

Securing Land Rights for Broadband – Land Acquisition for Utilities in Sweden

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SUMMARY

The European Commission's Digital Agenda for Europe presents goals and a strategy for the European Union by the year 2020 in order to better exploit the potential of information and communication technologies. One of the goals is fast and ultra-fast Internet access.

Although broadband access is generally good in Sweden, there are still thousands of households and businesses lacking access to such facilities. As a sparsely populated and outstretched country, it is hard to reach a sufficient customer base for profitability regarding broadband. Nevertheless, the demand is as high in rural areas as in other parts of the country, so Government strive to get private companies and organisations to invest in such infrastructure. The Swedish broadband strategy states that, in the year 2020, 90 % of all households and businesses should have access to broadband at a minimum speed of 100 Mbps. In most cases, it is about rolling out fibre optics based broadband throughout the countryside.

In this respect, it is important to discuss how land issues can be resolved at an early stage of the development. Since many property owners will be affected, land acquisition processes may take substantial amounts of time. It will also be costly to establish the utilities needed, especially in remote areas. Hence, such rights to land need to be secured for a long time and in a sustainable way for the future.

There are different ways to acquire land for broadband purposes in Sweden. Depending on the situation, e.g. who is establishing the utilities, such land rights can be achieved either through agreement between the involved parties or through cadastral procedure by a Cadastral authority. The latter method can sometimes be used when the parties cannot reach an agreement, as it includes certain coercive measures. It also implies an official right that is registered in, and thereby becomes official to the public through, the Real Property Register including the Cadastral Index Map.

This paper presents the different ways of land acquisition for broadband in Sweden, and discusses the characteristics of each method.

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1. BACKGROUND

After years of economic problems, the European Commission aims to reboot Europe's economy and enable smart, sustainable and inclusive growth. One of the initiatives under the Europe 2020 strategy is the Digital Agenda for Europe, presenting goals and means to better exploit the potential of information and communication technologies (ICT). One of the goals is fast and ultra-fast Internet access for all. The Commission intends to use common funds to finance this investment in broadband, and the policy framework to achieve the targets encourages both private and public investments in such networks. (European Commission, 2010)

On the whole, Sweden is a leading IT nation that stands up well in an international comparison regarding the use of IT and broadband access. Still, there is a challenge to seize the opportunity of further development, e.g. to increase the use of IT in the whole society in order to strengthen the country's competitiveness, growth and innovation. These technologies are considered key factors for achieving policy objectives in various areas of society, e.g. regarding entrepreneurship, environment, education, and health care. They also help to meet the challenges of increased globalization and an aging population in a sparsely populated country such as Sweden. (Government Offices of Sweden, 2009)

Sweden has specific geographic conditions as it is an outstretched and fairly large country (450,000 square kilometers) with a relatively small population (9 million). Approximately 85 percent of the population is urban, living mainly in the southern regions, while the remaining 15 percent is rural, spread over the whole country. These facts need to be taken into consideration, as investment in ICT infrastructure is costly and requires a certain customer base to be profitable. The conditions for investment in broadband are worse in more sparsely populated areas, especially in the north. However, the need for broadband among the population is the same there as in the other parts, so both Government and private actors join forces to facilitate investments in ICT infrastructure. The fundamental role of Government is to ensure relevant regulations, with focus on good market conditions and few obstacles for the companies and organisations that provide the broadband. (Government Offices of Sweden, 2009) One initiative to secure continuous development is the Broadband Forum for collaboration and dialogue on the deployment of broadband.

The current Swedish broadband strategy states that in 2020, 90 % of all households and businesses should have access to broadband at a minimum speed of 100 Mbps. Already in 2015, 40 % should have reached that level. The total number of broadband subscriptions has increased significantly in recent years, primarily as a result of the strong growth of mobile

broadband and fiber LAN. (Government Offices of Sweden, 2009) If the development continues according to plan, the chances of reaching the targets are good.

Another objective of the broadband strategy is that all households and businesses should have good opportunities to use public e-services. The idea is to better connect authorities with citizens, and to do so in terms of a smooth two-way communication. Today, many people are using the Internet mainly for seeking information, watching digital TV, shopping and keeping up with friends via various social media. Through a wider range of e-services provided by local and national authorities, they will also be able to do much of their communication with the public sector over the Internet.

2. GETTING ACCESS TO LAND FOR BROADBAND UTILITIES

2.1 Basic and specific conditions

There are many technical and legal aspects to take into consideration when establishing broadband. For example, there are regulations on how the network should be built, and there are contracts or other documents that need to be written. Building permissions may also be needed. In all this, it is important to have access to accurate information about the properties that are to provide space for the utilities, and who owns them. It need also be clarified how the broadband network will be owned and maintained, on short and long term. These factors determine which legal solution for land acquisition is the most suitable.

