

## Response of Vantage Towers AG to the consultation launched by the European Commission on the revision of the Guidelines on State aid for broadband networks

11 February 2022

### 1 Executive Summary

In 2021, the European Commission launched a targeted public consultation inviting all interested parties to comment on a proposed revision <sup>1</sup> of the Guidelines on State aid rules for broadband networks (the 'Draft Broadband Guidelines') <sup>2</sup>, which aim at facilitating the deployment and take-up of broadband networks in areas suffering from insufficient connectivity services, such as remote and sparsely populated regions of the EU.

This initiative could not come at a better time: mobile connectivity is playing an ever-increasing role as the backbone of [Europe's digital society](#)<sup>3</sup> and key to Europe achieving the "twin" green and digital transition. Indeed, the sizeable funds from the EU Recovery and Resilience Facility and Member States' budgets set aside will significantly help to advance the roll-out of 5G connectivity to rural and remote areas.

As regards mobile networks specifically, this initiative will enable the Commission to consider the developments in the mobile telecommunications market in recent years which significantly changed the way the industry functions. In most of the EU Member States, operators of passive mobile infrastructure (TowerCos) have started operating and expanding the passive infrastructure of mobile networks (in particular ground-based and rooftop towers). This corresponds to an industry trend whereby MNOs are focusing on their core business of providing electronic communications services to their customers, while relying on partners for the physical deployment of their communications towers.

With approximately 82,000 towers<sup>4</sup> across 10 European countries<sup>5</sup>, Vantage Towers AG is a major mobile telecommunications tower infrastructure operator in Europe. The company is headquartered in Germany and listed on the Frankfurt Stock Exchange. Vantage Towers is currently engaging in a number 5G corridor projects as well as in several rural mobile subsidy schemes. This and its wide-ranging, geographically diverse infrastructure network places Vantage Towers in a key position to contribute to the consultation and to give an industry perspective from a TowerCo, as to what is required to facilitate the successful roll-out of mobile networks in areas not adequately served by the market (both in terms of coverage and quality of services) and, ultimately, achieve the European Commission's 2030 target of full 5G coverage of all populated areas.

Therefore, Vantage Towers appreciates the opportunity to comment on the Draft Broadband Guidelines, which echo Vantage Towers' commitment to power Europe's digital transformation and will help establish

<sup>1</sup> The « Draft Broadband Guidelines ».

<sup>2</sup> Communication from the Commission, EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26 January 2013, p. 1, "**Broadband Guidelines**".

<sup>3</sup> Connectivity target by 2030: Gigabit for everyone, 5G everywhere, 2030 Digital Compass: the European way for the Digital Decade", See Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and Committee of Regions, 2030 Digital Compass: the European way for the Digital Decade COM/2021/118 final

<sup>4</sup> *i.e.*, either ground-based towers or located on the top of a building, where communications equipment is placed to create a cell in a mobile network.

<sup>5</sup> In Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Portugal, Romania, Spain and the UK.

the region as the world's digital leader. Overall, Vantage Towers very much welcomes the approach taken by the Commission in the revised Draft Broadband Guidelines.

In particular, **Vantage Towers wants to highlight and express its support for the following points:**

- Vantage Towers commends the Commission on rethinking its past focus on funding of passive infrastructure only and **explicitly allowing the funding of mobile active network equipment** when needed. To allow for funding schemes that effectively improve coverage in rural areas, **MNOs need to be able to fast forward their active investment plans even when customer demand is still low.**
- Vantage Towers is aligned with the Commission's position that State aid can only be granted if it incentivises the development of infrastructure. **Where an operator is subject to legal coverage and quality of service obligations** (such as the ones attached to the rights of use of certain radio spectrum for mobile deployments), **State aid should not be allowed**, as such aid will not induce the necessary incentive effect for such investment.
- Vantage Towers welcomes the clarification in the Draft Broadband Guidelines that **market failure** as regards mobile access networks does not only exist in areas where there is no mobile network in place or credibly planned to be deployed, but **also in areas where the existing or planned mobile network** does not provide end-users with sufficient quality of services to satisfy their evolving needs. This will **encourage Member States to fund innovative and highly strategic projects such as 5G corridors.**

However, Vantage Towers considers that some aspects of the Draft Broadband Guidelines still need improving. Based on its extensive experience in operating passive mobile infrastructure and with existing and planned aid schemes to support mobile network roll-out, **Vantage Towers proposes targeted changes** to the Draft Broadband Guidelines, including the following:

