Open Fiber welcomes the opportunity to participate to the second phase of the consultation on the European Commission's review of the General Block Exemption Regulation aimed at extending the categories of State aid that do not require prior notification to the European Commission.

Open Fiber appreciates the intention of the European Commission to facilitate the flow of public funding for projects falling within the scope of specific EU programmes, especially in light of the consequences of the COVID-19 pandemic, which will call for several public interventions not only to support specific economic activities but also to allow crucial research projects and investments in critical digital infrastructure to thrive.

In the present answer, we would like to focus on the parts of the consultation document concerning electronic communications networks, which will fall within the scope of the InvestEU programme and the Connecting Europe Facility fund.

On a preliminary note, we would like to underline that, as it is happening in the context of other EU measures intended to facilitate State aid, conditionality is of utmost importance. In this case, the fact that the projects to be funded have to fall within the scope of specific EU programmes, in order for a prior notification to the European Commission not to be needed, should be accompanied by the consideration that such projects should not run against other European policies and objectives.

At the time of adoption of Regulation 651/2014, which the present proposal seeks to amend, connectivity goals had not yet been set at the current thresholds, while the scarce availability or even non-existence of current cutting-edge technologies led the legislator to refer only to next generation access (NGA) networks, which are capable of delivering broadband speeds (above 30 Mbps).

In 2016, the European Commission adopted its communication "Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society", which set the following connectivity targets by 2025:

- Gigabit connectivity for all main socio-economic drivers (such as schools, transport hubs and main providers of public services) and digitally intensive enterprises
- A downlink of at least 100 Mbps, upgradable to Gigabit speed, to all European households, both rural and urban
- All urban areas and all major terrestrial transport paths to have uninterrupted 5G coverage.

Furthermore, in December 2018 the new European Electronic Communications Code (EECC) entered into force. One of the main objectives of the EECC, as indicated under Article 3, par.2 (a), is to "promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union;". According to Article 2 (2) EECC, "very high capacity network" means either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location (which corresponds to a multi-dwelling building for fixed networks and to a base station for wireless networks), or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation. BEREC is currently finalising its guidelines on very high capacity networks, with a view to identify those networks other than FTTH/B and FWA, capable of delivering similar performances.

However, NGA networks typically consist of hybrid solutions, where fibre backbones are completed with copper (FTTC) or coax cable lines in case of fixed networks, while in case of wireless networks they usually consist of radio access solutions without a full fibre backbone. While in urban areas such NGA networks may deliver fair performances, although far from gigabit speeds, in rural areas tests have shown that their performances are often not very different from ADSL ones. In case of FTTC networks, this is because the cabinets are usually located far from the households.

Please consider that the most performing eVDSL services may reach a downstream speed of 200 Mb/s only if the cabinet is very close to the premises (no more than 30-40 meters). Otherwise, the higher the distance, the lower the performance granted by FTTC. As confirmed also by a report prepared by TIM, a cabinet located more than 500 meters from the end users' premises cannot grant connection speeds of more than 30 Mbps download and 15 Mbps upload.

[…]

Conversely, in case of FTTH networks, speeds are much higher (usually 1 Gbps or 10 Gbps), irrespective of the distance and granted to all users at the same time.

Therefore, while in 2014 NGA networks could represent the 'step change' necessary to make them eligible to receive public funding in accordance with the European Commission Broadband State Aid Guidelines, this is no more the case nowadays.

As it appears, and has been recognised by the Commission, the EU will very likely miss the above-mentioned connectivity targets. With specific focus on rural areas, State Aid represents an essential means to bridge the digital divide that affects those areas and, in order to do so, it is necessary that any public funding is targeted to the roll-out of very high capacity networks.

As the recently published DESI Report 2020 shows, notwithstanding the significant increases that have occurred since 2011, the VHCN coverage rate in rural areas is still very low (20% of households). Moreover, the demand of VHCN networks appears to be lagging even in urban areas: while the overall VHCN coverage rate in the EU is 44%, the take-up rate of VHCN networks is dramatically lower (around 19% indicated for FTTH/B). It is credible to imagine that if the take-up rate is low in urban areas, it will be even lower in rural areas.

Such rigidity of the demand (which can be explained, among other reasons, both by pricing issues and a lack of consumer knowledge about the possibilities that very high capacity networks are able to offer) can be stimulated by measures such as voucher schemes. However, in order to ensure the uptake of very high capacity networks on a great scale, it is first necessary to ensure ubiquitous coverage. Otherwise, in the absence of VHCN, consumers will be forced to subscribe to offers based on outdated technologies (such as traditional NGA solutions, where available) and will very likely not be willing to switch to very high capacity services shortly afterwards, even though those technologies would only be able to cater for short-term connectivity needs. A similar scenario would surely guarantee that the EU misses its connectivity targets by 2025 and possibly for years to come.

Unfortunately, the draft proposal, which is the object of the consultation, does not seem to take into the necessary account the above scenario, or to represent any concrete update with respect to Regulation 651/2014, which should be expected in light of the policy and regulatory changes that have occurred so far.

The draft proposal repeats the same wording of the original point (138) of Article 2 of Regulation 651/2014 with regard to NGA networks. And while it is added that “NGA networks include networks capable of providing 1 Gbps upload and download speeds”, this offers no clarity and, most importantly, simply leaves the door open to public funding targeted to outdated NGA solutions (such as FTTC networks), without making any changes to the scenario that existed back in 2014. In particular, it is surprising that the acronym FTTx is used to indicate fiber networks, allowing FTTC solutions to fall into the category of fiber networks along with FTTH ones, which are the only fibre networks. This may have detrimental effects on the efforts made by BEREC and national regulatory authorities to fight misleading advertising and to allow the use of the word ‘fibre’ only to describe FTTH networks.

We would therefore ask the Commission to clarify the situation by removing all the obstacles that prevent a very positive initiative, such as the present review of the GBER, from contributing to the achievement of the EU connectivity targets as set already 4 years ago, of which an upgrade will have to be expected soon. Point (138) should therefore focus only on very high capacity networks (VHCN), the only ones for which the granting of State aid without a prior notification to the Commission is justified in consideration of the current connectivity needs of the EU.

Both the InvestEU and the Connecting Europe Facility funds should aim to represent themselves the step changes they seek to finance. We hope that the current negotiations on the text of their related regulations will result in a positive and consistent outcome, in order to contribute to the "shaping of the EU digital future" in line with the legitimate ambitions of the Commission.