



EUROPEAN COMMISSION

Brussels, 22.07.2015
C(2015) 5165 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: State aid SA.41416 (2015/N) - Germany – NGA Scheme Baden-Württemberg

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the measure "*NGA Scheme Baden-Württemberg* (hereafter: "the measure") as laid down in "*Verwaltungsvorschrift des Ministeriums für Ländlichen Raum und Verbraucherschutz zur Breitbandförderung*" and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)c of the TFEU.

II. PROCEDURE

- (2) After intensive pre-notification discussions, Germany notified the measure to the Commission on 31 March 2015 pursuant to Article 108 (3) of the TFEU.

III. CONTEXT

- (3) In line with the "Europe 2020" strategy for more growth, with the "Digital Agenda for Europe" and with the German federal broadband strategy (that calls for comprehensive broadband networks with download speeds of at least 50 Mbit/s by the year 2018), the Region of Baden-Württemberg aims at deploying NGA-networks; with download speed of at least 50 Mbit/s and with upload capacity that is significantly higher than that of basic broadband networks. In case

Herrn Dr. Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

of business customers, the upgrade shall extend to providing also upload speeds of at least 50 Mbit/s.

IV. DESCRIPTION OF THE MEASURE

- (4) **Objective:** The objective is to obtain affordable, full coverage NGA networks with download speeds of at least 50 Mbit/s and in case of demand (e.g. business customers) symmetrical speeds of at least 50 Mbit/s with public support in areas where private investment has not been and will not be in the coming three years ready to achieve this goal.
- (5) **Description of the project:** The measure is a framework scheme with various intervention models that aim at enabling municipalities to develop NGA networks. To a large part it includes direct financial support for municipalities in order to construct municipally owned NGA networks. Such grants are mostly directed at establishing the passive NGA infrastructure. Aid will also be given to other initiatives that more indirectly enable the establishment of NGA networks.

Initiatives of the scheme directly aimed at the construction of NGA networks:

1. Laying ducts between municipalities without copper or fibre, large enough for accommodate even point-to-point solutions, for at least 144 optical fibres;
2. Laying ducts within municipalities, in "NGA–white" areas – in case justified by an expert technical planning;
3. Constructing NGA networks with at least 50 Mbit/s download speeds in "NGA white" areas while doubling the previously available upload speeds, in a technology- and provider neutral manner. In case of wired networks, only the passive infrastructure can be subsidized.
4. Upgrading NGA networks to achieve at least 50 Mbit/s symmetrically for businesses in "NGA-grey" areas. For this, in case of explicit demand, whereas also a step change has to be proven. However, this measure is not covered by the present decision, as the German authorities committed to notify separately possible subsidies for grey areas. These will be annually submitted for approval to the European Commission;
5. Constructing NGA networks achieve at least 50 Mbit/s symmetrically for businesses in "NGA–white" areas;
6. Constructing inter-communal fibre backbone that is open to any provider.

The subsidized networks shall be operated by private entities selected by open, transparent and non-discriminatory tender procedures. The private operators will pay compensation (e.g. rental fee) for the use of the network to the municipality.

Other and indirect measures eligible for support under the scheme:

7. Kick start subsidy to a telecom operator for setting up the operation of an NGA network: For a case where the result of the open, transparent and non-

discriminatory tender to operate the municipal passive infrastructure shows a further need for State aid¹.

8. Expert planning of NGA networks: Service procured by the municipalities for the preparation of their applications for the State support. An expert plan needs to be part of any application for the construction of municipal NGA networks.

9. Innovative pilot projects for broadband infrastructure solutions or feasibility studies: Municipalities can benefit of State support for deploying innovative, new solutions for NGA that may serve as lessons or cost reduction opportunities for other future initiative². Construction and operation of such NGA networks is also limited to "NGA-white" areas.

10. Inter-communal collaboration: Shall several municipalities team up for the construction or shall the target area encompasses more than one municipality, coordination and administrative activities can also receive funding.

11. Rental fee of physical infrastructure: In line with the principle for efficient use of infrastructure³, duplication of infrastructure shall be avoided by including existing infrastructure. To this end, not only construction costs, but also rental fees (e.g. of ducts or fibre) can be subsidized if rental is more economical than own construction. The rental contract shall be at least 15 years.

