

Second consultation on regulated access to Next Generation Access networks

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Attending to this matter
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**Ericsson comments on
Second consultation on regulated access to Next Generation Access networks (NGA)**

Ericsson is the world's leading provider of technology and services to telecom operators. Ericsson is the leader in 2G, 3G and 4G mobile technologies, and provides support for networks with over 1 billion subscribers and has a leading position in Managed Services. The company's portfolio comprises mobile and fixed network infrastructure, telecom services, software, broadband and multimedia solutions for operators, enterprises and the media industry. The Sony Ericsson and ST-Ericsson joint ventures provide consumers with feature-rich personal mobile devices.

Ericsson is advancing its vision "to be the prime driver in an all-communicating world" through innovation, technology, and sustainable business solutions. Working in 175 countries, more than 75,000 employees generated revenue of SEK 209 billion (USD 32.2 billion) in 2008. Founded in 1876 with the headquarters in Stockholm, Sweden, Ericsson is listed on NASDAQ OMX Stockholm and NASDAQ New York.

1 Summary

The EU is in great need of a regulatory framework for Next Generation Access networks (NGA) that stimulates investments. The EU Council of Ministers clearly stated that in March 2009 that Europe urgently needs an investment friendly NGA regulatory regime. Ericsson therefore welcomes the initiatives by the Commission to provide comprehensive recommendations on NGA regulation and the related state aid guidelines.

NGA is an emerging market with many evolving technologies competing on their own merits. Market demand for services and applications is unpredictable; it is still unclear which will be predominant, commercially viable and what requirements they will put on the network capabilities.

In Ericsson's view the draft NGA Recommendation fails both in recognizing the importance of letting this new market evolve and compete based on its own merits, and in fulfilling the requirements of an investment-friendly regulatory regime as requested by the March Council statement.

Ericsson would therefore urge the Commission to reconsider the draft NGA Recommendation and work in closer collaboration with industry players to formulate NGA regulatory principles that incentivise the deployment and use of broadband infrastructure and services in Europe.

2 New market definition, new investments and technology neutrality

As noted by the Commission MEMO/09/274, the FAQ to the NGA consultation¹, services provided over NGA networks are high-speed broadband services not previously available and NGA networks provide enhanced capabilities not previously attained. Consequently ex-ante regulation should not be applied in a way that hampers investments and constrains the development of these new services and capabilities that in Ericsson's view forms a new market separate from legacy broadband markets.

The investment necessary to provide high speed broadband wireline connection Europe-wide has been estimated² to be 250-300 BEUR. The volume and long term nature of such investments do require regulatory clarity and stability; Ericsson therefore welcome the Commission's initiative to provide further recommendations clarifying the regulatory framework applicable to such network investments.

Since technology and market demand for services has evolved, and will continue to evolve, beyond legacy services, regulation can not presume a network architecture modeled on the existing copper network and its market structure. NGA regulation should stimulate competition and clarify how NRAs should act to analyze and ensure a sufficient level of competition. This should take the following into consideration:

- Respect for sound investment principles;
- The need for long term regulatory clarity;
- Co-operation, joint investments and other arrangements shall be based on commercial agreements recognizing the investment risk in new infrastructures;

¹ "new broadband services such as online gaming, high-definition TV and interactive applications require enhanced network characteristics including higher bandwidths, that cannot be provided over copper infrastructure"

² McKinsey study

- Many different wire-line technologies and architectures (e.g. Cable-DOCSIS 3.0, VDSL, FTTH P2P, FTTH GPON, FTTB, etc) are available and will evolve and compete based on the most suitable technology/architecture to satisfy market demand. Therefore technology neutrality is imperative.
- Wire-line technologies will be a complement to an increasingly dominant mobile broadband network. For some geographical areas and services it will however be more efficient to utilize wire-line broadband access technologies. Thus wire-line and mobile broadband technologies will live and evolve, depending on market demand and technology evolution, side by side and as complements. This means that the selection of wire-line broadband technology and network topology should be left to the investor, not imposed by the regulator;
- With the exception of access to civil works infrastructures, regulatory intervention shall only apply as a last resort in cases of market failure.

3 Regulatory principles needed to facilitate the NGA market

3.1 Focus regulation on lowering civil works investments

Civil works count for 50-80% of the NGA network investment cost. This part of the infrastructure has no competitive elements per se. Therefore equitable access shall be ensured by regulation to ducts, rights of way and other relevant civil works, across all relevant infrastructures, including telco, cable, municipalities, utilities or passive infrastructure PPPs.

3.2 Regional approach to remedies

There are geographical areas where infrastructure competition is quite feasible. Operators can compete with different network topologies and active network solutions. The prospects for infrastructure-based competition are quite good in many areas, depending on user density and ARPU levels. Clearly three main regions can be identified:

Region 1 – Where infrastructure competition is feasible i.e. where two or more parallel active networks can be commercially deployed. Access to civil works infrastructure components is the only regulatory remedy to be applied. Otherwise investment in competing infrastructures would be disincentivised. If SMP evolves, based on a new market definition and only for the geographical areas where the SMP definition is fulfilled, the least intrusive remedy should be considered to reach a sufficient level of competition. Remedies to ensure sufficient competition in areas where SMP would hamper competition can be selected from a variety of measures and should only apply after market failure have been found. Such remedies can apply equally well at network levels above the physical access and need not stipulate a technology that facilitates unbundling of the physical layer.

Region 2 – Where 1-2 commercially viable networks can be sustained. To obtain sufficient competition in the retail level, after market failure or SMP has been found by appropriate market analysis, least intrusive remedies can be applied. Such remedies shall not limit the selection of technology or topology. Wholesale access above the physical layer can be equally effective in ensuring sufficient retail level competition.

Region 3 – Where no commercially network is viable. In such areas state aid is needed through e.g. a PPP that provides network access for service operators.

4 Symmetric regulation

Regulation must be based on a new and clearly specified market definition. It must treat all NGA ventures equally, and have no reference to regulation of legacy networks. Furthermore regulation shall facilitate co-investments, based on commercial agreements and recognize the high risks involved in infrastructure investments. New infrastructure investments that accommodate access seekers entail additional costs; this additional investment risk must be acknowledged. Any free rider approach will only be counterproductive. Access seekers willing to share investment risk by volume and time commitments and/or via joint investments in the network shall be rewarded in relation to access seekers not willing to take such investment risk.

5 Boosting a competitive landscape

All network sharing arrangements shall, as a general principle, be based on commercial agreements between commercial actors. NRAs shall only ensure that non discrimination is maintained in case SMP evolves or where insufficient retail competition is concluded ex post.