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Subject: State aid N 150/2008 – Germany
Broadband in rural areas of Freistaat Sachsen

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Broadband in rural areas of Freistaat Sachsen*" (hereafter: "the measure") and decided not to raise objections as the State aid contained therein is compatible with Article 87(3)(c) of the EC Treaty.

II. PROCEDURE

- (2) By letter registered on 26 March 2008, pursuant to Article 88 (3) of the EC Treaty, the German authorities notified the above mentioned measure to the Commission. By letters registered on 30 April 2008 and 9 July 2008, the Commission requested additional information on the proposed measure. The German authorities submitted the answers to the Commission's requests of information by letters registered on 2 June, 5 August and 24 September 2008.

III. DESCRIPTION OF THE MEASURE

- (3) *Objective:* The objective of the scheme is to enable municipalities to grant financial support to operators for the provision of broadband services to citizens and businesses in those geographic locations of *Freistaat Sachsen* where no such services are currently available and where there are no plans for coverage in the near future. The scheme is aimed at closing the gap in access to affordable broadband services between rural and urban areas.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
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- (4) *Legal basis:* The notified measure is based on: "*Haushaltsordnung des Freistaat Sachsen*"; the "*Richtlinie des Sächsischen Staatsministeriums für Umwelt und Landwirtschaft zur Integrierten Ländlichen Entwicklung im Freistaat Sachsen (Förderrichtlinie Integrierte Ländliche Entwicklung - RL ILE/2007)*"; Teil A 1.4" and the "*Gesetz über die Gemeinschaftsaufgabe 'Verbesserung der Agrarstruktur und des Küstenschutzes'*" (hereafter: "GAK"). The measure also has to comply with the Commission decision of "*Entwicklungsprogramms für den ländlichen Raum für den Freistaat Sachsen 2007 bis 2013 (EPLR)*"¹. In addition, insofar as a project is co-financed by the European Agricultural Fund for Regional Development (hereafter: "EAFRD"), the measure shall also comply with Council Regulation No 1698/2005².
- (5) The notified measure is a regional initiative of *Freistaat Sachsen*. Based on the objectives, rules and conditions of the federal level broadband scheme approved by the Commission under the State aid rules³, the authorities of *Freistaat Sachsen* have designed a broadband measure that also takes into account the local specificities of the telecommunication landscape. Hence the current measure was submitted separately for State aid approval.
- (6) Similarly to the broadband measure of Baden-Württemberg⁴, in order to increase legal certainty and to provide guidance for local authorities on the use of public funds in support of broadband provision, the authorities will issue detailed guidelines for municipalities that stipulate the general rules and conditions for granting aid. The "*Eckpunkte für die Verwendung öffentlicher Mittel Breitbandversorgung des Ländlichen Raumes im Freistaat Sachsen*" will be published after the approval by the Commission. The scheme will be implemented by single projects and the support measures will follow the conditions set out in the scheme.
- (7) *Target areas:* The measure targets geographic locations in *Freistaat Sachsen* where no or insufficient broadband services are available to citizens and businesses. As in the case with the federal level broadband scheme⁵, the authorities of *Freistaat Sachsen* consider insufficient broadband coverage if a minimum (download) bandwidth of 1 Mbps⁶ is not available at affordable prices⁷. According to the German authorities, a market survey from 2007

¹ The referred legal bases are available on the website of the *Freistaat Sachsen* authorities, at <http://www.smul.sachsen.de/smul/index.html>.

² Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). The legal bases are available on the website of the authorities of *Freistaat Sachsen*: www.smf.sachsen.de.

³ Commission decision of 2 July 2008 in case N 115/2008 Broadband in rural areas of Germany. OJ C/194/2008, 31 July 2008.

⁴ "*Eckpunkte für die Verwendung öffentlicher Mittel zur flächendeckenden Versorgung des Ländlichen Raums mit Breitbandanschlüssen in Baden-Württemberg*". Commission decision N570/2007 - *Broadband in rural areas of Baden-Württemberg*. OJ C/282/2007, 24.11.2007.

⁵ For reference, see footnote 3.

