

Ericsson's position on the European Commission's proposals for change in the EU Framework for electronic communications

Contents		
1	Introduction	3
2	Increase market competition	4
3	Spectrum policy	5
4	Consumer protection	7
5	Security and integrity of networks and services	8
6	Privacy	9
7	Institutional arrangements related to strengthening the EU internal market	9
1.	Introduction	3
2.	Increase market competition	4
3.	Spectrum Policy	5
4.	Consumer protection	7
5.	Security and integrity of network and services	8
6.	Privacy	9
7.	Institutional arrangements related to strengthening the EU internal market	9

1 Introduction

Ericsson welcomes the opportunity to provide its views on the Commission's proposals for change in the current EU framework for electronic communications networks and services.

Ericsson is the world's leading provider of technology and services to telecom operators. The market leader in 2G and 3G mobile technologies, Ericsson supplies communications services and manages networks that serve more than 185 million subscribers. The company's portfolio comprises mobile and fixed network infrastructure and broadband and multimedia solutions for operators, enterprises and developers. The Sony Ericsson joint venture provides consumers with feature-rich personal mobile devices.

Ericsson is advancing its vision of 'communication for all' through innovation, technology, and sustainable business solutions. Working in 175 countries, more than 70,000 employees generated revenue of USD 27.9 billion (SEK 189 billion) in 2007. Founded in 1876 and headquartered in Stockholm, Sweden, Ericsson is listed on the Stockholm, London and NASDAQ stock exchanges.

For more information about Ericsson, visit www.ericsson.com or www.ericsson.mobi.

Ericsson takes great interest in the EU framework for electronic communications and services, because this will set the regulatory parameters for the ICT business in the EU for the coming years. As a global player, Ericsson would like to emphasize that the European approach should be compared with the approach in other markets to ensure that the EU approach does not lead to comparative disadvantages for players on the EU market.

While we believe that the current regulatory model is basically sound, we agree with the Commission that improvements are necessary. The proposals put forward by the Commission contain a number of improvements, but also raise concerns for Ericsson.

Our key messages with regard to the proposals for change are:

- The regulatory framework should stimulate sustainable investment in infrastructures and services. This requires regulatory predictability and stability.
- Efficient use of spectrum requires harmonized spectrum arrangements and coordinated regulatory conditions.
- The Digital Dividend provides opportunities for the broadcasting and mobile industries. A common European approach is the best way forward to ensure harmonization of spectrum usage.
- It is important to strengthen the EU internal market. Institutional arrangements need to balance coordination and expediency while allowing for subsidiarity.
- Ericsson believes that industry-led self-regulation provides the best approach to guarantee the security and integrity of networks and services. Industry, in close cooperation with authorities should define industry-wide best practices aimed at protecting critical infrastructures and safeguarding network and information integrity.
- It is important to protect consumers, but the measures should be proportional and should not result in unevenly burdening providers of networks and services.

2 Increase market competition

2.1 Relevant markets

Ericsson supports the reduction of the list of relevant markets. Ex-ante regulation should be focused on markets that meet the three criteria test; ex-ante regulation should not be directed towards retail prices and pricing models. Infrastructure based competition is the foundation for competition between providers of network access and services. The burden should be on the NRA (National Regulatory Authority) to prove competition failure, not on the operators to prove that the market is competitive. After all, ex-post regulation can still be enforced if subsequently the NRA is shown to have been correct. Ericsson believes that it is important to further explore the possibilities to define sub-national markets.

The proposed introduction of requirements on providers to provide information on future network or service developments that could have an impact on wholesale services made available to competitors, could have a negative impact on investment plans, as this could force providers to disclose future strategies and loss of first mover advantages.

NRAs should carry out new market assessments as soon as possible, based on the assumption that markets no longer on the list should not be subject to ex-ante regulation.

It is also important to recognize that in a growing number of member states, mobile broadband (using 3G technologies) is competing successfully with fixed broadband (mainly ADSL), by providing connections with similar or higher speeds and similar prices, and with the added value of mobility. Mobile broadband thus significantly increases broadband penetration and helps to close the Digital Divide.

