

Municipal wireless networks and State aid rules: Insights from “Wireless Prague”

Norbert GAÁL, Lambros PAPADIAS and Alexander RIEDL (1)

1. Introduction

Access to advanced electronic communications networks and especially broadband services has become a critical component of the economic and social fabric of today's societies. Despite full liberalisation of the telecoms sector and increased competition through third-party access to the networks of fixed-line incumbents, the economics of broadband networks mean that not all geographic areas can receive and enjoy affordable broadband connections. To remedy some of the shortcomings of fixed networks, wireless technologies have emerged over the last years as an alternative technology that could serve the needs of citizens where access and use of fixed-line networks may not be a viable solution.

Today, local wireless networks are mushrooming all over Europe. Initially deployed in rural areas and remote areas as a complementary network component to a fixed-line broadband network, wireless networks are now being set up in cities and towns where broadband technologies may already be in place. Apart from many private initiatives, some local authorities have also been considering playing a significant role in the deployment of such networks in several European towns and cities. The public funding for such networks often aims to relieve a perceived gap in broadband supply to enable the provision of services (2) to citizens and businesses. However, often “municipal pride” seems to play a role as well. The complaint against the Prague Municipal Wireless Network project (3) was the first such case assessed by DG Competition under the State aid rules. This article provides a short overview of the case and a number of general policy considerations.

(1) Directorate-General for Competition, unit C-4. This article reflects the personal opinions of the authors and may not be regarded as stating an official position of the European Commission or of its Competition Directorate-General. Responsibility for the information and views expressed lies entirely with the authors.

(2) Broadband access is deemed essential for various public e-services such as e-Government, tourism applications or telemedicine.

(3) Case NN 24/2007 — Prague Municipal Wireless Network (ex CP127/2006), Czech Republic, of 30.05.2007, see http://ec.europa.eu/competition/state_aid/register/ii/doc/NN-24-2007-WLWL-en-30.05.2007.pdf

2. The “Wireless Prague” project

The project plans

In 2006, the City of Prague initiated plans to build an entirely publicly-funded, city-wide wireless broadband network in Prague. According to the Czech authorities, this would support the development of the knowledge society in Prague and improve the competitiveness of the city. The total planned cost to the City of Prague over 5 years amounted to CZK 342 million (approx. € 12.2 million).

The network would enable all citizens to have wireless broadband access (using their laptops, mobile devices, etc.) throughout 21 out of 57 Prague municipal districts, which is approximately one-third of the Czech capital. For the network, the City of Prague chose to implement WiFi technology, a Wireless Local Area Network technology using unlicensed spectrum, and offering broadband access at short distances around so-called “hot spots”. The construction and operation of the network was planned to start in 2007 and the complete infrastructure is expected to be finished by 2008.

The initial plans also provided for commercial exploitation, whereby capacity on the municipal network to be built would have been available to telecommunications operators via a public tendering process. These operators would have been able to use the capacity on the new, municipal wireless network to offer their own broadband internet services to citizens and business users in the covered area.

The market context

Although broadband penetration in the Czech Republic remains below the EU average (4), the broadband market in the Czech Republic is characterised by significant platform competition, with the third highest market share for alternative operators in the EU (5). Thus, broadband access in Prague is provided over several competing tech-

(4) According to the European Commission's 12th report on the Implementation of the Telecommunications Regulatory Package, it reached 9.6% of the population in 2006 compared to 15.7% on average in the EU-25.

(5) Source: 12th Report on the Implementation of the Telecommunications Regulatory Package — 2006. COM(2007) 155 — 29 March 2007.

nology platforms such as ADSL, cable, wireless or mobile communications. A notable feature of the Czech broadband market is the significantly higher market share of wireless connections compared to other EU countries: wireless access comprises 31.1% of all broadband connections ⁽⁶⁾. So it came as no surprise that the initial plans of the City of Prague triggered opposition by private operators already offering broadband services in the Czech capital.

3. State aid assessment

Preliminary investigation of DG Competition

Following a complaint by private operators in June 2006, the Commission conducted a preliminary investigation of the initial plans. However, during the investigation and after consulting the Czech Competition Authority (ÚOHS), the City of Prague modified its initial plans considerably in the light of concerns as to the possible negative effects of the project on existing providers. In order to alleviate these concerns, the project was accordingly split into 2 phases:

- Phase 1 was limited to the provision of high-speed connectivity to public buildings and institutions (such as schools or municipal buildings), free wireless internet access to public administration services (such as e-government services) and to public sector information for citizens as well as the development of public-sector applications (such as mobile camera surveillance of municipal areas or traffic monitoring).
- Phase 2 involved plans for the future commercial exploitation of the network.

Since Phase 2 was postponed indefinitely by the Czech authorities, the Commission's State aid assessment was limited to Phase 1 of the project only.

Presence of State aid

In its decision of 30 May 2007, the Commission concluded that Phase 1 of the project did not involve State aid. Although there were no doubts that state resources were involved given that this was a publicly-funded project, no economic advantage within the meaning of Article 87 (1) of the EC Treaty was conferred at any level. In particular, the provider selected to build and operate the network was chosen by means of an open

tender. The public-sector organisations whose websites could be accessed for free via the wireless network do not carry out any economic activities and therefore cannot be regarded as undertakings within the meaning of Article 87 (1). Moreover, at the level of end-users, the new network would not be able to substitute existing market offers as it will offer access only to publicly-funded websites which in any event are already accessible via any other existing broadband connection offered (ADSL, cable, mobile and WiFi networks).

4. Insights — Some policy considerations

The "Wireless Prague" case is regarded by market observers as an important precedent. Following the decision, several European cities significantly modified their plans to roll out municipal wireless networks. The decision is in line with the Commission's policy concerning the public funding of broadband networks ⁽⁷⁾. In areas characterised by adequate broadband coverage over several competing broadband infrastructures, such as Prague, the justification for State aid is doubtful as there is a high risk that state intervention crowds out existing and future private investments.

The main concern of the complainants regarding the "Wireless Prague" project had been the distortive effects of the initially planned commercial exploitation of the wireless network on existing providers. Given that several competing broadband offers were already provided by private operators in the area covered by the municipal wireless network, creating a new broadband network with public funds and making it available for commercial exploitation could have raised serious questions about the *necessity* and *proportionality* of such a measure.

In general, public authorities may provide public support for the provision of (wireless) broadband if there is no offer by private operators. However, there are also several alternative ways of encouraging private operators to provide (wireless) broadband which do not involve granting State aid. For example, local authorities may procure services by means of public tender from broadband operators for public sector use instead of building their own networks. This would avoid State aid issues related to the exploitation of excess capacity on such networks from the outset.

⁽⁶⁾ This is significantly more than in any other EU country: the EU-25 average of "alternative" technologies for broadband access, including wireless, is 2.7% of all connections, *ibid*.

⁽⁷⁾ See also "Public funding for broadband networks — recent developments", by Papadias, Riedl and Westerhof, Competition Policy Newsletter, 2006-3 autumn.

Public authorities may help wireless operators to deploy their networks, for instance by granting antenna permits to operators more cheaply and more quickly. They may also grant non-discriminatory access to public infrastructure such as lamp posts or municipal buildings for antenna sites. They can actively coordinate the

deployment of hotspots or encourage service take-up by providing attractive e-government services. The experience from several European cities shows that local authorities are well-advised to work *with* private operators and not against them, in a joint effort to bring affordable broadband to everyone.