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**Subject: State aid SA.36234 (2013/N) – Bulgaria
Broadband network project in Bulgaria**

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the measure *"Support for development of critical, secure, safe and reliable public ICT infrastructure in Bulgaria"* (hereafter: *"Broadband network project in Bulgaria"*) and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)c of the TFEU.

II. PROCEDURE

- (2) Bulgaria notified the measure to the Commission on 19/02/2013 pursuant to Article 108 (3) of the TFEU. The Bulgarian authorities replied to the Commission's requests for information of 18/04/2013, 11/07/2013 and 25/09/2013 by letters registered on 15/05/2013, 01/08/2013 and 23/10/2013. The Bulgarian authorities submitted additional clarifications by letter registered on 19/11/2013.

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III. CONTEXT

III.1. The target region

- (3) The project targets 53 locations¹ where no or insufficient broadband services are available to citizens and businesses and where currently no NGA network is in place or being deployed in the coming three years.
- (4) The areas covered by the measure are urban peripheral and remote rural areas characterised by low level of population density, below-average of local inhabitants (and thus potential clients of electronic communication services) income and weak economic activity. According to the Bulgarian authorities, these factors significantly increase the financial risk of rolling out broadband networks in areas already suffering from lack of infrastructure and the lack of adequate competition reflected in inadequate services. Indeed, similarly to other regions in the European Union, also in the case of Bulgaria, advanced broadband services and the infrastructures required to support them are available for citizens and businesses in more densely populated areas, whereas broadband infrastructure is inadequate or outright lacking in other areas which are not commercially attractive for electronic communication operators.
- (5) Although Bulgaria ranks among the leading EU Member States as to the coverage with fixed broadband lines with data rates above 10 Mbps, this is mainly based on the high penetration rate of the Internet services in cities and densely populated areas. According to the Bulgarian authorities, the situation is very different in small settlements and less urbanized regions where the existing broadband connections do not satisfy public administration's and citizens' connectivity needs and where private operators lack the necessary infrastructure to provide end-user with NGA broadband services and at the same time do not have sufficient commercial incentives to upgrade the existing or to construct the new networks.
- (6) Currently, in the localities covered by the measure the penetration of broadband services (i.e. equal or above 2 Mbit/s) is low and amounts to 30.45%. This is much below the EU average.

¹ Kovachevtsi, Makresh, Ugarchin, Venets, Avren, Bobov Dol, Strelcha, Bratya Daskalovi, Breznovo, Chuprene, Kula, Madan, Mineralni bani, Nedelino, Omurtag, Pavel Banya, Rakovski, Roman, Rudozem, Samuil, Simeonovgrad, Stambolovo, Teteven, Varbitsa, Yablanitsa, Zlatograd, Belogradchik, Dimovo, Mezdra, Gorna Beshovitsa, Gorna Kremena, Gorna Krashtitsa, Tavalichevo, Gorna Koznitsa, Mala Fucha, Babino, Sopot, Balgarski izvor, Vlahovo, Podvis, Ravnishta, Srednogortsi, Gorno Cherkovishte, Viden, Naydenovo, Golyam Dol, Kozma Prezviter, Aleksandrovo, Konstantinovo, Manastir, Ivanovo, Konevo, Mengishevo.

Table 1 - Breakdown of broadband services (by connection speed) in target areas

Backhaul infrastructure	Number of Localities in the target areas	END USER DOWNLOAD SPEED				
		No service	<1Mbps	1-<2Mbps	2-<6Mbps	>6Mbps
None	25	100 %	0 %	0 %	0 %	0 %
Radio links	25	0.00%	80 %	4 %	16.00%	0 %
Fiber +Radio links	3	0 %	66.67%	33.33%	0 %	0 %
Total	53	25	22	2	4	0
	100%	47.17%	41.51%	3.77%	7.55%	0.00%

- (7) The lack of broadband infrastructure in the areas covered by the measure emerged clearly during the preparation of the inventory of existing infrastructure and credible investment plans. Only 3 localities out of 53 in total has optical backhaul infrastructure and in majority of localities there is no broadband access to Internet offered that would guarantee 2 Mbit/s download speed to an end-user. Over 47.17% of the localities have no access to the fixed Internet.
- (8) As explained by the Bulgarian authorities, there is also a lack of competition in many parts of target areas where the existence of entry barriers and the dominant position of the incumbent that competes at the same time on the retail market discourage other private operators from investing in development of a new network.

