

New electronic communications act to provide more muscle

There is a lot happening in the world of IT and telephony. New technology is constantly creating new opportunities. This naturally places new demands on those whose task it is to make laws and ensure this new technology is available and secure for the consumer. The government has drafted a proposal for a new electronic communications act. This is based on EU legislation, the overarching aim of which is to harmonise the regulatory framework for electronic communications networks and services as well as associated services. The proposal covers all electronic communications networks and services. The act will replace the current Telecommunications Act and the Radio Communications Act and will come into force on 25 July 2003.

The aim of the act is to ensure that electronic communications are as accessible and efficient as possible and are open to free competition. We wish to give an authority power to force market-dominating companies to allow competitors access to their networks or to limit their prices to the endcustomer to what is reasonable. This also means that it will be possible to force operators to share 3G masts. This will allow us to limit the number of 3G masts where it is justified from an environmental or public health point of view. We wish to have as few masts as possible with as much competition for supply as possible.

The proposal also contains provisions to ensure that the user is provided with a certain basic range of services at affordable rates and on equal terms throughout the country. We want open broadband networks that provide freedom of choice for the individual consumer regardless of where s/he lives in Sweden.

We will also improve consumer protection. As consumers we will be given the right to demand itemised bills, the possibility to block certain telephone calls, such as premium rate calls, and be able to set a credit limit that temporarily cancels the subscription if costs get out of control. This is important so that we as consumers can feel we have control over the cost of our telecom and IT use.

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Contents

1. The bill in brief	4
2. The proposals	6
Objectives for the electronic communications sector	6
A new electronic communications act	6
Market access	7
The right to use radio transmitters	8
The right to use numbers	10
Interconnection and other forms of access	11
Services to the end-user	13
Protection of privacy	16
Market analysis, consultation process and other administration	19
Fees	21
Supervision	22
Appeals	22
Certain television and radio-related issues	23
Authority organisation	23
Entry into force and interim provisions	24
Sweden's affiliation to a European Communications Office (ECO)	24
Economic consequences	25
Consequences for small companies	25
3. The basis of the bill	26

1. The bill in brief

The bill represents the government's proposal for an electronic communications act. The new act will replace the current Telecommunications Act of 1993 (1993:597) and the Radio Communications Act of 1993 (1993:599) and is based on EU regulations, the overarching aim of which is to harmonise the regulatory framework for electronic communications. The act applies to electronic communications networks and services as well as associated facilities, services and other radio use. It does not cover the content transmitted in electronic communications networks with the help of electronic communications services.

Extension of the obligation to notify and limitation of the licensing requirement

The proposed act is based on a general obligation to notify the authorities of the commercial supply of public communications networks and publicly available electronic communications services. The proposal also implies an extension of the current obligation to notify under the Telecommunications Act. For example, some Internet operators and broadcasting network suppliers will be covered by the new obligation to notify.

The government proposes that the use of radio transmitters and numbers from a national numbering plan shall require a individual license, whilst the requirement for a telecommunications license will cease to apply. The double licensing requirement that currently applies for mobile telephony under the Telecommunications Act and the Radio Communications Act will therefore cease.

Double license applications will, however, still apply to transmissions of sound radio and TV programmes to the general public. These transmissions will then need a license both under the Radio and Television Act of 1996 (1996:844) and the new act.

Using radio transmitters will therefore still require a license. It should be possible to limit the number of licenses awarded in a frequency spectrum if this is necessary to guarantee efficient use of radio frequencies. Such licenses should be awarded after a public invitation to tender. The selection alternatives can be a comparative selection process ("beauty contest"), a competitive bidding process whereby the price the applicant is prepared to pay for the license shall be the deciding factor (auction) or a combination of these.

It shall be permitted to transfer the license to use radio transmitters or numbers ("secondary trading").

Effective competition

An authority will be charged by the government to identify product/service markets, especially geographical markets, into which it may be justified to introduce obligations in

accordance with the act. This competent authority shall then consider the European Commission recommendation on relevant product and service markets and its guidelines on how to conduct the analysis of the markets and to determine the existence of significant market power (SMP). Decisions shall be taken subsequent to special consultation.

