

2008-11-10

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Comments on the Draft Commission recommendation on Regulated Access to Next Generation Networks

General background and comments

The Swedish Network Association (SSNf) www.ssnf.org was formed in 1998 and organises 300 members' organizations.

The organization is an independent non profit organisation for NGA networks owners, ho operates competition-neutral and open networks, as well as for telco's, suppliers and other organizations. The association continuously operates in cooperation with the Swedish Ministry of Enterprise, Energy and Communications and has a close cooperation whit regulator The Swedish National Post and Telecom Agency.

We welcome the recognition made by the commission to not only clearly and finally include NGA, essentially an upgrade of the wireline telecommunication networks from copper to fibre, in the SMP product categories.

Since several of our members, many municipality or utility controlled local providers of alternative networks, have for several years struggled with the transformation the proposed regulation is aimed to address. Not only from a very immediate practical point of view, getting fibre out as an alternative to incumbent copper, but also trying to find sustainable business models and legal frameworks.

To day is 30 % of the household in Sweden connected whit NGA (FTTX). 20% true the municipal owned networks.

The incumbent Telia-Sonera stands for 10 % FTTX and has been force to invest in NGA earlier than planed because of the competition from other operators ho is using the open municipal's owned networks.

Additional EC complementary action

The EC must consider added efforts in the creation of models, including deeper analysis of real implementations to avoid too simplistic and shallow processes at national level. NRAs and policy makers need support in looking beyond the situation for the incumbent. In particular this is applicable where the policy makers still have a position as dominant owner of the incumbent, blurring the policy discussion.

We, and our members, would be happy to participate and share our real life experiences in NGA deployments, but we have not the resources to do this on our own account, nor do we have officers suitable for the research task of systemizing the data.

A few general comments on the draft recommendation:

We find the liberations in various points in the document to be excessively occupied with the relations between the regulator, the SMP operator and the new service operator(s) lacking physical wireline network. End users, and user agents, are surprisingly absent, but as passive recipients of whatever occur between the other three stakeholders. This is more than just looking at the traditional operators. In many cases a considerable part of the total investment (and risk) is carried by the users and landlords like CP wiring and CPE. The Draft should have provided more guidance and room for these stakeholders.

EU harmonisation

We question if the ambition of the EC to drive the harmonisation aspect is the most useful one at this point. True, there are advantages of scale effects in the creation of visions and approaches, but it is not obvious that total harmonisation of market conditions for NGA is even a major factor for a more rapid development of better broadband in the EU, leveraging into more user value creation. The consultation comments from the ERG suggests otherwise: In order to reach a common position laggards have most likely had a restraining, limiting and delaying effect. Lobbyist work from incumbents has no doubt created some fear. Now is still the time for champions to show what can be done under a visionary and challenging main framework, not a consolidation of a well established NGA position into detailed pan-EU positions on details involving other areas like housing and land legislation.

Two basic problems with the draft approach:

A. Unbundling down to duct level will never work in real life but for the occasional example. The structural responsibility, impact of churn and a whole array of practical outside plant issues have been played down by the application of too narrow and simplistic competition model assumptions. The cost penalty over time for several of the suggested actions will be prohibitive.

If the general idea with this regulation is to expose this flaw and pave the way for a structural separation of the NGA up to dark fibre level we can see the point, otherwise not. However, the risk is obvious that millions of man hours and euros will be spent along a dead end by policy makers, regulators and operators increasingly desperate in trying to make the fundamental down to duct unbundling work.

B. The tremendous scale, network and first mover effects of wireline networks makes the lingering desire for infrastructure competition look like a distraction from the real questions, who will have a dominant position on NGA, will it be one or two players, and how will it be regulated long term. The long term business risk in NGA is *lower* than telecom average, not higher as the draft suggests. But this applies only to the dominant, the large & dense footprint provider. NGAs on passive level, dark fibre, are more appropriately compared with water utilities and other long term non-differentiating networks.

GENERAL PRINCIPLES

1. No changes.
2. We suggest changing to “NGAs are wireline access networks....”

3. We subscribe to the need of considering smaller areas when evaluating if competition exists or not. The main issue is if the user can get service to their premises, or if there at least do exist a credible competitive pressure in an area from a nearby facility.

4. We are at odds with the hope for unbundled duct to be of any but theoretical value. Excessive shared digs has been tried early on municipally controlled metro members. It creates a patchwork of unusable pieces of duct.

Getting access to third party duct with any structural value is a futile hope. There is simply not enough empty space available for access networks from incumbent telcos or even from alternative potential providers like utility companies. Backhaul may be a different thing. We are afraid that this unfortunately may create patchworks of substandard plants, a future maintenance nightmare and a short life providing prohibitive annual costs once assessed.

What defines “sufficient space?” Right now the phrase just adds to the regulatory risk.

5. The big product will be dark fibre. The draft proposal lacks any substantial reasoning on who will take care of the structural stability and maintenance of the outside plant, should several operators challenge each other over ducts and at what added cost these measures will come. The costing will be much more complex than indicated, not least in relation to all step effects as the last duct is rented in a bottleneck where additional duct can not be easily, or timely, added.

