobile networks (former market 15);
- copper and fibre-based broadband access (markets 4 and 5);
- low-speed transmission capacity (market 6).

The access obligations imposed on Telenor include access to the relevant wholesale services as well as co-location obligations. Telenor must keep separate accounts in markets 4, 5 and 6. In markets 3, 4 and 7, price regulation (maximum tariffs) are imposed on Telenor. In market 15, Telenor must submit reports on accounting separation, and Nkom has imposed price regulation to prevent margin squeeze for competitors. A margin-squeeze regulation is also imposed in market 5.

3.6 Provisions for Access to Public and Private Land

A network operator that is unable to reach a commercial agreement with a landowner may seek to expropriate a right to install telecommunications equipment on the property based on provisions in the Ecom Act. Nkom will assess the expropriation and has, in some cases, expropriated rights of way in order to install masts/antennae for mobile network operators.

3.7 Rules which Govern the Use of Telephone Numbers

All providers of telephony services must offer number portability. A separate non-profit company has been established to offer an industry-wide service for number portability.

3.8 Regulation of Retail Tariff

Retail tariffs for electronic communications services are not regulated in Norway.

3.9 Rules to Promote Service in Underserved Areas

Telenor must provide telecom services in rural and underserved areas. Since Telenor is regarded as a player with strong market position in several telecom markets in Norway, Telenor is also subject to various universal service obligations and certain public service obligations. These obligations are set out in Telenor's licence and in a separate agreement between Telenor and the government. According to the licence and the agreement, the obligations also include special social obligations such as offering specific services that enable dysfunctional people access to telecom services, ensuring relevant telecom services in times of emergency, war and crisis, providing a coastal radio that meets the obligations that Norway has undertaken through international conventions, etc. From 1 January 2016, Telenor was relieved of its obligations to offer public phones and directory services.

In general, this universal service obligation will be provided on ordinary commercial terms, but there are mechanisms for public financing of the net costs related to the provision of universal services.

3.10 Extent to Which Local Government Regulations of Telecom Service is Pre-Empted

Not applicable for Norway.

4. Wireless

4.1 Important Companies

The three biggest companies in the wireless industry are:

- Telenor (49.6 %);
- Telia (38.9 %);
- ICE (5.5 %).

4.2 General Requirements for Obtaining a Licence/Authorisation to Provide Wireless Services

Licences to use spectrum for providing wireless services are mostly awarded through auctions. The procedures are set out in the Ecom Act which requires the process to be transparent, objective and non-discriminatory. Usually, there are conditions attached to the licences (eg, deadlines for roll-out requirements with specific coverage requirements) and the conditions are related to ensuring effective use of spectrum and achieving specific policy goals.

The auctions follow a standard procedure and it will normally take 12–20 months from when Nkom starts planning an auction to when a licence is granted. The preparation for the auction procedures and the auction rules normally takes 12–14 months, including public hearings where stakeholders may voice their views. Within this period, Nkom will carry out necessary analyses, consultation procedures and requests

for comments, decide the auction rules and invite relevant players to take part in the auction.

In general, the timeframe and final costs depend on the auction format as well as the specific spectrum.

The largest and most complex auction carried out thus far in Norway took place in 2013 and was a combined auction of spectrum in the 800 MHz, 900 MHz and 1800 MHz band. The aggregate bids amounted to NOK1.7 billion, and the outcome led to significant changes in the market because Tele2 (then the third largest mobile operator) did not succeed in obtaining spectrum. ICE, who prior to the auction only had spectrum in the 450 MHz band, acquired spectrum in the 800 and 900 MHz bands and has since been rolling out a third mobile network in competition with Telenor and Telia.

In May 2017 Nkom auctioned out four blocks in the 900 MHz. Telia and Telenor acquired two blocks each for respectively MNOK 394 and MNOK 396.

4.3 Transfer of Wireless Licences/Authorisations to Provide Wireless Services

Wireless licences/authorisations are transferable to other entities through changes in ultimate ownership or mergers. However, if a change of control leads to the consolidation of spectrum, the Ministry of Transport and Communications has the right to intervene and set conditions or, ultimately, withdraw a spectrum authorisation to prevent concentration.

