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Public Consultation on the revision of the Guidelines on State aid for broadband networks.

here: Position Paper of VATM e.V. Germany (does not include business and trade secrets)

We hereby submit the views of VATM and our member companies with regard to the revision of the Guidelines on State aid for broadband networks.

VATM welcomes the public consultation and sees the undertaken revision as timely measure in line with the targets set by the Digital Compass with a time horizon towards 2030 and the evolving connectivity needs of the EU citizens.

VATM agrees with the Commission that the 2013 Broadband Guidelines still constitute an appropriate framework, and some improvements would be sufficient to update them and adapt them to the new policy objectives (i.e. digital transition, achieving the European Gigabit Society objectives, implementing the Digital Compass and sustainability goals).

However, based on the proposed guidelines, there is a need to better address the overarching principles of state aid control – priority of market-driven broadband deployment limiting state interventions to areas of market failure and reducing distortions of competition.

We acknowledge that based on the data gathered by the European Commission, there is a significant gap between the targets set by the Digital Compass and the current state of Gigabit connectivity infrastructure within the EU. Thus, institutional intervention may be considered appropriate in those Member States (MS) lagging behind due to shortage of funds in order to ensure a timely digital transition. Nonetheless, we point out that thus far not institutional measures driven by political agenda, but the market has played the most crucial role towards broadband deployment. Infrastructure competition has insured innovation and driven private investment in the past. Today, respectively for the past couple of years, we have observed a strong trend towards an investment surge by long-term oriented private capital. In Germany, those private investments put forward by different market players tally up more than 40 bn Euro.

Based on these tendencies, we can confidently state that public intervention such as state aid should play only a subordinate role and be actively set in motion only in areas where there is no economic incentive for the market players to further the broadband deployment. Therefore, we emphasize that the scope of intervention according to the Broadband Guidelines should be limited to areas of demonstrated market failure. The proposed Guidelines do not yet fully commit to set these intervention boundaries and they use a concept for determining market failure unsuited to the task. As a result, we face the danger of overarching state interventions that will distort competition, devalue current and disincentivise future private investments, and hinder the broadband network roll out instead of fostering it.

In Germany, we are currently in a state of actively expanding the gigabit capable networks with a rapid growth which was enabled by massive private investments in Very High-Capacity Networks (VHCN) deployment. We would like to emphasize that this acceleration of the broadband network rollout in the country has been triggered by an enhanced infrastructure competition with a tendency to grow further. Therefore, our main concerns related to the future broadband rollout are rather with regard to the capacity constraints (construction, planning, permits, etc.) in the market. For that reason, we see state aid intervention as potentially dangerous for the healthy development of the German telecommunications market as **only** commercial conditions can be improved by state aid, not other constraints like deployment capacity. We fear, based on our past experience, that unrestricted state aid intervention might, instead of accelerating the infrastructure deployment, lead to crowding-out private investments, raise construction costs by overheating demand for deployment capacity (which is already boiling) and thereby slow deployment. Thus, it is VATM's view that massive private investment, especially for VHCN rollout, will ensure that Germany and the EU would meet the targets set for the end of the decade in order to be competitive in a world relying on digital services.

VATM would like to point out that the proposed Guidelines may not reflect the general situation in the EU and accordingly, foresee a greater distribution of state aid for telecoms than ever before. This means that its overall impact on the market will also be greater. However, as only some national markets may face serious capital constraints, we would like to underline that a *one-size-fits-all* approach would be unsuitable and even harmful. Therefore, we urge the Commission to take into consideration that the market conditions in the different MS should be adequately addressed both by the MS and EU authorities. We would like to emphasize that institutional interventions in the form of state aid should be secured only in the areas where commercial deployment of VHCN is not viable independent of the relevant time horizon, which would secure the fair and equal treatment of all market players and benefit the end-users.

1. Overall state of broadband connectivity

Looking at the EU telecommunication market, the current state of market evolution towards VHCN is characterized by a rather uncoherent landscape with regard to the connectivity infrastructure.

