



Konkurransetilsynet
Norwegian Competition Authority

UNDERSTANDING THE MARKETS FOR SERVICES OFFERED VIA ELECTRONIC NETWORKS



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Introduction

Let me at first show you a picture depicting the major telegraph lines in 1891. We see only two lines crossing the Atlantic, and just a few lines crossing Europe.

In the modern economy there are increasingly many services which are offered via electronic networks.

Some examples are broadcasting services, payment services, telecommunication and a wide range of other services.

Electronic networks now play a crucial role in our everyday life.

The development since Samuel Morse invented the telegraph in 1837 has been extreme and just seems to accelerate.

Structure of talk

In this talk, I will first present some definitions: What is an electronic network? And what are electronic network services?

I will also present some figures showing important trends, and discuss some key features of markets for services offered using electronic networks.

Thereafter, I will take a look at the concept of market definition and relevant market – and discuss how the competition authorities are challenged by these fast moving markets, and the implications for competition policy.

Finally, I will present some sunshine – or soft – enforcement examples in this area, based on our own recent experiences.

Some definitions – electronic networks

The **Commission Directive on Competition in the Markets for Electronic Communication Networks and Services**¹ from 2002, define "electronic communications" and "electronic communications networks" to include all electronic communications services and/or networks which are concerned with the **conveyance of signals** by wire, radio, optical or other electromagnetic means, including therefore, the broadcasting of radio and television programmes.

This directive i.a. regulates rights to establish and offer services in markets for electronic communication, and must be considered together with the EU regulatory framework in the area for electronic communication.²

The directive from 2002 is also part of the process to make ex ante sector-specific regulation converge towards ex post competition law enforcement.

In this regard, I would like to state that the Norwegian Competition Authority has excellent relations with the Norwegian Post and Telecommunications Authority (NPT).

Some definitions – electronic communications services

The term 'electronic communications services' is the conveyance of signals on electronic communications networks relating to a service normally provided for **remuneration**.

Two features can in particular be noted regarding these definitions.

First, the Directive makes reference to 'electronic communications services' and 'electronic communications networks' rather than the previously used terms 'telecommunications services' and 'telecommunications networks'.

This change takes into account the **convergence** phenomenon by bringing together under one single definition all electronic communications services and/or networks used for the conveyance of signals.

Secondly, the directive excludes from the regulatory framework services providing or exercising **editorial control** over content transmitted, using electronic communications networks and services.

¹ Commission Directive [2002/77/EC](#) of 16 September 2002 on competition in the markets for electronic communication networks and services.

² See e.g. <http://europa.eu/scadplus/leg/en/s21012.htm>

Key features

In 2009, electronic networks are something we use almost every day.

They represent a fast and efficient tool for interaction and coordinating action, as well as conducting market transactions.

They enable new ways of distributing, accessing and exchanging information.

They provide new and efficient ways of working, learning and playing.

Facebook demonstrates that electronic networks also have given rise to new communities of people with shared interests and concerns.

As I will show later, a large and increasing share of services are offered via electronic networks, notable examples being WEB-TV or IP-phone as well as internet banking.

Other important features are that these markets are characterized by rapid technological change as well as economies of scale and large investments in R&D.

This in particular applies to the platforms for the conveyance of signals, but also for the production of content, services and software for using the network and its services.

Often, competition is **for** the market instead of competing **within** the market.

An example often used to illustrate this, is the competition between Beta and VHS (for those of you who still remember the old video-tape cassettes). VHS got an early lead, and network effects allowed it to become dominant even though it was technically inferior.

Other examples where the market gravitated toward one winner are the battle between the spreadsheet programs EXCEL and LOTUS and between word processing programs WORD and WORD PERFECT.

A more recent example is the competition between Blue Ray and HD DVD to be the new video standard.

Thus, another feature of electronic networks is that they sometimes seem to **tip** in the sense that one provider or one platform obtains a dominant position in the market, often close to monopoly.

This is often the case when there are strong **network effects**.

The classic example of network effects is the telephone. Being the only owner of a telephone in the whole world would not be very exciting. The more people who own telephones, the more valuable the telephone is to each owner.

