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Consultation of the draft

Revision of the Guidelines on State aid for broadband networks

Contribution of CMG-AE Action Group Gigabit Access (AGGFA)

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1 Who we are

CMG-AE (Computer Measurement Group – Austria & Eastern Europe)¹ is an open, vendor independent forum for stakeholders in the communication and information technology sector.

The largest CMG group is the Action Group Gigabit Fiber Access (AGGFA)² working group. The AGGFA is devoted to the promotion of FTTH and the wholesale only (Open Access Network – OAN) business models with the focus on rural areas.

2 Method of evaluation

Our evaluation concentrated on topics most important for us. We selected the following sections of the Guidelines on State aid for broadband networks (BBGL):

- Definitions (2.2)
- Fixed ultrafast access networks (2.3.1)
- Existence of market failure as regards fixed access networks (5.2.2.1) - White and grey target areas
- Step-change – Fixed access networks (5.2.3.1)
- Wholesale access (5.2.4.4)
 - Wholesale access products in fixed access networks (5.2.4.4.1.1)
 - Wholesale access terms and conditions (5.2.4.4.2)
 - Wholesale access pricing (5.2.4.4.3)
- Connectivity vouchers (6.2)

Section 2 of our contribution includes general remarks in relation to our position³, laid down in our AGGFA Position Paper describing what we are convinced of, what is indispensable for the networks of the future and in relation to the Austrian market. The evaluation of relevant sections of the BBGL result in general remarks and suggestions.

In section 3 we comment selected chapters and bring concrete suggestions for changes of the BBGL text.

3 General remarks

First we explain more detailed the AGGF position. In the assessment sections we comment how far the BBGL correspond to it.

Main results and recommendations are printed in bold.

¹ www.cmg-ae.at

² <https://www.cmg-ae.at/themenpanels/action-group-gigabit-fiber-access/>

³ Positionspapier AGGFA

<https://www.cmg-ae.at/wp-content/uploads/2021/05/20201110-Positionspapier-AGGFA.pdf>

3.1 FTTH FTTB

3.1.1 AGGFA Position

We believe that FTTH/FTTB networks, which are a fixed ubiquitous open fiber infrastructure connecting all end users and endpoints like apartments, undertakings, “machines”, sensors, antennas, street furniture is the only sustainable, future oriented, energy resource efficient and most cost efficient – related to life time - solution for connectivity.

Full fiber networks serve as basic infrastructure for all digital applications. It can be regarded as general-purpose networks (GPN) that enables the deployment of platforms that offer a broad range of services, traffic types, applications, content, and devices, as described in a report of OECD⁴.

3.1.2 Assessment

We welcome the fact that the BBGL refers to Ultrafast download speed as defined in the Union objectives as “Internet connectivity of at least 100 Mbps download speed, upgradable to 1 Gbps” (see (54) to (61)), complemented by very important footnotes:

Footnote 37 highlights the difference between fixed and mobile networks and state that “fixed networks offer a higher degree of stability and security in particular for data transmission” than mobile networks.

Footnote 49 emphasizes the importance of specific quality of service parameters such as latency or jitter.

Footnote 55 states: “A network is considered to be upgradable to provide 1Gbps download speed, if it can provide 1 Gbps download speed on the basis of limited investment such as an active equipment upgrade.”

Based on the above statements we draw the conclusion that the BBGL supports and means FTTH/FTTB as the preferred infrastructure to be subsidized by state aid, using descriptions and definitions which do not jeopardize technology neutrality.

In the BBGL the determining term for the existence of market failure is “ultrafast download speed”. **Therefore we suggest to specify “ultrafast download speed” and include it as a new term in 2.2 Definitions - see 4.1.**

3.2 Wholesale Only Business Models

3.2.1 AGGFA Position

Wholesale only open access business models have been applied in Austria three years besides the vertically integrated ones. Country owned passive infrastructure providers have been founded and implement the 3 Layer Open Model (3LOM) like the nÖGIG in Lower Austria. In The Tyrol the Passive

⁴ DIGITAL CONVERGENCE AND BEYOND: INNOVATION, INVESTMENT, AND COMPETITION IN COMMUNICATION POLICY AND REGULATION FOR THE 21ST CENTURY
[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP\(2015\)2/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2015)2/FINAL&docLanguage=En)

Layer Open Model (PLOM) is implemented supported by the Tyrolian government. These new undertakings build only passive fiber infrastructure, FTTH/FTTB networks.

We are convinced that these alternative business models bring considerable advantages compared to vertically integrated ones, especially if they are implemented by wholesale only providers⁵. They promote service competition, increase consumer choice and oppress service monopolies. For new entrants into the market like communities it is easier to concentrate only on passive infrastructure roll out instead of covering infrastructure, active operation and service provision. The wholesale only business models offer transparency between passive infrastructure, operation and service provision and thus facilitate risk assessment. These qualities attract investors who prefer projects of wholesale only providers.