The product/service markets shall be regularly analysed. A decision shall then be taken as to whether there is effective competition on each market. Market analyses shall be performed based on the principles and methodology of competition law. If there is no effective competition, companies with significant market power shall be identified and required to comply with one or more obligations, for example an interconnection obligation, a requirement to provide the end-customer with other forms of access and price controls.

A company, either alone or with others, whose financial position allows it to act independently of its competitors, customers and ultimately the consumers is assumed to possess significant market power.

The new act does not incorporate any general interconnection obligation. As well as obligations for an operator with significant power on the relevant market, it is proposed that the operator who controls access to the end-user can be obliged to interconnect or in some other way ensure that end-users can connect to each other.

Consumer protection

Concerning universal service, the proposal for a new act does not imply any large-scale changes compared to current regulations in the telecommunications field.

The act incorporates provisions for the protection of consumers and other end-users and provisions on the protection of privacy. There are also provisions governing supervision and scrutiny. In addition, the government proposes some amendments to the Television Signal Transmission Standards Act of 1998 (1998:31). The acts shall come into force on 25 July 2003.

2. The proposals

Objectives for the electronic communications sector

Private individuals, companies and authorities shall have access to effective and secure electronic communications. These electronic communications shall provide the greatest possible benefit as regards the range of transmission services, their price and quality. In an international perspective, Sweden shall be at the cutting edge in these respects. The electronic communications shall be sustainable, of practical use and satisfy future needs.

The best way of achieving this is to create the conditions for effective competition without distortions and restrictions and to promote international harmonisation. The

government shall, however, have a responsibility in areas where public interests cannot be satisfied by the market alone.

This objective replaces the telecommunications policy objective which hence ceases to apply.

A new electronic communications act

The aim of the act

The provisions in the act aim to ensure access to secure and efficient electronic communications for private individuals, companies and authorities and the greatest possible benefit to them as regards the range of electronic communications services, their prices and quality. Competition and international harmonisation shall be the principal means of achieving this aim. Universal services shall be available to everyone on equal terms throughout the whole country and at affordable prices.

When applying the act, the significance of electronic communications for the freedom of expression and information shall receive particular attention.

Measures taken pursuant to the act must not intrude more than appears reasonable and shall be proportionate with regard to the aim of the act and the above-mentioned interests.

The area of application and content of the act

The act shall be applied to electronic communications networks and services as well as associated facilities, services and other radio use. It shall not be applicable to the content transmitted in electronic communications networks with the help of electronic communications services.

Market access

Obligation to notify

In order to supply public communications networks that are normally provided in exchange for payment or publicly available electronic communications services, the operator must first notify the authorities. Such a notification shall not lead to any form of prior authorisation being given. A license shall only be required for the use of radio transmitters and numbers from a national numbering plan.

Exemptions from the obligation to notify

Operations that only consist of the conveyance of signals by wire for transmission to the general public of sound radio or other transmissions, as stipulated in Chapter 1, Article 1, third paragraph of the Fundamental Law on Freedom of Expression, shall be exempted from the obligation to notify.

The government or, when sanctioned by the government, the supervisory authority shall have the power to lay down regulations on further exemptions from the obligation to notify.

The right to use radio transmitters

The basis of the regulation

The provisions under the Radio Communications Act of 1993 (1993:599) shall, together with the amendments brought about by the EU directives, be transferred to the Electronic Communications Act.

The Swedish frequency plan

A coherent, fundamental frequency plan for the country shall be available. The frequency plan shall act as general guidance to be distributed by the competent authority in the radio communications sector.

License requirement

A license will be required to use a radio transmitter in the country or onboard a Swedish shipping vessel or aeroplane abroad.

Exemptions from the license requirement

The Swedish Armed Forces, the National Defence Radio Institute and to a certain extent the Defence Matériel Administration and the Swedish Police shall be exempted from the license requirement.

The government, or the authority assigned by the government as the competent authority, shall have the power to lay down further regulations on exemption from the license requirement regarding certain radio use.

