



European Commission
Directorate-General for Competition – Unit C4
State Aid Registry
1049 Bruxelles /Brussel
Belgique /België

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HT.5766 Reply from a business association

Contribution to Revision of the Guidelines on State aid for broadband networks

Dear Sir/Madam

The [European Local Fibre Alliance](#), ELFA, is the shared voice of alternative fibre network operators and regional public utility companies in the EU. Our members bring fibre to every house and home across Europe in order to shape the green and digital transition envisaged by the EU. With competition as the key driver for investments and open access as a means to fast, efficient and sustainable deployment, we are committed to the only future-proof technology to fulfil the needs for the digital infrastructure of tomorrow.

ELFA believes that the roll-out of Very High Capacity Networks (VHCN), as introduced by the European Electronic Communications Code (EECC) and pursuantly defined by the corresponding BEREC guidelines, must be an overarching priority at European level. This is because fibre networks are the backbone of our modern, digital and interconnected economic system and society.

Telecommunication operators continue to make substantial investments in network roll-out, which are primarily driven by intense competition at all levels. This has led to a positive market trajectory and fibre momentum that can also be observed by the increasing number of investors entering the fibre market. In order to give stakeholders the opportunity to earn back these investments, it is important to avoid crowding-out private investment and disincentivizing commercial agreements.

As a guiding principle and to protect an efficient, functioning and competitive internal market, it is therefore crucial that the use of state aid is limited to those instances where regulatory intervention is necessary as a last resort to connect areas affected by market failure.

In this respect, ELFA welcomes that the European Commission addresses the notion of 'incentive effect', which highlights that aid must not be granted to finance the cost of an activity that an undertaking would have otherwise carried out in its absence.

Subsidies must under no circumstance cause market distortion, incentivise overbuilding or crowd-out of private investments. Particular attention must be paid to the latter aspect, because private investors, for example, have to act in a more demand-oriented manner than can be the case with investments by public-sector entities, where public service obligations and external benefits are included in the cost-benefit analysis.

Priorities

ELFA concurs with the Commission's overarching political objective to connect all European households to a gigabit network by 2030 at accessible conditions. This will require an overall acceleration in the pace of deployment of fibre infrastructure, necessitating a regulatory landscape conducive to meeting ambitious roll-out targets. The priority of a state aid scheme should therefore be to connect white areas, or in other words, to fund fibre roll-out in areas without private investment potential. It is essential that the final guidelines address this issue clearer in order prevent undue delays and bottlenecks within funding procedures. This will be necessary to help bridge the digital divide and to achieve the Commission's desired political objectives of the Digital Compass and the European Gigabit Society.

Concerning the guideline's intervention thresholds and target bandwidths, it is important to highlight that the new terminology needs to be coherent with the BEREC definition of VHCN in order to prevent the funding of outdated, low-performing and unsustainable technologies. Overall, a focus on fibre or at least VHCN would reduce the complexity of the funding scheme, assist in the prioritisation of public funding and help allocate scarce resources in civil engineering and permit granting. By doing so, unnecessary and intermediary 'step changes' can be avoided.

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. The presence of two ultra-fast access networks should be evidence enough to ensure a functioning market and the existence of investments opportunities. State aid interventions must rather be aimed at prioritising the least connected areas, which do not have any foreseeable viable private investment potential, i.e. white areas, with one ultrafast access network. Any possibility to subsidise overbuilding would threaten investments in areas with a viable private investment potential and crowd-out commercial deployment.

Subsidised Technologies

ELFA believes, that only the roll-out of fibre 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 subsidisation of outdated or bridge technologies. As such, the principle of technology neutrality undermines Europe's gigabit targets, delays fibre deployment and wastes public resources, while at the same time increasing the financial and economic burden of the digital transition.

Step Changes

ELFA agrees with the Commission that step changes are justified in order to prevent the wasteful allocation of public funds, however, we believe the rules laid down in the guidelines are too complex and are not ambitious enough to meet the future demand in high-speed connectivity.

We thus encourage the Commission to make the proposed step change rules simpler, i.e. introducing only one step change to gigabit networks, regardless of the bandwidth before the funding.

Mobile Access & Backhaul

With regards to mobile access and backhaul networks, ELFA would like to underscore the importance of not implementing new measures which would effectively distort functioning markets and competition therein. Freely negotiated solutions need to be the basis for any kind of deployment and are the most economical means to accelerate the deployment of FTTB/H and other VHC-networks, such as 5G networks. In fact, ELFA members currently offer a variety of framework agreements to connect 5G base stations, which shows the willingness of fibre network operators to collaborate and gives all market players the equal opportunity to actively participate in the roll-out of telecommunication networks. Any new funding measures for mobile access and backhaul should hence take into consideration available voluntary market agreements and refrain from funding in the presence thereof.

Mapping

Regarding the relevant provisions on mapping, ELFA contends that Member States should enjoy a wide margin of appreciation to define target areas. We agree with the Commission's assessment that the size of target areas may play a role in the outcome of competitive selection procedures and that areas which are too big might indeed reduce the competitive outcome. That being said, onerous mapping reporting obligations may at times carry a disincentivizing effect on smaller market undertakings due to a disproportionality in their compliance capacity when compared to dominant market players. It is therefore important that any reporting requirements are implemented on a voluntary basis and should be kept to a minimum in order to create a level-playing-field between all market participants.

Definitions

It is unclear to ELFA why the draft guidelines introduce new definitions instead of applying the existing framework of the EECC and the BEREC guidelines. 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 for operators, which is vital for investing into infrastructure in the long-term.

No one-size-fits-all approach

ELFA members are from seven different European Member States, as such, we would like to underline the importance of not implementing a one-size-fits-all approach and giving national authorities the competences to issue measures according to a Member State's particular needs. There are vast differences in roll-out speeds, market maturity and structure, and pricing regimes, which need to be taken into consideration when determining market failure and the appropriate funding measure.

Should you have any further questions, please do not hesitate to contact us at any time.

Yours sincerely,

European Local Fibre Alliance (ELFA)
