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**Applicant**

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**The matter**

Application for amendment of licence conditions in accordance with Section 16 of the Telecommunications Act (1993:597)

**Background**

On 12 May 2000, the National Post and Telecom Agency (PTS) published, in accordance with Section 14 of the Telecommunications Act, an invitation for applications for licences to provide network capacity for mobile telecommunication services in accordance with the UMTS/IMT 2000 Standard and the GSM Standard in Sweden (UMTS licence). In conjunction with this, PTS also published a guidance for the applicants (Guidance), which explained how the applications should be formulated and how the assessment of the applications would be conducted. PTS had before this decided to adopt regulations concerning the said licences (National Post and Telecommunications Agency Regulations on licences to provide network capacity for mobile telecommunications services in accordance with the UMTS/IMT 2000 Standard and GSM Standard respectively – PTS Code of Statutes PTSFS 2000:5). These indicated how the licence consideration by PTS would be conducted and what basis of selection would be applied in connection with the consideration.

On 16 December 2000 the National Post and Telecom Agency (PTS) decided, in matters with file references 00-12986, 00-13042 – 00-13046, 00-13048, 00-13051, 00-13053 and 13055, to issue UMTS licences to Europolitan AB (Europolitan), now Vodafone Sverige AB (Vodafone), Orange Sverige AB (Orange), Hi3G Access AB (Hi3G) and Tele2 AB (Tele2), subject to the conditions on coverage requirements, among other things, which would be issued by PTS according to a special procedure. Telia, Telenordia Mobil AB and Reach Out Mobile AB appealed against the decision to the County Administrative Court, which confirmed PTS's decision by a judgment of 27 June 2001. The judgment of the County Administrative Court was thereafter not appealed against to the Administrative Court of Appeal, for which reason it has entered into final legal force. The licences apply as of and including 16 December 2000 until the end of 2015.

PTS has, by a decision of 22 March 2001, in the matter with file reference HK 01-7947, issued licence conditions to Europolitan for the UMTS licence, to apply as of 1 April 2001 up to and including 31 March 2006. It is stated in the licence conditions, as far as regards the requirements for coverage, that the network capacity shall have a coverage of at least 8,860,000 people in Sweden (Section 1.1.2 of the licence conditions) and that Europolitan, no later than 1 March 2004, should verify that the coverage requirements are satisfied as of 31 December 2003 (Section 1.3.1 of the licence conditions). The licence conditions have not been appealed against by any of the licence holders.

PTS has, by a decision of 30 September 2002 (file reference 02-10223), adopted a position on an application for an amendment of licence conditions relating to the UMTS licence held by Orange. By the decision, PTS rejected the application.

Hi3G has, in a written communication received by PTS on 9 November 2002, applied for amendment of the licence conditions for the UMTS licence (file reference 02-14635).

### **The application**

Vodafone applies, by a written communication received by PTS on 30 September 2002, for the grant by PTS of an amendment of the company's licence conditions relating to the UMTS licence (Section 1.3.1), in such a way that the time for the coverage requirements to be satisfied is postponed until 31 December 2005, to be verified by Vodafone no later than 1 March 2006.

### **Grounds, etc.**

Vodafone states as grounds for its application that, since the licence and licence conditions were issued, circumstances have occurred outside the control of Vodafone which substantially affect the company's possibility of completing the development in time.

In support of its application, Vodafone has basically stated the following.

### **Summary**

It is primarily the following circumstances that currently constitute an impediment to the ability of Vodafone – and presumably even the other licence holders – to satisfy the coverage requirements by the end of 2003.

1. The consideration of the building permit matters is characterised by very slow processing times in a large number of municipalities. The various circumstances referred to by these municipalities as reasons against determining the matters within reasonable time are, in the opinion of Vodafone, not acceptable. A number of municipalities have not complied with the statutory requirement for rapid processing. An unwillingness to make decisions within reasonable time delays and prevents the development, not only in these municipalities, but throughout the whole of Sweden.
2. The frequencies allocated to Vodafone by PTS must, according to new guidelines from the Swedish Armed Forces, be subjected to further consideration by a public authority in a large number of cases through the so-called radio interference review.
3. The processing by the Armed Forces of both flight obstacle and radio interference review is proceeding significantly slower than could reasonably

have been expected, which delays and prevents the development being completed in time.

Set against the background of previous experience relating to the GSM development, Vodafone did not have reason to assume that these circumstances would cause such substantial delay as has now transpired to be the case. Vodafone has been very active in its attempts to expedite the processing of the above-mentioned matters on the part of the municipalities in question and the Armed Forces respectively. However, these efforts have not yielded results to such an extent that the stipulated time schedule can be met. The situation has become so serious that Vodafone sees no possibility of being able to satisfy its undertaking regarding completion of the development. The circumstances that form the basis of the application for amendment of the licence conditions will as such not influence the commercial UMTS launch planned by Vodafone.

