



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG COMP - Impact Assessment on EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks**
(draft version of 23 October 2012)*

(A) Context

The Commission has considerable experience with assessing State aid granted for the roll out of broadband networks. Since 2003, it has already taken more than 100 decisions in this sector. On the basis of this case experience, in 2009 the Commission adopted Guidelines for the assessment of State aid in broadband. The Guidelines do not formally expire on a certain date. However, in the light of rapid technological and regulatory change, they provide for a review to be carried out within three years. The review process started in April 2011.

On the basis of the Commission's case practice and the experience with the existing Guidelines, the Impact Assessment explores the options for the review. It does not address wider sectorial issues which are, for instance, linked to the regulation of the electronic communications sector. Similarly, the review is considered within the framework of the objectives of the Digital Agenda for Europe ('DAE'). Moreover in the State Aid Modernization (SAM) Communication of 8 May 2012 the Commission committed to a "broad modernisation package for EU State aid policy as a whole", by revising various state aid guidelines based on common economic principles.

(B) Overall assessment

The report provides an adequate overview of the main issues concerning state aid for broadband infrastructure, but it should be improved on a number of points. First, the report should better structure the problem definition to analyse the most important problem drivers, and the mechanisms by which the different problem elements influence each other, supported by the available evidence. Second, it should reformulate the objectives and retain a broader range of policy options for more in depth analysis. Third, the report should provide more quantitative information to illustrate the analysis of the expected impacts of the various options and packages of sub-options. Finally the report should compare the options with respect to their effectiveness, efficiency, and coherence in achieving the stated objectives.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition. The report should better structure the problem definition to analyse the most important problem drivers, and the mechanisms by which the different problem elements influence each other, supported by the available evidence. This can be done by more clearly distinguishing between on one side problems specifically related to the sector (market failure, funding gap, technological developments), and on the other hand problems that may have arisen in the application of the current rules. In view of the absence of formal evaluations the report should be much clearer about other evaluative exercises that have been undertaken (apart from the public consultations), explaining how the findings have been used in the current analysis. The perceived lack of demand in the problem definition should be better supported by evidence. The links between the review of the guidelines and other Commission initiatives will have to be better explained. More in particular the report should clearly refer in the problem definition to the ways in which the current guidelines are expected to be inadequate to facilitate achieving the targets with regard to broadband access as formulated in the Digital Agenda for Europe. It should also clarify that the initiative is fully in line with the principles that guide State aid policy modernisation. The report should clearly explain any new concepts introduced (e.g. passive and active infrastructure), and be more precise in the definition of relevant markets, for instance as regards ultrafast broadband.

(2) Present a broader range of options. On the basis of more adequately defined objectives, that can be shown to address specific problem drivers, the report should present a more comprehensive set of options. As neither the baseline nor the more radical "DAE objectives first" option are seriously considered, the report should present a number of clearly differentiated 'fine-tuning' options with different ambition levels, thresholds or implementation logic to inform fully about available policy choices. The report should explain how the (sub-)options contribute to the stated objectives.

(3) Provide a more detailed analysis of impacts. The report should make a more consistent effort to identify who is affected in which particular way by the options under consideration. The available evidence from the case studies should be more explicitly used to give an indication of the likely costs and benefits for the different parties involved, including the costs for national administrations. The report needs to assess more systematically how the different options will affect internet access prices for businesses and consumers (including those in very remote areas), the development of competition in affected markets, and the competitiveness of relevant EU industry sectors. The report should also explicitly indicate to which extent SMEs are affected by the proposed options. It should also address whether any of the options aims at and can be expected to deliver on simplifying the application of the rules on state aid for broadband infrastructure development. The report should discuss impacts on administrative burden in more detail, including the information requirements falling on companies that own subsidised infrastructure.

(4) Improve the comparison of options. The comparison of options is made without presenting any evidence with regard to expected costs and benefits. It should bring together all relevant information on the impacts of the different options in tabular form to make a more transparent comparison of options possible, and to provide a more adequate evidence base for the selection of the preferred package of sub-options. The report should explicitly compare the options (including packages of sub-options) with respect to their

effectiveness, efficiency, and coherence in achieving the stated objectives.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should define a number of relevant indicators, in line with the operational objectives, that can provide adequate information for future follow-up of the effective implementation of this policy, as well as a proper arrangement to ensure that the outcomes are used for effective implementation. It should also include a timetable for a formal evaluation, complying with the Commission's evaluation standards, of the state aid regime in this sector, and specifically define the focus and responsible actors.

(E) IAB scrutiny process

Reference number	2012/COMP/002
External expertise used	No
Date of IAB meeting	21 November 2012