verizon

Regeringskansliet
Infrastrukturdepartementet
103 33 STOCKHOLM
only by e-mail: i.remissvar@regeringskansliet.se
copy by e-mail to: i.d.remisser@regeringskansliet.se

Solna December 2, 2019

Consultation on the Memorandum: Transposition of the Directive establishing the European Electronic Communications Code (I2019/02319/D)

1 Introduction

Verizon welcomes the opportunity to respond to the consultation on the proposed Swedish national legislation transposing the Directive (EU) 2018/1972 establishing the European Electronic Communications Code ("EECC", or "Code").

We believe the European Commission ("EC" or "Commission") was right to bring the set of directives commonly known as the "telecom package" into line with today's realities in order to align the framework with the tremendous transformation in the digital market that has occurred over recent years, and that will only continue. The time is now for national legislators to transpose the Code into national law. This reaction relates to the Swedish market, taking into account specific national circumstances.

Verizon is a global player. Outside of the US, Verizon provides a broad range of global communication products and enterprise solutions, predominantly to large business and government customers. We are established in most European Union ("EU") Member States ("MSs"), and provide services in over 150 countries worldwide. As a pan-European business provider, we generally welcome any initiative which aims to bring further harmonization and legal certainty, and reduce administrative burden at EU and national levels.

Given the shear breathe of issues covered in the draft legislation, this paper aims to provide a high-level overview of our position related to the consultation and linked to our overarching guiding principles.

2 Overarching Guiding Principles

Verizon has followed the developments around the Code from scratch based on some upfront overarching guiding principles. We have assessed the proposed legislation in line with these principles and will focus on some of them in this reaction. For completeness, these overarching principles are:

Harmonization and consistency: Verizon operates in almost all EU Member States; therefore it is critical for the Code to deliver full and maximum harmonization and to ensure that regulation is applied consistently across the EU.

Foster innovation and investment: the Code should enable innovation and investment for all parts of the telecom sector.

Market regulation: the Code should maintain the existing *ex-ante* regulatory approach based on competition law principles where regulation is imposed only when necessary and proportionate.

Light-touch horizontal regulation: the Code should shift away from sector specific regulations towards generic horizontal regulation when applicable and only apply sector specific regulation where really necessary and equally to similar services.

Specificities of enterprise providers: the Code should recognize the distinction between consumer services and (larger) enterprise services and exempt enterprise services from consumer-protection regulation.

Encourage voluntary industry-led standards: the Code should enable the use of voluntary, industry-led global standards.

3 Proposed Legislation Specific Comments

3.1 General authorization

3.1.1 Article 12: General authorization of ECNs and ECSs

The EECC obliges MSs to ensure the freedom to provide Electronic Communication Networks ("ECNs") and Electronic Communications Services ("ECSs"). Article 12 EECC sets out that providers of ECNs and ECSs may only be subject to a general authorization. A Member State may consider a notification requirement also justified.

We believe that the EECC should have gone further in supporting cross-border provisioning of networks and services. A general authorization should be sufficient (like in the United Kingdom) and the Swedish legislator should refrain from imposing a national notification requirement especially for pan-European providers.

verizon

3.1.2 Proposed Legislation Comment

The proposal made by the legislator means that the provisions on duty to notify and on exemptions from duty to notify shall be transferred to the new law, with the amendment that no duty shall apply to the provision of number-independent interpersonal communication services.[1] In case the final proposal contains a notification requirement we urge the government to refrain from introducing national-specific requirements as this will add fragmentation of rules across MSs and increase the administrative burden especially for pan-European providers like Verizon. Today PTS may, according to 4 § Regulation (2003:396) on Electronic Communication (FEK), issue the necessary implementation regulations necessary for notification. We suggest that this 4 § FEK is amended to include the obligation for PTS to take into account the BEREC Guidelines for the notification template issued as per Article 4(d)(i) in Regulation (EU) 2018/1971.[2] By adding such an obligation the legislator will minimize further disparity between MSs Implementation of the ECCC across the EU.

