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**Nederlandse reactie op  
'Community Guidelines for the application of  
State aid rules in relation to rapid deployment of  
broadband networks'**

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**General**

- We appreciate the effort of the European Commission to pull together all relevant experience of the application of the state aid rules on broadband networks into one comprehensive document. The broadband market is a dynamic field, and the roll out of broadband networks is of great importance to both the economic powers of Europe and its social cohesion. However, we also recognise that in some countries, like the Netherlands, the market is already quite active in the roll out of broadband infrastructure and therefore extra care needs to be taken not to distort competition.
- We are keen that also in the Netherlands the roll out of fibre networks occurs in a timely fashion, and welcome this document which provides a good overview of the Commission's take on state aid and broadband.
- However, there are some issues in these Guidelines which in our opinion could benefit from some clarification. Below we list these issues, and the concerns or questions we have regarding them.

**Access to ducts**

- We understand the need to allow open access to civil works, such as ducts, to all electronic communications operators, so as not to be discriminatory towards any specific player(s). However, the guidelines seem to go one step further. Public interventions only fall outside the scope of Article 87(1),

provided that they are not ‘industry or sector specific’ but are open to all potential users and not just electronic communications operators. We find this obligation very peculiar for two reasons.

- This obligation to be non-discriminatory across sectors is a new concept in the existing – and proposed – Telecoms Package. For example, article 12 of the Framework Directive enables NRA’s to enforce shared use of electronic communication networks and facilities. However, in the light of the State aid guidelines under consultation, these obligations might be interpreted as State aid, as they are indeed sector specific measures – they ensure shared use within the electronic communications sector.
- Also the practical implications of allowing open access to ducts across sectors are out of the ordinary. If a public authority undertakes some civil works which involve laying a duct, does this duct need to be suitable for all mentioned sectors – including water, gas and sewage – or can the ducts specifications be tailored to that of one sector, namely electronic communications? It is very unlikely water utilities would use the same kind of ducts as a fibre optic cable. We would appreciate some clarification of this aspect in the guidelines, or perhaps a re-wording of the relevant paragraphs.
- Besides the requirement not to be sector-specific in the making available of civil works, we expect that, *within* the electronic communications sector, some operators that already have rolled out a NGA or broadband network might not be happy with public interventions in the construction of ducts. There is the potential that this distorts competition on the existing broadband market.
- The Guidelines do not mention this aspect. We would be interested to know the Commission’s opinion on the potential distortion of competition *within* the electronic communications sector when a public authority decides to undertake civil works, such as the construction of ducts.

#### **Definition of broadband/ NGA**

- A (technology neutral) definition of ‘basic broadband networks’, or of ‘advanced basic broadband networks’ would be useful. Such a definition would also help in explicitly bringing to light the difference between broadband and ‘NGA’.
- The definition of ‘NGA’ (3.1) does not appear to be very technology neutral. Various possible NGA networks are referred to, with various specific technologies and download speeds. We think this definition might improve if it was put in a more technology neutral fashion, but with downstream AND upstream speeds as an indication. We believe that especially upload speeds are important in differentiating NGA from current basic broadband networks, as particularly high upload speeds enable next generation broadband services.
- With specific regards to wireless or mobile broadband networks, it would be helpful to know the Commission’s view on the required indoor coverage (as opposed to outdoor coverage) of these networks in order to be included in the broadband definition.

- A clear definition of broadband versus NGA would also be useful in understanding the distinction in the application of the state aid rules. Exactly in what way does the roll out of broadband versus NGA results in different state aid rules?

#### **Size of an area**

- We find the distinction of 'white', 'black' and 'grey' areas very useful when considering whether state aid is acceptable. However, we were wondering whether there are any guidelines as to the acceptable size of such areas. Can an area entail an entire province, or in the other extreme, one square kilometre? The size of an area could be set strategically to ensure that specific area is of a desired colour, such as white.

#### **Onus of proof**

- In determining whether state aid is acceptable in a 'grey' or 'black' area, a Member State needs to demonstrate that in the next 5 years, no NGA network will be rolled out which would be sufficient to satisfy the needs of citizens and business users in the area in question. We believe this onus of proof is difficult for a Member State to provide. Any existing network operator, who will not benefit from State aid towards the roll out of an NGA, might make a strategic announcements about the upcoming upgrade or rollout of an NGA – thereby taking away the option of State aid. Could the Commission give some more guidance on this issue?