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Subject: **State aid SA.37682 (2013/N) – Germany**
 Implementation "Brandenburg Glasfaser 2020" III

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the State aid measure "Umsetzung des Entwicklungskonzepts Brandenburg Glasfaser 2020 III" (hereafter: "the measure") and decided not to raise objections as the State aid is compatible with Article 107(3)c of the TFEU.

II. PROCEDURE

- (2) Germany notified the measure to the Commission on 8 November 2013 pursuant to Article 108 (3) of the TFEU. The German authorities replied to the Commission's request for information of 5 December 2013 by letter of 11 December 2013.

III. DESCRIPTION OF THE MEASURE

- (3) The notified measure "Umsetzung des Entwicklungskonzepts Brandenburg Glasfaser 2020 III" constitutes a simple increase of budget of an otherwise not modified, approved aid scheme.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
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- (4) On 17 January 2013 the Commission approved the State aid scheme "Entwicklungskonzept Brandenburg Glasfaser 2020" (case SA.35562).¹ As described in that decision, outside the major towns and their surroundings, the German Land Brandenburg is largely under- or non-served in NGA broadband infrastructure. Especially in the rural areas the economic gap of operators to fund NGA broadband access is so significant that no such (market) investments are to be expected in the long term.
- (5) Purpose of the approved aid scheme is to promote the development of an NGA broadband backhaul network with download speeds of at least 50 Mbit/s in areas which have not yet access to high speed broadband infrastructure, because they are not connected to a backhaul fibre network, and where basic broadband services are not being delivered by competing broadband infrastructures. Therefore it is planned to build a passive optical fibre backhaul network which supports unlimited capacity and, in this respect, will allow an open access at equitable market conditions to all fixed and mobile operators offering broadband services to end-users. All (wired and wireless) telecommunications operators will be able to connect to the network at equal and non-discriminatory conditions.
- (6) On 12 September 2013, the Commission approved a raise of the budget of this approved aid scheme from 30 to 54 million EUR (case SA.36703)². As described in that decision (paragraph 5), the budget increase is explained by the fact that, while defining the detailed technical requirements during preparation of the public tender, the German authorities concluded that more street cabinets have to be installed and/or connected to an optical fibre backhaul cable, with significant additional possible infrastructure construction costs.
- (7) The current measure aims at a further increase of the budget from 54 to 94 Million EUR. The German authorities explain that this increase is necessary in view of the implementation of the approved aid scheme in phases: the region of Brandenburg is subdivided in the following five regional planning communities: Prignitz-Oberhavel, Uckermark-Barnim, Oderland-Spree, Lausitz-Spreewald and Havelland-Fläming. While the approved aid scheme covers all five regional planning communities, for budgetary reasons implementation of the scheme (and the corresponding budget) was so far limited to the first three mentioned regional planning communities. As Germany now wishes to also implement the approved scheme in the last two regional planning communities (Lausitz-Spreewald and Havelland-Fläming) an increase of the budget to maximum 94 Million EUR is considered necessary.
- (8) As also explained in the Commission decision of 12 September 2013 (paragraphs 6 and following), the other elements of the scheme, such as its duration, aid intensity, target areas, mapping and coverage, pricing, monitoring, control and claw-back mechanism, the choice of the network operator and obligations imposed on it, remain unaffected. The contract with the operator will contain in particular an obligation to establish and maintain the network and its operation for a period of at least seven years. It will also contain an obligation to inform third parties on all infrastructures (such as ducts, fibre, street cabinets, etc.) built in the context of this measure.
- (9) Regarding wholesale access, the network owner will be required to provide effective wholesale access to the subsidized network (including its existing infrastructure used for the project) on equal and non-discriminatory terms for a period of at least 7 years. The

¹ See: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35562.

² See: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36703.

NGA network architecture that will benefit from the support will support effective and full unbundling and satisfy all different types of network access that operators may seek (including but not limited to access to ducts, dark fibre, street cabinets, and bit-stream and unbundled access to fibre). Germany also undertook to make sure that the right of access to ducts or poles will not be limited in time.

