

## Commission's Draft Guidelines on State aid for broadband networks (the 'Broadband Guidelines')

### CEDEC reply

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#### General remarks

CEDEC, the European Federation of Local Energy Companies, welcomes the opportunity to comment on the European Commission's draft guidelines on state aid for broadband networks (the 'Broadband Guidelines').

The connectivity goals for 2025 as well as the Digital Compass setting out the EU's digital ambitions for 2030 require investments that need a **coherent and reliable investment framework** for the further deployment of broadband networks. Against this background, CEDEC welcomes the revision of the Broadband Guidelines in light of latest market and technological developments and fast evolving connectivity needs as reflected in the current EU priorities. In line with the objectives, it is crucial to ensure that EU measures urgently foster the deployment of very high capacity (VHC) networks, as those are key for a enabling remote working and schooling, healthcare, and personal communication and entertainment. The past two years of COVID-related restrictions on professional, educational and personal mobility and life have proven how essential the access to reliable and high-quality internet access has become for our daily lives and for the functioning of society.

It is important to ensure that the Broadband Guidelines are consistent with other EU legislation on electronic communications and broadband network deployment, providing a coherent legal framework. This applies in particular to the **European Electronic Communication Code** (Directive (EU) 2018/1972 – EECC) and the revision of the **Broadband Cost Reduction Directive** (Directive 2014/61/EU - BCRD). The guidelines must take into account that the reviewed BCRD will lay the new foundations for the deployment of broadband networks in the EU. Consistency as regards the definitions, in particular in line with the terminology used by the Body of European Regulators for Electronic Communications (BEREC) must be ensured, to provide legal certainty for operators and their long-term investments in infrastructure.

In the context of the twin transition – green growth and digital transformation – CEDEC also welcomes that the proposed Guidelines allow for the consideration of aid aligned with the **European Green Deal** as having wider positive effects, for example in improving energy efficiency of network operations or the design of State aid measures that also contribute to fostering the achievement of the Green Deal objectives.

CEDEC also wishes to highlight the diversity of starting points in the EU Member States. This diversity is reflected in many aspects, among which the existing infrastructures, the roll-out speeds of new infrastructures, the market characteristics (in terms of number and type of actors, including local and public shareholders) and the demand for fibre optic. The Broadband Guidelines should take these different realities in EU countries into account by foreseeing the necessary flexibility in view of an optimal implementation for citizens and businesses.

### **Summary of key points:**

- Foster deployment and take-up of VHC networks by limiting state aid to future-proof technologies (i.e. fibre optic networks) in line with the Digital Compass and the EU's strategy towards a European Gigabit society.
- Ensure a coherent legal framework, in line with the Broadband Cost Reduction Directive, and consistency with existing definitions as introduced by BEREC and the European Electronic Communications Code to ensure legal certainty for operators.
- Align the concept of backhaul networks with the definition used by BEREC.
- If any demand-side measures, such as connectivity vouchers – which CEDEC considers indirectly contributing to the effective deployment of VHC networks – would be applied, they should be targeted solely to fibre optic networks and should not be used for existing networks.

In the following, we explain the adjustments required to the proposed draft to ensure that the new Broadband Guidelines can make an essential contribution to achieving the EU's digital targets:

### **Restrict funding to gigabit-capable networks**

The EU's strategy towards a European Gigabit society emphasises the importance of the widespread deployment and take-up of VHC networks, in rural as well as urban areas and across all of society, to achieve the full economic and social benefits of the digital transformation in Europe. The availability and take-up of VHC networks will enable the widespread use of products, services and applications in the digital single market.

The increase in the connectivity goal to 1 Gigabit in the draft Guidelines reflects the growing importance and need for high bandwidth for the economy and society. To support the aim of supplying Gigabit-connectivity to all households in the Union, universal deployment of full-fibre networks (Fibre to the Building – FTTB/Fibre to the Home – FTTH) up to the end customer's residence must be fostered. Therefore, it is crucial that the revision of the Broadband Guidelines focuses on ensuring that subsidised expansion will in future only benefit full-fiber networks, which is a future-proof infrastructure and a prerequisite for the roll-out of 5G networks. There should be no subsidies for obsolete technologies. This is the only way the Broadband Guidelines can create the right investment environment and conditions for the deployment of advanced digital – very high-capacity – networks, ultimately contributing to the achievement of the targets of the European Union as set out in the Digital Compass and the goals of the European Gigabit society.