4 Security

4.1 Article 40 and 41: security of networks and services

Article 40 of the EECC involves the obligation of providers of public ECNs and public ECSs to take appropriate and organizational measures to appropriately manage the risks to the security of the networks and services. We applaud the role of the European Union Agency for Network and Information Security ("ENISA") to facilitate the coordination of MSs to avoid diverging national requirements that may create security risks and barriers to the internal market. The Article further lays down a notification obligation of security incidents with a significant impact. To determine the significance certain parameters have been summed up. An EC implementing act may provide further details. We strongly support this as this will result in a predictable and consistent harmonized approach.

We call upon the legislator to act in line with the recommendations and common practices of ENISA and in particular the EC implementing Act to ensure consistency across the EU and to refrain from adopting any further requirements as this would lead to fragmentation, inconsistencies and barriers to the internal market.

4.1.1 Proposed Legislation Comment

The obligations in the proposed legislation, specifically 8 Ch. 3 and 5 §§ NLEK[3] meets our belief that security measures imposed by the legislator should not be prescriptive. We subscribe to the principle that an operator shall take appropriate and proportionate technical and organizational measures to appropriately manage risks that threaten the security of networks and services in order to ensure a level of security in networks and services appropriate to the risk. It is however important

[1] Section 8, p. 117

[2] OJ L 321, 17.12.2018, p. 1–35, Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009

[3] New Law on Electronic Communication which replaces LEK (Law on Electronic Communication) in the memorandum

that the government or the authority designated by the government when issuing future regulations on the security measures act in line with the recommendations and common practices of ENISA and the EC implementing Act. We recommend anchoring this in the new legislation.

Furthermore, any national or EU wide requirements should be risk-based, flexible, robust and promote innovations-friendly and technology-neutral solutions. These national policies should draw on existing, interoperable and global best practices and voluntary industry standards and certifications that improve security while enabling growth in international commerce through digital means.

5 Access Regulation

In the context of access regulation in general we support the Code maintaining the status quo. An *ex-ante* regulatory approach based on general competition law principles, where regulation is only imposed when necessary and proportionate has proven to be effective.

5.1 Article 61 (3): Symmetric obligations

The EECC allows for the imposition of "symmetric obligations" as meant under article 61 (3), which is a new rather far reaching instrument that can lead to access obligations that go beyond to what is foreseen in the SMP framework. More specifically National Regulatory Authorities ("NRAs") may impose obligations; upon reasonable requests to grant access to certain network elements where this is justified on the ground that replication of these elements is economically inefficient or physically impracticable. BEREC will publish guidelines on this specific topic by 21 December 2020.

5.1.1 Proposed Legislation Comment

The proposed legislation indeed transposes this new instrument into Swedish law. It allows the NRA to grant access to network elements on reasonable terms and conditions. We want to underline that such far reaching measures should only be imposed if an in-depth analysis clearly provides evidence that replication of such elements is indeed economically inefficient or physically impracticable. [4]

5.2 Article 61 (5): Market review period

The extension of the market review period to 5 years (article 61 (5)) indeed provides more legal certainty and greater stability. The recitals of the EECC rightfully leave it to the NRA's discretion to decide on whether market changes in the intervening period require a new analysis. This address the concerns that remedies that has been imposed for 5 years but do not fit the market characteristics anymore jeopardize competition and the internal market.

[4] Ch 5 30 – 32 §§ and 42 § NLEK

verizon

5.2.1 Proposed Legislation Comment

The proposed legislation does extend the market review period to a maximum of 5 years while opening up for the NRA to intervene when market changes require a new analysis.[5] Verizon therefore support the implementation of the EECC as proposed by the legislator.

5.3 Article 67 (3): Withdrawal of regulatory obligations

When the NRA finds that a market is competitive even in the absence of wholesale regulation, a notice period is required during the transition. Article 67 (3) deals with the withdrawal of regulatory obligations. In this context it obliges NRAs to ensure that the parties affected by such a withdrawal to receive an appropriate notice period. The EECC allows NRAs to determine specific conditions and notice periods in relation to existing agreements.

