



EUROPEAN COMMISSION

Brussels, 12.9.2013  
C(2013) 5861 final

**PUBLIC VERSION**

This document is made available for  
information purposes only.

**Subject:**           **State aid SA.36703 (2013/N) – Germany**  
                              **Entwicklungskonzept Brandenburg Glasfaser 2020 II**

Sir,

**I. SUMMARY**

- (1) I am pleased to inform you that the European Commission has assessed the State aid measure "Entwicklungskonzept Brandenburg Glasfaser 2020 II" (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 22 May 2013 pursuant to Article 108 (3) of the TFEU. The German authorities replied to the Commission's request for information of 20 June 2013 by letter of 16 July 2013.

**III. DESCRIPTION OF THE MEASURE**

- (3) The notified measure "Entwicklungskonzept Brandenburg Glasfaser 2020 II" constitutes an amendment of the State aid scheme "Entwicklungskonzept Brandenburg Glasfaser 2020" which was approved by the Commission on 17 January 2013 (case SA.35562). As described in that decision, outside the major towns and their surroundings, the German

Seiner Exzellenz Herrn Dr. Guido WESTERWELLE  
Bundesminister des Auswärtigen  
Werderscher Markt 1  
D - 10117 Berlin

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.

- (4) Purpose of the approved measure 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.
- (5) Germany plans a change to the budget of the approved scheme. The originally estimated budget of the measure was 30 million EUR, funded from the budget of the European Regional Development Fund. Following the Commission approval, the German authorities prepared the public tender for the project and defined more in detail the technical requirements, throughout the target areas, which are necessary to ensure access to high speed broadband infrastructure. A result of this exercise was that they 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. Therefore, Germany is now planning to raise the maximum aid budget to 54 million EUR.
- (6) The other elements of the scheme, like 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 by this change. 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.
- (7) 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 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 bitstream 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.
- (8) 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.
- (9) Regarding transparency, the German authorities confirmed that they would publish on a central website ([www.breitbandausschreibungen.de](http://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.

- (10) 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**

- (11) As described in section V of the decision of 17 January 2013, referred to in paragraph 3, the notified aid measure constitutes state aid within the meaning of Article 107(1) TFEU.
- (12) The Commission has assessed the compatibility of the original scheme according to Article 107(3)(c) of the TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>1</sup>. Upon publication on 26 January 2013 in the Official Journal, the new *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks* (the "Broadband Guidelines") entered into force<sup>2</sup>. They are now applicable for the assessment of the amended scheme.
- (13) The new guidelines will not lead to a new assessment of most of the elements of the scheme, for which the criteria of the former guidelines have not been changed in substance. The Commission re-assessed however the balancing test with regard to the required "step change", the requirements for the design of NGA deployment and the transparency obligations of Member States as determined by the new guidelines.
- (14) With the balancing test, the Commission compares in particular the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition. In this respect, paragraph 51 of the Broadband Guidelines clarifies that the subsidised network should 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.
- (15) The amended scheme constitutes such a step change. The State intervention contributes to bridge the '*digital divide*' that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not. The measure addresses a market failure as it targets only so called "NGA white" areas in the sense of paragraph 75 of the Broadband Guidelines, where very high speed broadband is currently not available due to the absence of an NGA backhaul infrastructure, and where there are no plans by private investors to roll out such infrastructure in the near

---

<sup>1</sup> OJ C 235, 30.9.2009, p.7.

<sup>2</sup> OJ C 25, 26.1.2013, p.1.

future. By promoting the development of NGA networks with download speeds of 50 Mbit/s in such areas, the measure will contribute greatly to achieve the objectives of the Digital Agenda. The measure also allows for competition between operators to serve the end users.

- (16) 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. The aid remains to be well designed, as described in detail in section VI.2. of the Commission decision of 17 January 2013, referred to in paragraph 3 above. This concerns the necessity of the aid. It furthermore concerns its proportionality in terms of mapping, the tender process, technological neutrality, the use of existing infrastructure, wholesale access with full and effective unbundling and full open access to the subsidised network on equal and non-discriminatory terms, price benchmarking, and monitoring and claw back provisions. As stipulated in paragraph 80 of the Broadband Guidelines with regard to deployment of NGA networks, it will also be ensured that for a period of at least seven years the selected network operator will offer effective and full and unbundled access to the subsidised passive network and satisfy all different types of network access that operators may seek.
- (17) The Commissions notes in particular that Germany assured that the newly introduced condition for NGA deployment in paragraph 80 of the Broadband Guidelines that the right of access to ducts or poles will not be limited in time is complied with.
- (18) Germany will also fulfil the new element of transparency required now by paragraph 78 j) of the Broadband Guidelines and publish on a central website 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 be available for the general public without restrictions.
- (19) In addition, in compliance with paragraph 78 k) of the Guidelines, the Land Brandenburg will 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.
- (20) 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.
- (21) 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 does not change this assessment. On the contrary, it ensures better that the stated objectives of the aid are effectively attained.

- (22) 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

- (23) The Commission has accordingly decided that the aid measure "Entwicklungskonzept Brandenburg Glasfaser 2020 II" is compatible with the Treaty on the Functioning of the European Union, in accordance with its Article 107 (3)(c).
- (24) 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.
- (25) 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>.
- (26) Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto: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 2961242

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-President