

# FTTH COUNCIL EUROPE

Response: Broadband network deployment –  
evaluation of EU State Aid rules

27/07/2020



## **The FTTH Council Europe makes three points:**

### **1. The need for a seamless alignment of network objectives under the State Aid rules for Broadband and the new regulatory framework (EECC) being applied by national regulators.**

The new regulatory code, referred to as the European Electronic Communications Code (the “EECC” or “the Code”) has a principal objective to foster investments in the new Very High Capacity Networks (VHCNs). VHCN is essentially about investments in fibre networks. In the case of fixed networks, it is defined as “Fibre to the Home” or “Fibre to the Building” (or its “equivalent” but, as defined, it is difficult to see how it can have a practical equivalent and BEREC’s list of equivalent characteristics imply fibre networks). The clear objective is to drive fibre as deep in the network as possible.

We believe that as a matter of consistency with the EECC, assessments under the State Aid Rules should be made looking through the prism of whether investments funded by the State meet the basic criterion of being classified as VHCN. Consequently, anything which doesn’t fall in the category of VHCN should not qualify for funding.

### **2. The need for alignment of geographic areas under the State Aid rules and the relevant regulatory framework being applied by NRAs.**


Although entry barriers are high, they are not evenly so throughout a Member State. Measures in recent years lower barriers to entry by enabling sharing of civil infrastructures and in-building wiring and widened the scope of infrastructure-based competition. It seems likely that multiple VHCN enabled networks could be deployed in urban areas where the cost of deployment will be lower compared to deployment in other areas. An enhanced use of a revised Broadband Cost Reduction Directive ought to help with this objective. The EECC’s preferred approach relies heavily on infrastructure-based competition.

The possibility for commercial FTTH deployment in less dense areas where costs per unit are normally higher are likely to be more limited. In order to be consistent with the EECC, urban areas ought to be outside the scope of State Aid interventions based on the characteristics of the area being covered because areas could be commercially viable even if not in current business plans. Even in less dense areas innovative deployment techniques and efficient usage of existing assets can allow the commercial coverage area to be larger in the future than it has been in the past. While a case-by-case approach is necessary, a national consultation with operators as described below could add to the overall assessment.

### **3. The need to adapt State Aid rules to VHCN network investment – prevent crowding-out and anti-competitive misuse**

On the one hand investors rightly point out that capacity constraints means that for some EU countries a full VHCN deployment would not be possible within 3 years and that this alone could leave large swathes of a Member State open to a State Aid intervention. The FTTH Council Europe believes that flexibility in the respective EU rules is necessary to allow solutions like – for example - national consultations with the operator community which can help identify an appropriate timeframe for private FTTH/B deployments. This timeframe may vary by Member State depending on how much VHCN has already been deployed.

On the other hand, those who would block State Aid investments in order to preserve monopoly positions in copper are becoming more and more sophisticated in delaying or blocking the use of State Aid. For instance in an EU market that saw a lengthy tender process that has been awarded to one party with approval under the State Aid rules (SA.23179 National Broadband Scheme Ireland) was being undermined by an incumbent operator who firstly changed the geographic scope of its network build out and



subsequently sought to re-enter the tender process with radical price revisions. The net result of this episode was a delay of several years.