***The importance of the development of UMTS in Sweden and the rest of Europe***

The European Commission has, in a situation report on the development of UMTS in the Member States (see Communication from the Commission of 11 June 2002 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – Towards the Full Roll-Out of Third Generation Mobile Communications (COM (2002) 301, page 14)), emphasised the need of stability in the legal environment that surrounds the development. The Commission affords attention to the problems with, among other things, the processing of building permits, and states that amendments of the licence conditions may come into question as a result thereof:

- “Obtaining the authorization for installing base stations has become a real challenge in a number of Member States, which risks to impact on the schedule of roll-out envisaged and increase costs unexpectedly./.../In most Member States the relevant decision processes are taking place at regional or even local level, and applicable procedures and rules vary considerably (e.g. construction permit from local authorities).”

- “Changes to license conditions should be envisaged only when circumstances have changed unpredictably and in these cases any modification should be proportional, transparent and non-discriminatory.”

The Commission points out the need of a legal environment for the implementation of UMTS systems that is characterised by stability but which nevertheless has the necessary flexibility. It is set against this background, that this need for flexibility in the light of new, previously unpredictable circumstances outside the control of the operator, that Vodafone’s request should be viewed.

***Previous experiences and assumptions concerning reasonable processing***

When Vodafone, just more than two years ago, formulated its application for a UMTS licence, assumptions and assessments were made that were largely based on experiences from the development of Vodafone’s GSM network during the 1990s. At that time the processing times for building permit matters and - in relevant cases – the Armed Forces’ flight obstacle reviews did not normally exceed two months. Even if the development of the UMTS network requires a greater number of building permits during a shorter period of time than was the case with the GSM development, Vodafone considered at the time the application was made that the time schedule indicated by the licence conditions could be kept. Vodafone, in summary, made the following assumptions:

-The processing by the municipalities of the building permit matters required by the development would be conducted within a reasonable time and normally not significantly exceed the one to two months that the processing had normally taken during the development of the GSM network.

-The frequencies allocated to Vodafone would, during the development phase, not need to be subject to further consideration by authorities in the form of radio interference review with consequent significant loss of time and delay. It is likely that nor was PTS aware that the frequencies that PTS would allocate after the extensive application procedure would also require licences from the Armed Forces.

-The processing by the Armed Forces of the flight obstacles reviews should be conducted within a reasonable time and normally not significantly exceed the two months that the processing had normally taken during the development of the GSM network.

The said kinds of matters have, however, been characterised by very long processing times among a number of municipalities and with the Armed Forces. The various circumstances that the municipalities in question have mainly referred to as impediments to determining the applications for building permits are, in the opinion of Vodafone, not acceptable. When the application for a UMTS licence was made, there were no indications that the kind of problem that has now arisen would be encountered. The scope of the difficulties that have now arisen must, among other things, be deemed to have been unforeseeable by Vodafone.

#### ***Vodafone's development and co-use of infrastructure***

Vodafone's own organisation is responsible for the development of the area that Vodafone, according to the licence conditions, must cover with its own radio infrastructure, i.e. 30 per cent of the population coverage. For the remaining area, corresponding to 70 per cent of the promised coverage, Vodafone has, together with Hi3G Access AB and Orange Sverige AB, formed the company 3G Infrastructure Services AB (3GIS). Through this collaboration the three licence holders will have a common infrastructure in 70 per cent of the area that should be covered according to the licence conditions. This collaboration is a very extensive form of shared use of infrastructure and means that the number of building permits that are required reduces significantly. Furthermore, both Vodafone and 3GIS are endeavouring, as far as is possible, to collaborate with the other operators and mast owners for the shared use of new and existing masts. Vodafone has thus endeavoured to achieve and has achieved shared use of infrastructure as far as is possible – first through cooperation with 3GIS, second through concluding mast equipment placement contracts. The consideration by the municipalities of building permit matters was probably simplified by this collaboration. In order to further facilitate the work of the respective municipalities, 3GIS attaches to every application for building permits a letter, in which other operators are offered to the shared use of the 3GIS mast.

#### ***Processing by the municipalities of building permit matters***

-The requirement for simple and rapid processing.  
According to Section 7 of the Administrative Procedure Act (186:223), every matter where any private party is a party shall be dealt with as simply, expeditiously and inexpensively as possible without security being neglected. Vodafone has an interest in compliance with the rule in the sense that delayed processing jeopardises the company's ability to satisfy the coverage requirement. The appropriate speed of processing of the applications for building permits must also be deemed to be in the interest of the whole of Sweden, if the political

objectives underlying the development of UMTS should be possible to achieve. Vodafone cannot understand why the processing of building permit matters for the development of UMTS should require a longer time than in connection with the GSM development. Vodafone considers that the municipalities' processing contravenes Section 7 of the Administrative Procedure Act in a large number of cases. This applies, among other things, to the requirement from many municipalities that all licence holders shall submit all of their building applications before the processing of the applications is commenced. This kind of requirement is completely unsupported by law and makes it impossible for Vodafone to satisfy the time schedule.

