



**GSMA response to the draft revised Guidelines on State aid for  
broadband networks**

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## About the GSMA

The GSMA is a global organisation unifying the mobile ecosystem to discover, develop and deliver innovation foundational to positive business environments and societal change. Our vision is to unlock the full power of connectivity so that people, industry, and society thrive. Representing mobile operators and organisations across the mobile ecosystem and adjacent industries, the GSMA delivers for its members across three broad pillars: Connectivity for Good, Industry Services and Solutions, and Outreach. This activity includes advancing policy, tackling today's biggest societal challenges, underpinning the technology and interoperability that make mobile work, and providing the world's largest platform to convene the mobile ecosystem at the MWC and M360 series of events.

## Introduction

1. The GSMA welcomes the opportunity to comment on the European Commission's draft of the revised Guidelines on State aid for broadband networks. We consider that the revision is timely, given the EU's new and ambitious connectivity targets for 2030.
2. In particular, the GSMA welcomes that the draft Guidelines confirm the priority of private investment and reassert the principle of technological neutrality. The GSMA continues to support both fundamental elements. We also welcome the adaptation of the guidelines to reflect the Gigabit society and Digital Decade connectivity targets, the inclusion of guidance on support for the deployment of mobile networks, additional guidance in relation to market failure and 'step-change' and the introduction of a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks and the increased neutrality in relation to tender requirements in that they no longer favour any specific type of operator according to its business model.
3. We note the differences between fixed and mobile networks in terms of the "step-change" criteria proposed in the draft guidelines and welcome this approach. The GSMA notes that mobile networks differ from fixed in several respects and the focus of 'step-change' criteria should be on the potential experience of the end user from the step change as opposed to availability of particular new technology or network infrastructure.
4. While we believe that the proposed adjustments to the Guidelines move in the correct direction, we consider that it would be useful for the Guidelines to include some additional more precise guidance to ensure that available funds are used efficiently and avoid market distortion.
5. At the outset, the GSMA has several comments on the definitions set out in section 2.2 of the draft revised Guidelines as follows.
6. The GSMA believes that additional clarity is needed in relation to Recital (19)(l) and the 'relevant time horizon' used for verifying planned private investments. We consider that the requirement that such a time horizon "*cannot be shorter than two years*" is insufficient, given the amount of time required to plan and deploy new networks. The GSMA considers that the text should return to the "no shorter than three years" horizon. Investments in telecommunications infrastructure typically extend beyond three years and although such plans can be subject to changes, there should still be an opportunity for operators to share more details of investment plans beyond three years on a voluntary basis.

7. We would also suggest that, without prejudice to the binding nature of the inputs, certain margin for a deviation from the initial plan should be allowed to account for unforeseeable events outside the control of the operator. Additionally, and to allow for a better assessment of the nature of the areas, we consider that a practical option would be to do an update to the mapping exercise before a call for proposals in individual funding projects. This would allow for the accommodation of any changes in private investment plans within the relevant time frame
8. The GSMA would also like to highlight the practical challenges involved in mobile operators accurately anticipating any potential external delays due to protracted procedures surrounding network rollout, which are subject to many stages and multiple authorisations or consents. The Guidelines should recognise these challenges to avoid the risk of operators submitting overly cautious investment plans.
9. Regarding Recital 5 of Annex 1, the GSMA proposes that when it is not being determined based on national rules under the conditions and obligations of individual rights of use for radio spectrum, the concept of “achievable performance” should be aligned with the notions of “maximum speed” as defined by BEREC. The GSMA recognises the motivation of the Commission in trying to identify the most suitable parameter, but the proposed measurement is extremely challenging to accurately identify. Any methodologies applied to approximate user experience are extremely complex and based on varied assumptions. For example, the 50% cell load does not consider that actual network load may be to a much larger extent dependent on the type of content that users transmit at a given time rather than how many users are simultaneously transmitting. For example, one user with heavy traffic needs such as high-quality video streaming or online gaming, may cause more load than a dozen users using their connection for emails or other applications with comparably low data intensity.
10. It is also worth noting that many Member States have been extensively using other methodologies for various other mapping purposes, including to assess compliance with obligations under the individual rights to use spectrum, to provide transparency on mobile coverage to the public, and to identify market failure as a basis for the provision of state aid. These methodologies (e.g., drive tests) have been proven in practice, are easier to apply and consequently also to verify. These tests have become increasingly sophisticated with a growing ecosystem of independent organisations conducting these tests.
11. We therefore believe that the methodology used to determine the absence of sufficient network coverage in the context of state aid should be the same one used for determining the presence of network coverage under the conditions and obligations of individual rights of use for radio spectrum, especially in the context of considering whether State aid can be