Currently, there are areas with VHCN in place or areas in which VHCN will be deployed through private investments using different technologies (FTTH, FTTB, FWA, and cable upgrades).

In addition, there are areas without VHCN, but with retail competition dynamics in place on the basis of local loop unbundling (LLU) and sub-loop unbundling (SLU) wholesale access offered on significant market power operators' (SMP-Operators) copper or hybrid copper/fibre networks (FTTN).

There are however also areas, which are not and are not going to be covered by any of those technologies in the near future, infrastructure competition is not in place, and so achieving the connectivity targets set by the Digital Compass would be put towards the end of the decade. Therefore, these should be covered by alternative technologies (i.e. FWA, mobile or satellite services).

Having those three areas in mind, to ensure a minimum market distortion caused by state aid measures, and to guarantee a maximum wholesale and retail take-up of the connectivity services on the state funded networks, VATM would like to highlight that:

- the proposed guidelines must consider enhancing the level of private investments in commercially viable VHCN deployment areas resp. areas already covered by VHCN not being undermined by state funded networks. This, they are currently not able to do and, therefore, must be adapted;
- in the selection processes for granting state aid, all market players have a fair chance to bid and win;
- the current competition dynamics in the areas subject to state aid are preserved, improved and not undermined by excluding physical unbundled access to state funded networks.
- state aid is granted only for the deployment of networks that are future proof and that are upgradable to the connectivity objectives foreseen by the European Union's Digital Compass 2030.

In Germany, we see competition as a main driver of infrastructure development and no state intervention would match the effect and distribution of the available private investments. Therefore, we see some of the suggestions made in the proposed Guidelines as inconsistent to the observed surge in private (fiber) investments. We would like to emphasize that currently, the German market is one of the most rapidly evolving markets in Europe in terms of connectivity infrastructure development.

For that reason, we would like to express our concern to the proposed changes related to:

- the classification, competitive assessment of the target intervention areas and step change conditions in those areas for public support to Gigabit fixed networks;
- adjustment of the wholesale access conditions in relation to services offered;
- the possibility of engaging in private extensions by the state aid beneficiary;
- the mapping requirements set by the Annex I part of the proposed Guidelines.

VATM notes with concern that if those changes would be confirmed in the final text of the proposed Guidelines, they will lead to a significant alteration of the competition dynamics in the German telecommunications market and will harm existing and future private investments in VHCN as well as access seekers to the state funded networks, and ultimately would have negative outcomes for the end-users.

2. Classification, competitive assessment of the target intervention areas and step change conditions for public support

2.1 Market failure and intervention thresholds

The proposed Guidelines define 'market failure' as follows:

Member States may define the deployment and/or the operation of a broadband network as a service of a general economic interest (SGEI) under the following conditions:

*The project must address a **market failure**, this is to say only in unconnected areas where it can be demonstrated that private investors are not in a position to provide adequate broadband coverage to all users in the relevant time horizon, thus leaving a significant part of the population unconnected (...).*

VATM questions whether this definition appropriately addresses the market situation defined as 'market failure' the main characteristic of which is putting unmet connectivity demand in relation to a 'relevant time horizon'. The definition rightfully states that the lack of investments in the area in question should be demonstrated but fails to identify a set of criteria other than 'adequate coverage' and 'relevant time horizon' which can be reliably evaluated. This raises the question how transparent and justified this evaluation might be if it does not take into account the complex socio-economic factors of a certain area, but rather simply pursues connectivity speed thresholds.