- Reasons given for the drawn-out processing by the municipalities  
Vodafone has by a letter of 28 August 2002 to PTS reported, among other things, on how many building permits Vodafone has applied for as of 30 June 2002 and how many of these have been dealt with by the municipalities. It is indicated by this report that only a very small proportion of the building permits applied for have been determined. The reasons given for the drawn-out processing times varies from municipality to municipality. Largely, the reasons given for decisions not being issued within a reasonable time are the following.

- The municipalities require further coordination or shared use by the licence holders before a building permit is granted to any licence holder.

Shared use is for various technical and practical reasons not always possible. In some instances, the placement of several antennae on the same mast cannot be arranged, for example because the mast does not have space or because the structural design of the mast does not permit further placement. In some other cases, placement may also disturb other radio traffic. In cases where it would as such be technically possible with shared use of a mast, this may be impossible considering the licence holder's radio planning or transmission planning that forms the basis for the development. An existing mast is sometimes not a fully satisfactory alternative to a newly constructed mast because the area covered by the existing mast may be too small or has a disadvantageous geographical range. Vodafone considers that shared use in certain cases would be facilitated by the municipalities granting *one* of the licence holders a building permit, following which the other licence holders could plan on the basis of the building permits already granted. However, such first building permits are seldom granted.

- The municipalities require, before any application is processed at all, that all licence holders submit all building permit applications in the municipality.

This is impossible for several reasons. The development is occurring gradually according to, among other things, geographical parameters that do not correspond with local government boundaries. The exact localisation of a mast has decisive importance for the localisation of several other masts in the vicinity. To simultaneously specify localisation would furthermore, in practice, be the same as disclosing the overall radio plan for the UMTS network, which contains business secrets of very great value for the respective licence holders. Every licence holder has also its own careful plan for the development, where work at any particular point in time is at different stages in different parts of Sweden. Consequently, all licence holders do not build at the same place or in the same municipality simultaneously.

- The municipalities do not make use of the possibility to make a decision by delegation in accordance with Chapter 5 of the Local Government Act, but allow the building boards to make decisions on matters regarding building permits. Furthermore, in some cases the matter is adjourned on repeated occasions, which results in delay for several months.

Vodafone considers that delegation should be used to the greatest extent possible, taking into account the fact that building permits are of a rather simple nature and also the national interest in the rapid development of the UMTS network.

- A number of municipalities object to, or are refraining from, processing building permit applications by referring to so-called radiation free zones being introduced in the municipalities or the fact that such zones are being planned.

The Swedish Radiation Protection Institute (SSI) is the central administrative authority for issues concerning protection from, among other things, electromagnetic radiation. SSI is also responsible for the provision of an information-base concerning such measures for the purpose of the application by the municipalities of the Planning and Building Act (1987:10) and the Environmental Code. The information published by SSI on these issues will probably also govern the approach by the municipalities when processing the building permit matters. SSI is working, among other things, with transforming the limits for public exposure for electromagnetic fields that have been issued by the EU in 1999 into Swedish General Advice. According to SSI, the fields from base station antennae dissipate rapidly with distance and are normally far below the limits recommended by the EU for places where the public may normally stay. SSI has on repeated occasions also provided information on the scientific studies that have been conducted in the field and which have not been able to demonstrate any harmful health effects of radiation from mobile telephony. Taking into consideration the information issued by SSI, it must, according to Vodafone, be deemed improper for the municipalities to use unfounded fears about health risks as grounds for delaying processing of building permit matters. Vodafone's view is shared by representatives of the Swedish Association of Local Authorities' Planning and Environmental Section, which in an information sheet – Mobile Networks – Radio waves and security – states that the municipalities should not take into account issues of radiation and electromagnetic fields when processing building permits. Representatives of the National Board of Health and Welfare, Compliance Department, Health Protection Section, also emphasise that there is no reasonable basis on which to refer to the precautionary principle when considering building permit matters.

- Municipalities object to applications referring to the fact that different kinds of guidelines have been adopted or planned by the municipalities. Such guidelines may mean, for example, some form of radiation factor, such as masts not being allowed to be placed within a certain distance of a particular kind of built-up area or the like.

As indicated by the Association of Local Authorities' brochure "Big mast issues – Questions and answers about municipal processing of building permits for 3G masts", it is stated, as regards detailed planning, that the protective distance should be possible to justify and involve a manifest public interest. According to Vodafone, there are no objective reasons to introduce protective distances or the like.

- The municipalities have delayed processing referring to other causes, for example the election in September 2002, various kinds of proceedings for consultation within the municipality, open meetings over a number of months in order to gather views from inhabitants of the municipality, etc.

This kind of measure conflicts, in the opinion of Vodafone, with the requirement for a rapid and simple processing of building permit matters and does not take appropriate regard to the national interest existing for the development of UMTS throughout the whole of Sweden.