granted under Recital 68 for the provision of QoS beyond the coverage obligation requirements. Given that member states have recently made spectrum assignments with coverage obligations and legacy obligations for other spectrum bands have been place for some time, the Commission should respect these national coverage obligations and not seek to undermine national license obligations with an EU level set of coverage obligations just for state aid purposes.

12. Finally, any methodology that prescribes the manner conditions of peak performance should be modelled, is intrinsically problematic since, while most networks are dimensioned with peak load in mind, every network operator does this in a different way in order to compete on quality. Therefore, a prescriptive methodology outlining conditions on how “peak load” is to be measured would likely be incompatible with the methodology used by operators for actual dimensioning of their networks and may therefore distort outcomes.
13. In relation to the definition of overbuilding, private investments should be duly protected from publicly funded networks and sufficient safeguards to ensure the efficient use of public funds should exist. The GSMA would welcome additional clarification and reinforcement of the view that overbuild can be justified only on an exceptional basis.
14. We hope that the additional detailed comments on the content of the Guidelines provided in the remainder of this response can serve as a constructive contribution to the Commission’s deliberations on its draft.

## Issues related the deployment of fixed broadband networks

15. The GSMA would like to reiterate that public funding should be limited to address underinvested areas that are not yet or not planned to be covered with networks that can deliver on the Gigabit Society and Digital Decade targets. In this context, the GSMA notes that Recitals 52, 104 and 105 allow for the possibility of public funding in areas where one network providing 1 Gbps already exists, if unsatisfied end-users’ need for up to 1 Gbps upload is demonstrated. Recital 52 states that “[a]s the decade progresses, a market failure may also be demonstrated, where the market does not and is not likely to satisfy identified end-users’ needs for enhanced upload speed up to 1 Gbps”. This Recital is complemented by footnote 46, which states that “[d]emonstrating a need for enhanced upload means that the Member State provides reliable evidence from verifiable sources, for instance surveys of end-users’ needs, studies on profile of end-users and traffic evolution, smart specialisation strategies, etc.”

16. The development of market failure concepts to include areas where there is competitive investment in fixed networks risks disincentivising further investment if investors believe that their investments will be undermined by state subsidised networks over time. The GSMA considers that the guidance as currently formulated does not provide sufficient safeguards against potential market distortion and to ensure that private investments are not disincentivised. This creates a lot of uncertainty, and the wording should therefore be updated and include additional safeguards to ensure that Member States and public authorities provide enough independent proof of the end-user's concrete demand.
17. In the context of Recital 52 and footnote 46, the GSMA considers that no intervention should be possible if the existing network can be upgraded to provide 1 Gbps upload speed. Private gigabit networks already meet the 2025 "Gigabit society" and 2030 "Digital Decade" connectivity targets even if they do not currently provide gigabit upload speeds. It is paramount that private investments are not crowded out, especially where there are existing gigabit-capable networks. In the presence of such networks, public funding should not be allowed, even where 200 Mbps upload or looking forward 1 Gbps upload are not provided.
18. Where public funding is allowed to address upload speeds, we consider that this should be on a very exceptional basis and that the requirement for evidence to be provided from verifiable sources to justify such intervention, should be cumulative, given the potential issues of relying on one source of data such as surveys, which can suffer from survey design issues e.g. stated versus revealed preferences etc. The key requirement in the Guidelines should be an obligation to provide evidence of pent-up demand for services that are not currently being provided by the market and that this evidence is clearly presented in State Aid notifications. Alleged abstract end-user needs should not be enough, demand should be proven.
19. The GSMA further considers that there are some inconsistencies in the revised Guidelines that need to be addressed, the possibility provided for under Recital 99, whereby in the absence of existing or planned ultrafast broadband networks, public funding could be used for the deployment of networks that would provide less than 100 Mbps. The GSMA notes that publicly funded initiatives should be in line with the Gigabit society connectivity targets for Europe. This is particularly true in the case of white areas, if the goal is to ensure territorial cohesion and ubiquitous gigabit connectivity across the European Union. However, we note that there may be very exceptional and limited circumstances whereby projects that deliver lower speeds may potentially be justified if there are currently very low speeds available. Any such intervention should consider the negative impact it may have on other private investments in the area.

