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Directorate-General for Competition – Unit C4
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Rome, 11th February 2022

Subject: HT.5766_Public consultation on the "Revision of the Guidelines on State aid for broadband networks" – EOLO S.p.A. response

Dear Sirs,

EOLO welcomes the opportunity to respond to the European Commission's consultation document on the 'Revision of the Guidelines on State aid for broadband networks".

Below we provide EOLO's position with reference to the most relevant issues also in consideration of the experience of the company as Fixed Wireless Access operator.

We remain available for any eventual clarification.

Best regards

Public consultation by the European Commission on the Revision of the Guidelines on State aid for broadband networks

EOLO S.p.A. Response

INTRODUCTION

EOLO S.p.A. is an Italian Internet Service Provider and the main Fixed Wireless Access (FWA) operator, whose mission is to guarantee ultra-broadband connectivity in rural areas and small municipalities affected by Digital Speed Divide.

The company's mission is clear since the beginnings: bring the Internet where others do not arrive, positioning itself as an enabler of Digital Transformation throughout Italy, thanks to its FWA technology (EOLOwaveG) that allows providing VHCN services on licensed frequencies at 26-28GHz.

EOLO's network infrastructure covers around 6,800 municipalities in Italy (out of 8,000), connecting over 590,000 customers with Internet services up to 100 Mbps for consumers and SME and up to 1 Gbps for enterprise and Public Administrations.

1. White Areas

White areas are defined as the one where the existing network cannot provide ultrafast download speed – at least 100 Mbps. Based on the Draft Guidelines, these areas will be divided into 2 clusters:

a) Areas with network providing speed below 30 Mbps
b) Areas with network providing speed above 30 Mbps and below 100 Mbps

For the first cluster, the Commission proposes that the State funded network must double the download speed and at least reach 30 Mbps download speed. For the second, the State funded network must triple the download speed and at least reach ultrafast download speed.

EOLO agrees with the definition of white areas but expresses some concern on the need to identify 2 different clusters for areas that have the same characteristics. As reported by the Commission itself, **the Union has a strategic objective that, by 2025, all European households, rural or urban, will have access to connectivity offering a download speed of at least 100 Mbps upgradable to 1 Giga by 2030**.

EOLO believes that, in line with the new European objectives, the achievement of speeds of only 30 Mbps can no longer be considered suitable. The use of State fund to build obsolete legacy infrastructures would determine an unjustified waste of resources. Such provision would in fact undermine the "step change" principle which requires **a substantial increase of download and upload speed** compared to existing network and a **new infrastructure investment bringing significant new capabilities to the market.**

Given that Europe should become a "Gigabit society" by 2030, the new guidelines should promote the implementation of high-performance networks and require as a minimum threshold of quality of service at least the achievement of a speed of 100 Mbps in all white areas. Moreover, since in a short time the networks should be able to offer 1 Giga, **EOLO believes that even the threshold of 100 Mbps is no longer appropriate because it is not representative of a real step change in these areas**.

To this end, the undersigned proposes to set a higher threshold that considers the new framework and that can be more in line with the new objectives. **EOLO believes that in white areas an effective "step change" can be ensured by guaranteeing the achievement of at least 300 Mbps.** Such a speed would considerably reduce the gap with more competitive areas which is one of the main objectives of the state aid instrument.

As known the threshold of 300 Mbps is indicated in the Italian 1 Giga plan, approved by the European Commission, to establish when a market failure occurs. This demonstrates the fact that this speed is now considered the minimum acceptable threshold.

In summary, **EOLO asks that the distinction between white areas with speed below 30 and above 30 Mbps is removed and that for all white areas State funded network must triple the download speed and at least reach 300 Mbps.**

2. Grey Areas

According to the Draft Guidelines, in grey areas a market failure may be demonstrated if the existing or credibly planned ultrafast network cannot provide at least 1 Gbps download and 200 Mbps upload speeds.

As mentioned in the previous paragraph, EOLO believes that as of today the speed of 300 Mbps is to be considered a speed capable of meeting the connectivity needs of users. Please consider that the networks that today can reach this speed are networks that can presumably be upgraded over time towards higher speeds, i.e. 1 Giga.

The threshold of 300 Mbps, as mentioned, was also identified in the Italian strategic plan as a sufficient threshold to ensure the connectivity needs of users. The measure also has an incentive effect, since it facilitates the deployment and operation of fixed high-performing networks in areas in which private operators are not willing to invest due to high deployment costs, which are not balanced by forecasted revenues.