5.3.1 Proposed Legislation Comment

Under the proposed legislation[6], if, in an assessment, it is found that in a defined market, it is not justified to impose special obligations, the obligations previously imposed shall be removed. The timing of the removal of an obligation shall be determined, taking into account the interests of the parties concerned. The NRA may impose special conditions for the transitional period. Verizon, therefore, believes that the implementation is in line with the Directive and meets the specification of Article 67(3). Verizon believes that the legislation should state that depending on the affected services a minimum notice period of 12 – 18 months should be imposed in order to allow the affected parties to find other suitable services to replace the existing regulated services.

5.4 Article 75: Termination rates

We support the new EU-wide price cap for termination rates introduced in the Code. Nonetheless we welcome a clarification that cost-oriented termination rates apply to all traffic regardless of whether the traffic originates within or outside the European Union /European Economic Area. This ensures a true “single EU-wide” rate as per the objective of Article 75 EECC.

5.4.1 Proposed Legislation Comment

According to 5 Ch. 11 § NLEK a market analysis concerning a market for voice call termination may only be carried out provided that the European Commission has not established a Union-wide termination rate for the market pursuant to Article 75 (1) of Directive (EU) 2018/1972. If a market analysis referred to in the first subparagraph justifies the introduction of cost-oriented termination tariffs, the criteria set out in Annex 3 to Directive (EU) 2018/1972, in the original version, shall be applied in the determination.

According to 5 Ch. 11 § NLEK a market analysis concerning a market for voice call termination may only be carried out provided that the European Commission has not established a Union-wide termination rate for the market pursuant to Article 75 (1) of Directive (EU) 2018/1972. If a market analysis referred to in the first subparagraph justifies the introduction of cost-oriented termination

[5] Ch 5 6 –7 §§, 12 § and 40 § NLEK
[6] Ch 5 § 7 NLEK

tariffs, the criteria set out in Annex 3 to Directive (EU) 2018/1972, in the original version, shall be applied in the determination.

Verizon would like to highlight that the paragraph in NLEK referenced above, is silent on the issue of termination rates for calls originating outside the EU/EEA. This is problematic as Sweden and the EU have obligations under the General Agreement on Trade Services (GATS) not to discriminate against calls originated outside of the EU/EAA.

This is all the more relevant since the judgment by the Administrative Court which removed for one operator the obligation to apply same termination rates regardless of where the calls originates. [7] This opens the risk that Swedish operators might set termination rates which could violate EU and Sweden's commitments under GATS and more specifically the section on interconnection within Protocol 4[8], to which both EU and the member states are bound. [9] As stated in Article 216 (2) TFEU: Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. [10] The Protocol 4 of GATS is considered an EU legislative act which is still in force and is therefore part of the EU legal system.

Paragraph 2.2 (a) Section 2 Interconnect of such Protocol 4 to GATS states: "Such interconnection shall be ensured under non-discriminatory terms, conditions (including technical standards and specifications) and **rates** and of a quality no less favorable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates".

Sweden therefore has an obligation to regulate termination rates in accordance with the section on interconnection within Protocol 4 to GATS, since it constitutes a firm and precise commitment of Sweden, which the Swedish State has an obligation to safe guard.

Verizon therefore calls for the Swedish legislator to prevent any legal uncertainty by adding a paragraph to Ch. 5 11 § NLEK, which states:

1. That such regulated termination rates should be applied equally regardless from which country the call originates; or as a minimum
2. That such regulated termination rates should apply to calls originating from any country which is a party to the Protocol 4 to GATS and has not made reservations to the dedicated section on interconnection.

In any case, the legislator should add language which prohibits termination rates which are set higher than the regulated termination rate, in cases of calls from countries outside the EU/EEA, if rates applied in such countries for the termination of traffic originated in Sweden are lower or equal to, such higher than regulated rates applied in Sweden (or in the EU when EU wide rates are applied).

[7] See the judgement by the Administrative Court in Case 22200-16 issued 3 October 2018
[8] Official Journal L 347 , 18/12/1997 P. 0045 - 0058
[9] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=618
[10] The Treaty of the Functioning of the European Union

verizon

5.5 Article 76: Regulatory treatment of new very high capacity network elements

We support the promotion of Very High Capacity Networks ("VHCN") by offering commitments when co-investing in the roll out of such networks (as meant under Article 76). Care should be taken to ensure that the VHCN objective does not interfere with the promotion of competition. This has been acknowledged in the EECC by allowing NRA's to address competition problems by imposing, maintaining or adapting remedies.

