



Cable Europe comments on EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks

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Executive Summary

The Commission has issued revised broadband state aid Guidelines in which it proposes to add a category of network that could receive state aid described as "ultra-fast broadband networks".

This paper will develop Cable Europe's position on this new ultra-fast tier but in essence, we consider that:

- The new paragraphs (54/77-79) run contrary to the fundamental policy principle that state aid should be used only to correct market failures and to pursue social and geographical cohesion objectives. Meeting the Digital Agenda's 100 Mbit/s target cannot be viewed as a correction of market failure (which does not exist) or a pursuit of cohesion objectives (consumers in urban areas are not lacking fundamental means of communication – rather the contrary).
- The new paragraphs (54/77-79) run contrary to the fundamental policy principle that state aid is not necessary on well-functioning markets on which competition between market actors is fierce and on which – by definition – consumer demand can be expected to be met by the market. According to the current state aid guidelines, state aid in black and grey areas (often urban areas in which a number of market actors operate broadband infrastructures) lead to unacceptable distortions of competition. As such, state aid granted in line with the proposed paragraphs (54/77-79) would lead to unacceptable distortions of competition.
- The new paragraphs (54/77-79) run contrary to the fundamental policy principle of technology neutrality.
- The new paragraphs (54/77-79) are characterized by a fundamental lack of stringency and an unacceptable level of inconsistency. As it stands today, state aid according to paragraphs (54/77-79) would be in breach of the Treaty on the Functioning of the European Union (TFEU) because they do not satisfy the balancing test applicable to the

assessment of State aid compatibility and the principle of technology neutrality.

- The goals, which the Commission aims at reaching by widening the scope of state aid to broadband roll-out in black and grey areas, are already being met by present technologies (inter alia fiber based cable networks) which – in addition – are very well positioned to cope with any foreseeable development of consumer demand.

Overall, we do not consider that the proposed revisions to the guidelines will lead to the outcomes sought – in fact they will very likely be counterproductive and have the opposite effect. Perhaps most importantly, the revisions send a fatal signal to investors in broadband in the EU. They will suppress further investment by existing players and will result in new funds being diverted to other countries and regions which are more supportive of private investment.

This is particularly concerning given that, as the Commission itself has recognized, achievement of the Digital Agenda objectives, and indeed improvement of the EU's overall digital standing, are fundamentally dependent on sustainable, private investment. We urge the Commission therefore to take the utmost account of the recommendations that we make in this response and to amend its proposals accordingly.

I. Background Information

This is Cable Europe's response to the Commission's consultation on EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks.

Cable Europe is a trade association that groups all leading broadband cable TV operators and their national associations throughout Europe.

The European cable TV industry provides digital TV, broadband Internet and telephony services to more than 73 million customers.

Cable Europe welcomes the Commission's consultation on the matter and supports the Commission efforts to facilitate broadband connectivity in EU along the line of the Digital Agenda targets. These efforts should be made to support any technology capable of delivering high speed broadband be it wireline/wireless.

Cable is one of many technologies that is capable of delivering ultra-fast broadband services. Over the past decade cable operators made substantial investments in modernising their networks, upgrading electronic equipment and adding optical fibre into the coax infrastructure capable of providing very fast broadband services.

The roll out of Docsis 3.0 has led to dramatically increased service speed. Equally important to speed as well as increased capacity levels to efficiently support our customers is the cable sector's ongoing deep fibre deployment. Hybrid fibre coax networks (HFC networks) in Europe already deliver fibre as far as street side cabinets.

Docsis 3.0 has been deployed by all Cable Europe's members. By the end of 2013, most of Cable Europe members will be able to offer their customers

access to 100-200 Mbps (with a potential of much higher speeds in the future). Cable operators have pioneered the deployment of fast broadband services and have become leading providers of very high speed internet in Europe.

