Danish Energy Agency

Office/department
Centre for Telecoms

The Danish Energy Agency's response to the Commission's public consultation on the revision of the Guidelines on State aid for broadband networks

The Danish Energy Agency (DEA), which is the Danish NRA for the purposes of this public consultation, welcomes the opportunity to submit its input regarding the draft revised EC Guidelines on State aid for broadband networks (hereafter "the Broadband Guidelines").

The DEA notes that the Danish Government has also responded to the consultation. Some of the points in the Danish Government's response may be duplicated in this response in order to elaborate on them from a more technical NRA perspective.

This response from the DEA seeks to supplement the response to the public consultation by BEREC (to which the DEA has contributed) especially on topics which are not addressed in the BEREC response or where the DEA has additional or more specific comments.

The DEA welcomes the update of the guidelines, especially the codification of recent case practice and the general clarification of a number of important points in the draft Broadband Guidelines, which overall are more informative and concrete for any authority working on a State Aid Scheme. This also applies to the important step of establishing explicit rules on subsidies for mobile networks.

The draft Broadband Guidelines seem to contain ambitious, future-proof criteria for eligible target areas for fixed networks (section 5.2.3.1), which are unlikely to become obsolete in the near future. On one hand, the DEA refers to the concerns on some aspects of these proposals raised in BEREC's response. On the other hand, the DEA believes that future proofing these criteria is important, since the old NGA definition has been increasingly obsolete as technological development has resulted in the ubiquitous demand for speeds far beyond 30 Mbit/s download. The DEA also welcomes in principle the fact that insufficient upload speeds can be grounds for granting State Aid under the draft Broadband Guidelines, as an explicit upload criterion has been lacking under the current guidelines.

The DEA notes, with reference to the concerns raised by BEREC on the potential for market distortions if the new criteria as presented in the draft, that the proposed new criteria entail a high degree of responsibility for Member States to assess the national

market situation in order to avoid designing measures that may be distortive in the Member State in question. These necessary assessments may lead to differences in the degree to which Member States exhaust the possibilities in the new guidelines.

Any notified measures from Denmark, for example, are likely to be much smaller than the "flagship" type of scheme often seen in other Member States. Accordingly, the DEA has considered to what extent the draft Broadband Guidelines enable smaller schemes, e.g. just beyond the scope of GBER, and very small local tenders taking place within notified framework schemes. This analysis has identified some hurdles to smaller schemes or small local tenders within framework schemes. The DEA asks the Commission to review the draft with small projects and framework schemes in mind, and consider whether the guidelines can support such measures through more proportionate requirements and explicit rules on framework measures.

In the following, the DEA will elaborate on these potential hurdles to small schemes/tenders and certain other issues. Unless otherwise specified, the DEA comments take a gap-funding model with competitive tenders as their point of departure in assessing the draft Broadband Guidelines.

Section 1: Enabling smaller state aid measures

Denmark grants very little state aid to the deployment of broadband compared to other Member States. The DEA is very aware of the necessity to limit the distortive effects of any aid granted, and will always be committed to doing so in any state aid schemes. At the same time, the DEA is concerned about the draft Broadband Guidelines' overall level of requirements to both the aid granting authorities and the beneficiaries in cases where the draft Broadband Guidelines are applied to smaller state aid schemes or to very small local tenders within a notified framework scheme.

A Member State may notify state aid schemes that are close to falling within the scope of GBER. This may occur when the aid amount is well within the scope of GBER, but the design of the measure is not; or when the aid amount is just above the GBER threshold. The DEA's understanding based on dialogue with the Commission is that Member States may even notify state aid schemes that *do* fall within the scope of GBER, for the sake of legal certainty. This implies that the Broadband Guidelines need to enable Member States to design smaller schemes in a cost-efficient and proportionate way.

The DEA is concerned that the draft Broadband Guidelines are written primarily to fit ambitious schemes in Member States where state aid plays a larger role than in Denmark, e.g. schemes aiming to connect a significant percentage of a Member State's area in a once-off major ("flagship") initiative. Such schemes are not likely to be needed in the context of the Danish market situation, which currently sees very high private investment levels.