Licensing procedure

The positive attitude when assessing license applications for radio frequencies and the assessment criteria based on the Radio Communications Act shall be maintained.

A new assessment criterion shall be introduced stipulating that a license to use a radio transmitter shall be approved if the radio use constitutes efficient use of the frequency spectrum. It shall also be stipulated that a license application can be denied if there is reasonable cause to assume that the radio transmitter will be used in violation of the licensing conditions.

If the use of the radio spectrum and the licensing conditions and license approval process for using a radio transmitter have been harmonised in accordance with international agreements to which Sweden is party or provisions adopted pursuant to the Treaty establishing the European Community, an operator who has been awarded such a license shall be assumed to have the license under the act.

Furthermore, it shall be possible to award a license for certain radio use on one occasion and a license to use individual radio transmitters within the scope of this use on another occasion.

The invitation process

It should be possible to limit the number of licenses awarded in a frequency spectrum if this is necessary to guarantee efficient use of radio frequencies. When the frequency spectrum is limited, licenses shall be awarded after a public invitation to tender, unless the radio use mainly concerns the transmission of radio programmes or the like to the general public, concerns private use, or shall exclusively be operated to safeguard public order and safety. Licenses shall be awarded either subsequent to a comparative selection process (“beauty contest”), a competitive bidding process whereby the price the applicant is prepared to pay for the license shall be the deciding factor (auction), or a combination of these.

Radio use requirements

A license to use a radio transmitter shall refer to a specific radio use. It shall be possible to combine a license for the digital conveyance of radio programmes to the general public with the right to use the radio transmitter for other purposes, corresponding to a maximum of 20 per cent of the digital capacity in the frequency spectrum, unless the terms under Chapter 3, Article 2, paragraph 8 of the Radio and Television Act of 1996 (1996:844) apply for the equivalent transmission license and that this does not otherwise have a detrimental effect on competition.

Terms and conditions

It shall be possible to combine a license with conditions relating to frequency spectrum, type of service or network, antenna-type, geographical area for mobile transmission, the location of the antenna for permanent transmitters, a skills requirement, an obligation to share the spectrum, undertakings made during the invitation process and other important factors as regards use of the frequency. It shall also be possible to lay down terms that are the result of international agreements on harmonised use.

The right to use numbers

National numbering plans

The government or the authority assigned by the government as the competent authority will have the task of establishing national numbering plans for electronic communications. These plans shall be designed so that electronic communications networks and services can be accessed on equal terms. Those conducting operations for which there is an obligation to notify or supplying electronic communications services that interconnect with such operators shall be obliged to follow the established numbering plans.

A license to use numbers

Numbers from a national numbering plan may only be used on license. The government or the authority assigned by the government as the competent authority shall be able to lay down regulations governing allocation principles.

Licensing conditions for using numbers

It shall be possible to combine a license for using numbers from a national numbering plan with licensing conditions regarding:

- the type of service the number is to be used for,
- the actual and efficient use of the numbers,
- reasonable period of validity subject to possible changes in the national numbering plans,
- undertakings made in connection with the license to use numbers being granted subsequent to a public tender invitation process,
- obligations that are the result of applicable international agreements regarding the use of numbers.

The tender invitation process

Licenses for using numbers that are of considerable financial value may be awarded subsequent to a public tender invitation process. The licenses shall then be allocated using a comparative selection process, a tendering process, the drawing of lots or using a combination of these. The government or the authority assigned by the government as the competent authority may lay down regulations on the content of a public invitation and on the process in general.

Transferring a license to use radio transmitters or numbers

The license or part thereof to use radio transmitters or numbers may be transferred. A transfer shall only be valid after the licensing authority has given its permission. Permission shall be granted on condition that there is no reason to assume that the transfer will have a detrimental effect on competition or that there is any other reason against it.

Interconnection and other forms of access

General obligations and requirements that may be placed on a company regarding access

An operator of a public communications network shall be obliged to negotiate on interconnection with an operator who supplies or intends to supply publicly available electronic communications services.

It shall be possible to oblige an operator who controls access to end-users to interconnect, or take other action required to ensure that end-users can connect each other, in exchange for remuneration at market rates.