⁶ According to survey conducted by a consultancy firm, WIKK-Consult in 2007 on behalf of the Ministry of Economics, Transport, Agriculture and Viniculture of Rhineland-Palatinate, in light of the current applications available on internet (such as vocational training, eLearning, teleworking, home offices, etc.) a minimum bandwidth of 1 Mbps is required to meet this basic needs of citizens living in rural areas.

⁷ Municipalities should also rely on the existing broadband mapping initiatives such as the referred WIKK study or the "Breitband Atlas" to more accurately identify the targeted areas.

indicated that only 41% of the responding 248 municipalities had access to broadband services in the form of DSL, cable or wireless networks.

- (8) *Budget:* The aid takes the form of grants. The annual budget is estimated at approximately €1.4 million between 2008 and 2015 and the total aid amount will be €8.4 million.
- (9) *Aid intensity and maximum aid amount:* The aid intensity of each single project will depend on the outcome of the local selection procedures. As foreseen in the federal level broadband scheme⁸, the basis of the grant will not be the total cost of the project, but the so-called "*profitability gap*", i.e. the difference in investment costs and profitability threshold between providing broadband services in rural areas compared to urban areas⁹. The value of the "*profitability gap*" for each project will be calculated and submitted by the tenderers to the granting authority in the course of the tender procedure. The measure will finance this "*profitability gap*" and the aid is limited to a maximum public funding of €200.000 per project.
- (10) *Funding instruments:* Similarly to the federal level broadband scheme¹⁰, the amount of public support for each of the projects will be granted from federal, state (*Freistaat Sachsen*) and municipal funds and could be co-financed by EU funds, namely by the European Agricultural Funds for Rural Development funds (EAFRD)¹¹.
- (11) In case the measure is not co-financed by the EU funds, the municipality concerned will have to contribute at least 40% of the aid amount. The remaining 60% of the aid will be financed by federal and state level (*Länder*) funds (divided as 60% and 40%, respectively) within the framework of GAK.

| GAK | | Municipality | Total |
|-----------------------------|---------------------------|--------------|-------|
| Max. 60 % | | Min. 40 % | 100 % |
| of which 60 % federal funds | of which 40 % State funds | | |

- (12) In case the measure is co- financed by EU funds, the municipality concerned will contribute at least 26% of the aid. The remaining aid amount will be financed up to 74% under the EAFRD funds, divided by 75% of EU funds and 25% of State (*Land*) funds.

| EAFRD | | Municipality | Total |
|------------------------|---------------------------|--------------|-------|
| Max. 74 % | | Min. 26 % | 100 % |
| of which 75 % EU funds | of which 25 % State funds | | |

⁸ For reference, see footnote 3.

⁹ According to the German authorities the "*profitability gap*" derives from the diseconomies of establishing broadband networks in rural and remote areas (for instance, due to low population densities and high fixed costs of network deployment). As a consequence, electronic communication operators do not provide widely available broadband services at affordable prices in such areas.

¹⁰ For reference, see footnote 3.

¹¹ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), OJ L277/1 21.10.2005.

- (13) The German authorities have confirmed that there is no cumulation possible within the current measure (for instance between GAK and EAFRD supported areas) or with any other State aid broadband measures, including the federal level broadband scheme¹².
- (14) *The selection procedure:* Similarly to the federal level broadband scheme, before any aid is granted, as a first step, the municipalities will have to prove a need for broadband services as well as the absence or insufficient offer in the area. To this purpose the municipality will carry out a market analysis and consult operators of electronic communication networks, asking them whether they would be ready to provide broadband without public support. Municipalities will also have to confirm if there are other means than State aid to provide broadband services on their territory – for example by providing access to empty ducts or demand aggregation. Aid may only be granted if, after such a consultation, there is no sufficient broadband offer provided or expected to be provided by the market in the near future.
- (15) In case there is a proven need for public support, the municipalities should publish the envisaged support plans in their official gazette or bulletin and on their website. The selection procedure shall be conducted in a transparent manner and in full compliance with the national procurement rules (*Vergaberecht*). The project will be technology and provider neutral.
- (16) *Award criteria:* The aid will be granted to the bidder with the most economically advantageous offer¹³. For the application of this award criterion, the following criteria are used in a descending order of importance:
- Amount of aid required;
 - Achieved download/upload rates;
 - Retail prices;
 - Reliability and quality (like economic life time and upgradeability) of the solution proposed.
- (17) *Beneficiaries:* The direct beneficiaries of the aid will be electronic communications operators offering broadband services. The indirect beneficiaries will be third party providers of electronic communication services and business end users (primarily SMEs) in the targeted areas.
- (18) *Service definition:* As a minimum, the selected service provider shall supply a minimum standard broadband connection of 2 Mbps download and 192 kbps upload for private users. In case there is a verified demand from local undertakings, 2 Mbps synchronous connection will be the necessary minimum service requirement for business users¹⁴. Taking into account the rapid change of the telecommunication sector and relatively long timeframe of the measure

