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CONTRIBUTION FROM THE TELECOM INDUSTRY ASSOCIATION (DENMARK) ON THE REVISION OF THE GUIDELINES ON STATE AID FOR BROADBAND NETWORKS

Telecom Industry Association - Denmark (TI) is a Danish industry organization, which represents the vast majority of Danish private entities related to and within the Danish telecommunications sector. Currently, TI has 29 members ranging from MNOs, MVNOs, fiber, cable and copper operators, tower cos to internet- and TV- service providers.

KEY RECOMMENDATIONS FROM TI

1. The new guidelines should incentivize Member States to form **uniform procedures** and schemes to keep administrative burdens both at private and public level at a minimum. When developing state aid schemes under the new guidelines it should be ensured that the required speeds are aligned with EU´s ambitions for 2025 and 2030 on this point and leave further development beyond those goals to the market.
2. Requirements to provide **wholesale access to passive services**, such as dark fiber, should be based on a specific analysis for the individual state aid case and not be general requirement.
3. The **relevant time horizon for mapping** operators' planned deployment of not less than two years is well-balanced, while unrealistic in practice at a detailed level. Instead, a mapping of insufficient market coverage could consider scenarios, when market-based deployment is slowing down. In **mapping white, grey, mixed and black areas**, areas with good mobile broadband coverage should be considered black areas and not be prioritized state aid for alternate technology, or alternatively be considered grey areas where intervention can only be made if a special case can be made.
4. **Fixed wireless access solutions** can bridge the connectivity gap (and help realize connectivity targets) and may in some cases be more economically feasible than e.g. digging down fiber. Thus, TI supports the inclusion of certain FWA-networks in the guidelines and encourages the Commission to further develop the guidance on this point.
5. The requirement to **deploy over-capacity** (in fixed networks) is disproportional and should be disregarded. If this is not, at least, the owner of the infrastructure (partially paid for with state aid) should be able to require a fair rate of return if a third party demands access. To minimize the number of physical mobile towers in the landscape, such mechanism may be feasible for wireless technologies while it should be based on an open consultation of interest amid operators rather than a strict requirement of over-capacity that risks lack of use.
6. The inclusion of guidance on take-up **measures** is welcomed, not least the emphasis on technology neutrality, non-discrimination of operators, transparency, reporting and monitoring.

1. EXPERIENCES WITH CURRENT FRAMEWORK

In Denmark, we have only a few cases where the state aid rules have been exploited. In these cases, it has merely been an inadequate mapping of current and future coverage of marked-based deployment. In the Danish state aid scheme, the "national broadband fund", state aid has also been possible to be granted for holiday homes and summer cottages, which in the opinion of TI should be sub-sequential to primary homes/addresses.

The “national broadband fund” has been granted under Block Exemption, and thus, it has not been subject to individual approval by the European Commission.

In TI, we find a high level of bureaucracy to be an administrative burden and - to some extent - unnecessary extra cost. This should be considered when developing state aid schemes under the new guidelines. For instance, uninhabited and vacated addresses (required) included in a state aid funded broadband project often slows deployment and thus delays the payout of public funds.

2. ACCESS TO INFRASTRUCTURE

TI supports the proposed provisions on wholesale access to active products on fair and non-discriminatory principles. We find them proportionate and within the merits of the state aid rules. As a general principle, access obligations on publicly funded networks should not deviate from access obligations imposed under sector specific regulation. The principle of proportionality should always be respected when defining the access product on specific cases. Generally, we find that the provisions, where correctly enforced, guarantee effective access to the subsidized infrastructure.

As regulatory regimes across several member states are changing, i.e. aligned with symmetric access provisions based on the EECC, TI believes that the requirement on wholesale access to passive services should not necessarily be a standard requirement but could instead be based on a specific analysis for the individual state aid case and not be a general requirement.