VATM is gravely concerned by the implications of the definition, should it remain in its proposed formula. If we take as an example the German market, there is a surge of private investment and entrepreneurial interest towards connectivity infrastructure deployment. However, due to the lack of workforce and suitable technical capacities, there is a huge discrepancy between the available capital and the time frame it could be put in actual use. It should be noted that in the context of the Covid-19 pandemic the consumer demand has risen and now, connectivity is part of the political platform of the elected local authorities. The result is that we already today face the absurdity of a booming market competing with state aid granting authorities for deployment capacity. Should state aid be awarded based solely on the assumption that there is no 'adequate coverage' within the 'relevant time horizon', large parts of the commercially viable VHCN deployment potential in Germany can and will become eligible for subsidies. If the total commercially viable VHCN potential is larger than the available deployment capacity within the "relevant time horizon", this time horizon loses its value for any sensible decision. We therefore underline that state aid must be kept under strict scrutiny for only those areas where it is actually needed

based on economic parameters as the excessive public funding might lead to shrinking of investments and damage the market dynamics all over the EU.

Furthermore, taking into consideration the proposed definition of '*relevant time horizon*' as: (...) *a time horizon used for verifying planned private investments and corresponding to the time frame of the planned deployment of the State funded network, starting from the moment of publication of the public consultation on the planned State intervention until the entry into operation of the network* (...), VATM finds it to be vague, confusing and overall, not fit for its purpose. We would like to express our serious doubts that the formula '*verifying planned investments*' describes any suitable means for evaluation of the planned investment. The concept is therefore unsuitable to the task and must be adapted to account for these deployment capacity constraints. In addition, the interventions must secure fair and equal treatment of all market players to ensure effective retail competition and corresponding end-user benefits.

The definition states that "(...) *the relevant time horizon cannot be shorter than two years*". We question whether this period is adequately set as the definition does not provide any criteria how the actual contributions and actions of a private investor should be evaluated in order their (planned) investment to be verified. We understand that the intention behind this definition is to secure reliable commitments on behalf of the enterprise/entity engaged in the infrastructure deployment. However, we can equally well contemplate that a period of two years is too long if it comes only to a planning manifestation and that the same period is too short if it comes to its execution. Hence, the suggested period is misleading and completely unsuitable for achieving the objectives set by the Digital Compass.

VATM would like to emphasize that every investor would like to have their long-term investment opportunities protected. Therefore, the commitment to an investment must be based on a self-sustaining expansion, which cannot rely on only two years as this would harm the predictability of the regulatory environment. The Commission should take a position that ensures that private investments are not endangered by unnecessary state aid intervention until 2030 and the investment security is not limited to two, three or four years.

In addition, the experience of our member companies unequivocally points out that they are not able to provide reliable planning on the exact infrastructural extent of the future VHCN access network (i.e. exact addresses covered) for a period longer than one year. This is due to variables as changing demand, obstruction- and reduction measures in broadband deployment related for example to lengthy permit procedures. However, through the active dialogue between the industry and the responsible authorities we have been able to develop a system of '*analysis of potential areas*' which enables longer non-binding planning. This system secures the necessary flexibility for the companies as it defines the geographic areas subject of the planned private investment but does not individualize the connection points. So, a scientifically sound analysis is the basis of the evaluation which areas are

most likely to be reached sustaining a viable business case based on their technical and economic parameters. These areas can therefore be kept out of an extremely costly, both for local authorities and for companies, public funding for a longer period. The system provides for a more effective public aid intervention and targeted public spending in areas where it is proven there is no business case in mid to long term.

We therefore propose that the 'analysis of potential areas' would be a more suitable approach for defining 'market failure' securing that in the areas with proven investment potential a binding detailed planning with a perspective of one year is executed.

In the proposed Guidelines, the definition of 'market failure' stretches even further as it addresses the conditions for market failure in white, grey, and black ultrafast areas. It is our view as VATM that it fails to consistently establish a set of reliable assessment criteria. In particular, the additional criteria according to which a market failure should be determined, create the risk of neglecting the extent to which the private sector is able to address end-users' needs. In addition, it widely broadens the scope of a public intervention by incentivising it in areas defined by a functioning market competition and sufficient private investments.