¹² For reference, see footnote 3.

¹³ Similarly to the other broadband measures approved under the State aid rules (N115/2008 and N570/2007), in a few exceptional cases, when the call for tenders remains unsuccessful or the aid amount required by the tenderer is significantly higher, the municipalities could initiate the investment themselves. In such cases municipalities will not engage in retail broadband service provision but will grant wholesale access to third party operator(s) in an open, non-discriminatory procedure afterwards.

¹⁴ These thresholds were set by the regional authorities based on the perceived current market needs of residential and SME in urban areas. Business users usually require higher speed and typically symmetrical bandwidth broadband connection compared to residential users.

(until 2015), the German authorities may adjust these values in line with the market developments.

- (19) *Pricing*: the retail prices of the broadband services provided by the selected supplier will be established in the course of the selection procedure. However the retail prices should be similar to those in other, non assisted areas.
- (20) *Technology*: The municipalities will not specify the technology to be used for the deployment of broadband networks in the areas concerned.
- (21) *Wholesale offer*: The tender will oblige the selected operator to provide wholesale access to the subsidised infrastructure to all electronic communications operators on equal and non-discriminatory conditions that will enable them to compete with the selected operators, thereby strengthening choice and competition in the areas concerned by the measure¹⁵.
- (22) *Duration of the measure*: The scheme runs from 2008 (after the approval of the Commission) until 31 December 2015. The actual length of the contracts between the municipalities and the selected service providers will be minimum 5 years.
- (23) *Monitoring*: each individual project will be examined on regular basis by the granting authorities in accordance to the National Household Regulation (i.e. *Haushaltvorschriften*)¹⁶. Furthermore, concerning the projects also co-financed by EU funds, they will also be regularly scrutinized in accordance with the referred EAFRD regulation¹⁷.

IV. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

De minimis aid

- (24) According to the *de minimis* Regulation¹⁸, state funding of less than €200,000 over a period of 3 years in favour of one company is deemed to have no substantial effect on competition and trade between Member States, and therefore does not constitute state aid. However, in the measure at hand, certain service providers could carry out several local projects and could receive aid in excess of €200.000 over 3 years. Also, the German authorities have not argued that the notified aid falls under the "*de minimis*" Regulation.
- (25) Hence, it is necessary to assess whether the measure entails State aid and whether this aid can be deemed compatible with the EC Treaty.

¹⁵ Similarly to the other broadband measures approved under the State aid rules (N115/2008 and N570/2007), in some rare cases, the German authorities consider possible that projects are funded when no wholesale access is provided due to technical restrictions or cost reasons (in case this would make total investment costs considerably more expensive, by at least 50%).

¹⁶ This includes, inter alia, auditing on the expenditure of the funds and regular monitoring whether the network is functional. If the selected operator fails to carry out the service in accordance with the provisions of the contract, the granting authority would be in the position to recover the aid.

¹⁷ See footnote 2.

¹⁸ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, Official Journal L 379 of 28.12.2006

Presence of aid

- (26) According to Article 87 (1) of the EC Treaty, “*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 common market*”. It follows that in order to be qualified 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 an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.

IV.1. State resources

- (27) The measure will be financed by resources of the federal government, the state (*Freistaat Sachsen*), the municipalities and by EAFRD fund monies. Hence State resources are involved.

