

To the European Commission
Directorate-General for Competition Unit C4
State Aid Registry
COMP-BBGL@ec.europa.eu

AIIP COMMENTS ON THE DRAFT REVISED GUIDELINES ON STATE AID FOR BROADBAND NETWORKS (THE 'BROADBAND GUIDELINES').

AIIP (acronym for "*Associazione Italiana Internet Provider*") represents more than 50 SME operators which substantially invested in access infrastructure (with FTTx and FWA), with which they provide BB and UBB access services also in white areas without public aid.

As of Dec. 2021 operators associated to AIIP installed tens of thousands of fibre optic networks, 30%-50% of which in white/grey areas, with around 1,000,000 household passed (i.e., which may be linked with further costs of less than €350 each).

AIIP wishes to prevent that the investments made by its associated operators are vanished by public intervention capable of distorting market conditions. Therefore, AIIP has actively participated to the precedent phases of the process that has brought to these Broadband Guidelines.

AIIP deems that the 2013 Broadband Guidelines have been quite useful in assessing the conditions for overcoming digital divide due to market failure with lawful State aid for developing broadband communications networks and services and they constitute a framework which is still fit for such purpose.

AIIP agrees that 2013 Broadband Guidelines need to be updated in order to keep pace with the fast and huge technologic developments which took place in the electronic communications sector in the last decade as well as to achieve the new policy objectives and targets set forth by the Commission (with the Gigabit and the Digital Compass Communications targets, etc.).

As a matter of fact, AIIP acknowledges that State aid may be necessary in order to expand to the fullest extent Ultrafast Access Network coverage in the territories of the members States in order to maximize network effects arising out of VHCN communication services (such as video-conference, tele-working and tele-learning: the largest the user base of a network, the most valuable –exponentially growing- is the network and the services over it) as well as to enhance density economies so to reduce the activation/access cost per unit.

However, AIIP stresses that the 2013 Notice only need "minor" amendments, which can be performed by integrating and detailing the following pivotal tools set forth therein:

- effective necessity of SA intervention and proportionality of the measures taken (e.g., by providing detailed procedures to define/map the areas in which Ultrafast Access Networks have to be financed with State aid; surveillance and periodical revision, etc.);
- full compliance with transparency, complete disaggregation, non discrimination and technological neutrality of networks and services;
- selection of the subject entrusted with the public funds for realising the public Ultrafast Access Network according to transparent, proportionate and non discriminatory process.

In this regard, AIIP greatly appreciates the statement by the Commission in the revised Broadband Guidelines that “Defining several smaller areas, which would lead to organising several selection procedures, would allow different potential undertakings to benefit from State aid thereby avoiding that one (possibly already dominant) operator’s market position is further strengthened by the measure” (page 23).

AIIP shares the aims of the proposed revised Broadband Guidelines and appreciates that the Commission has clarified and detailed activities to be performed in a proper and lawful State aid granting process, as to mapping, selection procedure, criteria for pricing (subject to the warnings hereunder exposed).

However, AIIP has the following remarks and suggestions or requests for changes as to:

White Areas

AIIP agrees with the definition of white areas proposed by the Commission.

AIIP also agrees, in principle, with the requirement set as to the present speed below which it would be justified the State aid as a policy instrument in such areas.

However, in order achieve the connectivity objectives established by the Commission’s Gigabit Communication and more recently by the European Digital Compass, AIIP suggests that the minimum target of the step change with respect to present speed be determined as the double (if actual download speed is lower than 30 Mbit/s) or triple (if 30 Mbit/or above), as stated by the Commission, but in any case it should be:

- (i) not lower than 100 Mbit/s, so to guarantee, even in the white areas, achievement of at least the performance of an Ultrafast Broadband Access Network as defined by the Proposed Guidelines (100 Mbps download speed) and
- (ii) symmetric, a necessary requirement in order to provide specific services of a high social relevance (videoconference, telelearning, teleworking).