Where fiber optic networks are funded and expanded into every building, less powerful access technologies such as those that use copper cables for the last mile (excluding in-house) should not have access to the passive infrastructure (empty pipes/cable ducts, etc.) of a new funded FTTB or FTTH. When state aid is given for the deployment of fiber networks, active and passive wholesale access should be mandatory in all cases. This condition should always be foreseen.

### **Need for uniform definitions (incl. market failure – section 5.2.2.1)**

To ensure legal certainty for operators, the Broadband Guidelines should be coherent with the EECC and should apply the definition of a VHC network as established by the BEREC guidelines. As an example, the current draft Guidelines only use bandwidth as a definition of access. According to the BEREC definition also other parameters (IP packet loss ratio, IP packet error ratio, etc.) should be used.

Also the threshold values (intervention threshold – 100 Mbit/s, market failure threshold – below 1 Gigabit/s download and 200 Mbit/s upload) proposed by the draft Broadband Guidelines diverge essentially from each other. To avoid subsidies to technologies that are low-performing, unsustainable and not future-oriented, fundings schemes' intervention and target bandwidths should at least be coherent with the definition of VHC networks established by the EECC and the BEREC guidelines. A focus on fibre or at least VHC networks would also reduce the overall complexity of funding schemes and save public funds.

Coherence must also be established with the upcoming BCRD as regards the re-usability of existing infrastructure. It must be ensured that only those infrastructures that are suitable in such a case should be used.

### **Backhaul networks (section 5.2.2.3)**

The inclusion of backhaul networks, depending on how the concept is defined, can have significant effects on the existing competitive situation in the local and regional broadband access market. In order to avoid distortions of competition by strong market players in the mobile and fixed network segment, the backhaul network should be considered from the first concentration point of the fixed network and not from the mobile antenna to a local concentration point, in accordance with the definition established by BEREC.

When promoting mobile communications, the impact on the fixed access market must always be considered and priced in. As subsidised mobile network operators might also be active in the fixed access market, public funding for mobile access markets might create dominant positions in the fixed market, ultimately disrupting competition.

### **Mapping (section 5.2.2.4.1)**

In general, CEDEC advocates for proportionate reporting obligations and mapping details. The obligations and details should be kept to a minimum necessary for establishing a market failure to limit the burden on smaller local and regional fibre operators which should rather use their (scarce) resources to foster the deployment of broadband networks.

#### **Public consultation (section 5.2.2.4.2)**

In general, CEDEC agrees with setting a minimum period for a public consultation. Our observation in several EU Member States, however, has shown that there is a need for a much longer period, due to the large number of fundings procedures running in parallel within a country. Therefore, CEDEC recommends a minimum period of 60 days.

#### **Claw-back (section 5.2.4.5)**

The reduction of the clawback threshold is seen critically, as a higher bureaucratic burden for smaller projects is expected at the same time. CEDEC believes that this reduction could lead to fewer operators actively participating in the competitive selection procedure. Ultimately public money will be allocated to only a few operators (mostly dominant market players), which may have adverse effects on the achieved quality and price.

#### **Connectivity vouchers (section 6.2)**

The main focus of the Broadband Guidelines should be on the efficient roll-out of broadband network. Nonetheless, demand-side measures, such as connectivity vouchers can also indirectly promote the effective deployment of VHC networks which are anyway required in the first place to be able to create an infrastructure market response on future demand.

If a connectivity voucher system is used, then its design still needs to be improved. The current proposal foresees that vouchers can be applied to existing networks. However, vouchers should mainly be targeted to accelerate the competition-based expansion of fiber optic and to further promote nationwide access to fast internet. It is, therefore, seen critically that the proposed guidelines foresee the application of connectivity vouchers to customers of existing networks.

Also, it is important that demand-side measures are only applied to sustainable and FTTB/H networks (or at a maximum for VHC networks) to ensure the take-up of newly built fibre-optic networks. Connectivity vouchers could likely benefit large and dominant companies in the market that operate copper and cable infrastructures which are not future-proof and sustainable.