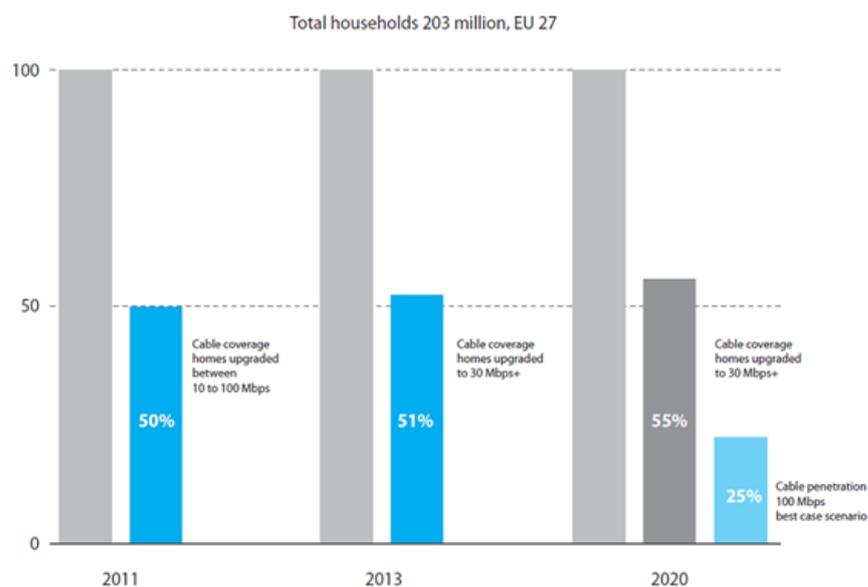
According to the findings of Solon consultancy published in 2011¹:

- ✓ 50% of households (103 million households) will be reached with at least 100Mbps by 2013;
- ✓ 55% of EU households (112 million households) will be reached with at least 100Mbps by 2020

This will be an extraordinary achievement, which means that more than 1 out of 2 households will be able to have access – if they choose to – to 100 Mbps cable broadband and above.

To translate our performance to the Digital Agenda targets *sensu stricto*:

- ✓ 51% of EU households will be reached with 30 Mbps via cable networks by 2013.
- ✓ By 2020, 55% of EU households will be within the reach of cable broadband networks delivering at least 30 Mbps.



(Source: Cable Europe)

With the ongoing implementation of DOCSIS 3.0 (D3.0), cable operators can easily scale their offers to deliver speed levels of up to 400 Mbps. In latest trials in May 2012, Cable Europe member Kabel Deutschland Group (KDG) reached 4.7 Gbps over a DOCSIS 3.0 configuration. This translates into 4,700Mbps, a speed that would allow a user to download a DVD in 8 seconds.

As demand grows, Europe's hybrid fibre coax networks (HFC networks) are perfectly capable of meeting any foreseeable demand

¹ Broadband on Demand – Cable's 2020 Vision – Solon Consulting - March 2011

for ultra fast broadband. Cable operators can opt for various upgrade strategies, such as reallocating the cable spectrum or implementing efficiency improvements for broadcast services.

Delivering 'ultra fast' broadband remains firmly on the agenda of the European cable industry. Given the fact that HFC networks are well equipped to cope with the demand of ultra fast speeds, there is no need to over build them with FTTP networks.

The issue at stake is about demand rather than supply.

The recent WIK Consult's report "Rethinking the Digital Agenda for Europe"² shows that the European Commission's speed and coverage targets set in the "Digital Agenda for Europe" strategy can be more quickly and cost effectively met by encouraging broadband infrastructure competition among a broader range of technologies, including cable. The authors reference a 2012 analysis by the European Investment Bank (EIB) demonstrating that **cable competition to incumbent telco operators can lower the total cost of high-speed broadband deployments by up to 30% across all European markets where cable is present.** The report also finds that cable investments acts as a spur to investment by telecom incumbents. Cable operator investment thus drives both competition and investment in Europe's ultra-fast broadband infrastructure.

Encouraging the markets to evolve naturally, rather than artificially forcing the pace, will therefore arguably be less costly and deliver better longer term results.

The question of investment in Europe, particularly in the field of technology and the needed infrastructures, comes up on a regular basis. Where businesses see future value, they will invest as a means of competing with other providers. **Where businesses do not see a commercial incentive for investment, State aid can, in the appropriate circumstances, be deployed as a remedy to ensure that crucial infrastructures are rolled out across Europe as uniformly as possible.**

The majority of state funded projects for broadband roll out that have been notified to the European Commission is for areas that have not been able to attract private investments. Cable Europe is of the view that all Europeans should have access to broadband and if the market does not deliver this, a member state should indeed consider supporting the roll out of a fixed or a mobile network with public resources.

