

22<sup>nd</sup> June 2009

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

I am writing on behalf of the nine English Regional Development Agencies (RDAs) to provide a joint response to the consultation on *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*.

The nine English RDAs have a statutory responsibility for preparing a *Regional Economic Strategy* (RES) for their respective regions or their equivalent in the Devolved Administrations. All RESs seek to apply a robust, evidence-based, approach to understanding the drivers of regional economies. The analysis and priorities identified in RESs are subject to considerable debate and extensive local consultation before any strategy is adopted by its region. All of the published RESs draw attention to the importance to UK regional economies of modern communications infrastructure.

How the UK might secure the roll-out of next generation broadband has been the subject of a recent UK government consultation on creating a Digital Britain to which the RDAs provided a joint response in March 2009. Our response reflects issues we raised in that document but also reflect considerable practical experience and learning gained by RDAs over many years implementing 'first generation' broadband projects.

The importance of the digital economy is reflected in the fact that all of the published English RESs draw attention to the critical importance of the role of modern communications infrastructure in driving the growth of a Knowledge Economy.

In seeking to understand how we might better support the creation of a Digital Britain the RDAs developed four key principles set out below:

- The internet is a *General Purpose Technology* which should be affordable, accessible and used by all.
- A 'two-speed' Next Generation Digital Britain would diminish UK competitiveness.
- Fibre should be pushed deeply into the network to future proof investment and UK competitiveness.
- Intelligent procurement across the public sector estate should be used to further demand for next generation broadband networks.

### Substantive Issues raised in the consultation

The RDAs welcome the opportunity to contribute to the debate on next generation broadband. The following substantive issues are based on our collective experience supporting the roll-out of first generation broadband here in the UK.

- I. **Para.45a: Detailed mapping**—The Commission rightly identifies the role of *market analysis* to support effective decision making. We would entirely agree with this approach. However, whilst this principle is commendable, experience here in the UK

has been that telecommunications providers are reticent to share data publicly arguing that this data is commercially sensitive. We note elsewhere that the Commission has identified **Functional Separation** as a means to overcome competition problems and cites the positive impact this structural change has had upon UK experience, where: "...it triggered a surge in broadband connections".<sup>1</sup> We would not disagree that functional separation has accelerated the market and significantly improved competition in the UK but we would caution that experience in the UK suggests that where competition exists it is typically focused on price and constrained to specific geographies. There remains a concern in our minds that, in the absence of countervailing forces, this structure does little to help accelerate the transition to next generation broadband and, at a practical level, encourages a climate of secrecy that inhibits the sharing of information between incumbents and public agencies interested in understanding the economics of transition.

- II. **Para.45d: Technological neutrality**—We strongly endorse the principle of technology neutrality. This approach (not prescribing a specific solution or attempting to second-guess the market) appears eminently logical in the first instance. However, in all member states as in the UK, if investment follow historical trends then rural communities will be most prejudiced by future patterns of investment (particularly so where providers are private companies). It has, and will continue to be argued that fibre, particularly point-to-point (p2p) is prohibitively expensive for our more remote communities. We do not dispute the cost of p2p but we would argue that applying a short-term commercial logic will always lead to the conclusion that fibre in rural areas is not fiscally responsible. Indeed, under the current regime it would be difficult to prescribe fibre to, say, a rural business incubator or a network of rural hubs. The RDAs have, however, argued that the case for fibre rests on its ability to future proof investment and when looked at over a much longer time horizon, in fact, represents genuine value for money. Fibre p2p clearly has a role in a 21<sup>st</sup> Century connected economy but we accept that in practice future connectivity will be delivered by a patchwork quilt of technologies. It is a concern that under prevailing conditions the short term market economics that prevail particularly discounts the provision of fibre in rural initiatives. We therefore welcome the pragmatic approach adopted in the consultation, specifically, para.55 in the consultation which suggests Member States *may decree fibre connections in new constructions*. We would, however, argue that there is a compelling case that responsibility for designating fibre could be more effective if delegated to appropriate regional bodies who are better placed to address the challenge of understanding the balance and trade-offs between, cost, performance and value for money of the various technologies.
- III. **Para.63: The five year test**—The concept of 'in the near future' used in the consultation has considerable merit as a threshold test. Understanding and defining market failure is already a critical test in any RDA project appraisal and something in which we have some considerable experience. We have seen in practice, however, that market conditions can change quite quickly with, for example, public sector wireless initiatives stimulating incumbent operators to accelerate the upgrading of exchanges previously not identified in any published investment programme. In this case a strategic policy shift by one market player meant that we moved from market failure to competition in a stroke. Similarly, major infrastructure projects can have long lead-in times during which market conditions will change. Whilst we agree

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<sup>1</sup> *European Parliament Approves EU Telecoms Reform but Adds 1 Amendment: Commission Reaction* (MEMO/09/219, 6<sup>th</sup> May 2009)

entirely that competition is the most effective policy instrument it is also critical that public investment secures regulatory certainty and not be immediately derailed by [albeit] welcome investment by either the private sector or indeed a public sector incumbent. It is not clear from the consultation how the five year test will be operationalised to give regulatory certainty for proposed interventions. As it stands, notwithstanding the initial difficulty in defining that a [forward looking] five year market failure exists, one interpretation of the test is that any change in the defined market in the subsequent five years would necessitate a fundamental reappraisal of the intervention that would trigger the need to re-model the intervention or potentially completely withdraw. A possible way forward to address this concern would be for the Commission to give consideration of the concept of a '*commencement date*' formally agreed with the Commission and which would define the start of the five year period and apply this to an agreed geography. We accept entirely that, on balance our view is that, in a dynamic changing market this approach might not necessarily provide an economically optimal solution but the alternative would appear to be that all public interventions would be subject to the whim of the market – over which they have absolutely no control.

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