5.5.1 Proposed Legislation Comment

The proposed legislation is in compliance with the intention of Article 76 and is regulated by Ch. 5 22 – 23 §§ NLEK, as the wording of the proposed legislation correctly incorporates Article 76 (1) (a - e), Verizon has no further comments.

6 End-user rights

6.1 Verizon's main concerns

Verizon's concerns in the context of the EECC are twofold: (1) although the Code recognizes that due to their nature (e.g. stronger bargaining power) larger enterprises need less protection than consumers, micro and small enterprises and not-for-profit organizations, larger enterprises are still disproportionately and unnecessarily covered by many end-user protection requirements; (2) although the Code prescribes maximum harmonization for end-user rights, in some areas it still allows MSs to deviate from that guiding principle.

Below we explain these concerns in more detail and then focus on the most relevant end-user protection provisions (Articles 101 – 107), together with the proposed national legislation.

6.1.1 End-user protection should not automatically be extended to larger enterprises

We welcome that the Code in some instances explicitly recognizes the distinction between consumers, microenterprises and small enterprises and not-for-profit organizations on the one hand and larger enterprises on the other hand. The Code rightfully clarifies that larger enterprises have stronger bargaining power, which consumers, microenterprises, small enterprises and not-for-profit organizations generally tend to lack. Indeed larger enterprises, contrary to consumers, microenterprises, small enterprises and not-for-profit organizations, generally negotiate individualized contract terms and have different technical requirements compared to the other categories of end-users. This means that in most cases larger enterprises do not need consumer-like protection, while the other categories of end-users may need this protection.

Unfortunately the welcome distinction between these categories of end-users is not consistently reflected throughout the end-user protection provisions of the Code. While in some provisions larger enterprises have been rightfully carved out, in others larger enterprises unfortunately are still captured. We see this as a missed opportunity for better regulation, and see a clear role for national legislators on this point.

Referring to general principles of good governance, we call upon the legislator to carefully test the necessity and proportionality of applying certain consumer protection provisions to larger enterprises. In our view these tests should lead to a correction of some of the end-user protection provisions whereby larger enterprises will be carved out.

If for whatever reason a general carve out of larger enterprises is not feasible, it still continues to be important that when transposing the Code into national law, the legislator carefully describes in the explanatory memorandum what the key distinctions are between the different categories of end-users and that based on these distinctions the need for protection of consumers, microenterprises and small enterprises and not-for-profit organizations is much higher than for larger enterprises. Ideally MSs should accompany this with the notion that it would be reasonable and understandable that in their enforcement practices NRAs use their discretion to focus on those categories that need protection the most. This leads to a situation in which larger enterprises are de facto being carved out, as currently already is the case in some MSs for the end-users provisions.

6.2 Article 101: Level of harmonization

We strongly welcome the full harmonization principle as laid down in Article 101. It is clearly stated in Recital 257 that a calibrated full harmonization of end-user rights is of key importance for pan-European providers as it increases legal certainty, and lowers entry barriers and unnecessary compliance burden stemming from fragmentation of the rules.

Although the Code prescribes maximum harmonization for end-user rights, in some areas it still allows MSs to deviate from that guiding principle. Verizon believes that it is important that the Swedish legislator refrain from maintaining or introducing additional requirements in national legislation, for example as meant in Article 102, paragraphs 6 and 7. Doing so could undermine the full harmonization principle as discussed before, and lead to legal uncertainty, entry barriers and unnecessary compliance burden stemming from fragmentation of the rules.

6.2.1 Proposed Legislation Comment

The proposed legislation does not take use the opportunity to continue to apply more stringent national consumer protection provisions diverging from those laid down in Articles 102 to 115 until 21 December 2021, provided that such provision were in force on 20 December 2018. Verizon, as a pan-European business provider, applauds this as this allows for maximum harmonization from the day the new legislation comes into force.

