



# Creating a brighter future

Response to the Consultation on 'EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks'.

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## GENERAL COMMENTS

The FTTH Council Europe (hereinafter the FTTH Council) welcomes the opportunity to participate in the consultation ‘EU Guidelines for the application of state aid rules in relation to the 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.

The FTTH Council welcomes the publication of the draft guidelines and in particular welcomes a greater co-ordination between the Digital Agenda and State Aid policy. The FTTH Council in particular welcomes the creation of a new category of ultrafast broadband as an explicit acknowledgement of the benefits of FTTH. The FTTH Council also welcomes the continued emphasis on open access and access to passive infrastructures.

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 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>1</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.

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<sup>1</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’

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. Paragraph 60 in the draft guidelines should improve the position significantly in this regard.

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.

## **POLICY RE-ORIENTATION**

The FTTH Council has noted the ‘Policy Reset’ announced by Vice President Kroes on 12 July 2012<sup>2</sup> and is concerned that such policy shifts should not undermine the enhanced co-ordination evident in this document between Competition Policy and the Digital Agenda. For instance paragraph 67 of the revised draft says that if there are limited price controls then a policy of cost orientation should be followed.

## **CO-ORDINATION**

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. The FTTH Council is glad to see a greater role for NRAs in the assessment of State Aid in the current draft and could envision this role being strengthened further.

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<sup>2</sup>

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/554&format=HTML&aged=0&language=EN&guiLanguage=en>

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

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

## ULTRA FAST CATEGORISATION

The FTTH Council welcomes the greater refinement of the categories to specify an Ultrafast category.

Such a distinction is in line with the Digital Agenda goals and aligns these two policies. It also recognises an important distinction between infrastructures which are future proof and those which are not. Only FTTH is future proof in the our view.

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 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.

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.

It should be also recognised that wireless infrastructures such as LTE are complimentary rather than substitutes to FTTH. Indeed, these technologies can be seen as symbiotic in that

LTE depends heavily on adequate backhaul (which in an urban setting could amount to FTTH/B).

### **SHORT VERSUS LONG TERM INVESTMENTS**

Public investments should, in the opinion on the FTTH Council, place far greater emphasis on the durability of the investment or implicitly recognise and provide for subsequent investments.

There is 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 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.

While the creation of a new category of 'ultrafast broadband' is a step in the right direction the FTTH Council would welcome a more explicit recognition of the cost trade-offs in the final text.

### **STRENGTHENING PROVISIONS TO ENSURE ADEQUATE CONTROLS ON PARTIES SEEKING TO BLOCK STATE AID**

The FTTH Council notes and welcomes the redrafted position concerning measures to ensure that expressions of interest in private build NGA does not block State Aid unless the investment is credible.

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. The creation of 'milestones' in paragraph 60 of the draft guidelines which must be met should strengthen this provision.

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 and that any burden is proportionate to the request to stop investment. 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.

By automatically sanctioning aid where milestones are missed, the administrative burden, and thereby an important delaying tactic, is removed.

## **AREAS OF CONTINUING CONCERNS**

The FTTH Council believes that the final text should reflect the trade-off between investments in future proofed rather than short term infrastructures. In particular, areas such as paragraph 67 which seek to minimise distortions of aid on competition need to be further refined. For instance in **(d) Most economically advantageous offer**: the Council believes this 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.

A second condition in paragraph 67 and where the FTTH Council has a concern is **(e) 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.