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HT.5766 Dutch response to the targeted revision of the Guidelines on State aid for broadband networks

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

This is the response of the Netherlands to the targeted revision of the Guidelines on State aid for broadband networks (hereafter: Broadband Guidelines). With this targeted revision of the Broadband Guidelines, the European Commission aims to clarify the existing State aid rules and ensures they take account of the latest market and technological developments. The Netherlands welcomes the revision and proposes some further improvements. The response entails the first formal reaction of the Netherlands to the first draft of this Broadband Guidelines revision. The Netherlands looks forward to be involved in the further drafting of the Broadband Guidelines.

Introduction

Although investment in telecommunications network deployment comes mainly from private operators, EU countries may also provide public support ('state aid'). EU competition controls play an important role in ensuring this public support does not harm competition (by crowding out private investment, subsidizing local monopolies or discriminating against certain technology platforms), while ensuring that public support serves a public interest in creating modern infrastructure that reduces the digital divide where commercial operators have no incentives to invest.

In general, the authorities of the Netherlands find it important that private operators invest in fast telecommunications network deployments. Any State intervention should limit as much as possible the risk of crowding out private investments, of altering commercial investment incentives and ultimately of distorting competition contrary to the common interest. However we do see cases in which proportional public support can be necessary. In general the Dutch authorities are satisfied with the possibilities that the State aid rules offer to public entities. A revision of the Broadband Guidelines is relevant to reflect the latest market and technological developments and should be aligned as much as possible with other relevant EU regulations and guidelines. Therefore, the Netherlands welcomes the initiative by the European Commission to revise the Broadband Guidelines.

General comments on the revision of the Broadband Guidelines

In particular, the Dutch authorities would like to draw attention to the following points in the revised guidelines:

- further alignment of the proposed step-change speeds with the definition of Very High Capacity Networks and the EU Gigabit targets;
- the possibility to also include a voucher scheme regarding connection fees, as long as this is compatible with the internal market;

- the proposed exceptions to differentiate the types of wholesale access depending on the competitive situation in a given intervention area, especially in situations where isolated underserved addresses are to be connected to existing VHCN networks;
- the improved guidance on mapping, for which we suggest to make a clearer connection with the relevant BEREC guidelines on this matter;
- the re-usability of existing infrastructures for which we suggest that the requirement for a national database should be revised, taking into account the existence of the Single Information Point under the BCRD (2014/61/EU) and possibly other systems under the EECC (EU/2018/1972);
- clarifying that Member States can also involve NRA's on a voluntary basis without having to set up competences in the national law which regulates the tasks of the national NRA's;
- requesting the European Commission to maintain the threshold of EUR 500,000 for publication of State aid on a State aid website.

These highlighted comments are further elaborated upon the following sections.

Comments on the introduction of new speed thresholds, mixed areas and step-change

The Dutch authorities welcome the proposed modifications in setting a new intervention threshold of 100 Mbps download speed with the objective of reaching 1 Gbps download speed, thereby aligning with the connectivity objectives as set out in the 'Gigabit Communication' (2016) and the 'Digital Compass Communication' (2021). In our non-paper on the evaluation of the functioning of the broadband state aid regime (hereafter: non-paper of January 2021), the Dutch authorities raised this matter by questioning whether the previous 30 Mbps threshold for white areas, in the light of the EU broadband targets, hadn't become obsolete. Hence, the Dutch authorities are happy to see that the proposed intervention thresholds have been aligned with current and expected technological and market developments.

The Dutch authorities also welcome the introduction of the new target area category 'mixed areas' (sect. 5.2.2.1.3). This is important for the Netherlands because the costs of the roll-out of new high capacity networks per household can be reduced and efficiency can be promoted.

In section 5.2.3.1 the Commission sets out the criteria for fixed access networks in relation to the enhanced characteristics in terms of speed. In the draft, the Commission requires different step changes. The Dutch authorities believe that the guidelines need further alignment with respect to the proposed step-change speeds in recitals (99), (102) and (103). Those step-change speeds should be aligned with the performance thresholds of Very High Capacity Networks (VHCN) as laid down in the BEREC Guidelines on VHCN - BoR (20) 165. This alignment would also be in accordance with the specific conditions to step change in recital (96), as well as the EU Gigabit targets (recitals (3, 4, 5)). We think this is helpful to make the state aid for broadband networks as sustainable and future proof as possible.

Comments on the introduction of a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks (vouchers)

The Dutch authorities welcome the introduction of a new category of possible aid by means of a voucher scheme (Chapter 6 which sets out the criteria of the Compatibility Assessment of Take-up measures). The Dutch authorities propose to include an addition of connection schemes to this new category of aid.