The circumstance that the municipalities in many cases omit to consider building permit applications also means that Vodafone and 3GIS are denied the opportunity of allowing a superior instance to consider the assessment made by the municipality on the basis of an appeal, which would be possible if the municipality rejected the application instead of not dealing with it at all.

#### *Vodafone's measures to facilitate processing by the municipalities*

Both Vodafone and 3GIS have implemented substantial measures to facilitate processing of building permit matters by the municipalities. 3GIS has, among other things, produced information material about UMTS generally, technical descriptions of UMTS and the planned development. Vodafone and 3GIS have also concluded an agreement with the Association of Local Authorities concerning proposals for standard rental contracts between licence holders and the respective municipalities in the cases where the municipality shall grant land or buildings for UMTS radio mast infrastructure.

#### *The Armed Forces' handling of flight obstacle and radio interference review*

- Radio interference review is novel for UMTS development

Radio interference review involves the consideration of whether a radio frequency, that in this case Vodafone intends to use with a particular antenna, can disturb radio traffic for installations that are used for defence operations. There was no special radio interference review conducted generally in conjunction with the development of GSM. When Vodafone submitted its application for a UMTS licence in August 2000, there were no guidelines concerning such review. Vodafone therefore did not know that radio interference review would be necessary. Even less, Vodafone had no reason to assume that the Armed Forces had not allocated the necessary staff resources to deal with the numerous matters within a reasonable period.

- The Armed Forces do not have resources for processing within a reasonable time

Vodafone has by the grant of a licence by PTS been allocated certain frequencies for the UMTS network and assumed that the frequencies were clear for use. It has now transpired that this is not the case, but on the contrary Vodafone has been compelled to seek consultation with the Armed Forces regarding every antenna, except for certain so-called polygons. As the development is exceptionally extensive, this means that the Armed Forces received a very large number of applications, several thousand in number. It has transpired that the preparedness of the Armed Forces to deal with such a pile of work was not good. To date, the Armed Forces have issued a very small number of decisions. Bearing in mind that every UMTS antenna through the whole of Sweden – except in certain geographical areas designated as polygons – should be the subject of a radio interference review, it can easily be understood that all the matters will not be possible to determine before 31 December 2003. Vodafone has on repeated occasions pointed out these problems for the Armed Forces and PTS without this having any impact. Vodafone also questions the statutory basis for the Armed

Forces conducting radio interference review. Irrespective of the legality of this review, Vodafone has chosen to comply with the directives it has received from the Armed Forces by reporting each mast for consultation in accordance with the Guidelines. On the part of Vodafone, it can be observed that the Armed Forces' processing of these matters – radio interference and flight obstacle review – has seriously jeopardised the development of the UMTS network. Vodafone cannot control this processing. The unforeseen delay that has arisen and the pace at which the Armed Forces deals with matters concerning flight obstacles and radio interference review makes it impossible for Vodafone to satisfy the coverage requirement by the end of 2003.

### **Views of the Armed Forces**

PTS has requested the Armed Forces to express their views on the matter. The Armed Forces have expressed views, in a communication received by PTS on 18 October 2002, comprising basically the following.

#### *Background*

Consultative matters regarding development of civil radio installations, now completely dominated by UMTS, are dealt with by the Armed Forces in accordance with Guidelines that were given their current formulation approximately ten years ago. The Guidelines were produced during the GSM development, partly in consultation with the GSM operators. The Guidelines were updated on 9 October 2001, among other reasons, owing to the development of UMTS. The Guidelines were sent to the UMTS operators for information on 5 November 2001. The examination of the radio installations that are conducted comprise

- Obstacles for the Armed Forces' flying operations
- Interference with the Armed Forces' radio installations (radio links, tactical radio and radar)
- Impediments to the operations of the National Swedish Defence Radio Centre
- Impediments to the Armed Forces' operations (manoeuvres/firing ranges, stores, planned grouping sites, etc.)

The purpose with the Guidelines is to improve control of the operation within the Armed Forces, but also to describe the routines for those seeking consultations on what should be observed to ensure the most efficient management possible. Among other things, endeavours are made to commence the investigations in parallel, first with the municipal building permit consideration, second within the Armed Forces, where the matters are considered by the Headquarters, the Defence Matériel Administration and the National Defence Radio Centre. Within the Armed Forces, the respective military command district coordinates the consultative work and gives a coordinated answer to the party seeking consultation. Although endeavours have been made to find simplifications and general rules aimed at reducing the matters that the Armed Forces need to examine, the number of matters in conjunction with the development of UMTS has rapidly become far too great for the ordinary organisation to be able to deal with. Processing times have increased from under two months, to at present four to six months. The primary cause of the increased processing times is, as regards flight obstacle review, a shortage of qualified caseworkers owing to long-term illness that occurred at the time when the UMTS development started. Regarding the radio interference investigations, relevant technical data about UMTS radio equipment could not be obtained from the operators or suppliers. A delaying factor has also been that the consultation applications were incomplete and

subsequently supplemented or amended, which is time-consuming for the process. The operators are using several sub-contractors who sometimes have not had any knowledge about the process, which resulted in further additional direct contact.