IV.2. Economic advantage

- (28) *Selected operators*: The selected operators will receive financial support which will enable them to enter the market and provide broadband services on conditions not otherwise available on the market. The selected operators will also be in ownership of the networks as well as other tangible and intangible assets acquired with State funds (for instance equipment, customer relations) even after the lifetime of the projects and hence enjoy continuing benefits partly funded with State resources after the end of the project. In view of the above, it is clear that an economic advantage will be granted to the selected operators.
- (29) *Third party providers*: In the areas covered by the project, there is no or limited broadband connection and therefore no or limited broadband wholesale offer, preventing market entry of third party service providers which do not have their own infrastructure. Therefore, third party providers of broadband services using wholesale access provided under the measure might also benefit indirectly from the measure at hand.

IV.3. Selectivity and distortion of competition

- (30) The notified measure supports the supply of certain electronic communication services, namely broadband services. The intervention of the State alters the existing market conditions by allowing the provision of broadband services by the selected telecommunication operators and, potentially, third party providers. A number of undertakings are likely to subscribe to the services provided by the selected suppliers instead of more expensive market-based solutions (for instance satellite or leased lines). Therefore, the fact that a new broadband service becomes available at a lower price than existing ones has the effect of distorting competition.
- (31) In addition, while the German authorities decided to intervene precisely in view of the lack of private initiatives in the targeted areas, it cannot be excluded that market initiatives could become viable in some areas in the longer term. By securing this project, the chosen operators will be capable of

establishing their business and developing their customer base, enjoying a first mover advantage over prospective competitors.

- (32) The measure is also selective in that it is addressed to undertakings active only in certain regions or in certain markets for electronic communications services. These selectivity elements also induce a potential distortion of competition¹⁹.

IV.4. Effect on trade

- (33) 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. There may also be an effect on trade between the businesses using the broadband services enabled by the measure and their competitors in other Member States.

IV.5. Conclusion

- (34) In view of the above, the Commission considers that the projects covered by the notified measure will grant an economic advantage to the selected operators and possibly to third party operators. The projects are publicly funded, have a potential of distorting competition and have an effect on trade between Member States. Therefore the Commission considers that, for those projects which are not covered by the remit of *de minimis* Regulation (see paragraphs (24) above), the funding covered by the scheme involves State aid within the meaning of Article 87 (1) of the EC Treaty.
- (35) Having established that the project involves aid within the meaning of Article 87(1) of the EC Treaty to the selected service providers, third party providers and businesses, it is necessary to consider whether the measure can be found to be compatible with the common market.

V. ASSESSMENT OF THE MEASURE: COMPATIBILITY

- (36) The Commission notes that the project aims to ensure the widespread availability and use of broadband services in currently unconnected or underserved rural and remote areas of *Freistaat Sachsen*, Germany with no prospect for coverage on commercial terms in the near and medium term and, as such, does not fall under one of the existing frameworks and guidelines.
- (37) It should be noted that the areas covered by the measure could be eligible to receive regional investment aid under the derogation of Article 87(3)(a) within the meaning of the Regional Aid Guidelines²⁰.
- (38) However, the Commission considers that the assessment of the compatibility of the measure with the common market needs to be based directly on Article 87(3)(c) of the EC Treaty²¹ which states that:

¹⁹ As regards the sectoral specificity, see for instance Judgement of the Court in case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Aementwerke* [2001] ECR I-8365.

²⁰ See "*Guidelines on national regional aid for 2007-2013*", OJ C 54, 4.3.2006 and Commission decision in case N 459 / 2006 – "*German regional aid map 2007-2013*" OJ C 295, 5.12.2006.

“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”

may be considered to be compatible with the common market.

- (39) In order to be compatible under article 87(3)(c), an aid must pursue an objective of common interest in a necessary and proportionate way. In particular, the measure shall be assessed with respect to the following questions:
- (1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
 - (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate instrument?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

V.1. The support of broadband rollout is in line with the common interest

Community policy

- (40) As with the similar public funding measures in support of broadband assessed by the Commission in the past²², the scheme is clearly in line with Community policies to bring broadband to all Europeans²³. The Commission encourages Member States to put comprehensive national broadband strategies in place²⁴ and to mobilize all relevant policy instruments to bridge the *"broadband gap"*²⁵. By improving broadband access for citizens and businesses in areas of *Freistaat Sachsen* where these services are not satisfactorily available, the measure helps achieving greater cohesion and is therefore in line with the common interest.

