



EUROPEAN COMMISSION

Brussels, 10.12.2008  
C(2008) 8368

**Subject: N 508/2008 – United Kingdom**  
**Provision of Remote Broadband Services in Northern Ireland**

**I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Provision of Remote Broadband Services in Northern Ireland*" (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) Following prenotification discussions, by letter dated 13 October 2008, pursuant to Article 88 (3) of the EC Treaty, the authorities of United Kingdom (hereafter: "UK") notified the above mentioned measure to the Commission.

**III. CONTEXT**

- (3) In 2004, the Government of Northern Ireland (hereafter: "NI") launched a competitive tender to deliver 100% broadband coverage in Northern Ireland. As explained by the NI authorities, in December 2005, following award of the contract to British Telecom (hereafter: "BT" or the "contractor"), Northern Ireland became the first region in Europe where broadband was available to every home and business at affordable prices. The contractor provides basic broadband services to most of its users via ADSL connection. In areas, where the existing lines were not able to support ADSL broadband services<sup>1</sup>, BT offers broadband services via satellite. According to the authorities of Northern Ireland, out of 370.000 broadband accounts in Northern Ireland, approximately 800 consumers are served via satellite technology.

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<sup>1</sup> Due to technical reasons, the available bandwidth via copper network using ADSL technology significantly deteriorates as the distance between the exchange and the end users sites increases. Hence, although in some places copper line is available, it is not capable of sustaining broadband (ADSL) services.

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- (4) The NI government's five-year contract with BT expires in March 2009. The contractor has indicated that to continue to offer the satellite service to users at the current rates would not be a commercially viable option. The contractor has therefore indicated its options are either to continue providing satellite broadband services on commercial pricing or to remove the satellite option entirely from its portfolio. The NI authorities explain that with the installation costs for satellite consumers increasing to approximately €1750 and with monthly charges in the region of €90, the potential effect of either decision would be the loss of equitable access to broadband in Northern Ireland for all and the emergence of a digital divide between urban and rural homes and businesses<sup>2</sup>.
- (5) The NI authorities have conducted a market research to reveal the location of the satellite customers and to examine whether any alternative suppliers would offer a product for these consumers that is comparable to the current offer of BT. According to the market research, satellite customers are located in rural, widely dispersed and remote areas with no obvious clustering. Furthermore, if there were alternative market-based offers for these consumers, the costs of basic broadband services would be regarded as prohibitive and it is likely that take up levels in these areas would significantly lag behind the urban areas of Northern Ireland. Hence the market research concluded that it is highly unlikely that any service provider would offer comparable services to these consumers on market terms given the very small market and the perceived high costs.
- (6) Taking into account the utmost importance of widespread and affordable broadband services to all citizens as a prerequisite for strengthening the competitive situation of the region and promoting social and economic cohesion of the EU, the NI authorities designed a measure to maintain equitable access to broadband for all citizens and undertakings in the region.

#### **IV. DESCRIPTION OF THE MEASURE**

- (7) *Objective:* The measure is aimed at maintaining access to an affordable broadband service for all citizens in Northern Ireland, ensuring continuity of service for those customers using a satellite product and protecting the competitiveness of the Northern Ireland economy. The project seeks to improve regional cohesion by ensuring that all businesses can access basic broadband services anywhere in Northern Ireland.
- (8) *Legal basis:* The measure is based on the Communications Act 2003, Chapter 29, Section 149 - Grants by Department of Enterprise Trade and Investment<sup>3</sup>.
- (9) *Target areas:* The aid will target those areas where current operators do not supply affordable broadband services on market terms.
- (10) *Beneficiaries:* The direct beneficiaries of the aid will be electronic communications operators offering broadband services. Indirect beneficiaries

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<sup>2</sup> An analysis of the locations of satellite customers indicates no obvious clustering, but customers are generally located in rural areas of Northern Ireland. See also para (5).

<sup>3</sup> Available at [http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030021\\_en\\_1](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en_1).

will be third party providers of telecommunication services and local SMEs in the targeted areas.