We are extremely concerned though with the prospect of public money flowing in to areas that are capable of attracting private investments such as densely populated areas – or indeed into areas in which private investors have already deployed networks that are satisfying customer demand. But the proposed Guidelines include various – and worrying – signs that this could happen more and more in the future, potentially creating a disincentive for overall investment.

² 'Re-thinking the Digital Agenda for Europe: A Richer Choice of Technologies' presented and discussed in Brussels June 26th.

II. Aid to ultra-fast broadband networks

The Commission has issued revised broadband state aid Guidelines in which it proposes to add a category of network that could receive state aid described as "ultra-fast broadband networks".

A. No new ultra-fast tier:

1. The new "ultra fast tier" is not in line with the EU state aid rules (see Annex)

As discussed in the annexed White & Case Memorandum, proposed paragraph (77) and (78) are in breach of Article 107 of the Treaty on the Functioning of the European Union (TFEU), because they do not satisfy the balancing test applicable to the assessment of State aid compatibility and the principle of technology neutrality. These flaws, favouring solely a fibre platform and based on an arbitrarily set "common objective", are likely to cause undue distortions among competitors in the internal market. Specifically, paragraph (77) does not comply with Article 107 TFEU because it foresees the potential to grant aid to FttP projects, even in 'black and grey areas' where there is no market failure. This provision does not pursue a goal in the common interest, since it is not aimed at addressing any market failure. Further, it is likely to distort competition between FttP platforms and non-FttP platforms, and in the adjacent enterprise connectivity/leased lines market in a disproportionate manner, falling short of the balancing test applicable to State aid cases. It is also incompatible with the principle of technology neutrality.

These paragraphs also lead to a number of inconsistencies - both internally, in relation to the draft Guidelines themselves; and externally, in relation to other EU guidance, including the Digital Agenda³ and the European Broadband Communication⁴. These inconsistencies arguably breach the legal principle of good administration, as set out in Article 41 of the EU Charter for Fundamental Rights⁵ and the general principle of legal certainty.

If the wording of paragraphs 54, 77 and 78 is not amended, granting of aid by the Member States on the basis of these paragraphs which is approved by the Guidelines, risks later being declared incompatible by the European Courts⁶. To avoid this, the burden is on the Commission to amend these paragraphs to bring them in line with EU law.

2. The new "ultra fast tier" runs the risk of implicitly favouring a specific technology

Cable Europe fears that by suggesting aid for ultra-fast broadband networks in light of the Digital Agenda objectives, an EU policy would end up imposing a specific technology to do the job. As explained above, cable has already made a substantial contribution towards achievement of the digital agenda targets, and is capable of contributing even more. We strongly believe that

³ Communication from the Commission, A Digital Agenda for Europe of 26 August 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>.

⁴ Communication from the Commission European Broadband: investing in digitally driven growth of 20 September 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0472:FIN:EN:PDF>.

⁵ Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal C-364/01.

⁶ To date, the EU courts have not dealt with State aid cases involving broadband providers.

Fibre-coax networks (cable), Fibre-copper networks (FTTC), fibre to the home (FTTH), mobile and satellite all have a role to play in furnishing Europe with competing broadband infrastructures in Europe.

The new "ultra fast tier" would then implicitly favor a specific technology (FTTH). This will very likely undermine the billions of Euros of private money that operators have already invested and are planning to invest in NGA networks against the backdrop of the perceived certainty provided by the categories set out in the existing Guidelines. This certainly applies to the cable industry, which has invested heavily in its future proof HFC-networks.

We believe that if policy decisions and regulatory measures are taken without appropriate and careful consideration, very serious counterproductive effects on competition and private investments may occur due to promotion, implicit or explicit, of a specific technology.

Furthermore, such a policy has implications for well beyond just the cable industry but for wider European ICT-related business and could suppress investment in any technology. The market and its investors would likely interpret it as a sign that their investments could be undermined by the favouring of another technology in the future on the basis of a political aim.