III.2. The rationale for public intervention

- (9) In view thereof, the Bulgarian authorities considered that their public interest goals would be best achieved through the rollout of a new public backhaul infrastructure and decided to fund the construction of such a network for internal use of the public administration (particularly to connect public institutions to the eGovernment cloud) and in order to be able to provide citizens and businesses with adequate e-administration services in areas where existing networks are not sufficient or do not exist and where there are no investment plans to create such networks in the near future. As explained by the Bulgarian authorities, reliable high speed networks are needed not only for public services but also for the local communities to attract businesses, provide health care services and improve education methods (virtual training, e-learning, digital libraries). According to the Bulgarian authorities, the creation of a high speed public backhaul network will, by lowering investment costs, reduce the entry barriers for commercial operators and thereby will encourage them to extend their broadband access network coverage. This, as explained by the Bulgarian authorities, will contribute significantly for achieving the socio-economic development objectives of municipalities set out in their development programs and allow meeting current and future demand for high capacity broadband services. Furthermore, the dissemination of broadband services will help to eliminate the digital divide, increase social cohesion and contribute to economic growth.

IV. DESCRIPTION OF THE MEASURE

- (10) **Objective:** The objective of the measure is the construction of a public backhaul broadband network for the use of public administration bodies as well as for commercial use by other operators to deliver services to citizens and business in areas where adequate services are currently unavailable and where no similar investments are planned by market operators in the next three years. By the same token, the measure aims at creating incentives for investment in basic and NGA last mile segments and intends to accelerate the supply of broadband services to end-users. The other objective of the project is to allow the use of the new backhaul network to help eliminate the "digital divide" and strengthen the territorial and social cohesion by closing the gap in access to affordable broadband services.
- (11) **Legal basis:** the notified measure is based on the Decision No ПД-02-14-1762/12.07.2012, amending Decision No ПД-02-14-2121/27.08.2012 of the Head of Managing Authority of OPRD (Ministry of Regional Development and Public Works, General Directorate "Programming of Regional Development"); the Operational Programme "Regional Development", Priority 2 "Regional and local accessibility", Operation 2.2. "Information and communication network"²; Contract No BG161PO001-2.2.01-0001-C0001 between the MA of OPRD and EA ECNIS; National Strategy for the Development of Broadband Access in the Republic of Bulgaria, setting policy in this regard, approved on 25 November 2009 the Council of Ministers³; Guidelines for applicant under grant scheme BG161PO001/2.2-01/2011 "Support for development of critical, secure and reliable public ICT infrastructure".
- (12) **Design of the project:** The project will be performed by the public authority (Executive Agency "Electronic Communications Networks and Information Systems" - EA "ECNIS") that was allocated funds in the framework of the Regional Operational Program (Operational Programme "Regional Development" 2007-2013 – OPRD). The project envisages development of the backhaul⁴ network. The EA "ECNIS" will first launch public procurement procedures for the design and construction of infrastructure and will subsequently, in a different procedure(s), select the infrastructure operator(s). The subsidy will cover passive as well as active elements of the network.
- (13) In order to achieve its objective, the project is made up of the 'self-provision' part for the public administration sites and the 'commercial part'.
- (14) The Bulgarian authorities consider that the 'self-provision' part of the project does not involve State aid as the public administration bodies (e.g. local authorities, police, public hospitals belonging to the national health service, public schools) that will be connected to the planned network exercise public function and do not perform economic activities⁵.

² <http://www.mtict.government.bg>.

³ <http://www.bgregio.eu>.

⁴ Backhaul networks comprise the intermediate links between backbone networks and access (last mile) networks.