- (6) For measures Nr. 1, 2, 6, 10 and 11 to obtain financing, applicants have to demonstrate how they fit into a larger project to establish a NGA infrastructure.
- (7) Applications and granting are conducted via the Regional Councils in Baden-Württemberg – unless specified differently.
- (8) **Duration:** The measure will enter into force upon approval by the European Commission in 2015 and will be in force until 31.12.2022.
- (9) **Legal basis:** Procedural Law on regional administration ("*Landesverwaltungsverfahrensgesetz*"), Budget Law of Baden Württemberg ("*Landeshaushaltsordnung*"), Regulations under the EU initiative "Improving agricultural structures and coastal protection", Law for telecommunications.
- (10) **Budget and financing instruments:** The overall budget of the measure is 253.6 million EUR, over eight years. The aid is granted by the Regional Councils in Baden-Württemberg.
- (11) **Aid amount and intensity:** Aid amounts and intensity vary across the type of supported initiative and can also differ depending on the financial situation of the applying municipality. Fixed amount subsidies vary from 150 000 EUR to 250

¹ Germany states that this rather exceptional circumstance can occur in rural areas where the target area is very small or if a large number of basic broadband contracts are far from expiry. The kick-off aid would cover investment into the active components of the network. If, under the terms of the best offer additional subsidies need to be granted to cover the operating expenses, Germany committed to comply with the so called Altmark conditions (see the Court's judgment in Altmark Trans and Regierungspräsidium Magdeburg, C-280/00, EU:C:2003:415, paragraphs 89-93), as clarified, taking into account the specificities of the broadband sector, in paragraphs 18-27 of the Broadband Guidelines.

² Such are for example the use of micro- or mini-trenching or laying the fibre in the sewage system.

³ As described in paragraph 78(f) of the Broadband Guidelines

000 EUR and aid intensity varies from 25% to 50% on average. In case of a municipality in difficulty, or especially difficult demographical and geographical conditions, up to 90% of costs can be covered by aid. The maximum disburseable amount per project is 750 000 EUR. Fixed amounts apply for the support of civil engineering works and cabling, which are also well below their general market price. In addition, fixed amounts decrease with increasing population density – 4 different levels have been differentiated.

- (12) **Beneficiaries:** Municipalities, associations of municipalities or administrative districts can receive aid. Indirectly, network operators leasing the passive infrastructure will benefit from the measure to some extent. Downstream, the beneficiaries of the aid will be the end users who will be able to enjoy the services enabled by NGA at an acceptable price.
- (13) **Target areas:** The target area is the full territory of Baden-Württemberg; aid recipients can be located in fully rural areas or areas with higher density, up to outskirts of urban zones. In exceptional circumstances aid can be granted in urban agglomerations (e.g. for backbone) in case all other award criteria for the aid are fulfilled. Thus, target areas have been divided into 4 categories according to population density and aid intensity for the same type of project is adjusted according to population density.
- (14) Mostly of these areas represent "NGA white" areas, which do not currently have an NGA network in place or planned to be deployed in the next three years. The target area includes some "NGA-grey" areas (i.e. where another NGA network is present or planned), but State aid measures in these areas are not covered by the present decision, as they will be notified separately by the German authorities.
- (15) Applying municipalities must present a visual representation (a map in appropriate resolution defined by the granting authority), of the target area to be covered, together with the subsidized and not subsidized network elements.
- (16) For a grant application to be considered, it has to present a proof of an area being "NGA-white". In case of "NGA-grey" areas, applicants for grants have to present proof (demand survey) that the target area is underserved with NGA and the planned step change to be achieved, as described in recital (14). Applications have to include a justification why other measures such as vouchers or ex-ante regulation cannot satisfy the unmet demand.
- (17) **Consultation with stakeholders:** The initiative must be published for consultation for at least 1 month on www.breitbandausschreibungen.de. Also a map of the existing service levels has to be published at the time of the consultation at latest. Service providers have to confirm the correctness of these data and declare if they plan any developments in the target area in the coming three years. Service providers subject to this consultation must also ensure that their own infrastructures are included into the "Infrastrukturatlas" maintained by the Regulatory Authority "Bundesnetzagentur". Service providers also have to be made aware that – in case they participate in the tender process - they will have to commit to giving access to their existing passive infrastructure to the winning operator. Municipalities also have to contact the operators present in the region individually. In case of access networks, also local utility companies (electricity, gas and water) need to be consulted whether they would be interested in using or jointly deploying the infrastructure –mainly ducts and reduce the aid intensity of the project (these companies paying for their share of the infrastructure). Applicants for grants have to present proof of having carried out this consultation

and the proof that the development in question would not have been carried out without public intervention within the next three years.

