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European Commission
The European Electronic Communications
Code

The Swedish Local Fibre Association Position Paper on the European Electronic Communications Code

Introduction

The Swedish Local Fibre Alliance (Sw. Svenska Stadsnätetsföreningen) is a trade association which organizes some 155 local fibre networks as members. The Swedish Local Fibre Alliance thereby has an absolute majority of those players which actively invest in new modern fibre infrastructure for high capacity broadband in Sweden.

The primary objective for the Swedish Local Fibre Alliance and its members is to provide open competition-neutral high capacity fibre networks in an atmosphere of free choice, transparency and non-discrimination. Open networks allow both existing and new players the opportunity to establish their business and to supply services by leasing dark fibre or wholesale capacity services without having to invest in their own infrastructure. These open networks thereby create a level playfield for retail competition to the ultimate benefit of residential inhabitants, business enterprises and municipal activities in each respective community and region, in both rural and urban districts.

The members of the Swedish Local Fibre Alliance are local fibre networks that are municipally operated and locally established, usually within a municipality. Representative of the members is that they are not vertically integrated, i.e. they do not offer retail services in competition with other service providers. Such local fibre networks constitute vertically separate undertakings in the meaning of Article 77 the Commission's proposal for a European Electronic Communications Code (EEC Code).

Over the last 20 years, these local fibre networks have played a major role in helping to deploy fibre optic networks in Sweden, thereby contributing to the development of Sweden's successful information society. The Swedish Local Fibre Alliance estimates that local fibre networks currently own approximately 50 per cent of the fibre access networks in Sweden. It is also the investments by local fibre networks that have laid the foundation for the well-functioning competition at the infrastructure and retail level in Sweden.

The EEC Code includes important initiatives for achieving a Digital Single Market

The Swedish Local Fibre Alliance shares the same conviction as the Commission that access to high speed broadband is the key factor for increasing Europe's competitiveness and for developing new jobs. Europe risks falling behind when it comes to the availability of very high-speed broadband networks, defined as VHCNs in the Commission's proposal. The scope of access regulation needs to be examined in light of new VHCN networks need to be built and investments encouraged.

The Swedish Local Fibre Alliance believes that the proposed EEC Code constitutes a robust basis to deliver a new, modernized, simplified and investment-focused set of rules for networks. The Swedish Local Fibre Alliance welcomes the Commission's recognition of vertically separate undertakings operating wholesale-only networks and the positive effects they can have on retail competition downstream.

In Sweden, this type of business model -wholesale-only networks- has been developed through the municipal networks. The open networks model promoted by the Swedish Local Fibre Alliance and operated by its members involves the local fibre network assuming responsibility for ensuring that equal and non-discriminatory access terms are observed and thereby for ensuring a level playfield and healthy competition on the retail level. Representative for the local fibre network is that they are not vertically integrated, i.e. do not offer retail services in competition with other service providers

Local fibre networks have an important role to play in the broadband market as they often represent an alternative to the former incumbent's infrastructure. In Sweden, this type of wholesale only business model is a strong contribution to Sweden's good position in access to high-speed broadband and low prices for end-users¹. The positive effects of such municipal networks have also been confirmed by OECD in a recent report². According to the OECD report, it is the competition of the municipal owned local fibre networks in the broadband market that Sweden today is one of the best countries in broadband deployment and has the lowest retail prices. The municipal investments in fiber networks have prompted companies to remain in the municipality because of network availability. In addition, there are examples of municipalities in Sweden which had a decreasing population, but since the launch of the municipal fiber network, population number has stabilized and even increased a little.

In the report, OECD inter alia found that

Notably, Sweden has the highest proportion of fibre connections outside Asia among OECD countries given the role municipal networks have played, underlying again the importance of competition to incumbent players in stimulating investment.³ And ".....where capital has been available and networks has been deployed, experience generally indicates that municipal networks stimulate further investments" and that ".....there is evidence of private players increasing investment driven by competition provided by municipal networks in areas that would have otherwise had insufficient competition from a single incumbent operator".

The Swedish Local Fibre Alliance believes that the access regulation needs to consider the specific characteristics of a wholesale-only business model and foster the establishment of more wholesale-only networks by incentivizing investment and thereby promoting the creation of a thriving wholesale market as well as stimulation of retail competition downstream. This is something that the Swedish Local Fibre Alliance feels is shared by the Commission and overall is well reflected in its proposal.

¹ Prices in open networks where the local fibre network allows service providers to compete on a service portal are even lower, according to the Swedish Post and Telecom Authority (PTS).

² Development of High Speed Networks and the Role of Municipal Networks, OECD.

