



EUROPEAN COMMISSION

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WORKING LANGUAGE

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**Subject: State aid SA.33420 (2011/N) – Germany
Breitband Lohr am Main**

1. PROCEDURE

- (1) On 27 July 2011, Germany notified to the Commission the above-mentioned aid measure.

2. DESCRIPTION OF THE MEASURE

- (2) The individual aid notification concerns the area of Lohr am Main¹ in Bayern, Germany. The Germany authorities planned to support the creation of an adequate basic broadband coverage in the white areas of Lohr am Main where commercial operators are not willing to invest on market terms. This will be done on the basis of the approved State aid broadband scheme of Bayern². Following the conduction of an open tender procedure and selecting the most economically advantageous offer, it turned out that the selected bid requires an aid amount of

¹ Egenhofen is a municipality located in the district Main-Spessart, Unterfranken with a population of 15.921.

² When the measure was designed and the tender procedure was concluded, Commission decisions N266/2008 "*Broadband in rural areas of Bayern*", OJ C/12/2009, 17.01.2009, p. 2 and N153/2009 "*Amendment of the State aid broadband scheme N266/2008*", OJ C/284/2009, 25.11.2009, p. 13 were the relevant legal basis for the measure under assessment.

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€80,567 which is higher than the maximum aid amount of €500,000 per single project authorized under the approved scheme.

- (3) Therefore Germany notified to the Commission the current measure as an individual aid measure for State aid assessment.
- (4) The German authorities confirmed that the measure is in line with Commission decisions N266/2008 and N153/2009³ authorizing the State aid to broadband in Bayern, and accordingly with the Broadband Guidelines⁴, which contain a detailed interpretation of Article 107(3)(c) TFEU in this area of State aid law. The only difference is that the condition for the maximum aid amount, which was proposed by Germany itself, is not fulfilled.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (5) As explained in the decisions concerning the original scheme⁵, the measure will be financed by State resources, namely from resources of the municipality and the Land of Bayern. It will provide selective economic advantage to the electronic communication operators selected via the tender procedure and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidized network. There will be also an advantage for the businesses in the targeted areas.
- (6) The measure has the potential to distort competition by enabling local undertakings to subscribe to the services offered 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.
- (7) Therefore, the Commission considers that the measure constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility of the aid

- (8) As confirmed by the German authorities, all aspects of the measure are in line with the authorized broadband scheme, except that the aid amount is larger than the maximum aid of €500,000 allowed under the scheme as the bid selected through the open tender procedure requires an aid amount of €80,567.
- (9) The Commission notes that the bidder was selected through an open tender procedure and the aid will be awarded to the most economically advantageous bidder fully in line with the Commission decisions authorizing the scheme for broadband development in Bayern. Accordingly the Commission can conclude that the aid amount is the minimum necessary to achieve the objective of providing adequate broadband coverage for the white areas of Lohr am Main.
- (10) The Commission also notes that all the necessary safeguards ensuring that the measure will remedy a well-defined market failure in a necessary and proportionate way and limit any potential distortion of competition to the

³ For references, see footnote 2.

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

⁵ For references, see footnote 2.

minimum possible will remain unchanged (inter alia, detailed mapping and coverage analysis has been verified by consultation with market operators; the aid has been awarded through an open and transparent selection procedure selecting the most economically advantageous offer; the measure is technology neutral; the use of existing infrastructure was considered to avoid unnecessary and wasteful duplication of resources; the selected operator has to provide wholesale access to third party operators; minimising of the price distortions and monitoring is ensured) and accordingly the measure is fully in line with the conditions stipulated in paragraph 51 of the Broadband Guidelines⁶.

3.3. Conclusion

- (11) Consequently, for the same reasons as explained in Commission decisions N266/2008 and N153/2009, the individual aid is compatible with Article 107(3)(c) TFEU.

4. DECISION

- (12) In view of the above, the Commission finds that the aid granted on the basis of the measure in question is compatible with the internal market in accordance with Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (13) The Commission reminds Germany to submit annual reports on the application of the aid scheme and to inform the Commission pursuant to Article 108(3) TFEU on all plans to approve a new or to modify this aid measure.
- (14) 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/eu_law/state_aids/state_aids_texts_en.htm.

⁶ In accordance with footnote 59 of the Broadband Guidelines, in case of a project with very low aid amounts or small scale, "one-off" projects based on simple procurement principles, claw back mechanism may impose a disproportionate burden on the granting authorities and will not therefore be required by the Commission. The Commission agrees that the measure under assessment with an aid amount of less than €1 million falls into this category, hence claw back mechanism would not be required (see also Commission decision of 06.05.2010 in case N62/2010 High-speed Broadband Construction Aid in Sparsely Populated Areas of Finland).

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

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Directorate-General for Competition
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Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President of the Commission