

## **Comments on COM (2013) 147 final: "The Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks".**

The Swedish Urban Network Association, (SSNf), is a trade association which organises some 150 urban networks plus approximately 150 providers of services and equipment within the broadband sector. The Association represents thereby an absolute majority of those players which actively invest in new modern infrastructure for broadband in Sweden.

The primary objective for the Swedish urban networks is to provide broadband to residential inhabitants, business enterprises and municipal activities in each respective community and region, in both rural and urban districts, achieved via open competitively-neutral networks in an atmosphere of free choice, transparency and non-discriminate conditions. Open networks allow both existing and new players the opportunity to supply services without having to invest in their own infrastructure, or alternatively to rent dark-fibre or capacity.

### **Introduction**

The Urban Network Association has taken notice of the headlined proposal and submits comments as follows. The Association's comments are restricted to such areas which directly concern our activities. Several other areas which predominantly concern real-estate owners are not touched upon by us.

### **Summary of the SSNf's comments**

The Swedish Urban Network Association observes that progress within the EU, in relation to the development and access to IT-infrastructure with high transmission capacity for electronic communication, varies considerably. We anticipate that this regulation will be a major contributor in the development of the EU's internal market and a driving force behind a new market to buy and sell access to canalisation.

The proposal should imply that the will to invest in high-speed networks will increase but it seems that the EU's pursuit of a willingness to invest can lead to a distortion of market competition. It would appear that infrastructure competition, from the perspective of a need for low costs and large-scalability, will be limited and in the main favour existing dominant players. In Sweden, it is Urban Networks and TeliaSonera which have invested in broadband with a high transmission capacity, whilst for other players the will to invest has been low. The SSNf feels that there is a strong risk that the will to invest within Urban Networks will reduce if the proposed regulation comes into force.

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#### **Svenska Stadsnätetsföreningen**

The SSNf believes that competition should exist at all stages. The Swedish model defends both dark-fibre and capacity services' competition. In the Swedish model the Urban Networks are therefore not vertically integrated and do not offer end-user services in competition with other service providers. The rules outlined in the regulation proposal are no guarantee that the will to invest will increase. On the contrary, the SSNf believes that there is a great risk that the will to invest will be suppressed and competition will be distorted.

It is of major importance that this regulation is adapted and strengthens the will to invest for smaller players on the existing well-functioning Swedish market. It should be taken into account that:

- Sweden's leading position with an open network model must be upheld.
- Competition should not be distorted and should exist at all levels. In areas which already have dark-fibre, access to canalisation should not be a first-hand alternative. It should be made clear that where dark fibre is available, a canalisation product will not be offered
- It should be made clear that this regulation endeavours to establish competition even at the infrastructure level and that its application shall not put smaller players out of business.
- It describes how an application should be designed to ensure business-like negotiations between buyer and seller.

The Swedish model, where smaller players such as the Urban Networks were the driving force in the construction of high-speed networks, must be safeguarded. In addition it is appropriate that Sweden amends those rules which obstruct the Urban Network's possibility to co-operate so that more efficient regional and national structures can be created.

## Objectives of the Proposal

The proposed regulation sets out to

*"Reduce the cost and enhance the efficiency of deploying high-speed electronic communications infrastructure by scaling up existing best practices across the EU".*

Furthermore that

*"Barriers to investment and market entry can be lowered by allowing for more intensive usage of existing physical infrastructures, enhanced cooperation on planned civil works, streamlining permit granting procedures and by removing obstacles to high-speed-ready in-building infrastructure".*

Four problem areas are addressed:

- 1) Inefficiencies or bottlenecks concerning the use of existing infrastructure (such as ducts, conduits, manholes, cabinets, poles, masts, antennae, towers and other supporting structures).
- 2) Bottlenecks relating to co-deployment.
- 3) Inefficiencies regarding the administration of granting permits.
- 4) Bottlenecks concerning in-building deployment.

A study made by Analysis Mason reportedly shows that:

*"If steps were taken to tackle the identified problem areas, operators could make capital investment savings in the region of 20-30% of the total costs, i.e. up to 63 billion Euros by 2012.*

The proposed regulation is addressed not only to electronic communications network providers but also to all owners of physical infrastructure, such as networks for electricity, gas, water and sewage, municipal heating systems and transportation services.

### Important opening remarks

- The proposed regulation makes note of a number of fundamental objectives. Some of the most important are deemed necessary in order to eliminate barriers for a functioning single market.