⁵ The Bulgarian authorities argue that in a case where a public entity could be considered as performing an economic activity within the meaning of State aid rules and thus potentially involve State aid, the Bulgarian authorities assure that in such a case they would only grant support to public entities performing an economic activity in compliance with the SGEI package of 2011 (Commission Communication on the application of the EU State aid rules to compensation granted for the provision of services of general economic interest; the Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of

- (15) To implement the 'commercial' part of the project, the Bulgarian authorities will select in the tender procedure the infrastructure operator(s) that will be provided with the spare capacity of the public network and to whom it will lease and entrust the operation and maintenance of the infrastructure. In exchange, the infrastructure operator(s) will pay a fee for the lease of the broadband infrastructure and will have the right to retain revenues from managing and operating the network. The public authority will remain the owner of the network throughout the life of the contract with the infrastructure operator. The infrastructure operator will not provide any services to end-users, but will have an obligation to provide other third party operators with effective wholesale access to the subsidised network during the lifetime of the contract with the public authority i.e. for a period not shorter than 13 years.
- (16) **Budget, funding instruments, aid amount and aid intensity:** The total budget of the project amounts to approx. BGN 39 million (around EUR 20 million). The significant part (85%) of the budget will be funded from the European Regional Development Fund (ERDF). The remainder part will be financed from the national budget (15%). The final amount of the aid as well as the aid intensity will depend on the outcome of the tender procedure.
- (17) **Duration of the measure:** The construction of the network should be accomplished within two years following the Commission approval. The lifetime of the contract with the selected operator is thirteen years.
- (18) **Mapping and coverage analysis:** As confirmed by the Bulgarian authorities, in order to identify the existing broadband networks and services offered on the target areas, a mapping and coverage analysis has been conducted during a detailed inventory in 2009-2011 (which was subsequently updated in April 2012). The inventory covered both the backhaul infrastructure and the access infrastructure. The results of the market analysis, including the mapping, research and analyses of the broadband access networks in Bulgaria have been published on the central websites.
- (19) **Public consultation:** The Bulgarian authorities undertook the public consultation between January 2012 and May 2012 in order to verify the results of its mapping, planned classification of areas eligible for intervention and in order to obtain information from stakeholders about their plans relating to their future investments as well as their views on the project. The granting authority published the project on the central website with invitation to comment and, additionally all telecommunication companies registered in the NRA register were contacted individually. The comments submitted by the parties led to reclassification of certain areas with respect to their eligibility for intervention. In July and October 2013, the Bulgarian authorities carried out the final follow-up public consultations to confirm the classification of the target areas. No further comments concerning future investments in the target areas were submitted by the telecommunication operators.
- (20) **Conditional access to planned infrastructure:** The Bulgarian authorities designed a conditional system of access to the planned backhaul network in order, on the one hand, to meet the objectives of the scheme and at the same time to minimise the potential distortion of competition on existing operators and, on the other hand, to make sure that the notified measure brings a step change in terms of broadband deployment in all the target areas.

- (21) In view thereof, it is foreseen that in areas where there exists already a fibre backhaul infrastructure, the planned backhaul will not be used to offer commercial wholesale services. In areas with no fibre backhaul infrastructure in place and where one or more radio backhaul infrastructures exist, the Bulgarian authorities will allow third party operators to connect to the planned backhaul network only if they deploy NGA capable 'last mile' infrastructure. Such limitations in the use of the backhaul network will reduce any potential distortion of competition as regards basic broadband services providers, but at the same time will incentivise NGA network roll-out by developing an open fibre backhaul network in the region.
- (22) On the basis of the above described mapping exercise, the list of targeted areas was finalised and the type of access to planned network per type of area was identified according to the following table⁶.

Table 2 - Conditional access to nodes of the broadband network in target region with the type of available basic broadband access services

	<u>Total number of localities in category</u>	<u>Fibre backhaul infrastructure in place plans for the near future</u>	<u>Radio backhaul infrastructure in place</u>	<u>Basic broadband retail offers or plans for the near future</u>	<u>NGA infrastructures or plans for the near future</u>	<u>Conditional access to the planned network</u>
1	25	None	Non	No	No	All operators can connect to the planned backhaul network
2	25	None	Incumbent + alternative operators	Incumbent + alternative operators	No	Only 'NGA last mile' infrastructures can connect to the planned backhaul network
3	1	Only one ⁷	Incumbent + alternative operators	Incumbent + alternative operators	No	The planned backhaul network cannot be used to offer commercial wholesale services
4	2	Only one	Alternative operators	Incumbent + alternative operators	No	The planned backhaul network cannot be used to offer commercial wholesale services

- (23) **Open tender process:** The Bulgarian authorities confirmed that open, transparent and non-discriminatory competitive procedures for the construction and the operation of the subsidised network will be conducted in conformity with European and Bulgarian public procurement rules. As explained by the Bulgarian authorities a prior notice as

⁶ In line with the method already applied in decision N 407/2009 Optical fibre Catalonia (Xarxa Oberta) C(2010)5696 of 11.8.2010, decision SA.31687 (N436/2010) Broadband in Friuli Venezia Giulia Project Ermes) C(2011)3498 of 23.5.2011 and decisions SA.33438 (2011/N), SA.33440 (2011/N), SA.33441 (2011/N), SA.33439 (2011/N), SA 30851 (2011/N) Broadband Network for Eastern Poland of 10.11.2011.

