EUROPEAN COMMISSION

Brussels, 16.XI.2004

C (2004) 4346 fin

Subject: **State aid N 307/2004 – United Kingdom**

Broadband in Scotland –remote and rural areas

Sir,

I. Procedure and background

1. By letter dated 6 July 2004 (registered 12 July 2004) the United Kingdom authorities (hereinafter: UK authorities) notified the Commission of a project to finance the provision of mass market broadband services to businesses and citizens in remote and rural Scotland. By letter of 9 September 2004, the Commission asked for additional information. The UK authorities replied by letter on 29 September 2004 and 3 November 2004

2. According to the UK authorities, there has been a considerable progress in the roll-out of mass-market broadband services in Scotland[1]. However, there is no clear indication of how much further the broadband market is likely to extend in Scotland in the short to medium term. It is questionable whether the developments will go far enough to prevent a digital divide. The UK authorities state that British Telecom (the incumbent) has declared its intention to upgrade all remaining telephone exchanges on its trigger list to allow for ADSL access. However, 600 exchanges will be left without access. Of these 600 exchanges 399 are in Scotland and cover 50,000 households and around 5,900 businesses. Even where exchanges have been enabled, there is a sizeable minority of the households and businesses which are physically out of reach of the ADSL service. Furthermore, broadband access via cable modem is available in the majority of the cable franchise areas in Scotland, but these areas are mainly in the Central Belt and reach only 40% of the households. The authorities also allege that cable companies do not seem to have the intention to build. Finally, the authorities reiterate that wireless technology has potential in Scotland, but operators have made clear that this is unlikely to be the case for all of the dispersed and difficult to reach areas of the market without funding. According

[1] From 43% of households having access in 2001 to 82% coverage as of March 2004.

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to the authorities, it is clear that without State intervention in the short to medium term, the market would be unable to respond to deliver services to about 4% of the households in central and southern Scotland, and 20% of households in the Highlands and Islands.

3. According to the authorities, Scotland has in addition one of the highest concentrations of less favoured areas (LFA) in the European Community and the project will help to ensure that the small population in remote areas, the vast majority of which are LFA territory, is not disadvantaged through a lack of broadband access[2].

II. Detailed description of the measure/aid

Title, legal basis

4. The UK authorities have notified the project "Broadband for Scotland –Extending broadband access to rural and remote Scotland" which will be implemented under Section 53 of the Scotland Act 1998. The project will be administered on a regional level (Scotland).

Budget

5. The total intervention budget will approximately be between £ [...][*] and £[...] million, including UK State resources and ERDF funds. The UK State is expected to finance up to £[…] million, depending on the bids received. The final intervention budget will be dependent on the outcome of a number of applications for ERDF funding. The UK authorities have stated that if all of the applications were to be approved, the total amount of ERDF funding for the project would be £ […]. Based on consulting studies, the UK authorities expect that private funding will amount to two to three times the intervention budget. Hence the aid intensity, including UK State resources and ERDF funds, is expected to be in the range of […] %.

Duration

6. The Services Agreement will require the services to be provided under the specified conditions for a period of 3 years (subject to a possible extension of up to a further period of 2 years). In addition, the Scottish Executive has stated that within the negotiations with the Service Provider it will pursue the goal of guaranteeing wholesale open access after the State funding has come to an end. A post-termination clause is expected to be included to that effect in the Services Agreement.

[2] According to the UK authorities, the geographical and demographic characteristics of these areas inhibit the commercial case for broadband deployment: the areas include remote areas (79% of the EU 25 NUTS 2 areas are less peripheral than Scotland – 2nd Cohesion Report), inhabited islands (over 100 of these islands in Highlands and Islands area), sparse and dispersed populations (3 persons per square kilometre) and economically disadvantaged areas (GDP per head is 72% of the average figure of the EU15).

[*] Business secret

Beneficiaries

7. The project aims to provide advanced broadband services to the households and businesses in remote and rural areas of Scotland. In addition, any single company or consortium, including telecom operators, service providers and system integrators, can participate in the tender to become the selected service provider and receive the subsidy.

Object of the aid

8. According to the UK authorities, the aim of this project is to secure the extension of high-speed broadband services to those parts of Scotland where there is currently no planned commercial coverage whilst promoting the technological diversity which is a characteristic of the broadband market. The underlying objective of the project is to correct a broadband digital divide in Scotland between communities and businesses that can get affordable access to broadband services and those who cannot. Hence the principal rationales for intervention are to promote social equity and economic development.