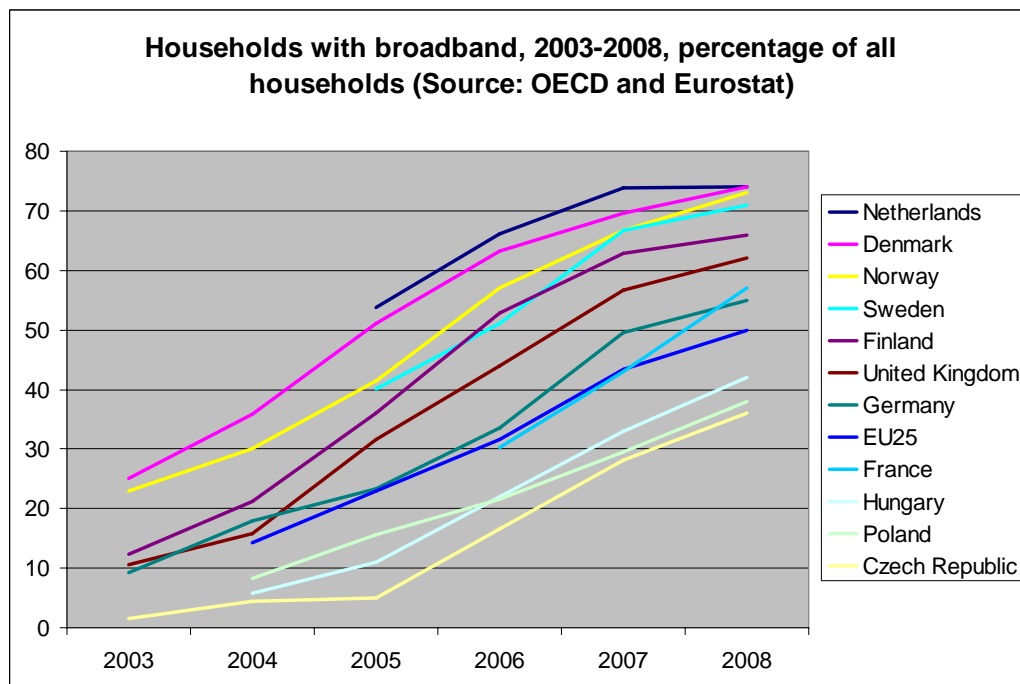
How important are these networks and services in modern economies?

The electronic networks have become more and more crucial for the modern society. A major part of us watch daily television, use a cell-phone and are connected to Internet.

The use of these electronic networks is increasing. In Norway, 73 percent of the Norwegian households had broadband in their homes 2008, and 86 percent had access to PC.

Furthermore, in Norway, broadband access has been an explicit policy goal. According to a new report from the Norwegian Ministry of Government Administration and Reform (published in March 2009), 98.8 per cent of the Norwegian households may now access broadband with speeds above 640 kilobytes per second.

Thus, the dependence – and the possibilities - of electronic networks are rapidly increasing.

