

FTTH/FTTB in the EU: why and how local monopolies may get regulated

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Some ancient (pre-internet) history: in the past, the fixed telecoms industry was highly fragmented in Finland and different regions of the country had copper telephone networks provided by different companies. Today, many of these companies have merged, but the Finnish regulator Traficom continues to regulate 27 different companies as having significant market power (SMP) in the wholesale local access market in different regions of Finland. Many of these operators are tiny. For example, two companies cover different parts of the Åland islands, a region that represents less than 1% of the population of Finland – and each has SMP. Therefore, rather than saying ‘Balkanised’, in the telecoms industry we should perhaps refer to the historic Finnish model, with local monopolies of small size, each requiring regulatory supervision.

Fast forward to today. A recent market review by the Swedish regulator PTS concluded that there is a national market for wholesale local access to fibre networks (FTTH and FTTB) in Sweden that is distinct from other technologies, and found the former incumbent operator Telia to have SMP. However, after this was examined, the European Commission has issued a “serious doubts” letter, pointing out that the actual situation is not at all homogenous.¹ In 139 of Sweden’s 290 municipalities, there is indeed a network owner with over 80% of the number of local fibre connections (which would usually indicate SMP). However, this 80% market share operator is Telia in only 60 of those municipalities and is another local operator in 79 municipalities. In 77 of those 79 areas, this is a municipal network. Using national averages obscures these critical differences.

The European Commission also notes that, where the municipal networks are present, “*Telia typically provides retail services as an access seeker to the municipal network based on central access² or acts as the communications operator, rather than self-providing the FTTH/B connectivity.*”

From these facts, the Commission concludes the following.

“While at national level the market conditions appear to be very heterogeneous, the situation appears different when looking at municipal areas (or aggregated areas with similar conditions). In many cases, the conditions of competition within municipalities appear to be sufficiently homogeneous and are often clearly distinguishable from neighbouring areas.”

If the analysis that concluded that Telia has SMP nationally were to be repeated by PTS using similar criteria, but looking at the sub-national areas implied by the Commission, this would imply that it is the various local operators holding 80% local market share which have SMP in the various fibre local access markets. In Sweden, these local operators are mostly municipally operated, but in other countries they may be commercial deployments.

¹ Case SE/2019/2216: Wholesale local access to fibre networks provided at a fixed location in Sweden.

² While this is called “central access” by the Commission, it may be similar to a local access product in some ways due to the small scale of these networks.

The Swedish case, although yet to be revised by PTS following the European Commission's concerns, has three important features.

- It shows that a separate relevant market for fibre wholesale local access can be defined.
- It shows that very high local market shares can demonstrate that very different competitive conditions may exist in different local areas even if pricing appears to be relatively homogenous nationally.
- It implies that if the SMP analysis were repeated on appropriately defined geographical markets (municipal areas, in this case) then it is very likely that FTTH operators other than Telia would have SMP in 79 Swedish municipalities.

Operators found to have SMP will be subject to one or more regulatory remedies that could be relatively light touch (e.g. mandated wholesale access, transparency, non-discrimination obligations) or could if necessary be more intrusive (e.g. price control, obligation not to unreasonably bundle).

The historic Finnish regulatory model with many local SMP players may therefore re-emerge in FTTH in some EU countries. However, at the same time, other countries including the UK are pursuing a model where, as network coverage develops, there may be overlaps between FTTH networks in urban and suburban areas, which may represent a very different outcome and, potentially, different types of risks to consumers such as non-collusive oligopolies.

We are therefore seeing a variety of different models of competition in FTTH which will result in turn in different, tailored, responses from EU regulators (even within a common EU regulatory code). For further details, contact James Allen (Head of Regulation, Cambridge) or your local Analysys Mason office.