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**The European Commission Guidelines on State aids to the
deployment of broadband networks**

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Ladies and Gentlemen,

Let me first thank the organisers for giving me the opportunity to address you today.

My objective for today's presentation is to sketch for you DG Competition's policy and actions in relation to State aid for broadband and in particular the Commission's draft Broadband Guidelines, which aim to clarify the application of EU state aid rules to public funding of broadband networks.

[Introduction]

We all are very well conscious of the importance of Broadband connectivity to our societies. A high-quality, efficient broadband infrastructure improve productivity and promote economic growth in all sectors by advancing the development of new forms of work and improving the ability of firms to compete. Access to adequate broadband services has a positive impact on economic growth, creating employment and fostering innovation. Good telecommunications infrastructures are also essential for the provision of public services and e-government, especially in sparsely populated and rural areas. Investments in broadband infrastructures are also fundamental for ensuring regional cohesion.

In the current climate when the economic crisis has seriously affected our economies, investments in broadband networks have become even more important and the Commission has been in the frontline to live up to the challenge.

[Context]

I don't have to remind you of the consistent track record of more than 40 positive state aid decisions in the broadband sector, where well over a billion € of public funds were authorised to bring broadband connectivity to underserved areas. The Commission itself has recently injected another 1 billion € of its own funds for rural development, to contribute to bridging the digital divide of rural areas throughout Europe, while at the same time helping economic recovery in the short term. Member States are now busy drafting their aid schemes to spend these funds as well as their own funds. I am confident that we have a unique opportunity now to make a great step to achieve our visions of "*broadband for all EU citizens*" in the very near future.

Moreover, and besides fighting the digital divide and promoting cohesion, the Commission is very well aware of another important development in the telecommunication markets: the emergence of very high speed, fibre based "*next generation access networks*", bringing connection speeds to unprecedented

levels and representing a major technological shift. Being aware of the important implications that such telecommunication infrastructures may have on the European GDP and the economy in general, and as a part of the Lisbon strategy, the Commission actively supports the widespread roll out of such networks. Also President Barroso, in his Political Guidelines for the next Commission, pledged to renew efforts to promote the deployment of high-speed broadband by achieving regulatory certainty through 'active intervention'.

However, NGA networks are expensive networks – experts calculate a total investment of 200-300 billion € will be needed - and will initially target densely populated areas. It is expected, therefore, that alongside the private investments of telecom operators, which – as we always stress it – remain the main drive for the development of the sector, the use of public funds will probably have more salient role than it was the case for traditional broadband networks.

As you certainly know, the Commission, and my Directorate in particular, is active on two fronts to achieve the goals I just mentioned.

First, on the regulatory side, and while the review of the Telecom package is ongoing, we have published a draft NGA

Recommendation to delineate the Commission's views on how to best foster private investments - from incumbents and new entrants alike - in the telecommunications markets. As you know very well, the Recommendation was put in public consultation and generated a great deal of discussions. As usual, the Commission takes very seriously into account the comments of the stakeholders, while never losing sight of the public interest. Therefore I am confident that at the end of the process, the resulting document will be very useful to achieve the desired regulatory clarity which will give operators the right incentives to maximise investments in NGA Networks.

Second, and coming to the main topic of today's talk, we have drafted "Broadband Guidelines" on the application of State aid rules in the sector, in order to help public authorities to channel public funds to broadband networks as effectively as possible, and which are now very close to become a formal Commission Communication.

The Broadband Guidelines will play a crucial role in supporting the widespread roll out of broadband networks and – together with the NGA Recommendation – they will help to channel billions of euros of investments, thereby shaping the broadband landscape in the forthcoming years.

[The logic of the Broadband Guidelines]

The Broadband Guidelines address the challenges of public funding to traditional broadband as well as next generation access networks. The first part of the Guidelines is a summary of our case practice which has been coherent and stable for the last five years. The second part builds on the existing good practice to develop suitable rules for NGA deployment, for which we do not have yet such an established policy.

The objective of State aid policy in the field of broadband, which apply both to traditional and next-generation broadband networks, is to foster broadband deployment. State aid rules aim to strike a delicate balance between the objective of achieving high coverage while fully preserving the market dynamics in the sector.

Therefore we encourage state intervention:

- where private investors do not invest or coverage is not adequate even though coverage would be efficient from a wider economic perspective, e.g. due to positive externalities in terms of increased employment, economic activity, GDP growth on those areas (i.e. “market failure”)
- Where market forces do not lead to a socially desirable outcome, for instance by not connecting people in small villages thereby excluding them from the participation of the

knowledge-based society (i.e. “equity” or “cohesion considerations”)

However, we are also:

- seeking to ensure aid measures are better targeted and State aid is concentrated on areas where there is no other way of tackling market failure or cohesion challenges
- seeking to inject competition in areas where consumers do not have a choice; for instance, by requiring open wholesale access on the subsidised network we want to avoid re-creation of monopolies and allow other operators to benefit from State aid by giving them the possibility to compete for customers in those areas.
- Moreover, State aid should not be used to crowd out investments of existing operators – and we also require several safeguards to prevent that.

[The role of public authorities in the transition to NGA]

I also would like to highlight that there are several ways for public authorities to accelerate NGA deployment before resorting to the use of State aid.

Certain regulatory or administrative measures which are open and not restricted to a specific sector, for example may not

constitute State aid (civil works coordination, opening up existing municipal ducts, constructing new ducts for all network operators to use, mandating sharing of infrastructure and fibre connectivity for new builds etc). Such measures are very important to foster transition to NGA networks and should be encouraged: according to estimates, 60-80% of the NGA deployment could be related to civil engineering works.