Project principles

9. Under the Broadband for Scotland project the UK authorities seek through an open tender to contract provision of broadband services in areas which currently have no prospect of broadband provision.

10. The exact service offering will depend upon the specific proposal of the selected tenderer. The Invitation To Negotiate (ITN) document will however specify that the service should offer peak bandwidths of at least 512kbit/s downstream and 256kbit/s upstream; a maximum contention ratio of 50:1 and end user prices (and terms and conditions) comparable to those available for equivalent services in urban areas of Scotland.

11. The principles of the procurement and the provision of this service will be that it is:

    – technologically- neutral, i.e. no a priori specification;

    – fully open to all providers, i.e. whole sale services can be offered;

    – aiming to bring equity of access across Scotland, in terms of coverage and price;

    – the end users of broadband services provided by the selected service provider will pay full commercial rates for such services, subject to the principle of price equity. This means that the service provider must guarantee that the price to the end-user will be comparable with those in areas where broadband services are already established;

    – designed to achieve competition at the retail level by mandating open access for retail service providers to a wholesale service from the selected supplier; and

    – the provider will be expected to charge the market rate in urban areas (in line with the price equity requirement) for wholesale price to ISP's.

12. The selected supplier will be obliged to offer both retail services (to end-users) and whole sale services (to the other retail service providers). The appointed service provider will also be asked to provide a clearly specified timetable for service delivery and details of the annual cost of the service provision. The contract will be for the provision of

services not infrastructure. It will be for the service provider to lease or build infrastructure in order to meet the service requirements. The ownership of any infrastructure used will remain in the private sector.

Eligible costs

13. The eligible costs must be directly attributable to the Project and will cover only the cost of providing the services for the period of the Services Agreement.

Procurement

14. The procurement will be conducted in accordance with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts[3]. More precisely, the UK authorities have chosen a negotiated procedure due to the complex trade-offs involved in this project between service coverage, service quality and costs. The contract will be awarded to the Economically Most Advantageous tenderer in accordance with UK government accounting rules.

Service Agreement

15. All payments will be subject to the Service Agreement between the service provider and the Scottish Executive.

Monitoring

16. The fees payable to the Service Provider will be subject to an annual review by the Scottish Executive for the purpose of reconciliation of the fees payable in light of the demand levels reached in respect of broadband services provided. In addition, payments to be made will be reviewed against performance of the services in accordance with the requirements set out within the Services Agreement by the Scottish Executive, in conjunction with an appointed representative of the service provider, on a quarterly basis.

Repayment of aid

17. Payments made under the contract will be linked to the level of demand for broadband within the relevant parts of Scotland. Therefore, if demand in a certain area covered by the contract reaches a level at which a broadband provider could reasonably be expected to provide services without financial assistance, the financial assistance will have to be repaid[4]. The purpose of this mechanism is to ensure there is no over-compensation to the service provider as demand grows. The Scottish Executive will assess the supplier's returns as a whole for the provision of retail and wholesale services in the intervention area, and receive a repayment of any “excess” return.

18. In terms of the specific mechanism for repayment of over-compensation, the Scottish Executive considers a discounted cash flow methodology more appropriate than a simple percentage of profit earned, as this is a financially more rigorous means of capping a supplier's return on an investment. According to the Scottish Executive, it will also be easier for the Scottish Executive to monitor the financial situation.

19. The supplier's Internal Rate of Return (IRR) will be capped at an agreed threshold. A review at the end of an agreed period (e.g. five years) would assess the supplier's

[3] The Contract Notice (2004/S 153-133031) was published in the Official Journal of the EU on 7 August 2004.

[4] E.g. where demand is at levels similar to that in areas where broadband is currently available).

achieved cash flows associated with the provision of services over the period (using an agreed retrospective discounted cash flow methodology). If their achieved IRR exceeds the pre-agreed threshold, then a repayment would be triggered sufficient to reduce their IRR down to the threshold level.

20. Finally, if the appointed service provider fails to carry out the service in accordance with the provisions of the Services Agreement, the Scottish Executive will have the right to recover payments made.

III. Assessment of the measure

21. According to the EC Treaty and consolidated case-law there is State aid within the meaning of Article 87(1) when:

- there is an intervention by the State or through State resources;
- the intervention is liable to affect trade between Member States;
- it confers an advantage on the recipient and,
- it distorts or threatens to distort competition.