It shall be possible to place obligations regarding transparency, nondiscrimination, separate accounts, meeting reasonable requirements for interconnection and other forms of access, price controls or cost accounting on an operator adjudged to have significant power on a specific market. The aim of such an obligation shall be to create effective competition on the market.

In addition, it shall be possible to instruct each operator to provide collocation or other forms of facility-sharing etc., in exchange for remuneration at market rates, if this is required to protect the environment, public health or public safety, or to achieve physical planning objectives.

Local loop access

The supervisory authority shall be able to instruct an operator to allow others access to his local loop. An instruction that refers to access to that part of a public telephone network between a main distribution frame or equivalent facility and the subscriber's fixed network connection point shall, if the network consists of twisted metallic pairs, be combined with an obligation to publish a reference offer.

Remuneration issues

It shall be possible to oblige an operator who controls access to end-users to interconnect, or take other action required to ensure that end-users can connect to each other, in exchange for remuneration at market rates. In addition, it shall be possible to instruct each operator to provide co-location or other forms of facility-sharing etc., in exchange for remuneration at market rates, if this is required to protect the environment, public health or public safety, or to achieve physical planning objectives.

It shall be possible to instruct an operator with significant market power to cover its costs or apply cost-oriented or other price-setting for specified types of interconnection and other forms of access. This may be done if a market analysis indicates that a lack of effective competition will enable the operator to charge excessively high prices or apply price squeeze in a way that will be unfavourable to the end-users. Such a liability could imply an obligation for the operator to apply a specifically defined cost accounting method.

A decision on the obligation to allow access could be amended or rescinded if the operator who has been given access according to the decision does not fulfil his undertakings.

Services to the end-user

Universal service

The act shall specify that the following services are included in universal service:

- supply of a connection to the publicly available telephone network and access to telephony services to a fixed location. The connection shall allow functional access to the Internet,
- a comprehensive public directory,
- a comprehensive directory enquiry service,
- the supply of public payphones,
- special measures for end-users with disabilities.

The government shall be authorised to prescribe the data transfer rate that is to be considered commensurate to functional access to the Internet. The services shall be supplied at affordable prices. It shall be possible for the authority to prescribe performance targets for the services that an operator has been obliged to supply.

Supply and funding of universal service

When the market does not satisfy the need of a universal service, it shall be possible for the responsible authority to oblige the appropriate operator to supply the service.

The universal service shall be procured if it is particularly required with regard to the costs of its supply.

Controlling expenditure

The supplier of a publicly available telephony service to fixed locations shall provide itemised telephone bills free of charge and apply a procedure upon non-payment in which the subscriber must have been requested to pay within a reasonable time period before being cut off. Furthermore, an operator whose task is to supply universal service shall on request and free of charge block certain types of outgoing calls. Such an operator shall also be required to offer consumers the option of setting a credit limit on their subscription as well as both pre- and part-payment options.

Number portability

The operator supplying publicly available telephony services shall ensure that the subscribers can keep their telephone numbers when they change operators. The transferring operator shall only have the right to remuneration from the operator with

which the calling subscriber has entered into an agreement concerning the conveyance of a message, and only for the operating costs in conjunction with the transfer. The transferring operator shall not charge the subscriber for costs in conjunction with the transfer.

The transferring operator shall be obliged to submit the necessary information on transferred telephone numbers to a body determined by the supervisory authority so that telephone communications can be directed to these numbers. Personal data other than details of telephone numbers and relevant operators shall however not be submitted without consent. The supervisory authority shall be able to appoint someone (a reference database operator) to receive, compile and forward this information. This person/body shall supply the information to the operators on reasonable and competitively neutral terms.

The supervisory authority shall be authorised to decide whether the information shall also be submitted to others.

Carrier pre-selection and carrier selection

The operator who exercises significant power on the fixed telephony market shall enable his subscribers to pre-select and select carrier. Remuneration for changing carrier pre-selection may only be based on the operating costs.