It is believed that these barriers are the result of a patchwork of rules and administrative proceedings at national, regional and local levels. This patchwork is considered harmful to European company development and growth, resulting in a negative impact on Europe's ability to compete. It creates obstacles for investments and cross-border business and consequently has become a hindrance in the right to provide electronic communication services and networks as guaranteed by current EU legislation.

- The many diverse and unclear methods used to regulate network construction increases costs of entry to the national markets.

It is noted that this fragmentation has created a barrier for both multinational and national companies wanting to achieve European level economies of scale when faced with increasing global competition. This also impedes the development of innovative services which otherwise could be deployed over high-speed networks, seamlessly across borders.

- Promote comprehensive broadband coverage, which is a pre-requisite for the development of a digital single market.

It is noted that this action would contribute to the removal of an important barrier towards the realization of a single market, whilst at the same time contributing to the territorial solidarity. In particular it is emphasized that these goals can only be achieved if construction costs can be reduced throughout the entire European Union.

- Create unified and efficient planning and investment processes on a major scale.

This would contribute to a development where operators can be active throughout Europe.

## Comments on the Regulation Proposal

### General

Electronic communications are an important component necessary for the creation of sustained development within all areas useful to individuals, society and commerce. The Swedish Urban Network Association notes that progress within the EU, regarding the development and availability of high-speed IT-infrastructure for electronic communication, varies greatly. The SSNf agrees that it is therefore imperative that solutions are available allowing all countries within the Union to develop. The EU must however ensure that countries such as Sweden, which have come a long way in their development, are not hindered by this regulation and forced to stagnate instead.

The Regulation Proposal is permeated with the idea of favouring the investment of high-speed broadband and creating an inner market where players are given the conditions to establish activities in several member states. It appears that the proposal favours existing dominant network owners. It seems that the EU's pursuit of increasing the will to invest also affects competition. The Swedish model defends competition at all stages, irrespective of dark-fibre or capacity services and has been successful in this endeavour. The Swedish model implies that Urban Networks are not vertically integrated, i.e. they do not offer end-user services in competition with other service suppliers, they only offer dark-fibre and capacity services to other operators and network suppliers. In the SSNf's opinion the EU's proposal appears to limit infrastructure competition and suppress the will to invest of smaller players. From the point of view of low costs and large-scalability the Proposal favours in the

main existing dominant players.

The ambition for construction costs to reduce throughout the EU will mean that major players will be favoured at the expense of the smaller ones. There is a clear risk that the rules which regulation proposes will cripple the small players and favour multinational or nationally dominant players.

The proposed regulations are no guarantee that the will-to-invest will increase. Since the national regulatory systems still exist and access-regulation remains, there is a risk that this proposed regulation can overturn the whole objective of a functioning market, meaning continued and increased dominance for established national monopoly companies.

The proposal incorporates new rules for physical infrastructure (canalisation). It seems that the EU thereby clearly feels that owners of physical infrastructure (canalisation) have large amounts of excess capacity at their disposal which could be utilised by new players, an assumption which could be either right or wrong. If it is wrong, the proposal will not have the effect it aims to achieve.

### Decision process and dispute settlement

The proposal states that, where one player, in writing, requests access to another player's physical infrastructure, any decision made can be submitted for dispute settlement after two months and within four months thereafter the dispute settlement body shall pronounce a mandatory ruling to solve the dispute. At this time fair terms and reasonable prices shall be stipulated. This ruling can be appealed to a court of law but must be implemented immediately.

The SSNF's members sell access to dark-fibre and capacity via fibre infrastructures on commercial terms. The Urban Networks do not normally sell a canalisation product. The Urban Networks defend, and have been a driving force in, the creation of an open network business model. The implication is: *"An open network is an infrastructure available for all market players on equal terms. A network is open to all who wish to lease fibre and for all who want to offer services in an active network"*.

The proposed regulation can imply that the Urban Network's business idea is sabotaged if other players are allowed to request access to an urban network canalisation rather than purchase those products and services which are sold today. The SSNF feels that as dark-fibre is already offered on an equal basis, Urban Networks should refuse other players access to canalisation. This should be made clearly apparent.

There are normally several alternatives available for access to dark-fibre and capacity via fibre in most places in Sweden. The Urban Networks have been torch bearers in the challenge to build fibre in Sweden. Without them the country's fibre structure would in no way be as developed as it is today.

The SSNF notes that infrastructure competition is growing in Sweden. New mobile networks incorporating LTE, cable-TV networks and the copper network exist in parallel with fibre. There is therefore a large selection of supply and access to these networks for operators who want to act at the service level.