20. The GSMA is also highly sceptical of the Commission's proposal for 'mixed areas' in Recitals 58 and 59. For a target area of intervention, which consists of white and grey address points, a market failure for each of these points should be precisely identified and the appropriate requirements for a step change should be defined depending on whether the address is white or grey. Additionally, we are concerned with the proposal for an acceptable level of overbuild. A threshold of even 10% could in practice mean more than thousands of households which seems highly disproportionate and could significantly distort competition.

## Backhaul

21. Regarding the compatibility assessment for backhaul, we note the requirement to double download and upload speed. The GSMA considers that there should also be a requirement to at least reach a minimum level of performance and reliability.

## Mobile deployment

22. The GSMA note clarity on how Member States can use public funds to foster mobile deployment in areas where it is not economically viable to bring state-of-the-art mobile connectivity, and this represents a step in the right direction. The GSMA welcomes the fact that the European Commission recognises the difference between fixed and mobile rollout and that the draft new Guidelines on State Aid for broadband networks therefore separately address mobile access networks.
23. We note the significance of footnote 71, which recognises that in the case of mobile networks, investments in active equipment may play an important role in the quality of services provided and that in such cases, public support may also be extended to active equipment. Footnote 71 further states that such public support for active equipment is considered as long as it is an integral part of a significant upgrade of network's capability and is not merely an incremental upgrade. To be accepted state funded fixed and mobile networks must provide significantly enhanced characteristics in comparison to existing networks.
24. We understand that the Commission is seeking feedback on criteria and corresponding values necessary for identification of market failure areas in respect of mobile e.g., speed. However, it is difficult to currently define objective EU wide QoS thresholds for the purposes of assessing whether a State Aid program would help achieve common interest objectives, for the purposes of defining "step change" or for the purposes of defining market failure areas. We therefore generally consider that the Commission should assess each plan on a

case-by-case basis but taking into account that the average network performance available to a consumer in an urban area measured in terms of maximum achievable speeds could be an important consideration in such assessments.

25. Finally, the GSMA notes the preliminary view of the Commission that state aid funding should not be used to meet coverage obligations as set out in spectrum license obligations. Coverage obligations as set out in license obligations typically address population reach and obligations on operators are to ensure a certain minimal service is provided to a set percentage of the population over time. The GSMA welcomes Recital 68 according to which *“State aid can be granted to provide additional quality of service required to meet demonstrated end-users’ needs going beyond what is already required in order to comply with such obligations. Such aid can only cover additional costs necessary to ensure increased network quality”*. The Guidelines should not preclude State Aid to specifically improve the quality or capacity of that coverage, particularly given the envisaged opportunities arising from 5G deployment, nor should the Guidelines preclude state support in certain geographical areas where improved speeds or capacity would drive beneficial societal changes.

## Wholesale access obligations

26. As previously noted, the GSMA welcomes the inclusion of guidance on support for the deployment of mobile networks. State funded mobile networks should be expected to offer access on fair and reasonable terms. In this regard, the GSMA notes Recital 139 which specifies that the State funded network must offer the widest range of wholesale access products and, as they become available, those access products necessary to exploit the most advanced features of 5G and future mobile generations. Recital 139 also specifies that effective access may include access to components of the network that have not been publicly funded but that are necessary for the access seeker to provide its services. Further, footnote 97 cites *“Roaming, Multi-Operator-Access- Network (MORAN), Multi-Operator Core Network (MOCN), network slicing”* as forms of access covered by the guidelines.
27. To reflect in the Guidelines, the points raised in the previous paragraphs, we would suggest that the obligation included in Recital 139 and footnote 97 to provide *“the widest range of wholesale access products”* should be substituted with an obligation to provide *“a reasonable set of access products”*, ideally pre-agreed by relevant stakeholders including public authorities, MNOs and access seekers.