⁷ Not open for third party operators.

well as the whole documentation regarding the selection procedures will be published on the Bulgarian central websites and in the Official Journal.

- (24) **Award criteria:** The contract will be awarded to the bidders presenting the most economically advantageous offer. In this regard, as confirmed by the Bulgarian authorities the main award criteria will include: in view of minimising the amount of public aid - the amount of the fee to be paid for the use of the subsidised backhaul infrastructure and the standard and quality of services provided (the technical and quality requirements and other selection criteria as well as their respective weight will be set out in advance in the tender documentation).
- (25) **Use of existing infrastructure:** The Bulgarian authorities encourage using the entire existing infrastructure in order to limit the aid necessary for the measure as well as to avoid duplication of infrastructures. The Bulgarian authorities confirmed that they would ensure that any operator which owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the selection to receive the aid, shall meet the following conditions: (i) to inform the aid granting authority and the NRA about that infrastructure during the public consultation; (ii) to provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid. In addition, the authorities stated that a national database will provide information on the availability of existing infrastructures that could be re-used for broadband roll-out.
- (26) **Technology:** The Bulgarian authorities consider that at the current stage of development of telecommunications technologies there is no transmission medium for backhaul networks other than optical fibre links that would allow providing next generation services of enhanced capacity and quality with minimum bandwidth of 100Mbits/s. Therefore, the project envisages construction of the backhaul network using optical-fibre links. For every other equipment, as confirmed by the Bulgarian authorities, choice of technology will be based pursuant to technical plans, and in public procurement procedures no technology will be excluded a priori. In addition, the services provided on the wholesale market will be such as to enable the interconnection to the subsidised backhaul network of any possible technology, which operators wish to use for their access infrastructure⁸.
- (27) **Wholesale access:** As confirmed by the Bulgarian authorities the wholesale access will be provided by the infrastructure operator to the subsidised backhaul network (including its existing infrastructure used for the project) on non-discriminatory and open access terms for a period of at least 7 years. Wholesale services will include active access by means of the provision of transport services as well as passive access, including access to dark fibre, street cabinets. The Bulgarian authorities also confirmed that ducts and pipes access will be available on the planned backhaul network and will not be limited in time. The winning bidder for the operation of the backhaul infrastructure will not be allowed to provide retail services in order to avoid any concern of possible anticompetitive exploitation of the advantage created by the management of the backhaul network.
- (28) **Pricing:** The Bulgarian authorities stated that they will comply with the provisions of point 78 h) of the Broadband Guidelines and that therefore the wholesale access prices will be based on average (regulated) wholesale prices for comparable services in more competitive areas or on prices specified or approved by the NRA.

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In line with the conditions detailed in paragraph 20 and following.

- (29) Furthermore, during the term of validity of the contract, the fees charged by the infrastructure operator will be monitored and verified by the granting authority and the NRA. The latter will be also entitled to resolve potential disputes between the infrastructure operator and third party operators.
- (30) **Monitoring and claw-back mechanism:** The compliance of the selected infrastructure operator with the contract obligations will be monitored on a regular basis by the granting authority. The monitoring will be performed during the entire duration of the project. Further details of the mechanism will be described in the contract with the infrastructure operator.
- (31) In order to avoid any overcompensation to the beneficiary of the aid, the Bulgarian authorities envisage also a claw back mechanism that will comprise the whole lifetime of the project. The calculation of the amount to claw-back will be dependent on the accumulated (during three years) profit after payment of income taxes, the fee for use of the infrastructure and amortisation of the infrastructure. If the accumulated profit exceeds its originally assumed level by more than 20%, then the infrastructure operator will have to refund the profit made on the turnover exceeding this 20%.
- (32) **Transparency:** The Bulgarian authorities confirmed that they would publish on a central website at least the following information on the State aid measures: the full text of the approved aid scheme and its implementing provisions, name of the aid beneficiary, aid amount, aid intensity and used technology⁹. Furthermore, the aid beneficiary will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under a State aid measure.
- (33) **Reporting:** The Bulgarian authorities confirmed that starting from the date when the backhaul network is put into use, for the duration of the aid measure, the State aid granting authority would report every other year the key information on the aid project to the European Commission.