Public authorities may also decide to invest in NGA at the same conditions as a market economy private investor. The very detailed Amsterdam decision of 2007 still stands as to the way to successfully prove that the public investment is in fact responding to the same market dynamics as any other investor.

Some public authorities may decide to use the SGEI instrument to achieve their goals of universal coverage. Compensation for an SGEI which fulfils the *Altmark* criteria is not deemed to constitute State aid. This was found to be the case for two schemes fulfilling all such requirements. However, for a number of other schemes, the conclusion was different: the measures in question were at the end authorised, but it was concluded that it was not the case of compensation for an SGEI. It is very clear that public authorities have to be very careful in using this tool: the discretion they enjoy for defining SGEI cannot be exercised arbitrarily, especially in a sector such as the telecoms one, which

is currently fully liberalised and subject to sectoral regulation. Telecoms services are nowadays provided in a competitive fashion by private operators, hence there is a big risk of interfering with the market dynamics by means of an SGEI. Since distortions of competition by public intervention are very likely, a great deal of caution is imposed both on Member States designing their measures as SGEIs and on the Commission assessing it. We will further clarify the conditions under which Member States can fund broadband networks under SGEI in the final version of the Guidelines.

[State aid to NGA networks]

Where no private operator is willing to invest in NGA in the near future, public authorities may use State aid to help the deployment of NGA networks.

Concerning State aid and NGA deployment, our draft Broadband Guidelines:

- build on our existing State aid rules that we have applied very successfully in the last years. The main milestones of our policy remain in place: a *detailed mapping* analysis is all the more necessary to identify the areas to be targeted; the requirement of use of *open tenders* will guarantee that state

aid is minimised and that the burden of how much aid is necessary is shifted to the market, *effective* wholesale access is a fundamental characteristic of a public network, *ab origine* and regardless of any finding of SMP.

- Let me stress that with the draft Broadband Guidelines we do not propose to introduce new market definitions. We simply use a new NGA-based definition of “white”, “grey” and “black areas” solely for the purposes of State aid assessment. The intention is not to define new markets for NGAs but simply acknowledge the technological shift with respect to traditional broadband in the identification of the areas targeted by the public funds.
- Additional conditions have been introduced to protect investments that, without evolving to NGA, have been made by private operators to upgrade traditional broadband networks.

[The Commission's approach]

In essence, the Commission's methodological and analytical approach to traditional Broadband and NGA will be based on the existing distinction between areas that lack NGA connectivity (labelled "NGA white areas"), areas where only one network

infrastructure is deployed and there are still competition problems (labelled "NGA grey areas") and areas where the market is competitive (labelled "NGA black areas").

Accordingly, the Commission's position towards public support for broadband network deployment varies from a positive view for *NGA white areas* to a more critical assessment for areas where private investment is already made or is expected to take place and where competition is effective.

The draft Guidelines also set out the conditions that need to be fulfilled for the purposes of the compatibility assessment carried out under Article 87.3(c) of the Treaty. These conditions remain in place both for "traditional broadband" and for NGA, with some additional specification for NGA, which take into account the fact that investments in NGA in most cases have yet to take place.

The Guidelines set out the main conditions that have to be fulfilled when designing compatible NGA State aid measures:

- Investment plans of existing operators have to be considered – as these investments have just started, and their full scale will only become clear in the coming years.

- Open access on the subsidised networks has to be granted for at least 7 years – afterwards access obligation may still be possible under the Regulatory Framework, in case SMP is found. It is very important to ensure that National Regulatory Authorities are involved, given their competence in the field.
- Full and effective unbundling is crucial to avoid re-creation of monopolies and future instances of market power, therefore we have highlighted in the Guidelines the fact that a multiple fibre architecture is able to ensure effective and technologically neutral access to all operators wishing to use the subsidised network.

[State of play]

The public consultation on the broadband Guidelines was concluded last June. As you have seen on our website, the public consultation generated high interest from stakeholders (and we are very happy about that): we have received almost 100 comments on the draft Guidelines from Member States, incumbent operators, alternatives operators and civil society organizations. You have certainly seen also that the majority of the reactions were positive towards both the decision of issuing

Guidelines and the content thereof and that most remarks were aiming at fine tuning certain aspects related, in particular, as expected, to the part on NGA. We have analysed all the comments carefully and proposed a final text based on the valuable information provided by the stakeholders during the public consultation phase.

The revised the text is now in the final stages leading to its adoption.

Compliance with State aid rules despite sometimes perceived as an administrative burden by public authorities, at the end of the day it is an effective tool that help public authorities to spend state aid effectively in a way that provides the greatest benefit for the local citizens and the taxpayers, whilst minimising distortions of competition. I can assure you that many public authorities – after *ex post* assessment of the implementation of their state aid measures – do come back to us saying that full compliance with the State aid rules helped them to achieve wider coverage, higher take-up rates or more and better services to citizens in comparison to what they anticipated previously.

[what we would like to achieve]

We hope that the Guidelines will provide a clear and predictable framework for all industry stakeholders in this field, by clarifying the role for public funding in this crucial sector.

We hope that by respecting the conditions set out in the Broadband Guidelines, Member States will be quicker to channel public funding to areas where market operators have no plans to invest.

We hope this document will also accelerate action by Member States and public authorities, and that we will not have to witness the emergence of a new, possibly even more long-lasting "NGA digital divide".

Thank you very much.