

General remarks

The Hungarian authorities appreciate the Commission efforts to present this draft. Moreover the Hungarian authorities welcome the general principles - for requisition of state aid – which are performed in the draft. Such as:

- Detailed mapping and coverage analysis
- Market analysis
- Open tender process
- Best economic offer
- Technological neutrality (with some special Hungarian complements)
- Use of existing infrastructure
- Wholesale access
- Benchmarking pricing exercise
- Claw-back mechanism to avoid over-compensation

The Hungarian authorities expressly favour the approach of the draft that state aid could be given in only in cases, when it is confirmed, that any measures taken and/or remedies by the competent national regulatory or competition authority with regard to the existing network provider are not able to overcome such problems.

State aid for broadband projects

The Hungarian authorities agree with the approach, that it is very important to make a distinction between areas (so called white, grey and black area), but they remark in connection with the principle of technological neutrality that it is not practical to favour not progressive, „future proof” broadband technology (for examples xDSL, satellite) quoting to the technological neutrality. The satellite technology case can be an exception only, when it is justified by geographical isolation (for example when we speak about islands or highlands with low population density). Under the present draft the wholesale access to the subsidised infrastructure should be offered for at least a period of 7 years. The Hungarian authorities have that opinion that this is rather short. We suggest to extend this period for 10 years.)

By the draft, the European Commission says that in the absence of a clearly demonstrated market failure, the Commission will assess negatively measures funding the roll-out of an

additional broadband infrastructure in a back zone. In this context, the Hungarian authorities ask the Commission to specify the indicators how they can map the market failure. The Hungarian authorities come up with that approach with this connection, that Commission should specify the the obligatory elements of details of this market analysis, because without this the Member States cannot comply with the guidelines properly.

In connection with the public service compensation, the Hungarian authorities come up with that approach, that the definitions should be much more concrete in the guidelines.

For the time being it is very difficult to establish, when it is possible or when it is not to give the state aid as public service compensation in this field. Hungary considers that a higher degree of legal security is needed when determining the rules related to public service compensation.

According to the interpretation of the Hungarian authorities, in the draft the establishment of the whole infrastructures can be only promoted. Respectively also the state can influence the competition for example with measures, which may also be adopted by the national regulatory authorities in order to ensure equal and non discriminatory access to the pillars or ducts owned by utility or existing network operators.

According to the Hungarian authorities, in the cases of the basic infrastructure there are justifications of support with direct state intervention also the building of independent subbuildings (for examples duct-networks, dark-fibre or pillar), which can contribute to the further cost-effective spread of broadband infrastructure.

State aid for NGA Networks

The Hungarian authorities agree with that approach, that in general it is not necessary to give state aid for the black areas, but next to the above mentioned territorial separation it should be reasonable to apply further distinction at the network level as well. Beside the Next Generation Access, that is to say local accessing network, sometimes it can be reasonable to give state aid on the level of the core, transport network and aggregation. For example it is possible to have an island like Cable TV broadband network but at the same time because of the lack of capacity of core and transport network level it cannot function properly. Therefore an other level of the network and not a new local accessing network should be developed; otherwise the system will not function.) The Hungarian authorities' point is that the guidelines should show exactly define the principles of the evaluation of state aid above the local access network.

According to the draft guidelines – when setting the conditions for wholesale network access - , Member States should consult with the relevant national authorities. The Hungarian authorities agree with the justification of this proposal, as according to our experience the cooperation between the regulatory-authorities inside the EU of a high professional level, therefore is right according to the statement which we can find in the draft, that in the future national regulatory authorities are expected to continue either to regulate ex ante or to monitor very closely the competitive conditions of the overall broadband market and impose, where appropriate, the necessary remedies provided by the applicable regulatory framework.

Thus by requiring that the access conditions should be approved or set by the national regulatory authorities under the applicable community rules, Member States will ensure that if not uniform, but at least very similar access conditions will apply throughout all broadband markets identified by the national regulatory authorities concerned.

According to the draft, in exchange for receiving state support, the beneficiary should be required to provide third parties with wholesale access for at least 7 years (in case of public ownership without any timelimit). It would be very helpful from the Commission to give a more accurate definition of “providing open access”, as under the draft the details of this notion will be developed by the national authorities.