V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (34) According to Article 107 (1) TFEU, “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer a selective economic advantage to undertakings, 3) it has to distort or threaten to distort competition and 4) it has to affect trade between Member States.
- (35) As regards the self-provision part of the project, on the basis of the information provided by the Bulgarian authorities, it can be concluded that the public administration entities that will be interconnected by the planned network do not carry out economic activity. In this regard, the Commission has already accepted in the past that the fact that a public authority builds its own public-sector network to satisfy its own needs does not entail a State aid for it since it does not exercise an economic activity¹⁰. Therefore

⁹ Such information will be kept for at least 10 years and shall be available for the general public without restrictions.

¹⁰ See Commission decision in case NN24/2007, Prague Municipal Wireless Network, OJ C/141/2007 and Commission decision in case N46/2007 Welsh public network scheme, OJ C157/2007.

the mere fact that the public authorities decided to build their own public-sector network in order to satisfy their own needs does not raise concerns under Article 107(1) TFEU, this being an autonomous organizational decision by a public authority.

- (36) Consequently, the Commission concludes that the self-provision part of the project does not involve State aid within the meaning of Article 107 (1) TFEU.
- (37) As regards the commercial part of the project the Commission carried out the following assessment of the existence of State aid:

State resources

- (38) The measure is financed by resources of the Bulgarian authorities and EU funds, which are allocated under the control of the Member State to the beneficiaries with an element of discretion. Hence, State resources are involved.

Selective economic advantage

- (39) The measure results in a selective economic advantage for the electronic infrastructure operator that will be selected in the tendering procedure and will provide broadband services on conditions not otherwise available on the market. Third party operators who will gain wholesale access to the subsidised network might also benefit from the measure at hand as well as undertakings that exercise an economic activity in the target areas will ultimately benefit from the creation of a new backhaul network.

Distortion of competition

- (40) The intervention of the State is liable to alter existing market conditions by allowing the provision of enhanced wholesale broadband services by the selected infrastructure operator and, potentially, third party operators which are active in a market open to competition. Furthermore, the measure is liable to alter the conditions of competition between business users who are likely to subscribe to the broadband services offered by the planned backhaul network in the targeted areas and business users elsewhere in Bulgaria and the EU. Therefore, the fact that an improved broadband service and additional (wholesale) capacity become available has the effect of distorting competition.

Effect on trade

- (41) Insofar as the intervention is liable to affect providers of electronic communications services from other Member States, the measure has an effect on trade. The markets for electronic communications services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States.

Conclusion

- (42) In view of the above, the Commission concludes that the notified measure "*Broadband network project in Bulgaria*" constitutes State aid within the meaning of Article 107 (1) TFEU.

VI. ASSESSMENT OF THE MEASURE: COMPATIBILITY

- (43) The Commission has assessed the compatibility of the scheme according to Article 107 (3) (c) TFEU and in the light of the *EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*¹¹ (the "Broadband Guidelines") which contain a detailed interpretation of Article 107 (3) (c) TFEU in this area of State aid law.
- (44) As explained in paragraph 33 of the Broadband Guidelines, every aid measure has to comply with the below necessary prerequisites in order to be possibly declared as compatible with the internal market:

(1) Contribution to the achievement of objectives of common interest

- (45) The Commission defined in its Europe 2020 strategy of 3 March 2010¹² the Flagship Initiative: "A Digital Agenda for Europe", which has the *"aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps."*
- (46) With the notified project the Bulgarian authorities create public infrastructure for the eGovernment services and by the same token intend to bridge the traditional *"digital divide"* and to improve broadband access for citizens and business by facilitating and encouraging investments in basic and NGA last mile networks. By extending broadband coverage to areas where private operators have no commercial interest to invest in the near future and promoting the development of NGA networks in such areas, the Bulgarian authorities pursue genuine cohesion and economic development objectives which is in line with the Digital Agenda.