Usually, intervention by public authorities to push a given technology (e.g. FTTH) adopts two main forms: 1) Subsidizing such technology, for instance by mean of State funds for public and/or private undertakers; or 2) Imposing sub-optimal access prices to the incumbent operator deploying such technology, which, in turn, crowds out investment in alternative technologies (a new entrant will prefer to access the incumbent's network rather than deploy its own). Both approaches distort competition as the capability of commercial response by alternative networks such as cable will as a result be severely reduced.

3. The new ultra-fast tier would be inconsistent with the Digital Agenda's social cohesion objectives.

The new approach would also be inconsistent with the Digital Agenda's social cohesion objectives. If intervention is to occur, and in particular if state funds are to be deployed, these should be targeted in the first instance at those citizens and consumers **who have very poor internet access or even no access at all**. To focus on the duplication of 'ultra fast' networks at the expense of achieving an improved base level of service, particularly when high capability facilities capable of more than satisfying demand, such as cable, already exist in the market, would not only represent a mis-allocation of resources but would also very likely lead to an exacerbation of the digital divide. The draft Guidelines recognize in paragraph (38) that a balance needs to be carefully struck between the desire to provide very high speed infrastructure and the necessity to avoid a new digital divide.

4. The new paragraph 77 could have a second effect on private investment

The proposed paragraph 77 could have a second effect on private investment. Not only could the granting of state funds to black and grey areas, drive away investment from white areas but it could also distort or delay private investment all together. The current guidelines are relatively clear on the situations in which state aid can be applied and the criteria governments have to adhere to. To date, governments have had

a clear focus on white areas. This sends a clear message to the market as well: a second NGA network in grey areas generally has to be deployed at the cost of private investors. With the proposed paragraph 77, the Guidelines would increase the prospect of state funding for ultra fast broadband in grey and even black areas. We expect governments to react to this by drafting plans to also invest in or subsidize grey or black areas. Since the criteria for state funding in these areas are not very explicit, it will take a while for these plans to come to effect, if at all. This could have detrimental effects on private investment in these areas. Private investors may want to make use of the state funding and therefore they can be expected to delay any planned investments. Alternatively, private investors that had contemplated investing in these areas may be deterred from doing so on the basis that their investments will be undermined by a state subsidised network.

There are clear examples of these effects in the Netherlands. For a couple of years, private investor Reggefiber has been very active with the roll-out of FttH in small and medium sized municipalities across the country. There are two notable exceptions to this. The Province of Limburg has seen the first investment in FttH only a couple of months ago, right after the Province abolished its plans to pour public money in the province-wide roll-out of NGA. In the Province of Fryslân, FttH has only been deployed in the capital (Leeuwarden). In the rest of the province, private investors are waiting for the Province's plans for public funding of NGA roll-out to crystallize a process that has been going on for over two years now. And this is despite the presence of an HFC network in both of these provinces which offers 100Mbps + connection service to 95% of the households.

With government funds being scarce and their use increasingly scrutinized in the current macroeconomic climate, there are only so many broadband projects that can be publicly funded. Publicly funded broadband projects in grey areas, made possible by the new category of ultra-fast broadband, could thus crowd out broadband project in white areas where citizens may not even have access to basic broadband. Governments might very well opt for projects in these grey areas, since they can serve more households for the same amount of money and the benefits might thus seem higher. This leaves no or less funds for projects in white areas.

This all shows that the guidelines should restrict state funding to those areas where private investors cannot be expected to invest on their own – white areas -, because private investment could otherwise be severely distorted.

5. *The new ultra-fast tier needs to uphold the principle of technology neutrality*

Cable Europe calls on the Commission and Member States to uphold the **principle of technology neutrality** and to consider that any fixed and wireless broadband technology has a valid role to play and that public intervention should not distort the optimal mix of technologies that will naturally emerge in the market according to the widely diverse regional circumstances and consumer preferences across the European Union.

There is no doubt that facilities-based competition between cable and telco incumbents will spur ultra fast speeds. The cable industry's HFC networks are perfectly capable of meeting any foreseeable demand for ultra fast broadband.