6.3 Article 103: Transparency, comparison of offers and publication of information

Article 103 is a good illustration of inconsistency in terminology between consumers and end-users and unintended consequences. Article 103 (1) requires Competent Authorities (“CAs”) and NRAs to ensure that providers of internet access service (“IAS”) or publicly available interpersonal communications services (“PA ICS”) that provide services subject to terms and conditions, publish the relevant information in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities.

This Article read in conjunction with Recitals 265 – 270 illustrates the inconsistency in the use of terminology around the notions of *"consumer"* and *"end-user"*. For example Recital 265 mentions that "The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services". The Recital continues suddenly jumping to "end-users" without providing any justification for expanding the scope: "End-users should be able to compare the prices of various services offered ..."

In our view the inclusion of larger enterprises is unnecessary and disproportionate, as larger enterprises have the ability to negotiate each single element of the service they buy and often use tenders to compare the different service offerings. We therefore request that the legislator carves out larger enterprises, in line with the initial intention of the first sentence of Recital 265 clarifying that the obligation should only apply to consumer facing services.

A further inconsistency can be found in paragraphs 2 and 3. Paragraph 2 requires the CAs to ensure that end-users have access to a comparison tool, while paragraph 3 stipulates that the tool should include the possibility to compare offers available to consumers and – only if required by MSs – between the offers to other end-users.

Clearly such a comparison tool makes sense for consumers and (possibly) microenterprises, small enterprises and not-for-profit organizations as their demand for one-size-fits-all services may make such a tool meaningful. Larger enterprises however negotiate individualized contracts and use other means such as tenders to compare the quality of service and pricing of the different providers. In our view expanding the scope to larger enterprises is meaningless, unnecessary and disproportionate. We call on the Swedish legislator] to act in line with Article 103 (3) and explicitly clarify that the tool in Article 103 is exclusively destined for consumers.

Further, paragraph 4 lays down that MSs may oblige providers of IAS or PA Number Based ICS to distribute public interest information free of charge to end-users covering *inter alia* common uses of the relevant services to engage in unlawful activities (e.g. copyright infringements) and the means of protection against risks to personal security, privacy and personal data.

6.3.1 Proposed Legislation Comment

The proposed provision Ch. 7 6 § NLEK which regulate the obligation for providers of Internet connection services or publicly available interpersonal communication services shall disclose to the end users clear, comprehensive and up-to-date information on the services. As argued above in line with Recital 265, Verizon calls on the legislator to clarify that this obligation should only apply to consumer facing services.

As stated in the memorandum[11], Article 103 (2) and (3) is addressed to the CAs, which are required to ensure access to at least one independent comparison tool. However, the Articles do not prescribe any details on how the implementation shall be made. The legislator propose that it would be appropriate for PTS to investigate how best to ensure that the obligations under Article 103 (2) and (3) of the EU Directive are fulfilled, including how a quality control of comparison tools in the market can be carried out. We urge the legislator to include in its directive to PTS, when performing

[11] Memorandum, p. 277

this investigation, to clarify that such comparison tool should solely address the needs of consumers and (possibly) microenterprises, small enterprises and not-for-profit organizations.

Verizon notes that the proposal will not implement Article 103 (4) as there are already plenty of free resources in Sweden which distribute public interest information free of charge to existing and new end-users, addressing the most common uses of internet access services, ways to protect against risks to personal security, privacy and personal data etc. Such information is provided both by authorities and voluntary organizations. Verizon therefore agrees that there is no need to implement Article 103 (4) into national law.

6.4 Article 104: Quality of service related to internet access services and publicly available interpersonal communications services

According to Article 104 the NRA and CA may require providers to publish information for end-users on the Quality of Service ("QoS"). Article 104 applies to providers of IAS and PA ICS to the extent that they control at least some elements of the network directly or by virtue of a Service Level Agreement ("SLA").

We believe that in principle larger enterprises should have been excluded from this Article. Larger enterprises negotiate tailor-made contracts, including comprehensive SLAs with penalty payments clauses. They can choose between different QoS levels and they receive regular and individualized QoS reports for the services they buy. For larger enterprises such general QoS reporting requirements therefore don't have any relevance.