Access to passive infrastructure (e.g. ducts and poles) is reasonable but should not be a measure within the state aid rules. The Broadband Cost Reduction Directive, currently also under review, seems like a better measure, while national sector-specific regulation could be another relevant measure. Such provisions are already in place in Danish sectorial regulation, where the Digging Act prescribes such rules for ducts and the Tower Act prescribes similar for towers.

3. OPEN AND COMPETITIVE SELECTION PROCEDURES IN A DIMINISHING RESIDUAL GROUP

In Denmark, where both mobile and fixed coverage is generally considered good, it is increasingly the case that merely geographically dispersed addresses with low home density are left without access to (ultra-) highspeed broadband access.

This may lead to a situation where merely geographically dispersed addresses (not groups of addresses) are white spots (i.e. are not currently covered or planned to be covered with NGA broadband). In these cases, granting of state aid (based on the open and competitive selection procedure) could take several indicators into account, instead of the rolling timeframe of at least 2 years (see below), ruling whether market-based deployment in a specific area has (fully) decreased.

4. MAPPING OF BROADBAND DEPLOYMENT AND THE HORIZON OF NO LESS THAN 2 YEARS

TI acknowledges that the proposed relevant time horizon of no less than 2 years for mapping is well balanced. In practical terms however, we find it very unrealistic to foresee deployment in this time horizon considering the highly competitive market situation.

Households already covered or prospectively covered in near future by private operators should always be excluded from state aid in order not to crowd-out private investments. Consistently with the European Gigabit Society targets, as well as those targets presented in the Digital Decade Programme, the mapping made by the NRA should focus on identifying areas which are not covered with highspeed broadband.

Areas with good mobile broadband coverage should preferably be considered grey areas – or even black (if Quality of Service-levels are fulfilled) - and should not be prioritized in state aid deployment broadband projects as this could distort competition. Alternatively, these areas should at least be considered grey;

where intervention can only be made if a special case can be made. This is important to secure good conditions for roll-out of 5G networks with very high investments required.

Data on existing infrastructure, respectively on coverage with certain bandwidths can be more granular (i.e. address specific), while data on planned infrastructure deployment can be provided in a less granular way, at least for the plans beyond one year, and are by nature subject to change. In general, the level of granularity should not be the same for mapping of existing coverage and planned rollout. For planned rollouts, a lesser level of granularity (e.g. not household/address specific) should be the rule. The level of granularity could be lower after the first-year forecast or however long after the two years minimum of the relevant horizon is perceived; after the first year it becomes problematic providing reliable forecasts with a high level of granularity (i.e. at address level).

Instead, the mapping of insufficient market coverage could consider scenarios, where market-based deployment is slowing down or has fully met its' potential. For instance, in France and the United Kingdom[1] expected white spots/non-spots are declared in zones.

5. INCLUSION OF FWA

The overall aim of the state aid framework should be to bridge the connectivity gap. This should be done 1) in a non-market distortive way, 2) be cost-efficient and 3) be technologically neutral.

Using taxpayers' money, the EU and Member States have an obligation to ensure the highest possible value for that money. Thus, if MBB and/or FWA solutions can bridge this gap (i.e. realize connectivity targets), and in some cases be more economically feasible than e.g. alternate fixed technology, TI believes that it should be possible to channel state aid funds in this direction, and if conditions in point 1), 2) and 3) are met. The draft guidelines include "certain fixed wireless access networks" in the category of "fixed ultrafast access networks" and mentions in a footnote that this may be based on 5G or WiFi. TI finds that the Commission should continue to follow up on the technological development to guide Member States in how to ensure that new and emerging fixed wireless solutions are included in state aid measures.

Consequently, it raises a dilemma of access to passive elements of such infrastructure. For instance, say an operator is granted state aid funds to deploy a mobile tower for FWA-purposes in a rural area; how is sharing of the passive elements (e.g. the tower) then ensured and is it problematic? Alternative usage possibilities could be that another operator sees potential for public LTE/NR coverage, now that the tower is deployed via public funds (sharing of passive infrastructure vis á vis BCRD and the Danish Tower Act), then the tower should be statically designed for this in the initial design engineering phase, including increased costs in the phase of establishment.