28. We consider that the requirements of Recital 139 as currently formulated are not proportionate given that they prescribe an infinite catalogue of possibilities and indeed this may not always be technically or operationally feasible, especially for “tower companies” which only provide physical infrastructure. The subsidised operator should be required to provide reasonable wholesale access services at levels corresponding to its business model and should have the possibility to suggest alternatives in case it cannot provide the specific service required by the access seeker.
29. Currently, and unlike the fixed market, there are generally no regulated wholesale mobile access products and it is difficult to concretely envisage the type and level of wholesale access to subsidised mobile networks that may be sought by access seekers, particularly with regards to 5G and future mobile generations. We therefore suggest removing the period of 6 months between granting a wholesale service and the start of retail operations. In the case of mobile, there is no defined wholesale access service and therefore it is very difficult to grant a specific service in advance (in the case of fixed networks it took several years to agree on the wholesale service in some Member States).
30. The GSMA stresses that wholesale mobile access does currently exist on a commercial basis in most Member States depending on the type of access required. Mobile operators also offer roaming agreements to allow existing operators extend their network reach and offer virtual operator agreements (MVNO) for businesses wishing to resale mobile services. Many mobile operators have network sharing agreements, which allow certain types of passive or active sharing of costs in the network. In the future network slicing may be a way to allow access to mobile networks and could be considered as a potential way to access broadband services in a subsidised mobile network.
31. As markets evolve and additional wholesale products come into existence, then the development of similar products for State Aid purposes should follow existing regulatory processes whereby industry stakeholders are consulted and agree the technical specifications of such products and such developments are monitored by NRAs based on access seekers demands for such access products. Typically, mobile operators do not have SMP obligations and SMP obligations, where a finding of dominance is a prerequisite, would not apply to mobile operators’ networks so regulators should consider establishing wholesale access products for subsidised mobile networks products in the least burdensome way and allow as much as possible time for commercial negotiations or procurements processes to address these issues. As opposed to fixed access products, the prices of mobile services to be offered on the subsidised network should be based on the principles of transparency, fairness, reasonability, and non-discrimination instead of the cost-orientation principle, which is not usually applied in the mobile markets, which have so far been guided

by commercial agreements. Furthermore, for fixed networks, the obligations placed on the aid beneficiary should be in line with those placed on the SMP operator.

32. The GSMA also consider in the case of access obligations that further clarification is required as to which party is responsible for financing the costs for access when it requires an upgrade or increased capacity of existing infrastructure. These additional costs need to be recognised in the state aid application or with the NRAs in relation developing access products on private networks.

## Demand-side measures

33. Digital policies and public funding should also be targeted at stimulating demand and increasing the uptake of the latest technologies both citizens and the industrial sector. In this regard, the GSMA welcomes the inclusion of a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks in the draft Guidelines. The GSMA would also encourage the Commission to promote measures which allow for competition in the tendering process.

## Private investment protection period

34. In relation to Recitals 147-149 and specifically the extension of state aid to areas outside the intervention area, the GSMA would welcome explicit confirmation in the Guidelines that state aid must not distort competition both in the intervention area as well as in the adjacent areas. However, deployment purely based on private funds shall always be allowed.
35. In relation to Recital 97, the GSMA welcomes the clarification that private investments shall be protected of in principle up to seven years from any overbuilding due to the roll-out of publicly financed networks.

## Mapping methodology

36. The GSMA notes Recital 74 which states that the Commission “*regards the methodology described in Section 3 (for fixed access networks) and 4 (for mobile and fixed wireless access networks) of Annex I as the most accurate mapping method*” but that “*Member States may propose the use of alternative methods to those described in these two sections provided that they comply with recitals (4), (5),(9), (10) and (12) of Section 2, are duly justified and include*

*a reasoned opinion by the national regulatory authority supporting the use of the proposed alternative methodology.”*

