



ECCA's response to the Digital Divide Report Consultation

Introduction

The European Cable Communications Association (ECCA) is an association of cable operators and their national associations active in Europe. Its main objective is to foster co-operation between cable operators and to promote and represent their interests at European and international level. ECCA members have more than 55 million subscribers.

ECCA members own and operate cable broadband distribution networks across much of western and central Europe and in Scandinavia. Our breadth of geographic coverage and experience in providing a full range of video, telephony and broadband internet retail products based on privately financed and operated Hybrid-fibre-coaxial (HFC) cable networks gives the cable industry an informed perspective on the issues associated with public support for broadband access infrastructure.

In general, ECCA members welcome the Commission's efforts to promote competition whilst addressing the broader policy issues of extending broadband deployment. In this context, it is important to consider the clear benefits of extending broadband roll-out via the deployment of competing infrastructures.

In today's highly competitive broadband digital marketplace, there is clear and compelling evidence that demonstrates broadband deployment is most advanced precisely where infrastructure competition is most developed.

The European Commission's report on national broadband strategies of 11 May 2004¹ recognises that the development of broadband is strongly stimulated by the competition cable networks offer to incumbent telecom operators. "The speed with which broadband has been taken up has been strongly affected by the amount of competition in different Member States particularly from other networks such as cable TV networks, and by the prices of services"².

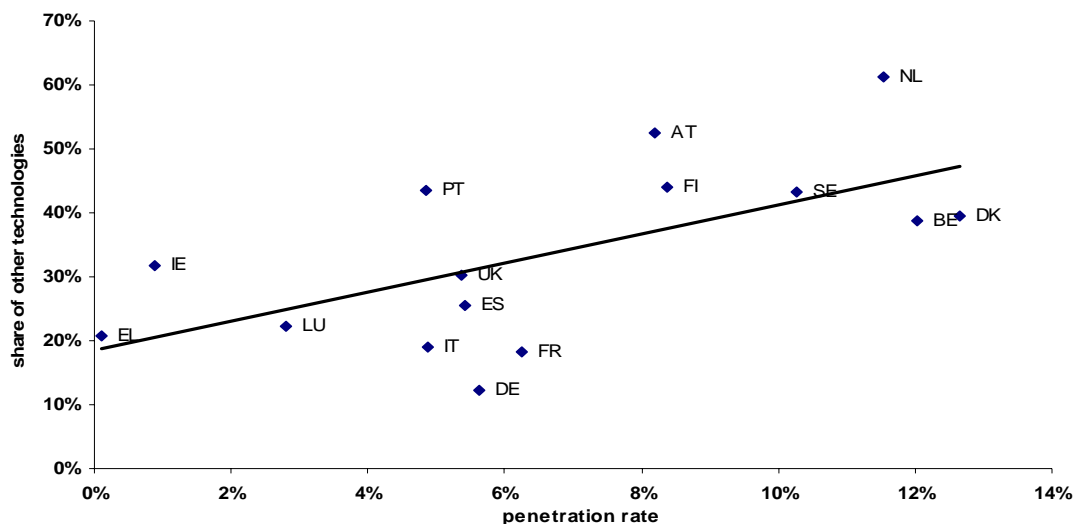
The chart below shows clearly that the share of other broadband technologies lead to a higher penetration, thus clearly illustrating the crucial value of infrastructure competition uptake of broadband.

¹ Communication from the Commission on Connecting Europe at High Speed: national broadband strategies, 11 May 2004.

http://europa.eu.int/information_society/eeurope/2005/doc/all_about/broadband/com_broadband_en.do

² EC press release: 'Connecting Europe at high speed: Commission takes stock of national broadband strategies', 11 May 2004

**Figure 8 - Facility-based competition
January 2004**



Source: Commission services

It is in this context that we welcome this opportunity to comment on the Commission's document, "Digital Divide Forum Report: Broadband Access And Public Support In Under-Served Areas".

Before providing our comments on the chapters of the report itself, we would like to offer our thoughts on the policy options proposed in chapter four, and those which specifically relate to further future investment for the provision of broadband infrastructure.

