

# Binding roll-out commitments are necessary for network protection in low density areas

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In areas where market conditions do not support next-generation access (NGA) roll-out on a commercial basis, local authorities can intervene and provide subsidies. However, potential changes in market conditions and/or operator strategies must be well timed in order to avoid a commercial overbuild.

One of the cornerstones of the 2002 European Telecoms Framework was the removal of unnecessary constraints to the development of telecoms networks and services. The general authorisation framework that was put in place still applies and, for fixed networks and services, this framework provides freedom to roll out fixed networks on a commercial basis.

No specific restrictions were put in place against a commercial overbuild on publicly subsidised networks, as it was assumed that compliance with the State aid rules restricted such networks to areas where market conditions do not support NGA roll-out on a commercial basis. In practice, the delimitation of publicly subsidised networks generally results from a formal check of the absence of any actual or planned commercial initiatives before public intervention.<sup>1</sup>

Several examples in Europe, however, have shown that changes in market conditions and/or operator strategies could contradict this assumption.

- As part of the National Broadband Plan in Ireland, in July 2016, the Department of Communications, Climate Action and Environment (DCCA) short-listed three operators to roll out high-speed broadband (over 30Mbps) over an area of 757 000 homes and businesses where no operator had previously expressed an interest to roll out on a commercial basis. However, in April 2017, eir, the incumbent operator, committed to commercially roll out to 300 000 of these homes and businesses by the end of 2018. The DCCA assessed the credibility of the roll-out, concluded that it was sincere, entered into a commitment agreement with the operator and started formally monitoring this binding agreement. The DCCA intervention area was therefore reduced to include, after a few additions, just 542 000 homes and businesses.
- The French government held a national call for expressions of interest to roll out FTTH in 2011 that led to the identification of areas with 13.6 million homes and businesses where public intervention was needed due to a lack of commercial initiative. Local authorities conducted procurement processes resulting in both local- and national-level subsidies as part of Plan France THD. However, just before losing out in one of these procurement processes in Grand Est in June 2017, SFR, one of the major fixed and mobile operators, wrote a letter threatening to build a parallel FTTH network in Grand Est, without any subsidy, which would jeopardise the profitability of this public network. SFR subsequently extended its plan to all of France by writing a letter to the Prime Minister in which it offered to roll out a nationwide FTTH network, with no subsidy, covering 80% of the French territory by 2022, and 100%

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<sup>1</sup> 'Planned commercial initiatives' must be technically, commercially and financially credible – an announcement without evidence of credible funding and deployment plans would not normally be taken into account.

by 2025. SFR's offer raised significant doubts and concerns among stakeholders because its profitability was questioned. Even if SFR was to roll out FTTH only in the densest parts of some public networks, this would jeopardize those networks' business models in these areas as well as the associated public subsidies. SFR eventually announced that they would not proceed with this plan in December 2017.

The following changes in the regulations are being considered at an EU- and national-level to better secure public intervention.

- The current project of the European Electronic Communications Code includes a regular geographical survey with compulsory operator participation in order to drive public intervention in low density areas. Under such a framework, if adopted, commercial roll-out in an area where an operator has not previously expressed interest and where another NGA roll-out is upcoming (after due announcement) would be punishable by the national regulator on the basis that it would affect the business model of the first network in an area where network duplication is not sustainable. As this proposed geographical survey would be conducted every 3 years, operators would have regular opportunities to update their roll-out targets.
- A French legislative draft submitted in November 2017 includes provisions to address the risk of parallel roll-outs in low density areas. Under this framework, if adopted, the minister in charge of electronic communications would gather proposals for NGA roll-out in low density areas from operators and/or public bodies and would select one for each area. These proposals and their schedules would then become binding and be followed by the national regulator, who would be entitled to punish both unmet commitments and roll-outs outside of the accepted roll-out areas. The operators whose roll-out commitments have been accepted would have priority access to civil engineering with a limited capacity, but would lose this if they missed their roll-out commitments.

These projects may still evolve to consider trade-offs between protecting public intervention and avoiding excessive restriction of commercial initiative. However, the protection of network roll-outs in low density areas is now a clearly identified objective, which can be achieved by securing binding roll-out commitments.

We can help stakeholders to understand how changes in technologies, market conditions and regulations can affect NGA roll-out plans. Please contact Omar Bouhali (Principal) to discuss this further.