Regulating services aimed at end-users

It shall be possible to instruct a player with significant power on a specific end-user market to take appropriate extra measures if other mandatory measures are deemed to be insufficient. Such an obligation may consist of applying a certain maximum or minimum price, not taking measures that prevent competition, or not performing a service that can be supplied separately depending on some other service also being supplied.

Leased lines

It shall be possible to instruct an operator with significant power on the market for the supply of the minimum set of leased lines services to abide by the fundamental principles of non-discrimination, cost orientation and transparency.

Special rights for subscribers, etc.

The act shall stipulate certain rights that subscribers and end-users have in an agreement. This agreement shall contain at the very minimum:

- the supplier's name and address,
- the services supplied,
- the level of quality offered,
- the supply period,
- the maintenance services offered,

- detailed prices and tariffs,
- how information on applicable tariffs and maintenance fees can be obtained,
- the duration of the agreement,
- terms for the extension and discontinuance of the services,
- terms for the extension and cancellation of the agreement,
- terms of reimbursement should services not be supplied in accordance with the agreement,
- how a dispute settlement procedure is initiated.

Subscriber information

An operator who supplies a publicly available telephony service shall disclose subscriber information that is not covered by professional secrecy regulations to another operator who conducts or intends to conduct subscriber information activities. This information shall be disclosed on fair, cost-oriented and non-discriminatory terms.

The network's operational reliability

An operator who supplies a publicly available telephony service shall ensure that the public telephone network to fixed locations fulfils reasonable requirements concerning good functionality and technical reliability and concerning durability and accessibility during extraordinary events in peace time.

It shall be possible to instruct an operator who supplies public communications networks or publicly available electronic communications services of particular significance for public interest to consider the total defence service's need for electronic communications during times of heightened alert.

The common European emergency call number (112)

An operator who supplies a publicly available telephony service shall help ensure that emergency calls can be conveyed free of charge and uninterrupted and, as far as is technically possible to implement, provide location data when emergency calls are made.

Protection of privacy

Affinity with the Personal Data Act

Unless otherwise stipulated in the Electronic Communications Act, the Personal Data Act of 1998 (1998:204) shall apply regarding the processing of personal data when supplying electronic communications networks and services and when providing subscriber information.

Security

A supplier of a publicly available electronic communications service shall take appropriate measures to ensure the protection of the processed information. A public communication network supplier shall take the necessary measures to uphold this protection in the network.

If there is a particular risk for inadequate protection in this respect, the service-provider shall inform the subscriber of this risk. If the service-provider is not obliged to remove this risk, the subscriber shall be informed as to how and at what approximate cost it can be removed.

Protection of confidentiality with regard to electronic messages

With the exception of the provisions on the processing of traffic data and professional secrecy, no-one other than the relevant user may obtain access to or in some other way process the data in an electronic message that is conveyed in a public communications network or using a publicly available electronic communications service, or the traffic data that is associated with this message, unless one of the users has given his consent to such processing. The prohibition on processing such data does not hamper necessary intermediate storage, storage effected with the sole purpose of improving the efficiency of further conveyance to other recipients (“caching”), nor does it hamper listening through a radio receiver or obtaining access in some other way by using such a receiver to an electronic message sent by radio that is not intended for the listener or the general public.

Processing cookies, etc.

It shall be permitted to use an electronic communications network to store information, or to obtain access to information that is stored in a subscriber’s or end-user’s terminal equipment, only if the subscriber or user receives information from the data controller as to the purpose of the processing and is given the opportunity to prevent such processing.

Processing of location data

Location data that is not traffic data, such as position data from a satellite (e.g. GPS), and which concerns users who are natural persons or subscribers, shall be allowed to be processed only after it has been made anonymous or after the user or subscriber has given his consent to the processing. Before consent is given, the service-provider shall provide information on the type of data that is to be processed, why and for how long it is to be processed and whether the data will be forwarded to a third party in order to provide the service. It shall be possible to revoke this consent at any time.