(2) Absence of market delivery

- (47) As illustrated in section III.2 above, the availability of the broadband services in the project area is very low. In 25 out of 53 target localities there is currently no backhaul infrastructure at all and in 25 others the existing backhaul infrastructure is based on the radio technology that is able to support basic broadband networks only. Furthermore, the public consultations revealed no investment plans to build a fibre backhaul network in these areas in the near future, in view of their low commercial attractiveness for private operators. The commercial part of the project covers only those areas (the areas where a fibre backhaul infrastructure is in place are excluded from the commercial part of the project). This clearly demonstrates the absence of the market delivery and important inequalities in the target areas.

(3) Appropriateness of State aid as a policy instrument

- (48) The project at hand is part of an integrated set of measures under the Bulgarian National Strategy for Broadband Development. However, due to the economics of broadband networks, the efforts from alternative instruments, such as regulatory interventions have not solved the problems related to the lack of broadband infrastructure and have not been able to ensure effective competition. Consequently, in order to ensure the supply

¹¹ OJ C25, 26.01.2013, p.1.

¹² EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, page 12.

of broadband services to all citizens, the Bulgarian authorities see no alternative but to grant public aid to the deployment of backhaul network in the target areas and to offer a spare capacity of the new network for the commercial use by third party operators.

- (49) In consideration of the above, the Commission can agree that without further public intervention, it would seem impossible to avoid the emergence of a new "*digital divide*" between different areas of the country, which could lead to the economic and social exclusion of the local citizens and undertakings. Hence in the current situation, State aid is an appropriate instrument to achieve the set objectives.

(4) Existence of incentive effect

- (50) As set out in paragraph 45 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken without any State aid. According to the results of the public consultation and market research referred to above in paragraph (19) and following, in the targeted areas no similar (fibre based) broadband backhaul network investment would take place without public funding within the same timeframe. In addition, by granting access to the public network to third party operators, the measure facilitates and encourages investments in last mile networks, provides a direct and appropriate investment incentive for the selected operator and for third party beneficiaries and produces a change in their investment decisions. According to the Bulgarian authorities, infrastructure operators have already expressed a high degree of interest in possibility to connect to the planned backhaul network and in expending their access network and services. Therefore, the aid shall provide a direct and appropriate investment incentive for the operators.

(5) Aid limited to the minimum necessary

- (51) In assessing the proportional character of the notified measures, the Commission has assessed in paragraph (69) and following a number of necessary conditions to minimise the State aid involved and the potential distortions of competition.

(6) Limited negative effects

- (52) The significance of the distortion of competition has been assessed in terms of effects on competitors in paragraph (69) and following. Given the design of the project, it is unlikely to have a crowding out effect on potential future investments of private operators.

(7) Transparency

- (53) As further explained in paragraph (77) below, the aid will be awarded in a transparent manner and it will be ensured that the public authorities, economic operators, the interested public and the Commission have easy access to all relevant acts and pertinent information about the aid.

(8) The overall balancing exercise and the compatibility conditions

- (54) The measure under assessment has been designed to ensure that the overall balance of the effects of the measure is positive.

- (55) As mentioned above, the objective of the project is throughout a significant new investment in sparsely populated areas to bridge the digital divide and provide access to broadband services where they are currently unavailable or not adequate and where the private operators are not planning any investments in the near future.
- (56) As noted in paragraph (20) above, the commercial part of the project covers only areas where no fibre backhaul infrastructure is in place or is planned in the near future. In some of the target areas (25 of localities) a backhaul infrastructure based on the radio technology is in place. However, in such areas there is an unsatisfied demand for Internet services to which the existing backhaul infrastructure is not able to respond as advanced services able to meet the growing expectations of public administration, citizens and businesses are not offered or are sporadic and not reliable. Indeed, the existing radio networks cannot deliver timely and at the affordable level a very high speed and advanced services as their performance depends on weather conditions and the number of users communicating over the network at the same time. It means that although the download speed may reach up to 50 Mbps in low traffic time in some segments of the network topology, it should be shared by all end-users in the given location and therefore an upload speed is much lower.
- (57) The planned investment will therefore allow the rollout of an open and modern optical fibre backhaul infrastructure, not provided by the market, on which competing providers will be able to offer NGA services to the end-users. The planned fibre backhaul infrastructure will deliver services of high performance that are not available through the existing radio backhaul networks in the target areas, allowing the deployment of NGA networks and therefore the provision of very-high speed retail connections (the Bulgarian authorities assume that the end-user's speed will increase in average by twenty times in the first two years after the deployment of new infrastructure). It is indeed expected that operators which will use the planned backhaul network will offer higher speeds since demand for faster broadband services is likely to increase in line with the range of digital services that will be delivered.
- (58) Thus, such an open infrastructure brings significant new capabilities to the market and ensures a "step change" in terms of broadband availability for the target areas, in line with the requirements of paragraph 51 of the Broadband Guidelines.