4.4 Spectrum Allocation

The spectrum allocated for wireless services is in several blocks, below 1 GHz (800-900 MHz) and above 1 GHz, including 1800 MHz, 2.1 GHz and 2.6 GHz.

4.5 Procedures to Identify and Assign Spectrum Among Competitors

The procedures to assign spectrum amongst competitors have been based on spectrum auctions in various formats, including single bid auctions and simultaneous multiple-round auctions as well as beauty contests. The authorities will determine the auction format and particular rules depending on the expected number of interested parties, the need to prevent concentration and spectrum harvesting as well as other issues.

To ensure transparency, if a company applies for a certain spectrum which is unused, Nkom will publish information about the application and invite other companies to indicate their interest in obtaining the same spectrum to create competition.

Certain spectrum are assigned on the basis of auctions – for instance, when the “digital dividend” (800 MHz band) was

auctioned together with spectrum blocks in the 900 MHz band and the 1800 MHz band in 2013. Prior to the auction, there was a public hearing in which the authorities were able to identify the number of interested parties and take this into consideration before determining the auction rules. Similar proceedings were initiated prior to the 900 MHz spectrum auction in 2017.

Spectrum caps are used to prevent further market concentration and promote competition (the 800 MHz was capped to ensure that at least three separate operators could obtain spectrum).

There have also been separate auction procedures or determination procedures in order to re-allocate existing spectrum after auctions so that the operators have adjacent spectrum blocks.

4.6 Unlicensed Spectrum Uses

Certain spectrums do not require a licence and may be used freely for, among other things, Wi-Fi services, wireless microphones, etc. The scope of such spectrum is regulated in the so-called free-use regulations. For instance, available spectrum in frequency bands 510–790 MHz may be used for wireless microphones.

4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

Norway already has well-developed infrastructure within the telecom services, and it is one of the most digitised countries in the world.

Being a country with challenging geographic conditions, Norwegian policy is to have availability and quality of telecom services as a priority, and it is a political objective to increase the penetration of digital services. For instance, in rural areas, companies may be granted subsidies to establish and operate high-speed internet access.

Norway has a fairly strong infrastructure focus and pays attention to making developmental projects efficient, with a particularly strong focus on providing information about where new cables should be laid. Also, the legal framework for building on public land is continuously being revised to facilitate infrastructure projects.

4.8 Price Regulation for Mobile Services

Norway has implemented Regulation 531/2012 on roaming on public mobile communications networks within the EU/EEA. Articles 8, 10 and 13 specify the maximum rates for of respective calls, SMS and data traffic for end users travelling within the EU/EEA.

The new TSM-Regulation 2015/2120 is implemented into Norwegian law and came into force on 1 June 2017. This

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regulation introduced new and more detailed regulations for mobile service-providers, the most important change being that operators can no longer charge additional fees from end users using mobile services whilst travelling in the EU.

4.9 Regulation of Government and Commercial Wireless Uses

Governmental wireless use is not regulated differently from commercial use, although spectrum allocated to governmental use (ie, the multi-agency public safety network and the railroad network) have provisions in the licences reflecting that the spectrum shall be used for specific public services purpose (ie, limitations on commercial use and priority rules as well as other conditions).

However, there are some specific provisions pertaining to law enforcement and public services, for instance, permission to jam mobile services. Law enforcement may intervene and use spectrums that are allocated to other entities in particular cases of criminal procedure. The National Security Authority may also intervene in special circumstances, as may military entities.

4.10 Extent to Which Local Government Regulation of Wireless Service is Pre-Empted

Not applicable for Norway.

5. Satellite

5.1 Important Changes

Satellite services still play an important role as access technology, particularly in TV distribution (DTH), but also for other commercial services (at sea) as well as public services by the authorities. The most important companies operating satellite services in Norway are Telenor, Kongsberg and Airbus.