***Measures that have been implemented***

- Generally

Through several direct contacts, the Armed Forces' Guidelines have been circulated, explained and also, to some extent, updated.

- Flight obstacle review

Substitutes for the caseworker who is ill have been employed and trained, and use made of staff who have retired and the secondment of staff within the regional organisation. A further caseworker is in the process of being employed and may be expected to be trained before the end of the year. The possibility of employing further caseworkers on a project-employment basis is being investigated. Pending the new recruitment yielding results, the operators have been invited to make direct contact with the Headquarters to go through pending consultation applications, eliminate matters no longer current and identify such matters as should be given priority. In order to eliminate from the procedure those matters that do not need to be considered as regards flight obstacles and/or radio interference, the Armed Forces shall try to make clear those cases involving development in urban areas where consultation is not necessary, subject to the precondition that certain simple conditions are satisfied. One solution based on a Web page being available to the operators is being considered, where the operators/contractor can get direct information about and, in that case, what kind of consultation is necessary, and also where the consultation application in the case involved should be sent.

- Radio interference review

The Defence Matériel Administration, which is resolving this task on the assignment of the Armed Forces, has met all the operators in order to identify the technical preconditions for the radio interference investigation and the way in which the Defence Matériel Administration shall respond in those cases where there is some risk of interference. The responsibility is in this connection placed on the operator to ensure that the values for the base station that are quoted to the Defence Matériel Administration are not exceeded. A description of the method and the principle for the response of the Defence Matériel Administration has been circulated to all operators on 23 September 2002.

- Comments on Vodafone's communication

Both flight obstacle and radio interference review have been conducted and will also be conducted in the future for the development of GSM. The technical assessment for GSM is simpler because there is a good technical information-base. The Defence Matériel Administration has tried in vain to obtain relevant technical data for UMTS investigations in order to be able to make more realistic calculations.

According to Chapter 2, Section 1 of the Planning and Building Act (PBL), areas of land and water shall be used for the/those purposes for which the areas are most suitable, taking into account their nature and position and also the existing need. Priority shall be given to such use that involves, from the public perspective, good management of resources. In connection with planning and in matters concerning building permits and preliminary rulings, the provisions on resources management contained in Chapters 3 and 4 of the Environmental Code (MB) shall be applied.

According to Chapter 3 MB, areas of land and water that are important for the Swedish Total Defence shall, as far as is possible, be protected against measures that may manifestly counteract the interests of the Total Defence. According to the same statutory provision, areas that are of national interest because they are needed for Total Defence installations are protected against measures that can manifestly impede access to or the use of the installations.

The latter provision is thus aimed at protecting the operation of Swedish Total Defence installations, for example interference with radio link systems, radio and signal reconnaissance stations. Objects of this kind are of the category that their capacity and intended use, etc. is necessarily subject to high-level secrecy. It is therefore difficult for an applicant in a building permit to anticipate the possible impact of the construction on a Total Defence installation.

It is prescribed by Chapter 13, Section 7 PBL, that a decision or preliminary notice within such protection or security zones as referred to in Chapter 8, Section 9, third paragraph, may be appealed against, in the context applicable here, by the Armed Forces. Therefore, if the issue involves mast construction that may impede the use of a defence installation that is of national interest from the Swedish Total Defence's military perspective, then it is possible for the Armed Forces to appeal against such decision in accordance with the statutory provision referred to here. It is sufficient, according to established practice, that the land unit in question satisfies the criteria for inclusion in such a protection or security area for the Armed Forces to have the right of appeal.

It is stated in Section 9 of the Radio Communications Act (1993:599) (LRK), among other things, that

A licence to use a radio transmitter shall on application be issued, provided

1. it may be assumed that the radio transmitter will be used in such a manner that other permitted radio use in Sweden and abroad is not in jeopardy of being adversely affected,
  
5. it may be assumed that the use will not interfere with the frequency space that is required for the Armed Forces, the National Defence Radio Centre and, to the extent referred to in Section 6, the National Defence Matériel Administration, and also the Police.

Consultation with the Armed Forces can also be viewed as a measure to prevent the circumstances referred to in Section 16 LRK, which deals with "measures against interference" arising.

Set against this background, various actors have, over the years in connection with the development of, among other things, the GSM system and in connection with the current development of wind power, considered it wise to obtain the views of the Armed Forces in advance regarding anticipated building permits, particularly against the background of the appeal times for a building permit being three weeks after service of the building permit decision. The routines that are currently applied have thus been developed together with the various operators ever since the PBL was passed.

#### **Vodafone's views on the views of the Armed Forces**

Vodafone, which was afforded an opportunity to express its views on the Armed Force's communication, stated in a communication received by PTS on 22 October 2002, among other things, the following.