Market failure and cohesion considerations

²¹ This approach was also followed by the Commission in other cases, see for instance: State aid decisions for cases N 442/2007 *"Aid in favour of broadband in remote areas of Veneto"*, Italy of 23.10.2007 or N 570/2007 *"Broadband in rural areas of Baden-Württemberg"*, Germany of 23.10.2007 or N 14/2008 *"Broadband in Scotland – Extending broadband reach"*, United Kingdom of 30.04.2008. The public versions of all broadband decisions are available at the following website: http://ec.europa.eu/comm/competition/state_aid/register/ii/.

²² See footnote 21.

²³ As outlined, *inter alia*, in the Commission Communication *i2010 – A European Information Society for growth and employment*, COM (2005) 229 of 1 June 2005.

²⁴ Commission Communication COM(2004) 369 of 12.05.2004, *"Connecting Europe at High Speed – National Broadband Strategies"*.

²⁵ See Commission Communication on *Bridging the broadband gap*, COM (2006) 129 of 20.03.2006.

- (41) Lack of broadband coverage is due, among other factors, to some of the typical economic problems associated with networks industries. In particular, due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs, costs increase significantly as population densities drop. Remoteness also plays a role, requiring bridging longer distances in the backhaul and in the last mile. In addition, although equipment costs have fallen as volumes increase, they remain a significant cost and major barrier to roll-out. In areas where demand is not very developed and coverage of cost is uncertain, private operators do not have sufficient incentives to offer broadband services similar to urban areas under normal market conditions.
- (42) Typically these underserved areas are rural areas and have a low population density²⁶ so that commercial providers have no economic incentive to invest in electronic communications networks to provide broadband services. This leads to a "digital divide" between the areas which have access to affordable broadband services and those that have not. The gap between the broadband coverage in rural areas and the national average is particularly significant in Germany²⁷.
- (43) However, it would be beneficial for the communities concerned if such services were available to citizens and businesses. Regional economic development benefits resulting from greater broadband deployment include job creation and retention, improved education and health systems. For rural and remote communities²⁸, broadband is a crucial element to avoid economic and social exclusion and to provide the opportunity to participate in the knowledge based economy.
- (44) Hence, by providing financial support for the establishment of infrastructure to provide basic wholesale and retail broadband services in such areas of Germany, the authorities pursue genuine cohesion and economic development objectives.

V.2. Well-designed aid

(a) Aid is the appropriate instrument

- (45) The measure at hand is part of an overall strategy of the Federal Government in cooperation with *Freistaat Sachsen* to ensure affordable broadband services for all citizens and undertakings in Germany, including, *inter alia*, regulatory

²⁶ For instance, according to the German authorities, the average population density in rural areas is 40 inhabitants/km² compared to the average 231 inhabitants/km² in urban areas.

²⁷ In Germany, 12% of the population in rural areas did not have access to DSL broadband services at the end of 2007. IDATE, Broadband Coverage in Europe, 2008 (data as at 31 December 2007), *forthcoming*.

²⁸ According to the German authorities, out of approximately 3400 villages in *Freistaat Sachsen*, 75% of them are located in rural areas, and 30% of the population of *Freistaat Sachsen* is living in villages with less than 2000 inhabitants.

measures and radio spectrum policies. Although instruments like *ex ante* regulation has facilitated broadband deployment in urban and more densely populated areas, it is unlikely to lead to sufficient investments for the provision of broadband services to underserved areas as it presupposes the existence of broadband access infrastructure.

- (46) The measure also foresees (i) a thorough market analysis (ii) consultations with existing electronic communication operators whether they would be willing to provide affordable broadband services in those areas on commercial terms and (iii) encouraging the deployment of broadband services via other market driven solutions²⁹.
- (47) However, in some situations such as those under examination, there is no alternative to granting public funding to overcome the lack of broadband connectivity. In view of these considerations, the Commission concludes that, in the case at hand, public funding for the provision of broadband services is an appropriate instrument to achieve the set objectives.

(b) The aid provides the right incentives to operators

- (48) Operators requesting funding will indicate the amount of public funding they consider necessary to carry out the required investment on the basis of the anticipated total investment, operating costs and revenues and the verified "profitability gap"³⁰ up to a maximum amount of €200.000 per single project. The objective of the German authorities in this regard is that the public funding granted provides a direct and appropriate investment incentive limited to the amount required by the selected operators with the most economically advantageous offers to provide broadband services.

