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TeliaSonera's response to the European Commission's public consultation on the revision of the Recommendation on relevant markets.

Introduction

TeliaSonera has operations in all Nordic and Baltic countries. Our experience from these countries is that the competitive conditions differ significantly within Europe. Both in terms of retail market shares as well as the structure of the markets and the availability of different wholesale products.

This consultation response is to a large extent based on the market development at TeliaSonera's two largest markets, Sweden and Finland. Finland is currently the leading country in mobile broadband penetration¹ and Sweden is one of the countries in the world with the toughest competition and lowest prices on wholesale products for fibre². We therefore believe that the development on these markets is an important input to the European Commission's work with a forward looking recommendation on relevant markets.

Question 1: *What are the technological developments in the electronic communications sector at the EU level as of 2007 that have an influence on how the markets should be defined in the revised Recommendation from an ex ante perspective?*

TeliaSonera would like to highlight two important technological developments that we believe should have significant impact on the market definitions but also on the regulatory approach in general.

The first is the development of xDSL in relation to other fixed access infrastructures. In 2007, xDSL was growing in most European countries, both in total connections but in many countries also in share of total fixed broadband connections. In 2012 xDSL is decreasing in many countries and in general being replaced by other broadband infrastructures such as fiber and cable-TV-networks. In many European countries xDSL's share of total fixed broadband subscriptions is below 50% and decreasing rapidly. The consequence of this development is that the current regulatory approach that is based on a situation with an incumbent that owns the copper network and new entrants that seeks access to the copper network for producing xDSL is becoming less and less relevant in many member states.

The other technological development is the fixed-mobile substitution, both for telephony and broadband. For telephony, the most important drivers for this development are the lower price levels for mobile phone calls and the success of smartphones. People that use their smartphones for almost everything are also using them for making phone calls. In 2007³, 66% of Swedish consumers said that fixed telephony was their first choice for communicating with friends and family while 28 % preferred mobile telephony. In 2012 the situation is the opposite, 22% prefer the fixed line while 50%

¹ Digital Agenda, Scoreboard, Mobile broadband take-up, Penetration of dedicated service cards/modems/keys only

² See for example: <http://www.stokab.se/upload/Dokument/Broschyre%20och%20foldrar/100MbitUnitedMinds2011.pdf>

³ Consumer Scoope 2012, Annual consumer survey made by TeliaSonera

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use the mobile phone. At the end of 2011, only 16 % of the Finnish households had a fixed telephony subscription. During year 2012 the downward trend in fixed telephony has continued. SMS is well on its way to substitute fixed line calls as the 2nd most preferred channel of communication with family and friends. The development between 2007 and 2013 clearly shows that mobile networks and especially mobile terminals are the future platforms for voice communication. This must be reflected in the regulation of fixed telephony.

Mobile broadband (HSDPA) was launched late 2006 in Sweden. Today 46% of the households have mobile broadband (excluding smart phones) and 18% of the households use mobile broadband as their only connection to Internet (no fixed broadband). The 4G networks will cover 99% of the population in 2013 and is today sold as a substitute to xDSL. In Finland, 47 % of households have a mobile broadband connection and 26 % of households use mobile as their only internet connection. Since the recommendation from 2007 a new and parallel infrastructure for broadband has emerged. This should have a significant impact both on the definition of markets and the level of obligations that are imposed on different markets.

Question 2: *What are the changes in structure and functioning of the relevant markets (e.g. supply and demand side developments, bundles, convergence, geographic scope), which should be reflected in the revised Recommendation from an ex ante perspective?*

Question 3: *Can you identify any market bottlenecks which in your view cannot be addressed by ex ante regulation via a revision of the Recommendation alone? How in your view can such market bottlenecks be addressed?*

The most important structural change between 2007 and now is the development from a national xDSL dominated broadband market to extremely local NGA markets. The consequence for service providers is that they cannot rely on the access to the incumbent's network. A service provider that wants to offer NGA-services on a national basis needs to get access to: in-house wiring owned by landlords, different local fiber access networks, the national copper network and active wholesale products offered by local and national operators. Already today, the incumbents copper or fiber network is in many situations not the relevant bottleneck.

In most member states the roll-out of fixed NGA infrastructure is done by several players in the market: Cable-TV-operators, Incumbents, Local City Networks and Landlords.

