BUGLAS
Bundesverband Glasfaseranschluss e.V.

VKU
VERBAND KOMMUNALER UNTERNEHMEN e.V.

POSITION PAPER

On the Revision of the Guidelines on State aid for broadband networks

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Position on the European Commission's communication on the Guidelines on State Aid for Broadband Networks

To whom it may concern,

we welcome and thank the European Commission for the opportunity to address the draft guidelines on state aid for broadband networks which were published in November 2021. The new guidelines are of great importance to the membership of our joint associations and directly affect the investment incentives of our undertakings in the broadband market. Therefore, we kindly ask you to consider and consider the following assessment we have gathered through feedback from the majority of German alternative fibre operators.

About BUGLAS:

BUGLAS is the nationwide alliance of companies in Germany (infrastructure owners, carriers, service providers, equipment suppliers, etc.) that promote the expansion of fibre optic networks with a clear and exclusive focus on FttB/H. As the central representation of its member companies' interests vis-à-vis politics and regulation at national and European level, BUGLAS has been recording a steady increase in member companies (currently around 160) since it was founded in 2009. Most of the companies which deploy and run full-fibre networks in Germany have a communal background and come from the municipal utility sector or are municipal companies or institutions such as special purpose associations and similar. Our members, among others include NetCologne, M-net, Wilhelm.tel, MDCC and many more.

About VKU:

The German Association of Local Public Utilities „Verband kommunaler Unternehmen" (VKU) represents around 1,500 local public utilities in Germany, operating in the sectors of energy, water/waste water, waste management and telecommunication. In 2019, VKU's members, which have more than 283,000 employees, generated a turnover of around 123 billion euro of which more than 13 billion euro were reinvested. In the end-customer segment, VKU's member companies have a market share of 62 percent in the electricity market, 67 percent in the natural gas market, 91 percent in the drinking water sector, 79 percent in heating supply market and 45 percent in waste-water disposal. Every day, they dispose of 31,500 tons of municipal waste through separate collection and take a vital role in ensuring recycling rates of 67 percent, which rate the highest within the EU. Additionally, more and more local public

utilities are committed to the deployment of broadband infrastructure. 203 members invest more than 700 million euro every year. When deploying broadband infrastructure, 92 percent of local public utilities rely at least on fibre to the building.

Together BUGLAS and VKU represent approximately 290 local and regional full-fibre network owners and operators which invest in and manage most of the FttB/H-infrastructure in Germany.

Statement on draft guidelines

To section 5.2.2.1

MARKET FAILURE

The associations BUGLAS and VKU welcome the adjusted market failure definition for which the connectivity goal of 1 Gigabit reflects the growing importance and need for high bandwidth for the European economy and society. BUGLAS and VKU support the European aim to supply Gigabit-connectivity to all households in the Union. To this end we also advocate for a universal deployment goal of full-fibre networks (FttB/H) up to the end customer's residence or living unit. Only full-fibre networks can deliver on the needs of tomorrow and are the most sustainable technology option in terms of resource consumption, energy usage and durability/ future-proofness. They can deliver easily on the targets of the European Union as set out in the Digital Compass and Goals of the European Gigabit Society.

The draft correctly emphasises the importance of upload rates and the need for enhanced upload speed. We support the new threshold of 200 Mbit/s for upload speeds as part of the market failure definition.

By extension for BUGLAS and VKU this means that the distinction between white, grey and black spots no longer appears to be significant or purposeful, since the goal should be to achieve the most comprehensive coverage of full-fibre networks possible. Further intervention thresholds, like 100 Mbit/s for white spots vs. 1 Gigabit/s download in grey spots, and differential target bandwidths (see comments on step change) slow down the roll-out and promote less sustainable and low-performing copper technologies, which cannot keep up with full-fibre optic networks.

It is questionable why intervention (100 Mbit/s), target (see Step Changes) and market failure thresholds (below 1 Gigabit/s DL and 200 Mbit/s UL) are different from each other and diverge in such a way. Overall, they are not coherent with the European Electronic Communications Code and the BEREC-guidelines regarding the definition of Very-High-Capacity Networks (VHC). Accordingly, the guideline's intervention and target bandwidths should at least be coherent with the definition of VHC networks, which ensures no promotion of low-performing and unsustainable technologies. At the same time, a focus on fibre or at least VHC-networks would reduce the overall complexity of funding schemes, save public funds and conserve scarce civil engineering capacities, by cancelling in-between steps – "step changes".

