

POSITION PAPER ON THE EUROPEAN COMMISSION DRAFT GUIDELINES ON STATE AID FOR BROADBAND NETWORKS

Considering the great disparities in density across Europe, huge subsidies are needed to roll out very high-speed broadband in medium and low-density areas, and to provide end consumers with broadband market connectivity similar to what already exists in major cities.

The recovery plan is a unique opportunity to effectively achieve the EU 2030 digital society goals, including in medium and low-density areas. But there will be no other recovery plan, and public debts will be paid for decades. We have a responsibility to use public money to subsidise infrastructure that are future-proofed for decades, in terms of resilience, performance, competition and innovation.

Only FttH is capable, once the initial investments have been made, of delivering much more than 1 Gbit/s with low operating costs and almost zero energy consumption, a technical lifetime of more than 40 years, unlimited scalability in terms of speed, latency or jitter for several decades, without additional investment. Therefore, almost all public subsidies should be directed towards FttH (part 1 below).

Fundamentally, the subsidies needed in rural areas have the overall objective that households and businesses have a long-term broadband service equivalent to that of the big cities. In the big cities, there are several networks, with different prices and technologies. In rural areas, there will be only one subsidised network. Only passive access to this subsidised FttH network will allow operators to innovate, technically stimulate the market and differentiate themselves in the long term. Thus, passive access to subsidised FttH networks should be mandatory, at a tariff equivalent to that in dense areas (part 2).

The huge amount of public money implies a significant risk of distortion of competition. The risk that public subsidies, insufficiently monitored, may ultimately have a negative impact on global welfare cannot be ruled out, especially by the European Commission. State aid will create unregulated local broadband network monopolies. The counterpart of aid for the formation of a local FttH monopoly must be a strong guarantee that it will be open to competition in the long term. The guarantees set out in the draft guidelines are insufficient. The guarantee must be provided under conditions at least similar to those already provided for in Article 76 of the EEC, in particular a co-investment offer securing tariffs in the long term (part 3).

1. The vast majority of public funds, if not all, should be directed towards FttH. FttH is the most sustainable technology and the only one that can immediately guarantee a 1 Gbit service with a consumption of less than 2 W / household including in rural areas, low opex hence no need for further equilibrium subsidies, a technical and economic lifespan of several decades with unlimited service upgrade capacity (speeds, latency, jitter) with no additional capex.

The Commission's proposed Digital Decade Policy Programme puts as an objective that all European households are covered by a Gigabit network by 2030. To be fully consistent with this objective, we consider that state aid funds in the next decades should be devoted only to infrastructures capable of reaching 1 Gbit/s (this being the threshold for both black and grey areas), and primarily to fibre networks.

Indeed, among the technologies able to meet this 1 Gbps threshold, fibre seems to be the most suitable future technology for public funding, for the following reasons:

- refinancing of the recovery plans being necessarily spread over decades, it is essential to devote these plans to infrastructures, such as fibre, which have the same life span. From a performance point of view, fibre is future-proof, readily enabling future transmission equipment upgrades to achieve 50 Gbps and beyond with unlimited services scalability (speeds, latency, jitter);
- from an environmental point of view, fibre has the lowest consumption (2 W/household) compared to other technologies such as FWA; more generally, FttH has high capex and low opex, compared to wireless technologies; this can be an advantage, as high opex in rural areas may not be compensated by revenues and may lead to a recurrent need for a balancing grant;
- from a macro-economic point of view, FttH is a work intensive infrastructure to build, with a lot of civil engineering, medium and low-skills jobs, low purchase of non-EU materials and thus a strong Keynesian multiplier ; moreover, FttH has a short "time-to-market" due to the fact that FttH build-out programs have been initiated already all over Europe;
- there is an existing wholesale market, including passive wholesale FttH offers available in most countries; those wholesale offers already serve several million customers allowing for dynamic competition; on other technologies, such as FWA, wholesale offers are experimental, with a few tens or hundreds of thousands end customers served; hoping that these subsidised infrastructures and wholesale offers will make it possible to stimulate the retail market is unrealistic.

This revision of the guidelines should be the opportunity for the European Commission to reaffirm the Digital Decade Policy Programme objectives set for 2030 and therefore to consistently set the intervention threshold for both grey and black areas at 1 Gbps, with fibre being the principal recipient of state aid.

2. Passive access to subsidized FttH networks should be mandatory, at a tariff equivalent to that in dense areas. The inclusive objective of the subsidies in rural areas is to ensure that households and businesses have a long-term broadband service equivalent to that in large cities. In large cities, there are several networks, allowing innovation and differentiation. Only passive access to subsidized FttH networks will allow different operators to innovate, technically stimulate the market and differentiate themselves in the long term, this emulation improving the positive impact of the telecommunication industry on reducing inequalities and enabling sustainable cities and communities.