2.2 Functional separation

Ericsson firmly believes that infrastructure based competition provides the best way forward to ensure sustainable competition, investment and innovation. Ericsson is concerned about the potential impact of mandated functional separation on investment in infrastructures and innovation.

In practice, the experience with functional separation is very limited. Further assessment is necessary of the implications of introducing mandated functional separation on investment and the introduction of new technologies. In very specific markets and under clearly defined conditions, functional separation might have merits as ultimate remedy. Conditions need to be well defined and all other remedies will have to be exhausted.

2.3 Guidelines on the application of the regulatory framework to new fibre investments in local access networks

Regulatory predictability and stability are essential prerequisites for a positive climate for investment in infrastructures. The application in practice of the regulatory framework to Next Generation Networks and Next Generation Access needs to be clarified to stimulate investments in NGNs. Ericsson looks forward to the Commission's forthcoming Guidelines on the application of the regulatory framework to new fibre investments in local access networks.

2.4 Facility sharing

Access to ducts and other facilities in the local access networks are important factors for the roll-out of Next Generation Access networks and closing the Digital Divide. Facility sharing obligations should be market-driven. Regulatory intervention should only take place in case of market failure and should be objective, transparent and proportionate and should take into account sharing of costs.

Ericsson believes that facility sharing requirements should not just focus on facilities of providers of electronic communications, but also encourage sharing of facilities of public utilities and municipalities. The proposal to facilitate the coordination of public works by municipal authorities can have a positive impact if this speeds up processes, but this should not lead to undue delays and impact the operators' ability to design their own network topology.

Ericsson encourages national governments to consider the wider benefits of a national regime of public works coordination and impose relevant and expeditious planning regimes to support the common goal to reduce the need for excessive duplication of facilities.

The Commission proposes to require NRAs to hold public consultations before requiring sharing of facilities or property or taking measures to facilitate the coordination of public works. Ericsson recognizes the importance of transparency and ensuring that the interests of stakeholders are taken into account, but consultations should not lead to undue delays. We therefore propose to define 'all interested parties' in article 12 (2) Framework Directive in a way that ensures that parties with a direct interest in the issue are consulted.

3 Spectrum policy

Ericsson welcomes the Commission's proposals to increase the efficient use of spectrum by focusing on a more market-led approach. We are happy to see that the Commission recognizes that harmonized spectrum arrangements and coordinated regulatory conditions are important for efficient spectrum use and to achieve the economies of scale essential for mass market industries.

Mobile operators are generally recognized to be efficient users of spectrum. These operators and the related manufacturing industry are investing heavily to further improve this efficiency.

Ericsson agrees with the objective to "ensure a co-ordinated approach for the achievement of the single market for equipment and services". We also strongly agree with the recognition in the Commission's proposals that a new system for spectrum management must permit different models of spectrum licensing to coexist to promote economical and technical efficiency.

Access to scarce resources should be open to all based on objective, transparent and proportionate conditions.

Ericsson believes that a single approach will not be able to facilitate access to radio spectrum for market players in all situations. We therefore propose to apply different regimes to different classes of spectrum:

- a *light regime* with general authorizations for short range devices and other applications where mobility and roaming is of less importance;
- an *administrative regime* for applications e.g. where national or international security concerns are paramount; and
- *individual licensing* of harmonized spectrum for applications with high numbers of users where pan-European services including mobility and economies of scale are of prime importance.

Ericsson believes that a higher degree of frequency management flexibility can be applied in some bands to improve efficiency of use, while bands used for public mobile communications are already used very efficiently. Examples of bands that can benefit from higher degrees of flexibility are the current ISM bands, and the 2300 – 2400 MHz, 3400 – 3800 MHz, 5150 – 5350 MHz, 5470 – 5725 MHz and 57.0 – 59.0 GHz bands, which do not need to be managed through detailed regulatory practices.

