



# Creating a brighter future

Response to the 'Revision of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks'

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### *1.1.1. General Comments*

The FTTH Council Europe (hereinafter the FTTH Council) welcomes the opportunity to participate in this ‘Revision of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks’.

The FTTH Council is an industry organisation with a mission to accelerate the availability of fibre-based, ultra-high-speed access networks to consumers and businesses. The Council promotes this technology because it will deliver a flow of new services that enhances the quality of life, contributes to a better environment and increased competitiveness. The FTTH Council consists of more than 150 member companies. Its members include leading telecommunications companies and many world leaders in the telecommunications industry (additional information is available at [www.ftthcouncil.eu](http://www.ftthcouncil.eu)). Telecoms operators are not members of the FTTH Council and we have our own perspectives regarding the appropriate regulatory policies to accelerate NGA deployments.

### *1.1.2. QUESTIONNAIRE for STAKEHOLDERS*

#### **1. GENERAL QUESTIONS**

##### **1.1.**

##### **1.2.**

##### **1.3. In your view, what are the main technological, market and regulatory developments in this field since 2009 that should be considered and should have an impact on the content of the revised Broadband Guidelines?**

The FTTH Council sees the main developments since 2009 as being a continued failure of large scale private investments in FTTH. The absence of such large-scale private deployment since the publication of the original State Aid guidelines points to an ongoing and continued reliance on State Aid at this stage of market development.

The completion of NGA Recommendation has clarified to an extent the form of regulation that applies to private investments and there have been a large number of notifications. However, experience to date suggests that the NGA Recommendation has not kick-started private investments which may reflect a continued divergence in approaches (and hence continued regulatory uncertainty) or continued uncertainty in the business case. While the latter is important, regulatory uncertainty continues despite the Commission’s attempts to harmonise.

One important development over the past year is that NRAs with copper prices below the European average have been inclined to increase copper prices<sup>1</sup> while those NRAs with copper prices above the European average have generally lowered copper pricing<sup>2</sup> slightly. The net impact has been raising the returns on copper which may explain in part the lack of a private sector dynamic.

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<sup>1</sup> E.g. Spain, UK, Italy

<sup>2</sup> E.g. Germany, Ireland

As the Fibre to Home Council, one of our main requests to policy makers has been the need for far greater co-ordination by Government Agencies. Such co-ordination may refer to a coherent inventory of existing infrastructures that can be shared. For example, a department of transport may have knowledge about traffic light infrastructure which may or may not be shared with other Government departments. Also the way different Government departments intend to change service delivery in the presence of very high speed networks needs to be recognised and co-ordinated to reveal the true benefits of such high speed networks. For instance, an eEducation initiative that envisaged real-time video tuition may not justify a specific investment but when added to eHealth initiatives, telepresence (environmental savings), social services delivery, retraining for the unemployed etc., the investment may indeed be more than justified. However there remains an overwhelming lack of co-ordination at Member State level regarding infrastructure sharing (which could imply a certain element of State Aid) and in terms of service delivery.

One actor which could be used to act to a far greater extent in a coordinating role is the National Regulatory Authority. NRAs frequently have links across a range of Government departments and public sector actors. The French NRA, ARCEP, has filled such a role in France and has recently advised the NCA on specific aid investments as well as co-ordinating passive infrastructure inventory assessments<sup>3</sup>. This example might be replicated elsewhere.

In general the FTTH Council sees a need to encourage both National bodies but also regional bodies which can have a very important co-ordination role in the actual deployment issues that arise at a local level. NRAs should help to establish, guide and co-ordinate Regional Committees.

## **2. SUBJECT OF THE AID**

**The current version of the Broadband Guidelines distinguishes between basic broadband and NGA networks as subjects of State aid measures.**

### **2.1. Do you consider that distinction is justified in light of current economic, technological and regulatory developments in this field?**

YES. The usage patterns in place today on broadband networks clearly demonstrate that there is an ongoing evolution in terms of speeds which only actual end-to-end fibre solutions will be able to meet. NGA as a concept often refers to a broader set of access technologies; but the reality is that the speeds and reliability needed to meet European broadband requirements in the near future<sup>4</sup> can only be met using FTTH solutions. The FTTH Council therefore welcomes at least a distinction between basic broadband and NGA networks. The distinction is important and is likely to become even more important in the foreseeable future.

