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Subject: State Aid SA.54684 (2020/N)– High-capacity mobile infrastructure roll-out in Brandenburg-DE

Excellency,

I am pleased to inform you that the European Commission has assessed the measure concerning the roll-out of passive infrastructure for mobile communication networks in the target areas in the Federal State Brandenburg (hereafter: "the measure") and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU).

1. PROCEDURE

- (1) Following pre-notification discussions, on 20 October 2020, the German authorities notified the European Commission of a new support scheme to promote the development of public mobile electronic communications networks in the German Federal State Brandenburg ("Land Brandenburg").

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objective and design of the measure

- (2) The objective of the measure is the roll-out of passive infrastructure to support the deployment of mobile networks in a manner to close the gaps in mobile coverage in Land Brandenburg and to support the availability of high-capacity mobile voice and data services in areas where no mobile services or only mobile voice services are available. In those areas, the authorities of Land Brandenburg aim to support the rolling out of terrestrial public mobile communications networks that will only be used to provide mobile voice and data services ("mobile networks").

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- (3) To this end, the scheme aims at deploying passive infrastructure¹ that will be used to support the deployment of mobile networks (“mobile passive infrastructure”). The aided mobile passive infrastructure should be capable to support the roll out of 4G mobile networks (based on LTE technology²) or above which can provide a wireless connection delivering at least a data rate of at least 50 Mbps symmetrical with a latency of no more than 150 milliseconds per antenna sector.³
- (4) The intervention area will consist of areas in Land Brandenburg where mobile networks have not been deployed or where only mobile networks capable of supporting mobile services of 2G (based on GSM⁴ technology) and below are available and where no private investors plan to invest in deploying 4G (and above) mobile networks in the coming three years (“target areas”).
- (5) The scheme will also support the upgrading, replacement or rebuild of masts that are currently used exclusively for the supply of 2G.
- (6) The scheme may also support limited backhaul (ducts and dark fibre) deployment, only insofar as strictly necessary for the implementation of the scheme in the target areas. The aided backhaul will be used exclusively for these purposes. An investment in backhaul is necessary if a new mast is to be connected (no backhaul exists) or when an existing 2G mast is upgraded and the existing backhaul is not enough to support 4G services or above. Existing ducts and dark fibre supporting the needed capacity will not be overbuilt.
- (7) This support would help address digital divide in society, increase the attractiveness of the rural areas, stimulate economic growth and maintain and create jobs in structurally weaker regions. In this respect, living conditions would be aligned with those in better-served regions.
- (8) One and the same area may receive funding only once under this scheme. Operation of the passive infrastructure will be guaranteed for at least seven years before it can be sold. Funding may only be granted for projects that have not yet started or that were not already planned to be started.

2.2. Context

- (9) By virtue of existing mobile coverage obligations, by the end of 2019, 97% of the households in each Federal State in Germany had to be covered with mobile networks providing at least 50Mbps per antenna sector. By the end of 2022, at least 98% of households per Land have to be covered with mobile networks

¹ Passive infrastructure covered by this includes e.g. the towers, masts, and other supporting constructions (including foundations, and the electricity connection) ducts, dark fibre and access routes (*Zuwegung*). Active infrastructure, antenna systems, as well as the costs for land acquisition or land lease costs will not be supported.

² Long-Term Evolution (LTE) is a standard for high-speed wireless communication for mobile devices and data terminals.

³ For a target of 50 Mbps per antenna sector, the Bundesnetzagentur assumes that a 10 Mbps access speed can be made available reliably to an end user in that sector even in peak-time periods.

⁴ Global System for Mobile Communications (GSM) is a standard developed by the European Telecommunications Standards Institute to describe the protocols for second-generation (2G) digital cellular networks used by mobile devices such as mobile phones and tablets.

providing at least 100 Mbps per antenna sector. In addition, one thousand 5G base stations and five hundred 4G base stations with at least 100 Mbps are to be put into operation in "white spots" by the end of 2022.

- (10) However, these coverage obligations refer to households. Given the nature of the mobile services which have to be available "on the move", a more relevant proxy is the areas that would remain uncovered following the implementation of the coverage obligations.
- (11) Currently, in Land Brandenburg, 0.7% households and 3.4% in terms of area are not supplied by mobile services or are supplied with services of 2G and below. The scheme will provide support exclusively in these mobile coverage gaps in Land Brandenburg, in consideration of the results of the mapping and the public consultation as well as the mobile coverage data for Land Brandenburg published by Federal Ministry of Transport and Digital Infrastructure (BMVI).

2.3. Legal basis

- (12) The notified measure is based on the following legal basis:
- Financial Regulation Landeshaushaltsordnung (LHO) of the State Brandenburg of 21 April 1999, and the principles of support for the development of a nationwide high-capacity broadband mobile infrastructure (investment programme 'high-performance mobile telephony in Brandenburg') of the Ministry of Economic Affairs, Labour and Energy (MWAE),⁵ and
 - the Implementing provisions (Verwaltungsvorschriften).⁶
- (13) The current Decision is also part of the legal basis.