(c) Proportionality

- (49) The German authorities have designed the scheme in a way which minimises the State aid involved and potential distortions of competition. In this respect, the Commission notes, the following positive elements in the overall design of the notified measure:

(a) Market analysis and consultation of operators: Before any aid is granted, municipalities have to carry out a market analysis to identify the targeted areas. A thorough market research provides evidence for the necessity of the measure and supports the proportionality of the state intervention by limiting any potential distortion of competition *vis-à-vis* existing operators while at the same time reducing the amount of State aid required for the measure. In the case at hand, a subsidy may only be granted if there is no broadband offer provided by the market or expected to be provided in the near future at affordable prices³¹.

(b) Transparency and open selection of projects: Each municipality shall publish the envisaged measure in its official gazette or bulletin and on its website.

²⁹ See also para (14).

³⁰ See also para (9).

³¹ See also para (14).

The selection of projects shall be conducted in a transparent manner and in full compliance with the procurement rules (*Vergaberecht*). On the basis of the pre-defined technical specifications, the bidder requesting the lowest aid amount will be selected.

- (c) *Technology neutrality*: The scheme is technologically neutral, i.e. it does not favour a priori any given technology.
- (d) *Wholesale access*: The selected operators will have to grant wholesale network access to all electronic communications operators on equal and non-discriminatory conditions that will enable third party operators to compete with the selected operators, thereby strengthening choice and competition in the areas concerned by the measure³².
- (e) *Minimising price distortion*: The selected operators will have to offer retail services at prices that are comparable to the average prices in other not supported areas. The German authorities expect that in light of the wholesale access provisions and the increased competition between service providers, retail prices will follow the likely decrease of the market prices in the medium term.
- (f) *Monitoring*: the projects will be examined on a regular basis by the granting authorities in accordance with the National Household Regulation and the EAFRD regulation³³.

V.3. The distortions of competition and the effect on trade are limited, so that the overall impact of the measure is positive

- (50) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of broadband services due to the insufficient density of potential and actual subscribers to make delivering broadband services economically viable on a purely market-driven basis. In view of the characteristics of the project and of the safeguards applied by the German authorities, the overall impact on competition is deemed to be positive. On the effect on trade, the Commission does not identify negative spill-overs for other Member States.
- (51) On balance, the Commission concludes that the overall effect of the measure is deemed to be positive. The measure is clearly in line with the objectives of Article 87(3)(c) EC Treaty as it facilitates the development of certain economic activities (retail and, indirectly, wholesale broadband services) in certain remote and rural areas. The intervention is designed in a way that does

³² Operators deemed to have significant market power are in any case obliged by regulation to offer wholesale access to their networks. Whereas wholesale access is obliged by the scheme, it is possible that projects are funded when no wholesale access is provided due to technical restrictions or cost reasons (see footnote 15). In case of a few villages, which are situated in an area with a very difficult telecommunication topology, according to the German authorities, the combination of several platforms might be necessary to provide broadband services, which would create a challenge for operators to provide wholesale access from the technology point of view. The German authorities have also confirmed that the wholesale access provision might be lifted only in a very few exceptional cases. In view of the limited size of the local projects, the low aid amounts concerned and the fact that they typically target rural areas where no broadband services are available at all, in this specific case, the Commission is of the opinion that this does not distort competition or affect trading conditions to an extent contrary to the common interest.

³³ See also footnote 2.

not distort competition or affect trading conditions to an extent contrary to the common interest.

V.4. Conclusion

- (52) In the light of the above, the Commission has come to the conclusion that the aid involved in the notified measure is compatible with Article 87 (3) (c) of the EC Treaty.

VI. DECISION

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*Broadband in rural areas of Freistaat Sachsen*" is compatible with Article 87(3)(c) of the EC Treaty.

The German authorities are reminded that, pursuant to Article 88(3) of the EC Treaty, they are obliged to inform the Commission of any plan to extend or amend the measure.

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/comm/competition/state_aid/register/ii/.

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

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State Aid Greffe
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Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission