



EUROPEAN COMMISSION

Brussels, 04.12.2009
C(2009)9925

Subject: **State aid No N 607/2009 – Ireland**
 Rural Broadband Reach

Sir,

1. PROCEDURE AND DESCRIPTION OF THE MEASURE

- (1) On 4 November 2009, Ireland notified to the Commission the above-mentioned aid measure. The measure was notified under the Notice on simplified procedure, in particular point 5 (b) (v) of the Notice.¹
- (2) A description of the relevant features of this measure can be found in the summary of the notification, as published on the website of the Commission http://ec.europa.eu/competition/state_aid/register/ii/doc/Not_N607_2009_1106_2009_WL_EN.pdf and annexed to the present decision.

2. ASSESSMENT OF THE MEASURE

2.1. Existence of aid

- (3) As shown by the features of the measure described in the summary of the notification, the current measure will be financed by state resources. It will provide selective economic advantage to the electronic communication operator selected via the tender procedure and also for third party electronic communication operators that will be able offer their services via wholesale access to the subsidized network. The measure has the potential to distort competition by enabling local undertakings to subscribe to the services offered

¹ OJ C136, 16.06.2009, p. 3-12.

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via the subsidized network instead of more expensive market-based solutions. Insofar as the intervention is liable to affect providers of electronic communications services from other Member States, the measure has an effect on trade.

- (4) The Commission therefore concludes that the notified aid measure constitutes State aid within the meaning of Article 107(3)(c) of the TFEU² as moreover confirmed by the notifying Member State during the notification.

2.2. Compatibility of the aid

- (5) The Commission's compatibility assessment of the notified measure in this case did not imply any serious difficulties. The Commission has assessed the compatibility of the notified measure with the common market in the light of the Broadband Guidelines³, which contain a detailed interpretation of Article 107(3)(c) of the TFEU in this area of State aid law. As regards the applicable substantive provisions, the Commission has essentially analysed the measures in the light of the criteria developed in paragraphs 31 to 51 of the Broadband Guidelines. In order to be compatible under Article 107(3)(c) of the TFEU, the aid must pursue an objective of common interest in a necessary and proportionate way.
- (6) Since the objective of the measure is to extend basic broadband services to consumers located in rural locations which do not currently have an affordable broadband service option, the measure at stake pursues well defined Community policy objectives laid down in paragraphs 37 to 40 of the Broadband Guidelines. Moreover, the funding for the measure will be provided through the EERP funds⁴ available through the Rural Development Programme; hence by accelerating broadband deployment, the current measure is also in line with the European interest to support fast recovery of the European economies.
- (7) The Commission's analysis confirms that the measure is well designed to deliver those common interest objectives.
- (8) First, it is an appropriate instrument because in the targeted areas of Ireland the provision of affordable broadband services remains unprofitable for commercial operators in the near future⁵. Hence the measure targets only "white areas" within the meaning of paragraphs 41 and 42 of the Broadband Guidelines and there are no valid alternatives to public funding to overcome those obstacles. As explained by the Irish authorities, approximately 25 000 premises in the country (approximately 1.4% of the total number of premises) can be considered as

² 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

³ *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 235, 30.9.2009, p.7.

⁴ Communication from the Commission to the European Council: *A European Economic Recovery Plan*, Brussels, 26.11.2008.

⁵ As explained by Ireland, based on current market prices, satellite broadband is not considered as an affordable option.

"white areas" where consumers still do not have access to affordable broadband services due to topological shortcomings (such as height of the local terrain, buildings or other local obstructions or split copper lines) and also because these premises were not covered by the previous State aid broadband scheme of Ireland⁶. According to the Irish authorities, the targeted end users are widely dispersed across rural areas of the country.

- (9) Second, since the measure targets "white areas", where - as demonstrated by the market research and the consultation with existing provider conducted by Ireland (see also paragraph (10)) - the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. Furthermore, the Commission considers that the aid should provide a direct and appropriate investment incentive for the selected operator due to the use of a public tender process to select the beneficiaries.
- (10) Third, the measure at stake is considered proportionate because, amongst other features, the following can be identified:
 - a) A detailed mapping and coverage analysis and consultation with existing operators will be conducted by Ireland in order to clearly indentify the targeted "white areas".

In particular, (1) Ireland will verify that the targeted consumers cannot be reasonably served by existing service providers at affordable costs; (2) Ireland will conduct a public consultation with the existing service providers who will be given the opportunity to offer such services to the consumers in question on market terms within a reasonable timeframe⁷; (3) if a consumer satisfies all of these conditions and is not offered an affordable service within a reasonable timeframe, they will be deemed to be "unserved" for the purposes of this measure and hence eligible for the State aid.