To section 5.2.2.2 and 5.2.2.3

MOBILE ACCESS & BACKHAUL

Regarding the inclusion of mobile access and backhaul networks in the guidelines, state aid provisions have a direct effect on the existing competitive situation in the local and regional broadband access market.

Specifically, the impact depends on the definition of the last mile in question. If funding comprises the fixed connection (e.g. via fibre) of an antenna to a local concentration point, competition in the fixed local access market of network operators is directly affected. Since these operators often offer dark fibre as well as active connections as a service for backhauling data over their own local and regional access network, funding in the proposed markets affects the fixed access market. Additionally, subsidized mobile network operators might also be active in the fixed access market. Public funding in the mobile access market, for example, might strengthen a dominant position in the fixed market and disrupt equal opportunities for alternative fibre operators, such as are represented by BUGLAS and VKU.

In the case of Germany, alternative fibre operators are continuously emerging into the mobile backhaul market by cooperating with mobile network operators in connecting their antennas and towers with dark fibre, thus, giving evidence against a market failure. Subsidization must factor in the dynamic developments that can be brought about via, for example, master or framework agreements, which BUGLAS is actively negotiating and completing currently. Funding in the mobile backhaul market should, thus, recognise the role of alternative fibre operators and restrain from funding, if commercial deals are possible on a voluntary basis.

To section 5.2.2.4.

MAPPING

The methodology set out in the Annex I Section 3 and 4 for mapping the supply of broadband in certain geographical areas lays out the collection of data on the broadband performance at peak-time conditions for each single address. This constitutes an undue burden on network operators, due to the very different data usage behaviours across end-users, very heterogenous network topologies as well as missing traffic distribution models. Thus, the bureaucratic burden of reporting such information is in no proportion to the actual value and benefit of the information for national funding schemes. From BUGLAS and VKU point of view, the reporting obligations and mapping details should be kept to a minimum that is necessary to establish a market failure. Otherwise, scarce resources, especially of smaller local and regional alternative fibre operator, are averted that could rather be used in the deployment of networks. At least, no consequence should result for undertakings that do not participate in information requests.

Looking at the proposed definition of “Premise Passed” (PP), the time horizon of four weeks in which a house connection must be created for an address to be considered supplied is unrealistic and has the consequence of including addresses in a subsidy area which are already adequately served. Service appointments with a technician often cannot be completed in four weeks due to the high workload and shortages of skilled labour. A possible solution may be to only al-low four weeks to elapse after the construction work for the house connection for an address has commenced.

In the case of a price cap for house connections, it must be ensured that full-fibre networks that qualify as Homes Passed (fibre until the private ground/ in the street, but no physical house connection), but not as Premised Passed in the sense of this guideline, due to the high costs of the house connection, are not overbuilt with the help of subsidies. In this case, it should only be possible to fund the last mile to the end customer. Alternatively, the proposed demand-side subsidy (connectivity voucher) could be used here.

PUBLIC CONSULTATION

Setting a minimum period for a public consultation, in our opinion, is very sensible. We generally observe in the German context the need for a much longer period, due to the large number of parallel funding schemes all over the state. We therefore advocate for a minimum period of 60 days. We also agree with the assessment of the Commission that irrespective of whether the mapping exercise may already have collected information on future investment plans, the result of the mapping exercise must always be verified in a public consultation.

To section 5.2.3.1

STEP-CHANGE

As articulated in the first paragraphs, we are of the opinion that the set-out system of complex and differential goal bandwidths is inappropriate to meet future household and business demand and invest sustainably. To keep the complexity for member states to an adequate level, future proof investments should be secured and re-funding of identical areas should be avoided. The goal down- and upload speeds should at least correspond to the quality of VHC-networks, as set out by the BEREC guidelines. This means that performance of the new networks is oriented along the performance of FttB-networks.

The differentiation by the degree of underprovision is inappropriate, in our view, as it still allows for the subsidization of DSL-Technologies. This constitutes only an intermediate which leads to wasted taxpayer money. With the various intermediate steps and different coverage thresholds, not only the funding regime becomes incredibly complex, but it also becomes much more expensive in the long term, as areas must be upgraded over time multiple times with funding. Regarding the upload rate goals, 10-30 % of the download rate is not sufficient in the context of the target download rates. BUGLAS and VKU advocate for state aid to only be addressed at full-fibre networks, but at least at VHC-networks.

