Guidelines on public financing of broadband infrastructure – Influence the debate

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GUIDELINES ON PUBLIC FINANCING OF BROADBAND INFRASTRUCTURE - INFLUENCE THE DEBATE

On 19 April 2011, the Commission launched a public consultation inviting stakeholders' views on the upcoming review of the State aid rules on public financing of broadband infrastructure (the **Consultation**)[1].

Background

The Commission adopted the Community Guidelines on the application of State aid rules in relation to rapid deployment of broadband networks (the **Broadband Guidelines**) in 2009.

The Commission views broadband as a strategically important sector and considers the Broadband Guidelines, together with other Commission policies (such as the EU Digital Agenda[2]), *"play an important role in achieving the ambitious European goals for high speed broadband deployment"*.

The Broadband Guidelines provide guidance on the conditions under which public funding for the deployment of broadband networks should be granted and cover both traditional broadband networks and the so-called Next Generation Access (**NGA**) networks. For both types of broadband network, in order to identify areas eligible for public intervention, the Commission distinguishes between "white", "grey" and "black" areas, with the colour category for a particular area depending on the pre-existing infrastructure and operators.

Under the Broadband Guidelines, the Commission approved over €2.1 billion pro-competitive State aid in this sector. Whilst the Commission expects the amount of public funding earmarked for broadband development to increase further, it also recognises that public funding has to be used carefully in liberalised telecoms markets to avoid crowding out private investors.

The Commission undertook to review (and if necessary revise) the Broadband Guidelines by 2012.

The Consultation

The Commission has opened this Consultation at an early stage of the review process to obtain stakeholders' views and experience on the application of the Broadband Guidelines to date. The aim of the Consultation is to inform the Commission's forthcoming review of the Broadband Guidelines in 2012, particularly relating to important market, technological and regulatory developments in the sector. A draft revised version of the Guidelines will be published for the purpose of a further public consultation before the new guidelines are adopted. The current Consultation takes the form of a detailed questionnaire, and we set out below a summary of some of the key themes.

- **NGA networks**

  The Consultation addresses the distinction between NGA and basic broadband networks, and also asks stakeholders whether the definition of NGA in the Broadband Guidelines remains adequate in light of technological and market developments and/or whether it should move towards a more quantitative basis (for example, by including thresholds based on download speeds).

  The Consultation also specifically addresses the issue of aid to NGA networks and asks for stakeholders' views on the adequacy of the way the Broadband Guidelines deal with aspects such as "the open access" requirement in cases of subsidised NGA networks and the requirement for wholesale access obligations on aid beneficiaries to last at least seven years.

- **Areas of public intervention**

  The Consultation seeks views from stakeholders on whether the criteria which inform the distinction between the white, grey and black areas need to be replaced and/or complemented with other criteria (for example, download/upload speeds or other technology, regulatory or market criteria). Likewise the Commission is interested in stakeholders' views on whether the current rules related to the relationship between white NGA network areas and existing basic infrastructure have served / serve the purpose of preserving competition without the risk of crowding out private investment.

- **The role of National Regulatory Authorities (NRA)**

  The Consultation asks stakeholders how NRAs could help national or local authorities (in a Member State) with their State aid broadband measures, and the views of stakeholders regarding the role of NRAs in solving disputes between "access seekers" and the operators of a subsidised network.

- **Other points**

  The Consultation also picks up on certain points that have seemingly been made to the Commission before and asks for stakeholder views on the same: the costs and benefits of requiring vertical separation on subsidised networks to avoid anti-competitive effects arising from vertical integration, and on the circumstances that justify retaining public ownership of subsidised broadband networks (particularly infrastructure).

Influence the debate

This sector has been, and will continue to be, the subject of important market, technological and regulatory developments and this initial consultation is a key opportunity for interested stakeholders to influence, at an early stage in the process, the areas in respect of which the Commission's review will focus.

The deadline for replies to the Consultation is **31 August 2011** and interested parties need not necessarily touch upon all the questions asked in the Consultation.

If you would like further information on how your business can engage with the Commission and respond to this Consultation, contact details of the Squire Sanders Antitrust and Competition team are available at: **www.ssd.com/antitrust_competition/**

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European Commission

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