



EUROPEAN COMMISSION

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C(2012) 8681 final

Subject: State aid SA.35060 (2012/N) – United Kingdom
Mobile Infrastructure Project

Sir,

1. PROCEDURE

- (1) On 19 September 2012, pursuant to Article 108 (3) TFEU, the United Kingdom notified to the Commission a project to fund infrastructure supporting mobile telephony in uncovered areas of the United Kingdom. On 1 October 2012, the Commission sent a request for information. The reply to it was received on 2 October 2012.
- (2) The United Kingdom declared that it will not implement the measure before Commission approval.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (3) The UK Mobile Infrastructure Project ("MIP") seeks to improve mobile voice and basic data coverage for consumers that live and work in areas of the United Kingdom where existing mobile network coverage is non-existent, as well as for businesses that operate in such areas.
- (4) The United Kingdom has identified areas in the country that receive no mobile coverage and where the national mobile network operators (MNO) have not rolled out mobile infrastructure, nor intend to do so. The United Kingdom has decided to address these around 60 000 "complete not spots" in rural areas and along key roads by extension of mobile coverage. For this purpose, it intends to fund the required mobile infrastructure and make this available to all four current mobile network operators.
- (5) The engagement of the United Kingdom authorities with the mobile network operators showed that most of the "complete not spots" in question would be unlikely to cover the costs of covering them. Operators do not expect that the construction of a new mast would necessarily lead to any sizeable number of new customers or increased revenues from usage. This picture is unlikely to change in future as mobile telephony is a mature market.
- (6) Objective of the notified measure is therefore to complete the mobile phone coverage. This is integral to the policy of the United Kingdom, reflected in a number policy instruments issued in recent times, such as the Rural Economy Growth Review¹ which recognises the importance of the development of physical infrastructure, the National Infrastructure Plan 2011² which identifies the need to ensure a strong telecommunications framework in the United Kingdom, and the National Planning Policy Framework³ which sets out that the development of communications networks plays a vital role in enhancing the provision of local community facilities and services.

2.2. Budget and duration

- (7) £150 million of funding from the general budget is being made available for this purpose. The procured infrastructure roll-out is scheduled to begin in Spring 2013 and complete by Spring 2015, with the aid being paid in financial years 2012/13, 2013/14 and 2014/15. The mobile infrastructure built using that funding will be made available to mobile network operators for a period of at least 10 years. The legal basis for this funding is the Industrial Development Act 1982.

¹ <http://www.defra.gov.uk/rural/economy/econ-business-broadband/rural-economy-growth-review/>

² See paragraph 3.91: http://cdn.hm-treasury.gov.uk/national_infrastructure_plan291111.pdf

³ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

2.3. Design of the Mobile Infrastructure Project (MIP)

- (8) Via the implementing authority, the Department for Culture, Media and Sport (DCMS), the UK government selects through a European wide tender process (published in the OJ) a supplier to deliver the relevant mobile telecommunications infrastructure and related requirements, including the design, build, implementation, operation, ownership and maintenance of that infrastructure. The successful supplier of the mobile infrastructure will be required to make that infrastructure available to all of the current MNOs.
- (9) The MNOs will be granted access to the mobile infrastructure via the MIP supplier. Such access will be made available to the MNOs on the same non-discriminatory terms on the basis of a management fee the amount of which is subject to the tender procedure. The period of such access is a minimum of 10 years. Installation of the radios (whether owned by the MNO or the MIP supplier) will be undertaken by the MIP supplier. Given the number of potential occupants on a MIP site, this installation work will be coordinated centrally by the MIP supplier. If a new MNO enters the market, the MIP supplier will be required to offer access to the MIP passive site infrastructure to the new MNO on comparable terms to those offered to current, participating MNOs.
- (10) The funding will be used by the MIP supplier to build the passive mobile infrastructure required to make sites ready for occupation (base stations foundations, masts and associated structures, mains power supplies, and transmission backhaul equipment including microwave radios). Through this mobile infrastructure, the MIP project targets the delivery of mobile voice and basic mobile data coverage (all current mobile technologies support mobile voice as well as at least basic data). The MIP supplier will be encouraged to re-use existing infrastructure, where possible. This could include re-use of existing masts where such masts are already in place on identified MIP sites or existing water towers on which masts could be erected.
- (11) The funding will also be used to provide the active base station radio equipment that will be required by the MNOs on site. Given infrastructure sharing arrangements already in place between the MNOs this could involve the funding of two or three sets of radio equipment on each of the identified sites.
- (12) The UK authorities have been engaging with all four MNOs in the UK (Vodafone, O2, Everything Everywhere and Three) to ensure their participation. Objective is to secure buy-in from all four MNOs to use each of the identified sites. If all four MNOs do not use each of the identified MIP sites, there is a risk that some customers will still be without coverage, if their network operator does not use the site in question. Three MNOs are committed to participate fully. In that case the UK authorities considered that the impact of three, rather than four, MNOs going on site is relatively small and that the project's objectives could still be achieved with only three MNOs on each site.