- **Restrictions** on wholesale access prices should **not exceed the period for which State aid is granted** (i.e., earmarking period, usually 7 years);
- It should be clearly stated that **TowerCos** and not only providers of electronic communication networks **are eligible beneficiaries of aid**;
- **Competitive safeguards** for direct investment model should be introduced **to avoid undue preferential treatment of state-owned entities.**

These proposed changes are consistent with the recent Commission's decision-making practice:

- Lastly, **the notion of end-user needs should be clarified** to avoid the risk of crowding out of private investment and to only stimulate public funding that achieves a multiplicity of network deployment parameters.

## 2 Key amendments for the Broadband Guidelines to support the roll-out of mobile network infrastructure

### 2.1 Funding of active mobile equipment should be allowed

Vantage Towers welcomes the Commission's initiative to **expressly allow public funding for the deployment of both passive *and* active mobile network equipment in underserved areas** when Member States deem necessary<sup>6</sup>.

So far, EU State Aid law applicable to the sector has clearly focused on funding of passive infrastructure only (see e.g., Art. 52a (3) GBER). Accordingly, existing Member State schemes neglect incentives for the roll-out of active mobile network infrastructure despite the developments in the mobile market in recent years.

However, with the changed industry set-up, future subsidy programmes will only be effective in closing the digital divide if there are sufficient incentives to participate in the mobile network roll-out for both TowerCos and MNOs. To support the widespread and high-quality mobile connectivity, certain aid schemes provide for incentives for MNOs, e.g., by setting fixed regulated prices for wholesale access for a certain period no matter how many MNOs use the TowerCo's tower infrastructure<sup>7</sup>.

Vantage Towers stresses that it makes economic sense to allow public funding to apply to both passive and active infrastructure. Given the intensive investment requirements for active equipment such incentives may not suffice to ensure that MNOs chose to cover areas which they formerly did not deem commercially viable. The reasons are that the costs of active equipment are still considerable compared to passive mobile infrastructure. This has most recently been explicitly recognised by the Commission in its decision on the subsidy scheme established by the Autonomous Community of Galicia<sup>8</sup>.

In the past, integrated MNOs which operated both the passive *and* the active infrastructure could ultimately take a different look at funding schemes that were 'passive funding only': They would calculate a funding gap for **the active *and* the passive** infrastructure. Now, MNOs will normally decide not to deploy active equipment on passive infrastructure built by TowerCos under a funding scheme if they cannot expect at least some return on their investment. For example, for Germany, the Federal German government estimates that in the remaining white spots that the government seeks to address with its mobile subsidy scheme, on average, only 21 households will be covered<sup>9</sup>.

There is a serious risk of Member States 'building bridges to nowhere' where an incentive for investments in non-economic areas is provided solely to the TowerCo, but the MNO, who also must make considerable investments, must finance such investments entirely from its own funds or outside capital. These costs can lead to MNOs being discouraged from using the passive infrastructure, which is already subsidised with considerable state funds. For this reason, **Member States should be free to choose to also subsidise the active components of mobile network infrastructure.**

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<sup>6</sup> Cf. Footnote 71: "in case of mobile networks, investments in active equipment may play an important role in the quality of services provided. In such cases, public support may be extended also to active equipment, provided that it does not consist of merely incremental upgrades but constitutes integral part of a significant upgrade in the capabilities of the network."

<sup>7</sup> Cf. European Commission, decision dated 25 May 2021, SA.59574 – Deployment of high-performance mobile infrastructure in Germany, point 77.

<sup>8</sup> Commission Decision (CXXXX) – Spain- SA.57216 Mobile coverage in rural areas in Galicia (not yet published), paras 119 and 120

<sup>9</sup> Based on a study by WIK Consult on selected incentive parameters of the Federal German Mobile Communications Funding Scheme, 2020, p. 4.

Like passive infrastructure, open and non-discriminatory access to the subsidised active infrastructure would then have to be guaranteed for the earmarking period. The sharing of active infrastructure between MNOs is now practiced widely, specifically in rural areas. In some cases, new forms of sharing the passive *and* the active infrastructure of mobile networks via so-called 'neutral hosts' have enabled the industry to further drive down the costs of network deployment significantly.