- (10) Also with regard to the use of existing infrastructure, the bidder will be requested to use as much as possible existing backbone infrastructure. All telecommunication undertakings active in Brandenburg have agreed to give access to their existing infrastructure to allow connection of the rural areas.
- (11) Regarding transparency, the German authorities confirmed that they would publish on a central website (www.breitbandausschreibungen.de) at least the following information on the State aid measures: the full text of the approved aid scheme and its implementing provisions, name of the aid beneficiary, aid amount, aid intensity and used technology. Such information will be kept for at least 10 years and shall be available for the general public without restrictions.
- (12) In addition, the Land Brandenburg as State aid granting authority undertook to report, every two years, key information on the aid projects to the Commission, starting from the date when the network is put into use and for the duration of the aid measure. Such information will include the date when the network is put into use, the wholesale access products, the number of access seekers and service providers on the network, the number of houses passed, and take-up rates.

IV. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURE WITH ARTICLE 107 TFEU

- (13) As described in section V of the decision of 17 January 2013 referred to in paragraph (4), the notified aid measure constitutes state aid within the meaning of Article 107(1) TFEU.
- (14) While, by decision of 17 January 2013, the original scheme was approved under Article 107(3)(c) of the TFEU in light of the 2009 *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*³ that were applicable at the time, the Commission has, in its decision of 12 September 2013, reassessed the scheme (with increased budget) in light of new requirements of the *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks* (the "Broadband Guidelines")⁴, which entered into force in the meantime.
- (15) As described in detail in section IV of the decision of 12 September 2013, the measure complies with all conditions of the (new) Broadband Guidelines. In particular, the subsidised network will ensure a "step change" by which the selected bidder makes significant new investments and the new infrastructure adds significantly new broadband capacity, availability and competition on the market (point 51 of the Broadband Guidelines); the scheme is also in line with the more detailed criteria established in paragraph 78 of the Broadband Guidelines for the design of the aid for broadband roll-out. Further, in line with paragraph 80 of the Broadband Guidelines, it will be ensured that for a period of at least seven years the selected network operator will offer effective, full and

³ OJ C 235, 30.9.2009, p.7.

⁴ OJ C 25, 26.1.2013, p.1.

unbundled access to the subsidised passive network and satisfy all different types of network access that operators may seek and the right of access to ducts or poles will not be limited in time.

- (16) Germany will also fulfil the transparency requirements of paragraph 78 j) of the Broadband Guidelines and report, in line with paragraph 78 k) of the Guidelines, every two years, key information on the aid projects to the Commission, starting from the date when the network is put into use and for the duration of the aid measure.
- (17) In view of the characteristics of the project and of the safeguards applied, the overall impact on competition is deemed to be positive. The project design allows several network operators to use the subsidized infrastructure and to compete. The subsidized infrastructure significantly increases broadband service availability and capacity. The public intervention does not crowd out comparable private investments, as the subsidized network must provide significantly better broadband quality and availability than existing operators are able to provide. The increase in network capacity is expected to stimulate market entry by service providers and the provision of a larger variety of services. On the effect on trade, there does not appear to be any significant negative spill-over for other Member States.
- (18) As in its decisions of 17 January 2013 and 12 September 2013, the Commission concludes therefore that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of high speed broadband services in the targeted areas. Considering that all these conditions for the aid are respected, the higher budget for the planned roll-out of the NGA backhaul network in order to cover two regional planning communities that could otherwise not be covered does not change this assessment. On the contrary, it ensures that the previously approved aid scheme can be fully implemented and its stated objectives are effectively attained.
- (19) Accordingly, the Commission concludes that the measure notified by Germany meets the compatibility criteria set out in the Broadband Guidelines and is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest and is thus compatible with Article 107(3)(c) TFEU.

V. DECISION

- (20) The Commission has accordingly decided that the aid measure "Umsetzung des Entwicklungskonzepts Brandenburg Glasfaser 2020 III" is compatible with the Treaty on the Functioning of the European Union, in accordance with its Article 107 (3)(c).
- (21) The Commission would remind Germany of the requirement to submit to it annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to amend/extend this measure. Furthermore, in line with paragraph 78 k) of the guidelines, starting from the date when the network is put into use, for the duration of the aid measure, the State aid granting authority is asked to report every 2 years key information on the aid projects to the European Commission.
- (22) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of

the letter in the authentic language on the internet site:
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

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

Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President