The proposed Guidelines set the threshold of 1 Gbps download and 200 Mbps upload speeds. While this may be appropriate as a target for the network subject to state intervention and in the context of the step-change assessment, the set threshold cannot be a sufficient indication of a demonstrated market failure.

We fear that if implemented in practice this threshold would lead to a market failure case for grey or even black areas, even though one or more ultrafast networks that can deliver download speeds of well over 100 Mbps are already available there. In fact, even the usual retail products currently provided by the VHCN-operators tend to fall below the minimum 1 Gbps download and 200 Mbps upload thresholds.

It is our view that state intervention should remain the exception and not become the rule. However, the threshold set by the proposed Guidelines creates an incentive for an excessive state aid intervention in large parts of the territories of the EU MS.

Therefore, we urge the Commission to re-examine the relation between the threshold and the classification of a certain area (white, grey or black) as an area of market failure, in order to prevent excessive state interventions which might lead to a competition distortion and crowding out of private investments.

2.2 White Areas

Regarding the definition of white areas and the conditions of step change that would be associated to those areas for assessing the appropriateness of the aid measure as a policy instrument, VATM agrees with the white area definition. However, the proposed step change rule for white areas should be altered in order to better reflect the needs of the market.

The proposed Guidelines set that “Where the existing networks are not able to provide ultrafast download speed, public support must:

- *Below 30 Mbps download speed: at least double the download speed and at least reach 30 Mbps download speed*
- *30 Mbps and above download speed: at least triple the download speed and at least reach ultrafast download speed”*

This proposal implies that in white areas (irrespective of the network performance being below 30 Mbps or above 30 Mbps download speed) state funded networks could continue to be based on copper networks, by upgrading them partially to fiber (FTTCAB).

VATM disagrees with this proposal as it is unsustainable and goes against the motion of future proof infrastructure. Regardless of the type of areas, the state funded networks should aspire to reach to the greatest extent possible the connectivity objectives established by the Commission’s Gigabit Communication and by the Digital Compass and to **guarantee**, even in the white areas, **achievement of at least the performance of an ultrafast broadband access network as defined by the proposed Guidelines (100 Mbps download speed)**.

However, it will take many years, even for State aided operators, to build out to all premises in white areas. Specific isolated premises within white areas (e.g. rural SMEs, farmhouses, residential homes located away from public roads, etc.) are likely to remain underserved by ultrafast access networks up until the end of the time horizon set by the Digital Compass. Therefore, the Commission could include provisions in the Guidelines to allow for specific connectivity vouchers for such ‘long lines’ cases, enabling recipients to obtain the best realistically available connection for the time being, even if it has to be by means of a custom project for their premises. In order to keep expenses manageable, such connections could potentially be of lower speed than the State aided network being built out in the white area. However, this intervention should be aiming at improving the socio-economic conditions of these specific users considerably, compared to a situation in which they would have no broadband, or only the most basic broadband which is insufficient to participate effectively in European society.

2.3 Black Areas

The European Commission should take a very cautious approach when assessing the intention of the MS to use public funds in black areas. The Guidelines should define a clear presumption against the use of public funds in all but the most exceptional circumstances. The wording on step change should be aligned with the one provided in the definition of market failure in black areas as any intervention in these areas is likely to distort competition and be incompatible with the internal market under the provisions of the Treaty on the Functioning of the European Union (TFEU, Art 107 (3) (c)). The extension of market failure concepts to areas where there is competitive investment is gravely concerning and risks

disincentivising further investment if investors believe that their investments will be undermined by state subsidised networks over time.

VATM considers that the guidance as currently formulated neither provides sufficient safeguards against potential market distortion nor ensures that private investments are not disincentivised. The same applies to the approach of 'enhanced upload speeds' under which intervention could be permissible in areas where networks providing 1 Gbit/s download speeds already exist. We would like to underline that the criteria for defining a potential market failure with regard to upload speed according to the proposed Guidelines are too vague, and interventions carried out on this basis could have significant distortive effects. Consistent with the principle that state aid should be limited to what is necessary to achieve the public policy objective (in this case, ultrafast connectivity), state aid should in principle not be permissible where private investors have already created the capability which is the object of the set public policy.