2.4. Budget and duration

- (14) The support measure consists of a scheme in the form of a grant of EUR 55 million until 31 December 2026.
- (15) The maximum intensity of the aid provided by the Land Brandenburg under the scheme is, as a general rule, limited to 90% of the eligible costs. Eligible costs are all expenses necessary for the construction or upgrading of the passive infrastructure including planning costs, costs of submitting applications to various authorities (including the Nature Conservation Authority), site development (installation or upgrading of radio masts, lightning, earthing systems), connection to central nodes i.e backhaul (ducts, dark fibre), construction costs, etc. Active equipment and data connections between the supported passive infrastructure and

⁵ See in particular paragraphs 23 and 44 of the Brandenburg Financial Regulation (LHO) in the version published on 21 April 1999 (GVBl.I/99, [No 07], p. 106, as last amended by Article 1 of the Law of 5 June 2019 (GVBl.I/19, [No 20]).

⁶ Administrative provisions relating to paragraphs 23 and 44 of the Financial Regulations (VV-LHO) in the version published on 11 August 2016 (ABl./16, [No 35], p. 870), as last amended by Decree of the MdF of 24 October 2019 (ABl./19, [No 47], p. 1303)

the infrastructure owned by the Mobile Network Operators (MNOs) using the newly established passive infrastructure is excluded.⁷

- (16) The funding comes from the overall budget of Land Brandenburg and may include ERDF funds.
- (17) Overlaps with funding from other programmes at Land or federal level for the same measure are excluded. Therefore, the risk of overcompensation is also excluded. The Granting Authority will observe and check if the fundamental prohibition of double funding is respected.
- (18) Also, funding by Land Brandenburg under the current scheme will be reduced to the extent necessary for keeping the cumulative aid intensity at maximum 90% of the eligible costs. The beneficiary's own contribution must in all cases reach at least 10% of the eligible costs.

2.5. Standstill obligation

- (19) The Brandenburg Authorities have confirmed that the granting of the aid is conditional on the decision of the Commission on the notified measure. Pursuant to the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589⁸, new aid measures must not be put into effect before the Commission has taken a decision authorising it.

2.6. The Granting Authority

- (20) The competent granting authority is the Investment Bank of Brandenburg (Investitionsbank des Landes Brandenburg), hereafter, “the Granting Authority” or “the ILB”.
- (21) The ILB is responsible for implementing the funding principles of the Ministry of Economic Affairs, Labour and Energy (MWAE).
- (22) The rights and obligations of ILB vis-à-vis the Land Brandenburg, represented by MWAE, are governed by a framework contract between the MWAE and ILB.⁹ The ILB is entrusted with a public policy mandate. As an institution governed by public law, ILB supports Land Brandenburg as a central development institution in carrying out public tasks in accordance with the principles and objectives of the State’s public support policy. Among its tasks, the ILB is entrusted to provide support for infrastructure measures. For the implementation of the mobile telephony support programme, Land Brandenburg, entrusted ILB to carry out tasks of public authority in line with the given mandate.
- (23) In particular, the ILB will carry out the authorisations, payments and settlements of the grant, as well as the proof of use and verification of the use of funds. It will

⁷ Any VAT paid by network providers for the upgrading of existing passive infrastructure forms part of the eligible costs only insofar as such VAT paid cannot be deducted from input tax.

⁸ Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union OJ L 248 of 24.9.2015, p.9.

⁹ See the framework contract between MWAE and ILB of 19 July 2007 as modified on 17 September 2019.

also examine the economy and efficiency of the design and construction and the reasonableness of the costs. In addition, it will check the fulfilment of the purpose of the aid (supply of the identified underserved areas with at least 4G capabilities) using external expertise where appropriate.

- (24) As a technical supervisory authority, the MWAE has the right to request information, reports, and to order verifications upon the ILB. In order to carry out technical supervision, established procedures exist between ILB and MWAE in the form of regular committee meetings at higher level or monitoring meetings for individual measures in which it is checked if the ILB complies with its obligations.
- (25) In addition, the Brandenburg State Court of Auditors is responsible for auditing the overall budgetary and economic management of the Land Brandenburg, its special funds and holdings, including the ILB.

2.7. Investment and business model

- (26) Support will be in the form of a grant, which is calculated on the basis of a percentage of eligible costs. As part of the application process, interested companies must present their expected costs for the deployment/upgrade of the passive mobile infrastructure only (no operation costs), as well as the potential for demand and the expected revenues. The Granting Authority will verify and assess the provided information.
- (27) The direct beneficiaries will obtain the ownership of the network. They will build the passive infrastructure (e.g. foundation, masts, electricity connection, ducts, dark fibre and access routes), and will place at their own cost their active equipment. The direct beneficiaries are obliged to offer all interested parties access to the passive infrastructure on fair, open, non-discriminatory terms. The access obligations are independent of any change in ownership, management or operation of the subsidised infrastructure.
- (28) If the direct beneficiaries are both present at wholesale and retail level, they will provide for safeguards for preventing any anti-competitive behaviour towards other service providers. Such contract clauses will have to be reflected already in the tender documents and the award criteria of the procurement procedures. In case a conflict cannot be solved by the ILB, the national regulatory authority (“the NRA”) will take the final decision.

2.8. Beneficiaries

- (29) The direct beneficiaries are undertakings that plan, build and commercialise the elements of the mobile passive infrastructure under the scheme (e.g. the masts, ducts, dark fibre) and may include MNOs, specialised construction companies (such as the tower companies) and fibre optic companies. The direct beneficiaries will be selected following an open, transparent and non-discriminatory selection process in the framework of a public tender that would take place at the EU level.¹⁰

¹⁰ The funding principles (die Fördergrundsätze), which form the basis for the competitive selection procedure will be published in the framework of the Europe-wide call for tenders. They will continue to be made available after the competitive selection procedure has been carried out on the central website of the

2.9. Target areas

- (30) The scheme will provide support exclusively in areas where no mobile network is available or where only mobile networks providing mobile capabilities of 2G and below are available.
- (31) Supported infrastructure will not be taken into account to meet the coverage obligations arising for MNOs out of spectrum licence conditions and will therefore not be reported as such to the Federal Network Agency (Bundesnetzagentur). MNOs using the supported infrastructure must commit in this regard and confirm it in writing to the Federal Network Agency and to the Granting Authority. This written confirmation will be sent to the Federal Network Agency together with a documentation of (i) the current situation, and (ii) the planned situation following construction of the mobile passive infrastructure and activation of stations. This mechanism ensures that the aid scheme will in fact complement the existing mobile coverage that results from the coverage obligation imposed on the MNOs.

2.10. Mapping

- (32) Any funding under the scheme will be based on a map of mobile coverage in Land Brandenburg.
- (33) The MWAE initiated a market survey on 8 July 2019 and an update of the market survey in June 2020 in the framework of which the MNOs presented the current supply situation in the country and the planned roll-out over the next three years. The MWAE drew up a map of mobile coverage in Land Brandenburg on that basis. To this map, the MWAE also added the information following a study on mobile funding gaps published by BMVI.¹¹ The resulting map is publicly available.¹² This map identifies all mobile coverage gaps in Land Brandenburg, i.e. areas in which the MNOs offer mobile services on technologies of 2G and below. These areas, identified in the map as mobile coverage gaps, constitute potential target areas of the scheme. The determination of the final target areas for mobile network development will be done by the MWAE only after conclusion of corresponding public consultations.
- (34) Before the start of any single investment measure, the status of the area will be checked on the basis of the current mapping and the results of the public consultations (described below). Any area will be removed if its status changes during the planning period.

Federal Government for publications in the context of subsidised broadband expansion (www.breitbandausschreibungen.de). See also: <https://vergabemarktplatz.brandenburg.de>.

¹¹ <https://www.bmvi.de/SharedDocs/DE/Artikel/K/mobilfunkstrategie.html>

¹²

https://mwae.brandenburg.de/media/bb1.a.3814.de/Mobilfunk_Uebersicht_weiße_Flecken_Brandenburg.pdf

2.11. Public consultation

- (35) A preparatory consultation took place in June/July 2019. During this phase, the Brandenburg Authorities informed the relevant stakeholders that they intend to invest in the target areas.¹³
- (36) A general public consultation took place between 12 February and 15 March 2020. The consultation contained a summary of the planned support measure and a description of the potentially targeted areas.
- (37) This consultation was published on the website of Land Brandenburg¹⁴ and it received two comments largely in support of the measure.
- (38) The Brandenburg Authorities commit to organise project-specific public consultations focusing on the specific target areas. These consultations will be published on the website of Land Brandenburg. In the framework of these project-specific public consultations, all interested parties will be invited to comment and be requested to inform the Brandenburg Authorities of their development plans in the target areas (mobile coverage gaps) in the three coming years starting from the date of the initiation of the specific public consultation.
- (39) These project-specific public consultations are carried out in advance of the individual funding projects. They have a duration of 12 weeks and are a prerequisite for a subsequent aid application. These project-specific public consultations will ensure that up-to-date mobile networks development projects (covering infrastructure such as ducts, dark fibre or masts in the target areas) are taken into account and thus ensure effective protection of investment and competition.

2.12. Competitive selection procedure

- (40) The Brandenburg Authorities ensure that all competitive selection processes under the measure will be in line with both the national and the European public procurement regulations. Land Brandenburg will examine the specifications established by the Granting Authority before publication.
- (41) Following the approval of the aid by the European Commission, the Granting Authority will carry out a competitive selection procedure to select the direct beneficiaries. In the framework of this pan-European call for tenders, the target areas will be divided into different lots. All subsidies (lots) are then granted in a single procedure. Subsequent individual aid is not foreseen under the scheme.
- (42) The call for tenders will be published at the regional, national and EU level according to public procurement and rules.¹⁵

¹³ To this end, the Brandenburg Authorities submitted the relevant information by e-mail to the telecommunications companies concerned (Telekom, Vodafone and Telefonica), tower companies (Deutsche Funkturm and American Tower), as well as to other relevant stakeholders, such as the Association of Municipalities and Municipalities, the Landkreistag and the Chambers of Commerce and Industry. The feed-back was largely positive.

¹⁴ <https://mwae.brandenburg.de/de/mobilfunkausbau>

- (43) Brandenburg Authorities committed to ensure that the following requirements will be fulfilled for all selection procedures:
- (a) All selection procedures must be in line with the spirit and principles of the EU public procurement directives.¹⁶
 - (b) All selection procedures must ensure transparency for all interested bidders.
 - (c) All selection procedures must ensure equal and non-discriminatory treatment of all bidders and objective evaluation criteria.
 - (d) All selection procedures must be published on a dedicated website. Tenders will be published in the European Union (EU) database and in the database of Land Brandenburg.¹⁷
 - (e) In cases where a competitive selection process does not generate a sufficient number of bidders, the implementing authority will use the services of an external auditor for the assessment of the bid, in particular regarding cost calculations.

2.13. Economically most advantageous offer

- (44) The Brandenburg Authorities confirmed that the selection procedures will ensure the selection of the economically most advantageous offer.
- (45) Offers received in the course of the competitive selection procedures will be assessed using qualitative award criteria established in advance by the Granting Authority.
- (46) To this end, the Granting Authority will define minimum standards for the infrastructure to be built. This includes, *inter alia*, the sizing of ducts to ensure the use of the mobile passive infrastructure by all interested parties. In addition, the Granting Authority ensures that the tenders are carried out under market economy conditions with at least three competitors. If this is not the case, it will have the selected offer tested for market conformity by an external auditor.
- (47) The participants to the tender need to provide a detailed cost-benefit analysis to be able to participate in the call for tenders. To this end, the development measures necessary for the implementation of the project and their costs must be set out, together with the potential for demand and the revenue to be expected from it. In order to minimise the amount of aid to be granted, the applicant shall

¹⁵ The Brandenburg Authorities will publish the call for tenders for the mobile telephony programme on <https://vergabemarktplatz.brandenburg.de/>. When the invitation to tender is drawn up, an automatic publication of the invitation to tender in the Official Journal of the European Union (TED) and at www.service.bund.de.

¹⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p.65 and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p.1.

¹⁷ The calls for tenders are published on Land Brandenburg mobile communication portal (www.mobilfunk-Brandenburg.de) and Land Brandenburg call for tenders platform.

be selected who, within a reasonable period of time and on market terms, requests the lowest amount of aid and thus submits the most economically advantageous offer for the provision of the same technical specifications defined in advance, taking into account economic efficiency.

- (48) Award criteria are, for instance, the requested State aid amount, tech specifications, timeframe, the planned retail prices and possible synergies with existing infrastructure, as well as the impact of the proposed solution on competition. The qualitative criteria have to be weighed against the requested aid amount. In order to minimise the amount of aid, at similar if not identical quality conditions, at the overall assessment of a bid, the bidder who requires the lowest State aid amount will receive most priority points. Bidders proposing a wholesale-only model will receive additional points.

2.14. Step change

- (49) The Brandenburg Authorities confirmed that the measure will ensure a "step change" in that the investments in (at least) 4G networks will bring significant new capabilities to the market in terms of mobile service availability, capacity, speeds, latency and competition, compared to existing as well as concretely planned commercial network roll-outs.
- (50) A significant improvement in mobile coverage is achieved by providing 4G (and above) capabilities where there is currently no mobile coverage or only 2G and below.
- (51) In terms of mobile data services, 2G technology allows for merely up to 53.6 Kbps. The aim of the measure is to provide 4G capabilities of at least 50 Mbps symmetrical per antenna sector (1MBit=1000 Kbit). This means that the implementation of the planned scheme will reach thousand times the data rates currently available (both download and upload).
- (52) This allows for availability of services currently inaccessible to the EU citizens living, working or travelling in the target areas. These include, for example, the possibility of accessing frequently used applications such as navigation apps, news portals, e-mail retrieval and or applications that are even more data-intensive, such as streaming services.
- (53) The measure will also support backhaul deployment in areas where no backhaul is present or where it is not suitable for enabling 4G capabilities. The backhaul capabilities will therefore also significantly improve.

2.15. Technological neutrality

- (54) Brandenburg Authorities confirmed that the beneficiaries will be selected on the basis of objective criteria. Any provider capable of rolling out passive elements of network infrastructure allowing the roll out of public terrestrial mobile networks supporting speeds of at least 50 Mbps symmetrical and latency of max. 150 milliseconds per antenna sector are eligible as beneficiaries. Also, wholesale access will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.

2.16. Use of existing infrastructure

- (55) All existing mobile masts in Germany can be viewed on the Federal Network Agency's (*Bundesnetzagentur*) website data-base.¹⁸ Mobile network providers will indicate any mobile passive infrastructure planned within the coming three years in the framework of the public consultations.
- (56) In the planning process for the construction of the mobile passive infrastructure, the Granting Authority will take into account all existing infrastructure in the relevant target areas that can be accessed and re-used. This would help reduce investment costs for the development of the network and minimise the amount of public funding needed for the project.
- (57) The local authorities will include to the best extent possible all available information on existing infrastructure in their procurement documents (in particular in the "invitations to tender").
- (58) Bidders should explicitly include existing infrastructure in their network planning. This applies in particular to the use of existing infrastructures for the connection with optical fibre of the base stations. The information from the central information office of the Federal Government (in particular, the information from the Federal Infrastructure Atlas) must be taken into account as part of the network planning. It provides planning information (overview of facilities that can be used for electronic communication purposes), shared use information (for the shared use of passive public utility infrastructure) and information on civil works (for the coordination of civil works on public utility networks).
- (59) Any operator that owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the competitive selection process, will (i) inform the local authorities about that infrastructure during the public consultation and (ii) provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid. Where a bidder does not provide this information, it will be excluded from the procurement process. The procurement process will be conducted in accordance with a timetable that allows sufficient time for bidders to compile bids on the basis of information provided by other suppliers, and allows for any non-compliance issues to be resolved efficiently. All operators participating in the public consultation will be required to provide data on the available existing infrastructure that may be used for building the mobile networks, including conditions and prices for access.

2.17. Wholesale access

- (60) Brandenburg Authorities will ensure that the direct beneficiaries will provide wholesale access to the mobile passive infrastructure on an open and non-discriminatory basis to all interested parties.
- (61) The Granting Authority will clearly define the conditions for the aid beneficiaries to ensure wholesale access to third-party operators. They will ensure that the requirements for wholesale access will be outlined in a transparent manner in the tender documents and the grant agreement. The same access conditions will apply

¹⁸ <http://emf3.bundesnetzagentur.de/karte/>

on the entirety of the network including on the part of it where existing infrastructure will be used.

- (62) This access will include at least access to electricity connections, ducts, dark fibre, masts, and all remaining passive equipment supported by aid. Access to all new and necessary existing infrastructure will be granted for an unlimited amount of time.
- (63) The beneficiary may also decide to provide higher value wholesale products such as bitstream offers for connection to base stations (Layer 2 and 3) and sharing of active network elements. It can therefore happen that third-party bidders obtain not only passive access to the subsidised infrastructure but also active access to it, even though the measure only supports the deployment of passive infrastructure.
- (64) In case of a sale of the mobile passive infrastructure after expiry of the earmarking period of seven years, the sales contract will include an obligation on the buyer to allow for continued open, non-discriminatory access to the mobile passive infrastructure also in the future.
- (65) With regard to the backhaul, the Brandenburg Authorities specified that ducts financed under the measure shall be large enough to cater for the deployment of dark fibre by at least all licensed MNOs.
- (66) The Commission further notes that Germany has transposed Directive 2014/61/EU¹⁹ into German law²⁰, and in particular its Articles 3(2) and 3(4) which ensure that any network operator, within the meaning of that Directive, will meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks and that disputes regarding access to such physical infrastructure can be referred to the competent national dispute settlement body (BNETzA).²¹
- (67) The exact rental fee to be paid by the access seekers for each project will be subject to negotiations between the access seekers and the direct beneficiary and may therefore be different for each project/location. However, all access seekers, including the beneficiaries if active on this level, will always pay the same rental fee at the same location. This applies to all passive infrastructure, both new masts and existing GSM masts, which are upgraded for use with 4G antenna technology. That is to say, whilst rental fees may differ from location to location, at the same location they are always the same for all interested parties.
- (68) All information concerning the wholesale access, including the rental fees will be permanently available on the website of the Brandenburg government.

¹⁹ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, p. 1.

²⁰ Gesetz zur Erleichterung des Ausbaus digitaler Hochgeschwindigkeitsnetze (DigiNetzG) vom 4. November 2016, Bgbl. 2016 Teil I Nr. 52, S. 2473.

²¹ Cf. Sections 77d(1) and (2) and 77n(1) of the Telekommunikationsgesetz (TKG) vom 22. Juni 2004.

- (69) Disputes among operators regarding wholesale access products conditions and pricing can be submitted to the Granting Authority who will aim at finding a solution in cooperation with the MWAE. In case such disputes persist, they will be submitted for resolution to the Federal Network Agency.

2.18. National Regulatory Authority

- (70) The Federal Network Agency (*Bundesnetzagentur* or *BNetzA*) has been informed of the planned support scheme and was given the possibility to comment. It did not raise any concerns.
- (71) The Federal Network Agency assumes a dispute settlement role in particular in disputes concerning the determination of the level of rent of the passive infrastructure. In case of such disputes, the Federal Network Agency's dispute resolution chambers will decide.
- (72) Also, the aid scheme requires MNOs not to notify to BNetzA any subsidised infrastructure as part of their coverage obligations resulting from frequency auction requirements. To this end, all MNOs using infrastructure supported under the aid scheme must undertake not to notify this infrastructure as part of their coverage obligations and confirm in writing their commitment to the Brandenburg Authorities. This written confirmation, together with a documentation of the current and planned situation after the construction of the mobile passive infrastructure will be sent to the Federal Network Agency. This mechanism ensures that the support programme is indeed complementary to the existing mobile telephony coverage and is not used to comply with the licensing requirements.

2.19. Claw-back and monitoring mechanism

- (73) The Granting Authority will monitor the correct use of the funds. In case of improper use, the Granting Authority will recover those funds in accordance with the general principles of administrative law. The Granting Authority will monitor in particular the tendering processes and the construction of the mobile passive infrastructure as well as the improvement of the mobile coverage in the target areas.
- (74) The Granting Authority will also implement a claw-back mechanism with regard to the Beneficiaries. The claw-back mechanism will be linked to unanticipated gains by the direct beneficiaries. To this end, after the end of the earmarking period, the Granting Authority must check with the direct beneficiaries whether rental income has increased beyond the level that the beneficiary indicated to MWAE as part of its bid in the competitive selection process. If, after seven years, the actual gains of beneficiary exceed the expected gains by more than 30%, and no corresponding price reduction has taken place, the beneficiary shall reimburse to the Granting Authority the proportion of turnover (excess revenue) exceeding that 30%.
- (75) The Granting Authority must document its assessment no later than six months after the expiry of the earmarking period.

2.20. Transparency and reporting of the measure

- (76) The Brandenburg Authorities will ensure, for the entire duration of the project, that all transparency requirements are met at each phase of the project. The relevant information about the mobile network expansion will be published on the regional website²² that will allow easy access to all relevant acts and information regarding the project.
- (77) The following information will be published: the full text of the approved aid scheme and its implementing provisions, the date of granting, the name of the aid beneficiaries, aid amounts and aid intensities as well as the technology used. This information must remain published for at least ten years and be available for the general public without restrictions.
- (78) The Granting Authority as well as the beneficiaries are obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on the mobile passive infrastructure (including ducts, dark fibre, electricity connection, foundation, access routes and masts) deployed under the measure, which will facilitate other operators' access to the infrastructure.
- (79) The Granting Authority and the beneficiaries will also publish detailed information concerning wholesale access conditions and prices.
- (80) The Brandenburg Authorities will report to the Commission about the application and the progress of the measure every year. The report will contain the following key data concerning the aid project: the information already published in accordance with the transparency requirements (as above); the date on which the networks are expected to become operational; the wholesale products and access conditions and pricing; the number of parties seeking access and service providers in the network; information regarding any disputes regarding the project, if any, and in particular concerning wholesale access, as well as how such disputes were resolved.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (81) According to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), "[s]ave as otherwise provided in the Treaties, 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."
- (82) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an 'undertaking', (ii) the measure has to be granted through State resources and be

²² The aid granted to the beneficiaries selected in the competitive selection procedure above EUR 500 000 will be also recorded in the Transparency Award Module (TAM). See also: <https://mwae.brandenburg.de/de/mobilfunkausbau>. In addition, a page on the support programme will also be set up on the ILB.

imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

3.1.1. Undertaking

- (83) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.²³
- (84) The direct beneficiaries are the companies that plan, build and commercialise the elements of the mobile passive infrastructure under the scheme (e.g. the masts, ducts and dark fibre) and may include Mobile Network Operators ("MNOs"), specialised construction companies (such as the tower companies) and fibre optic companies. They engage in activities consisting in offering goods and services on the telecommunication market i.e. planning, construction and operation of passive mobile infrastructure. They are thereby considered undertakings within the meaning of Article 107(1) TFEU.

3.1.2. State resources and imputability

- (85) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.²⁴ Resources of local and regional authorities are for the application of Article 107(1) of the TFEU State resources.²⁵ As described in recital (16) the measure is financed from the budget of the Land Brandenburg. The financing is allocated to the beneficiaries under the control of the Granting Authority, which as shown in recital (22), has a public mandate to provide support for (mobile) infrastructure measures.
- (86) Hence, State resources are involved and the measure is imputable to the State.

3.1.3. Economic advantage

- (87) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention.²⁶
- (88) Direct beneficiaries will be granted direct grants amounting to up to EUR 55 million for the rolling out of mobile passive infrastructure in Land Brandenburg. This enables the direct beneficiaries to provide goods and services in the target areas on conditions that would otherwise not be available.

²³ Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

²⁴ Case C-482/99 *France v Commission* (hereafter: "*Stardust Marine*") ECLI:EU:C:2002:294.

²⁵ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08 *Nord-Pas-de-Calais*, ECLI:EU:T:2011:209, paragraph 108.

²⁶ Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

- (89) The measure thus confers an advantage as compared to companies investing only on the basis of private funds under the same technical, commercial and legal conditions i.e. in the liberalized market.
- (90) It is hence considered that direct beneficiaries under the scheme are granted an advantage by Land Brandenburg which would not have occurred in normal market conditions.

3.1.4. *Selectivity*

- (91) To fall within the scope of Article 107(1) TFEU, a State measure must favour “certain undertakings or the production of certain goods”. In the case at hand, the measure is aimed at the direct beneficiaries.
- (92) The measure thus targets only certain undertakings that are active in the electronic communications sector in particular MNOs and special construction companies or fibre optic companies specialised in the provision of passive infrastructure for mobile networks to the exclusion, in principle of other electronic communications network and service providers such as the fixed communications operators, or of other construction and fibre companies active rather in the general industrial or other sectors of the construction industry, when these cannot provide the mobile communications services.
- (93) Furthermore, the measure does not concern general infrastructure which would be open on a non-discriminatory basis to anyone but is limited to infrastructure used for mobile networks.
- (94) As concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the construction and operation of mobile networks is a liberalised economic activity usually conducted by commercial operators on the basis of private investments in the market. In such a framework, economic activities normally do not receive subsidies. Indeed, the deployment and operation of mobile passive infrastructure in the target areas is not justified by the nature of the liberalised market and the regulatory framework. In any event, the features of this legal framework cannot provide any justification for the granting of subsidies.
- (95) The measure is moreover territorially selective. The scheme is set up with the aim of rolling out mobile passive infrastructure in the target areas in Land Brandenburg.
- (96) The measure is therefore selective.

3.1.5. *Effect on trade and competition*

- (97) As regards the construction of infrastructure, the Commission considers that an effect on trade between Member States or a distortion of competition is normally excluded in cases where at the same time (i) an infrastructure typically faces no direct competition, (ii) private financing is insignificant in the sector and Member State concerned and (iii) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large.
- (98) The present case concerns the development of mobile passive infrastructure to be used only for the provision of mobile services in target areas in Land

Brandenburg. When looking at the mobile communications sector in Germany in general, it must be concluded that there is significant private financing of the deployment of mobile passive infrastructure all over the country.

- (99) Also, the markets for electronic communications networks and services are open to competition between operators, which generally engage in activities that are subject to trade between Member States. Two of the three MNOs in Germany belong to groups of companies with headquarters in another Member State. Also, the construction and operation of the mobile passive infrastructure may be delivered by a company from other Member States having cross-border activities.
- (100) It must therefore be considered that the support scheme in question is capable of distorting competition and has an effect on trade between Member States.

3.1.6. Conclusion

- (101) The Commission concludes that the notified support scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility

- (102) The Commission has to assess whether the aid can be found compatible with the internal market.
- (103) Given the specificity of mobile networks (as opposed to the fixed networks which do not allow for the provision of voice and data services “on the move”²⁷), the measure is not directly assessed under the Broadband Guidelines.²⁸ Therefore, the Commission assesses the compatibility of the scheme pursuant to Article 107(3)(c) TFEU and in analogue application of the Broadband Guidelines, where appropriate.²⁹
- (104) Article 107(3) TFEU provides for certain exemptions to the general rule set out in Article 107(1) TFEU that State aid is not compatible with the internal market. The aid in question is assessed on the basis of Article 107(3)(c) TFEU, which stipulates that: “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading

²⁷ Performance gaps persist between fixed and mobile technologies in terms of capabilities (speed, latency, sensitivity to external electromagnetic and meteorological interferences). Therefore, mobile broadband was found to be complementary (not substitutable) to fixed broadband. See Study prepared for the European Commission DG Communications Networks, Content & Technology by WIK Consult, “Future electronic communications product and service markets subject to ex-ante regulation Recommendation on relevant markets, Final report” page 29-33, (“WIK Study”) available at: <https://ec.europa.eu/digital-single-market/en/news/study-future-electronic-communications-product-and-service-markets-subject-ex-ante-regulation>. The Commission reach a similar conclusion underlining also differences in price, stability on the network connection and secured access, in merger case M.8864 Vodafone / Certain Liberty Global Assets, paragraph 53, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8864

²⁸ Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p.1 (hereafter the “Broadband Guidelines”).

²⁹ See also State Aid SA.48324 (2018/N) – Germany Mobilfunk Bayern available at: https://ec.europa.eu/competition/state_aid/cases/275029/275029_2029861_118_2.pdf.

conditions to an extent contrary to the common interest", may be considered to be compatible with the internal market. Thus, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.³⁰

- (105) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission weighs up the positive effects of the planned aid for the development of the activities that the aid is intended to support and the negative effects that the aid may have on the internal market, in terms of distortions of competition and adverse effects on trade caused by the aid. In this regard, and also by analogy with the Broadband Guidelines, the Commission assesses whether the aid remedies market failures or important inequalities, is appropriate as a policy instrument, and is necessary as well as proportionate.