Commissioner for the Digital Agenda, Neelie Kroes, stated in a 12 July memo: "Enhancing the broadband investment environment" issued on 12 July that "*Technology Neutrality is just another way of saying that we cannot predict with any certainty what the best technological solutions will be, nor how they will compete and interact*". With these words, Mrs Kroes expressly mentions that she does not arbitrarily pick winners as many can do the job. Moreover, the guidelines themselves mention the importance of technology neutrality (see paragraph (67) e). Technology neutrality is therefore definitively still the main principle to follow and should be correctly implemented in any policy document.

Given the above, **Cable Europe is strongly against this new 'ultra-fast' tier** added in the Guidelines as it risks completely distorting existing infrastructure and private investments made. Furthermore, it is not needed or justified. The market is in general more than capable of delivering the Commission's ambitions – and to the extent that State assistance may be required in particular areas to address issues of proven market failure, the existing form of the Guidelines provides sufficient scope for any intervention that is required in this regard. It would therefore recommend **deleting these whole new paragraphs (77) – (79), (54)**.

B. Amendments:

If the Commission considers keeping these new paragraphs against the strong caveat we make, it has to take deep consideration of the following:

1. Aid to ultra-fast broadband networks:

Cable Europe believes that it is inappropriate to use State aid to force the pace of take-up of a certain speed of service. The choice of which tier or level of capability to take must rest with the consumer. Take up is a demand, not a supply side issue. The use of public funds for this end would definitively represent an unwise use of public scarce funds.

In the broader context, while it may be for the Commission to define the policy objectives it considers to be in the "common interest", there are limits to this. Focusing on speed alone is misguided. The emphasis of public broadband policy should be placed on coverage, rather than the delivery of certain speeds. The role of State aid policy must be to facilitate investments, not to drive demand.

While we are strongly against its inclusion, in the event that the Commission proceeds to maintain the paragraph (77), Cable Europe suggests the following wording : "In light of the Digital Agenda objectives, public intervention would still be possible in areas where existing or planned NGA networks *do not present enhanced technological characteristics as specified in paragraph 54*". (in conjunction with an alternative form of wording for paragraph 54, as we have proposed below in 3.)

Such a wording could help paragraph (77) comply with the condition of technological neutrality in paragraph (67) e). Indeed it is clear that both FttH and HFC cable networks present the enhanced technological characteristics in paragraph (54) and should therefore be regarded as 'ultra-fast broadband networks'. Footnote 110 would have no object any more.

2. "Step change":

Paragraph (78) requests that any new subsidized network must demonstrate a clear 'step change' compared to existing networks infrastructure. Paragraph (48) defines what a 'step change' is. Cable Europe considers that, despite its apparent strict conditions, the **'step change' notion is still a very vague concept, an arbitrary standard out of touch with market reality and an alien concept in EU State aid law.** Furthermore, it is fundamentally at odds with the accepted purpose of State aid (i.e. to remedy a proven market failure or address an enduring cohesion issue). A 'step change' in the context contemplated by the Commission does not in and of itself remedy a market failure, nor is it necessarily in the common interest.

Paragraph (78) could allow for many projects to be considered as ensuring a "step change" in terms of broadband availability and hence **risks the overbuild of existing infrastructures**, which are more than capable of satisfying demand, in the same areas. Footnote 59 indeed mentions an example of criterion to be used to assess this step change reality: the similarity of technical and topology constraints. As cable network has a unique technicality and topology, any different network would bring a 'step change' in the area where cable is present and therefore lead to a duplication of existing cable infrastructure.

In order to avoid this kind of outcome and as this criterion is not aimed at fixing market failures where demand is not satisfied, the Commission should abandon this "step change" test.

3. "Enhanced technological characteristics":

Paragraph (78) a) requires the new infrastructure to have significant enhanced technological characteristics compared to the existing networks (for instance through symmetric speeds). It refers to paragraph (54) for further description. According to the Commission, a 'future-proof NGA network' would (i) provide enhanced connectivity (ii) provide the possibility of symmetric speeds and (iii) represent a sustainable and non-temporary technological advancement by extending fibre until the customer premises (iv) supports infrastructure-based competition. Footnote 63 concludes by saying that NGA networks will have the speed and capacity to deliver in the future high definition content, support on-demand bandwidth hungry applications as well as bringing to business affordable symmetrical broadband connections.