Therefore, **Vantage Towers strongly welcomes the clarification added in the Draft Broadband Guidelines that Member States, if they deem necessary, may respond appropriately to incentivise the deployment of mobile networks, through complementary support for active infrastructure.** It nonetheless recommends acknowledge more clearly that failure to allow government funding for active mobile infrastructure may limit the effectiveness of government funding for passive mobile infrastructure. As in the Commission's recent Decision on the Galician scheme, the revised Broadband Guidelines should encourage Member States to put forward subsidy schemes which combine the funding of passive infrastructure and active equipment in a coherent way. For example, if a Member State decides to fund passive infrastructure and active equipment, tenders for the two network elements need to be aligned, for example in regards of timing, so that interested participants clearly understand the conditions under which the funds should be used.

**Footnote 71:** 'In case of mobile networks, **given the high investment needed for active equipment, public funding can also be necessary for active equipment.** ~~may play an important role in the quality of services provided.~~ In such cases, public support may be extended **in a coherent way** also to active equipment, provided that it does not consist of merely incremental upgrades but constitutes integral part of a significant upgrade in the capabilities of the network. See for instance Commission Decision (CXXXX) – Spain- SA.57216 Mobile coverage in rural areas in Galicia (not yet published).'

## **2.2 The concept of market failure should be further clarified and not limited to situations where there is no network in place or credibly planned**

It is a general principle under State aid law that funding from state resources can only be provided where market failure exists. Consequently, the Draft Broadband Guidelines rightly state that public funding of mobile network roll-out should only be permissible if a market failure exists, *i.e.*, in those 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.

As regards specifically mobile access networks, **Vantage Towers welcomes the clarification in the Draft Broadband Guidelines that the existence of market failure in this context should not be limited to the sole question of the presence or absence of a mobile network in a given area, but also to the ability of existing mobile networks in this area to address end-users' needs**<sup>10</sup>. The sole question of signal availability or even bandwidth does indeed not cover all the aspects of mobile networks performance, e.g., 5G standalone networks could be seen as a step change to 4G or 5G non-standalone as it allows latency performance and enables applications otherwise unattainable. It is a fact that mere compliance with license conditions (in terms of coverage or bandwidth) may no longer correspond to end-user needs. Reference to the notion of end-users needs, decorrelated from the existence or absence of any pre-existing network and from regulatory roll-out and coverage obligations will allow the funding of projects to levels never attained so far, including 5G cross-border corridors along

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<sup>10</sup> Points 62 to 69 and also point 96 of the Draft Broadband Guidelines.

transport paths throughout Europe <sup>11</sup>. This reference is rightly reflected in the Draft Broadband Guidelines <sup>12</sup>.

**However, Vantage Towers is concerned that the Draft Broadband Guidelines do not provide sufficient guidance on how Member States should assess whether an existing mobile network, e.g. a 4G network or even a 5G non-standalone network, in a given area addresses end-users' needs, in order to determine the existence or not of a market failure and the need for a step-change.** The Commission's policy in the field of electronic communications was successful because it was predicated on a high level of harmonization across Member States. The same must apply to how the notion of end-users' needs should be defined. In the absence of a harmonised approach as to how end-users' needs should be defined, the Commission will be torn between on the one hand Member States unlikely to seize the opportunity arising from this policy change by fear of crossing the line of State aid, and on the other by Member States who will abuse this notion and affect the very competitive nature of the market by funding investments where such funding is not necessary to respond to a market failure.

Pursuant to the principle of subsidiarity, the notion of end-users' needs will have to be defined at the national level. However, **the Commission could define minimum capacity levels which will be deemed to correspond to end-users' needs for certain applications.** This could be the case for instance by defining minimum quality levels (expressed in terms of speed, latency, and capacity) applicable in all urban areas and long certain road, railroad or fluvial transportations lanes.

### **2.3 Pricing and other restrictions associated with the granting of aid should cease to apply after an appropriate period of time**

As rightly pointed out by the Commission in the Draft Broadband Guidelines <sup>13</sup>, as far as State aid poses an inherent risk of distorting competition, it is important to keep its effects to a minimum, both materially and temporally, from the outset. The complex balancing between private sector investment and support from state funds cannot succeed if the grant of aid permanently prevents the re-establishing of market conditions. Accordingly, wholesale access obligations should be set in such a way as to minimise the distortions of competition.

