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Comments regarding community guidelines for the application of State aid rules in relation to rapid deployment of broadband networks

Please find below the Danish Energy Association's response to the draft guidelines for the application of state aid rules in relation to rapid deployment of broadband networks by the EU Commission.

The Danish Energy Association's response contains our overall comments on the EU Commission's draft guidelines as well as more specific comments on the Commission's suggested approach to State aid to the roll-out of the next generation broadband access networks (referred to as NGA). Finally, the Danish Energy Association has an overriding proposal for the Commission's deliberation regarding the final completion of the guidelines and their continuous work within this area.

Overall comments
The Danish Energy Association supports the Commission's objective of providing clear and predictable guidelines for the application of EU Guidelines for State aid rules in relation to broadband. In particular, the Danish Energy Association supports the Commission's efforts to encourage developments of the next generation of broadband networks based on Europe's future competitiveness and economical crisis.

The Danish Energy Association strongly back the overall principle of the EU State aid rules emphasising that it must be ensured that the State aid to broadband deployment does not crowd out private investments, but promote competition and distribution of rapid broadband to the citizens of the Member States.

The Commission's draft application of the State aid rules in relation to rapid deployment of broadband is related to the OECD report published on 19 may 2009 with the title "The Role of Communication Infrastructure Investment in Economic Recovery". In the report OECD underline that national governments may help re-establish the economy by actively demanding broadband infrastructure and direct investments (by private-public partnerships as an example).

Furthermore, the OECD report states that one way to increase competitive investments in telecommunication networks is to allow local authority to install passive infrastructure by burial of empty cable tubes which subsequently can be used by different operators for fibre cabling. OECD also stresses that public funds should not be used to make the local authorities net owners, but solely for the purpose of laying empty cable tubes under ground.

According to the OECD governments and local authorities shall merely take measures to ensure sufficient space for several operators in the tubes. The OEDC stresses that this is an area where the governments easily could make investments and increase competition with minimal market distortion.

This requires targeted State aid ensuring that the funds are spent on the objective aimed at and not used for other purposes. In addition to this it requires transparent guidelines from the EU – like the ones put forward – as regards EU State aid rules.

The important role of the local authorities in relation to distribution of broadband is also reflected in the communication from the Commission of 29 September 2008 (COM(2008) 594) regarding future networks and the Internet.

This is the reason for the importance of the EU Commissions draft guidelines.

The Danish Energy Association would like to call attention to the difference in the active participation of the local authorities in the development of broadband in the Member States. The EU Commission should focus on this in order to encourage Member States and local authorities to work towards ensuring citizens access to the digital opportunities provided by the next generation of broadband.

In Denmark the local authorities are prevented from this due to the municipal authorisation.

The Danish Energy Association estimates that a common coverage in Europe with the next generation of rapid broadband will require that all operators – both public and private – within the Member States, local authorities, energy companies and telecom companies contribute.

The Danish Energy Association would like to point out that nearly 60 % of the next generation network projects with optical fibre broadband for private homes in Europe are operated by local authorities and energy companies. Less that 10 % of the so called "homes passed" result from the roll-out of optical fibre by established telecom companies. This development clearly indicates that without an effort from the local authorities and the energy companies, in particular, a number of areas will not have access to the next generation networks in future. The number of "white" and "grey" NGA areas will therefore not be reduced at a pace which is desirable for the European development of broadband.

In Denmark as in the rest of Europe there are large white and grey NGA areas. Today 2 Mbit/s downstream connections are accessible for 96 % of all Danish households and companies, whereas only 68 % of all Danish households and companies have access to a 10 Mbit/s downstream connection. If one look at the speed defined by the Commission under the category "NGA network", no official statistics exist, but the Danish Energy Association estimates that the figure is significantly lower (than the above mentioned). In addition, Denmark has white and grey NGA areas both in rural and urban areas. A tendency confirmed at European level and in the Commission's draft guidelines.

Furthermore, Denmark has an exceptional situation where the former monopoly (now TDC) supplies broadband via the national copper access network as well as the largest cable television network. This is the reason why the infrastructure related competition of (broadband based on cables) is very weak in Denmark. In other countries the competition is often led by the cable television networks because other suppliers than the SMP operator supplies the broadband services via the cable TV net. A market analysis from December 2008 published by the Danish National IT and Telecom Agency concludes that the choice of external suppliers of broadband installations is very limited.