- (13) During the engagement process with the MNOs it has become clear that, even with the new mobile infrastructure rolled out in the "complete not spots", there is relatively little to be gained by the MNOs who install their equipment on those sites. For example, they are unlikely to attract new customers, as most people already have mobile phone contracts or packages.
- (14) The UK authorities have also received confirmation from each of the current MNOs that they do not have any plans to roll out mobile infrastructure in the identified "complete not spots" in the near future (i.e. within the next three years).
- (15) Commissioning of the radios will be at the cost of the MNO. It will be for the MNO to make the necessary arrangements, most probably with a sub-contractor. In principle, the radios could be owned either by the MNOs or the MIP supplier. However, given that industry practice is to allow for depreciation of radios over a 7-8 year lifetime (i.e. within the period that the MNO is expected to occupy a MIP site), it makes sense for the MNOs to own them. The MNOs will have to replace the radios if this becomes necessary within the lifetime of the project. This will also make it easier for the purposes of the maintenance of those radios. More particularly, MNOs will be required to hold enough spares and replacement equipment and maintenance contracts to maintain service during their occupation of a MIP site and to fund all software and firmware and service upgrades required. Therefore the MIP budget will also pay for the acquisition of active base station radio equipment. MNOs will offer the same services from MIP sites as they would from any other site that they occupy on a commercial basis at no extra cost.
- (16) The MIP project only has capital funding available, so the MNOs need to provide the operating expenditure for the sites built. The charge on MNOs will comprise a fixed rent and management fee and variable (e.g. power) operating costs. The management fee will be competitively bid by the MIP potential suppliers during the tender process and would need to be sufficient to cover both the MIP supplier's overheads, its risk premium and an operating profit. The variable costs will be charged to the MNOs on a straight pass-through basis.

2.4. Alternative intervention possibilities

- (17) The United Kingdom considered alternative intervention routes, like additional coverage obligations to the existing 2G licences or by extending the reach of 3G services. The original mobile licences for 1G and 2G networks contained obligations to cover 90% of the UK population. These obligations were met a number of years ago. The government could vary existing 2G licences only in agreement with the MNOs, which in practice would only be possible by offering financial incentives to the operators. Also operators of 3G services have been incentivised to increase 3G coverage to 90% in return for an indefinite licence term. However, this level still falls short of existing 2G coverage and operators will probably make use of existing infrastructure to extend their 3G coverage rather than through going to areas where no coverage exists.

2.5. Target areas

- (18) The funding will only be targeted at "complete not spots" which are most usually found in rural and remote areas (e.g. mountainous regions and National Parks). The UK authorities have been working with Ofcom, the communications regulator in the United Kingdom, to ensure that the "complete not spots" are clearly identified. Ofcom sought coverage data from the MNOs and produced a map of where none of the MNOs had predicted at least 2G coverage. The mapping ensures that only appropriate areas are targeted. 80,000 "complete not spots" have been identified. The project aims to provide coverage to up to some 60,000 of them.
- (19) On both selecting roads and premises to treat, the principle that the supplier will be required to follow is to maximise the number of people overall whose coverage is improved by the intervention with the available funds.