As concerns specifically restrictions on wholesale access prices associated with the granting of aid, Vantage Towers considers that they must accordingly not apply indefinitely. Rather, it must be possible for the beneficiary to return the subsidised infrastructure to the functioning market after a certain period. Otherwise, Member States would also be prevented from establishing effective subsidy schemes if they cannot provide sufficient incentives for private operators to invest in subsidised infrastructure and close coverage gaps.

In this respect, Vantage Towers notes with concern that the section on wholesale access terms and conditions (**Section 5.2.4.4.2**) of the Draft Broadband Guidelines does not distinguish between mobile and fixed networks and extends the period for which effective wholesale access must be granted to ten years <sup>14</sup> while in the 2013 Broadband Guidelines (point 78g) seven years were considered sufficient.

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<sup>11</sup> The Gigabit Communication set out the objective for 2025 that major transport paths should have an uninterrupted 5G coverage. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, COM/2016/0587 final.

<sup>12</sup> Points 108-109 of the Draft Broadband Guidelines.

<sup>13</sup> Cf. Draft Broadband Guidelines, points 10 and 117.

<sup>14</sup> Cf. Draft Broadband Guidelines, point 142: '*Effective wholesale access must be granted for at least ten years for all access products except VULA.*'

- Regarding public funding of mobile network infrastructure, Vantage Towers considers that **restrictions on wholesale access prices should not exceed the period for which State aid is granted**, i.e., the period that is used to calculate the funding gap and within which shortfalls are subsidised (earmarking period) <sup>15</sup>.
- In addition, Vantage Towers is of the opinion that the rules in the Draft Broadband Guidelines should **maintain the minimum period for restrictions on wholesale access prices at seven years** for mobile networks. A seven-year period would be consistent with Art. 52 (5) of General Block Exemption Regulation ('GBER'), which provides that wholesale access shall be granted for at least seven years in the context of funding of broadband infrastructures, as well as with the recent decision-making of the Commission, who has recently approved a corresponding model under the German mobile network aid scheme, with an earmarking period of seven years <sup>16</sup>.

Considering the above, Vantage Towers recommends the Commission to revise section 5.2.4.4.2. as follows:

**Section 5.2.4.4.2. Mobile access networks, point 142:***'(142) Effective wholesale access must be granted for the period for which funding is provided (earmarking period), which should be at least a period of 10 years for all fixed access products except VULA and of 7 years for all mobile access products except VULA.'* [..]

#### **2.4 Use of existing or planned subsidised infrastructure to fulfil future coverage obligations should be possible**

The Draft Broadband Guidelines rightly stipulate that State aid can only be granted if it has an incentive effect and that accordingly where an operator is subject to legal coverage and quality of service obligations, such as the ones attached to the rights of use of certain radio spectrum for mobile deployments, State aid cannot be used to fulfil such obligations as it is unlikely to have an incentive effect <sup>17</sup>. **Vantage Towers welcomes this strict approach, which is consistent with Art. 52a (5) GBER and ensures that State aid is used in the most effective way and does not drive out private investment.** Indeed, it cannot happen that operators will be granted State aid to meet coverage obligations which they have accepted independently from any government funding. In addition, this would retroactively change the outcome of any competitive selection procedure that led operators to accept certain coverage obligations. Finally, from a political point of view, coverage obligations must be considered a 'pact' that mobile network operators have entered into with the public hand.

**For the avoidance of doubt, this cannot apply to instances where State aid was granted or contemplated before new coverage obligations are being imposed**, as the government funding scheme pre-dates the moment in time when new regulatory obligations are being imposed. In addition to running counter to the legal principle of no retroactive alteration of pre-existing regulatory conditions, any different conclusion would run against sound economic principles:

<sup>15</sup> Should it become apparent after this period that there are exceptional gaps in coverage or that there is no effective competition at the retail level, sector-specific market regulation in the telecommunications sector – which is set out in the European Electronic Communications Code (EECC), the necessary and appropriate instruments.

<sup>16</sup> Cf. European Commission, decision dated 25 May 2021, SA.59574 – Deployment of high-performance mobile infrastructure in Germany, point 75 et seqq., 160 et seqq.

<sup>17</sup> Cf. Draft Broadband Guidelines, point 41.

- Infrastructure already subsidised from taxpayers' money would be used or not used optimally, as the infrastructure is potentially being 'overbuilt' to fulfil the coverage obligations, which is undesirable under State aid law <sup>18</sup>.
- **Existing subsidy schemes would remain unused or at least underused in markets where market players can expect new spectrum allocations** combined with additional coverage obligations.