While the text of the 2013 Guidelines required effective wholesale access to State aided fixed networks in the form of full physical unbundling (passive access), the European Commission proposes now to step back from this principle by requiring only VULA (active access) in white and grey areas. The justification put forward by the European Commission for this change is to reduce costs induced by the State aid beneficiary in providing unbundling.

We consider, on the contrary, that passive access offers should be mandatory in all cases.

Especially as we speak about a network that is not already deployed, we see no obstacle to mandate passive access. The example of France shows that even in very rural areas, with less than 20 habitants per square kilometre and where public initiative networks (PIN) are built and operated by concession holders, such passive access is feasible, granted and widely in use. There is no technical barrier to providing passive access even in rural areas. There is an additional cost, perhaps between 5% and 30% depending on the area, but this is largely compensated by the welfare and public utility benefits for consumers resulting from effective competition and technological innovation capacity, for the next 40 years.

Passive access is crucial for two reasons:

- dynamism and technological differentiation: in cities, competitive dynamism can be ensured by the existence of several networks; by contrast, on PIN networks, since there is only one network, it must therefore allow differentiation of the players, and homogeneity of technical conditions between towns and countryside; only passive access allows this. As a matter of proof, in Italy, Iliad's offer allowing 5 Gbps with native IPV6 can be deployed where passive access is possible while we are forced to downgrade our offer to 1 Gbps in areas where wholesale access is based on VULA/bitstream offers;

- *sine qua non* conditions are visibility and upfront agreements on long term tariffs. This is possible with passive access as 20 years IRUs are standard practice on dark fibre (even 40 years in France). Having long-term contracts with technical and tariff visibility on active products is much more difficult as it is impossible to predict whether the market standard will be 1, 5, 10 or 100 Gbps in 2040. It is therefore much more difficult to define the economic conditions today for the long run.

In any case, if there is no passive access (*quod non*) then the active product must have exactly the same characteristics, namely: price independent of bandwidth or data volume, long-term economic stability, guaranteed compatibility with the best future market standards for network capability and speed, possibility to acquire IRUs.

As regards fixed network backhaul, we believe that the mandatory offer should be access to dark fiber, with other products to be provided on a complementary basis but not as a substitute to dark fiber.

3. State aid will create non-regulated local monopolies. The counterpart of state aid for the formation of a local FttH monopoly must be a strong guarantee that it will be open up to competition in the long term. A much stronger and structural guarantee than those envisaged by the draft guidelines is needed to unlock the full investment power of the industry. We believe that the guarantee of long-term opening to competition should be provided under conditions similar to those already provided for in the article 76 of the EEECC, including a co-investment offer securing access tariffs on the long term.

By definition, no duplication of a subsidized network by a privately funded network may happen. Therefore, a long-term monopoly will be formed. On the basis of our experience of PINs (public initiative networks) such monopoly will not be regulated on an ex-ante basis by the National Regulatory Authority, and a finding of Significant Market Power would come too late in time to ensure pro-competitive technical and economic wholesale access conditions. In addition, it would be very difficult for the National Regulatory Authority or another competent authority to modify *ex post* the wholesale access conditions and especially the tariffs, as this may undermine the bidders' original business plans.

Therefore, the question to be answered by the Guidelines is basically the following one: what are the conditions of competitive openness that would allow public authorities and competition authorities to accept, or even to favour by granting a subsidy, the establishment of an unregulated long-term local FttH monopoly?

In fact, the same issue arose in the review of the regulatory framework, which led to the adoption of the EEECC. The EEECC sought to put in place a mechanism that would make it possible to reconcile: (i) openness

and long-term competitive conditions on FttH networks with (ii) incentives for the deployment and investment of FttH networks by the SMP operators through the lifting of ex ante regulation. The debates were particularly intense on this subject. The balance that was found during the inter-institutional debate is reflected in Article 76 and Annex IV of the EECC. In substance, an operator in a situation of dominance (SMP) or monopoly deploying a FttH network can be exempted from regulation under the following main conditions (listed in annex IV):

- formulation of a co-investment offer that is open to any undertaking on a non-discriminatory basis (point a) of annex IV);
- this offer shall be transparent (point b) of annex IV);
- this offer “shall include terms to potential co-investors which favour sustainable competition in the long-term” (point c) of annex IV) ; practically speaking, by subscribing to this offer, the access seeker makes a financial and irrevocable commitment to co-finance a part of the network and to be a customer in the long term in order to serve its subscribers; in exchange, it has visibility on the long-term technical and economic conditions that it will pay for; to put it briefly, the tariffs in the lifespan of the network (are known when the contract is signed (or at least the tariff formation rule is known, which may be the initial tariffs with indexation to a telecom cost index or a labour cost index); the tariffs cannot be unilaterally modified by the network operator without the agreement of the co-contractor;
- the offer shall “ensure a sustainable investment likely to meet future needs” for the deployment of VHC networks (point d) of annex IV);
- last but not least, as set out in Article 76, the relevance of this offer is not assessed in-house by the National Regulatory Authority or any local or national administrative body; indeed, two conditions are set : a market test is conducted on the offer beforehand and, above all, this offer must be signed by at least one (significant) operator in the market.

