

The CMT sets the conditions to be met by local authorities seeking to provide services and operate telecommunications networks

- The CMT (Commission for Telecommunications Market) and the CE (Council of Europe) have agreed on a collaboration procedure for the declaration of public aid and the monitoring of conditions imposed on operators
- The approved circular outlines the types of services or operation of networks (including wireless networks such as Wi-Fi) provided by local authorities which can affect competition

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The Board of the *Comisión del Mercado de las Telecomunicaciones* (CMT) [has approved a circular](#) setting out the conditions under which local authorities (PP AA) may act as telecommunications operators. This circular sets clear conditions for defining what types of services or operation of networks may or may not affect free competition. It also creates a process of collaboration between the CMT and the European Commission (EC) for the declaration of state aid and the supervision of compliance with possible EC conditions.

In this way the circular resolves some of the issues raised by local authorities, operators and the EC during the public consultation [launched in June 2009](#) and within the consultation period, such as in the case of notification and informing of European authorities, the conditions for operating land lines or wireless (WiFi) networks, by public authorities in general and local ones in particular, and how to analyze the potential problems of competition posed by the entry of public agents into a deregulated activity.

Management of existing legislation

As a general rule, local authorities which are operating networks and electronic communications services **should have previously notified the CMT of this**. Entry in the Operators Registry is free and it is a requirement for all operators. The only exceptions are in the case of self-provision and libraries.

Self-provision is deemed to exist when the operation of networks and the provision of electronic communications services are linked to the performance of duties normally assigned to local authority personnel or workers. Education or training centres (schools, institutes, colleges and universities) are included in this case, as well as their campus areas; teachers and students are considered as being part of the personnel.

Registration will not be required for internet provision services in libraries, and this may be free of charge, providing that users validate their connection by means of some form of identification.

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General principles

As general principles the circular sets out that any local authority (or company which is predominantly funded by a local authority) seeking to operate public networks or provide electronic communications services: must act in accordance with the **private investor principle** in a market economy. This means that there must be a sound, coherent business plan which includes plausible hypotheses; it must generate positive cash flow during the relevant period; it must finance its activities through its own revenue without recourse to public funds or to funds obtained through advertising or sponsorship (entities receiving any type of funds from local authorities may not act as sponsors or advertisers). Also, separate accounts must be kept for its telecommunications activities and it must act in accordance with the principles of neutrality, transparency and non discrimination.

Code of practice in case of non-adherence to private investor principle (public funding)

Local authorities operating networks and services without regard for the private investor principle must notify the CMT of their project.

The CMT will consider whether conditions should be imposed. The information submitted to the CMT should include: the technical conditions of the network or service, the scope of coverage, the expected revenue and funding sources, a report analyzing the impact on competition and a public consultation. In addition, in this public consultation all the information provided for the project will be made available to operators and the operators will be asked to provide information on the services they currently provide in the territorial area concerned, deployment plans for the next three years and their opinion with regard to how they may affect competition. The CMT will publish these public consultations on its website and will then conduct a substitutability analysis which will certify that it does not adversely affect or distort free competition.

Once the CMT has issued a resolution establishing conditions or once **three months have passed** from receipt of all information, the local authority may start providing the service.

Declaration of state aid

In the case of **enforced notification of state aid** for local authorities to operate networks or services, and **prior to its declaration to the CE**, the local authority concerned **shall request a mandatory report from the CMT** on how this concession may affect free competition and which conditions should be imposed, if any, on the beneficiary of the same in order to avoid market distortions. The information forwarded to the CMT should contain all project information: technical conditions of the network, geographical area, a report analyzing the impact on competition and a public consultation, under the same terms as in the case of action not adhering to private investor principles.

The CMT will publish on its website the information related to the public consultations and will monitor compliance with the EC conditions laid down in the State Aid.

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The CMT should issue a report within two months of receipt of all the information. Once this is received or after the deadline for the issue of the report has passed, local authorities may notify the European Commission of the project, enclosing the issued report, if any.

Once the file for the declaration of Public Aid has been resolved by the CE, the CMT will collaborate with the EC in monitoring compliance with the imposed conditions.

Circumstances in which the operation of networks and services does not affect competition

The following services do not affect competition, and therefore local authorities can provide them indefinitely and at no cost to the user, once they have registered as operators:

- **Internet access services limited to** local authority websites (in the geographical area where those local authorities provide this service)
- The operation and provision of services on wireless networks using commonly used bands (**WiFi**), **as long as the network coverage excludes buildings and building complexes of mixed or residential usage and the network-user bit rate is limited to 256 Kbps.**

These conditions may be amended by a resolution from the CMT following a substitutability analysis and public consultation.

Other circumstances

Operation and provision of networks or services below cost on a **temporary basis** but subject to the private investor principle: Communication to the CMT, which will set the provisional terms and conditions.

Local authorities acting in accordance with the principle of private investment but obtaining **financing through advertising or sponsorship**: Entities receiving subsidies, publicly owned companies and savings banks in which the pertinent local authority exercises a controlling influence on the governing bodies of the entity may not act as sponsors or advertisers.