In the Netherlands, end-users in underserved rural areas pay a one-off or monthly recurring connection fee (on top of the regular/market conform internet access subscription fee) to the network operator that deploys an FttH network in the area concerned, on the condition that a certain threshold in terms of participating addresses/households, usually about 50%, is met. The Netherlands asks whether a voucher scheme to cover such connection fees should be considered as state aid and if so if aid for this kind of voucher scheme could be taken up in the revision of these guidelines under appropriate conditions. If the Dutch authorities understand correctly, the proposed voucher scheme in the revised guidelines, only can be targeted at providing aid to end-users with respect to their internet access subscription in the situation that there is already a network in place. This follows from recital 194 which states that aid in the form of vouchers that are used for supporting deployment instead of encouraging take-up, would not be an appropriate

policy instrument (recital (194)). The Dutch authorities propose to include a voucher scheme with respect to connection fees.

Comments on the adjustment of wholesale access obligations to reflect technological progress

The Dutch authorities welcome the proposed exceptions to differentiate the types of wholesale access to be offered by subsidised fixed access networks depending on the competitive situation in a given intervention area. We think it appropriate to impose less-stringent access obligations in the case of Virtual Unbundled Local Access instead of physical unbundling in areas with limited competition (recital (137)). We welcome, in specific circumstances and under certain conditions, a further limitation of access products (recital (150)).

In recent years in the Netherlands fiber has been deployed to many addresses in underserved rural areas. This has mostly been done on the basis of commercial models (no state aid) by various network operators. However, in not all of these underserved areas, operators have been able to deploy fiber to all addresses on the basis of their models. For instance, isolated addresses where connection costs were disproportionately high, were not included in the rollout. For these specific addresses, the use of state aid seems unavoidable in order to still provide all addresses with a high speed (fixed) internet connection. Thereby, the most viable option would probably be to still connect these underserved addresses to the fiber network that is already deployed in the concerned rural area. Depending on the specific situation (e.g. of the type of wholesale access model of a specific operator), less stringent access obligations as proposed in recital (150) can be most suitable in order to still connect isolated underserved addresses.

Insofar these new exceptions to wholesale access obligation have not yet been included in the General Block Exemption Regulation (GBER), the Dutch authorities propose to also include it therein.

Comments on clarifications concerning certain concepts

Mapping

The Dutch authorities welcome the inclusion of a new annex providing guidance on how to carry out the mapping exercise both for fixed and mobile access networks to support state aid interventions. However, the Dutch authorities would suggest, for reasons of consistency and the avoidance of unnecessary administrative burden, to make a connection with the BEREC guidelines on geographical surveys under article 22(7) of the EECC (i.e. BoR 20 (42) and BoR (21) 32). We assume that the results of a MS's geographical survey under Article 22 of the EECC, when applied correctly, are useful as the starting point for carrying out the mapping exercise under the broadband guidelines.

Use of existing infrastructure

The Dutch authorities welcome the re-usability of existing infrastructures as a way to reduce the overall cost of deployment (and thereby the amount of state aid needed) of a new broadband network and to limit its negative impact on the environment. In recital (129) it is stated that Member States must set up a national database on the availability of existing infrastructures that could be re-used for broadband roll-out, including commercial infrastructure assets and those owned by public bodies. On the basis of the Broadband Cost Reduction Directive (2014/61/EU), which is currently being revised, Member States must already have a Single Information Point (SIP) in place, through which ECN operators have the possibility to retain information on the networks of other network operators. Therefore, from an economical point of view, the NL suggests that the requirement for a national database in recital (129) should be revised, thereby avoiding any unnecessary duplication with the SIP or other systems that might also include information on existing infrastructures and which Member States must setup under the EECC.

Claw-back mechanism

The Dutch authorities generally welcome the possibility of a claw-back mechanism as it further ensures the proportionality of state aid. In case of extra net revenues earned by aid beneficiaries

as a result of the aided project, it is appropriate to introduce an explicit provision on the possibility for the Commission to request appropriate claw-back mechanisms.

Role of NRA's

Furthermore, the Dutch authorities observe that the central government has a very important role in the guidelines and decisions of the EC and consequently also during the implementation of a state aid measure. This makes it more difficult not only for local authorities to get approval of the EC for a local support measure, but also for a framework scheme designed for municipalities by the central government to get an approval. The Dutch authorities would like the Commission to take into account the constitutional set-up of a Member State, which is the prerogative of the Member State itself. In addition to this, the guidelines mention a role for National Regulatory Authorities. However, not in all Member States, as is the case in the Netherlands, these authorities have competences regarding state aid, nor can the revised guidelines impose such an obligation on the Member State. The guidelines should take these differences between Member States into account which means recital 113 should clarify that Member States can also involve NRA's on a voluntary basis without having to set up competences in the national law which regulates the tasks of the national NRA's.

Transparency

Member States must publish certain information in the Commission's transparency award module or on a comprehensive State aid website, at national or regional level. The Commission proposes to publish information on each individual aid award exceeding EUR 100 000. The threshold for publication of State aid on a State aid website is lowered from EUR 500,000 to EUR 100,000. The Netherlands considers that this new threshold would lead to a disproportionate administrative burden for Member States and considers this highly undesirable. Therefore, the Netherlands requests the European Commission to maintain the threshold of EUR 500,000 as this threshold will ensure adequate transparency.