6.4.1 Proposed Legislation Comment

Article 104, in the proposed legislation has been incorporated in Ch. 7 § 7 NLEK. As argued above the paragraph should exclude providers that serve larger enterprises from any QoS reporting requirements. As there are different categories of end-users which have different needs for QoS reporting, the NRA/CA should take this into account. As QoS reporting to larger enterprise customers are already sufficiently governed in bespoke and tailored contracts between the provider and the enterprise, this obligation make no sense in such cases, An exclusion of enterprise providers therefore justified, and such measure is both proportionate and reasonable.

6.5 Article 105: Contract duration and termination

This Article is a mixed bag. It starts well, with paragraphs 1 and 2 explicitly carving out larger enterprises from the mandated contract commitment period (no longer than 24 months). A clear distinction is made between consumers, microenterprises, small enterprises not-for-profit organizations on the one hand and larger enterprises on the other. This is the right approach given that larger enterprises mostly have relatively longer term contracts, accompanied by a long-standing industry practice of tailor-made termination and break-up clauses that include penalty payments.

This also holds true for paragraph 5, which provides consumers with the right to terminate the contract free of cost in case of a (in short) discrepancy between the actual performance and the performance indicated in the contract of an ECS, other than an IAS or Number Based-ICS. Also here, larger enterprises are rightfully excluded.

Larger enterprises however again wrongfully fall in scope of paragraphs 3, 4 and 6.

Paragraph 3 requires that all end-users in case of automatic prolongation of a fixed contract obtain the right to terminate the contract at any time with a one month notice period without penalty and be informed of the means to end the contract prior to the prolongation and at least annually get a best tariff advice. Paragraph 4 gives end-users the right to terminate a contract upon notice of changes in the contractual conditions proposed by the relevant provider, unless certain requirements are met and paragraph 6 adds that no compensation shall be due by the end-user other than for retained subsidized terminal equipment.

Bringing larger enterprises in scope of paragraphs 3, 4 and 6 is disproportionate and unnecessary, as they reasonably do not require this type of protection. Mostly larger enterprises have highly complex solutions which are designed for a specific timeframe with tailor-made, negotiated terms and prices and very specific contract termination clauses that even include penalty payments. Larger enterprises and their providers generally use specific contract renewal processes to investigate new terms and conditions and prices for when the original contract duration expires. Larger enterprises should therefore be excluded.

6.5.1 Proposed Legislation Comment

Article 105 is regulated in Ch. 7 8 – 16 §§ NLEK. As discussed above Ch. 7 8, 9 –10 §§, 12 §, and 14 – 16 §§ effectively carves out services provided to larger enterprises from the provisions.

The remaining paragraphs (11, 13 and 14 §§) are more problematic as they do not exclude providers to larger enterprises from their provisions. To not exclude these provisions is both disproportionate and unnecessary, as larger enterprises reasonable do not require this type of protection for reasons stated above. It would also strongly negatively impact current contracting practices and the business cases underlying these contracts. It is therefore of key importance to exclude larger enterprises or at least make an in-depth impact assessment before imposing such requirements on services to larger enterprises.

The provision in Ch. 7 13 § NLEK is problematic for many reasons. Firstly on the Swedish Market most access providers apply a three (3) month notice period when the contract expires. This means that the provider to larger enterprises must take into account two (2) extra months of access lease cost from their wholesale provider, when the larger enterprise customer terminates a service as the 13 § do not apply to the wholesale provider as per the definition of end-user in NLEK. Today the service provider can mirror such terms towards the larger enterprise customer. Secondly the contract may regulate services provided not only in Sweden, but also services provided on a global scale. That's why larger enterprises and their provider agree on bespoke terms, which include early termination clauses and provide the necessary flexibility required by the enterprise. Price negotiations are not discussed on a country by country basis as larger enterprises do not exclusively procure services in Sweden or even the EU. The obligation for enterprise providers to issue at least annually best tariff advice relating to their services, have no bearing on such contracts. Therefore, we call on the legislator to make 11 and 13 §§ dispositive law for services delivered to larger enterprises. In principle the two clauses restricts the freedom to contract between two parties, whereas the general principle is not to interfere with such freedom unless it is needed to protect the

weaker party such as consumers, microenterprises, small enterprises and not-for-profit organizations.