Pro-competitive nature of the project

- (59) Furthermore, the funding of backhaul network open for access to all operators and technologies, as confirmed in the paragraph 81 of the Broadband Guidelines, exhibit especially pro-competitive features.
- (60) The wholesale provision of services is not aimed to develop an access network but only a transport "backhaul" network. Use of such a network is a necessary input for telecommunication operators to deploy access networks with which they can provide (high speed and very high speed) access services to the end-users. The operator of the new network will offer access to wholesale products (such as ducts, dark fibre) on a commercial basis. Construction of backhaul networks is generally a measure that fosters competition and investment and, for NGA networks, encourages third party operators to roll out last mile infrastructures capable of supplying advanced connectivity services to end-users. Backhaul networks have the potential to stimulate competition on all access technologies, while leaving the bulk of the investments to connect end-users to private operators.

- (61) The backhaul networks are "hybrid networks" in the sense that they are able to sustain both basic and NGA types of networks: it is the (investment) choice of the telecommunication operators what type of 'last mile' infrastructure they wish to connect to the backhaul network. In particular, operators could decide to use ADSL or wireless solutions (i.e. basic broadband infrastructures), but they could also opt for rolling out, for example, an FTTH architecture (i.e. an NGA infrastructure).
- (62) Hence from a competition point of view, the possible distortion resulting from the deployment of subsidised backhaul networks shall be assessed on two levels: (1) the level of basic broadband networks and (2) the level of NGA networks, in line with the distinction made in the Broadband Guidelines.
- (63) With respect to (1), the measure could cause distortion of competition in those localities in which market forces seem to work adequately to provide basic broadband services to citizens. In these areas, public intervention would not be justified, since it would not address a market failure (as competitive broadband providers exist), it would not bring any significant benefits for the targeted areas (as citizens would receive the same level of services), state aid would not have any incentive effect and it could crowd out private investments. By contrast, in localities where a market failure exists with regards to basic broadband, the provision of subsidies to provide backhaul services has a pro-competitive character.
- (64) As regard point (2), i.e. concerning the level of NGA networks, according to the information submitted by the Bulgarian authorities, the target areas have to be considered a "white NGA areas": even where backhaul infrastructure is present, the access infrastructure is not yet upgraded nor will it be in the next three years (in the target areas no "credible investment plans" have been reported by the Bulgarian authorities).

The system of conditional market access to the planned network

- (65) To alleviate these different concerns, the Bulgarian authorities have proposed a system of conditional market access to the planned backhaul network infrastructure, depending on the existing market situation in the various localities (see Table 2).
- (66) In the target areas where there is no backhaul infrastructure at all and where there are no plans to develop such infrastructure in the near future, there is no need to impose restrictions on the type of 'last mile' infrastructures allowed to use the subsidised backhaul network, provided the conditions set out in paragraph 78 of the Broadband guidelines are respected (see below in paragraph (69) and following).
- (67) The notified measure covers also areas, where no optical fibre backhaul network is in place but where more than one radio backhaul infrastructure already exists and where no NGA access network is connected to it or is likely to be in the next free years (which means that such areas are white from an NGA point of view). In such areas, the Bulgarian authorities will allow the third party operators to connect to the subsidised backhaul network only if they deploy NGA capable 'last mile' infrastructures. This will ensure a step change in term of broadband coverage, by encouraging the roll-out of NGA networks in areas where no such networks exist or are planned and guarantee that at the level of the basic broadband, the subsidised network will not be used to unnecessarily duplicate existing networks.
- (68) Areas where there is already a fibre backhaul infrastructure are not covered by the commercial part of the project and the subsidised backhaul network will be used only

for the self-provision of services to public bodies which do not perform an economic activity.