State resources

22. The Service Provider will be selected by the Scottish Executive and it is the latter which will conclude an Agreement with the Service Provider as well. Payments will be based on this Agreement. The payments made to the Service Provider by the Scottish Executive can therefore be considered as State resources.

Economic advantage

Service provider

23. An open tender procedure tends to minimise potential advantages to the service provider in terms of excessive returns. However, it should be noted that the procurement procedure followed included a negotiation phase and has involved qualitative elements. Moreover, even if the Service Provider would not receive an excessive return on its overall investment, it receives a financial support that gives it the possibility of entering the market and establishing its business. The subsidy will allow the Service Provider to offer lower prices than it would have been able to offer had it to bear all costs by itself and, as a consequence, the Service Provider will be able to attract more customers than under normal conditions.

24. The authorities have claimed that the reverse payment mechanism is designed to avoid over-compensation by assuring that revenues in excess of a reasonable return on investment are used to recover the project costs. However, even if eventually all public funds are repaid, payment of interest is not foreseen and their availability upfront is comparable to an interest-free loan. The absence of interest might imply a reduction in the net present value of the repayment.

25. As a result of the State contribution, the selected bidder is likely to acquire ownership of part of the infrastructure necessary to provide the services.[5] The service provider will be

[5] The selected bidder has the option of using infrastructure of third parties. In any case the infrastructure will be in the ownership of the private sector.

in a position to exploit this infrastructure, as well as other tangible and intangible assets acquired with State funds (e.g. equipment, customer relationships and goodwill) even after the lifetime of the project and hence enjoy continuing benefits[6].

End-users

26. The objective of the State subsidy is to provide broadband services to businesses (and citizens - however citizens are not subject to State aid rules). These services are currently not available.

27. In addition, such service provision has to be at affordable prices, as opposed to current offers which are deemed too expensive. According to the authorities, in terms of broadband services there are essentially two options currently available, neither of which could be considered to be equivalent to 'affordable' broadband. According to the UK authorities, businesses in the intervention area can theoretically purchase dedicated leased lines up to 155Mbit/s either directly from British Telecom (BT) or from other suppliers. While cheaper than leased lines, broadband satellite services – available from BT and other suppliers – are still several times more expensive than the mass market broadband services available in urban areas in Scotland[7]. With the intervention of the authorities, broadband will be available at affordable prices, i.e. at prices comparable to prices offered in urban areas in the United Kingdom.

28. Hence citizens and businesses in rural and remote Scotland will benefit from service coverage beyond and priced below what is provided purely on a commercial basis. In addition, they will enjoy an advantage in comparison to businesses located in other underserved regions of the United Kingdom.

29. Considering that many businesses are to be connected to the service, it seems that the advantage for each individual end-user beneficiary could be below the "de minimis" thresholds. However, the UK authorities did actually claim "de minimis" for the end-users. Since the UK authorities did not provide any assurance relating to the respect of Article 3(1) of the "de minimis" regulation regarding accumulation and monitoring, it therefore cannot be excluded that aid granted to end-users exceeds the limits set out in the aforementioned "de minimis" Regulation.[8]

Resellers

30. The above mentioned elements seem to suggest that indirectly, third party providers of broadband services are also expected to benefit from the State resources given the open access requirements. While the prices of these wholesale products are not predetermined, given the fact that a subsidy is given, the project is aiming at a minimum coverage to be achieved via retail or wholesale services and affordability is one of the requirements, one

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[6] Commission decision N 282/03, Project ACCESS of 10 December 2003, para. 5, published OJ C16, 22 January 2004.

[7] Costs per year (12 months contract) for broadband of 512kbps: for BT Yahoo! Broadband (ADSL delivered) which is not available in the intervention area in Scotland costs £ 349; BT Satellite 500 costs £ 2,196 and BT Flex Silver (over leased lines) costs finally £ 16,685.

[8] Commission Regulation No. 69/2001 on the application of Article 87 and 88 of the EC Treaty to de minimis aid, OJ L 10, 13 January 2001, p.30.

would expect the wholesale prices to be lower than what would be offered under normal market conditions in these remote and rural areas without State intervention.