The proposal states that:

*"The proposed measures do not impose specific business models. They also leave open the possibility for Member States to adopt more detailed provisions, and thus will rather complement than affect on-going national initiatives. In contrast, they will allow Member States to build on their current measures and select the organisation of any existing or new measure which best suits their particularities, without necessarily imposing further costs."*

The SSNF would preferably have seen that it was made clear that the regulation's task is not to open up a canalisation level in geographic areas where infrastructure provision and players already today have access to high-speed networks on which to sell and develop the service market.

The Proposal promotes the will to invest but at the same time it is important that regulation does not

stifle development and competition for small players. The SSNf feels that the Swedish model must be defended and at the same time Sweden must ensure that development and the will to invest do not come to a halt and that competition does not become distorted. Today's open-network model with dark-fibre and capacity products has put Sweden at the forefront and must be defended. The SSNf feels that in any area with competitive networks, access to canalisation should not be a first hand alternative.

### Ownership and businesslike negotiations

According to the proposal:

*"While the proposed measures aim at reducing barriers to access to physical infrastructures, they do not unduly impair ownership rights and preserve commercial negotiation in the first place.*

The Urban Network's business idea is not to sell a canalisation product. The business idea is to sell dark-fibre and capacity to service operators. In reality there is no player in Sweden selling a canalisation product. The reason is admissibly because all the canalisation which exists is optimized for that type of business conducted by the company concerned. This should apply to; energy, heating, water and sanitation, electronic communication, railways, roads and other canalisation owners.

The SSNf feels that the proposal's viewpoint that there is no unreasonable violation of ownership rights is questionable. In addition, the SSNf also feels that the proposal's view of businesslike negotiation continuing to be the most important method can also be questioned.

Experiences from the Swedish market are that every player tries to have the lowest cost for access and receive the highest possible price for providing interconnection. Businesslike negotiations are rare in those areas where the rule-book specifies that the Regulator can stipulate costs and pricing. Most players who purchases at wholesale prices naturally tend to use the Regulator as a "negotiating party" rather than entering into buyer and seller negotiations.

The risk with the proposed rule-book is that players will request access to canalisation, not only to establish their own network, but also in an attempt to force down the cost of access. The effect can be that canalisation owners will be forced to deliver at a price which will not give them the necessary return on investment. This becomes clear if the method to calculate what can be considered reasonable costs is the same or similar and applicable for general regulation of the market for electronic communication. It seems that a board of arbitration could apply a model which supported a view whereby costs for large-scalability became the norm. The practice of assessing a reasonable price implies that an existing dominant player will be given a better earnings-chance thanks to the large-scalability created during the monopoly era. A new and smaller network player is penalized and risks being driven out of the market supported by the rule-book's wish to create large-scalability. The SSNf feels that every practice which favours a larger network-owner simultaneously risks limiting competition at the infrastructure level. Smaller infrastructure owners can be put out of business which is diametrically opposite to the common desire for new players to develop on the market.

The Swedish model, where smaller players in the form of urban networks, have been the drivers behind the expansion of high-speed networks, must be safeguarded. The Proposal should therefore clarify how it intends to take care of smaller players and in addition how an application should be presented to ensure business-like negotiations between buyer and seller

The proposal states that "differences in regulatory requirements sometimes prevent cooperation between utilities". In this regard it would be appropriate if Sweden amended those rules which obstruct the urban network's possibilities to cooperate so that regional, national and more efficient structures could be created.

### **Inefficient usage of existing passive infrastructure**

The proposal's rules have arisen under the supposition that passive infrastructure is used inefficiently.

The SSNf is not convinced that such is the case, anyway not in Sweden. As mentioned above it is reasonable to suppose that every player constructing canalisation has optimised for its activities both today and in the future. This applies in all probability to all network owners (electronic communication, heating, water and sanitation energy, railways, roads and other players. It is therefore probable that the opportunity to provide new players with canalisation is limited.

The proposal also implies that those players owning canalisation are in practice obliged to create a new product where experience is lacking. From a political standpoint this could seem simple, but not so in practice. The problems in this case are not predictable. Probably every player will, amongst other things, need to define a completely new product and create new information systems as support for the product. It can even mean that existing and well functioning business models must be abandoned. The risk that these issues halt the further development of Swedish broadband is a real threat.

It is probable that a number of players will request access to canalisation. It is also probable that the affected parties have different views on whether or not there is canalisation space available for sale.

The SSNf is afraid that the same results, which otherwise characterised regulation of the market for electronic communication, still remain. This implies many judicial reviews, amendments to previous decisions and increased uncertainty about which provisions actually apply.

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