

Summary

The government and the
telecom market
(RiR 2013:5)



Summary

The government and the telecom market RiR 2013:5

The Swedish National Audit Office (Swedish NAO) has audited the role performed by the government on the Swedish telecom market, and whether government initiatives have contributed effectively to the realization of the objectives set by Parliament for the market in the long term.

Audit background

Audit objective: Sweden has been a leader in the development of electronic communications (the telecommunications market). The Swedish telecommunications market is a strategic resource for Swedish society. Parliament has given government the task to develop a market that is continuously characterized by electronic communications providing optimal exchange of electronic transmission services that are competitive in terms of price and of high quality. Sweden should, in these respects, be at the forefront of international development. Electronic communications should be sustainable, useful and satisfy future needs.

The Swedish telecom market is currently strong in many respects, and of significant importance for Sweden's competitiveness. Sweden is well placed in the European Commission's statistics of EU Member States, with high positions, both in terms of mobile broadband access and fiber deployment. Sweden is in fifth place for the use of fixed broadband.

The Swedish Government Offices noted in 2005 that the Swedish state is facing a challenge to ensure that "Sweden continues to be successful in the light of increasing international competition in the global IT and telecom industry". The Government Committee report *Efficient LEK* from 2006 stated that there was significant regulatory uncertainty in the Swedish telecommunications market. This was seen as hampering investment and making it difficult to establish effective competition; thereby ultimately affecting the range of services to consumers.

Audit purpose: The government's commitment regarding the telecom sector includes access to effective, safe and useful electronic communications. Parliament emphasizes the importance of the market, but also highlights that the state has a responsibility in areas where public interests cannot be met by market forces alone. The purpose of the Swedish NAO audit is to assess government efforts relating to Parliament's objective for the telecom sector, by auditing government, the Swedish Post and Telecom Authority (PTS) and The Legal, Financial and Administrative Services Agency (Kammarkollegiet).

Audit Implementation: To achieve the purpose of the audit, the Swedish NAO limited the audit to the government's and PTS's initiatives for a well-functioning application of the ex-ante regulation promoting competition, state ownership of digital infrastructure and government procurement of telecom services in the retail market.

This audit report is part of the Swedish NAO's audit strategy concerning the government's role in the market. The fundamental question posed by the audit strategy is whether government commitments are carried out effectively in markets that have undergone or are undergoing transformation and where the state is a market participant in addition to its roles as a regulator and supervisor.

The audit results

The Swedish NAO's overall conclusion is that government does not have a comprehensive approach to the telecom sector. There are also clear indications of issues in regards to regulation and supervision. Government has not developed clear goals and governance in relation to the sophistication of the market and the goals set by Parliament.

Government has not specified the objectives of Parliament or formulated a clear action plan for the telecom sector

The Swedish NAO finds a lack of clear government targets for the telecom sector. This means that the government commitment in this area lacks the necessary basis for coherent governance. A strategy or action plan for how the target set by the Swedish Parliament for the electronic communications sector should be fully achieved is therefore missing

PTS has not ensured a well-functioning application of the ex-ante regulation promoting competition

The Swedish NAO finds that nearly ten years after the introduction of the Act (2003:389) on Electronic Communications (LEK) there are still problems in PTS application of the ex-ante regulation. This has been one of several contributing causes to regulatory uncertainty. There are indications that this regulatory uncertainty influences investment climate negatively.

PTS has failed to collect adequate data concerning decisions and appeals; it has not had an effective quality assurance of its decisions and has not had a sufficient system in place for learning from implemented decisions and related litigation processes. The Swedish NAO questions if PTS during the period 2003-2012 made sufficient use of the opportunity to reconsider the Authority's decisions when these were appealed.

The Authority's decisions on the regulation of competition have been appealed to a large extent during the period 2003-2012. A high proportion of regulatory decisions have been amended or annulled in court. A number of decisions from the period 2008-2012 are currently pending a court ruling. In the cases that have so far been settled from this time period 87 per cent of the contested regulatory supervisory decisions have been amended or annulled. The corresponding figure for settlement decisions is 71 per cent. During the same period the proportion of appeals of supervisory decisions remains high, 92 per cent, while the share of appealed SMP and settlement decisions, have decreased significantly since 2008. In the second half of the review period, the number of PTS's regulatory supervisory decisions diminished and most have yet to be settled in court. Nevertheless, for the period 2008-2012, problems in the application of the ex-ante regulation contributed to regulatory uncertainty affecting operators on the market.

In recent years, PTS management has implemented or announced a number of necessary measures necessary to strengthen the procedures and organization of its regulatory activities. The Authority has also petitioned the government to amend the Act (2003:389) on electronic communications.

