

Comments by the Maltese Authorities on the draft Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks

Malta would like to thank the European Commission for the opportunity to respond to its consultation on the proposed Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks. Malta shares the Commission's viewpoint that broadband is of strategic importance due to its contribution to the growth and innovation in all sectors of the economy and to social and economic cohesion.

Delivering next generation electronic communications infrastructures in Malta is one of the pillars of the Government's Smart Island Strategy. The deployment of such networks and efforts to increase usage as part of a national plan will ensure that Malta does not face new digital divides; between those that have access to very high-speed services, thus accessing highly-interactive bandwidth-hungry applications and others who have limitations in speed and are not in a position to do the same.

Government's vision is that of facilitating the deployment of such new technology so as to ensure that Malta is one of the leading information societies in Europe. As far as possible, the country has to take advantage of its size as this helps to deploy nation-wide projects.

Comments on Section 2 – The Commission Policy on State Aid for Broadband Projects

Malta generally agrees with the principles adopted by the Commission for the presence of aid and the compatibility assessment of such aid in the evaluation of basic broadband projects.

Malta, however, does not agree with the categorical statements made in paragraph 37 wherein the guidelines seem to *a priori* determine that the presence of more than one network automatically leads to effective competition and “no market failure”. Malta has

already experienced instances where the presence of two fully fledged, ubiquitous networks¹ was insufficient to produce effective competition, (indeed following a market analysis under Article 7 of the Framework Directive for electronic communications², the National Regulatory Authority's findings in this regard were approved by the European Commission). Therefore while we agree that in principle state aid in such instances may be unnecessary, and consequently we agree with the last sentence of this paragraph, we recommend that the wording in this paragraph is revised to remove categorical statements.

Comments on Section 3 – State Aid for Next Generation Access (NGA) Networks

Malta agrees that the economics behind NGA network deployment might hold or prevent investment in such networks. This could be true especially in micro markets and in regions where the GDP is below the EU average.

With regard to the definition of white, grey and black areas for NGA networks – section 3.3:

- we agree with the proposed definition of what is a 'white NGA area'. However, we are of the opinion that the proposed *5 year* timeframe indicated in paragraph 63 should be reduced;
- we agree with the definition and timeframe for the proposed 'grey NGA area';
- paragraph 65 defines the black NGA area as one wherein 'more than one NGA network exist... or are being deployed in the coming [5] years'. Malta feels that the deployment of one or two networks or the promised deployment of networks does not guarantee a priori an efficient market outcome. In this regard Malta feels that the designation of a black NGA area should not rely on the number of networks alone but should be based on a comprehensive analysis of the market in question.

¹ In Case MT/2006/0443: Access and call origination on public mobile telephone networks in Malta, the Maltese NRA found two mobile operators to be jointly dominant in the market under analysis. The European Commission agreed with this finding.

² Directive 2002/21/EC of the European parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

With regard to the compatibility assessment of measures related to NGAs – section 3.4:

- In paragraph 68, the Commission states that the grant of aid for NGA networks is subject to the demonstration that broadband services provided over the said networks are not sufficient to satisfy the needs of citizens and business users. In our opinion, this condition raises concern with regards to its potential impact on the digital divide. The EU's current policy aims to facilitate network rollout and stimulate demand for ICTs across the entire Community in order to fight the digital divide. If the provision of state aid to assist in the deployment of NGAs is to be dependent on the above, then, Malta fears that those areas which traditionally lag behind in new technology deployment may remain unserved. Malta is not convinced that it is appropriate to determine this before a network is rolled-out, especially in the event that such technology in other parts of the Community already exists. Malta feels that, with regards to such new technologies, the need to use such technologies and enhanced applications is only fostered and maximised when citizens have the means over which these services can be conveyed.
- In their analysis of grey NGA areas, as per paragraph 69, the Commission and Member States should have factual proof of the prospective private investor's commitment to the investment within the specified period. Again, across Europe there have been many instances where private investors planned to make investments, and also obtained for example rights of use of spectrum in order to do this, only to rescind on their plans at a later date.
- With regards to paragraph 74, the first sentence in the third indent indicates that in setting conditions for wholesale network access, Member States should consult the relevant NRA. Further down in this indent however the text seems to indicate that such conditions should either be set directly by the NRA or approved by the NRA. Malta considers that the latter approach is important as it will ensure that such access obligations are consistent with the NRAs regulatory policies.
- With regard to the last indent of paragraph 74, Malta feels that the rationale behind the first two sentences should be explained in more detail. In particular, why aid should not cover the last mile access segment is not clear to us. The Guidelines

should also be more specific on the definition of what should be meant exactly with the term 'advanced broadband'.

As a general note, the Guidelines generally address the eventuality of market failure to specific regions within a country with little or no regard to the possibility of a market failure on a national scale as far as NGA deployment is concerned. Although prima facie this eventuality might seem a remote possibility in the larger EU countries, it may not be so in small countries and particularly in micro states such as Malta; and there could be occasions where the choice of an investor, given the limited size of the market and economic realities, will most likely be to either invest on a national scale or not invest at all. Malta trusts that where it could be proven that such risks are likely to manifest themselves, proposed projects will be decided on their own merit and would respect their particular circumstances.
