



EUROPEAN COMMISSION

Brussels, 02.VII.2008
K(2008)3157 endgültig

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

Subject: **N 115/2008 – Germany**

Broadband in rural areas of Germany

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 Germany*" (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 pre-notification contacts between the Commission and the German authorities, the authorities notified the measure by letter registered on 7 March 2008. By letter dated 15 April 2008, the Commission requested additional information on the proposed measure.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

- (3) Following a meeting with the Commission on 19 May 2008, the German authorities submitted the answers to the Commission's request of information by letter dated 28 May 2008.

III. CONTEXT

- (4) Broadband connectivity¹ is a key component for the development of knowledge-based global, national, regional and local economies and the development, adoption and use of information and communication technologies. Broadband is of strategic importance because of its ability to accelerate the contribution of these technologies to economic growth in all sectors, to enhance social development and to facilitate innovation².
- (5) Although broadband services are widely available in Germany, citizens and businesses in several municipalities (or parts of these communities) do not have access to broadband services. Typically, these unserved areas are mostly rural areas and have a low population density³ so that commercial providers have no economic incentive to invest in electronic communications networks to provide broadband services⁴. 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 Germany⁵.
- (6) Confronted with this situation, public authorities in Germany are initiating broadband schemes to foster the provision of broadband services in not- or not sufficiently covered areas. Although public subsidies are not necessary in all situations, in some cases there is no alternative to granting public funding to overcome the lack of service provision. Municipalities are prepared to facilitate the investments via public funding; however they often lack sufficient financial means. For this reason financial contribution from the federal government and the respective states (*Länder*) is required.
- (7) The German authorities consider the measure at hand as the main federal level broadband scheme stipulating the general rules and conditions for granting aid in

¹ Broadband services can be delivered using various combinations of communications network technologies ("platforms"). Technologies can feature either fixed or radio based transmission infrastructure, and they can substitute or complement each other according to the individual situation. Current mass-market broadband services have generally download speeds starting from 512 Kbps – 1 Mbps. For business users, usually much higher speed and typically symmetrical bandwidth is needed.

² See for instance OECD (2007): Broadband and the economy, Ministerial Background Report.

³ 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.

⁴ Network industries are typically characterised by high fixed costs. As a result, broadband networks are generally more profitable to roll out where potential demand is higher and more concentrated. Therefore, in certain areas (like scarcely populated, rural areas), operators may have no commercial incentive to invest in broadband services: the high additional costs are not matched by additional revenues.

⁵ For instance, in Germany, whereas DSL coverage in urban areas reached 99%, in rural areas this figure was only 58.5% at the end of 2006. IDATE 'Broadband Coverage in Europe' 2007 (data as at 31 December 2006). In: *13th Report on the Implementation of the Telecommunications Regulatory Package* – 2007, COM(2008)153 of 19 March 2008.

rural areas of Germany. However, taking into account the significant differences and specificities within Germany⁶, several states (*Länder*) may also design and notify their broadband schemes to the Commission for State aid approval, taking into the rules and conditions laid down in the current federal level aid measure⁷.

IV. DESCRIPTION OF THE MEASURE

- (8) *Objective:* The objective of this measure is to support investments necessary to ensure access to broadband services in rural and remote areas of Germany where there are currently no or insufficient broadband services available and where there are no plans for coverage in the near future ("white areas"). The authorities are aiming to provide reliable, affordable and high-quality broadband services to German citizens.
- (9) *Legal basis:* The legal basis of the notified measure is the "*Gesetz über die Gemeinschaftsaufgabe 'Verbesserung der Agrarstruktur und des Küstenschutzes'*" (hereafter: "GAK") and the "*GAK Rahmenplan 2008 – 2011; Grundsätze für die Förderung der integrierten ländlichen Entwicklung; Teil B: Breitbandversorgung ländlicher Räume'*" (hereafter: "GAK Teil B"). The latter legal basis stipulates the context and general conditions for granting aid for broadband measures and explicitly makes a reference that all broadband aid measures should be fully compliant with the current Commission decision. 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 the Council Regulation No 1698/2005⁸.
- (10) *Target areas:* The measure targets geographic locations in Germany where no or insufficient broadband services are available to citizens and businesses. The German authorities consider insufficient broadband coverage if a minimum (download) bandwidth of 1 Mbps⁹ is not available at affordable prices¹⁰.