- (18) Shall an operator signal its intention to develop the target area within the next three years, the municipality can demand that at least 98% of the target area be covered during the three years. Within two months of the declaration of this intention, the operator must present a business plan, proof financing security and the time schedule for investments. Within 12 months, deployment must begin. This can be also contractually agreed. Shall the operator fail to deliver on the plans; the municipality may start executing the public project.
- (19) Results of the consultation must also be published on the website www.breitbandausschreibungen.de.
- (20) **Detailed mapping of existing infrastructure:** Every application for grant that includes construction of physical infrastructure must present a clear record of the existing infrastructure and a reasoned concept of the how and why the new elements will complement this existing infrastructure. It has to provide an interconnection plan as well. These have to be confirmed by an expert study or the plans must obtain prior written approval from the Regional Office for Communications in Baden-Württemberg. In case of inter-communal networks, other municipalities have to be consulted on the availability of backbones, access conditions and economical aspects of their use versus new construction have to be considered. This consultation can be replaced by an expert study. All telecommunications operators must provide adequate information in a timely manner for all other companies participating in the selection process in order to enable them to carry out the planning of the infrastructure and the design of the offers.
- (21) **Proportionality:** For projects over 200 000 EUR, the assessment of the cost benefit analysis has to be presented to the Legal Supervisory Authority⁴.
- (22) **Choice of the network operator:** The municipalities shall own the passive infrastructure but shall not operate it themselves⁵. The private network operator will be selected by way of an open, transparent and non-discriminatory selection procedure. All participating operators have to commit to provide access to their respective infrastructures to whoever the award winner is going to be. A notice regarding the selection has been published on the central federal website: www.breitbandausschreibungen.de. Border areas to Switzerland and France need to be published Europe-wide. The selection of the operator will be in compliance with the Part A of the German law on contract procedures for supplies and services (VOL/A), in line with European procurement law. Those companies will be invited to the evaluation procedure, which confirm compliance with the performance criteria. Municipalities are free to choose their objective evaluation criteria and their weighting. The evaluation criteria and their weighting need to be published in the tender. The contract shall be awarded to the bidder offering the best value for money. The first time lease for the operator shall be at least seven

⁴ Rechtsaufsichtsbehörde

⁵ Under exceptional circumstances, if no operator can be found, the municipality can resort to own operation of the network, although only through a private law structure and in coordination with the Ministry for Rural areas and Consumer Protection and under compliance with the so called Altmark conditions, as clarified, taking into account the specificities of the broadband sector, in paragraphs 18-27 of the Broadband Guidelines.

years. Shall only one operator apply; the offer must be cross-checked by an external auditor. The final contract has to be presented to the "Bundesnetzagentur" for approval. Shall the "Bundesnetzagentur" remain silent for eight weeks, the contract is considered approved.