The DEA considers that operators' willingness to accept burdensome requirements is likely to be subject to economies of scale: The larger the aid amount, the greater

the willingness to invest in ensuring compliance with requirements deriving exclusively from state aid rules. Most potential bidders are unlikely to already be compliant with such requirements unless they are generally required in Union or national legislation, or in the coincidental case where an individual bidder's pre-existing corporate structure, commercial (wholesale access) product portfolio, etc. already match such requirements. Where bidders face extensive requirements to alter internal procedures, corporate structure, product portfolios or other aspects of their business setup, sufficient incentive – i.e. a large aid amount or expected profitability of a project – is needed. Sufficient incentive may be lacking in the case of smaller one-time national tenders, and especially in the very small tenders by local authorities which a notified framework scheme may seek to enable (see also section 2 on framework schemes). In this light, "one size fits all" set of extensive requirements may preclude a Member State such as Denmark from using state aid in a flexible way as a supplement to market-driven deployment.

The DEA has identified the following concrete hurdles to the success of smaller tenders under the proposed guidelines:

- **Extent of wholesale access requirements.** Bidders may not be willing to make significant changes to their wholesale access product portfolio in order to be able to bid on a minor tender. Due to economies of scale, requirements entailing products that are new to most operators in a Member State can be unrealistic, unless tenders have a certain volume in terms of e.g. the number of both addresses covered, total aid amount and expected revenue, scheme duration, and/or the frequency of tenders. It may also be the case that, short of leading to a complete absence of bids, far-reaching requirements to bidders severely harm the potential for competition in tenders. For instance, only one (larger) company may be willing or able to fulfil these requirements. See also section 4.
- **Reporting requirements.** General reporting requirements to an infrastructure database newly set up for the purpose of a minor state aid scheme are disproportionately burdensome on the market, especially if combined with an obligation to repeat this information in the public consultation. This is especially true for companies with no intention to bid. Depending on their extent, ongoing reporting obligations on the subsidised network can also affect the incentive to bid adversely.
- **Costs for aid granting authority.** The draft Broadband Guidelines contain a requirement to use an external auditor in all cases where sufficient competition is not achieved. For local authorities holding a very small local tender within a framework scheme, costs for this external auditor may represent a figure close to the aid amount, which is not proportionate and may lead local authorities to refrain from using a framework scheme.

In light of the above, it is the DEA's opinion that smaller tenders complying fully with the draft Broadband Guidelines are at high risk of attracting no bids and failing. Alternatively, the cost of compliance may limit competition in tenders to the operators with the most resources, i.e. those which already have a relatively strong position on the market.

The DEA urges the Commission to adapt the Broadband Guidelines to enable successful smaller notified state aid measures. This could be achieved through "light" rules for notified schemes under a certain threshold in terms of aid amount. The DEA notes that the Commission already has a threshold of 5 million euro in place for the clawback mechanism.

"Light" rules for small schemes should especially be considered for the issues identified above. The DEA stresses that bidders will evaluate the burdens from state aid requirements seen as a whole when they decide whether or not a project is worth bidding on, and that, from an operator's perspective, unavoidable requirements such as participating in public consultations, preparing bidding material, ensuring accounting separation, providing *familiar* forms of wholesale access (especially for companies not offering any wholesale access commercially), reporting etc. are already significant burdens that are not experienced in commercial network deployment. This is why the DEA believes it is important to consider a "light" regime for the aspects identified here, which are aspects where some requirements are naturally needed, but where both "light" and "heavy" regimes are possible.

See also section 4 on specific suggestions regarding wholesale access requirements.

Section 2: Explicit rules on framework schemes for lower-level aid granting authorities

Many Member States have notified framework schemes for lower-level authorities, often municipalities. The Commission has case practice on this from e.g. the German federal government and several German states as well as the United Kingdom pre-Brexit. The DEA has pre-notified such a measure in December 2021. However, the draft Broadband Guidelines do not address this type of notified measure directly in spite of this case practice, even though such measures may face specific issues.

The draft Broadband Guidelines' paragraph 114 does suggest that NRAs could issue guidelines for local authorities, with footnote 82 noting that this could mean that NRAs would not have to analyse each State Aid case (to be notified by lower-level authorities?) individually.

Thus, the draft Broadband Guidelines provide guidance for situations where lower-level authorities design and notify measures independently, but the guidelines do not provide guidance for Member States aiming to solve the issues targeted by paragraph 114 in a different manner, i.e. by notifying one common national legal framework for lower-level authorities. This approach provides for higher legal certainty for all parties and a lower workload for the Commission than simply issuing guidelines and allowing lower-level authorities to notify measures individually. Indeed, the purpose of notifying such a framework measure may be legal certainty *in the event* that any local authorities wish to grant state aid at some unspecified point in the future. However, the lack of specific rules and considerations for framework schemes in the draft Broadband Guidelines can give rise to doubts on how to interpret the draft

Broadband Guidelines for this type of scheme, or in some cases lead to unnecessary complications in designing framework schemes.