At a meeting on 4 October 2002 between, among others, representatives of the operators and the Armed Forces, it was stated on the part of the Armed Forces that the number of matters received but not yet determined amounted to approximately 4,000 and that the rate of which they were being dealt with currently amounts to less than 300 matters per month. In this context it is also important to note that the further number of matters that it is estimated will be submitted to the Armed Forces, during the remaining part of the current year alone, may amount to at least approximately 1,000.

Vodafone wishes to point out that the Armed Forces has received technical information relating to UMTS equipment, from both Vodafone and 3GIS, as soon as they have requested it.

### **Reasons**

Section 2 of the Telecommunications Act prescribes that the provisions of the Act aim at ensuring that private individuals, legal entities and public authorities shall have access to efficient telecommunications at the lowest possible cost to the national economy. This implies, among other things

1. that anyone shall be able to use, at his/her permanent place of residence or regular business location and at an affordable price, telephony services within a public telecommunications network ,
2. that everybody shall have access to telecommunications services on equivalent terms, and
3. that telecommunications shall be sustainable and accessible during crisis and wartime.

It is stated in Section 3 of the Telecommunications Act that when implementing the Act it will be endeavoured to create scope for and maintain efficient competition within all parts of the telecommunications sector as a means of achieving the objectives specified in Section 2.

It is stated in Section 14 of the Telecommunications Act that, when issues arise concerning the issue of licences to provide within a public telecommunications network new or substantially revised mobile telecommunications services or network capacity in connection with such services and when in such a case it may be assumed that the frequency spectrum which can be allotted to the activity concerned is not sufficient for granting licences to all who wish to pursue such an activity, applications are to be dealt with through an open invitation to apply procedure.

According to Section 16 of the Telecommunications Act (1993:597), licence conditions shall apply for a specific period of time. Amendments of licence conditions under a current conditional period may be effected only subject to reservations in conditions issued or with the consent of the licence holder and upon consultation with other licence holder(s) whose activities are directly affected by the amendment.

In Section 9 of the Terms of Reference of the National Post and Telecom Agency Ordinance (1997:401), it is stated that PTS shall, in accordance with its sector responsibility, promote the efficient functioning of the telecommunications market from both a consumer and regional policy perspective and also the functioning of an efficient telecommunications market from the competition perspective.

In the National Post and Telecom Agency's Regulations on licences to provide network capacity for mobile telecommunications services in accordance with the UMTS/IMT 2000 Standard and the GSM Standard respectively (PTSFS 2000:5), it is stated in Section 9 that the initial consideration will be based on the applicant's capacity to provide network capacity with respect to

1. financial capacity: The applicant should be able to demonstrate that it, or its owner, is willing to make sufficient capital available in order to provide network capacity for mobile telecommunications services.
2. technical feasibility: The applicant's technical plans shall demonstrate reliability, access, speech quality or other quality parameters as may be used in the design of the proposed system.
3. commercial feasibility: The commercial feasibility of the application shall be documented in a business and market plan with investment plans and financial prognoses.
4. suitable expertise and experience: The applicant should demonstrate that it has access within its organisation to staff with suitable expertise and experience of mobile communications or other equivalent experience.

Applications that do not satisfy the above-mentioned criteria will be rejected following the initial consideration.

If the number of applicants who satisfy the above-mentioned criteria exceeds the number of available licences, a detailed consideration will take place in accordance with Section 10.

It is also stated in PTSFS 2000:5, Section 10, that a detailed consideration shall be based on the applicant's

1. commitments concerning geographical coverage with own access network in accordance with the UMTS/IMT-2000 Standard. The consideration shall take into account the extent of the coverage in relation to the surface area and population of Sweden together with the distribution throughout Sweden, and
2. commitments concerning the development rate for networks in accordance with item 1, and also the dates from which UMTS/IMT-2000 services and GSM services will be made available within a public telecommunications network.

## The assessment of PTS

### *Vodafone's application for an amendment of conditions*

In this matter, PTS has to adopt a position on whether an amendment of the licence conditions for the UMTS licence shall be granted. PTS has in the decision regarding Orange's corresponding application (file reference 02-10223) concluded that the authority has statutory powers to amend the licence conditions and that in that case there should be circumstances whereby a need for amendment is manifest.

### *Amendment of licence conditions for licence issued after an open invitation to apply*

The issue is then whether there are circumstances whereby such a need is manifest or that the starting point – that the licence conditions should apply during the term as decided – shall apply.

The Commission has, in a Communication of 11 June 2002 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions – Towards the Full Roll-Out of Third Generation Mobile Communications (COM (2002) 0301) (Section 3.1)), stated among other things the following.