Distortion of competition

31. The intervention of the State alters the existing market conditions by allowing new entrants into the provision of broadband services including the selected Service Provider and, potentially, some third party providers. The fact that the services are procured via a tender does not completely remove this selective advantage granted to the selected service provider. In making their choice of investment in broadband infrastructure and service, the incumbent telecom operators have based their calculations on the assumption that other operators would have had to bear the costs of a new infrastructure or pay a market price for its services, which is no longer the case after State intervention. Even if for example an existing operator were to win the tender, their original business models would have to be altered by coverage and open access requirements beyond their current regulatory obligations, if any. Therefore, the fact that a new broadband service becomes available and at below market prices, has the effect of distorting competition.

Effect on trade

32. Insofar as the intervention is liable to affect telecom operators and service providers from other Member States, the measures have an effect on trade. The telecom market is more and more open to competition between operators and service providers, which generally engage in activities that are subject of trade between Member States. There may also be an effect on competition between the end-users and their competitors in other Member States, although the importance of that effect will probably be relatively low.

Conclusion

33. In view of the above, the Commission considers that the project grants an economic advantage to the selected Service Provider, to the end users (businesses) and third party service providers. The project is publicly funded, distorts competition and has an effect on trade between Member States. Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 87(1) EC.

IV. Assessment of the measure: compatibility

34. Having established that the project involves aid within the meaning of Article 87(1) of the EC Treaty to the selected Service Provider, the re-sellers and to the businesses, it is necessary to consider whether the measure can be found to be compatible with the common market.

35. It should be noted that although some of the areas covered by the project are considered as Objective 1 transitional areas under the European Regional Development Fund (ERDF) rules, they are not all in assisted areas within the meaning of the Regional Aid Guidelines[9]. Hence the measure can not be assessed under the Regional Aid Guidelines.

36. The Commission notes that the project intends to ensure the widespread availability and use of mass market broadband services at conditions closer to those in areas with a greater density of population and businesses. The Commission acknowledges furthermore that the existing frameworks and guidelines cannot be applied to assess aid measures that specifically target this objective. The Commission therefore considers that the assessment of the compatibility of the measure with the common market needs to be based directly on Article 87(3)(c) of the EC Treaty.

37. Article 87(3)(c) of the EC Treaty states that:

"aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" may be considered to be compatible with the common market.

Necessity of the measure

38. Broadband access is seen as a necessary step for the modernisation of the EU society and economy and is a crucial aspect of the Lisbon agenda. It is a pre-requisite for the development of e-Government, e-Learning and e-Health projects. [10] Implementing the eEurope Action Plan 2005, EU15 Member States have put comprehensive national broadband strategies in place. This process is now being extended to all 25 EU Members.

39. Broadband is a type of service that by its nature is capable of positively affecting the productivity and growth of a large number of sectors and activities. Regional economic development benefits resulting from greater broadband deployment can include job creation and retention, more industrial growth, improved education and health systems

[9] OJ 1998 C 74, p.9.

[10] Commission Communication COM(2004) 369 of 12.05.2004, "Connecting Europe at High Speed – National Broadband Strategies"

and even reduced traffic congestion.[11] Moreover, its economic impact is closely linked to the extent to which broadband is diffused across a country or a region. This is partly because in network technologies, the more people and firms that use the network, the more benefits it generates.[12] Finally the social and economic case for broadband takes on added significance for rural and remote communities, where improved communications can address a variety of challenges posed by distance.[13]

40. The relevant areas for this project include remote areas, inhabited islands, areas with sparse/dispersed population and areas with fragile and seasonal economies. The limited physical infrastructure and economic weakness of rural and remote Scotland increase the importance of facilitating communications technology take up. It is believed that through provision of mass market broadband services, employment, sales and innovation in businesses could increase.

41. However, the costs characteristics of broadband networks are such that services are generally much more cost effective to roll out, and hence available at cheaper terms, where demand is higher and concentrated, i.e. in densely populated and in relatively wealthy areas. High "economies of density" have usually been a key success factor in countries and regions where there has been rapid deployment of broadband.[14] On the downside, such economics may have the effect of increasing the disadvantage for less developed or scarcely populated areas such as remote and rural Scotland. As seen from the broadband demand registration schemes in Scotland, operators are often unwilling to make the necessary investment in upgrading the infrastructure unless a certain level of demand concentration is guaranteed beforehand.[15] This is also the case in Scotland, where 399 exchanges will be left without access (covering 50,000 households and 5,900 businesses).