A too high threshold, as the one proposed in the Draft Guidelines, would risk having a counterproductive effect both because it would intervene in areas where there are private networks that reach speeds already performing that presumably over time could be upgraded to 1 Giga speed and because it would risk investing public money going to duplicate existing infrastructure, thus crowding out private investments.

Based on EOLO's experience as a "native" FWA operator who has been operating in the Digital Divide territories for over 15 years, we estimate that in the perimeter outlined in the 1 Giga Italy Plan a far from negligible percentage of grey areas - about 25% - present orographic characteristics and/or population density completely similar to those of the white areas. In these areas, where the deployment of a fiber optic network will not be technically and/or economically feasible, it is undeniable that fixed wireless has played a key role in helping to bridge the problem of the digital divide and today represents a reality in strong growth. In such areas where there is at least one FWA network that reaches speeds of 300 Mbps greater attention should be paid to identifying the market failure threshold in order not to crowd out existing investments and in order not to misuse public funds in the construction of an infrastructure that essentially duplicates the private one.

EOLO therefore considers that in the grey areas the market failure must be identified where the only existing or planned network fails to reach the threshold of 300 Mbps. Once the target areas have been identified based on this threshold, public funds can be used to finance networks that must at least triples the download speed and sufficiently increases the upload speed as compared to the existing infrastructure and provide at least 1 Gbps download.

3. Mixed Areas

The Commission proposes to integrate the guidelines with a further cluster of areas, called "mixed areas" (white and grey).

According to the Draft Guidelines, where it can be demonstrated that a limited overbuilding of the existing private network (in grey areas) is proportionate and does not create undue distortions of competition, the public intervention (originally focused in white areas) may take place. The overbuilding must be limited to maximum 10% of all premises in the grey area. In such situations, the entire target area will be treated as 'white' for the purposes of assessing the public intervention (meaning that the conditions that apply to white areas also apply for grey areas).

EOLO does not agree with the draft proposal to insert this further classification of the areas. As the Commission itself points out *"In principle, the proposed intervention should be designed such that the entire target area is either white or grey [...]* ***Where some citizens and business users are already adequately served in the target area (or will be in the relevant time horizon), it has to be ensured that the public intervention does not lead to an undue overbuilding of the existing network[1]".***

The undersigned believes that this provision is highly risky as it could lead to serious distortions of competition that are not offset by a real positive effect on the market. Please consider that according to the Draft Guidelines, the definition of white and grey areas and the respective "market failure" discipline is quite different. The first can be public financed to deploy network that reach 100 Mbps,

[1] Draft Guidelines on State aid for broadband networks, 5.2.2.1.3, par. 58

the second can be financed only for the deployment of network that provide 1 Giga connectivity. It is not desirable a rule that allows public funds to be used to finance the development of non-performing networks by crowding out private investments in nearby areas, even if a minimum overbuild threshold is considered.

In addition, in view of the fact that even in the case of the extension of coverage by an operator with private resources, as will be seen below in the so-called adjacent areas, the Draft Guidelines provides for a mechanism to protect the investments of the operators already present, it is even more evident that it is not appropriate to allow an extension of the intervention carried out with public funds to nearby areas already served.

The areas in which there is already an ultrafast broadband access network deployed exclusively with private funds (and the customers are already adequately served) should not be subject to any overbuild with state funds, irrespective of the percentage of the overbuild planned.

4. Adjacent areas

The Draft Guidelines proposes a particular discipline for the private extensions of the aid beneficiary in area adjacent to the target area of the State funded network.

The possibility to extend the network to adjacent area must be indicated during public consultation process in order to give to present operators the chance to oppose such extension. In this case, the Draft Guidelines proposes that if it is demonstrated that:

- the planned extension enters an adjacent area which is already served by at least two independent networks providing speed comparable to those of the State funded network, or
- that there is at least one comparable network in the adjacent area which entered into operation less than five years before the State funded network,

private extension into such adjacent area may only be carried out two years after the publicly funded network enters into operation. These rules also apply in the case of connections to publicly funded backhaul networks **or in the case of publicly funded mobile network which is subsequently used for FWA into areas which are already covered by fixed network.**

EOLO appreciates the Commission's intent to establish mechanisms to protect private investments so that they are not crowded out by publicly funded networks. It is evident that the aid beneficiary would have a considerable competitive advantage with the extension at the expense of operators present exclusively with private investments which may be not yet amortized.

In such event EOLO believes that the negative distortive effects on competition will tend to outweigh the positive effects of the aid measure and should be avoided.

The undersigned agrees with the process proposed by the Commission as it provides non-beneficiary operators with an additional tool to safeguard their private investments.