Before putting the fibre optic cables into the ground, it is crucial to clarify how the access to land can be secured. Ideally, the whole procedure is planned at an early stage of the development. Since many property owners are likely to be affected, land acquisition processes may take substantial amounts of time. It may also be costly to establish the utilities needed, especially in remote areas of the country. Hence, such rights to land need to be secured for a long time and in a sustainable way for the future in order for broadband companies or other organisations to invest.

There are different ways to get access to land for broadband and other utilities in Sweden. In short, it can be achieved either through a voluntary agreement between the parties involved, resulting in a contractual right, or through a decision by a Cadastral authority, leading to an official right. Which of the ways that is the most appropriate depends on the situation, e.g. who is building the network, and if the parties involved can reach an agreement. Before presenting variations of these two main types below, a brief introduction to the Swedish cadastral system is needed.

The role of the cadastral surveyor in Sweden is rather unique, as he or she is authorized to make legal, economic as well as technical decisions regarding real property. All cadastral surveyors are part of a Cadastral authority, which is either a State or a municipal body. The Cadastral authorities are regarded as first juridical instance in many land related matters. This system implies that there are no private cadastral surveyors.

As in most countries, a Swedish cadastral procedure can be a straight-forward subdivision

based upon a contract of sale between two parties. However, in other cases it can be a complicated matter where disputes need to be resolved or decisions of compulsory purchase and economic compensation must be taken. Many property owners may also be involved, adding to the complexity of the cadastral procedure.

In any such case, all parties are given the opportunity to take active part in the process. The cadastral surveyor is obliged to act impartially and take into consideration both private and public interests. He or she then makes all necessary investigations and consultations before reaching the concluding decisions. These decisions are stated in writing and normally also on a cadastral survey plan. Should anybody be dissatisfied with the decisions taken, appeals can be made to the court of law (three instances) within four weeks. After the decisions have gained legal force, the results are registered in the Real Property Register including the Cadastral Index Map. Thereby they are made official to the public, implying full legal effect. This procedure is considered a time saving, cost effective and legally secure method of handling property issues.

2.2 Usufruct (right of user)

Space for broadband and other facilities can in some cases be secured by a usufruct grant. A usufruct is a legal right for a natural or juridical person, e.g. a company, to use and derive profit from a property belonging to someone else for a certain time. In Sweden, such a right is binding for up to 25 years in planned areas, otherwise up to 50 years. It is established through a voluntary agreement, either in oral or in written form, between the parties involved. Compensation for the use of the land is negotiated directly with each of the concerned property owners. The result is a contractual right, with no involvement of any authority.

Usufructs that are granted in writing can be entered in the Real Property Register, as a written notice of the property encumbered with the right (the location does not show on the Cadastral Index Map). Such registration, made by the land registration authority upon request, secures that the usufruct is valid even after change of ownership of the property. An entry in the Real Property Register also protects the holder of the right against competing grants. An oral usufruct is much less secured and naturally more difficult to prove and protect in the long run.

If there is a change to the land's division into real properties, a usufruct must be handled in a special way within the cadastral procedure in order not to be terminated. This applies whether the right is registered or not. There are also risks of termination of such use rights in case of public auction or expropriation of the property.

One advantage with the usufruct solution to acquire land for broadband is that it is a relatively simple method as such. The fact that the utility company is free to reach agreements directly with the concerned property owners, without involvement of any authority, appeals to many parties. From the property owners' perspective it may also be quite profitable, as they sometimes manage to negotiate a high level of compensation from the company. However, this 'simplicity' can also be an obstacle, as all the involved parties have to agree on the arrangement in order to reach a result. Also, a usufruct has limitations regarding its validity as a land right, which is a disadvantage not least from the point of sustainability.

2.3 Utility easement

In situations where a usufruct solution may not be desirable or even possible, the Swedish system offers opportunities of securing land rights through cadastral procedure. As all such procedures are handled by a Cadastral authority, the result is an official right.

One option that is often applied for broadband is to form a utility easement, which is done through a special cadastral procedure according to the Utility Easement Act. Like other easements, such a right can be held by a property. However, a utility easement can alternatively be held directly by a proprietor of a utility. In that case, a broadband company or other person establishing broadband is given the right to build, use and maintain the utilities needed on somebody else's land. This right is unlimited in time and can only be terminated by a new cadastral decision. In most cases of building broadband, many property owners are affected as the cables run long distances. This potential difficulty may often be handled in a smooth way throughout the cadastral procedure.