2.6. Aid recipients

- (20) The MIP supplier will be the direct beneficiary of the project. Although it will simply be remunerated at the level of its costs and a reasonable profit for delivering the mobile infrastructure, it would not be able to exercise this activity without the State funding.
- (21) The measure will also be to the benefit of the MNOs who will gain access to the infrastructure. The additional mobile coverage will improve the service provided to existing customers in the affected areas.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (22) According to Article 107(1) TFEU, there is State aid when there is a financial intervention by the State or through State resources which confers a selective economic advantage on an undertaking, distorts or threatens to distort competition and which is liable to affect competition and trade between Member States.
- (23) The MIP funds are provided directly from the State budget. They provide an economic advantage to selected undertakings. All mobile operators will be allowed to benefit from the existence of the infrastructure and of the operating equipment without having to invest their own resources. They will be able to expand their business in the currently non-served areas of the United Kingdom on conditions not otherwise available on the market. Equally, the undertaking being selected to establish the new infrastructure would not be able to do this on market terms, without the funding, and therefore enjoys an economic advantage.
- (24) The intervention of the State alters the existing market conditions by allowing the provision of telecommunication services by the mobile operators. It

potentially alters choices of consumers with regard to fixed telephony. A number of telecommunication users may subscribe to the services provided by the selected suppliers to the detriment of more expensive market-based solutions (for instance satellite). Therefore, there is a possible distortion of competition.

- (25) The markets for electronic communications services are open to competition between operators and service providers which are often active in several Member States. Insofar the intervention is liable to have an effect on trade between Member States. Therefore the notified measure constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility of the measure with the Treaty

- (26) The Commission notes that the project aims to ensure the availability and use of mobile telephony in currently uncovered areas with no prospect for coverage on commercial terms in the near future (three years). Aid for the rollout of mobile telecommunication infrastructure does not fall under one of the Commission's State aid frameworks or guidelines.
- (27) The Commission therefore considers that the assessment of the compatibility of the measure with the internal market needs to be based directly on Article 107 (3) (c) TFEU according to which aid to facilitate the development of certain economic activities may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. This is consistent with the Commission's Decision in State aid case N45/2009, Italy - Mobile Telephony Bolzano. The Broadband Guidelines⁴ which also address the rollout of telecommunication infrastructure may however give orientation by analogy, where applicable. This concerns in particular the criteria for assessing the objective and the proportionality of the design of the aid scheme.
- (28) In order to be compatible under Article 107 (3) (c) TFEU, an aid must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Commission addresses 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?

⁴ Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks
Official Journal C 235, 30.9.2009, p.7.

- (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?

3.3. The support of mobile telephony coverage is in line with the common interest

- (29) In past years mobile telephony experienced an unprecedented upswing. However, even after introduction of 3G services, this phase of growth and expansion seems to be over and mobile operators have started engaging in competition in existing markets, rather than attempt further expansion where it is less profitable.
- (30) Mobile telephony is currently widespread across regions in Europe. Yet, certain areas still lack coverage. It is not profitable to invest in areas not readily accessible and where potential demand is low and dispersed. In sparsely populated areas where demand is low and coverage of cost is uncertain or delayed, private operators may find it difficult to fund mobile telephony infrastructure which has a long life and amortisation period. This difficulty is very unlikely to disappear in the future, given that the mobile telephony is a mature market.
- (31) By providing financial support for the establishment of infrastructure to provide state of the art mobile telephony services in such areas of the United Kingdom at the level and price currently included in the nation-wide offer of the operators, the authorities pursue genuine cohesion and development objectives.