⁶ Concerning, for instance, population densities, topologies, existing telecommunication infrastructures, etc.

⁷ The Commission has already approved a state level State aid broadband scheme in 2007 in Baden-Württemberg, titled as "*Eckpunkte für die Verwendung öffentlicher Mittel zur flächendeckenden Versorgung des Ländlichen Raums mit Breitbandanschlüssen in Baden-Württemberg'*". Commission decision in case N 570 / 2007 - Broadband in rural areas of Baden-Württemberg, adopted on 23.10.2007.

⁸ 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 federal government submitted the GAK measures in accordance with Article 15(3) of the Regulation as a German national framework for co-financing through the EAFRD, which was approved by the Commission Decision of 05 September 2007, "*Genehmigung der nationalen Rahmenregelung der Bundesrepublik Deutschland 2007-2013'*".

⁹ According to the estimations of a consultancy firm, WIKK-Consult, in 2007 more than 2.500 municipalities and approximately 3 million households or 5-6 million inhabitants had no or insufficient broadband services in Germany. Another survey conducted by the same company on behalf of the Ministry of Economics, Transport, Agriculture and Viniculture of Rhineland-Palatinate came to the conclusion that 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.

- (11) *Budget:* The aid takes the form of grants. The annual budget is estimated as €47 million between 2008 and 2010 hence the total aid amount will be approximately €141 million.
- (12) *Aid intensity and maximum aid amount:* The aid intensities of each single project will depend on the outcome of the local selection procedures. 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 for providing similar broadband services in rural areas compared to urban areas¹¹. The measure will finance this "*profitability gap*" and any aid is limited to a maximum amount of public funding of €200.000 per single project.
- (13) *Funding instruments:* The amount of public support for each of the projects will be granted from federal, state (*Länder*) and municipal funds and could be co-financed by EU funds, namely by the European Agricultural Funds for Rural Development funds (EAFRD)¹².
- (14) As a condition for involvement of the federal and state level funds, the concerned municipality has to contribute at least by 40% of the aid amount¹³. 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
Max. 60 %		Min. 40 %
of which 60 % federal funds	of which 40 % Land funds	

- (15) Furthermore, the projects can be co-financed by the EAFRD funds (thereby reducing aid amounts originating from the federal and state level authorities, but not affecting the necessary contribution of the municipalities). In case of projects not eligible under the Convergence Objective¹⁴, 50% of the aid amount excluding the municipalities' contribution can be financed by EAFRD monies.

¹⁰ Municipalities should also rely on the existing broadband mapping initiatives of the *Länder* (such as the "Clearingstelle" of Baden-Württemberg, the "Hessen-it" of Hessen or the "Breitbandpaten" in Bavaria), consulting institutions (such as the referred WIKK study), or industry chambers and Ministries ("Breitband Atlas") to more accurately identify the targeted areas.

¹¹ According to the German authorities this "*profitability gap*" that occurs due to the economic reasons of broadband networks (see also footnote 4) prevents electronic communication operators to provide widely available broadband services at affordable prices in rural areas also. 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.

¹² 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 In some exceptional cases where the municipality cannot afford to contribute the 40% of the aid amount, local companies and citizens might contribute the necessary financial requirements required from the municipality.

¹⁴ Areas covered by the Convergence Objective are the least developed Member States and regions according to the Community legislation governing the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF) for the period from 1 January 2007 to 31 December 2013.

EAFRD	GAK		Municipality
Max. 30 %	Max. 30 %		Min. 40 %
	of which 60 % federal funds	of which 40 % <i>Land</i> funds	

- (16) In case of projects eligible under the Convergence Objective of the EAFRD, 75% of the aid amount excluding the municipalities' contribution can be financed by EAFRD monies.

EAFRD	GAK		Municipality
Max. 45 %	Max. 15 %		Min. 40 %
	of which 60 % federal funds	of which 40 % <i>Land</i> funds	

- (17) No cumulation is possible with any other State aid broadband measures including any separate broadband measures designed by the German States (*Länder*)¹⁵.
- (18) *Beneficiaries:* The direct beneficiaries of the aid will be electronic communications operators offering broadband services. Indirect beneficiaries will be third party providers of telecommunication services and business end users in the targeted areas.
- (19) *The selection procedure:* Before any aid is granted, the municipalities have to prove a need for broadband services as well as a missing or insufficient offer in the respective area. To this purpose the municipality shall 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 or under which condition they would be able to provide it. Municipalities 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. Aid may only be granted if, after such a consultation, there is no sufficient broadband offer provided by the market or expected to be provided in the near future.
- (20) In case there is a proven need for public support,
- the municipalities should publish the envisaged support plans in its official gazette or bulletin and on its website.
 - the selection procedure shall be conducted in a transparent manner and in full compliance with the national procurement rules (*Vergaberecht*).
 - the published description of the project must be technology and provider neutral and correspond with the described needs.
 - on the basis of the technical specifications determined beforehand, the operator requesting the lowest aid amount shall be selected¹⁶.

¹⁵ See para (7).

¹⁶ 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.

- (21) *Service definition:* As a minimum, the selected service provider shall supply each residential and business subscriber a minimum standard broadband connection of 1 Mbps (download).
- (22) *Pricing:* the retail prices of the broadband services provided by the selected supplier will be established in the course of the selection procedure. The German authorities are aiming to provide retail broadband services in the targeted areas at prices similar to not supported areas.
- (23) *Technology:* The municipalities will not specify the technology in the invitation to tender.
- (24) *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 enable them to replicate their own retail offers. Such a wholesale access will enable third party operators to compete with the selected operators, thereby strengthening choice and competition in the areas concerned by the measure¹⁷.
- (25) *Duration of the measure:* The scheme runs from 2008 (after the approval of the Commission) until 31 December 2010. The actual length of the contracts between the municipalities and the selected service providers will be maximum 5 years.
- (26) *Monitoring:* the projects will be examined on regular basis by the granting authorities in accordance to the national household regulation (*Haushaltsrecht*)¹⁸. Furthermore, the projects co-financed by EU funds will also be regularly scrutinized in accordance with the referred EAFRD regulation¹⁹.

V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

De minimis aid

- (27) According to the *de minimis* Regulation²⁰, 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 if all requirements of said Regulation are met, 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.

¹⁷ 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%).

¹⁸ 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.

¹⁹ See footnote 8.

²⁰ 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

Also, Germany has not argued that the notified aid would be provided as "*de minimis*" aid.

- (28) Hence, it is necessary to assess whether the measure entails State aid and whether this aid can be deemed compatible with the EC Treaty.

Presence of aid

- (29) 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.

V.1.State resources

- (30) The measure is financed by resources of the federal government, the states (*Länder*) and the municipalities with the possibility of co-financing by EAFRD fund monies. Hence State resources are involved.

V.2.Economic advantage

- (31) *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.
- (32) *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 from the state resources, as they will be customers of the selected telecommunication operators.

V.3.Selectivity and distortion of competition

- (33) 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 has the effect of distorting competition.

- (34) 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.
- (35) 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 competition²¹.

V.4.Effect on trade

- (36) 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.

V.5.Conclusion

- (37) 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 the funding covered by the scheme involves State aid within the meaning of Article 87 (1) of the EC Treaty.
- (38) 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.

VI. ASSESSMENT OF THE MEASURE: COMPATIBILITY

- (39) 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 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.
- (40) It should be noted that although some of the areas covered by the measure could be eligible to receive regional investment aid under the derogation of Article

²¹ 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.

87(3)(a) or (c), not all of the targeted locations are assisted areas within the meaning of the Regional Aid Guidelines²².

- (41) The Commission therefore 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 Treaty²³ 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.

- (42) 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?

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

Community policy

- (43) As outlined in its Communication “i2010 – A European Information Society for growth and employment”²⁴, 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 increased efficiency, productivity and welfare gains including job creation and

²² 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.

²³ 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/.

²⁴ COM(2005)229 final, 1 June 2005.

retention, higher growth of the number of undertakings as well as improved health and education services²⁵.

- (44) In order to achieve better broadband coverage, the Commission encourages Member States to put comprehensive national broadband strategies in place.²⁶ The measure at hand aims to deliver affordable basic broadband services to households and businesses in areas of Germany where these services are not available in a satisfactory manner. Hence, the measure under assessment is in line with the common interest.

Market failure and cohesion considerations

- (45) 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.
- (46) 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 communities, broadband is a crucial element to avoid economic and social exclusion and to provide the opportunity to participate in the knowledge based economy.
- (47) 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.

VI.2. Well-designed aid

(a) Aid is the appropriate instrument

- (48) The measure at hand is part of an overall strategy of the Federal Government in cooperation with the states (*Länder*) to ensure affordable broadband services for all citizens and undertakings in Germany, including, *inter alia*, regulatory measures and radio spectrum policies. Instruments like *ex ante* regulation has

²⁵ For an overview, see for instance Lehr, Osorio, Gillett and Sirbu (2005, revised in 2006): “*Measuring Broadband’s Economic Impact*” or Crandall, Lehr and Litan (2007) “*The Effects of Broadband Deployment on Output and Employment*”.

²⁶ Commission Communication COM(2004) 369 of 12.05.2004, “*Connecting Europe at High Speed – National Broadband Strategies*”.

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. Hence, in situations such as those under examination, there is no alternative to granting public funding to overcome the lack of broadband connectivity.

- (49) 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

- (50) The measure will enable municipalities to ensure that 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"²⁷ up to maximum €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 to offer broadband services.

(c) Proportionality

- (51) The German authorities have designed the scheme in a way which encourages municipalities to minimise 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 measure upon which all aid granted under the notified measure must be based:

- (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. Municipalities 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. The municipalities also have to consult operators of electronic communications networks, whether they would be ready to provide broadband services without public support. A subsidy may only be granted if, after such a consultations, there is no broadband offer provided by the market or expected to be provided in the near future at affordable prices²⁸.
- (b) Transparency and open selection of projects:* Each municipality shall publish the envisaged measure in its official gazette or bulletin and on its website. 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 electronic communication operator requesting the lowest aid amount shall be selected.

²⁷ See also para (11).

²⁸ See also para (19).

- (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 have to grant wholesale access to their networks to all electronic communications operators on equal and non-discriminatory conditions that enable them to replicate their own retail offers²⁹. Such a wholesale access will enable third party operators to compete with the selected operators, thereby strengthening choice and competition in the areas concerned by the measure.
- (e) *Minimisation of 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. These prices under no condition can be set below this threshold. The German authorities expect that in light of the wholesale access of the network and the increased competition between the service providers, retail prices will follow the likely decrease of the market prices in medium term.
- (f) *Limited duration*: The German authorities anticipate awarding contracts for a limited duration of maximum five years.
- (g) *Monitoring*: the projects will be examined on regular basis by the granting authorities in accordance to the national household regulation and the EAFRD regulation³⁰.

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

- (52) 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.
- (53) 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 not distort

²⁹ Operators deemed to have significant market power are in any case obliged by regulation to offer wholesale access to their networks. As explained by the German authorities, 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 (in case this would make total investment costs considerably more expensive, by at least 50%), see also para (24). In view of the limited size of the local projects and the low aid amounts concerned, 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.

³⁰ See also para (26).

competition or affect trading conditions to an extent contrary to the common interest.

VI.4. Conclusion

- (54) 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 "Broadband in rural areas of Germany" 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:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de Spa 3
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission