

GSMA response to the draft Communication on Important Projects of Common European Interest

The GSMA welcomes the current evaluation and the draft Communication from the Commission on the Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (hereafter, the Communication). In particular, the GSMA agrees on the need to ensure that the conditions set by the Communication remain fit for the EU policy goals, nowadays even more paramount than before due to the COVID-19 outbreak and the public funds granted by the Commission under the Recovery and Resilience Facility.

In this sense, we celebrate the Commission's commitment to provide public funding to projects that pursue EU policy goals, specially related to the Digital Strategy, the European Data Strategy, the New Industrial/SME Strategy for Europe, the Digital Decade Communication and the Green Deal. In doing so, part of the public funding might be granted towards projects that pursue cross-border benefits for European citizens, public administrations and undertakings which might be materialised through an Important Project of Common European Interest (IPCEI). Therefore, the review of the Communication is key to ensure that the projects developed to enable EU policy goals are compatible with the internal market under the State aid rules.

We believe, however, that the Commission should also take into account the challenges emerging from global competition, especially in the area of critical infrastructure and strategic technologies, when analysing the benefits of IPCEI projects (in terms of economic progress, efficiency, network safety and avoidance of relocation of activities outside the EU). In particular, the GSMA believes that the Communication should more explicitly recognise that fostering leadership in innovation in strategic sectors, in line with Europe's commitment to determine its own future, can be considered one of the societal benefits that could not be carried out or be sufficiently addressed in the absence of state aid.

Generally, the GSMA is of the view that the current criteria set by the Communication are still fit for purpose to ensure the eligibility and compatibility of an IPCEI under the basis of Article 107 (3) (b) TFEU. In terms of scope, we support the explicit inclusion in the draft of cross-border projects to support the digital transition and green objectives as mentioned before.

On this basis, the GSMA, as an association that represents more than 750 mobile operators, is committed to work in projects that support the EU policy goals, in particular in the building of telecom edge and cloud computing services and contributing to the Digital Strategy through the development of a European Open Ran ecosystem¹.

Advanced communications infrastructure is fundamental for digitisation and thus for the functioning of modern economies and societies. The COVID-19 pandemic has only underlined the strategic role and importance of an advanced and resilient digital infrastructure and the necessity to avoid any possible disruptions, inter alia through supply dependencies. In this context, open and virtualised

¹ The Open-RAN project (Open Ran) aims to support the roll-out of Open Radio Access Network solutions that take advantage of new open virtualized architectures, software and hardware to build more agile and flexible mobile networks in the 5G era, boosting the technology of choice for future mobile networks to the benefit of consumer and enterprise customers across the EU.

See also "Open and Virtualised Radio Access Networks: An Explanatory Guide for Policymakers", GSMA, February 2021: <https://www.gsma.com/publicpolicy/resources/open-and-virtualised-radio-access-networks-an-explanatory-guide>

Radio Access Networks will be a key element to improve the performance of modern communications infrastructures while strengthening Europe's leadership in communications network technologies.

Open RAN allows to combine the equipment from different RAN software and hardware manufacturers based on fully open and interoperable interfaces. Thereby, Open RAN presents a unique opportunity to address several key objectives, most notably to increase competition and cost efficiency, increase diversity of supply-chain and foster innovation and technology leadership in Europe.

Decisive policies are needed to propel Europe towards greater digital self-determination and technological leadership — for the benefit of all. To preserve Europe's strategic position and to strengthen its technological capabilities in the mobile network value chain, European industry as well as policymakers must jointly support the development of a strong and independent Open RAN ecosystem in Europe.

These projects and other innovative ones will become key enablers to ensure enhanced and innovative future mobile networks across the EU, to foster European data leadership and digital sovereignty, and to contribute to a sustainable and resilient economy after the COVID-19 outbreak. The wide contribution to the EU interests, particularly to sustainable economic growth and competitiveness for the European industry and economy, qualify these projects as an IPCEI, in compliance with the conditions set by the Communication.

In addition, the GSMA would like to put forward the following issues and proposals to ensure that the criteria set in the draft Communication remain fit for achieving the Commission and Member States' objectives, while guaranteeing that the proposed projects are compatible with State aid rules.

1. Openness and inclusiveness of IPCEI

The GSMA is of the view that the current eligibility criteria set out in Section 3.2 of the Communication are still fit for purpose, especially with regards to the minimum of Member States involved in the project to be qualified as an IPCEI. The current review proposes to raise the number of Member States to at least four to be considered as IPCEI.

The GSMA believes that this increase could be counterproductive for the development of projects that are initially embraced by a couple of Member States but that can have positive spill-over effects on the internal market and the society as a whole. Moreover, the obligation to ensure that these projects remain open for other Member States and the cross-border impact requirement set by the Communication ensure those projects are developed to the benefit of European citizens and the industry. Moreover, for the GSMA it is paramount to take into consideration the type of project, the objective pursued, and its financing needs to analyse the given project according to the characteristics of the European market at stake.

Therefore, the GSMA considers that the eligibility criteria set in **Section 3.2 of the Communication should remain as they stand today: an IPCEI project must normally involve more than one Member State²; and such projects must be designed so as to make it possible for all interested Member States to participate³.**

² Point 16 of the current IPCEI Communication.