Non-itemised bills, CLIP and automatic call forwarding

The supplier of a publicly available electronic communications service shall be obliged to provide a non-itemised bill to any subscriber who asks for one. A CLIP (calling line identification presentation) supplier shall provide certain scope for preventing number presentation or presentation of connected numbers or for rejecting incoming calls in a simple way. Nonitemised bills, CLIP and the possibility of preventing automatic call-forwarding shall be regulated under the new act.

Exceptions regarding CLIP and location data

A public communications network or publicly available electronic communications service supplier shall be able to:

- temporarily override CLIP protection to be able to identify disturbing calls on behalf of a subscriber,
- on behalf of the Police or of a regional alarm call centre override CLIP protection and provide such organisations with location data on alarm calls without the consent or despite the refusal of the subscriber or user.

Public directories

Subscribers who are natural persons shall be given the option of deciding whether (and if so which) personal data is to be included in a public directory or a directory from which data can be obtained via a subscriber information service. Not being included in such directories, checking the data, having incorrect data rectified and having data removed from a directory shall be free of charge.

Lawful interception and monitoring of telecommunications

An operation shall be conducted so that a decision on lawful interception and monitoring of telecommunications can be implemented and so that the implementation is not disclosed, if the activity involves the supply of:

1. a public communications network that is not solely intended for the transmission to the general public of sound radio programmes or other programmes stipulated in Chapter 1, Article 1, third paragraph of the Fundamental Law on Freedom of Expression, or
2. services in a public communications network that consist of
 - a) a publicly available telephony service to fixed locations which allows the transfer of local, national and international calls, telefax and data communication at a specified minimum transfer rate, that allows functional access to the Internet,
 - b) a publicly available electronic communications service to mobile locations.

The content of and information on intercepted or monitored telecommunication messages shall be made available so that the information can easily be taken care of.

Telecommunication messages include sound, text, image, data or other information conveyed with the help of a radio signal or by light or electromagnetic waves that use specially designed conductors.

Professional secrecy and the right to prescribe regulations

The regulations in the Telecommunications Act of 1993 (1993:597) on professional secrecy shall be transferred to the new act with only minor amendments.

Regarding the processing of data for electronic communications, the government or the authority assigned by the government as the competent authority shall be able to prescribe more detailed regulations on what type of traffic data may be processed for the invoicing and marketing of certain services where the data is needed and lay down the requirements that shall be placed on a publicly available telephony service that allows the identification of the calling or connected telephone number or forwarded call.

Market analysis, consultation process and other administration

Market analysis and identification of companies with significant market power (SMP)

An authority shall regularly define the relevant markets into which the introduction of obligations under the act may be justified. These markets shall then be analysed to determine whether there is effective competition. If it is established that there is no effective competition on a determined market, companies with SMP shall be identified and a decision conveyed on appropriate obligations. If however it is established that there is effective competition, no special obligations shall be introduced or upheld.

The concept of SMP shall be interpreted in accordance with the concept of “a dominant market position”, as defined in the case law of the Court of Justice and the Court of First Instance of the European Communities.

Consultation

An authority shall give concerned parties the opportunity to express their opinion within a reasonable time limit regarding a draft decision on a measure, if this measure will have a significant impact on a determined market. In specifically defined cases, such draft decisions shall also be made available to the European Commission and the national regulatory authorities in other member states. For draft decisions concerning:

- the definition of a market that differs from those defined in the Commission recommendation on relevant product and service markets,
- the stipulation of companies that are considered to have significant market power, the authority shall refrain from announcing the decision if the Commission expresses its opinion within a specific time limit and requests that the proposal be withdrawn. In exceptional circumstances, the authority may announce a decision that is to apply for a maximum of six months without observing the consultation process.

There shall also be consultation on certain issues regarding co-location and other forms of facility-sharing etc., amendments to licenses or the terms for using radio transmitters or numbers for electronic communications, as well as issues concerning the rights of end-users and consumers.

Processing times in certain cases

The authority shall announce a decision on a license to use radio transmitters within six weeks of having received a complete application. Decisions on a license to use numbers shall be announced within three weeks. This time may be extended by a maximum of eight months and three weeks respectively if the license is to be awarded subsequent to a public tendering process.

Obligation to provide information, etc.