“...When balancing the benefits and drawbacks of a rigid application of the conditions determined by the issued 3G licences, the Commission is of the opinion that in principle the licensing conditions should not be changed because the sector is best served by a predictable environment. Predictability allows business cases to be established in a reliable manner and to be credibly defended when accessing investment funds. Changes to licence conditions should be envisaged only when circumstances have changed unpredictably and in these cases any modification should be proportional, transparent and non-discriminatory...

When assessing whether there are reasons for an amendment, the following must also be taken into account. Europolitan received its UMTS licence following a “beauty contest”, i.e. a public invitation to apply in accordance with Section 14 of the Telecommunications Act. In preparation for the application procedure, the authority has, by Regulations on licences to provide network capacity for mobile telecommunications services in accordance with the UMTS/IMT 2000 Standard and GSM Standard respectively (PTSFS 2000:5) and in conjunction with the Guidance issued in conjunction with the regulations, stated the basis on which the evaluation and selection process by PTS would be conducted. In accordance with Section 9 of the said Regulations, PTS had to consider the various commitments by the applicants as regards feasibility in technical and commercial respects and also whether the applicants had the expertise, experience and financial capacity to implement their commitments. In the event that the number of applicants who satisfied the above-mentioned criteria exceeded the number of available licences, a detailed consideration would take place. The detailed consideration was to be based on the respective applicant's commitments concerning geographical coverage in relation to the surface area and population of Sweden and also distribution throughout Sweden together with commitments regarding the development rate for the promised coverage. (Section 10).

As the number of applicants who satisfied the above-mentioned criteria exceeded the number of licences, there was a detailed consideration in accordance with that stipulated above.

The operators who submitted applications for UMTS licences have thus, in their respective applications, had to proceed on the basis of the preconditions prescribed in the Regulations. PTS has based its decision on the applicant's own commitments. Europolitan, like the other licence holders, has subsequently had conditions issued regarding the level of coverage and development rate as regards coverage levels in accordance with the commitments made in its application for a UMTS licence.

The commitments that Europolitan made, and which subsequently became licence conditions and for which Vodafone now requests an amendment, were thus directly decisive for the decision of PTS to grant the licence for which Europolitan applied. Set against this background, it is in the opinion of PTS not only required that the preconditions have changed in such a way that could not have been anticipated at the time for the application, but also that there are particularly strong reasons to consent to an amendment.

In such circumstances, the issue is thus what may constitute particularly strong reasons. In the view of PTS, such strong reasons may be that amended legislation makes it impossible to satisfy the licence conditions. The circumstance that a licence holder has been able to show that it is not capable of satisfying the licence conditions does not, however, necessarily constitute reason for granting an amendment. The applicant can actually itself have put itself in such a position through, for example, failing to apply for building permits, submitting incomplete applications for building permits or quite simply not making use of the building permits that were actually granted. However, if the situation arose although the licence holder had done what it was under a duty to do, the necessary reasons for the grant of an amendment may exist.

PTS has thus in this assessment taken into consideration whether the circumstances referred to by Vodafone mean that the preconditions have changed in such a way as could not be anticipated at the time of application and, if that is the case, whether there are particularly strong reasons to amend the conditions prescribed. According to Section 16 of the Telecommunications Act, the starting point is that licence conditions decided should not be amended during the period of time that is decided, and it is consequently Vodafone – which now applies for an amendment of the licence conditions – that has the burden of proof for this.

***Vodafone's reasons for applying for amendment of the licence conditions***

On the basis of that which PTS, in accordance with the above, must take into consideration when considering Vodafone's application for amendment of the licence condition, PTS makes the following assessment.

Vodafone basically gives three reasons for the company considering that it is prevented from completing the development of the UMTS network.

*Processing of building permit matters by the municipalities*

Vodafone points out first the circumstance that building permit applications are not being considered by the municipalities at the pace that, according to the company, could have been expected when the application for a UMTS licence was submitted to PTS.

In the matter concerning Orange's application for amendment of the licence conditions of its UMTS licence, Orange pointed out the difficulties that existed for the company in getting applications for building permits considered by some municipalities within reasonable time. In the decision (page 13), PTS stated that the, in some cases, drawn-out processing of building permit matters represented a difficulty for all licence holders. The authority also explained the compliance work that PTS is conducting to follow-up how the licence holders implement the commitments made and stated that the authority "will also collaborate in the future with licence holders, municipalities and other interested parties to find solutions to the said problems with the aim of facilitating the possibility for the licence holders to implement the commitments that they have made. This work is continuing. Within the framework of a consultation group, PTS has together with SSI, National Board of Health and Welfare, Swedish Work Environment Authority and the Swedish National Electrical Safety Board prepared a brochure regarding radiation from mobile telecommunication systems. The brochure describes in a simple way what radio waves are, how a mobile call works, the difference between non-ionising and ionising radiation and how radio waves affect their surroundings. The target groups of the brochure are officers at the planning and building administrations, municipal politicians, tenants, tenant-owners, property owners and their branch organisations, among others. It may be assumed that this collaboration will result in improved routines for those authorities that in one or another way must adopt a position on issues related to development of the UMTS network and the dissemination of information concerning issues that are related to the development.