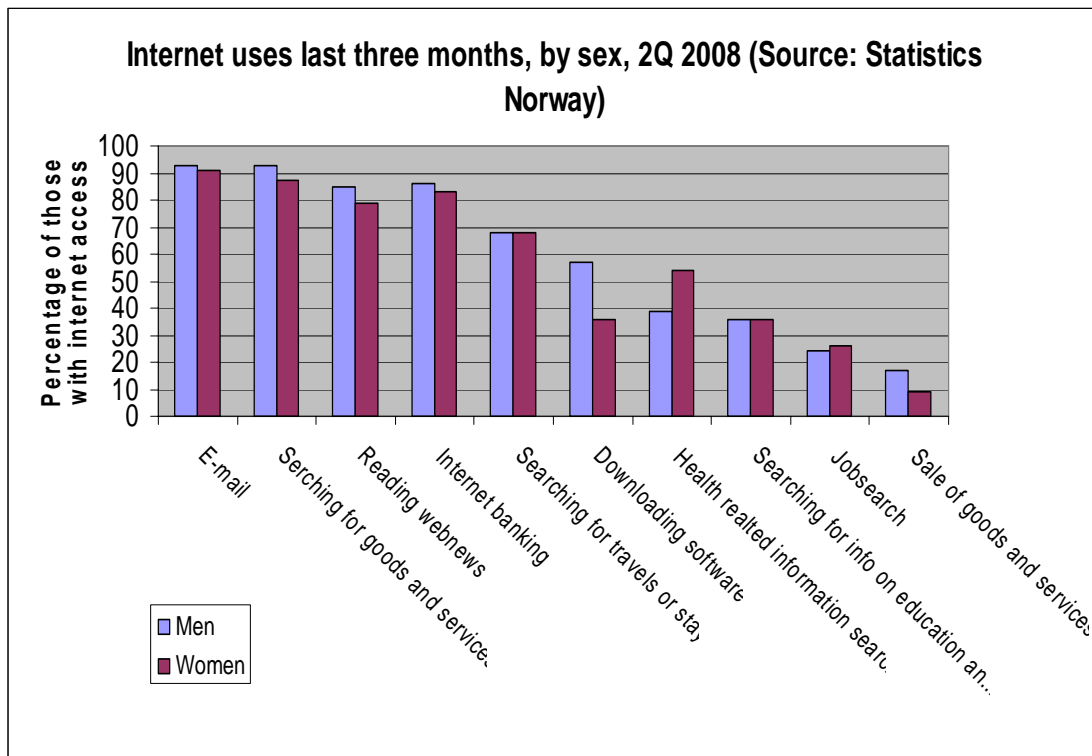


The next slides present some recent statistics from Norway.

Firstly, what have users of Internet used it for the last three months?

The figures on this slide are from the second quarter of 2008, and we see that e-mailing, searching for goods and services, Internet banking as well as reading news on the web are important uses: Between 80 and 90 percent of the respondents had used the net for such purposes.

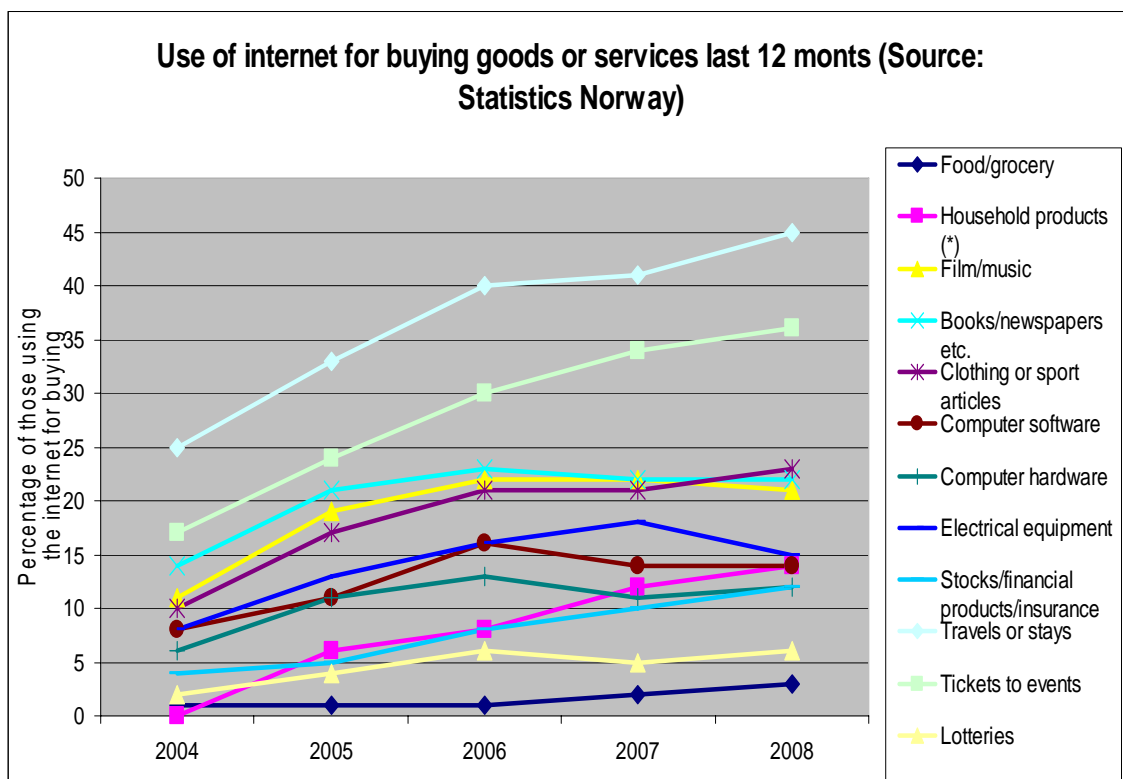
Mainly, there are no major differences between the sexes. However, men seems to be more preoccupied with downloading software, whereas women seems to be more interested in health related information search.



This slide presents data more specifically for services offered through the Internet. Here the Internet users have been asked if and what they have been buying on the net during the last year. Data is presented for the period from 2004 until 2008.