42. The reason for such "economies of density" is that most broadband technologies today are inherently uneconomical in low population density areas since unit costs escalate dramatically as population densities drop. High average costs per users for broadband services are mainly driven by high capital costs, especially in the access network. In the case of fixed networks, 65-70% of the costs associated with the deployment of broadband in the access network is related to civil infrastructure.[16] These costs are

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[11] US Department of Commerce, Office of Technology Policy "Understanding Broadband Demand", September 2002

[12] OECD "The Economic Impact of Information and Communication Technologies (ICT)", 2004

[13] OECD "Broadband Driving Growth: Policy Responses", October 2003

[14] For Instance, Korea has experienced rapid roll-out partly due to its demographics (e.g. 480 people/square kilometre versus 245 in the UK, large number of people living in high rise buildings., Brunel University and UK Department of Trade and Industry "Investigating Broadband Technology Deployment in South Korea", July 2002

[15] Until recently, BT ran a broadband registration scheme. It published a list of exchanges and a minimum trigger level for each, i.e. the number of subscribers which had to register their demand in advance in order for BT to schedule an upgrade of an exchange to carry ADSL.

[16] UK Broadband Stakeholders Group "Broadband in Rural Areas", 2003

particularly high in rural areas.[17] In addition, although equipment costs have fallen as volumes increase, they remain a significant cost and major barrier to roll-out.

43. Public sector intervention thus may be needed to support broadband rollout in rural areas by providing public money to foster private investment in areas otherwise underserved. With the increasing level of public support for broadband initiatives, there is growing evidence that public intervention may accelerate the establishment of a broadband network in the less profitable areas, while ensuring, by means of open access requirements, that competition is preserved in the future.

Proportionality

44. In order for the aid measure to be compatible with Article 87(3)(c) of the EC Treaty, it must be moreover proportionate to the objective and must not distort competition to an extent contrary to the common interest. The trade-off between the advantages – in terms of a local economic development, support to information society and enhancement of competition between telecom operators and service providers – and the disadvantages – in terms of distortion of competition and possible disincentives to private investment – has to be assessed. The extent of the measure in terms of service definition, as well as project design features, should also be evaluated to ensure that the least distorting model, which would nevertheless produce the required results, is adopted.

45. In this respect the Commission notes the following positive elements:

(1) *Open tender*: The selected service provider benefiting from the subsidy will be solicited from the open market in accordance with EC rules and principles on public procurement. The tender, seeking the Economically Most Advantageous proposal, is designed so as to minimise the cost of investment and the associated public funding, while still ensuring an appropriate level of service.

(2) *Technology neutrality*: The project is technology neutral, i.e. it does not favour a priori any given technology.

(3) *Open-access:* The selected service provider will lease capacity to resale operators and service providers on a transparent and non-discriminatory basis guaranteeing an open access. The pricing of these wholesale services is expected to be lower as well due to the fact that the retail prices have to be on an affordable level. Moreover, the Scottish Executive responsible for the implementation of the project intends to strive for, within the forthcoming negotiations with the selected bidder, a post-termination clause inserted in the Agreement which provides for wholesale open access after the project as well.

(4) *Existing infrastructure:* The service provider is free to choose the most efficient way of procuring the necessary infrastructure, either by building, buying or leasing it from third parties. By avoiding specific requirements to build new infrastructure, the projects minimises duplication. Since leasing facilities is expected to be more cost effective than building new infrastructure, existing

[17] U.S. National Exchange Carrier Association "Rural Cost Study" 2000 for example, concluded that the cost of upgrading 1.7 million mostly rural lines in the US would be EUR 3,500 each. Reaching the 600,000 most remote households would costs EUR 8,000 per line.

operators will have the possibility to contribute their infrastructure to the project, which limits the economic impact of the project for operators that already have infrastructure in place.

(5) *Aid amount and intensity:* First of all, the reverse payment mechanism, under which a partial reimbursement of the public funding is expected to take place as demand for services picks up, ensures that only the minimum necessary public funds are used and that aid is limited to the interest foregone on the money advanced by the State.[18] Secondly, given the size of the project and the number of enterprises concerned, the aid amount potentially reaching end-users and reseller service providers is certainly limited.