This position should not be misinterpreted in any way as an attack on technological neutrality. The FTTH Council fully endorses the principle of technological neutrality and believes that it is appropriate that free market forces determine the winning technology. However, under any

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<sup>3</sup> See co-ordination efforts in France

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024473100&dateTexte=&categorieLien=id>

<sup>4</sup> Reference!

reasonable view of the trends in terms of broadband capacity needs, a threshold will soon be passed where the only technology capable of delivering the necessary bandwidth is fibre.

Within an FTTH context there are any numbers of solutions, technologies, and deployment models, which will all vie with each other in the market. It may be that thresholds are selected in order to ensure a particular technology is not excluded. However, the FTTH Council believe that setting a requirement (be that based on speed or quality) so that a particular technology would be included would be counter to the principle of technological neutrality.

As noted below in answer to question 2.4, the FTTH Council believes that an appropriate threshold might be set at levels which ensure that the Digital Agenda targets are met and that ensure that these networks are sufficiently future proof with particular emphasis on upload speeds. Any requirement must set a realistic target in terms of what NGA should deliver now and in the near future.

**2.2. Would you consider it useful to devote specific sections of the Guidelines to the rules and conditions applying to the use of public funding to subsidize specific infrastructure elements (for instance, ducts, dark fibre, backhaul networks, etc.) or to other activities related to broadband network roll-out (such as civil engineering costs, upgrade of in-house cabling, etc.)?**

Yes, the FTTH Council believes that investments can be usefully guided. An emphasis on financing the basic infrastructure of future networks, be that civil infrastructures or other elements assumed to be mainly passive infrastructure, is entirely appropriate in the view of the FTTH Council. The challenges and issues which public sector investors are likely to face, depending on the form of investment, are likely to be significantly different. For instance, investing in passive infrastructures in white and grey areas is unlikely to have distortive effects on the market. Investments in white area backhaul or access networks are also unlikely to crowd out private investments but such considerations may change for these products as the investment profile changes.

Such investments, where they are made for other purposes can and should be made available for NGA rollout without fear of State Aid restrictions, regardless of the level of remuneration. Such a provision already exists in the State Aid document at paragraph 60 and the Council believes it is important that this provision remains in place.

There is also a concern within the FTTH Council that certain investments which may have a cost advantage in the short term may actually prove significantly more expensive when they need to be further developed and upgraded in subsequent years and become wary of such investments.

The Council believes that the Commission needs to be clearer on the dangers of investing public funds in time-limited infrastructures which are unlikely to be adequate to meet end user needs in the medium term. Other parts of the Commission, notably the EU2020 Strategy and the associated Digital Agenda for Europe identify 30mbps availability as a universal requirement (and 100mbps as being close to universally available). Short terms solutions such as FTTC are unlikely to be adequate and will most likely delay the ultimate migration for these users to FTTH; this needs to be avoided if Europe is to meet the targets which the Commission has set for it.

Any signals or measures which would delay or impede the momentum to a FTTH solution should be resisted in our view, both because such investments are potentially wasteful of public funds and are damaging to the market dynamic. The FTTH Council notes that certain Member States are adopting these criteria themselves (see for instance <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024473100&dateTexte=&categorieLien=id>) such that a clear path to FTTH is required where public funds are used. Such criteria should be encouraged and standardised at EU level in the Council's opinion.

**In line with the NGA Recommendation<sup>5</sup>, the Broadband Guidelines define very high speed, Next Generation Access ("NGA") networks in paragraph 53 as follows: "NGA networks are wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks."**

**2.3. Do you think that this definition is still adequate? In other words, at this stage of technological and market development, besides fixed, mainly fibre based networks, would you consider any other broadband technologies as falling into the definition of NGA networks? Please provide detailed justification and examples of commercial utilization to motivate your answer.**

Yes, this definition is still adequate but may need to be adjusted to limit the extent to which non-fibre elements should be used. In particular, the FTTH Council notes that many of the business cases put forward by different analysts identifying current and future trends identify a variety of services which require radically higher upload speeds (e.g. real tele-presence and tele-working, home security, home health-care for the elderly etc.)<sup>6</sup>.

