



EUROPEAN COMMISSION

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Subject: SA.34665 (2012/N) – Regional public administration broadband network in the region of Rzeszow – Poland

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measures "*Regional broadband network in Rzeszów*" (hereafter: "the measure") and decided not to raise objections because the measure does not constitute State aid within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU)¹.

II. PROCEDURE

- (2) Pursuant to Article 108 (3) of the TFEU the Polish authorities notified to the Commission, by a letter dated 17/04/2012, the measure for supporting the deployment of regional broadband network in Rzeszów for reasons of legal certainty.
- (3) The Commission requested additional information on the measure by a letters registered on 15/06/2012 and 1/10/2012. The Polish authorities provided the requested information on the measure by a letters registered on 1/08/2012, 30/10/2012 and 13/02/2013.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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III. CONTEXT

III.1. The target region

- (4) The target area of the project covers municipalities of Rzeszów and Krasne located in Podkarpackie Voivodeship in Eastern Poland.
- (5) The areas covered by the projects are largely rural areas with low population densities, which makes it difficult to attract investments in the development of broadband networks that are usually more profitable in areas featuring higher density of population and where the potential demand is higher and more accumulated. Another factor discouraging investments in the development of broadband networks in the concerned areas is the very low average income of local inhabitants and thus potential clients of telecommunications services.

III.2. The rationale for public intervention

- (6) According to the Polish authorities, the target areas face three key problems: (1) the lack of adequate infrastructure necessary to deliver e-public services by the local authority (2) the lack of e-public services in the education area (3) digital exclusion of part of community and the related inability to use e-public services.
- (7) As regards the first and second concern, according to the Polish authorities in order for the public administration in the target areas to meet the growing expectations of its citizens as regards the provision of advanced e-government, education and health care services, a significant increase of its current broadband capacity and connectivity services is needed also to be able to provide broadband services in the most remote areas.
- (8) As regards the third concern, in view of the Polish authorities similarly to other regions in the European Union, also in the case of the Podkarpackie Voivodeship, advanced broadband services and the infrastructure required to support them are available for citizens and businesses in more densely populated areas, whereas broadband infrastructure is inadequate or outright lacking in other areas which are not commercially attractive to electronic communication operators. This leaves citizens and in such areas without the possibility of adequate broadband access and services and the use of e-public services.

IV. DESCRIPTION OF THE MEASURE

- (9) **Objective:** The main objective of the project is to facilitate the performance of public tasks by the local authorities of municipalities of Rzeszów and Krasne, in particular by developing the broadband infrastructure of the public administrative units in order to deliver e-public services to the citizens. Furthermore, it is planned to provide access to the basic Internet services to that part of society which is excluded for economic, social or technical reasons through the creation of public Internet access points ("Wi-Fi hot spots") in public administration units.

- (10) **Legal basis:** The measure is based on the Law on rules of carrying out the development policy (6 December 2006), the Board Resolution 288/5681/10 of the Podkarpackie Voivodship of 2 June 2010 on the strategic evaluation and conditional selection of projects co-financed by the ERDF, decision of the European Commission no. K(2007)4560 of 1 October 2007 on terms and the conditions of subsidising the Regional Operational Programme for the Podkarpackie Voivodeship 2007-2013.
- (11) **Design of the project:** The project covers deployment of the telecommunications backhaul and access network infrastructure (in WIMAX technology) that will interconnect the public administration units in the municipalities of Rzeszow and Krasne. As a result, 61 buildings of the public administration units (including e.g. municipal offices, community centres, crèches, schools, drug rehabilitation centres) will be connected into one network. Furthermore, new e-public services will be implemented in the field of education².
- (12) The project also envisages the creation of creation of Wi-Fi hotspots located in the buildings the public administration units mentioned above, which will provide free Internet access service to citizens, subject to the application by the local authorities of the following restrictions³:
- (a) data transfer speed limited to 256 kb/s for the user,
 - (b) transmission time limited to 60 minutes per session, after which the user is disconnected from the Internet,
 - (c) data transmission volume limited to 750 MB per user per month.
- Furthermore, as confirmed by the Polish authorities, no ancillary services of commercial nature (e.g. advertising on a dedicated webpage) will be offered through the planned hotspots.
- (13) The local authorities will carry out a competitive tender to select a private operator of the public administration network and Wi-Fi hotspots.
- (14) **Budget and funding instruments:** The total budget of three projects amounts to approx. PLN 18.04 million (around EUR 4.3 million). The significant part (85%) of the budget will be funded from ERDF and the state budget through grants under the Regional Operational Programme for Podkarpackie Voivodeship for the years 2007-2013. The remainder of the budget will be financed from the budget of the regional authorities. As far as the part of project related to the creation of hot-spots, its value amounting to PLN 664 200 (approx. EUR 160 000) accounts for only 3.68% of the total value of the project.
- (15) **Opinion of the National Regulatory Authority:** The National Regulatory Authority (UKE), following the assessment of the market situation in the area, issued a positive opinion on the notified project confirming that the restrictions mentioned

² This will include e.g. a service for electronic recruitment to preschools and schools as well as a service related

³ These restrictions will be monitored by the public administration units under the supervision of the NRA. Furthermore, contrary to the offer provided by the commercial operators, it will be possible to use only the basic network services (the security policy of DENY ALL will be applied).

above imposed on the use of the planned hotspots by citizens will not affect competition in the market as the services provided would not compete with the offer provided by commercial operators.

V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (16) According to Article 107 (1) TFEU, *“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”*. It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer 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 trade between Member States.
- (17) As regards the deployment of broadband networks for the self-use of the public administration units, the Commission has already accepted in the past that the fact that a public authority builds its own public-sector network to satisfy its needs for Internet connectivity (instead of procuring such services from private operators) does not entail an economic advantage for the beneficiaries since they do not exercise an economic activity⁴ within the meaning of State aid rules. The mere fact that the local authorities decided to build its own public-sector network in order to satisfy their own needs for internet connectivity instead of procuring such services from private operators does not raise concerns under Article 107(1) TFEU, this being an autonomous organizational decision by a public authority. As confirmed by the Polish authorities the public administration units that will be interconnected by the planned network do not carry out economic activity. Consequently, the support for the roll-out of the public administration network as well as for the implementation of e- public services in the area of education does not constitute State aid within the meaning of Article 107 (1) TFEU.
- (18) As regards the planned Wi-Fi hotspots that will be created in the buildings the public administration units in order to provide access to public sector services and information as well as free Internet access to the citizens, the Commission notes that the heavy restrictions imposed on the use of such services (session duration, connection speed, amount of downloaded data) ensure that this offer is not substitutable to the broadband services provided by the commercial operators and hence does not distort or threat to distort competition.
- (19) The planned hotspots will be created in order to provide free access to public sector services and information. They will be used free of charge by citizens and the operator will not be allowed to commercially exploit the hotspots to provide broadband services to their users. Given the restrictions imposed on the use of the hotspots, it is highly unlikely that existing broadband users will give up their existing broadband subscription just because of the very limited services now

⁴ See Commission decision in case NN24/2007, Prague Municipal Wireless Network, OJ C/141/2007 and Commission decision in case N46/2007 Welsh public network scheme, OJ C/157/2007.

available for free via the public administration hotspots. Hence, the project has no perceived impact on existing broadband providers, and no advantage is transferred to the selected operator of the public administration network. Furthermore, as confirmed by the Polish authorities, no ancillary services of commercial nature (e.g. advertising on a dedicated webpage) will be offered through the planned hotspots.

- (20) Consequently, the Commission concludes that the part of the project related to the creation of Wi-Fi hotspots of the public administration units does not involve State aid within the meaning of Article 107 (1) TFEU.

VI. DECISION

On the basis of the foregoing assessment, the Commission has decided that the measure "*Regional broadband network in Rzeszow*" does not constitute State aid within the meaning of Article 107 (1) TFEU.

The Commission reminds the Polish authorities that they are obliged to notify to the Commission any modifications of the measure pursuant to Article 108(3) TFEU.

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/community_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President