In particular, the DEA believes that framework schemes for lower-level authorities may face these specific challenges with the draft Broadband Guidelines:

- **Proportionality of requirements (see section 1).** Even where a framework scheme has a considerable overall (maximum) budget, the individual local authority intending to use the framework scheme may only plan a very small tender, which in itself would be well below the GBER threshold, potentially just above *de minimis* thresholds. This means that the individual local authority may see a very small tender fail due to the considerations on the proportionality of certain requirements described in section 1.
- **Public consultation.** Some explicit guidance on the division of labour between national public consultations on the overall legal framework and the "initial" map, and the local public consultations on each local tender's conditions and concrete address list / intervention area, would be helpful. For example, it would be helpful to specify with regard to the requirement of a national-level public consultation on commercial investment plans in section 5.2.2.4.2 that in light of the possibility to respond to subsequent local public consultations, responding to national-level public consultations on deployment plans is simply a voluntary opportunity operators need to be given as a matter of formality.
    - One concrete issue is the wording of paragraph 83, which does not take into account the situation of framework schemes. The application of the paragraph to framework schemes is unclear, but it can be misunderstood to mean that a nation-wide public consultation must be repeated every year for a framework measure. From dialogue with the Commission, the DEA believes that in framework schemes, the public consultation that must be repeated after one year failing launch of the selection procedure is the *local* public consultation. This type of specifics should be codified, as framework schemes are not a rare occurrence in Commission case practice.
- **Duration**. Framework schemes may seek to enable small local tenders in principle, with actual tenders being relatively few or taking place at large intervals. For this type of scheme, a duration limit of four years (paragraph 210) may entail a number of re-notifications which is not proportionate with the amount of aid granted in each four-year period. Framework schemes may see relatively few concrete projects during e.g. a four-year period, and the number of projects and their aid amounts seem more relevant factors than duration per se.
- **Responsibility.** Finally, one apparent discrepancy is that where a Member State simply issues guidelines as suggested in paragraph 114, local authorities can notify their measures directly to the Commission, and the NRA or other national authorities will not be held accountable by the Commission for any illegal state aid; but where a Member State notifies a framework scheme, the notifying NRA or other higher-level notifying authority is given responsibility not only for the implementation of this scheme into national law, appropriate guidance and certain indispensable advisory tasks (e.g. on wholesale access), but effectively for all

actions taken by local authorities under the measure. The DEA believes that, as framework schemes of this type are essentially a way of "pooling" individual authorities' State Aid notifications, Member States should be allowed to place primary responsibility for compliance with the framework scheme on the individual local authority, provided that the national framework rules were implemented in accordance with the Commission's approval. This approach implies a national responsibility to design correct framework rules and notify as well as provide appropriate guidance on the rules; and a local responsibility to comply. We note that if all local authorities notified identical measures individually, this would be possible. Notifying national authorities could still have some responsibilities to monitor local authorities' behaviour to a reasonable degree, and to inform the Commission if and when any violations are discovered; however, the ultimate responsibility should rest with the aid granting authorities.

Section 3. Links to other Union legislation

The DEA believes that wherever possible, pre-existing legislation (e.g. deriving from the BCRD) should be used to address issues such as information on existing infrastructure and obligations to grant access to such infrastructure, especially where obligations on non-beneficiaries are concerned. Parallel regimes and dispute resolution procedures as a result of state aid rules should be avoided wherever pre-existing rules can be used to achieve the same goals. Otherwise, the DEA, being both responsible for broadband state aid and the DSB according to the BCRD, may have to administer conflicting or redundant rules. In part, these issues could be addressed by making it clearer in the Broadband Guidelines what exactly the links to other Union legislation are, and whether any duplication of other Union legislation in State Aid conditions is intended or not.

In detail, the DEA has the following comments on the links between the draft Broadband Guidelines and pre-existing EU legislation:

- The DEA notes that the link between EECC article 22 and the guidelines' paragraph 129 as well as Annex I is unclear. One possible interpretation is that the draft Broadband Guidelines, via article 22, impose new general mapping obligations on Member States, applying even where no state aid is envisaged. The DEA urges the Commission to clarify that this is not the view of the Commission, as such an interpretation could cause issues with the DEA's established mapping procedures as well as questions of administrative resources and burdens on operators.
- The DEA has general concerns about the requirement to set up a national database in point 129 of the draft Broadband Guidelines. This requirement risks duplicating the transparency requirements in BCRD article 4, notably the provision on the Single Information Point, which has been implemented in different ways in different Member States. While some Member States may have chosen to implement the provisions on the SIP through a national database or even a map of existing infrastructure, various approaches have been possible within the BCRD, cf. recital 21 of the BCRD: "Without imposing any new mapping obligation on Member States […]". A single state aid

measure, especially a small measure, does not seem to warrant requirements on Member States to permanently change or expand existing systems and/or reporting obligations on operators which already fulfil a directive-level requirement. From the point of view of the resources the DEA would need to implement any state aid measures, the DEA believes that whatever Single Information Point and reporting requirements are implemented in a Member State in accordance with BCRD article 4 should be considered sufficient for state aid purposes as well, as far as general reporting on existing infrastructure is concerned. Where additional information is necessary for a state aid measure, a once-off ad hoc reporting as described in paragraph 132 should be sufficient. As paragraph 132 seems to duplicate the purpose of the database and is more proportionate, the DEA suggests that paragraph 129 is deleted, and 132 is retained.

- To the furthest extent possible, the DEA believes that duplication of/parallel regimes to BCRD rules through unique state aid conditions should be avoided. This is especially relevant regarding access to existing infrastructure owned by non-beneficiaries. The DEA believes that access obligations and dispute settlement mechanisms provided by the BCRD should be sufficient for these cases. Accordingly, the DEA suggests that this is referred to in the guidelines. The DEA cannot see the reason for having a separate or parallel regime undermining the role of the Dispute Settlement Body, and if cases covered by the BCRD are not treated the same way as any other case regarding access to ducts etc., the DEA sees the risk for inconsistent prices. The DEA notes that operators having committed to making their infrastructure available according to paragraph 132 b will likely only give access to that infrastructure if they do *not* win the tender and thus are *not* beneficiaries of state aid. For non-beneficiaries, such commitments would in most cases be a redundant statement of willingness to comply with obligations already in place under the BCRD, and such commitments would only be legally enforceable through BCRD dispute settlement rules. It should be made clear in the Guidelines that non-beneficiaries are subject to the general rules in the national implementations of the BCRD rather than facing special state aid rules. For beneficiaries, the DEA agrees that special rules in accordance with the BBG's wholesale access provisions could reasonably apply even to infrastructure also covered by the BCRD, especially if these special rules go beyond what the BCRD is already requiring. On the other hand, legal provisions in the national legal basis of state aid measures that apply to non-beneficiaries would be highly controversial.

Section 4. Flexible wholesale access requirements

The draft Broadband Guidelines seem to propose a minimum set of access products which *must* be provided (paragraph 137) unless an exception can be made in accordance with paragraph 150. The DEA welcomes the fact that paragraph 150 already mentions proportionality and provides some flexibility, but believes – in line with BEREC's response – that this flexibility should be expanded, especially for smaller schemes and small tenders within framework schemes due to the concerns listed in sections 1 and 2.

To elaborate on the BEREC response with the DEA's own more specific considerations, the DEA finds the concept of a fixed minimum set of access products as described in paragraph 137 problematic because not all access products are equally common or in high demand in all Member States. Where products are not familiar to the national market because they are neither common in commercial wholesale access product portfolios nor in national SMP regulation, the wholesale access requirements in the draft Broadband Guidelines entail a requirement to develop products that are very rare or unprecedented in the national context. Such products may be costly to develop and may not be in demand. For example, in Denmark, bitstream access is what access seekers normally demand, and Danish SMP regulation normally imposes only one type of access, which is often bitstream access in practice. This means that other products are rarer and not necessarily standardised, so that most operators will not have the administrative or technical setup in place to provide these. Requirements to start providing these products could make it unattractive to bid in smaller tenders. Even for larger tenders, smaller companies may be placed at a disadvantage, limiting competition. These issues may even apply to physical access in some cases (esp. access to dark fibre etc., as opposed to access to ducts and masts which is already familiar due to BCRD requirements), and will often apply to more complex products such as VULA.

The DEA suggests that Member States should be able to adapt wholesale access requirements so they closely reflect the wholesale access products common in the commercial wholesale access market and in the SMP regulation in that Member State. The guidelines should give flexibility for proportionality assessments by the national authorities rather than require a minimum set of access products in a "one size fits all" approach, because the commercial wholesale access markets and SMP regulation are very different from Member State to Member State.

Footnote 66 suggests consulting the market on which products are in demand. The DEA believes this approach would be one good way of informing the aforementioned proportionality assessments and of ensuring that the needs of access seekers are taken into account. However, paragraph 137 seems to prevent making full use of a public consultation as described in footnote 66 by limiting wholesale access products to products confirmed to be in demand, unless the conditions for applying paragraph 150 are met, even if a residual "reasonable demand" clause is implemented as suggested in footnote 66.

Finally, on some points, the wholesale access provisions are unclear, which the DEA wishes to point out. While the above considerations on proportionality etc. also apply to some of these requirements, clarity is a separate and important issue.

- VULA products are both described as part of the minimum set of products to be provided in paragraph 137 *and* as an alternative to physical unbundling subject to the approval by the NRA in footnote 94 and 100, it being unclear

whether physical unbundling must then be provided in case of a VULA product not being approved, or can voluntarily be provided instead of VULA (the latter option being preferable due to the higher complexity of VULA).

- The requirement for capacity in physical infrastructure is set at a minimum of three networks, but it is not made explicit whether this is including or in addition to the subsidised network itself.
- The requirement of passive infrastructure being able to cater to different network topologies can result in doubt whether e.g. point-to-multipoint networks are eligible for aid, unless it is explained in more detail what is meant by this requirement.
- The guidelines make a distinction between dark fibre and physical unbundling. The distinction should be defined unambiguously, including for the benefit of technical non-experts.

Section 5. Mapping, existing infrastructure and private extensions

The DEA believes that from an efficiency perspective, the general-purpose national mapping of broadband coverage or mobile coverage in each Member State should, in principle, be sufficient to identify intervention areas (pending a public consultation on the concrete measure). The DEA welcomes the more detailed descriptions of mapping methodologies in Annex I to the draft guidelines, but considers these detailed instructions on mapping to be highly focused on verifying operator reports on available speed in a critical manner. Such verification may be relevant in cases where the notifying authority finds it necessary to challenge operators' reports on speeds available in a given area. However, where a Member State's general-purpose mapping shows an area to be eligible for aid (whether the general-purpose mapping is done as described in Annex I or not), this means that there is already an agreement between the Member State and operators that the area is eligible for aid (subject to a public consultation on the aid measure). Any further verification of mapping would then only be relevant if a Member State has doubts about the accuracy of reports from operators that an area/address has speeds which would make it ineligible for aid. Even in such situations, the level of detail necessary to verify operators' reports should be up to a proportionality assessment by the Member State.

For the mapping of mobile networks, the DEA welcomes the important fact that mapping in 100x100 metre grids remains possible for mobile networks, as address-level mobile mapping poses significant issues. On the other hand, the DEA is concerned that the Commission suggests requiring certain types of data which only seems relevant if a Member State wishes to emulate operators' own calculations of coverage for verification purposes. The DEA believes any such step should remain voluntary and sees no relevance of repeating operators' calculations in a Danish context.

In light of the above, the DEA has identified some concrete points where Annex I should give Member States more discretion or where maintaining discretion already given in the current draft is crucial, both to ensure that general-purpose mapping can normally be used for state aid purposes and to give Member States the opportunity

for an assessment of the proportionality of any added reporting requirements on operators. These include:

- The DEA finds it positive that recital 6 of Annex I uses the word “may” and is not included in the list of recitals which seem to be mandatory according to paragraph 74 of the draft Broadband Guidelines.
- The definition of peak time may reasonably be based on a period longer than one hour.
- The reference to “the average activation fee” in recital 10, which not all Member States may have available; the wording “normal” in the remainder of recital 10, or “general”, would seem sufficient.
- The seeming use of a contention factor of 5 in recital 15 and footnote 8, which seems like an unnecessarily strict requirement that could potentially lead to estimates of available speed significantly below usual user experience. The Commission should provide reasons for using the percentage of 20 % (i.e. an apparent contention factor of 5) in recital 15 and consider giving more flexibility on this.
- The proposed measures in recitals 16, 17, 18, 19, 22, 23 and 24 are, in The DEA’s opinion, highly burdensome measures of last resort and should remain voluntary with the current wording “may” in the draft; it could also be considered to rephrase these recitals in a more general way, giving room for pragmatism.
- The recommendation to use the proposed mapping method in recital 20 should be rephrased from “should” to “may”, as this methodology – especially point ii on cell edge probability – may deviate significantly from Member States’ general-purpose mapping of mobile coverage, and – as mentioned initially – further mapping is only relevant where a Member State sees a need for further verification compared to the general-purpose mapping, noting also that verification, where necessary, may be done in other ways harmonising better with the general mapping methods employed in that Member State.

There are certain technical considerations which the Commission could consider addressing in Annex I:

- Speeds measured at peak-time conditions may face other constraints than bottlenecks in the access network, e.g. capacity on the accessed server, including potentially the server of any speed test application used.
- Many of the suggested requirements in recital 20 seem to be more relevant for fixed wireless access networks than for mobile networks, and differentiation should be considered.
- The relevance of information on frequencies and 3GPP releases proposed in recital 20, point v is not clear, unless the Commission proposes that Member States should repeat operators’ calculations, which The DEA does not find relevant (as mentioned). It is important that it remains voluntary for Member States to collect this information.

Regarding existing infrastructure, for state aid purposes, any information-gathering related to existing infrastructure should take place ad hoc for each state aid measure

and be limited to the intervention area in order to be proportionate, and should not be required to take place in the form of mapping. See also section 3.

The DEA welcomes the addition to the guidelines (paragraphs 148 and 149) on how to deal with private extensions and finds that the proposed solution strikes the appropriate balance between on one hand the consideration of securing that the supported infrastructure can contribute to further coverage and to avoid waste of resources, and on the other hand the need to reduce the (indirect) advantage that the operator who builds private extensions on the supported infrastructure obtains as a result of the state aid.

Section 6. Comments on individual paragraphs and minor issues

The DEA has the following miscellaneous suggestions and comments:

- An explicit clarification could be added that one purpose of state aid is accelerating *when* deployment happens, which is why commercial deployment plans need not be taken into account indefinitely into the future, and why a "market failure" is defined as, among other things, the absence of commercial deployment plans within a limited time horizon. (Indeed, if the time horizon is infinite, no market failure is likely to exist anywhere.)
- It is the DEA's understanding from the wording of paragraph 22 and footnote 21 that, as with the question of when FWA networks can be considered NGA under the current guidelines, the draft Broadband Guidelines seem to leave it up to Member States to define criteria for when FWA networks fall into the proposed new category of "ultrafast access networks". If this is the intention, it could be helpful to state explicitly that this assessment rests ultimately with Member States.
- The DEA believes that footnote 40 can raise doubts. The DEA agrees that it may be rational for operators not to invest in an unprofitable project, because a for-profit business does not take into account positive externalities for society. It should be clarified that if *no* operator wishes to invest, a market failure can be present because the value for society of a broadband investment is not limited to the profits of the operator, and therefore may exceed costs even if profits do not exceed costs.
- The Commission could give a more detailed explanation on why, according to paragraph 69, one mobile network is sufficient to preclude aid to further networks in that area, as this is very different from the possibilities in grey and black areas for fixed networks. The DEA does not necessarily consider it necessary to revise this, but the reasoning could be made clear for the sake of comprehension.
- The "best practices" could be turned into annexes, especially if they are intended to be non-binding (cf. comments in section 3).
- Regarding paragraph 77 and footnote 64, the intended audience of this information should be considered. If the intended audience is national stakeholders, information such as "colour" (under the state aid guidelines) may not be meaningful to the target audience, whereas if the intended audience is the Commission, using state aid terminology is more meaningful.

- Paragraph 78 and footnote 65 are seemingly worded so they can be interpreted such that even if the time horizon elapses, the public consultation need not be redone unless changes or additions are made. If this is the intention, it should be worded more clearly. If the intention is that a network already being rolled out shouldn't be subject to a renewed public consultation in mid-deployment when the deployment in progress exceeds the anticipated time horizon, this should be made explicit.
- In paragraph 94, it could be added (e.g. as a footnote) that non-compliance with deployment plans reported in previous public consultations (and/or milestone plans for these) can be a factor in assessing the credibility of renewed rollout plans by the same company.
- Regarding paragraph 97, it is unclear what a "private investment protection period" is, and this should be explained in sufficient detail, as it is a new term not contained in the current guidelines. Further, since the term seems to indicate refraining from granting aid in some way, it is unclear why something that seems to *limit* state aid needs to be "justified".
- In paragraph 127, we understand the requirement not to favour or exclude any particular technology "in the provision of wholesale access" to mean that *beneficiaries with wholesale access obligations* should not discriminate access seekers by technology. If this is the correct understanding (or not), it could be made explicit what is meant.