- (23) **Technology neutrality of the tender:** The tender needs to remain technology neutral and has to define only the required service levels that need to be met in the target area and by when.
- (24) **Construction of the physical infrastructure** will be tendered according German national procurement regulation; Administrative Regulation of the Ministry of Interior for the Award of Contracts in the Municipal Sector, Regulation on the Awarding of Contracts in the Construction Sector⁶.
- (25) **Rights and obligations under the Concession Agreement:** The operator leasing the municipal infrastructure shall have a concession contract for at least 20 years. The operator must provide wholesale open access to any other operator that may seek access for at least seven years. Access must be provided through physical unbundling and bitstream. No time limit will be applied for access to ducts, masts, dark fibre and street cabinets. The operator must grant access not only to the subsidized infrastructure but to all other existing infrastructure it uses. Upon request, the access must be provided without delay. Even in case of a change of ownership of the subsidised infrastructure, access obligations are maintained.
- (26) **Wholesale access pricing:** For access pricing, the regulated prices of the "Bundesnetzagentur" will apply. In case the access product is not priced by the "Bundesnetzagentur", further benchmarking will be carried out with other comparable regions. Wholesale access prices must be cost-oriented taking into consideration local specificities. The network operator must demonstrate a justification for the access prices.
- (27) An independent expert shall be designated for the case that no agreement can be reached on the access conditions between network operator and access seeker. In this case sufficient time for reaching an agreement is to be granted and the opportunity for the network operators to present their standpoints. The expert opinion must be presented to the "Bundesnetzagentur" for consultation.
- (28) For those regarded by the "Bundesnetzagentur" as operators with significant market power, only regulated access prices can apply.
- (29) **Transparency, Monitoring, Control and Claw-back mechanism:** Beneficiaries are requested to use the Online Monitoring System on www.breitbandausschreibungen.de and fill in the information form yearly, until February 15. This monitoring provision may change once a federal broadband scheme will be in place. The contract award will be published on the federal website: www.breitbandausschreibungen.de. Consequently, name and deployed technology of the beneficiary, the amount and intensity of aid will also be public. From the time the network becomes operational, every two years the Ministry for Rural Areas and Consumer Protection will report key information about the project to the European Commission. The established infrastructure has to be documented and added to the registry of the Regional Office for Geo-information and Regional Development. The Office transmits this information yearly, until February 27, to the "Bundesnetzagentur" for inclusion into the

⁶ "Verwaltungsvorschrift des Innenministeriums über die Vergabe von Aufträgen im kommunalen Bereich (VergabeVwV)", "Vergabeordnung für Bauleistungen (VOB)".

"Infrastrukturatlas". For projects above 10 million EUR having received aid, actual achieved revenues by network operator will be checked against the business plan five years after the start of operations. If revenues exceed the planned by more than 30% a claw-back will be applied; the supplementary profits have to be returned to the aid grantor.

V. STATE AID ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (30) 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 support measure to be qualified as State aid, it has to be granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.
- (31) As described in recitals (9) and (10) the measure encompasses financing initiatives by the German authorities; public funds under the control of these authorities allocated to the beneficiaries with an element of discretion. Hence, State resources are involved.
- (32) The scheme results in a selective economic advantage for both the electronic network operators selected in the tendering procedure and for third parties who gain wholesale access to the subsidised network and can consequently offer their services on conditions not otherwise available on the market.
- (33) Finally, the measure is liable to distort competition. At network operator level, State support may deter other operators in the region from setting up or developing their own networks under commercial conditions. The State support may also encourage local undertakings to take advantage of services offered in the subsidised network rather than more expensive market solutions. In so far as the intervention is (at least potentially) liable to affect providers of electronic communications services from other Member States, the measure has an effect on trade. The markets for electronic communications services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. Therefore this support is also likely to affect trade between Member States.
- (34) The Commission therefore concludes that the notified aid measure constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the notifying Member State in the notification.

VI. COMPATIBILITY ASSESSMENT

- (35) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) of the TFEU and in the light of the *EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*⁷ (the "Broadband Guidelines") which contain a detailed interpretation of Article 107(3)(c) of the TFEU for this kind of State aid.

⁷ OJ C 25, 26.1.2013, p.1.

- (36) As explained in paragraphs 33 and following of the Broadband Guidelines, for aid to be found compatible with the Broadband Guidelines (and thus with Article 107(3) (c) of the TFEU), the following conditions must be fulfilled:
1. The aid must contribute to the achievement of objectives of common interest
 2. Absence of market delivery due to market failures or important inequalities
 3. The aid must be appropriate as a policy instrument
 4. The aid must have an incentive effect
 5. The aid is limited to the minimum necessary
 6. Negative effects must be limited
 7. The aid measure must be transparent

If these conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against the potential negative effects.

