

Comments

on the draft Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks

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The German Association for Information Technology, Telecommunications and New Media (BITKOM) represents more than 1,100 companies. Its 900 direct members generate a sales volume of 135 billion euros annually and employ 700,000 people. They include providers of software, IT and telecommunication services, manufacturers of hardware and consumer electronics as well as digital media businesses. BITKOM is working, in particular, to improve the regulatory framework in Germany, for modernization of the education system and for an economic policy which encourages innovation.

On May 19th, a consultation on the Commission's Broadband Guidelines on the application of EU state aid rules to public funding of broadband networks was launched. The Commission correctly acknowledges that broadband infrastructure is the lifeline of modern economy and society.

BITKOM supports the declared aim to improve the level of broadband coverage and penetration. From our point of view the draft Community Guidelines gives an appropriate answer to many questions of state aid in context of Next Generation Access (NGA). It has to be guaranteed that state aid does not create market distortions and in no way crowds out private investment.

Against this background the Guidelines should take into account the following aspects:

Private investment, friendly regulatory framework, technology neutrality

We plead for giving priority to private investment. Private network operators have undertaken huge efforts in the past to provide European citizens modern broadband networks and to close remaining white spots. With a view to closing the digital gap substantial investment is still required. The private sector is willing to play a key role in this case. In order to encourage private investors upgrading their investments it is important to avoid any negative impact on the willingness to invest (e.g. devalue these investments or crowd out private capital).

We believe that the EU Commission should concentrate on creating an investment friendly regulatory framework. State aid should be understood as an ultimate tool, if all other measures would not lead to a private investment decision.

If in an exceptional case, State aid is necessary BITKOM asks for considering the principle of technology neutrality (as being noted by Commission, p. 12, d)).

Grey areas

The Commission has made a distinction between areas where no broadband infrastructure exists or is unlikely to be developed in the near term (white areas), areas

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where only one broadband network operator is present (grey areas) and areas where at least two or more broadband network providers are present (black areas).

As the Guidelines correctly acknowledge it must be ensured that State aid does not crowd out market initiative in the broadband sector. For this reason BITKOM believes that state aid is not an appropriate measure in grey areas. From our point of view the disadvantages far outweigh their advantages.

As a general rule grey areas are areas where you can find an efficient business case for only one single broadband infrastructure. In such areas it is profitable for a single provider to set up a network, not for two or more. Duplicating the infrastructure would automatically lead to a distortion of competition. Private investors can never compete with a state funded network. In fact, State intervention in such areas not only risks but also realizes crowding out existing investors and distorting competition.

In such cases, state aid to broadband would become counterproductive to the objective pursued. Private investors will not invest in grey areas if they have to fear that a few years later a publicly financed broadband infrastructure could be rolled-out. In this sense, factors like legal certainty and planning certainty should be pointed out in the Guidelines.

Definition NGA networks

For the purpose of the Guidelines NGA networks are defined as follows:

- Laying fibre to existing street cabinets offering the prospects of downstream bandwidths of a minimum of 40 Mbps and 15 Mbps upstream.
- Upgrading current cable networks to deliver speeds up to and beyond 50 Mbps against the previous maximum speed of 20 Mbps, using the new 'DOCSIS 3.0' cable modem standard,
- Connecting newly built homes and offices with fibre connections offering services up to 100 Mbps and beyond.

As already mentioned in the document (footnote 44) BITKOM wants to emphasise that broadband mobile technologies can also provide high speed broadband access in the near future. According to principle of technology neutrality no specific technology should be excluded in the NGA definition.

With regard to the definition of NGA networks it is questionable why these specific limits have been chosen. This definition would exclude VDSL networks currently deployed by several operators having an average upstream of 10 Mbps. This threatens to devalue private investments in VDSL-Infrastructure.