An operator who conducts an activity that is covered by the act shall upon request provide an authority with information that is needed to:

- assess applications for licenses to use radio transmitters or numbers,
- publish comparative overviews of quality and price for the benefit of consumers,
- statistical purposes,
- market analyses,
- decisions on special obligations.

It shall be possible to make information submitted to an authority available to other relevant authorities within the European Economic Area (EEA).

It shall be possible to instruct operators with an obligation to notify and with special or exclusive rights to provide other services to report those activities associated with electronic communications separately.

Fees

To cover costs incurred by the authorities under the act, operators who conduct activities that have been notified in accordance with the act, or who possess a license to use radio transmitters or numbers, shall pay fees according to a reasonable allocation of the costs. Special fees may be charged for the costs associated with processing a notification or application for a license or with granting consent for the transfer of a license or part thereof.

Preparedness fees

Operators, who conduct activities that have been notified in accordance with the proposed act shall, according to a reasonable allocation of the costs, pay a fee to cover the costs of measures to combat serious peacetime threats and emergencies regarding electronic communications.

Supervision

The tasks and powers of the supervisory authority

The authority appointed by the government shall supervise compliance with the act and the obligations, terms and regulations issued pursuant thereto.

The supervisory authority shall be able to demand information, be given access to sites, premises and other areas and be able to issue injunctions and prohibitions. In specifically defined cases, the supervisory authority shall have the power to revoke a license, amend the terms of a license or to terminate either all or part of an activity.

As a rule, the supervisory authority shall firstly give the operator who is being supervised/inspected a reasonable amount of time to submit comments or voluntarily rectify any infringements.

Dispute settlement

At the request of a party, the supervisory authority shall settle disputes regarding obligations under the act between providers of electronic communications services, communications networks or associated services. Rulings on such disputes shall be issued within four months unless there are exceptional circumstances. The authority shall be able to refer a dispute to a mediator paid for by the parties.

Appeals

It shall be possible to appeal against decisions taken in accordance with the act in a public administrative court. It shall not however be possible to appeal against a decision regarding notification of the fact that the supervisory authority is considering taking action. Neither shall a decision regarding the identification of companies with SMP on a specified market and a decision that is merely paving the way for a later one be appealable.

Certain television and radio-related issues

Conditional access systems

The area of application for the Television Signal Transmission Standards Act of 1998 (1998:31) shall be extended to include both sound radio transmissions and all electronic communications networks used to distribute television programmes to the general public. The name of the act shall be changed to the Radio and Television Signal Transmission Standards Act. Provisions on conditional access shall be adapted to annex 1 of the Access Directive. The scope for prescribing an obligation for programme companies that market a digital pay-TV service to provide a price list shall be removed. The right of the government or the authority assigned by the government as the competent authority to prescribe regulations concerning the use of certain transmission standards shall be

extended from including the transmission of programmes to the general public to also covering the transmission of TV services. The restriction concerning the retransmission of TV services in widescreen format to retransmissions in cable networks shall be removed. The obligation shall instead relate to TV services and programmes that are received in 16:9 widescreen format and that are retransmitted in public communications networks set up for the distribution of digital television services.

Authority organization

The National Post and Telecom Agency should have the official responsibility under the Electronic Communications Act and be the sectoral authority for electronic communications area.

The National Post and Telecom Agency should therefore be responsible for defining the relevant markets, analysing the competition on these markets, identifying players with SMP on a market and deciding on specific obligations for such players. The National Post and Telecom Agency shall cooperate with and ask the Swedish Competition Authority for its comments regarding competition-related issues.

The Swedish Consumer Agency should be responsible for consumer issues within the field of electronic communications, to the extent that such issues are not regulated in the Electronic Communications Act. The Data Inspection Board should be responsible for supervision regarding the processing of personal data within the field of electronic communications, to the extent that this processing is not specifically regulated in the Electronic Communications Act. The National Post and Telecom Agency should be responsible for supervision regarding consumer issues and the protection of privacy when such issues are specifically regulated in the Electronic Communications Act.

The Radio and TV Authority should have the official authority in accordance with the Radio and Television Act and the Radio and Television Signal Transmission Standards Act.