The main problem with cable and FTTC networks is that even if they can deliver improved download speeds, there is relatively little increase in upload speed and this requires significant resources to be put in place. A second iteration of network investment to ensure an adequate network will inevitably be delayed by such an investment. The EU2020 Strategy document identifies 'a target of 50% or more of European households subscribing to internet connections above 100 Mbps'. In order to achieve a subscription rate of 50% an availability rate of more than 80% will be required. A 100% availability of 30mbps is also targeted. Any proposal which does not meet or have a low cost path to these minimum standards set by the Commission should be deemed inadequate for State Aid.

A second consideration in the context of comparing FTTH and other networks is the quality parameters that attach themselves. In terms of capacity related network characteristics, FTTH networks deliver a much higher performance than any other network type whilst also proving remarkably robust. Such quality and resilience allows more mission critical elements to be delivered remotely with confidence.

Wireless solutions (whether mobile or satellite) face far greater capacity constraints and importantly, as shared resources and spectrum, are greatly impacted by take up. While acting as important complements to fibre networks, they will in no way act as substitutes, not only due to capacity constraints but also due to wildly different quality parameters.

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<sup>5</sup> 2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) - C(2010) 6223.

<sup>6</sup> See for example, [http://www.ftthcouncil.eu/documents/studies/Analysis\\_of\\_Service\\_Portfolios.pdf](http://www.ftthcouncil.eu/documents/studies/Analysis_of_Service_Portfolios.pdf)

**2.4. In your opinion, shall the Commission change the current qualitative definition of NGA (i.e. mainly fibre based solutions) to a more quantitative one (for instance by setting explicit thresholds for download/upload speeds or defining any other technology criteria)? Please motivate your answer.**

The FTTH Council would welcome such a change with the caveat that the upload/download speeds are set at a realistic level with future requirements in mind. One of the problems which the FTTH Council perceives is something that might be called ‘false’ technological neutrality. In essence, the concept of a ‘false’ technological neutrality refers to the selection of speeds that are selected so as to ensure that as many technologies are included as possible (such measures often exclude upload speeds entirely). A ‘true’ technologically neutral approach would simply select the most likely future requirements across all parameters and let the technologies fall as they may.

The FTTH Council firmly believes that realistic targets should be set both for download speeds but also, very importantly, for upload speeds and quality parameters. If such an approach was adopted then a more quantitative definition would be appropriate.

The FTTH Council notes that when the Japanese Government set its target network speed in 2004 it only used one speed target which was 30Mbps upload speed (realising that the download would be in excess of that). This seems like a sensible approach to be used and the FTTH Council believes that at a minimum, download and upload speeds should be required which allow the Digital Agenda targets to be met. Publically funded networks should be future proof and should be capable of being easily upgraded to significantly higher speeds. This upgrade path should at least cover both downstream as well as upstream speeds.

Finally, and by reference to the kinds of services that are envisioned on these networks, the FTTH Council believes that significant consideration needs to be given to the robustness and metrics in terms of faults and errors which will be important to ensure that network quality and resilience which allow enhanced network usage for more important social services. Such generalised parameters with a concrete set of targets can set a ‘true’ form of technological network neutrality.

### **3. AREAS OF PUBLIC INTERVENTION**

**The Broadband Guidelines identify so-called "white", "grey" and "black" areas depending on whether there are already adequate private infrastructures in place.**

**3.1. According to your experience with State aid broadband schemes, would you consider other criteria (for instance download/upload speeds or other technology, regulatory or market criteria) as relevant to identify areas with non-adequate broadband coverage? Do you consider an adequate criterion that if a minimum (download) speed of 2 Mbps is not available at affordable prices, the area shall be considered as "white area"?**

The FTTH Council sees this consultation as being about NGA and therefore consider that connections given with 2Mbps are irrelevant in the context of assessing State Aid in a NGA context. The Council believes that here is every indication that the trend towards a ‘connected world’ will continue apace; and new applications will appear as quickly as new capacity is put

in place. Today, there is already significant evidence that 2mb download speeds are not sufficient. Already, IPTV and HDTV require significantly higher download speeds.

Many of the business cases put forward by different analysts identifying current and future trends identify a variety of services which require radically higher upload speeds (e.g. real tele-presence and tele-working, home security, home health-care for the elderly etc.)<sup>7</sup>. The Council would reiterate that NGA needs to be considered in terms of very high speed networks, both upload and download. The presence of basic infrastructures delivering 2Mbps ought to be irrelevant for the assessment regarding white/grey/black network areas.

