

Pillar VI: Support in implementing the state-supported part of a full broadband strategy

Where public support is used for high speed broadband infrastructure development (financing in whole or in part), the “state aid” rules template already exists for the EU; The set of tests that apply to the approval of state aid for any purpose include;

- Is there a significant contribution to universal broadband objectives?
- Would the absence of state aid result in market failure?
- Appropriateness of state aid – are there more efficient alternatives?
- Incentive effects – is there a commercial stimulus, does the public investment crowd-out private investment?
- Is the amount of state aid limited to the minimum necessary to achieve the purpose, or could the same result be achieved by a lesser amount of commercial investment?
- Are negative effects limited?
- Transparency – will the public be assured of accountability?
- Limiting of distortions on competition – how do we ensure that the state investment does not increase the likelihood of abuse of a dominant position?

The options should be considered in stakeholder consultation with full transparency, so that the various risks, rewards, benefits and required safeguards for public and private financing are exposed. The topics of public consultation are typically as follows:

- Geographical scope and service definitions
- The estimated level of funding required using network modelling and engagement with industry
- Participating stakeholders
- Ownership options
- Governance template
- National or regional projects
- Build and operate options

A key step to follow with key stakeholders, particularly with existing operators, is to decide the intervention area. The state aid guidelines request public authorities to map the intervention area. It should not be the case that public subsidy is given to areas which would have been roll outted out commercially. The mapping exercise needs to identify those areas that are commercial and those that will not attract investment without subsidy. The process should be future proofed by asking stakeholders to share their current coverage and their planned coverage up to 3 years in the future.

The non-commercial area is the intervention area and public authorities need to map the housing in the area, the scope and distances and some assessment of the quality of the infrastructure in the area.

The intervention area can be subdivided into lots either by geography, or by population density (i.e. towns). Multiple lots can create competitive pressures for bidders to ensure prices and subsidies are more effectively priced.

Councils and Municipalities can be involved in the process to identify the intervention area however there is a need to ensure coordination of the intervention area.

Should the commercial stimulus public subsidy model emerge as the preferred option, certain safeguards will be required in order to protect the public investment and the policy objectives. The template for the commercial stimulus model should therefore include:

- A financial claw-back mechanism for commercial profits over and above those envisaged in the winning tender;
- A financial claw-back mechanism for any savings that are achieved, particularly during the construction phase of the project;
- Annual financial clawbacks for non-performance over the lifetime of the contract;

Termination clauses for persistent sub-standard performance. Under the commercial stimulus model, in the event of the winning bidder(s) being the dominant monopoly wholesale and infrastructure player in the intervention area, there may then be a requirement for formal actions by the sector regulator. In any event, and to ensure alignment with best practice regulation, the governance arrangements will include measures to align with existing regulatory rules for the sector.