To initiate such a procedure, an application is normally required by the prospective proprietor of the utility easement. As mentioned above, the cadastral surveyor should act impartially, consider all interests etc. Ideally the parties involved agree on the whole arrangement, e.g. the location of the utilities and the compensation to be paid. In that case the cadastral decisions are based upon the agreements.

However, should there be disagreements, the Utility Easement Act provides some coercive measures. The situations where those can be applied are limited in order to protect individual interests. For example, the advantages of the broadband, often related to the public's needs, have to be bigger than a property owner's inconvenience of granting space for the utility. In that respect, the characteristics of this cadastral procedure are similar to that of expropriation. Furthermore, should there be issues regarding the level of compensation, the Expropriation Act is applicable for valuation of the encroachment. The cadastral surveyor makes a formal decision on compensation whether it is based on an agreement or the principles related to expropriation. If needed, there will be decisions also about restrictions of land use in an area surrounding the location of the utility. For example, a property owner may be prevented from planting trees or changing the level of the ground if such actions might cause damage to the underground cables. The right to appeal to a court of law is applicable for all such decisions.

Deriving from a cadastral procedure, the utility easement is registered in the Real Property Register after gaining legal force. The particulars are noted both in its textual part and on the map to show the spatial extent. The utility easement is thereby given publicity and is secured as an official right encumbering one or more properties. Neither a transfer nor a subdivision or similar change of such a property will be a risk to its existence. This is an obvious advantage for the proprietor of the utility. From the property owners' perspective, on the other hand, the coercive measures of the cadastral procedure are not always appreciated.

2.4 Joint facility

Another option of securing land rights for broadband through cadastral procedure is to establish a joint facility, according to the Joint Facilities Act. This may be a good solution when broadband is needed for a group of properties, e.g. a small village, whose owners would like to own and manage the utilities themselves in a cooperative way. Such communal broadband is particularly suitable where cables etc. are built along other local infrastructure, e.g. roads, water or sewage. If appropriate, a joint facility may include more than one type of utility.

The cadastral procedure may be initiated by e.g. a property owner, a tenant's organization or a municipality. After the necessary investigations and consultations with all interested parties, the cadastral surveyor determines if the facility serves a purpose of enduring importance to the properties in question. A joint facility may not be established for a property other than that for which it is of substantial importance to have a share in the facility. Regarding broadband purposes, this means that it is not likely that a property can be forced to participate. To conclude the cadastral procedure, the cadastral surveyor decides which properties are to participate, how and where the facility is to be established etc. All properties are given participatory shares to be the basis for the distribution of costs for the construction and operation.

A joint facility is an official right that is registered in the Real Property Register when the decisions have gained legal force. This implies similar effects and legal security as for the utility easement mentioned above. For example, legal decisions regarding the properties are valid also for future owners.

The participating properties formally constitute a special joint property unit for the management of the facility. Most often a joint property association is formed, in order to handle the common issues in a smooth way. Such an association implies that decisions can be made without the consent of all property owners. Also, the association being a juridical person, banks get a good security for loans related to the facility.

A joint facility is often an efficient and sustainable solution for cooperation within a group of properties. Communal broadband allows the property owners to have influence on the conditions and management of their own facility, and there are certain economic benefits. However, unless a joint property association is formed, the need for consensus among the property owners may cause difficulties in the decision making.

3. CONCLUDING REMARKS

The implementation of the broadband strategy in Sweden is ongoing, and the interest among suppliers and customers is as high as ever. The fact that there are various options available to secure the required land rights serves a good foundation to further development. Contractual rights and official rights are complementary to each other, all with their own characteristics. Thereby the system offers an efficient solution to most situations.

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BIOGRAPHICAL NOTES

Ms Marija Juric has been working as a cadastral surveyor for Lantmäteriet, the Swedish mapping, cadastral and land registration authority, since 2007, after graduating with a bachelor degree in Surveying from University West in Trollhättan, Sweden. She works with all types of cadastral procedures but mostly with forming utility easements. Since 2012 she is a delegate to FIG Commission 7.

Dr Kristin Land has been working for Lantmäteriet since 2000. After an initial period as a local cadastral surveyor, both national and international positions within the organization have followed, mainly focusing on research and development. Her specialization is on legal aspects of cadastre and land administration, which is recognized also by e.g. the Swedish Ministry of Environment. She is a delegate to FIG Commission 7 and participates in various international events. She holds a MSc degree in Surveying, and a PhD degree in Real Estate Science, both from Lund University.

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