We would like to reiterate that by their own definition, black areas are the ones in which at least two independent ultrafast networks are present or credibly planned. Consequently, they are areas in which more than one undertaking deemed or deems the investment in ultrafast broadband networks profitable. This state provides for a higher demand on the consumer side, which also incentivise the provision of higher threshold speeds (both download and upload). **Therefore, state intervention in those areas should be permitted under restrictive conditions in exceptional cases and only when the planned intervention would reliably secure symmetric 1 Gbps download and upload speed, as this would be the only future proof scenario justifying a state intrusion into a functioning market.** In addition, the step change condition should be able to preserve and improve the strong competition dynamics in place through an obligation of physical unbundled access on the state funded network which should in principle apply for any state aided network irrespective of whether an area is considered black, grey or white.

2.3 Mixed areas (white and grey)

VATM would like to point out that the concept of mixed areas consisting of intervention areas which are partly white and partly grey contradicts the principles of state aid control. Overbuilding of existing networks in areas not eligible for funding will always have distortive effects and crowd out private investment. Any overbuilding, however limited in its scope, will always be "undue" and hence inadmissible. We do not see any room for MS to demonstrate that overbuilding would be proportionate and would not create undue distortions of competition.

Furthermore, despite the 10% maximum limit and depending on the layout of mixed areas, the overall effect on the already existing networks may be anything but limited and has significant distortive effects. Thus, the concept of "mixed areas" has a great potential for abuse.

Therefore, **we urge the Commission to remove this possibility from the proposed Guidelines altogether and clearly defines that grey and white areas should be subject to a separate evaluation and state aid regime.**

3. Wholesale Access Conditions

With respect to the wholesale access conditions foreseen by the proposed Guidelines, VATM would like to highlight that the Broadband State Aid Guidelines currently in force rightfully require (among others) full physical unbundling per default in order to strengthen competition and to avoid the creation of regional monopolies in all target areas. 'Virtual unbundling' is considered to apply on a subsidiary basis only and only as long as full physical unbundling is technically not feasible for the funded network.

The proposed Guidelines, by contrast, differentiate the types of wholesale access products required to be offered by subsidized fixed access networks depending on the competitive situation in certain intervention areas. This is understood to be motivated by desire to reduce the amount of aid granted. Therefore, it is foreseen in the market failure areas subject to state aid that only a limited number of wholesale products would have to be offered. The draft outlines a particular preference towards the Virtual Unbundled Local Access (VULA) over full physical unbundling in all intervention areas. In this regard, VATM opposes this paradigm shift and urges the Commission to sustain the currently applicable regime. It is VATM's view that the offering of full physical unbundling and of additional products in high demand such as bitstream access to the state aided network independent of the classification of the intervention area as white, grey, or black would guarantee sustainability on the market based on competitiveness and future proof telecommunication services.

We see the proposition of the Commission to rely on VULA as pivotal access product in the different intervention areas as short-sighted and even harmful considering the limitations that it would impose on the technological capabilities of the access seekers' networks. VULA was and is only an inferior replacement service, where physical unbundling is not feasible (i.e. vectoring on local copper lines). Access seekers to state aided networks should be able to rely on capabilities fit for technological innovation enabling them to use advanced transmission equipment, and to compete based on differentiated quality and speed to price ratios. VULA should not be regarded as a product with quality and availability, which sustainably provide for such capabilities.

In this regard, we can give as an example the situation on the German market. In the past, full physical unbundling was considered to be the most important and absolutely necessary product made available by the SMP operator. However, this partly changed when vectoring was introduced to the copper-based network and made physical unbundling impossible at some network levels. In order to provide access to the network at least to certain extent, VULA was introduced, but was always considered to be an access product of limited quality and capability compared to the full physical unbundling. The same happened in state aid scenarios, where financial aid was used by third-party operators to access the

copper network of the SMP operator with VDSL-based vectoring technology. Here neither the SMP operator nor the operator of the funded network could provide physical unbundling to the copper network due to the technical characteristics of vectoring. So VULA was introduced as an obligation on the active operator – but only as a stopgap measure.