Forms of cooperation and information exchange among the authorities concerned should be strengthened and in certain cases formalised through their instructions.

The authority organisation should be subject to review following an analysis two years after the Electronic Communications Act has entered into force.

Entry into force and interim provisions

The Electronic Communications Act shall come into force on 25 July 2003. Provisions governing the entry into force of and transition to the new act shall be laid down in a special act on its introduction.

Sweden's affiliation to a European Communications Office (ECO)

An amendment to the Convention on the Establishment of a European Radio Communications Office (ERO) to refer to a European Communications Office (ECO) shall be approved.

Economic consequences

This legislative proposal involves certain economic consequences. Increased costs for the authorities may in some cases be covered by the fees that the competent authority can levy. The legislative proposal may also lead to new revenue for the government. In accordance with the proposal, auctioning may be used as part of the process for awarding licenses to use radio transmitters and certain numbers. Revenue from such a process is reported as gross income on the central government budget and hence does not go to the authority.

Consequences for small companies

A large percentage of the companies that operate in the sector are already affected by the existing legislation. The new regulatory framework will entail some changes however, with which the companies must familiarize themselves.

One aim of the new framework is to create simpler rules for companies to enter the market. Another is to create effective competition. The sectorspecific regulation benefits smaller companies in that it may lead to obligations being placed on the dominant market-player if there is ineffective competition. Effective competition benefits all actors in the sector, both providers of electronic communications networks and services as well as users. Under the act, the competent authority will have to perform regular market analyses to check that there is still effective competition.

3. The basis of the bill

The new EC regulatory package

In 2000, the European Commission presented a proposal for a new regulatory framework for electronic communications with the aim of modernising existing European legislation in the area. The proposal was put forward in the light of rapid developments both in technology and on the market. The legislation needed to be adapted to a more competitive market and take the ongoing convergence between telephony, data communication and media into account. The Commission's proposal aimed to bring together all transmission networks and associated services under one single regulatory framework.

The European Parliament and the European Council adopted the Commission's proposal during 2001 and 2002. The adopted regulatory framework incorporates five harmonisation directives, consisting of a framework directive and four separate directives, and a decision on radio spectrum policy within the Union. In addition, the Commission has adopted a directive on competition in the markets for electronic

communications networks and services. These new legal instruments replace about twenty current directives. In conjunction with this new legal package, the Commission has also developed guidelines on how to conduct the analysis of the markets and to determine the existence of significant market power as well as a recommendation for the relevant product and services markets onto which the introduction of special regulation obligations may be justified.

- 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 (Framework Directive) came into force on 24 April 2002.
- Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) came into force on 24 April 2002.
- Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) came into force on 24 April 2002.
- Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), referred to below as the USO Directive (Universal Service Obligations), came into force on 24 April 2002.
- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) came into force on 31 July 2002.
- Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) came into force on 24 April 2002.
- Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services came into force on 7 October 2002.
- Commission guidelines on how to conduct the analysis of the market and how to determine the existence of SMP in accordance with the Community regulatory framework for electronic communications networks and services were issued on 11 July 2002.
- Commission recommendation 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 the Council on a common regulatory framework for electronic communications networks and services was issued on 11 February 2003.

Committee of inquiry on electronic communications

In April 2001, the government appointed a committee of inquiry on electronic communications and charged it with performing a comprehensive review of the Telecommunications Act of 1993 (1993:597), the Radio Communications Act of 1993 (1993:599) and the current political objectives for these based on the EC legal instruments and put forward proposals for how these instruments are to be incorporated

into Swedish legislation. The Committee was also instructed to conduct a survey and analysis of other legislation in the electronic communications sector, describe the authority structure in the sector, suggest the necessary changes to the organization and submit the statute proposals considered necessary to enable supervision of Internet top-level domains.

- The assignment was presented in the interim report “Electronic communications Act” (Official Government Report 2002:60) in July 2002 and was circulated for comments.
- Another interim report “Authority issues, etc.” (Official Government Report 2002:109) was submitted in December 2002 and circulated for comments.