6.6 Article 106: Provider switching and number portability

The switching provisions lay down that providers of IAS shall provide the end-user with adequate information and ensure continuity in this context, when the end-user switches provider. It defines certain obligations for receiving and transferring providers and calls upon NRAs to ensure the efficiency and simplicity of the switching process for the end-user. Remarkably no distinction has been made for larger enterprises. Although we support efforts to ensure that transfers are simplified and run smoothly, it is worth noting that larger enterprise solutions are generally extremely complex. Providers that serve larger enterprises should in cooperation with their larger enterprise customers have the freedom to agree upon tailor-made transition arrangements and processes without being constrained by a process developed by NRAs.

Regarding number portability, it makes sense to also cover larger enterprises although the provisions do not take into consideration that the actual number portability processes for the different categories can differ considerably.

On the (porting) processes outlined in paragraphs 6-9 that NRAs and MSs may develop, it is worth noting that so far the right to number portability functioned well in practice. Therefore, we caution laying down further details which would be unnecessary and may increase fragmentation across the MSs.

With that in mind and taking into account that (porting) processes may be developed, we emphasize the importance of harmonization. Processes should be easy to use for all participants (transferring and receiving providers) and take into account complexities (like legacy access configurations) and specific requirements by larger enterprises (such as porting during non-working hours). One way to ensure an efficient number porting process is via the support by of a centralized database. Furthermore, it is essential for pan-European providers like Verizon to be able to apply a single (internal) process in order to ensure the most efficient and least burdensome compliance.

6.6.1 Proposed Legislation Comment

While the current proposal correctly implement Article 106 in Ch. 7 17 – 19 §§ NLEK, the provision in 20 § allows the government or the authority appointed by the government to allow exemptions from the obligations in 17 – 19 §§ and may, in individual cases, grant exemptions from the obligations, if there are special reasons. We call upon the legislator to use this discretion to take into account the special circumstances that exist when providing services to larger enterprises.

6.7 Article 107: Bundled offers

The regime for bundled offers is rightfully directed at services offered to a consumer and (partly) to microenterprises, small enterprises, and not-for-profit organizations (unless waived). From Recital 283 it clearly follows that the European Commission developed the article with triple and quadruple play consumer bundles in mind. This Recital reads “where different services and terminal equipment

within a bundle are subject to divergent rules […], consumers are effectively hampered in their rights [..] to switch to competitive offers for the entire bundle or parts of it."

We applaud that larger enterprises are carved out. In line with our comments on Articles 102-106 expanding the scope to larger enterprises would have been disproportionate and unnecessary.

6.7.1 Proposed Legislation Comment

Article 107 is implemented in Ch. 7 24 § NLEK, and contains the necessary wording to carve out services provided to larger enterprises from the obligation. We therefore concur with the proposed wording.

7 Other

7.1 Article 22: Geographical survey

Article 22 lays down the obligation for NRA's and/or other CA's to conduct a geographical survey of the reach of ECNs capable of delivering broadband. This may lead to another reporting burden. We further believe that this information tool should be directed at consumers and not end-users. The survey should provide a high level overview in the sense that the information on availability of connectivity by operator will not distort competition.

It should become clear from the geographical survey that participation of providers of ECNs gives a distorted view, as providers of ECSs are not covered.

7.1.1 Proposed Legislation Comment

PTS has since 2007 conducted this type of survey. Verizon has in conversations with PTS where Verizon has stated that we do not believe that carriers such as Verizon should be part of the survey as we do not believe that the geographical survey should include larger enterprises, but also because we don't have any fibre or copper in the ground. Verizon relies on wholesale providers to reach our larger enterprise customers. By adding carriers such as Verizon to the survey the outcome will become distorted. In order to get a correct view of the connectivity it is far better to survey the carriers that actually sell connectivity services such as Ethernet, xDSL etc.

For Verizon Sweden AB

_____

Åke Florestedt
Legal and Regulatory, Nordics