In order to reach the above targets, and overcome the digital divide in the most difficult areas to be connected by Ultrafast Access Network, the Commission might consider the possibility of

financing both offer and demand with voucher, by setting forth specific criteria to be satisfied in order for complying with State aid rules.

Grey Areas

AIIP agrees with the definition of Grey Areas proposed by the Commission.

However, the features of the public financed network should be:

- (i) not lower than 100 Mbit/s and
- (ii) symmetric.

Black Areas

AIIP agrees with the definition of Black Areas proposed by the Commission.

However, the features of the public financed network should be 1Gbit/sec in order to comply with the requirements set forth by Digital Compass.

Wholesale Access Conditions

AIIP agrees –in principle- as to the wholesale access conditions that according to the Draft Guidelines should be set forth for the granting of the State aid for developing Ultrafast Access Networks in areas featured by market failures.

However, AIIP requests that a clear obligation as to disaggregation of the Ultrafast Access Network publicly financed is stated. As a matter of fact:

- only full disaggregation of the Ultrafast Access Network would allow the operators to access to the different UAN network levels, also close to the final customer by purchasing only the network elements more fit for their needs, without having to access to a remote point;
- only full disaggregation of the Ultrafast Access Network would allow the operators to use their own network or network elements installed in the same area of the network financed by the State and to integrate their own infrastructure with the one financed by the State;
- without disaggregation obligations vested on the public financed network, the investments made of the operators active on the same territory would be vanished by distorting State aids and those investments programmed would be dissuaded.

Finally, a full disaggregation and transparency as to all information necessary to benefit of it (e.g. manholes geographic positioning and types) is also necessary to allow to verify effective cost orientation of public financed infrastructure and services (by “reverse engineering” their aggregated costs/prices as the sum of the costs/price of each network element of which they are made).

Wholesale Access Prices

AIIP does not agree on the order given by the Proposed Broadband Guidelines between the different principles according to which the wholesale access prices should be calculated.

As a matter of fact, according to AIIP, the first and main criteria to be applied should be that of the cost orientation calculated in accordance with the sectorial regulatory framework. The other two criteria may apply as a cap to the prices resulting from the application of the above criteria

Duration of wholesale access obligations

The Proposed Broadband Guidelines provide for a duration of 10 years as to wholesale access obligations imposed over the publicly financed network.

AIIP does not agree on providing such a limited duration as to wholesale access obligations on a public financed good.

As the money paid for realizing a Ultrafast Access Network in digital divided areas is public, all the obligations relating to such Ultrafast Access Network which have been set for in the interest of the public (also those relating to wholesale access) should not expire for the whole useful life of the network asset.

Therefore, AIIP request the Commission to amend accordingly its final document.

Private Extensions by State Aid Beneficiaries Into Adjacent Areas

AIIP does not agree on the possibility stated by the Commission that the public financed network, after a given time, may be extended into adjacent areas.

As a matter of fact, such a case would amount to a distortion of competition in such areas, performed with public funds, thus performing a clear infringement of the State aid rules of the European Union.

AIIP requests therefore to the Commission to amend the Proposed Broadband Guidelines I order to make clear that the public financed network may in no case (not even after one century) be extended into adjacent areas.

Demand-Side Measures

AIIP welcomes the circumstance that the Commission has provided specific guidance on the vouchers as a tool for financing with public funds by expressly regulating both the “social vouchers” (aimed at overcoming the limits and difficulties on the demand side) and the “connectivity vouchers” (aimed at the offer side).

AIIP stresses the need that to ensure that incentives have to be neutral and properly targeted, as to avoid any distortion of competition.

Therefore, according to AIIP the Commission should clarify that vouchers should only be used to support with public funds a step change (as clarified above) for the end-users' connectivity.

Differently, vouchers would become tools for distorting completion on the market.

We remain at your disposal for any clarifications.

Respectfully yours,