Now, when we enter a new phase of infrastructure deployment all over Europe, we see that all new fixed networks are based on fiber optic with a higher capacity than ever before. VATM considers that it would be a mistake to rely on a provisional access remedy such as VULA for the longer term limiting the possibilities which the fiber infrastructure potentially provides depending on current and future access technologies used on the fibre infrastructure-. We would like to emphasize that offering better quality services drives competition and enhances innovation – two of the main objectives defining the EU policies and vision for the future. Thus, we see the suggestion made by the proposed Guidelines that VULA should be universally accepted instead of full physical unbundling is gravely concerning and going against the long-term digital targets set by the Digital Compass. Furthermore, due to the rising demand for better connectivity on the wholesale as well as on the retail market, also in white areas, we expect that new services with far reaching requirements and security needs will emerge and their provision would not be feasible based on VULA.

Finally, VATM would like to emphasize once again that also in white areas, if there are reasonable requests from access seekers physical unbundled access and bitstream access should (in addition to duct access and access to dark fibre) continue to be offered by the state funded network. This is necessary to ensure that alternative operators would be able to deploy their own equipment and offer differentiated and innovative service propositions similar to those in grey and black areas. This is important to ensure that consumers, businesses, and public sector entities in white areas are not left behind.

In conclusion, we consider that the current Guidelines offer a better suited framework on this subject and should be considered more appropriate than the suggested changes.

4. Private extensions by state aid beneficiaries into adjacent areas

With respect to the issue of private extensions by a state aid beneficiary, the proposed Guidelines foresee that: *“When carrying out a public consultation inquiring about existing or planned network in the target area, the Member State must indicate that private extensions are permitted at a later stage unless interested parties in an adjacent area oppose such extensions during public consultation process.*

If, in the mapping exercise and public consultation, interested parties demonstrate 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”

VATM would like to express its concerns on this proposal. The policy objectives underlying the proposal aim at ensuring maximum extension of the best connectivity solutions and their effective take-up. We would like to highlight that even in case such extensions are allowed with conditions, in addition to the competitive advantage provided by the state aid to new deployment in the reference areas, the beneficiary would be given an additional competitive advantage also in the adjacent private extension areas, enabling it to damage the business case of existing comparable infrastructures built exclusively with private funds. In addition, allowing such extensions could negatively affect private investments which are not yet amortized, which were committed without prior knowledge of potential state aided competition. Thus, the network extensions into adjacent areas in their proposed form can lead to an overbuild of existing (even Gigabit-capable) network infrastructures and to significant distortive effects on competition. It is therefore necessary that the revised guidelines must contain provisions to counter these effects.

However, the rules contained in proposed Guidelines are not appropriate to meet this objective, both from a procedural point of view and with regard to the preconditions they set for excluding private extensions. The Guidelines require interested parties to oppose to private extensions in the public consultation process. This is unlikely to be an effective approach as at the beginning of the mapping and consultation process the target area is not yet (clearly) defined and can only be determined after the procedure. Therefore, it may be highly unclear which adjacent areas would be relevant for possible extensions. There is also a possibility that the concerned network operators do not participate in the consultation process because they do not have any relation to the target area, yet their infrastructure present in adjacent areas may be subject to a later overbuild by extension of the subsidized network.

To avoid such practical discrepancies, rules on the permissibility of private extensions should apply without the need for opposition to extensions in the consultation process.

Even more problematic are the conditions under which an extension is to be ruled out (temporarily). The current proposal requires the relevant adjacent areas to be *“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”*.

This would potentially allow private extensions (and thus overbuild) into (grey or even black ultrafast) areas which even according to the proposed intervention thresholds would not be eligible for funding. State aid-induced extensions could thus massively crowd out actual and future private investment in areas where clearly no market failure exists.