Accordingly, for example, the recently revised German Telecommunications Act which transposes the EEC stipulates that the conditions for spectrum usage must consider the possibilities of co-using or establishing publicly funded infrastructures in a reasonable manner <sup>19</sup>.

Thus, if State aid can reasonably be used by MNOs for the shared use or construction of mobile infrastructures, coverage obligations can be more far-reaching than what they would otherwise have been had MNOs had to construct the entire network infrastructure on their own. At the same time, this would give Member States an additional tool to ensure the use of subsidised passive infrastructure by MNOs.

Against this background, Vantage Towers recommends including the following wording in the Draft Broadband Guidelines:

**Section 5.1.2 Incentive effect, point 419:** *'For instance, where an operator is subject to legal obligations, such as obligations to ensure a certain coverage of the target area pursuant to coverage and quality of service obligations attached to the rights of use of certain radio spectrum for mobile deployments, State aid cannot be used to fulfil such obligations as it is unlikely to have an incentive effect, and thus unlikely to be compatible with the internal market <sup>39</sup>.'*

**Footnote 39 to be added:** *'This does not preclude Member States from taking into account subsidised infrastructure which already exists or for which the public consultation has already started at the time of the imposition of the coverage obligations to ensure that mobile networks operators meet the coverage obligations that arise out of conditions attached to rights of spectrum use.'*

## 2.5 TowerCos must be eligible beneficiaries of aid

Vantage Towers calls on the Commission to take the opportunity of revising the Broadband Guidelines to **clarify that TowerCos should be eligible for State aid in broadband, as there is no objective reason under State aid law to exclude them from funding.** The roll-out by TowerCos promotes competition, as companies, that do not offer retail services themselves, naturally have an interest in a large number of MNOs using their infrastructure. They thus contribute to higher competition at the retail level to the benefit of end customers. The positive effects of roll-out by TowerCos have already been recognised by the Commission. For instance, the CEF Digital Work Programme encourages the sharing of passive infrastructure, the model pursued by TowerCos, as it aims at substantially reducing network deployment costs and facilitating the energy efficient use of resources when deploying and operating the 5G infrastructure <sup>20</sup>.

Vantage Towers notes with concern that the Draft Broadband Guidelines currently state that *'the aid must be allocated to providers of electronic communications networks and services'* <sup>21</sup>. Vantage Towers

<sup>18</sup> Cf. Draft Broadband Guidelines, point 131.

<sup>19</sup> Cf. Section 100 (4) no. 4 of the new German Telecommunications Act (*Telekommunikationsgesetz*)

<sup>20</sup> Cf. C (2021) 9463 final, Commission Implementing Decision on the financing of the Connecting Europe Facility – Digital sector and the adoption of the multiannual work program for 2021-2025, page 16.

<sup>21</sup> Cf. point 119 of the Draft Broadband Guidelines.

fears that this could lead to Member States excluding TowerCos from State aid for mobile network infrastructure. Operators of passive network infrastructure (e.g., TowerCos) cannot be considered as providers of electronic communications networks and services. Under the EECC definition (cf. Art. 2 No. 1, 4 and 16 EECC), this requires that the networks or services in questions allow for the conveyance of signals which requires the use of active network elements and in case of mobile networks the functional control of the spectrum. This interpretation would not be in line with Commission's previous decision-making practice<sup>22</sup>, in which the Commission made it clear that the direct aid beneficiaries may include specialised construction companies (such as the TowerCos).

To clarify that TowerCos can also be recipients of aid for the deployment of mobile network infrastructure, Vantage Towers recommends including the following wording in the Draft Broadband Guidelines:

**Section 5.2.4.1 Competitive selection procedure, point 119:** *'The aid must be allocated to providers of electronic communications networks and services or providers of associated facilities<sup>85</sup>, which on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement and respecting the principle of technology neutrality, as specified in Section 5.2.4.2, without prejudice to the applicable public procurement rules.'*

**Footnote 85 to be added:** *'Providers of associated facilities include other undertakings (e.g., specialised construction companies or tower companies) that invest in the deployment and operation of active and or passive mobile network infrastructure.'*

## 2.6 Necessity to introduce competitive safeguards for direct investment model to avoid undue preferential treatment of state-owned entities

Vantage Towers welcomes the introduction of a specific section on competitive selection procedure (section 5.2.4.1) in the Draft Broadband Guidelines, which clearly provides that the aid should be allocated based on an open, transparent and non-discriminatory competitive selection procedure.