Landlords often build and control the in-house wiring in MDU's in for example Sweden and Finland. To access end-customers in a MDU an operator therefore has to make a deal with the landlord regarding access to the in-house wiring. The alternative is to buy an active wholesale product from an operator that has a contract with the landlord that allows him to sell wholesale products (a non-exclusive agreement). One single landlord can thus be the gate-keeper to tens of thousands of households. This is a big difference compared to xDSL where the incumbent usually was the gate-keeper and had access to all households in the country.

The other difference concerns the access network (to the building). With xDSL the coverage was almost 100% in many countries and the incumbent owned more or less 100% of the copper lines. For fiber, the situation is completely different. In Sweden there are city networks in almost 200 of 290 municipalities. Rolling-out fiber network is not a national project, it is thousands of local projects with huge variations concerning for example:

- Local political broadband strategy including the existence of a municipality owned network
- Local building conditions
- Level of competition from other infrastructures (cable network)
- Local customers: Real estate owners, County council, etc.

The joint national market share of the city networks in Sweden regarding wholesale fiber is 66 per cent. TeliaSonera's (incumbent) estimated market share is 33 per cent. This development has had a significant impact not only on the infrastructure market but also on the downstream markets. A service provider that wants to be a national player in the broadband market cannot any longer rely on

access to the incumbent's network. To be able to compete in many municipalities it is necessary to have access to fiber from the local city network.

In summary, the access market are becoming more and more local with the consequence that service providers need to have a commercial relationship with local suppliers in different parts of the value-chain. If there is a bottleneck that needs to be regulated it will in many situations not be the incumbents network. This must be reflected in the future regulation. Theoretically, this could be achieved with a new more local regulatory approach when assessing the geographical sub-markets. However, in practice it is not possible to use the SMP-methodology for regulating relevant bottlenecks in a market with for example almost 200 local networks and thousands of landlords. The analysis become even more complex since there are normally at least two competing fiber owner in each municipality.

The Finnish market is an example of the complexity to use the current regulatory regime in countries with different infrastructure owners.

On 3 December 2012, FICORA issued decisions on the obligations to be imposed on telecoms operators with significant market power (SMP) in the local loop and wholesale broadband access markets. FICORA decided to set stricter regulation to only eight out of 27 SMP operators in the local loop market. Instead of the obligation to ensure cost-oriented pricing, the 19 smaller 19 operators are obliged to apply non-discriminatory pricing. According to the FICORA, the significance of the 19 local telecoms operators is small with regard to the internal market and trade between Member States and the decisions were not notified to the EU Commission. The market analysis conducted by the Ficora shows that these companies have SMP in their local geographical markets. In addition, there is no difference in market situation, which would substantiate different regulatory treatment. It seems to be clear, that the SMP methodology with extensive and complex process is not suitable in a situation of 27 local markets.

TeliaSonera therefore suggest that member states that have competition on infrastructure level with a high degree of geographical variations should be able to replace SMP regulation with a general regulation on equal access to relevant bottlenecks. Relevant bottlenecks could be in-house cabling and/or the infrastructure on the last stretch leading into the building as long as there is no parallel competing infrastructure and/or it is not profitable to establish a parallel infrastructure. In the assessment of relevant bottlenecks, it is important to include the above described development in for example Finland and Sweden towards more and more substitution between fixed- and mobile broadband.

By extending article 12 and a introducing a clear EU guidance regarding the relationship between regulation based on article 12 and SMP-regulation it is possible to achieve a regulatory regime that guarantees a continued national retail competition based on local NGA-infrastructure.

Question 7: *In your opinion, should the scope of any relevant market(s) identified in the Recommendation be changed? If yes, please explain why, referring to the relevant market(s) concerned.*

Question 8: *If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such changed scope on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market subject to a new scope*

TeliaSonera believes that there is a need to review the relationship between current market 4 and market 5 (bitstream).

The regulation of bitstream has had two main purposes in most European countries. First, it can be a complement to regulation of passive infrastructure. In areas with low population density it might not be economic viable for several service providers to co-locate and produce their own services. Bitstream could therefore be necessary to secure an efficient competition.

Regulation of bitstream has also been motivated as an entry level product. To attract new entrants regulators have argued that there is a need for a regulated active wholesale product. In accordance with the ladder of investment, regulators have therefore often imposed regulation on both market 4 and market 5 in the same areas. The idea has been that new entrants should climb the ladder of investment, i.e. first buy bitstream and then migrate the customers to passive access products.