On this issue EOLO would like to highlight the possible distortions of competition in the case of financing mobile networks that are also used to provide FWA services. According to the Draft Guidelines, in case of publicly funded mobile network, during the mapping consultation it should be given the possibility to fixed operator to oppose to the use of the mobile network to provide FWA services if there are already two operators serving the same area or one comparable network in the adjacent area which entered into operation less than five years before the State funded network. In this case FWA services on the State funded network may only be carried out two years after the publicly funded network enters into operation.

In the specific case of mobile networks used to provide FWA services, EOLO would like to refer to the Commission's "Guiding Template: Measures to support the deployment and take-up of fixed and mobile very high capacity networks, including 5G and fibre networks" aiming at assisting Member States upfront with the design and preparation of the State aid elements of their recovery plans, and to provide guidance on the State aid-related aspects of those investments which are expected to be common to most of those plans.

In addition to the provision included in the Draft Guidelines, it is important to recall the principles expressed in paragraph 79 of the Guiding Template, as follows:

> *"79. Further,* ***in case of a potential provision of advanced fixed wireless services over a publicly supported 4G or 5G network, a Member State should also consider the fixed networks in the target area, to limit risks of competition distortions****.*
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> *The following approaches can be envisaged in principle:*
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> *- to restrict the use (by both the beneficiary or an access seeker) of the new 4G or 5G network to not include 4G or 5G advanced fixed wireless; or*
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> *-* ***to demonstrate that no aid is transferred to the use of the network for 4G or 5G advanced fixed wireless purposes*** *(by the beneficiary or an access seeker). This can be ensured e.g. by ensuring the operator using the network for 4G or 5G advanced fixed wireless purposes pays a market price for this use of the network and by limiting the public funding only to the net cost (including the cost of capital) of the 4G or 5G mobile activities, to be identified based on a clear separation of accounts. CAPEX (and related depreciations) used both for 4G/5G mobile and 4G/5G advanced fixed wireless would have to be allocated between the two on the basis of relevant allocation keys; or*
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> *-* ***to demonstrate that the aid transferred to the use of the network for the provision of 4G or 5G advanced fixed wireless (by the beneficiary or an access seeker) will meet State aid compatibility conditions for support for fixed networks*** *(as above described). To this end,* ***the mapping and public consultation exercise must include also the fixed networks present or planned****, and the 4G or 5G advanced fixed wireless solution in question must deliver a significant improvement (i.e. a step change) compared to what can offer the fixed present*

or planned infrastructure identified based on the mapping and public consultation. For instance:

i. Supporting the use of the network for 4G or 5G advanced fixed wireless in white NGA areas (areas where there is no present or planned infrastructure able to support speeds above 30 Mbps download) would follow the rules applicable to support for fixed broadband in white NGA areas, provided that the supported 4G or 5G advanced fixed wireless solution can reliably provide a sufficient step change compared to basic fixed networks in place (e.g. at least a doubling of download and upload speed).

ii. Supporting the use of the network for 5G advanced fixed wireless in grey NGA areas (areas where there is one infrastructure able to support speeds above 30 Mbps download present or planned) would follow the rules applicable to support for fixed broadband in grey NGA areas, provided that the supported 5G advanced fixed wireless solution can reliably provide a sufficient step change compared to the NGA network in place or planned (e.g. at least a doubling of download and upload speeds). Therefore, if intending to support 5G advanced fixed wireless to connect households in grey NGA areas where there is no present or planned infrastructure able to support speeds above 100Mbps download, this may only be possible if the 5G advanced fixed wireless solution can provide a sufficient step change, e.g. by ensuring at least 200Mbps symmetrical speeds."

In conclusion, **EOLO agrees with the need to outline certain mechanisms to safeguard private investment to avoid undue distortion of competition. In the case of financing mobile networks, the focus must be greater as this segment has always been considered driven by private investment. Therefore, both during the mapping phase and in the ex-post monitoring phase of the state aid measure, there should be the widest transparency and involvement of fixed network operators, which should be able to oppose to potential distortion of competition**.

5. Backhaul networks

The Draft Guidelines finally clarifies the importance of backhaul network, defined as a prerequisite for the deployment of access networks that have the potential to stimulate competition in the access areas to the benefit of all access networks and technologies.

EOLO agrees with the Commission on the relevance of backhaul network to foster competition and investment. EOLO also agrees on the definition of market failure where there is no backhaul or the existing or planned backhaul is not based on fibre or on other technologies able to provide the same level of performance and reliability of fibre.

As a FWA operator, EOLO confirms the need of fibre backhauling links, based on the FTTA (Fiber to the antenna) model in order to provide VHCN services.