- (11) *Budget and funding instrument:* The aid takes the form of a direct grant. The expected value of the contract is £1.1 million (approx. €1.3 million). The measure will be funded through the use of monies received from the clawback mechanism included in the contract with the current supplier<sup>4</sup>.
- (12) *Aid intensity:* The aid intensity of the project will depend on the outcome of the tender procedure.
- (13) *Duration of the measure:* The scheme runs for 3 years. The exact dates will depend on the date when the contract is signed. However, in order to ensure a seamless changeover for the users, the NI authorities plan to sign the contract with the new service provider before the expiry of the current contract of 31 March 2009.
- (14) *Procurement and award criteria:* The aid will be allocated on the basis of an open tender. The contract will be awarded for a period of 3 years, and the award criterion is the most economically advantageous offer<sup>5</sup>. The tenders will be evaluated against seven main award criteria with the following weights: 1. Pricing 20%, 2. Cost to Department 20%, 3. Timescale and deployment 15%, 4. Technical viability 13%, Economic and financial sustainability 12%, Retail customer support services 10%, Service specifications of the retail service offerings 10%.
- (15) *Technology:* The procurement will be technology neutral, allowing tenderers to propose any suitable technological solution.
- (16) *Pricing:* the retail prices of the broadband services provided by the selected supplier will be established in the course of the tender procedure. The aim of the NI authorities is to ensure that prices would be comparable with the typical market price for broadband in order to provide equitable access for the citizens concerned.
- (17) *Service definition:* The minimum broadband service envisaged is 512 kbps download, 128 kbps upload – a basic product allowing access to essential broadband services. The tenderers will be however free to offer higher specification products<sup>6</sup>.
- (18) *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 to enable them to replicate its own retail offers.

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<sup>4</sup> The clawback mechanism envisaged that if excessive excess revenue is generated from the contract (see also para (3)), a proportional amount will be repaid. The NI authorities will earmark this repaid monies to support the current scheme.

<sup>5</sup> Contract notice of 2008/S 190-252015.

<sup>6</sup> The NI authorities are intending to seek a future proof solution for the broadband services subject to the measure by awarding higher points in the course of the tender procedure to those operators who can offer services above the minimum required level.

- (19) *Monitoring and clawback mechanism:* The granting authority will carry out appropriate audit activities, including technical review of the delivered solution. The contract with the supplier will also contain a clawback arrangement that will ensure that if the supplier generates higher revenues than foreseen, a proportional amount will be repaid.

## **V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID**

- (20) 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 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 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.

### State resources

- (21) The notified measure is financed by resources of the Government of Northern Ireland. Hence state resources are involved.

### Economic advantage

- (22) *Selected operators:* Through the tender process, the selected operator will receive financial support which will enable it to enter the market and provide broadband services on conditions not otherwise available on the market. Although a competitive tender procedure tends to reduce the amount of financial support required, the aid will also allow the operator to offer end-to-end services *prima facie* at lower prices than if it had had to bear all costs themselves and thus attract more customers than under normal market conditions. The selected operator will also acquire ownership of the network as well as other tangible and intangible assets with State funds (e.g. equipment, customer relations) even after the lifetime of the projects. In view of the above, it is clear that an economic advantage will be granted to the selected operator.
- (23) *Third party providers:* In the areas covered by the project, there is no broadband connection and therefore no broadband wholesale offer, preventing market entry of third parties such as 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 from the state resources, as they will be customers of the selected telecommunication operators.
- (24) *End users:* The measure aims at facilitating the provision of broadband services to residential and business users which are currently available in the target areas. Whereas residential users are not subject to State aid rules, it is not excluded that businesses in the targeted geography might indirectly benefit from service coverage.

### Distortion of competition

- (25) The intervention of the State alters the existing market conditions by allowing the provision of broadband services by the selected telecommunication operator and, potentially, third party providers. A number of firms are likely to subscribe to the services provided by the selected suppliers instead of more expensive market-based solutions. Therefore, the fact that a new broadband service becomes available at a lower price than existing has the effect of distorting competition.
- (26) In addition, while the NI 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 operator will be capable of establishing its business and developing its customer base, enjoying a first mover advantage over prospective competitors.
- (27) The scheme 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 competition<sup>7</sup>.

