



European Commission
Directorate-General for Competition – Unit C4
State Aid Registry
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**HT.5766 Reply from a business association
Contribution to Revision of the Guidelines on State aid for broadband networks**

Dear Ladies and Gentlemen

The Austrian Association of Alternative Telecommunication-Operators (VAT – Verband Alternativer Telekom-Netzbetreiber) would like to take the opportunity to comment on the “Revision of the Guidelines on State Aid for broadband networks”.

VAT is an association of Austrian fixed and mobile network operators and infrastructure companies with the common goal of furthering the fibre roll-out in Austria. Thanks to our diverse members and the fact that our members have won about 50% of state aid tenders, we have a very broad view on the topic and in-depth expertise on the topic.

VAT believes that the expansion of very high capacity networks must be a top priority at both European and national level, as high-performance and universally available communication networks are the backbone of a modern, knowledge- and information-based society.

Our members are making substantial investments into network expansion, in the face of a competitive market situation. We see these investments across all technologies and in relatively short cycles due to technological progress. These investments need to be earned back in order to survive in the market. This market reality means that investments in network expansion are only made, where there are sufficient prospects of customer connections.

If the political intention is, as it should be, for companies to expand where it is not profitable according to economic principles, then one of the options is to provide investment incentives by means of subsidies in the form of state aid.

In this respect, we welcome the fact that the European Commission not only addresses this issue with the guidelines, but also explains how differentiated one must proceed with subsidy measures in order not to cause any negative consequences for companies investing in the market. The classic distortions, such as subsidized overbuilding or the crowding out of private investors, are given concrete form in these guidelines. Particular attention must be paid to the latter aspect because private investors, generally have to act in a more demand-oriented manner than can be the case with investments by public-sector entities, where public service obligations are paramount.

Funding schemes and universal service doctrine

Before we comment on certain aspects of the Guideline we would like to stress a point that seems very important to us. The EECC foresees the possibility of a sector-funded universal service, guaranteeing a functional internet connection for every household in the European Union. This universal service should only be a failsafe!

If there really are certain areas/households that could fall under this regulation, the regulator has to keep in mind whether there are roll-out plans for these areas, as well as looking at the funding maps, and whether these areas are eligible for funding. A state-aid funded roll-out should always come before a sector-funded connection via the universal service. Rather than forcing an operator to connect certain households via the universal service, those households could be taken up as a prerequisite for funding in certain areas.

Definitions

It is unclear to VAT, why the definitions introduced by BEREC and the EECC are not being used but rather other, new definitions are being introduced. We believe that to have a stringent and clear understanding of the European rules, it is paramount to use the same definitions across all legislative acts. Unclear and constantly changing definitions do not lead to legal certainty within operators, but this is vital if you are investing in infrastructure, a long going business.

We believe for example that the term “very high capacity network¹”, describes the network very well, that should be the “goal” of a subsidised roll out. These networks should thus be in the center of all considerations

Funding Priorities

The priority of a state aid scheme should be connecting white areas, or in other words, funding of roll-out of very high capacity networks where a private investment will not happen. This priority should be addressed clearer in the guidelines.

VAT welcomes the adjusted market failure definition for which the connectivity goal of 1 Gigabit reflects the growing importance and need for high bandwidth for the European economy and society. The draft correctly emphasises the importance of upload rates and the need for enhanced upload speed, and we strongly support the European aim to supply Gigabit-connectivity to all households in the Union.

The directive’s intervention and target bandwidths should therefore at least be coherent with the definition of VHC networks, which ensures no promotion of low-performing and unsustainable technologies. At the same time, a focus on VHC networks would reduce the overall complexity of funding schemes, save public funds and conserve scarce civil engineering capacities, by cancelling in-between steps.

¹ Any network providing a fixed-line connection which is capable of delivering, under usual peak-time conditions, services to end-users with the following quality of service (performance thresholds 1):

- a) Downlink data rate ≥ 1000 Mbps
- b) Uplink data rate ≥ 200 Mbps
- c) IP packet error ratio (Y.1540) $\leq 0.05\%$
- d) IP packet loss ratio (Y.1540) $\leq 0.0025\%$
- e) Round-trip IP packet delay (RFC 2681) ≤ 10 ms
- f) IP packet delay variation (RFC 3393) ≤ 2 ms
- g) IP service availability (Y.1540) $\geq 99.9\%$ per year”

White / Grey and Black Areas

We are critical of the fact that funding can also be provided for so-called black areas, even though two or more ultra-fast access networks already exist. We assume that the existing networks can meet the metrics mentioned in para 103, even if such an upgrade has not yet taken place.

In any case, the subsidized overbuilding of at least two existing networks represents a sunk investment. We therefore demand that in case of the existence of two parallel existing networks within one area, market failure can no longer be assumed. In any case, overbuilding two networks with a subsidized fiber optic network is contrary to TFEU Art. 107 (1) and therefore necessarily distorts competition and forces private investments out of the market. Ergo, such a overbuilding should not be eligible for subsidies and an adjustment of the draft guidelines seems imperative here.

In the case of gray areas, we are also critical of the fact that subsidized overbuilding is possible, even if an “ultrafast network” is already available. In any case, in the case of subsidies, the first developer must be given the utmost consideration, because it means compromising commercial investment incentives and can easily lead to the expressly disapproved goal of crowding out private investment (see para. 10).

Subsidised Technologies

VAT believes, that only the roll-out of very high capacity networks should be subsidised. State aid, and thus public funds, should only be invested into future proof technologies, always following the goal of bringing connectivity to all citizens. There should be no subsidising of outdated or bridge technologies.

We believe that the goal of a subsidy should be having a very high capacity network available to every European Citizen. Therefore we are very critical of the proposed step changes.

Step Changes

Although VAT believes that step changes could be a good way to make sure that funding is only allocated to the roll-out of future proof networks, we believe the rules laid down in the Guidelines are too complex and will lead to very complex tendering procedures. Furthermore, the step changes asked for in white areas are too easily achievable with the roll-out of outdated technologies as for example FTTC. This technology is not future proof and will need further investment in the future when it comes to upgrading the network to be gigabit ready. Such technologies should not be eligible for funding!

We suggest to the Commission to make the step change rules simpler, for example asking for a (the only) step change to Gigabit-fit networks, irrespective of the definition of the area.

Subsidies should also be prioritized for projects that do not merely meet the minimum requirements as defined. Projects should get more points if they offer a better quality of internet access. Upload bandwidth also proved to be a major challenge during the Corona pandemic (especially for video conferences). It should be examined to what extent the upload component could be included in the guidelines.

Mapping

As a general the reporting obligations and mapping details should be kept to a minimum that is necessary to establish a market failure. Otherwise, scarce resources, especially of smaller local and regional alternative fibre operator, are averted that could rather be used in the deployment of networks.

VAT supports the Commissions idea, to map the availability of a certain quality of internet connection, using address-bases. The common grids of 100x100m can result in individual properties already being

served, while other buildings or properties in the same grid without coverage remain disadvantaged by very high capacity networks. This can occur in local centers or in streets where only one side or individual buildings have been upgraded.

However good the idea, the address-basing is not possible in Austria at the moment, due to certain legal issues with the usage of the database of addresses. We fully support the opening of this database and the idea of making it available to the public (or at least a certain part of the public i.e., infrastructure operators). We hope, that this can be possible in the year 2025, but until then, member states should be able to use the already existing 100x100 m grid, when defining fundable areas.

Single Point of Contact

We suggest that data should be collected by a single point of contact - the regulator. Operators are already obliged to deliver a lot of data to the regulator, for market analysis, coverage maps etc., so that the additional data required for the mapping can be incorporated in those deliveries. Also it should be possible to completely automate the collection of data.

Misuse and intentional false information

What we are missing are proposed measures, towards misuse of the mapping scheme, by intentionally blocking certain areas, from being eligible for funding. This might occur, by telling the regulator of plans to roll-out a fibre network in certain areas in the next two years, and than not going through with it.

There should be a mechanism in place that prohibits such misuse.

Funding of Backhaul Networks

VAT is of the opinion, that the development of FTTH networks and modern 5G networks has to go hand in hand, because consumers and businesses will need very high capacity networks, fixed as well as mobile.

We support the commission in it's finding in recital (72), that there may be a market failure with respect to backhaul networks, if there is no backhaul network or if the existing or planned backhaul network is not based on fiber, and thus cannot provide the same level of performance and reliability as fiber backhaul lines can.

Thus backhaul networks based on fibre should be eligible for funding, be it for a fixed net fibre access network or a 5G mobile network.

Use of existing infrastructure

While it is true, that the re-usability of existing infrastructure may reduce the overall cost of deployment of a new broadband network and limit its negative impact on environment, too strict provisions can be of hindrance. That's why we believe there should not be any rules, forcing the use of every existing infrastructure available, when funding a network.

Where technically possible and commercially viable, telecommunications operators will consider using existing infrastructure out of self-interest in the most cost-efficient implementation possible. The forced usage of existing infrastructure might only make it more difficult (administrative burdens) and sometimes even more expensive, than building new infrastructure. This is especially true for short lengths of fibre routes.

Voucher schemes

We believe that funding measures that stimulate demand are a good complement to a wholesome funding scheme. Voucher models could provide the decisive impetus for demand for future-proof connectivity services.

A higher take-up rate (of high-bandwidth access) is suitable for promoting the roll-out of very high capacity networks, by giving the investing companies important signals and incentives for planning their network expansion. Vouchers could bring forward demand for access services that users probably do not need or want in full at the present time.

It is important that vouchers, whether for set-up costs or monthly fees, are only granted, if the network it is used for constitutes a very high capacity network. No bandwidth upgrade on old non future-proof networks should be funded.

No one size fits all

We feel the need to stress that there can be no “one size fits all” solution across Europe. Just looking at the different roll-out speeds, the different structures of the market and also the pricing regimes, it is obvious, that the starting point is very different in all member states. It is therefore of the utmost importance to leave enough leeway to member states, on how to address the market failure with broadband funding schemes.