5.2 General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service

Most satellite earth stations, especially those used for SNG in the Ku-band, are exempted from licence requirements in Norway and may be freely operated without registration to Nkom. The spectrum authorisations required for operation of earth stations that do not meet the exemption criteria are awarded by Nkom.

Access to spectrum capacity for satellites is awarded according to the ITU Radio Regulations. Nkom is participating, on behalf of Norway, in the ITU and acts on behalf of Norwegian companies in the event a company desires to apply for permission to launch a satellite. Nkom charges companies for their involvement in the application process. This is not a fixed fee and will vary depending on whether it is a geo-

stationary satellite or not, and how much involvement from Nkom that is necessary.

5.3 Transfer of Satellite Licences/Authorisations to Other Entities

Nkom will usually require that a licence is not be sold on or rented out to other entities. However, satellite licences are transferable to other entities through changes in ultimate ownership, merger and assignment. An existing licence is already clarified with regards to spectrum frequencies, which means that Nkom will normally not be involved.

5.4 Spectrum Allocation to Satellite Service

The spectrum allocated for satellite communication services is in the 10.7 GHz–48.2 GHz range.

5.5 International Telecommunication Union Membership

Norway is a member of the International Telecommunication Union. The National Communication Authority has several ITU satellite network filings, inter alia, on behalf of Telenor, Norwegian Space Centre, Dub Dub Norway, etc.

5.6 Provision of Service by Foreign-Licensed Satellites

Foreign-licensed satellites are permitted to provide services in Norway, provided that the foreign satellite does not cause any interference to Norwegian systems. Hence, the foreign company has to undertake the necessary clearances to avoid interference, prior to using the frequencies in the Norwegian market, usually before satellite launch.

Local earth stations are subject to a case-by-case assessment, involving the geographical co-ordinates where the signals are transmitted and co-ordination with foreign earth stations or local earth stations. Earth stations are subject to an annual licence fee.

5.7 Milestone and Due Diligence Deadlines

Norwegian satellite companies have to follow the ITU Radio Regulations which set out that a satellite has to be launched and operating seven years after the licence has been filed. Therefore, Nkom will set a requirement in the licence that the satellite has to be launched and operating seven years after Nkom has filed the application to the ITU.

6. Internet/Broadband

6.1 Important Companies

The five biggest companies in the fixed broadband residential market are:

- Telenor (40.6 %);
- Get (17.6 %);

- NextGenTel (6.2 %);
- Viken Fiber (6 %);
- Lyse Fiber (3.6 %).

6.2 Regulation of Voice-Over-IP Services

Norway strongly supports technology-neutral regulations and voice-over-IP (VOIP) is not subject to any specific regulations.

Technological neutral regulations also mean that VOIP, as a basis, has to meet the same requirements as other fixed phones services, including providing emergency calls and the geographical location of emergency calls. However, upon application, Nkom will usually grant “nomadic” VOIP providers a dispensation from this requirement while providers of VOIP at fixed locations have to meet similar requirements as traditional fixed phone services.

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

The general rules for interconnection and access regulatory conditions apply to IP-based networks if these networks are used for the provision of telephony services.

VOIP offered on fixed locations is included in the maximum tariff regulation for terminating calls, but mobile VOIP is currently exempt from maximum tariff regulation (termination) since the service utilises the data carrier that is not subject to termination tariffs.

6.4 Net Neutrality Requirements

According to the Electronic Commerce Act, the general rule is that ISPs are not liable for the traffic in its networks, and there are no net neutrality requirements that require ISPs to block different types of traffic.

Net neutrality is not yet regulated by law, but Nkom has developed principles of net neutrality, in co-operation with industry players, which telecom companies are encouraged to follow. These guidelines apply to both fixed and mobile networks.

Among other things, they encourage ISPs to not charge different rates from different companies or for different use in their networks.

From a user perspective, these guidelines shall ensure that users are entitled to an internet free of discrimination with regards to applications, services and content type and who is the sender or recipient.