We see that travel related purchases as well as buying books or newspapers are the most 'popular' categories, with clothes and sports articles coming up as a good number three, slightly above film/music and books/newspapers.

But maybe the most striking feature of this picture is the growth experienced during this period for almost all categories.



(*) Please note that value for 2004 is missing

Schumpeterian competition

Before proceeding, let me take a short step back, to Joseph Alois Schumpeter. He was an economist and political scientist born in the region Moravia, which is now part of the Czech Republic. He lived from 1883 until 1950, and popularized the term "creative destruction" in economics.

In traditional markets, when firms face competition, they seek to attract customers by offering lower prices and/or higher quality than their rivals, thus benefiting consumers.

The core of the Schumpeterian argument is that in many markets, competition primarily occurs through cycles of innovation, rather than through traditional price and/or quality competition. Firms compete for temporary dominance of the market through the introduction of new generations of technology.

Thus, firms do not compete simultaneously for a share of the market, but rather sequentially for the whole market. Consequently, at any given moment, one firm might dominate sales of a given product.

But even more importantly: Other firms will continue to innovate and prepare to knock the incumbent from the market by developing superior products.

Schumpeter and network services

Electronic networks and the markets for services provided through these are obviously characterized by dynamic, technological Schumpeterian competition.

By focusing on current sales and price competition, the authorities may miss the real force behind market performance: Innovation.

Intervening in dynamic markets might then have unintended consequences.

We risk slowing the innovation process either by distorting the reward structure for risky R&D or by preventing dynamically beneficial mergers.

Schumpeter provides insight in market dynamics and the innovative process which must be used by the competition authorities.

The relevant market

I will not dwell much upon the purpose of the market definition to this audience.

Its main purpose is to identify in a systematic way the competitive constraints to the firms involved - be it in a merger, an abuse of dominance or an antitrust case.

The market definition makes it possible to calculate market shares that convey meaningful information regarding market power.

The relevant market is defined according to both product and geographic features, and factors like demand and supply-side substitutability, potential competition and entry barriers have to be taken into account.

The **Commission guidelines on market analysis and the assessment of significant market power in communication networks and services** set out principles for use by national regulatory authorities, and are based on these fundamentals.³

Challenges defining the relevant market

Defining markets in dynamically competitive industries presents a number of challenges.

Traditional market definition exercises tend to focus on demand-side substitutability. This may lead to incorrect market definitions in dynamically competitive industries where competition does not come from readily available demand substitutes, but from new products, whose time of introduction is most often uncertain.

Take distribution of TV-signals as an example. Today, there exist several platforms over which TV-signals can be distributed to the viewers; cable, satellite, DTT, and IP-TV. Does this mean that the service providers on the different platforms are in the same relevant market, or can it be that each platform constitutes a separate market?

What about convergence? If we find that the different platforms indeed are separate markets; will they be separate also in the future, or will rapid technological change turn all platforms into one single relevant market?

Other important features which must be considered are network effects and the presence of two-sided markets.

³ See http://europa.eu/eur-lex/pri/en/oj/dat/2002/c_165/c_16520020711en00060031.pdf

Relevant market and network services

By ignoring potential competition in dynamically competitive industries, markets might be defined too narrowly, which in turn will lead to unjustified findings of dominance.

Thus, in these markets there is increased risk of Type I errors, i.e. destructive intervention or interventions that should have been avoided.

Not surprisingly, these are arguments we also hear in many cases, and which obviously have to be considered carefully.

But is the implication that the competition authorities should move more in the direction of a *laissez faire* or *Chicago School* policy, regarding mergers, antitrust and abuse in network industries and services provided in electronic networks?

Absolutely not! Schumpeter provides a way of **understanding** market dynamics and the competitive process in i.a. network industries - but he's not an excuse for a lax competition policy.

Implications for competition policy

Competition authorities must obviously have a dynamic and forward-looking perspective on its enforcement activities.

As competition authorities, we are very well aware of the fact that it is competition that drives innovation, and that competition and the competitive process must be nourished and protected. Fighting for a dominant position through innovation is good; **abusing** the position must be struck down.

Moreover, as the Microsoft experience so clearly has taught us, a dominant position acquired through a cumulative sequence of successful innovations can be long lasting.

We also know very well, also from Norwegian experience, that a dominant firm easily may venture into abusive behaviour to extend the period with market power, whenever the opportunity arises, and to expand the dominant position into adjacent markets. We frequently observe strategies like tying and bundling, which also result in prices less transparent to consumers.

