Consultation on Community guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks – CBI response

Introduction

1. The CBI welcomes the opportunity to respond to the Commission's consultation on the Community Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks.

2. The EU's future competitiveness will depend on its ability to develop strengths in knowledge-intensive, high value sectors. That in turn will require a world-class digital infrastructure that promotes the fast and easy flow of ideas and information. So the deployment of broadband networks is very important for businesses in the EU.

3. As a consequence any actual or potential government intervention in this area needs to be considered extremely carefully as inappropriate or misjudged interventions could weaken competition and investment and ultimately lead to supply-side bottlenecks.

4. **This submission argues that:**

   1) The market must lead the way in investment in broadband networks

   2) The primary role of governments should be to reduce any unnecessary or unintended regulatory impediments to competitive private sector investment

   3) Governments must also look at how they can play a role in stimulating demand, both as a customer in their own right and how to stimulate private demand

   4) Public funding for broadband networks should only be considered where there is a long-term market failure that is unlikely to be remedied by the initial three courses of action, and it must be subject to conditions

   5) State aid rules must however distinguish between investments in networks that are expected to make a commercial return and those which are designed to meet public policy goals

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As a guiding principle the CBI believes that investment in broadband networks should be led by the private sector

5. The investments required in broadband networks, particularly in high speed broadband networks, will be substantial. Although the costs vary depending on the type of technology used and the extent of the coverage, the investment costs run into billions. In the UK alone the cost of rolling out fibre to 90 per cent of UK households is estimated to be €14bn.1

6. The Commission's governing assumption must be that telecoms investment should be led by the market. The main role for governments and regulators across the EU is to encourage private investment and innovation, optimising legal and regulatory certainty for investors and ensuring competition.

The first consideration of regulators should be to remove any unnecessary regulatory barriers that may be impeding private sector investment.

7. The primary role for any national government must be to create the right conditions for investment in broadband roll out. The capital investments required are substantial and therefore the private sector needs a certain, stable and supportive regulatory regime.

8. Any new regulatory framework will need to strike the right balance between incentivising efficient investment and ensuring sustainable competition. Competition is an important part of an effective communications market in the EU. Overall governments and regulators must ensure that potential efficient investment is not undermined by regulatory uncertainty.

9. This applies to investments in all types of technologies. As well as fixed line networks, the Commission must take into account alternative technologies, such as mobile and satellite, capable of offering speeds similar or even above "traditional" fixed line broadband networks.

10. This will require governments to consider the regulation that bears on telecoms investments in an holisitic way. Decisions on telecoms specific measures such as fixed line regulations and spectrum allocations, will all need to be considered.

11. Wider regulations such as the taxation of fibre networks and local and national planning regulations will also have an important impact on broadband roll-out. Planning regulations can often impede the provision of infrastructure necessary to deliver broadband services. In the UK for example, planning permission can often be extremely difficult to obtain for mobile phone masts. This reduces the coverage of mobile broadband, which could be used as part of a solution to deliver cost efficient access to broadband in remote areas.

[1] Very High Speed Broadband: A Case for Intervention, Enders Analysis, January 2007

Governments must also look at how they can play a role in stimulating demand, both as a customer in their own right and in stimulating private demand

12. What will ultimately determine the value of communications infrastructure is how and what it is used for. The greater the demand, the more the private sector investment case makes sense, and the more competitive and innovative the communications sector will be.

13. So government attention should be focused on the demand side of the equation. Focusing on demand has some key benefits: it involves much less upfront outlay; it will provide a more sustainable and competitive future market for broadband in the EU; and it will help to drive greater government efficiency in the long run.

14. Governments across the EU should be looking at how they can help drive up demand. An obvious way is to use their significant buying power as some of the largest EU customers. By committing to purchase high speed broadband from the private sector, government can help to make a viable business case for competitive private sector investment.

15. A second method by which governments can encourage demand is by using high speed broadband as part of the solution to major public policy challenges. High speed communications can play a significant role in the shift to a low carbon economy. Examples include linking high speed broadband networks to the role out of smart metering, and by using communications infrastructure to replace transport journeys.

16. Third, governments can utilise modern communications technologies to reform the way public services are delivered. Ubiquitous high speed broadband can help deliver greater efficiencies, for example in the health service with online medical consultations, or the criminal justice system by the establishment of virtual courts.

17. Finally governments can also act to unlock private sector demand through ensuring that everyone has the skills to be part of a digital economy and society, and by building confidence in the safety and security of the digital environment.

Public funding for broadband networks should only be considered where there is a long-term market failure that is unlikely to be remedied by the initial three courses of action, and it must be subject to conditions such as not distorting competition

18. Any public sector funding of broadband networks must only be made in those circumstances where there is a long-term market failure and regulatory remedies and demand side stimulation are unlikely to be sufficient to deliver the desired level of broadband roll-out.

19. Any such investments must comply with the following criteria:

    - Must not undermine or displace private sector investment

- Must preserve competition
- Must be non-discriminatory
- Must provide open access and preserve entry for new operators
- Must be technology neutral

Taking account of these considerations, determining where long-term market failures exist is going to be very challenging for a number of reasons.

20. First, the draft guidelines suggest that public intervention is only appropriate for next generation broadband where private sector investment is not expected in the next five years. Judging likely private sector investment over a five year horizon is likely to be very difficult, if not impossible, for national governments. The Commission will have to adopt some clear principles to guide governments about how this judgment should be made. The assumption should be against public intervention where there is significant doubt as to the accuracy of such assessments.

21. Second, the draft guidelines set out a rather arbitrary definition/cutoff for NGA as opposed to current generation broadband. In practice it will be difficult to differentiate rigidly between the two. Therefore we would suggest that the guidelines allow more flexibility in these definitions.

22. Third, there are a number of practical issues surrounding the fact that any state aid request will inevitably involve a mix of white/grey/black areas and current generation / NGA systems. Judging a scheme with so many component parts against the criteria set out in the document will be extremely challenging.

23. These practical difficulties strengthen the argument that state aid should be a last resort, rather than a preferred policy option, for national governments.

State aid rules must distinguish between investments in networks that are expected to make a commercial return and those which are designed to meet public policy goals

24. Rules on state aid for broadband roll-out must distinguish between those circumstances where an investment is being made with the expectation of a commercial return and those circumstances where the private sector is required to provide certain services in order to achieve public policy goals. In the UK, the Government has recently set out a requirement for ISPs to provide universal broadband at 2 mbs to approximately 98% of UK premises. The current private sector case for eliminating 100% of remaining "not spots" is challenging as investments have already delivered broadband to about 90% of UK premises. Where such a service is mandated for public policy reasons private operators should be reimbursed for the costs of providing the service. State aid rules should not prevent this.

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