

**Subject: Consultation on Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks**

## **Opinion from the European Regional Information Society Association - eris@**

### **1- Background**

eris@ is a not for profit organisation based in Brussels and registered under Belgian law which acts as a platform for the exchange of experience on Information Society policies and practices – including the use of EU Structural Funds – for public sector bodies operating at the regional level of government across the EU27.

The role of the public sector in accelerating the deployment of high bandwidth telecommunications networks is of direct and pressing interest to the eris@ membership. We have gone on record about the need for the public sector to become more pro-active in ensuring that all European stakeholders (citizens, businesses, public sector bodies) have access to Broadband.

Because of its' supremely important role as an underlying enabling technology-on a par with electricity- we contend that access to ubiquitous, affordable and reliable high bandwidth telecommunications services is an essential element in the competitiveness of regions and directly enhances regional public sector bodies'ability to deliver efficient and cost-effective modern public services for the benefit of all. In a global economy, regions must compete not only with their national or EU neighbours but also with global competitors whether in the Far East, North America or the emerging markets. Therefore, we promote the use of public funds, including EU funds, to accelerate the deployment of high bandwidth telecommunications services either by direct investment or as part of a Public Private Partnership to correct "market failure" in areas where there is little or no access or where the cost of access acts as a deterrent to using these services.

eris@ welcomes the consultation by DG Competition Policy on the appropriate regime for considering the role of State Aid in connection with the deployment of Broadband and Next Generation Access networks. We consider that the Consultation is timely and important in the context of the EU's wider Information Society strategy post " i2010", made more relevant by the Commission's initiative to promote economic recovery by means of releasing unspent funds from the CAP to invest in rural and underserved areas including the deployment of Broadband. The fundamental principle of the Recovery Plan is solidarity and social justice; we argue that access to affordable Broadband is an essential element in ensuring that Europe delivers these important policy objectives.

We wish to contribute the comments below to the current consultation. We share the same end objective as the Commission – to promote the rapid deployment of high bandwidth services so that all EU stakeholders may gain access to the benefits of the Information Society, while ensuring that any public sector investment does not distort the market and thus discourages private sector investment and innovation- although we may disagree about the means. Where we disagree or diverge from the proposals in the consultation document, we do so in a spirit of “constructive criticism”.

## **2 - The Commission Policy on State Aid for Broadband Projects**

eris@ welcomes the clarification of the rules with regard to current generation Broadband services. We support the definition of white, grey and black areas for geographical coverage of current generation Broadband and encourage the use of detailed mapping/coverage and market analysis techniques and tools. We support the need for open tendering and for technology neutrality. We share the Commission’s belief that more could be done by public authorities and private sector actors to use existing telecommunications infrastructure to better advantage. We also believe that consideration should be given to the more widespread use of alternative infrastructures including (non-telecommunications) public utilities, so that when (for instance) a new gas or electricity or water pipeline is being laid or existing infrastructures are being refurbished, consideration is given to using these investments to assist with the deployment of high bandwidth telecommunications services. This may require increased cooperation between different regulatory bodies.

In the current difficult economic climate we consider that more encouragement should be given to public sector-driven initiatives subject, of course, to compliance with the rules on State Aid. Whether such initiatives should be in the form of direct investment eg the building of open access networks or by means of PPPs depends on individual circumstances. But the fact that the public sector has a wide expertise in civil engineering and often is able to amortise the costs over relatively long terms means that the public sector may be an attractive partner, especially for new entrants to a particular market. It is important to ensure that the guidelines relating to current generation broadband networks recognise the positive contribution that the public sector may make in promoting the market for Broadband services and do not inadvertently stifle such initiatives.

## **3- State Aid for NGA Networks**

eris@ believes that if public sector bodies have established clearly that their Region is suffering the impacts of “market failure” and are considering the deployment of high bandwidth telecommunications services to achieve legitimate public policy objectives, there is a strong case for encouraging them to embrace NGA networks rather than current generation Broadband networks. In this context, we are supporting directly the Commission’s objective of “rapid technology diffusion, which in turn creates demand for innovative products and services”. We already have real life

examples of fibre deployment in Nordic countries where innovative local partnerships have enabled regional and municipal bodies to provide NGA networks at a fraction of the costs regularly quoted by mainstream Telcos.

Given the different dynamics of NGA networks, in terms of different potential market actors, different technologies (including LTE) and different business models, we do not consider that it appropriate to apply entirely to NGA networks the rules developed for current generation Broadband to NGA networks. In particular, we do not consider that the “white/grey/black” definitions for current generation Broadband are appropriate for NGA networks.

We are highly sceptical about the analysis in paras 63-65 of the consultation document concerning the application of the “white/grey/black” definitions to possible public sector interventions in the NGA market. We do not consider that it is acceptable for public sector authorities and public policy initiatives to be totally dependent on the investment decisions of private sector actors who may have their own reasons for delaying investments in NGA and who could abuse the “in the near future” window - 5 years – for their own commercial ends in both white and grey areas. After all, often the reason that white and grey areas exist today is because private sector actors have refused to make investments in current generation Broadband and have denied other service operators the opportunity to access their networks and upgrade them. Therefore, we believe that this formula will stifle competition and frustrate the execution of legitimate public policy initiatives and that it should be reviewed as a matter of urgency.

Given the speed of change –both in terms of technologies and emerging business models-we consider that commitments by private sector actors (including incumbent operators) to deliver NGA networks to rural and underserved areas “in the near future” should be measured in months rather than in years. Otherwise regions risk being left “under the sword of Damocles” when private sector actors deliberately obfuscate about their true investment decisions and delay the deployment of NGA for their short term gain eg to force up the price of delivering services. In such circumstances the public sector should be empowered to invest directly or via a PPP or some other appropriate business model to ensure that their stakeholders are not either held to ransom or denied the benefits of a modern, dynamic NGA-enabled environment in which to access improved public services, enjoy enhanced audiovisual products or create world-class businesses.



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