The result of these two different purposes of bitstream is that market 4 and market 5 to big extent have been regulated in parallel and on a national basis. For example, there has often been a cost based regulation of bitstream even in geographical areas with up to 3 parallel fixed broadband infrastructures and several service providers that buy access to passive copper and/or fiber.

Given the market situation in 2012 in many European countries, there is not a need for a regulated national entry level product. In Sweden there are more than 36 service providers that deliver retail broadband products on fiber. The sales of the regulated bitstream product (copper and fiber) represents approximately 0,5 % of all fixed broadband subscriptions at retail level. Two conclusions can be drawn out of this. First, there is no need to use regulation to increase the number of service providers in the market. Second, a national bitstream regulation is of no importance for the existing service providers and for the competition.

However, bitstream might still be a relevant regulated wholesale product in sparsely populated areas. In addition, the transition to NGA has made access to passive infrastructure technical impossible in some situations, e.g. Vectoring, GPON. Some regulators have already handled this situation by for example including regulation of active wholesale products in market 4. TeliaSonera's suggestion is therefore that Bitstream should be handled as a pure complement to regulation of passive infrastructure. The best way to fulfill this purpose is to convert bitstream to a remedy in market 4. The obligation to provide bitstream (on market 4) should therefore only be imposed when it is not economic viable or technical possible to access passive infrastructure

By converting bitstream from a separate market to a remedy on market 4 the regulation of bitstream can be limited to situations and areas where a regulation of active products has a positive impact on competition. In areas with conditions for an efficient competition based on parallel infrastructures or access to passive infrastructure, a removal of bitstream regulation will be positive for the development of a sustainable competition.

TeliaSonera is also convinced that converting bitstream to an obligation will be positive from a harmonization point of view. A clear EU guidance regarding in which situations a bitstream obligation should be imposed on market 4 will definitely give a higher degree of harmonization than current regulation of market 5. Different member states current practice of geographical segmentation in market 5 seems to have little to do with actual differences in market structure between countries.

Question 9: *On the basis of the three criteria test carried out at EU level, should any of the markets listed in the Recommendation be removed from the list in the revised Recommendation? If yes, please provide comprehensive reasoning thereof.*

Question 10: *If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such removal of markets on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market you propose to delete from the list.*

Wholesale products for fixed telephony, market 1 & 2

TeliaSonera believe that market 1 and 2 should be removed from the list in the revised recommendation. As described under question number 1, there has been a shift from fixed to mobile as the primary platform for voice. This is in particular a consequence of the significantly reduced prices for mobile telephony and the success of smartphones. In recent years, several products that erase the boundary between fixed- and mobile telephony have been introduced in the market:

Home Telephony, over the cellular network: Using a fixed terminal (and number) that is connected to the mobile networks.

Home number: The possibility to transfer your fixed number to one or several mobile terminals, using the mobile network.

Home telephony in the mobile: Making fixed line calls (fixed number) with your mobile (Voip over Wifi with a subscription)

Skype, Viber, etc in you the mobile: VoiP over the mobile (3G/4G) - or fixed networks (Wifi)

Customers can today choose between all combinations regarding fixed/mobile terminal, fixed/mobile number (including tariffs) and fixed/mobile network. In addition to the fixed-mobile substitution there is also a transition from fixed PTSN to fixed IP-telephony. The development regarding prices, IP, terminals and new consumer offerings show that there is a high degree of market dynamics. Potential competition problems that could have been relevant in a pure PSTN market with one supplier of the service are not relevant in a telephony market with several parallel infrastructures and even more players who produce their own telephony service. It is evident that the market is moving in this direction rapidly and the regulation of fixed telephony (access & traffic) should therefore be phased out.

Termination, market 3 & 7

TeliaSonera believes that competition law and regulation under Article 5 Access Directive are sufficient to counter any potential market failure on the termination markets.

The Commission's recommendation on termination rates has resulted in significantly reduced termination rates and increased the level of harmonization In Europe. To continue with market analysis, cost calculations and supervision will have very little positive effect on consumer benefits. Given the relatively high administrative cost and regulatory uncertainty that the current regulation of market 3 & 7 implies, TeliaSonera therefore thinks that market 3 and 7 should be deleted from the list of relevant markets. If deletion is not considered a viable option, alternative models for treatment of the termination markets should be introduced, e.g. acceptance of termination rates within reasonable intervals.