Next generation networks are categorized as either "interim NGA" or "future proof NGA" without any consideration for the phased approach to upgrades developed by the market as the demand for "ultra fast broadband" evolves, or any consideration of the ability of existing NGA networks to satisfy foreseeable demand.

Cable operators can meet the criteria of a future-proof NGA networks and should be regarded as such. They have demonstrably followed – and exceeded – demand over time and will continue to invest in enhancing the capability of their networks as demand evolves. Indeed, cable operators already provide some of the highest broadband speeds on the market, significantly in excess of general end user demand, allowing the use of bandwidth-hungry and on demand applications. We also deliver symmetrical services to business customers.

It is to be expected that demand for bandwidth will continue to grow in the future. In order to further increase speeds cable operators can opt for various upgrade strategies, such as reallocating the cable spectrum, implementing efficiency improvements for broadcast services. Cable thus has a great potential of much higher speeds in the future.

Cable has a keen interest in symmetry when it comes to the enterprise customer. Symmetrical products are readily available to business customers in the adjacent enterprise connectivity market, and many cable operators are active in this market. Large industrial users will tend to ask for high speed symmetry and European cable operators are expected to play an increasing role in this specialized market. On the consumer market however, demand for symmetry is not evident. The reason behind this seems to be that consumers by their nature consume more data than they produce, whereas the relative weighting can be different for some enterprise customers. Internet access speeds in today's marketplace are typically not symmetrical, with the downstream rate being considerably faster than the upstream. This type of internet access is generally sufficient to meet any foreseeable consumers' demand⁷.

We recognise that some business customers rely on (consumer grade) broadband products to serve their connectivity needs - and indeed we are supportive of, and encourage that, where those needs are in line with general demand. However, many business users require characteristics significantly beyond the general demand in the consumer grade broadband market - not just symmetry - and it is not realistic for operators providing services in that market to support higher capability needs of a niche set of customers at consumer grade prices. In this regard, if there is any perceived inability to meet business users' needs, it should not be regarded as a failure of the residential broadband market.

The cable industry has not seen demand for symmetry although there has been a modest demand for higher upload speeds. As a result, cable has focused on providing more upstream (and downstream) capacity to consumers, rather than providing absolute symmetry. If consumer demand were to evolve toward more parity between download and upload, cable providers would be more than capable of providing it. In this regard we would note also that the apparent fixation with symmetry is misleading. The key consideration should be whether the end user has **sufficient** upload (and download) capability, not whether the upload and download capability is equal. Cable operators have considerable control over the bandwidth configuration per user and could adapt its allocation if there were a business case to do so in the future.

⁷ Research shows that this asymmetry in bandwidth demand is here to stay. TNO, for example, observes: 'We expect that the current, fairly strong bandwidth asymmetry on the demand side will decrease, but will remain a permanent characteristic, with an indicative lower limit of approximately 1:5. In principle, asymmetrical access technologies need not prove an obstacle to the proper facilitation of symmetrical services such as HD video-conferencing, provided the upstream speed is high enough and guaranteed'. (TNO, Demand and supply Next-Generation Infrastructures 2011-2020).

User type	Symmetry required
Large industrial	Yes
SME	Some
Home worker	No
Rural	No
Casual	No
HD streamer	No
Gamer	No

Source: Helios

Cable Europe strongly considers that demand from business customers (for example for symmetrical speeds) should never give rise to state aid to a network that is aimed at serving consumer demand. We therefore believe that description of the "NGA Future-proof network" is misleading and could allow for state aid to be granted to overbuild existing NGA networks.

As we have stated above, we are strongly against the introduction of an additional 'ultra fast' category, however if the Commission proceeds to include it in the Guidelines, we propose the following amendments to paragraph (78) a): *"the new infrastructure would have significant enhanced technological characteristics compared to existing networks (see paragraph 54 above)"*

And the following to paragraph (54) (to which paragraph (78) a) refers): *"While connection speed is one important characteristic of NGA networks, at the same time it is not the only one. Apart from a certain download speed, ultra-fast broadband networks are understood to have at least the following characteristics: (i) provide enhanced connectivity (ii) provide the possibility of higher upload speeds and (iii) represent a sustainable and non-temporary technological advancement . Overall, NGA networks constitute a leap forward compared to current generation technological solutions and thereby facilitate the improvement of all aspects of broadband technology and broadband services".*

Footnote 63 should also be amended as follows: *"NGA networks will have the speed and capacity to deliver in the future high definition content and support on-demand bandwidth hungry applications. Both FttH and HFC cable networks provide these enhanced characteristics. "*

4. "Demonstrable demand":

Paragraph (78) b) requests an aid granting authority to demonstrate expected demand for qualitative improvements.