37. However, without careful harmonisation across policy instruments, the proliferation of concurrent mapping methodologies is likely to result in a more complex regime and thereby less regulatory and legal certainty. Special methodologies designed specifically for funding purposes should only be warranted where there are no existing guidelines or methodologies already designed with an equivalent purpose in mind. The GSMA notes that there are clear overlaps in remit, when the provisions of Article 22 of the European Electronic Communications Code (EECC) clearly allow NRAs to collect network investment data for the purpose of State Aid applications. The GSMA therefore considers that the Guidelines should encourage Member States to follow the least burdensome route to data collection and specifically regarding the obligations placed on operators under the spectrum licence conditions.
38. Equally, the GSMA considers that mobile coverage in the context of the State Aid regime, should have regard to national licence coverage measurements and that there should be consistency with the methodologies used in this respect, first and foremost by using the methodology for national licence coverage measurement, whenever it exists, also for the purposes of mapping.
39. Whereas the GSMA acknowledges the differing remits of DG Competition, DG Connect and national regulators, there is a need for closer cooperation between the various bodies to ensure that engagement with industry players is effective. The GSMA will work with all stakeholders to ensure that this is the case, but the State Aid guidelines should confirm that such cooperation is envisaged.
40. The GSMA also notes the reference to credibly planned investments in Recitals 85 and 91. We would welcome further clarification from the Commission on the criteria to be met for an investment to be considered as such. Uncertainty will exist in relation to future planned investments by operators but for those participating in State Aid tenders or those with investment plans there is a need for the Commission to define what criteria constitutes a credible commitment to invest. In any case, the Guidelines should always grant the possibility to change plans.

## Competitive Selection Procedures

41. The GSMA considers that competition selection procedures in the context of mobile deployment could differ from those related to fixed deployment. For example, in the case that the aid includes active equipment, only operators with spectrum holdings should be considered eligible to participate in the tender process. In that case, the number of competitors will be limited. Such a possibility should be recognised in the Guidelines.
42. Furthermore, the GSMA considers that additional guidance on how to use existing infrastructure in an efficient way to participate in the tender process could be useful.
43. We also note that Recital 125 suggests the option to grant aid without a competitive selection procedure to a public authority to deploy and manage a broadband network at wholesale level directly, or through an in-house entity (direct investment model), and even that the public authority may be allowed to provide retail services as a “retailer of last resort” where a consumer cannot get a retail service from the market. A much less intrusive option is described in Recital 126, according to which a concession or other entrustment by a public authority or in-house entity to design, build or operate the network must be allocated through an open, transparent, and non-discriminatory competitive selection procedure. We therefore consider that the option described in Recital 125 should be limited to duly justified exceptional cases to limit the intrinsic distortion of competition.
44. Regarding transparency (paragraph 7.1) the GSMA would welcome the inclusion of a provision in the Guidelines for the publication of the notified decision to ensure that all stakeholders have an equal opportunity to also be involved during the assessment process.
45. Lastly, we welcome that the draft Guidelines provide for a level playing field among different business models (i.e., no preferential treatment to wholesale-only) and specify that State Aid measures must be compatible with the internal market rules. In this context, we recommend that the assessment of environmental impacts should be aligned with the upcoming revision of the Broadband Cost Reduction Directive, which may also lay down certain specific conditions for the assessment of environmental impact of access networks.

## Conclusions

46. The GSMA welcomes the overall direction of the Commission’s proposals for the revision of the Guidelines and in particular the inclusion of additional guidance on the deployment of mobile networks. We welcome the Commission’s consultation and appreciate the

opportunity to provide feedback on the proposed updates. The essential nature of connectivity has never been more evident, and we look forward to working closely with policymakers to help achieve the EU's ambitious goals for 2030.

47. In relation to a potential intervention threshold in respect of mobile, the GSMA notes that it is still difficult to predict how exactly the 5G consumer experience will evolve over the coming years as so much depends on the investment and business models as well as the innovation and pace of development in relation to services in the 5G ecosystem. Nonetheless, a core objective of the state aid Guidelines should be to ensure that the benefits of 5G can be enjoyed by all European citizens regardless of location.
48. The GSMA believes that the mobile end-user experience in areas where private sector investments already deliver additional speed and capacity should be the first benchmark used to determine the potentially appropriate level of mobile network performance for society as a whole and subsequently the need for state funded projects in areas where commercial deployment to deliver equivalent network performance may be difficult.
49. However, in areas where networks already exist any proposed measures for publicly funded deployment need to demonstrate that such deployment will truly deliver a step change alongside the provision of sufficient evidence that the investment will not crowd out or over build similar investment by the private sector.
50. The GSMA therefore remains concerned about several novelties included in the proposed Guidelines; those that allow for intervention in areas where gigabit capable networks already exist or indeed where upgrades of private networks would already be possible to provide additional QoS as well as the provisions related to mixed areas. We consider that additional and clear safeguards are required to ensure that publicly funded investments only occur in instances where a market failure truly exists, thereby avoiding any potential for market distortion.