6. FAIR RATE OF RETURN ON PASSIVE INFRASTRUCTURE AND REQUIREMENT TO DEPLOY OVERCAPACITY

A requirement to deploy over-capacity, e.g. extra space/ducts, in state aid funded broadband projects is in the view of TI disproportional and additionally removes the incentive to make use of state aid measures. The requirement is recommended to be disregarded in the new state aid measures and guidelines.

If the requirement persists, the owner of the infrastructure (partially paid for with state aid) should be able to require a fair rate of return (and not just an additional burden/cost as it is not used) if a third party might demand access to e.g. ducts. The same goes for mobile towers that potentially are deployed for FWA (partially funded via state aid), where the same or other operators potentially would benefit of deploying antennas for public mobile networks.

[1] In UK, Ofcom has identified geographic areas where just one provider will be viable for regulatory purposes, i.e. the use of a RAB as per the 2013 EC Recommendation. A similar exercise in nature but equal and not for state aid purposes.

Overall, TI does not see a need for a requirement to design over-capacity in fixed networks if there – in parallel - is a requirement for open and indiscriminatory wholesale access. To minimize the number of physical mobile tower in the landscape, such mechanism could be feasible on wireless technologies, but should be in scope of the BCRD. However, a strict requirement may not be feasible, instead a consultation amid operators of interest in a designated site position, should be determinant of the static calculations and constructions to keep capital expenditures at a minimum and withhold proportionate measures. Such consultation procedure works well in Denmark.

7. RISK FOR THE RECIPIENTS OF STATE AID GIVEN IN DYNAMIC MARKETS

When designing state aid schemes, the granting authority should ensure maximum certainty for the receiving project, including the participating operator.

In Denmark, the conditions of the "national broadband fund" are such that a minor change to a project (e.g. one household no longer wishes to be part of the project) may cause the state aid to be withdrawn after the project has been initiated. This causes significant uncertainty for the operators. TI argues that different ways in which this risk can be minimized without layering on another set of bureaucratic rules should be further investigated.

8. INCLUSION OF 5G/6G

The deployment of 5G networks has just been initiated by operators across most Member States along with significant investment horizons of operators. Thus, any state aid at this point should be carefully considered to ensure that it does not distort competition and crowd out private investments.

TI does not have a strong opinion on whether potential aid schemes for mobile and fixed should be managed separately. However, as mobile technology develops over time, aid schemes to deploy e.g. FWA services, serving the residual group not having access to fixed VHCN, should be a viable tool when market deployment stagnates in the coming years.

The provisions in the draft guidance on state aid for mobile networks seems very vague. For example, it is unclear how to provide bitstream access via mobile networks. The guidance should be further expanded on this point.

9. TAKE-UP MEASURES

The 2021 DESI report shows that the NGA coverage is very high in the EU (87% of households), whereas the take-up is still low (50.3% of households). For ultrafast broadband (at least 100 Mbps download speed), take-up is even lower (32.9% of households), also in respect to the coverage (59.3% of households).

The 2021 DESI report shows that in Denmark, the NGA coverage and take up is even higher (96.4% and 61.3% of households). For ultrafast broadband, take-up is lower (38.3% of households), while the coverage is almost comparable to the NGA (93.8% of households).

The situation significantly differs across Member States and depending on the available coverage for speeds over 100 Mbps, in the countries with the lowest level of take-up, also in presence of a certain coverage, it could be useful for the specific country at stake to adopt non-discriminatory demand-side measures. The current State Aid Guidelines do not include an explicit reference to demand-side measures but focus instead on measures aimed at favoring the deployment of broadband networks, such as the coordination of civil engineering works.

TI welcomes the inclusion of guidance on take-up measures such as social or connectivity vouchers. It is especially important that the proposal emphasizes technology neutrality, non-discrimination of operators, transparency, reporting and monitoring.