Demand in this discussion is key. Market demand should be correctly evaluated and demonstrated. It cannot be based on a perceived demand by the grantor. Allocating state funds on the basis of a perceived future demand when facilities that are more than capable of satisfying existing demand already exist, and where the need to improve the base level of broadband coverage and capability in other areas is of greater importance, would represent an inappropriate use of scarce funds. The market should always be given time to anticipate and meet new demand.

In this context, one should be very cautious about limiting the demand to business needs, as it does not represent the reality of the market. The

perceived demand should be looked at in the context of the general demand of the market which will, in the main part, be driven by **residential users**. Any state aid measure could not be approved when fulfilling only the enterprise area's demand. This could end up with an intrusive measure leading to competition distortion.

5. "Commercial investments"

Paragraph (79) mentions that the Commission will also consider recent commercial investments when deciding on the proportionality of state aid. This criterion should be much more explicit such as: "...the Commission will take into account whether major commercial investments in NGA *relating to both infrastructure deployment and network upgrades have been undertaken in the last 10 years.*"

III. Transparency and Involvement of NRAs

Transparency in the State aid procedure is key. Cable Europe supports any measures that would improve transparency and diligence of State aid broadband schemes.

Firstly, Cable Europe approves the Guidelines' **greater involvement of NRAs but would require that should the Commission proceed, against our recommendation, to include it**, such an NRA involvement be also included for the ultra-fast broadband measures as presented in paragraphs (77) and following. Moreover we consider that even more a procedure in which market analyses preceding state aid measures would have been audited and approved by NRAs could be very beneficial to the different procedures. For example, NRAs' own broadband coverage assessments and/or reviews of other public bodies' market analyses could be made available on their websites. In such a way, the rationale and the factual basis for state aid measures would be easily accessible for market actors and the public.

A greater involvement of NRAs (and National Competition Authorities (NCA)) would also be beneficial to secure a harmonized application of the notion of market failure. In the draft guidelines the notion of market failure is described in paragraph (35) when markets fail to deliver an outcome that would yield the highest possible welfare for society, for instance when socially profitable investments are not being undertaken. To avoid divergence of the concept of market failure and too broad application of State aid rules, it is necessary that both NRAs and NCAs play a decisive role in defining whether or not there exists market-failure and whether there is a need for State aid or other public intervention.

Secondly, Cable Europe considers essential that stakeholders can intervene very early in the procedure in order to comment on the case. According to paragraph 67, it is crucial that **stakeholders are aware as soon as possible about any project**. Member States have to demonstrate the demand for any state aid project. Mapping is very important. And stakeholders should be able to comment on these elements immediately. Public consultation can help of course but all the elements of the procedure should be known at a very early stage and continuously during the whole procedure.

IV. No exclusion of funding for cable networks

While the potential of crowding-out private investments is our main concern, Cable Europe likewise fears that the eligibility conditions for the funding of NGA networks will *de facto* favour one specific technology (i.e. FTTH) and exclude others, including future-proof cable networks. In the light of the principle of technology neutrality the Guidelines should, especially with regard to prescribing obligations concerning specific access models, network design and topology, leave room for technical and economic considerations that **allow for the use of different NGA network technologies in state aid projects**. The goal of fostering competitive services to end-users on funded infrastructures and the Digital Agenda targets are reached best if the guidelines follow a technology neutral approach.

V. No preemption of the Draft Guidelines

As a concluding remark, Cable Europe is asking the Commission **not to apply the provisions of the Draft Guidelines to aid measures currently notified** to the Commission. The revised guidelines are at this stage still subject to public consultation and may, therefore, not constitute the basis for ongoing evaluation processes.