To section 5.2.4

COMPETITIVE SELECTION PROCEDURE

Where fibre networks are rolled out using state aid, poorer and less sustainable access technologies, for example those that rely on copper cables for the last mile (excluding in-house), should not be given access to the passive infrastructure (pipes/cable ducts, etc.) of a newly funded FttB/H-network, since it would effectively overbuild the full-fibre infrastructure and create an artificial infrastructure competition. This is not very desirable from a sustainability point of view and inhibits demand and take-up of full-fibre networks, such as FttB/H-networks. In this case, the provision of a Layer-2 BSA virtual access product should be

sufficient for access seekers that are not intending to use the passive access in order to build out their own fibre network.

USE OF EXISTING INFRASTRUCTURE

BUGLAS and VKU generally welcome that the funding body should be obliged to provide companies with a list of existing and co-usable infrastructures during the competitive selection procedure. However, we advocate that the rules set out in the guidelines are coherent with the cost reduction directive which is currently consulted. In addition, reporting duties need to be kept to a minimum, as they weigh more on small and medium sized operators than on big market players, thus restricting entry into the market and skewing competition.

WHOLESALE ACCESS

The access requirements to ducts and fibre that demand reserve capacities for at least three networks and different network topologies is an undue burden on undertaking, especially in rural areas. BUGLAS and VKU welcome the exemption from the obligation to supply a whole range of passive access products by undertakings which benefit from state aid to access seekers.

In general, when active access products are concerned, BUGLAS and VKU underline the importance and market relevance of a Layer 2-Bitstream / BNG-VULA-access product, as the industry standard that secures an appropriate amount of value creation for both parties. It also constitutes the most sustainable and ecological way to grant access, since the network is utilized best and energy costs are shared.

PRIVATE EXTENSIONS

BUGLAS and VKU welcome the Commission's clarification regarding the contribution of private investments by aid recipients and access seekers for the development of adjacent areas. The regulation ensures the viability of recent investment in full-fibre networks.

CLAW BACK

The reduction of the clawback threshold is accompanied by a higher bureaucratic burden for smaller projects which in turn creates a barrier of entry for alternative operators to actively participate in the competitive selection procedure as a bidder. In effect, less bidders compete, and public money is allocated to a few operators, mostly dominant market players. This can have adverse effects on the achieved quality and price. We therefore reject the reduction.

To section 6.2

CONNECTIVITY VOUCHER

BUGLAS and VKU support the inclusion of a demand side subsidy within the guidelines. However, demand-side subsidies, from our point of view, can only apply to full-fibre networks (but at least to VHC-networks). Vouchers for costumers not only increase economic activity, as they enable end customers to demand/use a faster broadband product but are always subsidies for certain companies. Thus, a general and "provider-neutral" voucher in combination with high bureaucratic burdens and complexity is likely to benefit large and dominant companies in the market that operate copper and cable infrastructures that have

long been written off and are not future-proof and sustainable. This lures potential demanders away from already built fibre networks (even if the guidelines state that vouchers should not be used to switch, it is clearly questionable to what extent such behaviour can be prevented) toward cable or copper connections with supposedly high download and upload rates.

BUGLAS and VKU advocate for a fibre-voucher which can only be applied to sustainable and FttB/H-networks or at a maximum for VHC-networks. This ensures that newly built fibre-optic networks have a good chance of being used by end customers and consequently generate economic activity. The networks that would benefit from the voucher should ensure fair competition through open and non-discriminatory access to their network based on active Layer 2-Bitstream / BNG-VULA wholesale products.

However, the overall design makes the voucher itself redundant since it can only be applied to existing networks. If a market failure in terms of take-up is the condition for voucher funding, there regularly are no networks to use the voucher for (or very low-performing ones for which the voucher is inadequate to its goal to generate economic activity). If companies cannot find enough end customer, they do not invest in the area from the start. Consequently, there is no VHC or fibre optic network present for which so increase the take-up rate.

Overall, the member states must be given a great deal of leeway in adapting vouchers to local needs and conditions. In addition, the specifications and criteria must not be used to create a bureaucratic monster that would result in expensive administration especially for small and medium sized alternative operators. While dominant and large providers can scale their learning curve and administrative costs over a much higher number of projects, small and medium sized operators will be restricted from using the vouchers, thus skewing competition in the market significantly.