However, Vantage Towers notes with concern that the Draft Broadband Guidelines still allow aids to be granted to a public authority to deploy and manage a broadband network at wholesale level directly, or through an in-house entity (so-called direct investment model)<sup>23</sup> without a competitive selection procedure despite the negative effects of such model<sup>24</sup>. To prevent unnecessary or inefficient use of state resources and excessive and objectively unjustified interference with competition, Vantage Towers considers that **public authorities and state-owned enterprises should therefore only be able to receive an aid if - as provided for in the Federal German Mobile Communications Funding Scheme - they prevail over bidders from the private sector**<sup>25</sup>.

Should the Commission nevertheless decide to continue to allow funding in the direct investment model, as it is the case in the Draft Broadband Guidelines, **it must be ensured that the funding does not have an effect outside subsidised areas and at the retail level**. Vantage Towers is of the opinion that

<sup>22</sup> Cf. European Commission, decision dated 25 May 2021, SA.59574 – Deployment of high-performance mobile infrastructure in Germany, point 28; decision dated 16 December 2020, SA.54684 – High-capacity mobile infrastructure roll-out in Brandenburg, point 29.

<sup>23</sup> Cf. Draft Broadband Guidelines, point 125.

<sup>24</sup> Direct investment model (i) may result in a more extensive use of state funds than would have been necessary in the context of an open competitive procedure and (ii) constitutes a more far-reaching interference in competition for TowerCos whose activities in non-economic areas are completely disregarded by the direct investment model, without them having the opportunity to compete against the state-owned entity with a more economically advantageous offer.

<sup>25</sup> Cf. European Commission, decision dated 25 May 2021, SA.59574 – Deployment of high-performance mobile infrastructure in Germany, point 28 et seq.

the current draft of the **Draft Broadband Guidelines fails to provide for sufficiently strict competitive safeguards to limit the associated negative effects of the direct investment model** on the market for the construction and operation of passive mobile network infrastructure.

Vantage Towers considers that the direct investment model must be linked to the strict competitive safeguards that are at least equivalent to these required by the Commission for the approval of the aid scheme of the Federal State of Mecklenburg-Western Pomerania <sup>26</sup>. Since non-compliance with these safeguards could have a significant negative impact on competition, the Commission should pay particular attention to ensuring that these are complied with by the state-owned entity. In addition, state-owned mobile infrastructure operators could be obliged to sell their subsidised infrastructure to private-sector investors in a competitive selection procedure after a certain funding period, for example seven years. In this way, it can be ensured that the operation of the mobile networks ultimately remains organised and accountable to the market economy despite a temporary need for state funding.

In this respect, Vantage Towers strongly calls on the EU Commission to consider introducing the following safeguards in the Draft Broadband Guidelines:

**Section 5.2.4.1 Competitive selection procedure, point 125:** 'Where the aid is granted 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), the Member State must similarly justify its choice of network and technological solution and **put in place a number of competitive safeguards to preserve the results of competition that have been achieved since the liberalisation of the electronic communications sector in the Union, and in particular the existing and foreseeable level of competition on any relevant market:** (I) the publicly owned network operators shall limit their activity to the predefined target areas and shall not be allowed to expand their activities to other commercially attractive regions; (II) the publicly owned network operators shall limit their activity to maintain the passive mobile infrastructure and to grant access to it, but shall not engage in competition on the retail levels with commercial operators; (III) the publicly owned network operators shall have an accounting separation between the funds used for the operation of the networks and the other funds at the disposal of the public authority and regularly report to the Commission on the exact use of the funds ; and (IV) undertakings must not hold shares in the publicly owned network operator. The publicly owned network operator is obliged to offer the subsidised network to the market for sale in an open and non-discriminatory tender procedure after the expiry of the funding period.'

These safeguards are already partly laid down in Art. 52a (7b) GBER, but in a revision it should be added that the state-owned entity shall not expand to other commercially attractive regions and that it is obliged to sell the subsidised network after the expiry of the funding period.

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<sup>26</sup> Cf. European Commission, decision dates 21 May 2021, SA.58099 - Mobile communications Mecklenburg-Western Pomerania, point 27, 66, 95; cf. also Broadband Guidelines, footnote 96