In the BBGL price regulation for access products is mandatory.

Till now a price regulation for access products does not exist in Austria. Wholesale only providers are relatively young in the market, at the time being a monopolisation cannot not been foreseen.

3.2.2 Assessment

The BBGL should give the freedom to decide on national level about price regulation of access products. Anyway we suggest that wholesale only providers should be excluded from price regulation.

3.3 Encouragement for private Investment

3.3.1 AGGFA Position

AGGFA states that FTTH networks should be financed by the private market, but subsidized by public investment where necessary. Encouragement for private investment and prevention of crowding out private investment is a main requirement to achieve the EU objectives for 2025 and 2030. It is not possible to finance the gigabit networks with ultrafast download speed alone with public money but huge amount of private investment will be inevitable. The more transparency for costs and risk assessment is provided the greater is the leverage between public and private investment.

3.3.2 Assessment

In general statements the BBGL strongly support and highlight the importance of private investment – compare (6).

We appreciate very much that “the State supported intervention must also represent a significant new infrastructure investment and bringing significant new capabilities to the market” ((96), (101) and (102)) as a main prerequisite for step-change whereby these new capabilities could be low latency and jitter (footnote 49).

⁵ The EECC defines in (190): „Network owners that do not have retail market activities and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream.”

But in contrary detailed conditions for state aid induce special provision by member states of reliable factual evidence for the existence of a market for ultrafast networks upgradable to 1 Gigabit/s download speed (e. g. in (52) and (105)) and for ultrafast networks like latency and jitter (e. g. (57) and footnote 49).

This requested proof of the existence for a market for ultrafast networks and for special service parameters is time consuming. The validity of the BBGL will be several years and in this timeframe this market will arise even if it does not exist already today. The need for ultrafast networks and its qualities is demonstrated in hundreds of studies and forecasts.

These requests provoke doubts on the integrity of the Union objectives and result in delay of state aid and additional cost and thus discourage private investors.

Therefore this obligatory requested proof of the existence for a market for ultrafast networks and for special service parameters should be omitted.

Some other detailed conditions for state aid requesting overwhelming details also generate undue costs:

Ad 5.2.2.4.1 Detailed mapping and analysis of coverage and 5.2.2.4.2 Public consultation. Although we did not evaluate these chapters in detail we comment them shortly based on discussions with other stakeholders and ELFA members. **The mapping process constitutes an undue burden on network operators, due to the very different data usage behaviours across end-users, very heterogeneous network topologies as well as missing traffic distribution models. Thus, the bureaucratic burden of reporting such information (peak-time performance) is in no proportion to the actual value and benefit of the information for funding schemes.**

In 5.2.4.4.2 Wholesale access terms and conditions (136) and (144) is stated: "...the passive infrastructure must be large enough to cater for at least three networks and different network topologies..."

The request for the capacity of three networks discourages investors and leads to crowding out of private investment.

The request for the capacity of three networks should be shaped in relation to the target area – rural or urban - and to the business model of the beneficiary. See 4.3

3.4 Avoidance and Reducing Digital Divide

3.4.1 AGGFA Position

All measures have to be taken to reduce the existing digital divide between rural and urban areas. The ultimate goal are FTTH/FTTB networks and all kind of intermediate solutions (e. g. FTTC, vectoring) should be avoided and not be supported by public money, because they would widen the digital gap instead of reducing it.

3.4.2 Assessment

The BBGL highlight the importance of avoiding and reducing the digital divide - (7), (44) and (49).

But the definitions in 5.2.3.1.1 Step-change – Fixed access networks (99) a) allow to support networks which are not ultrafast networks upgradable to a download speed of 1 Gbit/s on the basis of limited investment such as an active equipment.

The BBGL should emphasize that public money should only be granted for ultrafast networks upgradable to a download speed of 1 Gbit/s on the basis of limited investment such as an active equipment. (99) should be changed accordingly . See 4.2

4 Analysis of special sections of the BBGL and suggested text changes

In this chapter we comment special sections of the BBGK and suggest concrete changes to the text:

- The original text to which we refer is cited under marks of quotation and significant parts are underlined.
- *Our comments are printed in italic.*
- **Our suggestions for an alternative text are printed bold.**

4.1 Ad 2.2 Definitions

Referring to 3.1.2 we suggest to add a new term “ultrafast download speed” in 2.2 with regard to the Union objectives and footnote 55:

‘ultrafast download speed’ means a download speed providing of at least 100 Mbps upgradable to 1 Gbps on the basis of limited investment such as an active equipment upgrade.

