

DG COMP

Unit C4 dealing with State aid in the Information, Communication and Media sectors

http://ec.europa.eu/competition/consultations/2009_broadband_guidelines/index.html

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For the attention of the State Aid Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Vienna, June 22nd, 2009

Subject: Consultation on the Commission's Broadband Guidelines on the application of EU state aid rules to public funding of broadband networks

Dear Sir or Madam,

ISPA, the Austrian Association of Internet Service Providers, appreciates the invitation to comment the public consultation of the draft Community Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks.

The recent development to expand broadband infrastructure and the future developments in the telecommunication segment require distinctive guidelines to guarantee a wide access to broadband connectivity. A clear and provident regulation of state aid for the telecom infrastructure sector is still necessary to guarantee functioning and sustainable competition on the telecommunication market and to foster the deployment of broadband networks.

1. General Remarks

State intervention in the broadband field is definitely a solid contribution to reduce the digital gap between rural and urban areas or regions within a country as the commission states in the roadmap for the State aid reform 2005-2009. Furthermore – and one of the most important messages in the draft paper – state aid may be helpful where individual market players do not invest, even though this would be efficient from a wider economic perspective, e.g. rolling out of a fibre-based network as this is still a very expensive and risky investment. State aid could be an appropriate measure to foster the acceleration of NGA deployment.

On the other hand, state aid can have negative implications for the market and private initiatives. The commission refers to several aspects like “the balancing test (2.3.1)”, “conditions for separating into black, grey and white areas (2.3.2.1. – 2.3.2.3.)” and several statements for the “design of the measure and the need to limit distortions of competition (2.3.3)” helping to avoid such negative consequences for the market.

In addition, we would like to highlight that these points adequately describe state aid for the widespread availability of broadband services and the supply of rural areas with modern internet as well as state aid with the aim to be the trigger for the roll out of a fibre-based network. However, it

has to be kept in mind that state aid for the general roll out of new access networks has much more potential to harm competition than highly targeted state intervention to supply inefficient white spots with broadband technology. For this reason it is important to closely monitor the market impact and to ensure that previous investments to infrastructure are respected or are compensated to counterbalance any devaluation tendencies. Also, in order to avoid misunderstandings a clear definition of “competitive broadband services with an adequate broadband coverage” should be included in the guidelines.

2. Specific Remarks

2.1. Design of the measure and the need to limit distortions of competition – General (2.3.3.)

- (45) b) Open tender process

The open tender approach should be obligatory when giving state aid to ensure that there is transparency for all potential investors. The process of open tender has to guarantee the equal and nondiscriminatory treatment of all bidders especially on the basis of technical neutrality and the acceptance of participation of a consortium of smaller investors.

- (45) c) Best economic offer

The principle to prefer the bidder with the lowest amount of aid requested is justified but the same quality conditions and even more important the same positive perspective for realization has to be guaranteed. It would be a waste of state aid to save some money by choosing a bidder with a risky business plan and the danger of failure in the middle of process. The best economic offer approach has to include the guarantee of equal quality, chances for the successful realization and a sustainable deployment of the infrastructure to be built.

- (45) e) Use of existing infrastructure

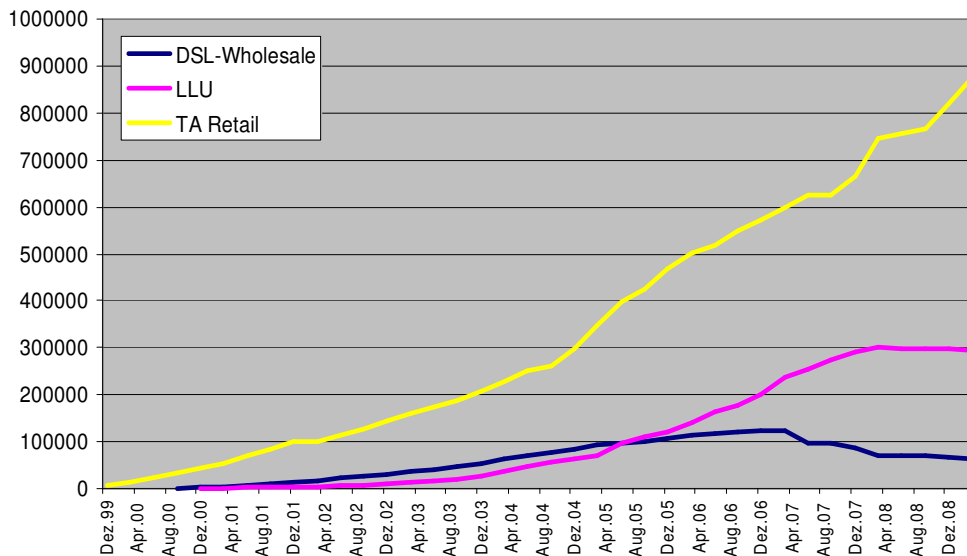
Encouraging bidders “to have recourse to any available existing infrastructure in order to avoid unnecessary and wasteful duplication of resources” involves two special risks. First, in connection with the best economic offer approach, the incumbent could be inadequately privileged by taking the existing – usually state funded network – into account. Second, in connection with the principle of technological neutrality ((45) d)) operators with significant market power could develop and improve their existing net to an NGA architecture which harms competition, e.g., in cases where the upgrade to NGA disturbs the quality of joint use of other operators. Thus, the application of the existing infrastructure principle has to be evaluated jointly with the principle of technological neutrality. It should be ensured that only technologies are accepted that allow a joint use or can be unbundled.

2.2. Design of the measure and the need to limit distortions of competition - NGA (3.4.5.)

- (74), point 1) open access / wholesale access

In Austria the incumbent has the obligation to offer a wholesale-model for its DSL-infrastructure; additionally some alternative operators offer wholesale-models under certain circumstances. Still

an increasing imbalance between the DSL- wholesale deployment and the market share of the market leader (Telekom Austria Retail) appears. Due to the unfavorable gap between the wholesale and retail price level, the development of wholesale-models is decreasing whereas the situation of the market leader is improving constantly. This outcome is depicted in the following graph demonstrating the decrease of DSL wholesale in comparison to the unbundling market (which slightly decreases) and the increasing market share of the market leader (Telekom Austria Retail).



Sincerely,

ISPA Internet Service Providers Austria

Dr. Andreas Wildberger
Secretary General

About ISPA: ISPA is the Austrian association of Internet Service Providers, representing approximately 200 ISPs. ISPA is a major voice of the Austrian Internet industry. Our goal is to shape the economic and legal framework supporting an optimal growth of the Internet and Internet services. We regard the use of the Internet as an important cultural skill and acknowledge the resulting socio-political responsibilities.