

To:

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Cc:

Norwegian Communications Authority

Oslo, 09 November 2017

Zero-rating in the Norwegian mobile market

We are writing in connection with Norwegian Communications Authority's (Nkom) ongoing evaluation¹ of the Music Freedom zero-rating deal and should like to state our views on the matter to both Telia and Telenor. The Norwegian Consumer Council is currently investigating consumer issues surrounding net neutrality and will provide more detailed information about these investigations in due course. However, we should like to share our preliminary opinion and assessment.

Background

The Consumer Council works to give consumers the power and freedom to make good decisions. This is best achieved through transparent markets and fair competition.

Net neutrality means "equal treatment of traffic on the Internet, whereby end users are ensured that their Internet connection can be used to access and distribute content of their choice, and not controlled by their ISP"². In 2008–09

¹ "Nkom's assessment of Telenor Yng's Music Freedom". 30 June 2017:

<https://eng.nkom.no/topical-issues/news/regulatory-assessment-of-telenor-yng-music-freedom>

² <https://eng.nkom.no/topical-issues/news/the-first-year-with-net-neutrality-in-europe>



the Consumer Council was involved in drawing up the Norwegian guidelines on net neutrality, and until now there have been no known breaches of the guidelines in Norway. The EU introduced a general ban on breaches of the net neutrality principles³ in 2016.

The Consumer Council is aware that the Body of European Regulators for Electronic Communications (BEREC) has adopted guidelines that permit “commercial practices” such as zero-rating in certain circumstances. Nkom has the following to say about the net neutrality rules in its assessment of Telenor Yng’s zero-rating deal Music Freedom: “end users should, as a starting point, be free to enter into special agreements with providers of internet access services, including commercial offers from providers, as long as they do not limit the end-users' rights pursuant to the Regulation. It is also stated that the competent authorities should intervene against agreements or commercial practices which, by reason of their scale, in practice reduce the end-users' rights and choices”⁴.

The Consumer Council’s view

The Consumer Council is of the opinion that freedom and neutrality are key to maintaining the internet as we know it – and important for free speech, continued innovation and a well functioning, consumer-friendly market. By making their choices in a free market, it is the consumer who decides which services “win” and “lose”. For the internet to continue to play the role as the most important and extensive piece of infrastructure there is, consumers must be able to use that infrastructure as they please.

The primary reason for the internet’s success is the fact that it is an open and accessible infrastructure. There is a low threshold to a gigantic market for individuals or firms wishing to offer a service or application. The successes of many of the services and applications we now take for granted are very much based on the premise of an open internet.

The Consumer Council is therefore of the opinion that zero-rating is detrimental to consumers, that it runs counter to the rights of end users and that their freedom of choice is compromised in both the long and short term. We take this view partly because:

³ Ibid.

⁴ “Assessment of Telenor Yng's Music Freedom zero-rating deal”, case no. 1701876. 29 June 2017: <file:///C:/Users/oyvkal/Downloads/Assessment%20of%20the%20zero-rating%20offer%20Telenor%20Yng%20Music%20Freedom.pdf>



- The consumer's freedom of choice is restricted because zero-rating raises the bar for switching providers, locking the consumer into one provider. The negative impact of is reinforced since Telia and Telenor control more than 90 per cent of the end user market.

The zero-rating offerings also make it more difficult to compare deals. Telenor's autobooter⁵ feature further obfuscates the pricing structure in the mobile market and makes it difficult to compare prices.

- Over time, freedom of choice may become more restricted as services that are not included in the zero-rating packages fail to reach critical mass in terms of customers and thus do not survive the competition. We believe that the same may be true for virtual mobile operators (who are leasing network) without the capacity or financial strength to manage and/or offer such a service. The competition-distorting effects and restricted freedom of choice are further compounded by the strong market positions enjoyed by Telia and Telenor.
- One negative effect of zero-rated services could be declining media diversity over time as young people's media habits are "nudged" in a certain direction, as described by the Norwegian Media Businesses' Association in a letter to Nkom dated 7 November: "The use of zero-rating thus gives mobile operators direct influence over the media usage of the general public, especially amongst adolescents and financially challenged groups for whom the cost of data is more important."

We also believe that the restrictions on Music Freedom (Telia and Telenor) are too narrow. A number of other streaming services are currently excluded, as are streaming services with other business models or other features which in practice serve much of the same function (e.g. radio).

Another matter of concern is how consumers' privacy is protected when using zero-rated services. The Consumer Council should like to receive / looks forward to receiving feedback from the industry on these matters.

It is the Consumer Council's opinion that a shift towards bigger data bundles would be far more advantageous to consumers. It would allow consumers to decide for themselves which services to use. Experiences in the Finnish market, for instance, show that such a shift is possible and will also increase uptake⁶ of

⁵ <https://www.telenor.no/privat/mobil/mobiltjenester/datakontroll/ynng.jsp>

⁶ Nkom, "The Norwegian electronic communications market – first six months of 2017"



the services. As an example, mobile deals with unlimited data are being offered for only €24.90 a month⁷, equivalent to around NOK 240. In comparison, a Telenor Yng⁸ and Telia Smart Ung⁹ contract with only 2 GB of data a month costs NOK 249.

We therefore ask you to reconsider the practice of zero-rating and instead offer consumers bigger data bundles at a reasonable cost. This would be more forward-looking and customer-friendly, prevent breaches of the net neutrality principles and allow consumers to control their own internet usage.

Best regards

Randi Flesland

Director

Norwegian Consumer Council

⁷ <https://kauppa.telia.fi/yksityisille/tuotteet/puhelinliittymat.aspx>

⁸ <https://www.telenor.no/privat/mobil/mobilabonnement/yng/>

⁹ <https://nettbutikk.telia.no/mobilabonnement/smart-ung>