Comments to section 3 – State aid for NGA networks

As the EU Commission underlines a number of Member states are turning their attention towards support for broadband networks that can deliver services at higher speeds than the existing copper-based broadband network or current cable network. In this perspective it is positive that the Commission has elaborated guidelines for the Member States' aid to rapid installation of NGA network.

At the same time the Danish Energy Association supports the EU Commission's efforts of avoiding a new digital NGA gab by providing clear guidelines for deployment of State aid. From now on it is the individual Member States who decide the demand.

The Danish Energy Association finds it positive that the Commission in its assessment of State aid rules for NGA network considers bandwidth as an important measure in defining areas as "white", "grey" or "black". Thus the Danish Energy Association agrees with the Commission in distinguishing between basic/old broadband networks (existing copper-based networks and current cable networks) and NGA networks (fibre-based or advanced upgraded cable networks). The Danish Energy Association is particularly satisfied that the Commission in this way tries to support and advance the development of the broadband users from being passive receivers to active creators of content and services. For this purpose both significant downstream and upstream capacity is required.

As an example the most used upstream capacity in Denmark was 512 Kbit/s in 2008. This provided access to upstream capacity of 512 Kbit/s or lower for 61.5 % of all Danish homes whereas only 5.5 % had an upstream capacity of 4 Mbit/s or more.

Rapid downstream and upstream speeds in particular are necessary to advance the development, including video communication and the citizen's possibilities to consult their doctor (GP) via their own television, the possibility for the elderly to get immediate visual contact with care

assistants or relatives across long distances and the possibility of utilising the full potential of eLearning.

The Danish Energy Association suggests that para 48 iii) which contains a weighing of the bandwidth, not only is limited to connection in new-built houses and office buildings with fibre connections but also embraces connections to houses in general. However, the limitation for new-built houses does not make sense in relation to the other descriptions in paras 48 i) and ii).

Furthermore, the Danish Energy Association notes that the EU Commission almost in accordance with the above mentioned OECD report of 19 May 2009 emphasises in para 56 that "Public authorities may decide to undertake some civil works (such as digging of the public domain, construction of ducts) in order to enable and streamline the deployment by the operators concerned of own network elements." Taken into consideration that as much as 80 % of the expenses to underground infrastructure are spent on construction work, as optical fiber broadband, such an initiative is considered as being beneficial for the distribution of NGA in areas mentioned in para 3.3 as white and grey areas with NGA network.

According to para 63 a "white NGA area" is considered to be areas where NGA network are not expected to be built and be fully operational in the near future. In para 63 the term 'in the near future' should correspond to a period of five years. The reason for this is according to the draft guidelines that the period of time corresponds to an average period needed for the deployment of NGA networks covering a town or a city. The Danish Energy Association considers five years to be a long period of time seen in (a limited local city and technological) perspective. In some cases it should be possible for the Member States to intervene before the period of 5 years, if this is in accordance with national plans for deployment of NGA networks for all citizens within a period of years decided by politicians. This consideration could with advantage be entered as a new para after para 65.

The Danish Energy Association supports para 73 from which it appears that it is possible for Member States to support deployment of NGA network in traditional black areas (with coverage by basic broadband networks as xDSL and cable net) if the existing operators of basic broadband networks do not intend to invest in NGA network in the near future.

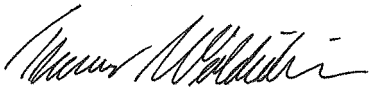
The Danish Energy Association assumes that the public support are granted by an open tender process and requirement of wholesale access (open networks), as mentioned in para 45b) and f) and in para 75. As mentioned in the guidelines "An open access obligation will ensure that ADSL operators can migrate their customers to a NGA network as soon as subsidised network is in place and thus start planning their own future investments without suffering any real competitive handicap".

The overriding proposal to the Commission's future work

The Danish Energy Association recommends the EU Commission to encourage the Member States to appoint special national units to promote development of broadband and continually to evaluate the need for State aid in accordance with the Community Guidelines. This ensures that the politicians in the Member States are aware of the possibilities which are consistent with the EU rules and to avoid a "digital NGA gap between the Member States" - between the Member States offering State aid and those States that do not offer State aid.

If you have any questions to the above or if you need further information, please do not hesitate to contact Consultant Thomas Woldiderich +45 22 750 412 / two@danskenergi.dk or Chief Consultant Christian Berg +45 22 750 411 / chb@danskenergi.dk.

Yours sincerely
The Danish Energy Association



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