³ Point 20.a) of the current IPCEI Communication.

2. Update to current EU priorities and strategies

As said beforehand, the **GSMA welcomes the Commission's initiative to adjust the Communication to the challenges pursued by the EU policy goals**, mainly on the Digital Strategy, the European Strategy for Data, the Green Deal, the new Industrial/SME Strategy, and the recent Communication on Europe's Digital Decade.

In particular, the GSMA is strongly committed to developing projects that might be considered under the IPCEI umbrella, mainly in telco edge and cloud and Open RAN solutions. The mentioned projects are key to boost the development of a strong and independent European digital ecosystem, to enhance and support a sustainable economic and social EU recovery after the COVID-19 outbreak. These projects require Member States' joint investments and efforts to create trustworthy infrastructures driven by reliable telecommunications' services. This request has been previously addressed in several instruments such as the European Strategy for Data and the Recovery and Resilience Facility, under the "Scale up" flagship.

Hence, the GSMA asks the Commission to favourably **consider edge and cloud projects as IPCEI** and take these into account when reviewing the eligibility and compatibility criteria. The development and deployment of Telco Edge Cloud should be a key pillar of the planned IPCEI on Cloud and Infrastructure Services. In addition, the GSMA supports the inclusion of Open RAN development under the IPCEI on microelectronics and communication technologies. The importance of the development and roll-out of Open RAN solutions in building enhanced and innovative future mobile networks across the EU, would justify dedicated support in the form of an IPCEI.

Opening up proprietary elements and interfaces in the RAN will diversify the network equipment and software ecosystem, bringing in new suppliers and additional market competition. Disaggregating the RAN will create new deployment scenarios, spur innovation, facilitate local equipment assembly, enhance security transparency and minimise risks facing the industry as it scales up its networks for the future.

Therefore, there is strong industry interest to accelerate the adoption of open interfaces and virtualisation principles in the transformation of mobile radio access networks. Open and virtualised networks are expected to deliver both technical and economic benefits, increasing flexibility and efficiency of the supply chain, reducing vendor lock-in and spurring innovation in RAN infrastructure.

Importantly, these activities should contribute to the overarching objective of creating a vibrant and innovative Open RAN ecosystem in Europe. This will require an EU-wide effort and close cooperation between industry and governments.

3. Eligibility criteria and compatibility criteria to ensure its compatibility with the internal market

The GSMA welcomes the introduction of further guidance on the criteria to determine whether a project shall be considered as an IPCEI under State aid rules. In this sense, the changes related to the definition of integrated project and the definition of first industrial development in the draft are very welcome and provide legal certainty to the Commission, Member States and undertakings in the analysis and development of a project under the rules set by the Communication.

However, the GSMA believes that the notion of societal challenge should cover new objectives aimed at fostering Europe's sovereignty, nowadays put at risk due to the challenges emerged via global competition for strategic technologies (in terms of economic progress, efficiency, network safety and

avoidance of relocation of activities outside the EU). We are of the view that **the Communication should recognise more explicitly that fostering innovation leadership in strategic sectors**, in line with Europe's commitment to determine its own future, **can be considered one of the societal benefits that could not be carried out or be addressed in the absence of the aid.**

We therefore propose the following wording for point 16 of the draft Communication:

*Point 16: The project should demonstrate that it is designed to overcome important market or systemic failures, preventing the project from being carried out to the same extent or in the same manner in the absence of the aid, or societal challenges, **including fostering the development of ecosystems of EU suppliers in strategic sectors**, which could not otherwise be addressed or remedied.*

On the compatibility provisions added in the draft to ensure that a project granted to the execution of an IPCEI exerts the sufficient pro-competitive effects that outweighs the likely related negative effects, the GSMA wants to stress:

- Concerns about the provision in point 20 stating that the project must involve significant co-financing by the beneficiary. In this sense, the GSMA believes that this provision is legally indeterminate and may give the Commission too much leeway in deciding whether a project is suitable to be considered as IPCEI. Instead, the GSMA proposes to add that the Commission shall analyse the "significant co-financing by the beneficiary" considering the type of project, the objective pursued and its financing needs (case-by-case).
- Concerns about the inappropriateness for an IPCEI assessment of the positive indicator contained in point 22f) of the draft, according to which the Commission will take a more favourable approach for projects considering the Taxonomy Regulation. In fact, a specific "do no significant harm" principle is already introduced in point 21 of the draft: "*The project must respect the 'do no significant harm' principle and ensure the phasing out of environmentally harmful subsidies, as recalled by the European Green Deal*". Hence, a reference to the Taxonomy Regulation may lead to an incorrect and unfair exclusion of projects that, although not directly "environmentally sustainable" according to the current version of the Taxonomy Regulation, have an indirect and undisputable enabling greening power over several other sectors (e.g. the enabling value of the digital transformation is well recognized, but for the time being it is not acknowledged in the Taxonomy Regulation).
- Support for the mechanisms to prevent potential negative effects and avoid overcompensation (relocation of a production activity, claw-back mechanism).

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces the industry-leading MWC events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences.

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