The aid contributes to the achievement of objectives of common interest

- (37) In its Europe 2020 strategy⁸ the Commission defined the Flagship Initiative "A Digital Agenda for Europe", which has the "aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra-fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps." In pursuing this aim, "at EU level, the Commission will work ...to facilitate the use of the EU's structural funds in pursuit of this agenda", and "at national level, Member States will need ... to draw up operational high speed internet strategies, and target public funding, including structural funds, on areas not fully served by private investments." Key Action 8 of the Digital Agenda calls Member States "to use public financing in line with EU competition and State aid rules" in order to meet the coverage, speed and take-up targets.
- (38) By promoting the development of NGA networks in "NGA white" areas with download speeds of at least 50 Mbit/s asymmetrically for the general population and upgrading networks in "NGA-grey" areas for businesses to symmetrical 50 Mbit/s, see recitals (4) and (5), the measure will contribute greatly to the objectives of the Digital Agenda and therefore contribute to the achievement of an objective of common interest.

Absence of market delivery due to market failures or important inequalities

- (39) As explained in recital (14) most part of the measure targets only so called "NGA white" areas, where very high speed broadband is currently not available and where it is established, by way of detailed market consultation (see recital (17)), that there are no plans by private investors to roll out such infrastructure in the next three years. In those few initiatives where the area is "NGA-grey", the market failure has to be demonstrated with additional proof (see recitals (14) and (16)).

⁸ EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, 3.3.2010, page 12.

The aid is appropriate as policy instrument

- (40) Upgrading broadband in "NGA white" areas requires significant upfront investments that are amortised over a long period of time. Alternative instruments alone, such as demand side measures in the form of grants, vouchers or tax incentives to end users, do not provide the critical mass to remedy the lack of supply (namely non-existence of the infrastructure). Ex ante regulation is serving the effectiveness of the scheme but is in itself not sufficient to entail large scale network deployment. Concerning "NGA-grey" areas that are eligible for support, the applying municipality has to include the justification why the higher bandwidths cannot be achieved through other means e.g. vouchers than with State aid. The evaluation of these cases will be made on an individual basis by the granting authority.

The aid has an incentive effect

- (41) As set out in paragraph 45 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not be undertaken within the same timeframe without any State aid. The scheme ensures that aid can only be provided if it is established that in the targeted areas no comparable investment would take place without public funding within three years (see public consultation in recital (17). Hence the investment would not be made within the same timeframe without the aid, which thus produces a change in the investment decisions of the operators and thus has an incentive effect.

The aid is limited to the minimum necessary

- (42) Germany has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes the following positive elements in the design of the measure (paragraph 78 of the Broadband Guidelines):
- (a) *Detailed mapping and coverage analysis, public consultation:* as described in recitals (17), (18), (19) and (20), public bodies must ensure that all necessary information about the planned project and existing infrastructures is transmitted to all those operators that could potentially be interested or affected. This information must be published on www.breitbandausschreibungen.de but operators active in the region must be contacted individually. Participants to the public consultation must also disclose their available infrastructures and commit to give access to their infrastructure to the winning bidder. They are invited to declare any own development plans in the target area for the next three years, which – upon their investment commitment, will be removed from the project. This manner it will be ensured that public funds will be used only in areas where private interest to develop is absent, therefore the possibility of crowding out private investments and distorting competition vis-à-vis existing operators is kept to a minimum.
- (b) *Competitive selection process:* as described in recitals (22) and (24) the construction and the operation of the network are selected by way of open, transparent and non-discriminatory tender procedures in full compliance with German and European public procurement rules. All notices regarding selection procedures under the measure are moreover published on a central online portal, www.breitbandausschreibungen.de, thus allowing all potential bidders to be easily aware of all on-going tender procedures.