Norway has been successful with these net neutrality guidelines. However, now that the TSM Regulation (2015/2120) has been passed by EU, Norway is required to adopt formal legislation that covers net neutrality.

6.5 Government Regulation of Internet/Broadband

Companies offering internet services in rural areas may apply for, and be granted, state funds to establish broadband networks and services. Norway has a well-developed telecom infrastructure and the current goal is to offer high-speed broadband connection in the whole country. The current government is advocating that the infrastructure needs to develop further so that 100 Mbps can be offered across the whole country.

6.6 Over-the-Top Internet-Based Providers

Over-the-Top (OTT) providers of telecommunications services are currently not subject to any licensing requirements or other regulations. The Norwegian government has voiced its reluctance to regulate online platforms. Instead, the current focus is to assess how current regulations are suitable for various platforms before taking initiatives towards new, specific regulations.

This position aligns with relevant legislative proposals from the EU Commission which may extend regulations to OTT such as the EU Commissions Proposal for amending the AVMSD (COM/2016/0589 final) extending rules to video-sharing platforms and VOD platforms, and the regulation concerning the protection of personal data in electronic communication (COM/2017/010 final) which stipulates equal security requirements for OTT services and traditional electronic communication services.

6.7 Extent that Local Government Regulation of Internet/Broadband Service is Pre-Empted

Not applicable for Norway.

7. Privacy

7.1 Government Access to Private Communications

According to the Criminal Procedure Act and the Ecom Act, the Police and the Police Security Service (PST) may carry out interception of communications to investigate serious crimes or national security-related offences. Generally, they may only do so under a court order issued by a district court. Interception without a court order is, however, also allowed in a few narrowly defined scenarios. Access to communications data is governed by similar rules. There is regulatory oversight of the activities of the police, and parliamentary oversight over the PST and other intelligence agencies.

7.2 Use of Encryption Technology

Electronic signature is the general term for different techniques that can be used to “sign” digital information in the same manner as a handwritten signature is used to sign a paper document. Encryption is necessary in order to satisfy certain requirements pursuant to the Electronic Signatures

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Act and its related regulations. Further, the Ecom Act states that TMT providers shall establish “necessary security measures” in order to protect data in electronic communications networks. The Personal Data Act contains similar requirements as it directs data controllers and data processors to establish satisfactory data security with regards to confidentiality in connection with the processing of personal data. Depending on the type characteristics of service and/or the type of data, it may be necessary to implement encryption techniques in order to satisfy these regulatory requirements.

7.3 Liability of TMT Companies for Content Carried Over Their Networks

The Electronic Commerce Act implements the E-commerce Directive. According to this primary legislation, TMT providers are not liable for “mere conduit” of content over a network – ie, if the provider did not (i) initiate the transfer, (ii) determine the recipient, and (iii) decide or alter the information that was transferred. In line with the Directive, the liability is furthermore limited with regards to caching and hosting.

In 2009, a group of copyright-holders filed a preliminary injunction against Telenor, the incumbent Norwegian telecom operator, as an internet service provider. In essence, the plaintiffs asked the court to order Telenor to block access to Pirate Bay’s peer-to-peer service, arguing that Telenor was liable for copyright infringements. In 2010, the Borgarting court of appeal dismissed the petition. According to the court, the provider’s role was “neutral” and its technical contribution “too far removed” from the copyright infringements. In consequence, Telenor’s activities did not contravene the copyright legislation directly and therefore not liable for copyright infringement.

7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content

Following the Pirate Bay ruling in 2010 (described in section 7.3 **Liability of TMT Companies for Content Carried Over Their Networks** above), the Norwegian Parliament introduced new legislation in 2013, according to which a copyright-holder may ask courts to order providers to block or obstruct access to websites containing substantial amounts of unlicensed content. In order to grant such a request, the interests of the copyright-holder in having the access blocked must outweigh other relevant interest such as the freedom of speech.

In 2015, the City Court of Oslo decided the first case where this legislation was invoked. Several right-holders to film and musical works required, and were granted, a petition from the Court to impose ISPs to block access to seven websites that facilitated illegal downloading of copyrighted material. A similar decision was made by the City Court of

Oslo in November 2017 where ISPs were imposed to block access to several websites offering the service Popcorn Time.