Vodafone claims that it was reasonable to assume that the processing of building permit matters for the UMTS development would not substantially exceed the time that the processing normally required during the development of the GSM network – one to two months. However, PTS considers – set against the background of the number of base stations that Vodafone said would be required when applying for a UMTS licence – that the company ought reasonably to have been able to anticipate that the processing of the applications for building permits would require significantly more time than the corresponding processing in connection with the GSM network.

Therefore, the circumstance that the processing of the applications for building permits came to draw out in time does not mean that it can now be concluded that the preconditions have changed in a way that could not have been anticipated at the time for the application. Consequently, at present there is no reason to grant the application on these grounds.

#### *Armed Forces' radio interference review*

Secondly, Vodafone points out the circumstance that the Armed Forces conduct so-called radio interference review. Vodafone questions in this context the legal power of the Armed Forces to conduct this task and also states that when Vodafone submitted its application for a UMTS licence, the company did not know that radio interference reviews would be necessary.

In accordance with that stated in Section 9, first paragraph, item 5, LRK, PTS is under a duty when considering an application for a radio transmission licence to ensure that the interests of the Armed Forces are not disregarded. It must reasonably, already at the time when the application was submitted to PTS, have been clear to the licence holders that the Armed Forces would be consulted at some phase of the processing regarding the issue of radio interference. Consequently, that stated by Vodafone in this respect can hardly be deemed to

mean that the preconditions have changed in such a way that could not be anticipated at the time of the application.

*The Armed Forces' processing times for matters concerning flight obstacles and radio interference review*

Vodafone also states in support of its application that the Armed Forces' processing of both flight obstacle and radio interference reviews are proceeding considerably more slowly than could reasonably have been anticipated, which delays and prevents the development from being completed in time.

The Armed Forces confirm in their views to PTS that the processing times for matters concerning flight obstacle and radio interference reviews increased from under two months from four to six months and have also stated the reasons for this occurring. Even if the reasons for this circumstance, in any event to some extent, appears to be based on factors that the licence holders themselves control, PTS questions whether the processing by the Armed Forces in the matters now involved have drawn out in time in such a way that could not have been anticipated at the time of the application for a UMTS licence.

PTS has, in an endeavour to facilitate the development of the UMTS network for the licence holders, had several meetings with the Armed Forces aimed at coordinating the processing by the Armed Forces of radio interference review the consideration of radio transmission licences by PTS. The Armed Forces have also stated that work is progressing with cutting down the times for the processing of matters concerning flight obstacle and radio interference review. In this context, PTS also wishes to point out that it is of extraordinary importance that the licence holders provide the Armed Forces with the relevant data for the UMTS equipment so that it is possible to make correct calculations. Set against the background of the above, it may be assumed that the processing will in the future take a shorter time than has hitherto been the case.

PTS considers that – although in this respect the preconditions to some extent must be deemed to have changed in a way that could not be anticipated at the time of the application – there is still scope for the necessary processing taking place within such time that it is possible for the licence holders to fulfil the conditions issued. Set against this background, PTS considers that at this time the necessary reasons to grant an amendment of the licence conditions on this ground do not exist.

**Overall assessment by PTS**

PTS considers that the circumstances referred to by Vodafone in support of the application for an amendment of the licence conditions, neither individually or together, are such that necessary reasons exist to grant Vodafone's application at present.

With this outcome, PTS considers that there is no reason to obtain views from the other licence holders affected.

**Determination by the National Post and Telecommunications Agency**

The National Post and Telecommunications Agency rejects Vodafone Sverige AB's application for amendment of the licence conditions.

**Notification concerning appeals**

The decision can be appealed against to the County Administrative Court for the County of Stockholm, see Appendix 1.

Nils Gunnar Billinger  
Director General

The Department Directors Ann-Marie Engvall and Katarina Kämpe, Deputy Director-General for Legal Affairs Charlotte Ingvar-Nilsson, Divisional Manager Hans Brändström, Senior Legal Officer Martina Irving Magnusson and Analyst Anders Björklund (the two latter presenting the matter) participated in this processing.

## INFORMATION CONCERNING APPEALS

If you wish to appeal against this decision, you should write to the County Administrative Court for the County of Stockholm. However, the letter should be sent to the National Post and Telecom Agency, Box 5398, 102 49 Stockholm.

Explain in the letter which decision you appeal against by stating the number of the decision. Also explain the change that you wish to be made to the decision. The letter must be signed.

The National Post and Telecom Agency must have received your appeal within three weeks from the date when you received the decision. Otherwise, the appeal cannot be considered.

The National Post and Telecom Agency will forward the appeal to the County Administrative Court for consideration, unless the National Post and Telecom Agency itself alters the decision in the manner requested by you.

If something is unclear, you may refer to the National Post and Telecom Agency.