The Commission's proposals provide the general principles and high level definitions. The implementation of these principles in practice requires:

- Clear definitions of the general principles and the exceptions to these principles

- Clear transitory regimes to provide regulatory certainty essential for a positive investment climate
- Clear procedures and roles of institutions and bodies involved

The Commission's proposals to increase the efficient use of spectrum are focused on providers of electronic communications services. In our view, spectrum users in all sectors should be stimulated to increase the efficiency of their spectrum use.

3.1 Technology and service neutrality

Harmonized spectrum arrangements and coordinated regulatory conditions are cornerstones for affordable and ubiquitous mobile communications services for consumers based on efficient spectrum use and economies of scale. Spectrum policy should allow markets to balance between efficiency and flexibility.

A policy providing the freedom to use "any technology" is clearly a reversal from the previous European strategy to create pan-European markets. Although no technology should be discriminated against in the consensus process leading to European or international standards, the benefits of standardization as expressed in the Framework Directive are still valid and should be preserved. A divergence from the existing policy of promoting standardization can lead to fragmentation in the market place and reduce the cohesion of the single market.

Ericsson agrees that deviations from a general principle of technology neutrality should be made only in justified cases. Services providing pan-European operations to a majority of the EU population and businesses that are strongly dependent on interoperability and economies of scale to provide such services at affordable prices are clearly such justified cases.

3.2 Spectrum trading

Ericsson supports proposals to facilitate open and transparent spectrum trading. In principle, requirements regarding consent by NRAs prior to trading spectrum should be reduced as much as possible. In practice, however, in some member states it may be important to maintain requirements of prior consent, such as in member states where there is no primary spectrum market; where the spectrum in question is used in international border areas; or where spectrum trading could be a politically sensitive issue.

In member states where formal consent from the NRA is no longer necessary, NRAs should closely monitor spectrum trading to ensure:

- (1) that trading does not result in a distortion of competition,
- (2) that trading does not create interference issues, and
- (3) that license obligations are respected.

In addition, transfer of spectrum that has been harmonized through the application of the Radio Spectrum Decision or other Community measures or international agreement, should continue to comply with this harmonized use.

3.3 Individual licenses

Ericsson notes with satisfaction that the proposals recognize the importance of efficient and effective spectrum use and that the system for spectrum managements would permit different models of spectrum licensing.

We strongly believe that individual licenses are essential in case of harmonized spectrum for applications with high numbers of users where pan-European services including mobility and economies of scale are of prime importance.

Individual licenses are important to minimize harmful interference and to facilitate a competitive market. Quality of service levels is essential to satisfy the justified high expectations of consumers regarding the dependability and availability of mobile services, not in the least part because public mobile communication networks provide life saving access to emergency services.

We believe that the proposed periodic five year review of individual licenses with duration of 10 years or more adds to regulatory uncertainty, creates extra administrative burdens and could negatively impact the investment climate. The Commission should set down criteria against which any license might be changed from an individual license to a general authorization

3.4 Digital Dividend

In most European Union member states, the 470 – 862 MHz band is currently in use primarily to provide analogue television services. By 2012, all EU countries are expected to have finalized the switch from analogue to digital television. Because digital television uses spectrum much more efficiently, a significant part of the 470-862 MHz band will no longer be needed for the delivery of today's television services and this "Digital Dividend" can be used to provide other services. Mobile broadband is one of the most prominent examples of services that support the universal need for services and efficiency gains and that address the need for personalization, mobility, and interactivity. Due to its radio propagation characteristics, lower frequency spectrum like the 470 – 862 MHz band is particularly well suited to provide efficient mobile network coverage in rural areas that currently lack sufficient coverage and to provide urban in-door penetration. In other words, allowing the use of mobile broadband in the Digital Dividend spectrum band would provide an important opportunity to close the Digital Divide.

Ericsson supports the European Commission's proposals on the Digital Dividend and believes that a balanced approach will provide win-win opportunities for all stakeholders including those from the traditional broadcasting and mobile industries. A common European approach to the digital divided is the best way forward to ensure harmonization of spectrum usage.

4 Consumer protection

4.1 eAccessibility

Ericsson generally supports the Commission's proposals on eAccessibility. It is important to ensure that efficient eAccessibility solutions are available. This requires the use of common interface standards to facilitate interoperability and an efficient and effective implementation. It may be sufficient that solutions are available on the market, rather than requiring all providers to offer solutions. Operators and service providers should be compensated by public funding for providing specific eAccessibility services and facilities.

