

**With our 24 million customers in 11 countries, Tele2 is one of Europe's leading alternative telecom operators.** We offer price-leading and good quality communication services. Ever since Tele2 was founded in 1993, we have been tough challengers to incumbents and other established providers. Tele2 strives to offer our customers the best deal at all times.

## **Comments on the European Commission's draft Community Guidelines for the applications of State aid rules in relation to rapid deployment of broadband networks**

### **Tele2 Group Position**

Tele2 AB ("Tele2") welcomes the opportunity to comment on the Commission's Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks. Tele2 would hereby like to submit the following remarks.

Initially Tele2 would like to highlight the importance of the principle that NGA State aid should be targeted at areas where no broadband infrastructure exists or is unlikely to be developed in the near term, so-called "White areas". This is important in order to ensure that private investments are not hampered and that competition is not distorted by overbuilding private competitive networks. In this regard investments made in other technologies, such as mobile networks, must be taken into account. This applies especially when operators like Tele2 have already made investments in mobile frequencies in order to roll out nationwide mobile (LTE) internet infrastructure. Hence, it is important to carry out a very careful analysis of market developments and investment plans before State aid is granted.

Further, it is important to secure that State aid for the investments in question is actually used in such market failure areas only. The importance of this principle became evident in Sweden in 2000 when public funds for broadband investments

were granted to municipalities in order to build broadband networks in rural areas. However, the result was that some municipalities chose to start their own broadband offerings. In order to reach enough scale of the business they expanded into more densely populated areas, where competition was already present.

Thus, NGA State aid should be targeted at market failures only, i.e. areas that cannot be addressed commercially or on regulated terms under the telecoms framework or where there is no competition or prospect thereof.

Another very important aspect in this regard is to ensure sustainable and effective competition in the market also when State aid is used for broadband/NGA investments. That would mean an increased value for tax payers who will be able to benefit from improved service and greater choice in the long term. In order to achieve this it is in Tele2's view important to ensure that an Open access model is a prerequisite also for network deployment using State aid.<sup>1</sup>

According to Tele2's opinion, the Open access requirement for a State aid funded NGA-network should be demanded for a period related to the normal economical lifetime for fiber, which is usually between 15 and 25 years, in order to secure that State aid support serves the interest of sustainable competition and does not give rise to a monopolisation in any area whatsoever. It is in Tele2's view not acceptable that the enterprise given the State aid should be able to add any assets to its books without itself having funded the asset to its full book value. This period of time should be counted from the date when the asset was ready for service. In this regard it should also be pointed out that, given an Open access requirement for 7 years only (as stated in the draft Guidelines), it is very unlikely that another parallel network could be realized with regard to the applicable market analysis preceding the State aid in question.

The Open access requirement should be complemented by a rule clearly stating that the wholesale access should be ensured also beyond the applicable Open access period until there is a no SMP finding by the NRA in a market analysis procedure. Hence, the access obligation may be revoked only if the NRA finds no SMP. If the market area with a subsidised NGA network is not effectively competitive, the access obligation has to be maintained. Another important aspect is that the wholesale access requirement should be well-defined (pricing, non-discrimination), including the technical requirements of effective physical access and bitstream access. Subsidising VDSL roll-out of SMP operators devaluates the competitors' ULL infrastructure (built without State aid) since VDSL-services can then be provided only to appr. 30%

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<sup>1</sup> Remark: Tele2 does not intend to imply that the Open access requirement is limited to state aid funded networks. Open access must be applied in all cases where the investing player (typically the incumbent) has SMP in broadband markets and where sustainable competition cannot otherwise be enabled.

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of customers on the existing infrastructure due to copper cable spectrum management restrictions.

Further, the access obligations should be detailed including that access infrastructures available for parties should both be active and passive and should include backhauling where this network element is subject to State aid. Access should be granted at marginal cost, i.e. for assets funded by State aid no operator should be able to charge for open access as if the asset was new and had any book value. The pricing should be applied on non-discriminatory terms. It is, in Tele2's view, of major importance to secure a reasonable wholesale pricing in relation to State aid funded networks. If this is not secured, there is a risk of creating a market distortion because of unfair economical advantage given to only one market player and hence a monopolisation in the market in question.

Tele2 also finds it important to include the obligation of non-discrimination between the internal division of the aided operator and external operators (Section 2.3.3, point g). The cost of new resources should be the same for incumbent's commercial division and competitors. Hence, the Commission has to make a clarification in this regard in order to avoid a situation where State aid funded networks are opened up for competitors at a price considerable higher than justified.

Concepts of structural separation for entities receiving State aid are therefore predestined to achieve fair and non-discriminatory usage of publicly funded assets.

Further, the Open access requirement should be equally applied to co-funded networks, i.e. when NGA networks are deployed from state and private funding, and such networks should not be possible to foreclose at a later stage and from non-investing parties.

Tele2 considers the principle of technological neutrality (2.3.3, point d) to be a very important condition and Member States should not be permitted to favour a single technology in the tender processes. However, technology neutrality should apply on the condition that the technology used must have a long lasting open architecture. Dominant operators often design the architecture of their NGA network to exclude or restrict competition, which should not be permitted on the basis of technology neutrality. The requirement of long term open access de facto excludes the use of certain technologies, which cannot be unbundled.

In Tele2's view it should be a general requirement that a network benefiting from State aid can be unbundled. It should therefore be clarified that technology neutrality should be subject to the requirement of using a long term open access architecture that can be unbundled (reference to be made to paragraph 74, point 3). This is in order to make sure that inherently future proof and pro-competitive architectures providing longer-term economic benefits, such as point to point and multifibre, are used for

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State aid funded NGA networks. Hence, architectures such as PON, which strengthen dominant positions and restrict competition, should not be subject to State aid.

In this regard it should be highlighted that State aid funded build outs must be accompanied by requirements to protect competitors' investments in the existing infrastructure (i.e. co-location and LLU) in order to make sure that subsidisation of certain architectures do not harm competition and favour dominant operators. For example, there is a risk that public investments in VDSL networks may harm competitors by stranding the competitor's existing investments at the telecommunication exchange, particularly if incumbents plan on shutting down and selling the exchanges once the neighbourhood equipment is installed, and the new fibre investments into neighbourhoods will be difficult for competitive operators to efficiently replicate.

In its Guidelines, the Commission also mentions the need for a transparent tender process and the criterion of best economic offer (Section 2.3.3, point b and c). In addition to a transparent tender process that treats bidders equally, Tele2 wants to highlight the importance of not ending up in a situation of favouring any network operator, especially not the legacy networks operators. Due to the fact that legacy network owners, most likely, have the best geographical presence to connect a State aid build out to the national network, legacy networks owners have naturally a better position to bid and to present the most favourable bid in this such proceedings. In this regard the Commission should consider the need for structural separation in relation to State aid granted to incumbent operators.

Transparency should be ensured also for all stakeholders and in particular all operators present in the market, which are potential access seekers to the publicly funded network. It should be considered good practice to hold a public consultation on the planned measure including the possibility for all stakeholders to comment on the principles as well as decisive elements such as the architectural requirements.

Further, the NRAs should be involved in designing and monitoring State aid related projects, in particular pricing and non-discrimination issues, and should be given the responsibility to supervise and administer such projects.

Yours sincerely,

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