3.4. Well-designed aid

(a) Aid is the appropriate instrument

- (32) For the reasons explained above, it is not commercially interesting for mobile operators to build antennas in the targeted areas. The current 2G and 3G mobile licences oblige MNO to cover 90% of the UK population.
- (33) No regulatory or other instrument is at the disposal of the public authorities to remedy such situation and to incentivise MNO to extend the coverage to the remaining 10% of the population, but a direct financial intervention to build the necessary infrastructure. Therefore, the Commission considers that the support provided by the notified measure is an appropriate instrument to achieve the set objectives.

(b) The aid provides the right incentives to operators

- (34) Thanks to the aid measure, all mobile operators active in the UK market will be able to provide services in the targeted areas at the state of the art level and at the same price available on the national market.
- (35) This access to the market in the areas not covered so far is furthermore only possible by setting up the necessary fixed infrastructure by the MIP provider. Therefore, the aid should provide a direct and appropriate investment incentive.

(c) Proportionality

- (36) The authorities of the United Kingdom have designed the measure in such a way as to minimise the amount of State aid involved and the potential distortions of competition arising from the measure. In this respect, the Commission notes, inter alia, the following elements in the design of the measure:

- (a) Open tender:* the construction, operation and maintenance of the network will be tendered out according to the criteria set in the national and European legislation on public procurement (see paragraph 8 above).
- (b) Choice of the target areas:* The infrastructure will only be added to the existing network for the areas where no mobile telecommunication infrastructure exists at all and where MNOs do not have any plans to roll out mobile infrastructure in these identified "complete not spots" in the near future (i.e. within the next three years). The United Kingdom will ensure that the targeted "complete not spots" continue to be appropriate targets for funding. In the first instance DCMS expects to continue to engage with the MNOs throughout the MIP tender process and beyond and therefore will adjust the "complete not spots" should MNOs alter their investment plans with regard to delivery of services in "complete not spots". In this way it will be ensured that the mapping of "complete not spots" is kept current.
- (c) Non-discrimination:* All mobile operators active in the United Kingdom will be allowed on the same terms to place their equipment on the passive infrastructure (base stations foundations, masts and associated structures, mains power supplies, and transmission backhaul equipment including microwave radios) so as to provide their telecommunication services.
- (d) Limitation of the effects on competition:* By enabling all mobile operators to offer their services in a competitive fashion, similarly to the profitable areas in other parts of the country, the notified measure avoids the creation of local monopolies.
- (e) Limitation of tariff discretion:* The mobile operators will have to offer services at the same level of prices practiced in the rest of the country.
- (f) Claw back mechanism:* A claw back mechanism is built into the contract with the MIP supplier to protect against an excess subsidy and ensure that the successful supplier is not over-compensated under the contract with DCMS.

In case of additional uses of the MIP infrastructure, the mechanism will allow the costs associated with the additional user on each MIP site to be set off against the additional revenues. The net revenue will be shared equally between the DCMS and the MIP supplier.

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

- (37) The notified measure will offset a genuine geographical and commercial handicap of the targeted areas and is objectively justified to address the lack of availability of mobile and broadband services therein. The target group of the scheme includes local businesses and citizens as well as tourism, which is important for the rural economy. They will benefit from the availability of such services in both their day-to-day business activity and in the quality of life benefits that mobile telephony availability affords to citizens.
- (38) In view of the characteristics of the project, the overall impact on competition is deemed to be positive. On the effect on trade, due to the limited areas in which the aid will intervene and the fact that all operators active in the United Kingdom may benefit from the extended network coverage, the Commission does not identify negative spill-over for other Member States.
- (39) On balance, the Commission concludes that the overall effect of the measure is positive. The measure is clearly in line with the objectives of Article 107 (3) (c) TFEU as it facilitates the development of certain economic activities (mobile telecommunication services) in certain remote and rural areas. The intervention is designed in a way that does not distort competition or affect trading conditions to an extent contrary to the common interest.

4. Conclusion

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

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<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

European Commission
Directorate-General for Competition
State aid registry
1049 Brussels
Belgium
Fax No: +32 2 2961242

Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-president