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Directorate-General for Competition – Unit C4
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The Hague, February 11th 2022

Subject: input on the draft revised Guidelines on State aid for broadband networks

Dear sir, madam,

NLconnect is the Dutch broadband trade association. Our 80+ members include companies that build, own and operate fiber, cable and wireless networks and companies that provide services on these and other broadband infrastructures, as well as their numerous suppliers. NLconnect strives for ubiquitous high quality and high speed broadband connectivity in the Netherlands. The rollout of new fiber networks is instrumental in achieving the goals of the Gigabit Society.

We appreciate the opportunity to respond to this consultation. Future-proof fiber optic based infrastructure and high-quality digital applications are of vital importance for our society and the economy.

Market competition in the Netherland has thrived in recent years, contributing to excellent fixed and mobile digital connectivity. Broadband and VHCN coverage in the Nederlands is already very high and is mostly provided by private companies and funds, even in rural areas. Many companies within our membership have invested heavily in significant network upgrades and new local and regional FttH and FttO networks. Often pushing the boundaries of profitability, for example in rural (white) areas and in building networks in grey and black areas.

State aid has rightfully been reserved to a very few cases in Dutch rural areas. There is currently no shortage of private funds for broadband deployment. But the State aid rules remain crucial to avoid crowding out these private investments. It also remains relevant to connect the last remaining white addresses. It is expected that 20.000 Dutch homes will remain unconnected to a VHCN in 2030, unless State aid rules combined with the EU financial instruments are used to connect them.

The EU State aid rules have long made it clear that government investment in broadband networks should focus on resolving market failures: public funds should not be invested in broadband projects in areas where private broadband investment is being made or planned. The policy also uses a technology-neutral definition of broadband. We are happy to see this approach continued in the draft revision of the Guidelines.

We are also pleased that the Commission has evaluated the Guidelines and aims to adapt the rules to reflect technological and market developments.

NLconnect would like to comment in more detail on the following recitals and annexes:

Recital 19j
'Ultrafast access network' is defined as an access network that provides at least 100 Mbps download speed. In our view it seems somewhat archaic to refer to 100 Mbps download speed as 'ultrafast'. Given market developments we would just call it 'fast' and reserve 'ultrafast' for very high capacity networks (VHCN).

Recitals 52 and 104
We share the expectation that households will increasingly need 1 Gbps connectivity. Gigabit subscriptions are also the new standard in the Dutch market. For that reason we support the notion that a market failure may be demonstrated where the market does not provide end-users with a connectivity of 1 Gbps download speed (or otherwise fails to meet the VHCN standard). We also agree that the need for higher upload speeds may grow in the coming years.

However, we do not agree that public intervention to deploy networks providing upload speed up to 1 Gbps upload may be allowed in areas with Gigabit downstream services but lower upload speeds. This would presuppose a trend towards symmetrical broadband usage. In the Dutch practice, no such trend is visible. Demand for higher broadband speeds grows, both on the downstream and the upstream side. But residential broadband usage remains highly asymmetrical. This should be taken into account.

Recital 57
In grey areas a market failure may be demonstrated if the existing or planned ultrafast network cannot provide at least 1 Gbps download and 200 Mbps upload speeds. It is unclear to us why specific speeds are mentioned instead of a reference to the definition of VHCN from the relevant BEREC Guidelines. A reference to the concept of VHCN in the Guidelines should suffice, since this is relevant for several provisions in the EECC and the goals of the Gigabit Society.

Recital 59
From this recital it follows that Member States may select target areas which are partly white and partly grey. Where Member States can demonstrate that a limited overbuilding of the existing network is proportionate and does not create undue distortions of competition, the public intervention may apparently take place. The Commission introduces the pleonasm of 'undue overbuilding' in this regard.

In our view, overbuilding with State funds is always undue and never proportional. The Commission should stand firm to protect private investment. We are therefore not in favor of the proposed rule in this recital.

Our basic principle remains that State aid may not be used to compete with existing privately funded VHCN networks. Firstly because such support will discourage market investment and secondly because there is no market failure and therefore no need for public financing.

The draft revision states that this kind of overbuilding is possible, provided that it is limited to a maximum of 10% of all premises in the target grey and white area. This 10% seems to us an arbitrary and high percentage. It would be unfortunate if the Commission were to persist in this rule. But if so, we recommend clarifying what this percentage is based on.

It is of course also a fact in Dutch practice that white addresses do not always form a separate geographical group. We understand that a business case for such addresses can readily be made by including certain adjacent (grey) addresses during construction. However, it is not *necessary* to do so with State aid, since State aid could be restricted to white addresses.

Regarding future investment plans and competition, we also see in the Dutch practice that backbones and backhaul networks are constructed in order to facilitate roll out (with State aid) in white areas. These are consequently used by State aid recipients to facilitate roll out (without State aid) in grey areas. This hinders rather than promotes competition and future investments by other companies and should be prohibited.

Recital 137-138
The Commission proposes that less strict access obligations apply in white and gray areas than in black areas (VULA instead of physical unbundling). We do not see the rationale of the distinction and we advise against it.

When a network has been built with State aid, physical unbundling must be the basic principle. In our view, this certainly also applies to white and gray areas, where the competitive pressure is less high.

Recital 171- 187
The Commission introduces a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks (vouchers). We are in favor of such technology neutral connectivity vouchers.

Ever since the broadband goals of the Digital Agenda for Europe were formulated in 2010, the Commission has had a target when it comes to the number of subscriptions to high-speed internet. Providers can install networks and offer subscriptions, but ultimately the choice to actually subscribe is up to the consumer. Certainly in rural areas, the situation can arise in which prices are higher than in cities. Vouchers may help to remedy this. The same holds for social vouchers.

Recital 210
To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes be subject to an ex post evaluation in order e.g. to verify that no undue distortive effects arise throughout the duration of the aid scheme that is contrary to the interests of the Union. We support this measure. In the Netherlands, State aid has been used to overbuild existing fiber networks which were not yet rolled out or even planned when the State aid was granted. In these cases the period between the moment when the market failure in a certain area was identified and the moment the actual roll out started, the market nevertheless proceeded to rolling out of its own accord or developed plans for roll out.

In hindsight, in these cases the market failure was only very temporary. In the dynamic telecoms market it is hard to determine whether market parties will invest within the relevant time horizon. It is even more difficult to predict whether any newcomers wish to invest. In our view, State aid should only be allowed on the condition that there is no change in the number of VHCN networks in an area between the time of approval and construction. If this does occur, the plans for which State aid has been granted, must be discontinued.

Annex 1

This annex outlines recommended methodologies on how to carry out the mapping exercise to support State aid interventions for the deployment of networks. The methodologies appear to be based on BEREC Guidelines, but also deviate from it in the terminology used. It is unclear to us why it is not sufficient to refer to the BEREC Guidelines in this regard. We would advise to do so, for the sake of uniformity.

Yours sincerely,

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