

Annex 1

The Swedish broadband situation:

To start investing in the rollout, altnets need access to the incumbent's telephone exchanges. During the initial 12 months Tele2 requested access to 214 exchanges. For 20 per cent of these Tele2 has either received a negative reply to its access enquiry or received no reply at all. In some cases the absence of a reply is due to the fact that a review is underway. The exchanges that Tele2 was denied access to include many located in Sweden's largest cities. Eight months after its enquiry, Tele2 was only granted access to 28 exchanges. This means that Tele2 was only able to provide broadband services to consumers via ULL in 13 per cent of the requested exchanges.

Thereafter, the following six months to date, Tele2 has in total requested access to 234 sites. Tele2 is interested in achieving access to significantly many more sites but has, due to the incumbent's lack of resources, decided not to request for access at the speed actually desired. Out of these 234 sites, Tele2 has received an acceptance for 145 sites while 89 have been denied or turned out not to be profitable due to the cost for the site in question. Today, the answer from the incumbent is typically, if not positive, either information about the price for making an investigation as such about the costs for a specific site, or, if the site is assessed as being very costly, a list of co-financing where several operators share the cost. This list of co-financing was recently, after one year of negotiation, implemented. It is however still uncertain whether this will work in practice and whether fibre is available at the station in question.

Once an operator has signed the necessary agreements, which in practice are not negotiable but comprise reference offers produced by the incumbent that the operator must accept in full to gain access, the next step is to apply for access to the exchanges in which it wishes to establish itself. This is done in the form of a request for collocation that is sent to the incumbent. A separate request must be sent for each exchange. Generally speaking, the incumbent can answer such requests in one of three ways:

The request is accepted, which means that the incumbent will send an offer that the operator is obliged to accept. Acceptance subsequently implies an order for collocation in the exchange concerned, i.e. space in the exchange where the operator can set up equipment, such as exchange cables, DSLAM, etc.

Access is denied. If the reply is negative, the incumbent will not get back to the operator who placed the enquiry, even if an opportunity for access should arise at a later point. That is something the operator itself has to monitor. However, the incumbent now has a "stop list" on the Internet with information about exchanges where no expansion of capacity is planned.

Access is denied, but the operator may request that the incumbent conduct a review, at the expense of the operator, of whether space can be created. This means that the incumbent will send out staff to the exchange to determine whether it is possible to

adapt the facility. The review results either in a denial of access or in an offer based on a higher establishment cost.

The reason given by the incumbent upon denying a request for access has been that there is not enough space in the telephone exchange to allow another operator to use the exchange for an expansion. Various reasons are cited. The most common reason is that the exchange's distribution frame is full. Other reasons cited are that the cable paths or nodes are full, that there is no cabinet room or that the exchange is being converted or extended. The reasons given are generally very brief. For the exchange in Norrköping, for instance, Tele2 received the following answer: "*Collocation not possible, no development of N is planned*".

Sometimes, Tele2 is offered to pay for a review of whether it is possible to create space in a certain exchange, e.g. by making alterations to the building. Under its agreement with the incumbent, Tele2 also has an opportunity to visit exchanges for which the incumbent has denied access without offering the option of a review. At such visits it has often been shown that collocation of equipment would, after all, be possible. See the example below.

The Hässelby exchange:

Tele2 requested access to this telephone exchange for collocation. The incumbent declined the request claiming there was no space, but offered to conduct a review if Tele2 paid SEK 20,000 (approx. 2200 EUR), which Tele2 did. According to the incumbent, the review showed that access could not be granted. Tele2 then requested and was granted access to the exchange. One cable entry in the exchange (approx. 70 x 40 centimetres) through a wall was indeed full. However, it turned out that the reason for this was that the incumbent had neglected to remove old cables that were no longer being used. There was plenty of space in the cabinet to extend the distribution frame. Tele2 proposed drilling to create a new cable entry point, which there was also plenty of room for. However, the incumbent objected to this on its visit to the site. A few months later, the incumbent got back to Tele2 and instead offered to remove its old cables, but only if Tele2 paid for it.

The example confirms the view that access is often denied on the flimsiest of pretexts. As seen, the fact that the incumbent has not "cleaned up" in the exchange may be sufficient cause. The example also points to the lack of any incentive to provide access to other operators via ULL. Even in the event of a negative reply with no option of a review, it has in several cases been shown that opportunities for collocation do in fact exist.

In cases where the incumbent has made access conditional upon Tele2 bearing the cost of a conversion or "clean-up" of a telephone exchange Tele2 has established that the company would be obliged to pay for more extensive works than necessary. As the cost of such a conversion or "clean-up" is not regulated by the Swedish NRA's decision or by the Electronic Communications Act, the sums involved are very considerable. An operator's ability to invest in ULL access is of course dependent on the cost. Because the incumbent does not automatically offer an option of cost sharing between different operators, access is delayed. Cost sharing is only possible if an operator is made aware that other operators have also requested access. The

incumbent's review of whether such cost sharing can be accepted takes a long time and further delays access.

As the market for broadband access is in a very expansive stage, a very important criterion for operators that are seeking ULL access is to gain access quickly. However, under its own reference offer the incumbent has 12 weeks to answer a request for access to an exchange. If the request results in an offer, the operator has 30 days in which to accept. Once the acceptance has been received, the incumbent once again has 12 weeks to prepare access for collocation. This means that it can take more than half a year to establish access in an exchange, if there is space. During this time the incumbent is free to tie up its own broadband customers with long tie-up periods.

In cases where an access request is denied, but a review is offered, there is no limit on the processing time. This means that the incumbent is free to delay any access that may later be granted by several more months. In exchanges that need to be adapted in some way access for other operators can be delayed by up to a year from the time of the original request.

In addition to the above-mentioned methods of delaying access for other operators, the following can be mentioned. Under the agreements the incumbent is required to enclose, along with its collocation acceptance, cabling plans for the exchange and the customer data that is required to enable the operator to work in the exchange and connect subscribers. In half the cases where Tele2 has been granted collocation the incumbent has either not sent a plan of the exchange or the plan has been incorrect. The exchange plans are essential, as a wrong connection can lead to individual subscribers not being able to call or use broadband services. Another way to delay the new operator's entry on the market is to refuse to provide other necessary services that the operator needs to be able to initiate sales to consumers such as the ability to connect the exchange to the operator's own backbone network (transmission). For instance, Tele2 has been unable to realise its establishment plans in five cases due to denial of transmission (Kungsängen, Österskär, Höör, Vellinge and Höllviksnäs).

Once the operator has received all necessary acceptances to establish itself at the exchange, a security agreement is required to enable the operator's technicians to access the incumbent's telephone exchange. Each individual technician must be approved for access. Here Tele2 has encountered major problems, as technicians who have gone through the incumbent's training programme and been approved have still been denied access simply because they were not listed as authorised in the incumbent's system. This has led to further delays.

Simultaneously with the orders, etc described above the operator also needs to link up its business support systems with the incumbent's business support systems to be able to handle customer management. Tele2's experience is that the incumbent deliberately delays even this process, further delaying Tele2's ability offer services to consumers.

Although the incumbent has been under an obligation to provide ULL access and the associated installations since January 2001, problems have arisen when alternative operators have sought to gain access to these products. The Swedish NRA has therefore been forced to take a number of regulatory measures.

This clearly indicates that the ladder of investment is not in proper use which is a real threat to competition in the retail services market as it means that the former monopolist is still in total control of the xDSL market in Sweden, preventing alternative operators from competing on equal conditions. The introduction of stronger enforcement mechanisms is imperative to prevent the incumbents from being able to exercise such delaying tactics any further.