7.5 Obligation of the TMT Companies to Retain Customer Data

Retention of customer data is not yet imposed as an obligation for TMT companies in Norway. The Data Retention Directive was received into Norwegian law in 2011. Following political controversies, the Directive did not, however, enter into force. TMT companies in Norway are, therefore, not as yet obliged to retain customer data – rather the opposite in many cases.

7.6 Prohibited of Unsolicited Communications

Unsolicited communications is regulated under the Marketing Control Act which specifically prohibits unsolicited communications by email, SMS, automatic dialing equipment, etc, without the explicit, prior and active consent of the consumer. However, marketing by electronic means is nonetheless allowed where there is an existing customer relationship and the contracting trader has obtained the electronic address of the customer in connection with a sale. The Consumer Ombudsman has published non-binding guidelines on the interpretation of the prohibition on its website.

8. Future

8.1 Status and Process of Convergence

The substantial part of legislation is technology-neutral and convergence in the TMT sector is considered to be a natural consequence of the continuous digitalisation.

The government aims to pave the road for nationwide availability of 100 Mbps internet access services by creating incentives for further development of telecom infrastructure and providing limited funding for broadband access in rural areas. However, the principal investments are expected to come from operators.

The government also pays close attention to the role of online platforms and published a report in February 2017 assessing the sharing economy (AirBnB, Uber, Amazon Mechanical Turk, etc). The report provides further recommendations on issues relating to the sharing economy, such as employment, tax and consumer considerations.

8.2 Changes to Statutes, Laws or Legislation

Currently, there are no plans for major changes in the legislation applicable to the TMT industry. However, as described above in sections 4.8 **Price Regulation for Mobile Services** and 6.4 **Net Neutrality Requirements**, both the Ecom Act and the Ecom Regulations have recently been amended by transforming the TSM Regulation (2015/2120) into Norwegian law.

In addition, a new statutory provision was passed and included in the Ecom Act to provide a legal basis to implement the EU eCall system.

Rules pertaining to BEREC in the Better Regulation Directive (2009/140/EC) have not been fully implemented in the EEA agreement and, consequently, only fragments have been implemented in Norwegian law. Rules that have been implemented include eg, service and technology neutrality, security requirements and measures, access to internet, collocation requirements for certain providers and regulatory measures such as implementing functional separations of SMPs. The main issue for the EFTA/EEA countries is that they require full participant rights in BEREC (without the right to vote). EFTA and the EU Commission have held talks regarding the EFTA/EEA countries participation in BEREC and, if they reach an agreement, the Norwegian government has communicated that it will propose implementing the remaining parts of the 2009 revision relating to BEREC in the current revision of the Ecom Act.

A new Copyright Act has been proposed and the proposals that are relevant for the TMT industry include technology-neutral collective licences for copyright clearance of audiovisual content and radio broadcasting in order to ease copyright clearance. The new Act is currently pending adoption by the Parliament.

With regards to privacy the current Personal Data Act will be replaced due to the implementation of Regulation (EU) 2016/ 679 (GDPR) on 25 May 2017. Unlike many other EU/EEA member states, Norway has historically had strict privacy legislation; although a new act will be passed there are few substantive changes that will be implemented compared to current legislation. However, some new privacy principles will be introduced with the GDPR, such as privacy by design and default, data portability and more comprehensive obligations for data processors.

8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

Not applicable for Norway.

8.4 Identification of Assignment of Additional Spectrum

As a result of having concluded a successful auction of the 800 MHz frequency band, where coverage was a key condition, 98% of the population is expected to have access to a mobile broadband service with a capacity of at least 2 Mbps by 2018.

Further, the National Communication Authority has recently assessed, and concluded, that the 700 MHz band shall be re-allocated from broadcasting to mobile communication. How this re-allocation will be carried out is yet to be concluded, but is scheduled to take place in the fourth quarter of 2018.

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