At the same time, the Commission notes the following aspects which could raise concerns:

(6) *Price distortion* The Commission notes that the project intends to ensure the widespread availability and use of advanced broadband services at conditions closer to those in areas with a great density of population and business. In this respect, the Commission took notice of the fact that the tender to select the Service Provider has left open the level of retail and wholesale tariffs charged for the subsidized services. The project has to guarantee "affordable prices". As noted in the Commission's decision "*Cumbria Broadband – Project Access*", appropriate pricing of the services is especially important to ensure that commercial end-users benefiting from the aid are not put in a position more favourable than their competitors located in regions where the same advanced broadband services are already available on pure market terms.[19] Indeed, disproportionately low prices may necessitate more aid than the minimum necessary to address the undersupply of the service in certain areas. The UK authorities have stated that the tariffs to be applied by the selected Service Provider will have to be "affordable", i.e. meaning consistent with those provided currently by providers in wired up areas of the United Kingdom, where they do not benefit from State resources. Therefore there will be no discrimination between customers being provided with the relevant services within the designated project area and other customers.

(7) *End-to-end service provision* The project intends to procure an end-to-end service. This means that the selected bidder will not only have the task of arranging the necessary infrastructure for granting access to broadband to end-users, but will also have the obligation of providing the end service on customers' request. In general, the chosen approach differs from a purely *infrastructure project* in several respects:

(a) an end-to-end service typically involves a lower detail of specification as to the type of infrastructure and technical means required by the

[18] Since the scheduling of repayment depends on market evolution, it is not possible to quantify ex-ante the aid amount.

[19] In "Project Access" the UK authorities provided a benchmark rate equal to the cheapest available rates for the specific broadband service being offered on a retail basis to a majority of users at a national level. Commission decision N282/08, Project ACCESS, see footnote 7)

authorities. This has the advantage of allowing better exploitation of existing installations and greater technological neutrality;

(b) an end-to-end service might also be preferable in cases where there is less need for building and managing new infrastructure and focus is on the rapid availability of the service to end users. By tendering the final service, the authorities have greater certainty regarding the scope and timing of the final service. In addition, it should be noted that the UK authorities argue that given the demographics, the mere establishment of an infrastructure would not be sufficient to ensure the commercial viability of the provision of the defined service in the designated area of Scotland, even though the authorities have not provided sufficient evidence in this regard.

(c) on the other hand, this type of project can be seen as creating more distortion than one merely consisting in the provision of infrastructure, since it will intervene in a greater number of markets, including those downstream markets in which public intervention appears less needed. This is in line with the views of the UK Broadband Stakeholder Group ("BSG"), which considers that in most cases public support for third party infrastructure (especially civil infrastructure), sold on a non-discriminatory wholesale basis to service providers, should be sufficient in reducing overall investment costs and lower barriers to service provision;

(d) it should also be noted that in certain 'infrastructure projects' the State retains ownership of the infrastructure and attributes its management – through a concession of limited duration – to an independent party that cannot act as service provider. This solution best preserves the neutrality of the infrastructure manager, as opposed to a situation in which a service provider has control over the infrastructure;

(e) finally, a project that includes the provision of the final services allows greater commercial opportunities to the selected bidder and is likely to command a greater amount of private funding. This might entail a trade-off between a greater risk of distortion of competition on the one hand and lesser use of public resources and lower aid intensities on the other hand.

46. Summing up the various considerations and taking into account the characteristics of the project already mentioned – in particular open access, limited amount and low intensities of aid – the Commission considers that in this particular case, the distortive effects of an end-to-end service, as opposed to the mere establishment of an infrastructure, are not of such an extent as to be contrary to the common interest. Although the selected bidder will be advantaged with respect to other service providers, the amount of aid will not allow the building of an extensive new network under its control and the obligation to provide wholesale service will allow entry in downstream markets. The stimulation of demand and launch of new services might have beneficial effects also on competitors.

Conclusion

47. In view of the above, the Commission considers that the public investment in "Broadband in Scotland – Rural and remote areas" will only be provided to the extent necessary to develop the use of broadband services of businesses. This is in line with Community priorities as indicated in the eEurope 2005 Action Plan. The intervention is designed in a way that does not distort competition to an extent contrary to the common interest.

48. Accordingly, the Commission has come to the conclusion that "Broadband in Scotland – Rural and remote areas" is compatible with Article 87(3)(c) of the EC Treaty.

V. Decision

49. On the basis of the foregoing assessments, the Commission has accordingly decided that the aid involved in "Broadband in Scotland – Rural and remote areas" is compatible with Article 87(3)(c) the EC Treaty.

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://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Mario Monti

Member of the Commission