Thus, in these industries we must pay close attention to attempts to abuse a dominant position; abuses attempting to extend the period of dominance or extent the dominant position into adjacent markets.

As competition – or sector authorities – we might also have a task regarding price transparency. In this regard, I would like to mention that the Norwegian Post and Telecommunications Authority (NPT) has a popular price comparison service for mobile phone prices accessible from their website.

But we also must be careful not to discourage pro-competitive, welfare-enhancing competition.

Furthermore, the authorities should use the whole range of their available instruments, and in particular be active in the field of advocacy, to inter alia contribute to removing barriers to competition and securing potential competition.

Enforcement – some examples from Norway

Soft enforcement – or “sunshine enforcement” as someone like to call it - is one of the tools that the NCA has used with success relating to anti-competitive practices in network markets.

In the last part of my talk, I will present two recent soft enforcement cases from Norway, in addition to a case relating to internet advertising of real estate.

From monopoly to competition in football broadcasting rights

The Norwegian Football Association (NFF) and the association for the top football clubs in Norway (NTF) jointly manage the media rights to Norwegian football.

The old distribution agreement covered the period 2006-2008, and all significant media rights were bought jointly and exclusively by the biggest commercial public broadcaster in Norway (TV2), and the biggest telecom operator in Norway (Telenor).

The Norwegian Competition Authority was concerned about the possible anti-competitive effects of a similar arrangement in the forthcoming contract period.

Thus, the Authority initiated a close dialogue with NFF and NTF throughout the process of formulating the tendering procedures.

The resulting new agreements, covering the period 2009-2011, are unique in the sense that the **distribution rights are spread across a number of different companies on different distribution platforms.**

Thus, "Football on TV" is no longer just limited to football on TV. Football matches will also be shown live on both IP-TV and web-TV. Two different web-TV operators were granted access to all the media rights. This should also contribute to challenge the hegemony of traditional distribution platforms.

The distribution of rights across platforms and companies, and the resulting competition for being the preferred platform and service provider, will provide consumers with better access and greater choice. The new contracts have also led to fierce price competition between Web-TV providers, as well as a wider choice of products to choose from.

Increased competition in the Norwegian TV market

The switch from analogue to digital broadcasting is under way in Norway, and is due to be completed by the end of 2009.

In 2007, the NCA commissioned a report on the effects of exclusive distribution agreements in the TV market. We were worried over an exclusivity agreement between TV2, the most popular commercial channel in Norway, and Canal Digital, one of the country's two satellite broadcasters.

The agreement meant that rival broadcaster, Viasat, was unable to offer its customers access to TV2, and therefore may not have been able to compete effectively in the market. The report found that the exclusive agreement had restricted competition and led to higher prices.

The launch of the digital terrestrial transmission network in 2007 would create another competitor in the market - but again Viasat would not be able to compete effectively without being able to provide access to TV2.

The expert report provided the NCA with a good basis for a clear, practical and proactive approach towards competition policy in the TV-market.

The NCA had several meetings with the parties concerned, and TV2 finally entered into **non-exclusive distribution agreements** with both Canal Digital and Viasat.

We believe this agreement - reached without formal decisions or interventions - will stimulate increased competition to the benefit of the consumers.

Internet portals and real estate agents

Over the last few years, independent internet portals have become essential to the marketing of real estate in Norway. They provide an electronic network market place where sellers and buyers can meet.

In Norway, the largest internet portals have a practice whereby only **estate agents** are permitted to advertise. Sellers of real estate who wish to advertise on these portals are forced to use an estate agent or lawyer.

We believe that this exclusivity limits choice for users and reduces competition in the downstream market for real estate services.

The reason why the portals exclude others than estate agents is the following: About 95 percent of all of residential property sales is done through estate agents. The agents want to keep the efficient internet portals to themselves and ask the portals for exclusivity. Because this is an electronic network market, even the largest portal could easily lose its market share, and stick to the exclusivity in fear of losing the agents.

The NCA reviewed the practice under Sections 10 and 11 of the Competition Act (corresponding to Articles 81 and 82 of the European Treaty) without finding a basis for intervening.

However, the Norwegian Competition Act allows **intervention by regulation** against market conduct which restricts competition.

Consequently, the NCA now has proposed a regulation that requires internet portals to provide access for everyone to the portals. By using a regulation that will apply to all the players in the market, we ensure a level playing field for the internet portals.

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