4.2 Improve transparency of information for consumers

Transparency of conditions (both in terms of services provided as well as costs and other conditions) for end-users is important for the development of a competitive market. Consumer protection requires an approach which balances the expected benefits with the expected costs and administrative burdens.

4.3 Basic access and quality of service

Ericsson supports the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice, within the bandwidth limits and quality of service of their service plans.

Operators should be allowed to offer different band plans with different service levels at different prices and conditions and should be allowed to reasonable network management. In order to ensure awareness of available service offerings, it is important that consumers receive meaningful information regarding their service plans.

Ericsson strongly believes that a competitive market does not need mandated quality of service requirements. Mandating quality of service levels has been discussed before, for example in the case of mobile communications. However, in practice, the market has provided sufficient choice between providers and service plans, precluding the need for regulatory intervention. As the market for Internet services is a very competitive market with many providers, Ericsson does not see the need to give powers to NRAs to introduce QoS requirements.

4.4 '112' Emergency services

Ericsson supports the Commission's proposals to enhance the implementation and availability of access to 112 emergency services, including the proposals requiring the operators to provide caller location information to the authorities dealing with the emergency. At the same time, national authorities must ensure that authorities dealing with the emergency are able to adequately process the location information in compliance with the technology solutions available on the market. The technology by which to provide caller location information should not be mandated.

4.5 Facilitating number portability

Ericsson supports the proposals by the Commission regarding number portability, but would like to point out that requirements regarding the implementation of number portability have to be realistic in light of the technical requirements and costs. In light of fixed-mobile convergence, it is important to note that the Commission's proposals envisage the possibility of portability between fixed and mobile networks.

5 Security and integrity of networks and services

Ericsson would like to point out that in the telecommunications industry, where carrier grade services are provided with a reliability level of 99,999 %, security and integrity of networks and services are part and parcel of business practices. Existing regulatory requirements regarding network integrity, service continuity and data protection as well as contractual requirements (including liability clauses) with customers require providers of networks and services to maintain high levels of security and integrity. Redundant systems and interconnection of networks provide safeguards in case of network failures and interruptions. Changes in technology and the emergence of new threats require constant vigilance and forces industry to provide quick and innovative solutions. Given the very competitive environment, providers of services cannot afford to lose customers due to security or integrity concerns.

Ericsson believes that industry-led self-regulation provides the best approach to guarantee the security and integrity of networks and services. Industry, in close cooperation with authorities, should define industry-wide best practices aimed at protecting critical infrastructures and safeguarding network and information integrity. Given the international nature of the communications market, a harmonized EU and where possible global approach is essential. Security solutions are only as strong as the weakest link. We do believe that educating end-users on improving information security is essential. We encourage the Commission and Member States together with industry to increase awareness in the area.

6 Privacy

Ericsson recognizes the importance to provide information to end-users of security breaches involving their personal data, but we would like to point out that these breach notification requirements should be aimed at serious breaches that lead to serious risks of harm to users. In that respect, the proposals by the Commission require further clarification. Also, to avoid exposing vulnerabilities to potential perpetrators, this information should only be provided on a “need to know” basis. Ericsson supports the possibility to take legal action against spammers. End-users need to be protected against unsolicited communications, spam can seriously disrupt networks and services so fighting spam are important for providers as well.

Ericsson believes that harmonisation of technical implementing measures with respect to data protection should be carried out by the Commission from the start, and then implemented by NRAs to ensure a consistent approach in the EU. This is of the essence in view of the cross-border nature of electronic communications.

7 Institutional arrangements related to strengthening the EU internal market

Ericsson would like to emphasize the need for strengthening the EU internal market by whatever instrument is politically and practically best suited to achieve this. Institutional arrangements will need to balance coordination and expediency while allowing for subsidiarity.

From an industry perspective, transparency throughout the policy-making and implementation process is essential, as well as opportunities for involvement by industry.