1- Public policy engagement & broadband infrastructure deployment

ECCA welcomes the report's commitment to providing clear Commission guidance in this area, guidance that must reflect the robust competitiveness delivered by private sector investments and which must carefully enforce and apply Community State Aid rules. The Commission has an opportunity to reinforce its policy in this area, which has to date successfully flanked intensive private sector investment in critical broadband infrastructure. In our view, failure to engage and articulate a clear policy is likely to accentuate the broadband digital divide that exists in the Community today.

At a practical level in today's vibrant broadband market, any proposed financial public sector investment must at the outset consider the demand for its network product. ECCA members today increasingly face actual or planned state-funded infrastructure projects which duplicate existing network investments and which offer little more in the way of service provision to existing infrastructures. Extending broadband coverage is, in our view, not simply a supply side issue. Clear evidence of demand side dynamics is an essential component of any proposed publicly financed broadband initiative or strategy.

Whilst in a limited number of cases there is likely to be a case for public investment where there is no possibility of private provision, any public sector financing must meet the market investor principle and must be in compliance with EU state aid law. For the avoidance of doubt, we would recommend the Commission clearly re-state and articulate applicable EU jurisprudence in this area. In particular, the European Court of Justice's decision in its 'Altmark' judgment³ provides some clarification to the scope of application of state funding for such projects, most notably that the recipient of state aid must be providing a public service - a service of general economic interest (SGEI) - if funding is not to qualify as state aid.

³ Judgement of 24 July 2003 in Case C-280/00, *Altmark Trans*. According to this judgement, a compensation for a public service obligation does not constitute State aid if a number of criteria related to the definition of the service and its funding are fulfilled.

Nonetheless, and given the greater number of projects in this area, we would request that the Commission's competition service review all proposed publicly funded broadband infrastructure projects as a matter of course whilst improving the transparency of their notification and consultation procedures. ECCA recommends that in order to avoid unnecessary market distortion, a careful case-by-case assessment of each new project is necessary to ensure that:

1. The project is, in fact, an SGEI and, if so, that
2. the Altmark criteria are met and that
3. no private sector provision can be provided for the area in question.

ECCA recommends this course of action given the increasing range of proposed, and active, projects for state-funded broadband networks, the effect of which is to disrupt continued private sector investment and skew optimal competitive market conditions in which competing infrastructures drive service innovation. Today's vibrant broadband market place has been shaped by the private sector investment, which should be supported so that the remaining gaps in coverage are filled by sustainable and pro-competitive means.

In our view, the role of the public sector is in general terms to create the conditions of competition rather than to engage as an economic actor in the provision of services and infrastructure. Such a role, without adequate safeguards, is likely to discourage and delay additional private sector investment that in many instances are likely to be directed toward those areas which are today underserved in broadband provision. It is important for the report to consider that cable operators themselves have an incentive to broaden their competitive reach to customer in these types of areas, as indeed do other broadband infrastructure providers.

In this context, ECCA would recommend that the Commission's policy proposals more effectively recognise the wide range of possibilities that exist in the market place today for investment in broadband deploying infrastructures. Private sector investments in technologies such as WiMax, Power Line Communications (PLC), UMTS and ADSLx2 are to some extent going to provide viable alternative for broadband infrastructure provision. These platforms are at an earlier stage of development than cable or indeed incumbent networks, and therefore the investment these projects seek are arguably at greater risk from inopportune and inappropriate public investment.

Accordingly, we would welcome greater optimism from the Commission in its policy conclusions of the potential for market-led, broadband infrastructure solutions based on new and emerging technologies, not least given the rapid pace of technological innovation in this area.

On a final note, we would welcome the Commission's proposals to improve best practice in local and national broadband deployment projects via a form of centralised exchange of information. We feel that such a mechanism, alongside a careful state aid law assessment can have real benefits in terms of developing EU guidance on the most appropriate and effective form of public sector intervention. Given the cable industry's experience in this area, ECCA would be happy to be involved in this initiative so that bottlenecks in infrastructure provisions can be clearly understood and addressed in light of industry's development and investment plans.

2. - Specific comments on the report

2.1 - Chapter 2: Broadband Technologies

In relation to the comments on the suitability of satellite technologies for providing broadband infrastructure and services to particularly remote areas of the Community, ECCA welcomes the report's conclusion that a tailored EU programme of support is inappropriate.