We believe that the question the Commission is facing in the context of the review of the guidelines (“what are the conditions of competitive openness that would allow public authorities and competition authorities to accept, or even to favour by granting a subsidy, the establishment of an unregulated long-term FttH monopoly?”) is substantially the same as the question that arose when the EECC was discussed. As a consequence, we believe that the Commission's response in these guidelines should be the same or similar to that provided by the EECC and that state aid should therefore be conditional on at least three points:

- a transparent and non-discriminatory offer (vertically integrated bidders should only be eligible to funds if specific non-discrimination safeguards are put in place, explicitly on the basis of the equivalence of inputs principle);

- the offer provides for the possibility to co-invest in the deployment of the network with the appropriate visibility for the co-investors on the long-term (= lifespan of the infrastructure) on tariffs and technical conditions;
- the offer has been submitted to a market test and signed by at least one wholesale access taker.

As regards wholesale access pricing conditions, Iliad generally supports the wholesale access pricing principles set out by the draft guidelines, in particular the principle that wholesale prices should be based on the prices in the competitive private areas (where public funding is not necessary) or on the regulated wholesale tariffs set or approved by the NRAs.

However, this principle needs to be more precisely defined. In order for the retail market conditions, notably from a tariff point of view, to be identical to those of the densely populated area, the purchasing costs of the retail operator on the wholesale market must be fairly similar between rural and urban areas. Identical tariffs are not necessarily sufficient; distances and work units are greater in rural areas. Identical tariffs, for example per linear metre of fibre, may result in very different costs per subscriber. Tariffs in rural areas must be governed by a dual principle of (i) homogeneity with the dense area and (ii) they must not result in costs per subscriber for the access seeker that are very different from the costs per subscriber that it bears in the dense area.

It is also of course essential that wholesale access prices be set under the supervision of the NRAs, which shall have dispute resolution powers explicitly covering the State aid context. The role of the NRA is key to ensure consistency with regard to other access regimes which may apply in the targeted areas or other areas.

4. Other remarks: the final FttH segment up to the final customer must be included in the subsidy scheme where necessary, otherwise it may result in the state aid being totally useless. As regards radio networks, state aid to provide fixed (wireless) services should remain limited while granting aid in view of mobile services may be legitimate under certain conditions (dark fibre backhaul access, effective and non-discriminatory access to publicly funded mobile sites, wholesale roaming conditions preserving competition).

4.1 FINANCING OF THE FINAL (FTTH) CONNECTION TO THE CUSTOMER PREMISES IS KEY

The final connection to the customer represents more than a third of the cost of rural FttH networks. It probably needs to be addressed explicitly in the guidelines, to ensure that it can be subsidized where necessary.

We clearly see from our experience in the various countries (notably in Poland and in Italy) that when the final connection is not clearly included in State aid granted to a beneficiary, or in a subsidies plan, there is a risk that the plan does not work at all. Thus, the penetration rate of the subsidized network is today less than 5% in rural Italy, due to higher wholesale tariffs than in the dense area and the absence of subsidies in the final segment. This is probably an economic disaster for the infrastructure operator but above all a huge waste of public money, since it has been paid for by taxpayers but benefits nobody in the end.

The network must be completed all the way to the user's premises. This is a necessary condition for grey areas and also even more for white areas.

4.2 THE ENVISAGED REGIME FOR RADIO NETWORKS

Radio networks can be subsidized with the aim of providing Fixed Wireless Access (FWA). We have already made it quite clear that the technical benefits, sustainability and competitive openness of wireless networks to provide fixed service are much lower than those of FttH. A subsidy of FWA networks should therefore be limited to atypical or even desperate cases, and should not represent more than a few percent of lines.

It may also be envisaged to subsidize mobile networks in rural areas for mobile use (not fixed or FWA). In this respect, which may be legitimate in some cases:

- Iliad agrees in general with the approach envisaged by the draft that State aid beneficiaries for mobile networks must offer the widest range of wholesale access products, including among others access to poles/masts/towers and some active products;
- as regards mobile network backhaul, we believe that, identically to fixed networks, the mandatory offer should be access to dark fiber, with other products to be provided on a complementary basis but not as a substitute to dark fiber;
- no public money should be granted to a tower company in the absence of effective access to the sites and the backhaul infrastructure enabling the connection of those sites. It also means that sufficient space should be available on those sites to ensure access by operators on fair and non-discriminatory conditions;
- the most efficient way in very rural areas is to install only one pole and one active equipment per area; the beneficiary operator provides a wholesale service to other operators via local roaming, MOCN or MORAN network sharing; the wholesale tariff is not straightforward to determine, in the absence of a reference in dense areas and there are consequently important risks of competitive distortion; in any case, the local roaming tariff should not exceed the EU roaming caps.