The decision of whether an area is white, grey or black should be solely based on an assessment of whether the area is NGA-White., NGA-Grey or NGA-Black, using those parameters indicated in response to question 2.4 to make the necessary assessment.

**The Guidelines distinguish between different types of "white NGA areas" - depending on the existing basic broadband infrastructures in place (white NGA/basic white in paragraph 79, white NGA/basic grey in paragraph 73 and white NGA/basic black in section 3.4.4. of the Guidelines) to ensure that distortions of competition are limited.**

**3.2. In your experience, has this distinction – and the ensuing differences in the applicable compatibility conditions – helped preserving competition and private incentives to invest?**

**The Guidelines request that the investment plans of private operators in the next 3 years shall be taken into account when defining the target areas for public intervention (see footnote 31).**

**3.3. Do you consider that the defined 3 years period is still an adequate time horizon? In your view, what proofs private operators can put forward to demonstrate their investment plans in a certain area?**

The FTTH Council believes that 3 years is adequate; but that a three year limitation should allow the private operators in question to put forward detailed rollout requirements, including concrete evidence of funding, for instance.

The FTTH council believes that the credibility of the plan in question is the key element that needs to be considered in any assessment of an alternative proposal which would undermine a public investment and deny citizens network access. Therefore, an established business case, a scheduled deployment plan, and the necessary finance in place, should be the key constituent components to give sufficient weight to block a particular plan.

While such a requirement places a considerable burden on the party claiming to be willing to deploy within the prospective period, the FTTH Council believes that such elements would be in place within the three year horizon and that any burden is proportionate to the request to stop investment. Furthermore, the FTTH Council believes that it is appropriate that the burden of proof must rest with the party seeking to block the deployment so as to protect against a tactic of inaction which would deny society the benefits that these networks can bring.

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<sup>7</sup> See for example [http://www.ftthcouncil.eu/documents/studies/Analysis\\_of\\_Service\\_Portfolios.pdf](http://www.ftthcouncil.eu/documents/studies/Analysis_of_Service_Portfolios.pdf)



#### 4. GENERAL COMPATIBILITY CRITERIA

The Guidelines list the general compatibility criteria in paragraph 51 that all State aid broadband measures have to comply with.

##### 4.1. In your experience, have these conditions reached their objective to foster investments, preserve private incentives to invest and to support effective competition on the subsidized networks?

In general the FTTH Council agrees that these conditions have reached their objectives. The Council's notes however that very often significant progress needs to be made implementing some of these aspects, such as infrastructure sharing.

There are also two conditions where the FTTH Council believes that more clarification is required.

The first concerns (c) **Most economically advantageous offer**: which the Council believes needs to be carefully qualified by reference to the service being delivered and the future proofed nature of the network being built. If the conditions set for the network being deployed are insufficient then poor outcomes can be expected. In particular, the Council believes that forward-looking capacity and quality targets should be set today.

However, if the need to set forward-looking targets today is not accepted, then upgrade profiles will become very important in the Council's view. For instance if the requirement is that the new network must deliver 2Mbps but it has a poor upgrade profile, then though cheaper in the short term context of a tender, it may be that it proves itself to be more expensive in the medium term when future network upgrades are considered. The FTTH Council believes that a more holistic approach to the costs and benefit needs to be adopted to ensure that the least money is spent in the medium to long term and in the most efficient way possible.

Even though higher download and upload speeds which meet the Digital Agenda targets might be more expensive to build today as a tender requirement rather than 2Mbps, on a 5, 10, or 15 year perspective it is likely to be not only better in terms of performance, but also likely to be significantly cheaper than rebuilding the same network when 2Mbps proves insufficient (the Commission's own assessment is that every citizen will need at least 30Mbps by 2020 according to the EU2020 Strategy document). The EU2020 Strategy document identifies '*a target of 50% or more of European households subscribing to internet connections above 100 Mbps*'. In order to achieve a subscription rate of 50% an availability rate of more than 80% will be required. Any proposal which does not meet or have a low cost path to these minimum standards set by the Commission should be deemed inadequate for State Aid.

The second condition where the FTTH Council has a concern is (d) **Technological neutrality**: where one of the problems which the FTTH Council perceives is something already mentioned, referred to as 'false' technological neutrality.