- (c) *Most economically advantageous offer*: On the basis of predefined and published objective criteria, the network operator requesting the lowest aid amount (best value for money) is in principle to be selected (see recitals (21) and (22)).
- (d) *Technological neutrality*: The tender documents must be technology and provider neutral, leaving it to commercial operators to propose the technological solutions they find most effective and efficient (see recital (23)).
- (e) *Use of existing infrastructure*: as explained in recitals (17), (20) and (22) operators active in the region and public bodies have to disclose all available infrastructure and commit to provide access to the winning bidder. Planning of the infrastructure must include the use of the available elements. In case of a network construction by the municipality, the plans are to be cross-checked by experts or the Regional Office for Communication. Unnecessary and wasteful duplication of resources should in this way be avoided and the funding gap (and hence the funding) should thus be minimised.
- (f) *Wholesale access*: in line with points 78(g) and 80(a) of the Broadband Guidelines, the selected operator must ensure full and effective unbundling and provide full open access to the subsidised network and all other network elements it uses (including but not limited to access to ducts, dark fibre, street cabinets, and bit-stream and unbundled access to fibre) on fair and non-discriminatory terms for at least seven years. Furthermore, full access, without limitation in time, is always to be guaranteed to any new passive infrastructure elements, such as ducts and poles (see recital (25)).
- (g) *Wholesale access pricing*: As described in points 78(h) of the Broadband Guidelines, wholesale access prices are to be based on the price set or approved by the "Bundesnetzagentur" or benchmarked against average wholesale prices of comparable access services in other, more competitive, parts of the country. Disputes between the network operator and access seekers, where the price is not regulated, will be settled by a previously designated independent expert. Thus, it will be ensured that access prices are kept at a reasonable and non-discriminatory level so that competition can develop (see recitals (25), (26) and (27)).
- (h) *Transparency, monitoring and clawback*: In line with point 78(j) of the broadband guidelines, all relevant information regarding any aid granted will be published on a central online portal www.breitbandausschreibungen.de. This also where projects have to report to and publish yearly milestones. All created infrastructure will be documented and included into the "Infrastrukturatlas". Where the funding of a project exceeds EUR 10 million, a claw-back mechanism is put in place for (see recital (28)). As foreseen in point 78(k) of the Broadband Guidelines, every two years, key information is reported to the European Commission.

The aid has limited negative effects

- (43) Given the design of the measure and its compliance with the conditions of Article 78 of the Broadband Guidelines (see recital (42) above), it is unlikely to have a crowding out effect on private investments.
- (44) In particular, most of the aid is confined to "NGA white areas", where no operator is willing to invest in NGA infrastructure without State aid in the next three years. Also, where a broadband network already exists, the measure requires that a "step change" be achieved; the public intervention must result in significantly better

capacity and thus service availability and the selected bidder must carry out significant new investments in the existing broadband networks (see recitals (14) and (16)). Any development in grey areas has to be additionally examined by the Commission whether they fulfil the criteria described in paragraphs (67)-(70) of the Broadband Guidelines. These conditions also ensure that the public intervention does not crowd out comparable private investments.

- (45) Furthermore, the operator is to be selected by open tender; full open access is to be granted to the subsidized infrastructure and there are several mechanisms to prevent wholesale access prices from being excessive.
- (46) Therefore, negative effects of the measure, if any, are expected to be limited.

Transparency

- (47) As explained in recital (29) the measure ensures that the interested public and the Commission should have easy access to all relevant acts and pertinent information about the aid awarded thereunder.

Overall balancing: the positive effects of the aid measure are expected to outweigh its potential negative effects

- (48) The Commission concludes 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.
- (49) In view of the characteristics of the project and of the safeguards applied, the overall impact on competition is deemed to be positive. The provision of NGA services by creating a high quality and capacity infrastructure has a pro-competitive impact, as it allows several network operators to use the subsidized infrastructure and compete on services to the end user.
- (50) The increase in network capacity is expected to stimulate market entry by service providers and the provision of a larger variety of services. Access of competing operators is ensured by requiring open access to the subsidised network on equal and non-discriminatory terms for at least seven years. The risk of crowding out private investments and the negative effects of the measure are expected to be limited (see recitals (43) – (46)). The measure does not entail any negative effects on trade, there does not appear to be any significant negative spill-over for other Member States. Accordingly, the measure is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest measure and is in line with the objectives of Article 107(3)(c) TFEU.

Conclusion

- (51) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3)(c) of the Treaty on the Functioning of the European Union.

VII. DECISION

- (52) The Commission has accordingly decided that the aid measure "*NGA Scheme Baden-Württemberg*" as laid down in "*Verwaltungsvorschrift des Ministeriums für Ländlichen Raum und Verbraucherschutz zur Breitbandförderung*" is compatible with the TFEU, in accordance with Article 107 (3)(c) TFEU.

- (53) 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.
- (54) 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>.
- (55) Your request should be sent electronically to the following address:
European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,
For the Commission

Margrethe Vestager
Member of the Commission