Therefore, the rules on private extension need adaptation. Otherwise, the permissibility of private extensions could de facto lead to an “anything-goes” scenario, with aid-induced extensions resulting in massive distortions of competition

One approach could be to allow extensions only into those adjacent areas that would themselves be eligible for funding under the intervention thresholds. Should the Commission nevertheless opt for allowing such extension with conditions, VATM urges the Commission to amend the criteria in a way to protect other operators’ existing private investments and to make sure that those investments are adequately amortized before allowing these to be challenged by state aid beneficiaries’ extended networks. VATM would like to emphasize that in this case a review of the definition of severe competition distortion would be necessary, so no extension into an adjacent area is permissible when there is at least one comparable infrastructure in the adjacent area which has entered into operation less than 10 years before the state funded network enters into operation.

In addition, VATM would like to request that the extension of the period of standstill during which the state aid beneficiary could not make private extensions from the currently proposed two years to five years after the publicly funded network enters into operation.

Only by introducing the proposed amendments could the negative impact of private extensions by state aid beneficiaries on the private operators’ investment be limited to an acceptable extent.

5. Annex I, Mapping

VATM would like to raise the concern that the introduced Annex section rather confuses than clarifies. In particular, we see many of the suggestions as burdensome for all market players and sometimes even unjustified especially when looked upon in relation to the European Electronic Communications Code (EECC).

We question whether the recommended mapping methodology described in the Annex, which is referred to in paragraph 74 of the draft Guidelines as “*the most accurate method*”, could be classified as such. It is VATM’s view that it is rather unpractical and prescriptive. The methodology in question focuses on the achievable performance under peak load conditions that end-users can rely on. This peak load is identified, with regard to fixed networks, as the time when at least 20% of the users are active and transmitting simultaneously at the nominal peak rate. Using this as a main requirement, the methodology would likely lead not only to a distorted picture of the user behaviour but also to an underestimate of the actual speeds available to subscribers.

Therefore, if applied, the mapping methodology would create a risk of artificially inflating the number of areas eligible for state aid intervention. Usually, the telecommunications network operators take peak load factors into account when dimensioning the network. However, these are not typically calculated by assuming 20% utilisation at nominal peak upload and download rates but rather determined by typical

use cases for different user groups. Thus, peak load factors can vary widely across the EU. However, the recommended methodology is not one that network operators use when dimensioning network capacity. The same arguments apply in view of the recommended mapping methodology for mobile networks. Neither the recommended methodology, nor the too narrow options for alternative methodologies defined in paragraphs 4, 5, 9, 10 and 12 of the Annex that paragraph 74 of the draft Guidelines refers to would lead to more reliable evaluation of the areas suitable for public intervention. We are concerned that contrary to what the Commission intended, the suggested mapping methodology would probably lead to less reliable results compared to nationally proven approaches. VATM therefore would like to emphasize once more, as noted under Point 2 of the current Position Paper, that we were able to develop a collaborative mapping approach as '*evaluation of potential areas*' which was accepted as a timely and suitable solution by all stakeholders.

Therefore, VATM would like to express the view that the mapping procedure introduced in Annex I of the proposed Guidelines is unnecessary as it focuses on comprehensive detailed (but to a large part arbitrary) technical specifications, which deviate profoundly from industry practice, provide questionable added value and that may lead to unintended consequences. They would make the whole mapping process a lot more complex and are unnecessary as there is a mapping procedure already set by the current state aid regime and the EECC, which is also the basis of '*evaluation of potential areas*' we already agreed upon and use:

We would like to point out that there are already processes (to be) implemented in national law in all MS based on the provisions of the EECC (Art. 22) on geographical surveys of network deployments. Based on this, MS have already established or are going to establish exhaustive mechanisms to assess existing (and possibly planned) broadband coverage, which may as well serve as the basis for a mapping exercise in the context of state aid measures. Therefore, there is no need of any additional mapping procedures.