### Effect on trade

- (28) 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

- (29) In view of the above, the Commission considers that the notified measure grants an economic advantage to the selected operator, third party operators and final users that exercise an economic activity. The project is publicly funded, distorts competition and has an effect on trade between Member States. Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 87 (1) of the EC Treaty.
- (30) Having established that the project involves aid within the meaning of Article 87(1) of the EC Treaty to the selected service provider, third party providers and businesses, it is necessary to consider whether the measure can be found to be compatible with the common market.

## **VI. ASSESSMENT OF THE MEASURE: COMPATIBILITY**

- (31) The Commission notes that the project aims to maintain the widespread availability and use of broadband services and, as such, does not fall under one of the existing frameworks and guidelines.

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<sup>7</sup> Judgement of the Court in case C-143/99, *Adria Wien Pipeline*, Slg. 2001, I-8365.

(32) It should be also noted that the area covered by the measure is eligible to receive regional investment aid under the derogation of Article 87(3)(c) within the meaning of the Regional Aid Guidelines<sup>8</sup>.

(33) However, in line with its established case handling practice, 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 Treaty<sup>9</sup> which states that:

*“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.

(34) 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?

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<sup>8</sup> See Guidelines on national regional aid for 2007-2013, OJ C 54, 4.3.2006 and N673/2006 – “UK - Regional aid map 2007-2013”, United Kingdom of 20.12.2006.

<sup>9</sup> 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, 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 decisions are available at the following website: [http://ec.europa.eu/comm/competition/state\\_aid/register/ii/](http://ec.europa.eu/comm/competition/state_aid/register/ii/).

## **VI.1. The support of broadband rollout is in line with the common interest**

### ***Community policy***

- (35) As outlined in its Communication “i2010 – A European Information Society for growth and employment”<sup>10</sup> and the *eEurope* Action Plan 2005<sup>11</sup>, the Commission actively supports the widespread availability of broadband services. There is clear evidence of regional economic development benefits resulting from greater broadband deployment, including job creation and retention as well as improved health and education services<sup>12</sup>. By ensuring equitable provision of coverage and access to broadband communications across the whole of Northern Ireland, the measure helps achieving greater cohesion and is therefore in line with the common interest.

### ***Market failure and cohesion considerations***

- (36) Lack of broadband coverage is due, among other factors, to some of the typical economic problems associated with networks industries. 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, unit costs escalate dramatically 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 might find it difficult to find a source of funding for broadband infrastructure, which has a long life and amortisation period.
- (37) Due to these constraints, local undertakings may suffer competitive disadvantage compared to other companies located in rural areas because the relative cost of the supply of services to these areas is not comparable to those in urban areas<sup>13</sup>. Furthermore, because the costs are seen to be significantly higher this inhibits investment by undertakings thereby reducing potential economic activity in the region<sup>14</sup>.
- (38) Hence, by providing financial support for the establishment of infrastructure to provide basic wholesale and retail broadband services in such areas of NI, the authorities pursue genuine cohesion and economic development objectives.

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<sup>10</sup> COM(2005)229 final, 1 June 2005.

<sup>11</sup> COM(2002)263 final, “*eEurope 2005: An information society for all*”.

<sup>12</sup> For an overview, see: Lehr, Osorio, Gillet and Sirbu (2005): “Measuring Broadband’s Economic Impact”, and Orazem, Peter, University of Kansas Business School (2005), “The Impact of High-Speed Internet Access on Local Economic Growth”.

<sup>13</sup> According to the NI authorities, the costs tend to be some 5-20 times higher in rural and remote areas compared to equivalent products in urban areas.

<sup>14</sup> According to the OFCOM report of Communications Market: Nations and Regions, 2008 Northern Ireland had the largest rural population in the UK, at 35% compared to the UK average of 12%.

## **VI.2. Well-designed aid**

### ***(a) Aid is the appropriate instrument***

- (39) As evidenced by the market research conducted by the NI authorities, after the expiry of the current contract with the supplier in March 2009, it is highly unlikely that consumers in remote and rural parts of Northern Ireland could avail of any broadband services on market terms<sup>15</sup>. The NI authorities indicate that there are no alternative suppliers offering a product for these consumers in Northern Ireland that is comparable to BT's existing satellite service. Indications from industry show, that given the very small market in Northern Ireland, there are no plans for affordable broadband coverage on these areas in the near future.
- (40) Whereas *ex ante* regulation, for example, 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.
- (41) Hence, in 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***

- (42) As explained above<sup>16</sup>, the recipients of the aid will be selected by public tender. Tenderers will submit investment plans indicating the amount of aid that they consider to be necessary to carry out the investment given the anticipated investment and operating costs and revenues. Therefore, the aid should provide a direct and appropriate investment incentive for the selected operators.

### ***(c) Proportionality***

- (43) The NI authorities have designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes, *inter alia*, the following positive elements in the design of the measure:
- (a) *Open tender*: the recipients of the aid will be selected by an open tender procedure. These procedures will have the effect of maximising the effect of the aid provided while minimizing any potential advantage granted for the selected operator. In particular, the subsidy will be awarded to the economically most advantageous offer.

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<sup>15</sup> See para (5).

<sup>16</sup> See para (14).



- (b) *Wholesale access*: The selected operator will have to provide access to the subsidised networks to other operators on equal and non-discriminatory terms that will enable the latter to compete on the retail level.
- (c) *Minimising effects on existing infrastructure providers and operators*: The freedom for the service providers to choose the most efficient way of procuring the necessary infrastructure, either by building, buying or leasing it from third parties minimises duplication and enhances economic efficiency. Tenderers have the possibility to contribute their infrastructure to the project, or acquire or rent infrastructure from another operator, which limits the economic impact of the project for operators that may already have basic electronic communications infrastructure in place. Furthermore, this aid will target those areas where current operators do not have sufficient infrastructure in place to supply affordable broadband services.
- (d) *Minimisation of price distortion*: The NI authorities confirmed that the selected operators will have to offer retail services at prices that are comparable to the average prices in areas where the service already exists.
- (e) *Technological neutrality*: The project is technologically neutral, i.e. it does not favour a priori any given technology.
- (f) *Monitoring and clawback provision*: The monitoring and clawback provision will ensure that in case of higher revenues than initially foreseen, a proportional amount of the aid will be repaid to the granting authority.
- (g) *Limited duration*: The NI authorities anticipate awarding contracts for a limited duration of three years.

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

- (44) 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 market-driven basis<sup>17</sup>.
- (45) In view of the characteristics of the project and of the safeguards applied by the NI authorities, the overall impact on competition is deemed to be positive<sup>18</sup>. On the effect on trade, the Commission does not identify negative spill-overs for other Member States.
- (46) 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

<sup>17</sup> According to the research conducted by the NI authorities, the measure will have positive impact on trade, since broadband availability could increase profits of undertakings by more than 10% depending on the size of the undertaking. Furthermore, as asserted by the NI authorities, the measure with the purpose of ensuring equitable access to broadband rather than giving rural and remote businesses a competitive advantage will ensure that any distortions of competition are minimised.

<sup>18</sup> As argued by the NI authorities, the measure may strengthen competition: first, by granting open wholesale access to other operators; second, by this measure acting as an incentive to companies who supply broadband service via satellite or other alternative technology.

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

#### **VI.4. Conclusion**

- (47) 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.

#### **VII. DECISION**

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*Provision of Remote Broadband Services in Northern Ireland*" is compatible with Article 87(3)(c) of the EC Treaty.

The UK 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/](http://ec.europa.eu/comm/competition/state_aid/register/ii/).

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Yours faithfully,

For the Commission

*Neelie KROES*

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