- b) Open tender process: the aid will be awarded on the basis of an open tender in accordance with the EU procurement rules.

Service providers will submit bids and the granting authority will select a bidder who will be required to provide broadband services to consumers who qualify under the measure. The minimum required service will have the following characteristics: always-on service (no charge by connection time); downstream speed of minimum 2Mbps; upstream speed of minimum 256kbps; a maximum contention ratio equivalent to 48:1⁸; minimum monthly limit on download capacity (uncharged) per retail subscriber connection of 10GB; latency requirements such that common Internet Protocol (IP) applications such as Virtual Private Network (VPN), Voice over IP (VoIP) and gaming may be supported by the broadband service.

⁶ N 475 / 2007 - *National Broadband Scheme* – Ireland, OJ C 282, 24.11.2007.

⁷ For the purposes of the scheme, it is envisaged that service providers will be given a 21 day period in which to offer a service to a consumer who has applied for the measure and a further reasonable period of 3 month in which to actually provide the service in question.

⁸ The contention ratio indicates how many users may share a specific connection at the same time. In this case, it would be up to 48 users.

- c) Selection of the most economically advantageous offer: in line with footnote 55 of the Broadband Guidelines, for the purposes of determining the most economically advantageous offer, the awarding authority will specify in advance the relative weighting which it will give to each of the criteria chosen.

As explained by Ireland, within the context of an open tender procedure, at similar if not identical quality conditions, the bidder with the lowest amount of aid requested shall receive more priority points within the overall assessment of its bid. Ireland will also include in the award criteria a provision relating to minimising any potential overspill of the broadband service provision (for instance, due to the wider line of sight of wireless solutions) to areas that are currently being served by existing service providers. Ireland anticipates awarding a contract for a duration of five years, which would include the timeframe for roll-out of services under the measure.

- d) The measure is technological neutral: bidders are entitled to propose the provision of broadband services using whatever technology they deem most suitable.
- e) The measure ensures the use of existing infrastructure to the extent possible: bidders are given the possibility to identify the most appropriate infrastructure and to contribute their infrastructure to the notified measure. However, since the targeted areas are "white areas", hence unserved by broadband networks, there are limited possibilities to use such network infrastructure.
- f) There will be a requirement to provide a wholesale access on the subsidized broadband network that will enable third party operators to compete with the selected service provider thereby strengthening choice and competition in the areas concerned by the measure. Ireland will require that wholesale access will be in place for the duration of the contract with the successful bidder, or for a period of seven years if the service persists beyond the duration of the contract.
- g) Benchmarking pricing exercise: It is Ireland's objective that the service will be broadly comparable to the products enjoyed in the majority of currently served areas. The broadband product to be provided by the measure will be benchmarked with tariffs and products typically available on the Irish market and the wholesale pricing will be set at a reasonable level to allow competition.
- h) Monitoring and claw-back mechanism to avoid over-compensation: Ireland will undertake a regular monitoring in order to ensure the compliance of the selected operator with the contract and the performance of the selected operator. Ireland will also to put in place a clawback provision to ensure that the selected bidder is not over-compensated if demand for broadband in the target area grows beyond anticipated levels. The monitoring and clawback provisions will operate for the duration of the contract with the successful bidder.
- (11) On the basis of the foregoing assessment, the Commission's analysis confirms that the compatibility criteria set out in the Broadband Guidelines are met, hence the aid involved in the notified measure is compatible with Article 107(3)(c) of the TFEU.

- (12) The Commission did not receive any substantiated comments of third parties upon publication of a summary of the notification on its website.

3. CONCLUSION

- (13) In the view of the above, the Commission finds that the aid granted on the basis of the measure in question is compatible with the common market in accordance with Article 107(3) (c) of the TFEU and has accordingly decided not to raise objections to the notified measure.
- (14) The Commission reminds Ireland to submit annual reports on the application of the aid measure. The Commission moreover reminds Ireland to inform the Commission pursuant to Art 108(3) of the TFEU on all plans to approve anew or to modify this aid measure.
- (15) The Member State has indicated in the context of the notification process that the summary nature of this decision implies that it does not contain any confidential information.

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

Annex: Summary of the notification based on the information provided by the Member State according to the standard form provided in Annex to the Notice on simplified procedure.