In essence, 'false' technological neutrality describes a situation where speeds and quality parameters are selected (and often simply not specified) so as to ensure that as few technologies are excluded as possible.

However, the FTTH Council firmly believes that a realistic target should be set both for download speeds but also, very importantly, for upload speeds and for basic quality parameters. Once these have been set then the viable technologies should fall where they may.

The fact that certain platforms cannot supply certain speeds or guarantee quality parameters should not indicate a problem on the tender requirements, but simply that certain technologies are not viable.

**In paragraph 51(e), the Guidelines encourage Member States to use existing infrastructure to avoid duplication of resources and to reduce the aid amount but without giving an undue advantage to the existing incumbents (who typically have significant existing infrastructure in place).**

**4.2. Do you have experience or examples on the implementation of such condition? In your opinion, how should such condition be implemented in practice to be effective in achieving its objective? Under what circumstances do you consider that access to the incumbent's infrastructure in line with the applicable regulatory framework is a sufficient safeguard?**

The FTTH Council is in general of the view that infrastructure sharing and its enablers (Management Information Systems etc.) are at the very early stages of development. An important initiative in the NGA Recommendation is the linking of Article 5 of the Access Directive with Article 12 of the Framework Directive which gives more teeth to the general infrastructure sharing requirements of the Regulatory Framework. Such requirements are not bounded by time and are not limited to the incumbent's infrastructure.

The FTTH Council believes that there is a need for a more coordinated response to be initiated by Government and covering the broad swath of useable infrastructures regardless of the industry segment from which such infrastructures originate.

The FTTH Council notes that many rural telecoms networks in North America used the Electricity network in order to lower costs despite interference issues. Such interference issues do not apply in a FTTH context and suggests that sharing of such infrastructures can be even more beneficial in future in a FTTH context. This experience is relevant in that it points to the need to consider the sharing of any and all basic infrastructures, whether in traditional telecommunication networks or not as a means to lower costs and to speed up deployment.

## **5. AID TO NEXT GENERATION ACCESS NETWORKS**

**The Guidelines require that the subsidized NGA networks shall support effective and full unbundling and satisfy all different types of network access that operators may seek (see paragraph 79).**

**5.1. Do you have experience with the implementation of the "open access" (i.e. full and effective access) requirement of the Guidelines in case of subsidized NGA networks? Do you have examples for difficulties or disputes and for good practices?**

The FTTH Council believes that the definition of open access should include the full range of access products, both virtual and physical. In general the FTTH Council believes that access to ducts, dark fibre, SLU, and bitstream, should all be included in such a definition.

The Council also believes that a limitation to one form of access, for example bitstream or its variants (VULA in UK), would not normally be sufficient by themselves but that a full range of access products ought to be available for an open access condition to be met. An exception to this could be that a particular remedy might not be required or may be deemed disproportionate at the point of deployment. For instance, if there is effective fibre unbundling an ancillary virtual access may not be required (see Recitals 20 and 38 as well Articles 22 and 37 of the NGA Recommendation).

**5.2. Do you consider it adequate that all technologically possible access products are requested from the aid beneficiary to compensate for the advantage obtained by the public funds?**

As a general rule the FTTH Council believes that open networks stimulate competition which will in turn promote take up and deployment. However, it may not be proportionate to require certain remedies which will clearly not be used. In certain settings it can be anticipated that network overbuild or network sharing will be limited. In such circumstances certain remedies could be limited as indicated below.

The form of the access product is also likely to be critically important as a requirement to give access to ducts/poles etc. falls somewhat short of an invite to co-invest simultaneously with the network builder; so the form of an access condition will be important. Co-investment models, where viable, create the possibility to leverage up State Aid finance increasing the overall investment in NGA. In general, access remedies which promote as much competition as deeply in the network as is efficient should be promoted. If operators through co-investment can compete over end to end infrastructures (whether by sharing a single infrastructure or with each operator controlling a discrete infrastructure) this would be a first best outcome. Investment and access models which do most to lower deployment costs should be promoted over alternatives.

**Would you consider that certain access remedies could under certain circumstances be deemed to be redundant (e.g. duct access and dark fibre access) and therefore there is no need to request them in all circumstances to ensure a sufficient level of competition?**

In general it is difficult to waive a remedy *a priori* since it is not clear what may or may not be required by access seekers and so the FTTH Council would express a need for caution in this regard and propose a tendency to include rather than exclude remedies. However, in the event that certain remedies incur costs to maintain, it may be appropriate to have a shorter requirement period on those specific remedies than the general 7 year requirement. If after a period of say 3 years no access request has been received, then such a remedy might reasonably be removed.

**Do you consider that a proportionality analysis shall also be carried out in analogy with the existing Telecoms Regulatory Framework<sup>8</sup> and that only a minimum set of access remedies should be imposed to meet the objective of increasing competition and reducing distortion of competition arising from public intervention? If yes, please explain in detail.**

The FTTH Council feels that a full proportionality assessment should not be required. Logically, State Aid will arise in areas where private investment will not happen by itself. In such circumstances a range of access remedies will be required to allow whatever level of competition the new investments can support. The FTTH Council believes that investments which support different forms of competitive access appropriate to the market circumstances will be more beneficial than investments which do not support competitive access. Over time and with experience, certain remedies might be retired ahead of time; if say, there had been no requests for a form of access after 3 years that remedy might be retired even if other remedies persisted for longer.

**Pursuant to paragraph 79, the wholesale access obligations on the aid beneficiary should last for at least seven years - without prejudice to any other regulatory obligations.**

**5.3. Do you consider this 7 year period adequate to ensure competition in the areas concerned without discouraging private investments? Would it be justified to require a longer period, for instance in case of passive access products (e.g. ducts)? If yes, please explain in detail.**

Yes, the period of 7 years is likely to be adequate and is unlikely to discourage private investment.

The FTTH Council notes that the requirement is in addition to any other requirements which may exist. In the case of an operator with SMP, asymmetric access conditions may be imposed only for a limited time period without further review (2 years in the New Framework).

The Regulatory Framework further allows symmetric conditions to be imposed (regarding passive access products) without time reviews and such access obligations can be set over much longer periods if appropriate. In this context, the provisions of the State Aid obligations are rightly emphasised as an aid to an effective migration from the existing to the new infrastructure thereafter relying on the existing market regulation mechanisms. The FTTH Council believes that this continues to be an appropriate approach to regulation.

**The Guidelines expresses its preference for multiple fibre networks: *"In this respect it should be noted that "multiple fibre" architecture allows full independence between access seekers to provide high-speed broadband offers and is therefore conducive to long-term sustainable competition. In addition, the deployment of NGA networks based on multiple fibre lines supports both "point-to-point" and "point-to-multipoint" topologies and is therefore technology neutral."***

**5.4. What is your experience with multiple fibre infrastructures? Do you share the view that it may not be economically justifiable to deploy multiple fibre networks in**

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See: [http://europa.eu/legislation\\_summaries/internal\\_market/single\\_market\\_services/124216a\\_en.htm](http://europa.eu/legislation_summaries/internal_market/single_market_services/124216a_en.htm).

**rural areas? Or would you see multiple fibre infrastructures as an essential investment to achieve competition in the concerned area in the long run?**

The FTTH Council is in favour of multi-fibre in specific contexts such as in-building solutions in areas where end-to-end network competition is viable. More broadly, multi-fibre solutions are likely to drive up costs needlessly where open access requirements are in place (see section 5.1 above).

**Certain types of network architectures (e.g. FTTH/P2P networks) are argued to be better in promoting competition as they allow full and effective unbundling (as compared for instance to FTTH/GPON infrastructure), albeit being generally regarded as more costly technological choices.**

**5.5. Have you been involved in NGA projects? Do you have experience with requesting effective unbundling, perhaps on different technology architectures? Do you have examples of good practices using one or the other technology?**

The FTTH Council sees a need to be neutral and let the market decide on the precise technical and topological parameters of the deployed networks.

**5.6. Besides the conditions specified in paragraphs 75 and 79, do you consider any other conditions that beneficiary companies constructing subsidized NGA networks shall comply with in order to increase competition and reduce the distortion to competition arising from the public intervention?**

## **6. THE ROLE OF THE NATIONAL REGULATORY AUTHORITIES ("NRAs")**

**The Guidelines foresee an important role of the NRAs in helping granting authorities to set the wholesale access conditions. According to paragraph 79, *"in setting the conditions for wholesale network access, Member States should consult the relevant NRA. NRAs are expected in the future to continue either to regulate ex ante or to monitor very closely the competitive conditions of the overall broadband market and impose where appropriate the necessary remedies provided by the applicable regulatory framework. Thus, by requiring that access conditions should be approved or set by the NRA under the applicable Community rules, Member States will ensure that, if not uniform, at least very similar access conditions will apply throughout all broadband markets identified by the NRA concerned."***

**6.1. In your opinion, how could NRAs help (national or local) authorities with their State aid broadband measures?**

NRAs have a strong market awareness from their experience analysing the different markets in the context of the Regulatory reviews. NRAs can therefore clearly advise on items such as the market status, the existing remedies, the logic and objectives behind existing remedies and the way new obligations are likely to impact on the market. NRAs often have a range of responsibilities in terms of co-ordination of civil deployments, mapping, national databases etc.

**Do you consider appropriate that access conditions should always be approved by the NRAs?**

It follows from the previous response that there needs to be a high degree of consistency and co-ordination between the different regulatory agencies. The interaction between ex-ante and ex-post regulatory agencies needs to be consistent and more importantly needs to be seen to be consistent so that market operators and investors have the certainty and confidence in the regulatory environment to invest.

**Do you consider any limitations for the involvement of the NRAs in State aid broadband measures?**

Ultimately, it is a different legal basis with potentially different objectives and motivations so yes, there will be limitations. However, the FTTH Council emphasises the importance of the investment climate if investors are to invest and that co-ordination by agencies will lead to consistency which in turn will give the investors the certainty and stability they need in order to invest.

**If you have been directly involved in aid projects, did you experience any difference when the access conditions were imposed as a regulatory measure as opposed to an access obligation deriving from the State aid rules?**

**In several State aid cases, the NRAs undertook to solve disputes between the operator of the subsidized network and the access seekers, should any such dispute emerge.**

**Do you have experience with such procedure?**

**6.2. How do you see the role of NRAs to solve disputes between the access seekers and the operator of the subsidized network?**

The FTTH Council notes that NRAs have the power to impose asymmetric or symmetric remedies depending on the context. The presence of State Aid in a network construction certainly points *a priori* to a limit on the extent to which competition will evolve in the absence of access to third parties. The Council believes that NRAs can and should give appropriate forms of access as provided for in the Regulatory Framework.

## **7. TRANSPARENCY OF STATE AID MEASURES**

**According to the Commission's case practice in this field, granting authorities shall share all the important information of the schemes with stakeholders. Inter alia, they have to publish on a central webpage the mapping information on the target areas, the planned State aid measure, and all information shall remain public for minimum 1 month to allow all third parties to comment. The tender procedures for granting aid have to be conducted in line with the principles of EU Public Procurement Directives<sup>9</sup>, respecting all conditions for transparency and non-discrimination.**

**7.1. Do you consider that the information made available in the described ways is adequate to ensure transparency?**

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<sup>9</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Yes but the FTTH Council believes that the existing provisions can be improved.

**Do you have suggestions on how the transparency of State aid broadband schemes could be further improved?**

The FTTH Council believes that there is a need to have centralised databases which should be maintained with better mapping and inventories of existing infrastructures.

The FTTH Council believes there should be access to future business plans where a proposed block on the investment in the network is planned. Mapping of broadband and infrastructure availability should also be conducted on a forward looking basis (i.e. including approved aid and planned investments) so that an ongoing assessment of Member State progress towards the EU2020 targets can be made.

**Can you provide examples of good practice when it comes to information provided on the State aid broadband measures in different stages of the procedure?**

## **8. OTHER POINTS**

Several Member States requested vertical separation on the subsidised networks (the wholesale operator of the network shall not engage in retail service provision) to avoid risk of discrimination, support competition and push take-up rates as a result of public intervention<sup>10</sup>.

**8.1. In your view, what would be the costs and the benefits of requesting this condition? In what circumstances would you consider vertical separation to be an effective remedy?**

### **8.2**

Some public authorities argue for a need of "strategic role" of the State in the broadband sector to achieve their social and economic objectives. In most cases, that is translated in the choice of retaining public ownership of the subsidised broadband networks (mainly passive infrastructure elements, like ducts, manholes, dark fibre) while the wholesale and retail operation of the networks is tendered out to private operators.

**In what circumstances would you consider that public ownership is justified? What are in your view the advantages/disadvantages of public ownership of the infrastructure?**

The FTTH Council believes that the widespread deployment of FTTH will facilitate enormous benefits for the economic and social development of Europe. Many of the potential uses of FTTH, such as home working and home-based eHealth applications, have significant impacts with them which can be classified as positive externalities. In the case of home-working, this could be relief of traffic congestion allowing other commuters to save time as well as positive environmental impacts. In the case of home-based eHealth applications, decongestion of healthcare is facilitated, and financial savings to the State can be anticipated

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<sup>10</sup> See examples of Commission decisions in cases of N407/2009 Optical fibre Catalonia (Xarxa Oberta), Spain; N183/2009 RAIN project, Lithuania or N196/2010 EstWin project, Estonia.

in addition to the direct benefits. In these circumstances, the benefits accruing to society often go far beyond the direct economic benefits identified by investors. A recent study by Ovum for the FTTH Council looking at the socio-economic benefits of fibre found that the provision of fibre at a municipal level is regarded as having positive benefits on health, education, and other public services. These benefits range from reduced telecom costs to more efficient and new services. This is particularly true in rural areas where limited resources and distance are barriers to service quality

There is also a strong belief reported that there are a number of indirect benefits derived from fibre rollout and this belief is strongly supported by a number of recent studies<sup>11</sup>. This is particularly true in more isolated areas where end-users face significant travel requirements and even more pronounced inability to engage with others and consume public services off-line. In terms of usage, the study found that users largely consumed the same services and used fibre in much the same way, but importantly, that users of fibre used much more of these services. For instance, those tending to work from home spent over 20% more time working from home once they had upgraded to fibre. Similarly, users of education, eHealth, and eGovernment all increased usage once they had migrated to fibre. It is also worth noting that many of the countries cited by Commissioner Kroes as examples to be followed are in fact countries where major network upgrades are already underway or planned in the near future.

In the context of positive externalities, greater public intervention can be justified (indeed this is the rationale behind State Aid in the first instance) and indeed, where investments are being systematically blocked and impeded by actors in the private sector, the State may justifiably move into the network ownership mode itself so that the externalities can be realised. This is the logic behind the Australian Government's intervention in its market. While the FTTH Council believes that market forces are best placed to move the mass market it does not believe that society should be denied the benefits of FTTH networks over prolonged periods and sees that deeper Government involvement may be appropriate in certain circumstances. The FTTH Council believes that if Government takes an ownership function it ought to specialise in basic infrastructures such as ducts, poles, and other passive network elements rather than investing in specific technologies.

This could avoid the problems of recreating State owned network monopolies which proved to be less than welfare enhancing in past iterations.

## **9. NON-AID MEASURES: MEIP AND SGEI**

**The Guidelines provide clarifications on broadband measures falling outside the scope of State aid rules, in particular when public funding for the roll-out of broadband is carried out at market terms ("MEIP" Section 2.2.1. of the Guidelines) and when Member States consider that the provision of a broadband network should be regarded as a service of a general economic interest ("SGEI" Section 2.2.2. of the Guidelines).**

### **9.1. Do you have any experience with "MEIP" or SGEI" instruments used in European countries?**

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<sup>11</sup> For example: Enck J. and Reynolds T. (2009) 'Network Developments in Support of Innovation and User Needs' OECD. See also Ovum 2009 'Fibre: the socio-economic benefits'



9.2. **Do you consider that the current level of detail provided in the Guidelines on MEIP and SGEI is sufficient?** In general; yes.

**Do you have any comment on the applicability of these provisions?** The MEIP provisions could usefully specify the extent to which co-investors can and should be independent of State actors. For instance, if a bank is the bank the city uses for all its business, then its investment decisions might be coloured by the broader context.

9.3. **The Guidelines insist on a strict definition of what constitutes an SGEI in the liberalised telecom sector (universal and compulsory nature, open and neutral network, separation of wholesale and retail operations etc.). Have you experienced special difficulties with the implementation of this type of measures??**

9.4. **Do you consider it adequate that for SGEIs all technologically possible access products are requested or would you consider that certain access remedies could under certain circumstances be deemed to be redundant (e.g. duct access and dark fibre access) and therefore there is no need to request them to ensure a sufficient level of competition? If yes, please explain in detail.**

## 10. FINAL REMARKS

10.1. **You are invited to highlight and explain any other relevant points related to the Broadband Guidelines.**

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