The other proportionality conditions of the Broadband Guidelines

- (69) ***Detailed mapping and analysis of coverage, public consultation:*** As set out in detail in paragraph (18) and following, the Bulgarian authorities have undertaken an analysis of the existing broadband infrastructure in order to identify the areas where State intervention is necessary. A public consultation has been conducted as described above in paragraph (19) and all the relevant stakeholders have had the opportunity to submit their views. As confirmed by the Bulgarian authorities, comments from one operator have been taken into account which led to reclassification of certain areas with respect to their eligibility for intervention. This will limit the possibility of crowding out private investments and distorting competition with regard to the existing operators to a minimum.
- (70) ***Competitive selection procedure:*** The Bulgarian authorities run selection procedures in line with the principles of openness, competition and transparency of the Bulgarian and European procurement rules in order to ensure equal and non-discriminatory treatment of all bidders.
- (71) ***Most economically advantageous offer:*** The Bulgarian authorities will select the most economically advantageous offer among those presented by the operators. On the basis of predefined and published technical specifications, the network operator requesting the lowest aid amount will receive more priority points within the overall assessment of the bid.
- (72) ***Technological neutrality:*** The project envisages construction of the backhaul network using optical fibre links. This specification is acceptable because at the current stage of development of telecommunications technologies there is no transmission medium other than optical fibre links that would allow providing basic and next generation services of enhanced capacity and quality with minimum bandwidth of 100Mbits/s. However, the Bulgarian authorities confirmed the choice of technology for the relevant equipment will be based pursuant to technical plans and in public procurement procedures no technology will be excluded a priori. Consequently, the services provided on the wholesale market will be such as to enable the interconnection to the subsidised network of any possible technology, which operators wish to use for their access infrastructure.
- (73) ***Use of existing infrastructures:*** As confirmed by the Bulgarian authorities, wherever possible, the new backhaul network will use existing infrastructure. This way, the unnecessary and wasteful duplication of existing infrastructure should be avoided and the overall costs of the project should be minimised. The Bulgarian authorities also confirmed that they would ensure that any operator which owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the selection to receive the aid, shall meet the following conditions: (i) to inform the aid granting authority and the NRA about that infrastructure during the public consultation; (ii) to provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid.
- (74) ***Wholesale access:*** As described in paragraph (27), the selected operator will offer wholesale services and access to the subsidised backhaul network to other operators in an open, transparent and non-discriminatory manner for at least seven years.

Furthermore, full access without limitation in time is always to be guaranteed to any passive infrastructure (such as ducts and poles).

- (75) **Wholesale access pricing:** In line with the provision of the Broadband Guidelines, the price for wholesale access will be based on average (regulated) wholesale prices for comparable services in more competitive areas or on the prices set or approved by the NRA, as detailed in paragraphs (28) and following.
- (76) **Monitoring and claw-back mechanism to avoid over-compensation:** The project will be examined on a regular basis so to verify that all conditions of the measure are respected. By ensuring that any extra profit generated through the operation of the network will be clawed back as explained in paragraph (30), the Bulgarian authorities ensure that the recipient of the aid will not benefit from overcompensation and will minimise *ex post* and retroactively the amount of aid deemed initially to have been necessary.
- (77) **Transparency:** As described in paragraph (32) above the Bulgarian authorities confirmed that they would publish on a central website at least the following information on the State aid measures: the full text of the approved aid scheme and its implementing provisions, name of the aid beneficiary, aid amount, aid intensity and used technology¹³. Furthermore, the aid beneficiary will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure (including *inter alia* ducts, street cabinets and fibre) deployed under the State aid measure.
- (78) **Reporting:** The Bulgarian authorities confirmed that starting from the date when the network is put into use, for the duration of the aid measure, the State aid granting authority would report every other year the key information on the aid projects to the European Commission.

Conclusion

- (79) The Commission concludes that the measure "*Broadband network project in Bulgaria*" meets the compatibility criteria set out in the Broadband Guidelines and is thus compatible with Article 107(3)(c) TFEU.

VII. DECISION

- (80) On the basis of the foregoing assessment, the Commission has accordingly decided that the measure "*Broadband network project in Bulgaria*" is compatible with Article 107(3)(c) TFEU.
- (81) The Commission would remind Bulgarian authorities of the requirement to submit to it bi-annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of any plan to extend or amend this measure.
- (82) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

¹³ Such information will be kept for at least 10 years and shall be available for the general public without restrictions.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Belgium

Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President