6. No comment

7. No comment

8. No comment

9. Unclear if the 3rd sentence refers to a reference offer on dark fibre or what.

10. A far reaching requirement both on the SMP operator and the NRA. What happens if the SMP operator decides to postpone investments? The requirement needs to be made more clear in scope and time to be measurable.

11. A non measurable task. Exactly how, and to what extent, will the NRA assume risk or provide incentives between parties where the dominant has all reasons to not cooperate?

12. Local NGA will be built as soon as it is designed in as a part of a bigger structure. The draft is not paying the structural issues during transition enough attention. We agree to removing the regulatory obligations, but only if an orderly process has been followed and new plant is made available on equal terms.

FTTH (Fibre to the Home)

13. The obvious conflicts of interests between operators must be recognised and dealt with more than as lightly as proposed. The industry fundamentals in leveraging any scale advantage or choke point will not be balanced by anything but banning its unfair use. We suggest changing “facilitate cooperation” to “mandate open and equal access” including adding something on preventing later operator or landlord abuse towards the end user.

14. The ingress perhaps puts a detailed operational task on the NRA that it cannot readily execute, as if this was to be determined on a case by case basis. The key things are (i) access to the final and physically separate medium to reaching the user, the termination segment, (ii) access at a point where low market share competition is viable, (iii) using a standard interface, (iv) being able to co-locate reasonable equipment at that point.

We trust that applying this requirement will drive the commercial interest of PON to very, very low levels, as the major commercial disadvantage, competition lock-out, will disappear. If PON has a true systems advantage, which is questionable down the road, the splitters may as well move into the CO close to the ODF. The added cost of fibre all the way to the CO ODF, increasing the termination segment, will most likely be less than all other measures to include bulkier street cabinets and detachable contacts en masse in the outside plant or at customer premises. A clear indication of this is the current fondness of PONs found with vertically inclined operators and P2P or “Home run” fibres with horizontal infrastructure providers.

15. What is “ a sufficient number of operators to ensure effective competition”? This is a key issue for all the economics related to roll out of competing infrastructure. Most competition literature suggest the presence, or threat of presence, from about five to meet this criteria. Duplicating the civil works cost by 3-4 times will obviously not be done. Just duplicating the initial duct will in most cases be prohibitive for anything but high density high demand areas. This will no doubt be one of the crucial limiting points ahead.

We do not regard duct sharing as feasible either. The chance to pull additional cables in narrow ducts is in most cases just hypothetical or at least only feasible in straight lines and at very short distances, like across a street. And that is only for the first cable. Three or more cables will almost certainly get entangled and jam. This will push for a substitute of the first cable, or if duct space allows, a re-installation of that cable in or along simultaneously pulled subducts, that will later house additional cable. The main alternative will be to ask for a substitution of the first (low fibre count) cable with a high fibre count shared cable since the fibres are supposed to terminate at the same place anyhow. This is a practice that most fibre providers with a growing demand and foot print have experienced.

We think that this, together with the accounting practices suggested, will unavoidable drive development towards a structural separation on the dark fibre level.

16. No comment

17. No comment

18. Residents and municipalities will increasingly protest the deployment of additional and bulkier street cabinets housing active equipment. Getting RoW for these will be more difficult over time. The draft fails to cover that aspect.

19. No comment

20. We suggest adding to the second sentence: “or to dark fibre at cost should ducts not be readily available.” The draft should somehow address the time aspect.

21. No comment

22. No comment

Wholesale Broadband Access (including bitstream...)

23. We find the term “Wholesale” inappropriate and misleading in a product concept and value chain discussion and we suggest the Draft as well as other SMP related documents to avoid it. The dimension “wholesale –retail” will just open up for a discussion of “who you are” not what product or ser

vice is offered, and how. The word and thinking is unfortunately imported from jurisdictions with a tradition we have gratefully left behind in the EU framework. Shall we have licenses sheltering operators from DIY end user competition?

Words like upstream and downstream can be used instead, or reference made to the various network levels as present in most technical discussions: Physical, Link level etc

24. See 23 above.

25. No comment

Annex 1

1. No comment

2. “not active” needs to be further defined. Cost allocation and sharing principles will need much more refinement.

3. Cost allocation will be a complex matter. Experience shows that sharing agreements often stall around influence of changes in the distribution of business risk.

4. How shall the SMP operator determine how many competitors he will have, and make room for, at the time of making the investment decision?

5. This will need further expansion, even if we agree to the main idea.

6. See previous objection to the use of the word wholesale.

7. Little explanation of anything but a formula. The key valuation and attributing of costs remain and needs further work.

Annex II

1. Information. We share the general attitude but lack any comment on maintaining security if this should be made readily available to what essentially is the public. Alternative fibre providers have already addressed this problem with tiered information. That could be used as a starting point.

2-4. These requirements are easily met by all reasonably professional and sized fibre providers in the market. However, the SLA requirements mandated by the NRA must be related to the capability of the provider.

For the board of SSNf

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Sectary General