³ OECD, Development of High-speed Networks and the Role of Municipal Networks (2015)

Competitiveness and changes to the current legislation

One of the main objectives of the proposed directive establishing the EEC Code is to foster competitiveness and the growth of companies providing digital services. This is something the Swedish Local Fibre Alliance supports and we think that it is necessary to make changes to the current legislation. In this work, there are some statements that the Swedish Local Fibre Alliance believes are very important, such as the promotion of investment in high-capacity broadband infrastructure, that such investments need to be future proof (such as fibre networks) and that market players that are vertically separate undertakings, i.e. only have activities in wholesale markets and are absent from any retail market, shall qualify for a simplified regulatory model.

Vertically separate undertakings and wholesale-only model (article 77)

The wholesale-only model, which means that the market player is a vertically separate undertaking, i.e. only has activities in wholesale markets and is absent from any retail market, fosters competition and increases end-user benefit due to its positive effects on retail competition downstream. The wholesale-only business models both can have positive effects on competition at the retail level, and can have positive effects on the development of and investment in fiber networks.

This model is common by the local fibre networks, owned by Swedish municipalities and largely separates the basic infrastructure from end-user services. The wholesale model allows the operators, global, national or local, as well as other players, to enter the market, without having to pay for the investment in the basic fiber infrastructure. The Swedish "wholesale-only" model has had positive effects on competition at the retail level and has had a positive impact on the investment in fiber networks in Sweden.

This can be illustrated by the fact that there are today four 4G operators competing all over Sweden. According to the European Commission's index DESI (Digital Economy and Society Index), Sweden is in third place in terms of digital development. According to the index, 100 percent of the households in Sweden are covered with 4G / LTE technology, which is seen as remarkable given how sparsely populated Sweden is, compared to other European countries. The reason why the 4G roll reached such high coverage in Sweden is the access to the local fibre networks' infrastructure (wholesale-only model). Mobile operators have been able to improve the efficiency and cost-optimize their expansion by leasing dark fiber in a competitive market.

According to a report prepared by the OECD⁴, it is precisely the competition of the municipal local fibre networks in the broadband market, which has resulted in that Sweden is one of the best countries in broadband deployment and the lowest retail prices. The reason for this is that the competition is high, which means low attractive prices and short delivery periods for companies and households. The choice for consumers and businesses are great because they can choose between different types of competing services from several national and local suppliers. This creates a market situation with fierce competition between operators and service providers, resulting in low prices for consumers, companies and other end- users, but also a variety of services and providers, ultimately to the benefit of the end- users.

The Swedish Local Fibre Alliance agrees with the Commission regarding the proposal in article 77 (vertically separate undertakings) for a simplified regulatory model for wholesale-only networks is key to establishing VHCNs. The wholesale-only model can also play an important role in the achievement of a

⁴ OECD, Development of High-speed Networks and the Role of Municipal Networks (2015)

Digital Single Market and the promotion of roll out of VHCNs. The initiative of the proposed simplified regulatory model is therefore a key factor in the Commission's proposal and it is crucial that it remains as it stands.

Access obligations applicable to wholesale-only networks (access to civil engineering (article 70) and symmetric obligations (article 59))

A pre-requisite for wholesale-only models to operate is that it is economically viable to do so. It is therefore crucial that any access obligations that may be imposed on wholesale-only networks are drafted so that they factor in the specific technical possibilities of operating such networks and the incentives in the business model.

The proposals in article 59 (symmetric obligations) and article 70 (access to civil engineering) are drafted in a way that makes it possible to take into account the specific characteristics of wholesale-only models. First by limiting the scope of possible symmetric access obligations to wiring and cables, meaning that while a wholesale-only network could be obliged to grant access to dark fibre, it could not be obliged to grant access to its ducts. And second by prescribing that access obligations about civil engineering may only be imposed to meet "reasonable requests for access". In line with the Cost Reduction Directive⁵, a request for access to ducts should not be regarded as reasonable when "the network operator already provides wholesale physical network infrastructure access that would meet the needs of the access seeker", since "access to the underlying physical infrastructure may have an adverse economic impact on its business model and incentives to invest while possibly entailing an inefficient duplication of network elements". Consequently, if a wholesale-only network provides access to the end-user, on fair and reasonable terms and conditions to a very high capacity network, e.g. access to dark fibre, it should not be submitted to access obligations about its physical infrastructure, e.g. ducts.

The Swedish Local Fibre Alliance welcomes that the proposals are drafted in a way that makes it possible to consider the specific characteristics of wholesale-only models in order not to stifle investment in such models, and thereby also benefit the coherence of the EU telecom legislation, in particular with the Cost Reduction Directive.