Whilst a particular technology may be the most adept at bridging the digital divide in specific geographic circumstances, this can only be properly assessed by local authorities

when they are analysing and aggregating demand for the service. There is very real risk that an EU programme, which picks a particular technology for a particular circumstance, will inhibit parallel infrastructure investment and development.

2.2 - Chapter 3: Examples of Government Intervention

This section provides an overview of several municipal, regional and national state involvements in broadband infrastructure projects. In general, our views on the limited appropriateness and necessity of such state initiatives are set out in section 1.1 of this paper. However, we do wish to offer our comments in the context of the Spanish Government's convergence plan to promote broadband in Spain.

One of the proposed measures is the creation of state funded 'trunk networks' through which existing network operators can interconnect in order to deploy local access networks and services to more remote and rural regions. The use of these trunk networks allows cable operators in Spain, in specific geographic conditions, to improve the percentage coverage of the homes passed thereby extending their broadband services footprint, and in our view a case can be made for these networks to also be targeted toward slightly more populated areas with similar geographic conditions.

These types of initiatives demonstrate the cable industry's willingness to embrace new concepts and enter into public/private initiatives in order to extend our footprint where clear market demand is evident. In our view this type of state investment in passive interconnecting infrastructure - in which the state does not act as a retail service provider - can, in limited circumstances, and in accordance with applicable EU state aid law, help to bridge the digital divide. Alternative operators are able to deploy their networks increasing the level of local access broadband competition with consumers benefiting from increased competition and enhanced roll-out.

3 - Annex: Answers to consultations' specific questions

3.1 - Is there a need for new public policy actions at the European level to stimulate the provision of broadband in remote, rural or sparsely populated areas of the European Union?

Yes. As set out in our full response, we would request that the Commission's competition service review all proposed publicly funded broadband infrastructure projects whilst improving the transparency of their notification and consultation procedures. However, ECCA believes the process of private investment in broadband infrastructures will further extend the footprint of a range of technology platforms largely meeting the demand in rural and remote areas, thereby reducing the need for extensive public policy actions.

3.2 - If YES, which ones? National broadband strategies regulatory intervention, financial support, exchange of best/good practice, other measures?

ECCA welcomes the Commission's proposals to improve best practice in local and national broadband deployment projects via an exchange of best practice. As we observe above, this type of initiative allows industry to address bottleneck issues in broadband infrastructure provision from a market perspective which in turn can be fed into future revisions of national broadband strategies. As to the question of possible regulatory intervention and state financial support, ECCA would again re-iterate that the process of private investment will in the main provide pro-competitive broadband provision solutions to those areas currently under served.

3.3 - On a scale from 1 to 5 (1 low and 5 high), how do you rate the justification for the need for public intervention for broadband in these areas, in particular the non-availability of broadband infrastructure (lack of coverage), high end-user prices (affordability), and the low quality of available services?

* "Lack of coverage": 3

- * "Affordability": 5
- * "Quality of Service": 1

In general terms, ECCA would observe that intervention to improve end-user affordability is likely to promote broadband take-up without having a great distortionary effect on the competitive market for the provision of broadband infrastructure and services.

Whilst lack of coverage is clearly an area that warrants public authority attention, coordinated local and EU level mechanisms to aggregate the demand for broadband will in our view be a sufficient stimulus for private sector investment to meet the market demand for services.

3.4 - Can you identify further bottlenecks that inhibit broadband deployment in rural areas and corresponding policy options to address them?

ECCA cannot identify any further bottlenecks.

3.5 - On a scale from 1 to 5 (1 Low, 5 High), how do you rate the usefulness of such a site for regional/local authorities and network operators in terms of assessment/aggregation of demand, exchange of best practices, and publication of regional local broadband plans, etc.?

- * usefulness for regional or local authorities: 5
- * usefulness for network operators: 5

3.6 - Can you suggest an alternative mechanism (to the website) to aggregate demand, without distorting competition and private incentives, in areas where satellite is considered to be the best solution for broadband delivery?

No

3.7 - Which other activities could be undertaken by the website?

N/A