4.2 Ad 5.2.3.1 Step-change – Fixed access networks

4.2.1 Ad 5.2.3.1.1 White areas

“(99) Where the existing networks are not able to provide ultrafast download speed, public support must: a) Below 30 Mbps download speed: at least double the download speed and at least reach 30 Mbps download speed; b) 30 Mbps and above download speed: at least triple the download speed and at least reach ultrafast download speed. ...The Union has set a strategic objective that, by 2025, ‘all European households, rural or urban, will have access to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit’...”

The wording allows to subsidize ultrafast networks which do not deliver ultrafast download speeds (according to the new definition in 4.1), e. g. FTTC, vectoring and others.

In any case it should be avoided, that public money is spent for types of networks which are only temporary solutions. Therefore (99) should be adopted in a way that such interim solutions cannot be subsidized by public money.

(99) Where the existing networks are not able to provide ultrafast download speed, public support must at least triple the download speed which at least reach ultrafast download speed. The Union has set a strategic objective that, by 2025, all European households, rural or urban, will have access

to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit on the basis of limited investment such as an active equipment upgrade.

4.2.2 Ad 5.2.3.1.2 Grey areas

“(102) Where there exists already one ultrafast network, public support for a more performing network may only be granted if the State funded investment in the new network at least triples the download speed and sufficiently increases the upload speed as compared to the existing infrastructure.”

Here apply the same arguments as in 4.2.1

(102) Where there exists already one ultrafast network, public support for a more performing network may only be granted if the state funded investment in the new network at least triples the download speed which at least reach ultrafast download speed. The Union has set a strategic objective that, by 2025, all European households, rural or urban, will have access to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit on the basis of limited investment such as an active equipment upgrade.

4.3 Ad 5.2.4.4 Wholesale access

“(137) The State funded network must ensure bit-stream access, virtual unbundled access ('VULA'94), access to street cabinets, poles/masts/towers, ducts and dark fibre.”

Epecially the access to dark fiber is essential for special applications as company private networks, connections for Public Protection and Disaster Relief, connections for regional connectivity hubs or for business models like the Stokab model.

“(136) The State funded network must offer effective access under fair and non-discriminatory conditions to all operators who request it. This may imply the upgrade and increased capacity of existing infrastructure where necessary and the deployment of sufficient new infrastructure (e.g. ducts large enough to cater for a sufficient number of networks that cannot be less than three and different network topologies.)”

“(144).... If State aid is granted for new passive infrastructure, the passive infrastructure must be large enough to cater for at least three networks and different network topologies.....”

The reason for these requirements is to allow parallel passive networks and infrastructure competition. But it must be differentiated between rural and urban areas. In urban areas infrastructure competition and parallel infrastructure could be economical and should be enabled. In rural areas infrastructure competition has much less significance and should therefore not be motivated through the BBGL. In rural areas where market failure exists there should be the first priority that at least one ultrafast network is provided, and this one is only viable with state aid. More than one network wastes public money, the provision of enough passive capacity to cater for at least three networks increases the cost of the passive infrastructure and discourages investors.

Therefore the requested provision for enough passive network resources to cater for at least three networks should not be imposed on projects in rural areas. Especially the access to ducts which is most cost intensive (as defined in (137)) should not be mandatory for projects in rural areas.

But it must be also differentiated between vertical integrated operators and wholesale only providers. Wholesale only providers operate one passive infrastructure and transfer competition to the service level. The wholesale only business models foster service competition and prevent successfully service monopolies. In 3.2.1 we describe how whole sale only providers enable and stress the full competition on the service level.

Therefore the requested provision for enough passive network resources to cater for at least three networks should not be imposed on wholesale only providers. Especially the access to ducts (as defined in (137)) which is most cost intensive should not be mandatory for projects in rural areas.

137) The State funded network must ensure bit-stream access, virtual unbundled access ('VULA'94), access to street cabinets, poles/masts/towers, ducts and dark fibre. The access to ducts is not mandatory for projects in rural areas and beneficiaries which are wholesale only providers.

(136) The State funded network must offer effective access under fair and non-discriminatory conditions to all operators who request it. This may imply the upgrade and increased capacity of existing infrastructure where necessary and the deployment of sufficient new infrastructure (e.g. ducts large enough to cater for a sufficient number of networks that cannot be less than three and different network topologies). The latter requirement does not apply for state aid funded networks in rural areas and for wholesale only providers.

(144).... If State aid is granted for new passive infrastructure, the passive infrastructure must be large enough to cater for at least three networks and different network topologies. This requirement does not apply for state funded networks in rural areas and for wholesale only providers.....