Government has not acted sufficiently to ensure a well-functioning application of the ex-ante regulation promoting competition

Government has a responsibility to ensure that the EU regulatory framework for electronic communications is well implemented in Sweden. The regulatory framework is a means to achieve the objective of promoting competition in the telecoms sector. The Swedish NAO finds that the regulatory uncertainty, which characterized the telecom market in 2006 and which led to new legislation, still remains. Government has, however, not possessed or requested adequate information to ensure that the regulation is working effectively. No efforts have been made to evaluate the initiatives undertaken in 2006-2008 to curb regulatory uncertainty.

The Swedish NAO underlines that government has a responsibility for an effective implementation of regulation in Sweden. As part of this responsibility the government should govern PTS to ensure that the regulating processes of the Authority are working effectively.

The government has not made use of the public ownership of digital infrastructure as a strategic resource to promote the development of the market

State owned digital infrastructure is controlled by four different organisations. Together, these organisations hold the second largest nationwide backbone network after TeliaSonera. The Swedish NAO finds that the government in the period 2003-2012 only made limited

initiatives to manage this public infrastructure in the market. During these years, only two out of the four organisations had a clear mission for their telecom business, with requirements from government on reporting. The governance of the four operations is not coordinated at the Government Office. The Swedish NAO concludes that the government has been passive in analysing, managing and developing the existing publicly owned infrastructure. The Swedish NAO's conclusion is that the government does not have sufficient knowledge of the potential in the public ownership of digital infrastructure. Consequently, this infrastructure has not been utilized as a strategic resource to achieve the government objectives for the electronic communications sector.

Public procurement of electronic communication services is not used to increase potential benefits for government and drive market innovation

The state is the largest single user and purchaser of electronic communications in Sweden. Despite numerous strategies and studies during the audit period 2003-2012, the government has, not taken initiatives to ensure that public procurement is used to generate additional value to the public sector and promote innovation in the telecommunications market. Government has lacked information on the extent of innovation-friendly public procurement in this sector. The Swedish NAO finds that the Legal, Financial and Administrative Services Agency's procurement frameworks for electronic communications do not exploit the purchase potential of public procurement in these respects.

Government reports to Parliament do not give a clear picture of the development of the telecom market

Government reporting to Parliament includes only limited assessments of the fulfilment of Parliament's objectives for the electronic communications sector. The Swedish NAO finds that the government has not assessed the fulfilment of the objectives in an integrated manner since Parliament's decision on the fundamental legislation for the telecom sector in 2003. Government has despite several requests from the Parliament Committee on Transport and Communications failed to specify Parliamentary goals for the sector. This means that there are no clear targets for the telecom sector that can be easily assessed and followed over time. Since 2008, the government's requirements on PTS reporting regarding the effectiveness of PTS ex-ante regulation have decreased and no evaluation of the effects of the government's changes to the law on electronic communications in 2008 has been carried out.

Overall, The Swedish NAO argues that government's lack of control of the market regulation, state ownership and public procurement contributes negatively to the ability of the sector to achieve national

goals and to be at the international forefront regarding the range of transmission services and their price and quality.

The Swedish National Audit Office's recommendations

The National Audit Office issues the following recommendations to the government:

- Government should clarify Parliament's target for the electronic communications sector, and coordinate these with the government's objectives for I.T. policy. Government should develop a long-term action plan describing how government intends to achieve Parliament's objectives. The plan should be based on precise targets and updated data,
- Government should make an overall assessment of the ex-ante regulation's effectiveness and impact. The assessment should include an analysis of the root causes that contribute to regulatory uncertainty in the market.
- Government should commission PTS to present an analysis and assessment of PTS's regulatory decisions and litigation relating to the application of the ex-ante regulation. Reporting should include an analysis of the outcome and effects on the market of decisions and litigation in the application of the Electronic Communications Act.
- Government should consider if ordinance (2007:603) on internal governance and control shall apply also to PTS.
- Government should initiate a review of public ownership of digital infrastructure, to gain a clear overall picture of its holdings and their possible impact on fulfilment of state and market needs. Based on an integrated analysis of the public ownership the government should present and consider how holdings can be best used as a strategic resource to achieve targets for the sector.
- Government should task the Legal, Financial and Administrative Services Agency with promoting innovation-oriented procurement when drafting requirements for upcoming procurement of frameworks in the telecom sector.

The National Audit Office issues the following recommendation to PTS

- PTS should continue to develop procedures for quality-assurance of decisions and ensure that the Authority applies these procedures, in order for decisions to meet administrative requirements. The Authority should also develop concepts, procedures and IT support for systematic knowledge and experience feedback from decision and litigation. PTS should follow up implemented measures to ensure that they fulfil their purpose.

The National Audit Office issues the following recommendation to the Legal, Financial and Administrative Services Agency:

- The Legal, Financial and Administrative Services Agency should increase support to purchasing authorities to ensure that call-offs from the Agency's existing framework agreements as far as possible are designed to create greater value for the purchasing authority. Assistance should aim at contributing to call-offs that are innovation-friendly and designed to encourage new ways of working with existing or new products and solutions, so that the purchasing authorities' ability to make demands on suppliers are strengthened.