Building on that, it should also be taken into account that the EECC (Art. 102) requires the network operators to create transparency about essential performance characteristics of broadband connections in the form of a contract summary, for which the operators must also be liable vis-à-vis their customers. Thus, the requirements set in the available EU legislation provide for sufficient data gathering to enable a qualitative benchmarking not only of the technical coverage but also of the performance of the relevant networks, which makes a completely new mapping procedure on the basis of peak-time performance is obsolete.

The Commission should therefore completely refrain from making any (additional) specifications on mapping in the context of the revised Guidelines. Instead, the new broadband guidelines should refer to the respective sections of the EECC.

Should the Commission nevertheless decide to proceed with the current proposal for a new mapping procedure, it should prioritise the most underserved areas. Considering the large number of potentially eligible households and the subsequent amount of funding procedures combined with the shortage of construction capacities such prioritization is necessary.

Finally, the proposed mapping procedure introduces a very restrictive definition of '*premises passed*'. The definition would unduly exclude many premises with available supply capability on the basis of existing infrastructure. In this regard, there are arbitrary specifications which appear to be completely detached from what is standard market practice both in terms of time (service activation within just 4 weeks) and in terms of costs (not exceeding average activation cost).

These arbitrary specifications are introduced in the proposed Guidelines by the term "activation fee", which in common market practice does not refer to the costs of connecting a building or premise passed to a network, but to the technical activation of a broadband product. The costs of turning a "passed" building or premise into a "connected" one, as well as the fact that they are borne by the owner, are customary in the market and universally accepted. Therefore, the term which properly addresses the described situation would be "connection fee". Finally, the mandate for "premises passed" should include all address points for which it is possible to set up a building connection at standard market conditions and within a reasonably short period of time.

6. State Aid for mobile networks

VATM welcomes that for the first time the revised draft Guidelines are to provide guidance on state aid for the deployment of mobile networks. It is VATM's view that the flexible approach to the step-change concept introduced by the Commission is timely and appropriate, taking into account the ever-evolving technological developments and allowing for MS to bring transformational 5G into rural areas, in order to bridge the digital divide and avoid depopulation trends. The revision of the Broadband State Aid Guidelines represents a great opportunity to rethink the most suitable approach to state aid for mobile networks enabling public intervention to serve the achieving of the Digital Compass targets and to enable the digital transformation in a fair and equal manner across the EU.

We therefore welcome the guidance on mobile market failure as defined by the Commission in the proposed Guidelines. Paragraphs 65 and 66 of the proposed Guidelines in relation to the provisions on step change in mobile networks (paragraphs 107-109) secure a straightforward approach for the MS on defining target areas for state intervention. Target areas can be for example 4G (or even 5G) networks where such networks do not (and are not expected to) provide end-users with sufficient quality of services. In relation to the guidance on step change, we also welcome that the Commission recognises that public funds represent a key policy element to deliver on bringing transformational 5G (i.e. 5G Standalone – not built on 4G core and using legacy licenses) beyond urban (and sub-urban) areas and industrial parks. According to paragraphs 107-109 each generation of mobile technologies represents a

step change compared to the previous generation (i.e. 5G standalone is a step change compared to 4G). The views expressed by the Commission go even beyond that by considering standalone 5G a step change from non-standalone 5G. We consider this to be a pivotal principal for the further development and expansion of mobile services.

Another positive element of the proposed Guidelines is mentioned in 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 as long it is an integral part of a significant upgrade of network's capability.

In conclusion, VATM would like to emphasize that the proposed Guidelines clearly outline the far-reaching ambitions of the Commission towards the targets set by the Digital Compass. We support this approach and salute any measure that would make EU fit and competitive for the digital future. We therefore sincerely hope that our suggestions, observations, and experience would be taken into account and ultimately, would help to shape a better policy securing agility and sustainability of the digital services all EU citizens rely upon.