



EUROPEAN COMMISSION

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Post & Telestyrelsen
P.O. Box 5398
SE-102 49 STOCKHOLM

For the attention of:
Ms Marianne Treschow
Acting Director General

Fax: +46-8-678 57 03

Dear Ms Treschow,

**Subject: Case SE/2004/0083: Wholesale broadband access in Sweden
Comments pursuant to Article 7(3) of Directive 2002/21/EC¹**

I. PROCEDURE

On 6 July 2004, the Commission registered a notification by Post & Telestyrelsen (“PTS”) concerning wholesale broadband access in Sweden. The national consultation runs in parallel with the Community consultation under Article 7 of the Framework Directive, and the deadline for both consultations is 27 August 2004.²

On 16 July 2004, the Commission requested PTS to submit further information and clarification which was provided on 20 July 2004.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) and the Commission may make comments on notified draft measures to the NRA concerned.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the “Framework Directive”), OJ L 108, 24.4.2002, p. 33.

² In accordance with Article 6 of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURE

PTS defines the relevant product market as the market for wholesale broadband access in the form of bitstream access (“wholesale bitstream access”). According to the definition of PTS, wholesale bitstream access occurs when an alternative operator rents from an operator controlling an access network a complete connection for broadband transfer of data in both directions between a network node and the end-user.³ After having analysed alternative types of infrastructure, PTS has decided to include cable-TV networks and Local Area Networks (LANs) in the relevant product market, when bitstream connections - including broadband access based on bitstream connections - are provided over these networks.

In respect of cable-TV network operators, PTS identifies a number of circumstances which make it difficult for those operators to enter the market for wholesale bitstream access, e.g. the lack of nation-wide coverage of the networks, the fact that most cable-TV networks are “cascade” networks (which impedes customer-unique access) and the fact that cable-TV operators normally do not own the entire infrastructure. In its analysis of supply-side substitution, PTS makes the assessment that cable-TV operators currently lack the ability to respond promptly to a price increase for wholesale bitstream access provided over other types of infrastructure and that switching costs for potential wholesale customers are high. As regards potential competition, PTS considers it unlikely that operators that do not currently offer bitstream access via alternative infrastructures would start offering such services in response to a price increase from TeliaSonera.

PTS considers the relevant market to be national in scope.

On the basis of its market analysis, PTS intends to designate TeliaSonera AB as having SMP in the relevant market. According to PTS, TeliaSonera accounted for 78% of the total number of bitstream connections in Sweden. The remaining 22% mainly consisted of companies offering wholesale bitstream access based on Local Loop Unbundling (LLU) or operating bitstream connections over LANs. PTS also indicates that an unspecified number of bitstream connections were provided over cable-TV networks at that time. However, additional information provided to the Commission by PTS indicates that no cable-TV operator currently operates any bitstream connections and, consequently, that no wholesale bitstream access is provided over cable-TV networks in Sweden.

In addition to market shares, PTS considered the following criteria when reaching its provisional conclusion on SMP: lack of market dynamics, high barriers to entry, lack of countervailing buyer power, lack of potential competition and the fact that TeliaSonera is a vertically integrated company controlling key inputs for bitstream access (e.g. network capacity in the local loop and IP-capacity).

PTS proposes to impose the following obligations on TeliaSonera:

³ As regards public switched telephone networks (“PSTN”), wholesale bitstream access has been defined by PTS as situations where (a.) the incumbent provides the DSL access link and hands over the bitstream to the alternative operator directly after the DSLAM and (b.) the incumbent provides the DSL access link plus a backhaul service and hands over the bitstream to the alternative operator at an ATM-PoP. This definition coincides with levels 1 and 2 in the European Regulators’ Group’s (“ERG”) Common Position on Bitstream Access of 2 April 2004. Document available on the ERG web site (www.erg.eu.int).

- (1) Access obligation: obligation to meet any reasonable requests for bitstream access from other operators.
- (2) Price regulation: obligation to apply margin-based pricing (“retail minus”) for wholesale bitstream access.⁴
- (3) Non-discrimination: obligation to provide wholesale bitstream access on non-discriminatory terms.
- (4) Cost accounting: obligation to keep separate accounts for the provision of wholesale bitstream access.
- (5) Reference offer: obligation to publish a reference offer.

III. COMMENTS

The Commission has examined the notification and the additional information provided by PTS and has the following comment.⁵

Cable-TV networks as alternative infrastructure for the provision of wholesale bitstream access: First, the Commission would like to reiterate the definition of wholesale broadband access in the Annex to the Recommendation on relevant markets⁶, which covers PSTN-based bitstream access as well as “*wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bit-stream access.*”

In its notification, PTS concludes that the market for wholesale broadband access includes cable-TV networks when bitstream connections *are* provided over these networks. The Commission considers that PTS’s approach to market definition is consistent with the Commission's Recommendation on relevant markets and notes that no bitstream connections are currently provided over cable-TV networks in Sweden. Consequently, the Commission invites PTS to make it clear in its final decision that cable-TV networks are excluded from the relevant product market.

As far as potential competition is concerned, the Commission notes that PTS identifies several impediments to entry into the relevant market. Therefore, PTS is invited to consider concluding in its final decision that it is unlikely for cable-TV operators to enter the market for wholesale bitstream access in the near future. On the basis of this, potential competition from cable-TV operators could only constrain to a very limited extent, if at all, the market behaviour of the current providers of wholesale bitstream access.

⁴ PTS does not envisage imposing cost-based pricing for wholesale bitstream access since such a pricing regime would be likely to reduce competing operators’ incentives to invest in local loop unbundling (“LLU”). Moreover, PTS considers that margin-based pricing reduces the risk of prize-squeeze effects at the retail level.

⁵ Pursuant to Article 7(3) of the Framework Directive.

⁶ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L114, 8.05.2003, p. 45.

Pursuant to Article 7(5) of the Framework Directive, PTS must take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to Point 12 of Recommendation 2003/561/EC, the Commission will publish this document on its website.⁷ The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission within three working days following receipt of the present letter whether you consider, in accordance with Community and national rules on business confidentiality, that this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.⁸

Yours faithfully,

For the Commission,
Mario Monti
Member of the Commission

⁷ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

⁸ Your request should be sent either by email: INFSO-COMP-ARTICLE7@cec.eu.int or by fax: +32-2-298 87 82.