3.2.1. Contribution to the development of an economic activity

- (106) The Brandenburg Authorities have submitted that the notified aid measure supports the development of the economic activity consisting in the provision (including building and upgrading) of electronic communications networks that can be used for the provision of terrestrial public mobile communication services in areas where private operators would have not invested otherwise. To this end, the private operators will be incentivised to deploy elements of passive infrastructure such as foundations, masts, electricity connections, ducts, dark fibre or access routes and also contribute with at least 10% of the costs.
- (107) Therefore, the Commission acknowledges that by providing financial support for the construction of mobile passive infrastructure in areas where such network elements are currently either not available or only to a limited extent (with a capacity supporting only the provision of 2G services), Land Brandenburg contributes to the development of that economic activity in a manner that promotes connectivity and access to high-performance mobile voice and data services by citizens and businesses of the Union.

3.2.2. Weighting the positive effects of the aid with any the negative effects in terms of distortions of competition and adverse effects on trade

3.2.2.1. Positive effects of the aid

- (108) The scheme will facilitate access to high-performance mobile voice and data services which forms a part of the fundamental needs of a modern society. It will ensure such access for up to 0.7% of households and 3.4% of territory in Land Brandenburg (recital (11)). In such areas internet connectivity can play an essential role in preventing digital divide, isolation and depopulation by reducing the costs of delivery of both goods and services and partially compensating for remoteness. This can be seen against a wider ambition that there should be access to mobile data connectivity throughout the territory, in all places where people

³⁰ Judgment of 22 September 2020, Case C-594/18 P, Austria v Commission (Hinkley Point C), ECLI:EU:C:2020:742, para. 19.

live, work, travel and gather.³¹ The European Electronic Communication Code also identifies the general objective of promoting connectivity and access to, and take-up of, very high capacity networks, including mobile networks, by all citizens and businesses of the Union.³²

- (109) Many Europeans own a smartphone but cannot always use its full potential given the gaps in mobile coverage or poor service quality. This holds true also for the aid scheme's potential target areas. The measure will allow for people living, working or travelling in the target areas receive access to high-performance mobile voice and data services. It will also allow people entering and moving through such areas to continue communicating seamlessly
- (110) Also, mobile coverage gaps pose obstacles to the work of emergency doctors who regularly have to use their mobile phones when in the car. The abrupt termination of telephone conversations when driving into an area without mobile coverage can have serious consequences for patients. Other examples include cardiac pacemakers, which can nowadays be digitally monitored, provided they are reliably connected to the internet. The measure will also address the problems posed by the lack of a mobile service in emergency situations.
- (111) Therefore, public intervention for rolling out mobile passive infrastructure would be beneficial for the target areas.

3.2.2.2. Limited negative effects: the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest

- (112) Article 107(3)(c) requires the assessment of any negative effects on competition and on trade in the relevant product markets, that is, in this case, the provision of high-performance voice and data services on the basis of the mobile passive infrastructure.
- (113) In the way the Brandenburg Authorities designed the measure, they ensured that the negative effects of the measure are limited. Indeed, the Brandenburg Authorities ensured intervention in market failures areas only, and ensured that the State aid is appropriate as a policy instrument, is necessary and proportionate.

(a) Absence of market delivery due to market failures or important inequalities

- (114) A market failure exists if markets, left to their own, without intervention, fail to deliver an efficient outcome for society. This may arise, for instance, when certain investments are not being undertaken even though the economic benefit for society exceeds the cost.

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Connectivity for a Competitive Digital Single Market: Towards a European Gigabit Society, COM(2016) 587 final, (“Gigabit Communication”) page 8.

³² See Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, Articles 3 (2) (a) and (d).

- (115) Existing and future applications of the Gigabit society rely on a powerful mobile network that is available on a balanced geographical basis. New forms of economic activity and ways of working require both data and voice mobile services increasingly of a high performance quality. In the potential target areas, there is either no mobile passive infrastructure or only a 2G network which cannot satisfy the above mentioned needs.
- (116) As shown by the current mapping and verified in the public consultation, private companies do not find it profitable to invest in remote or less densely populated areas of Land Brandenburg where potential demand for mobile services is low. Potential fixed broadband services in those areas cannot meet the needs covered by mobile services, namely to provide access to voice and data mobile services “on the move”. Fixed broadband was found to be complementary (not substitutable) to mobile broadband.³³ Indeed, broadband mobile networks can offer the possibility for users to have an uninterrupted access to telecommunications services “on the go” without the limitations of fixed broadband networks. In that sense, they provide a supplementary service that cannot be substituted by a combination of connections to fixed broadband networks.
- (117) Also, the intervention will only take place outside of the coverage obligation areas. Indeed, as per paragraph (31) the MNOs will not report subsidised infrastructure to the Federal Network Agency (Bundesnetzagentur) under their coverage obligations arising out of their spectrum licence conditions. This mechanism ensures that the aid scheme will complement the existing mobile coverage which results from the coverage spectrum licence obligations imposed on the MNOs.
- (118) It can therefore be concluded that the notified measure contributes to address a market failure in sparsely populated and topographically difficult parts of Land Brandenburg where private operators do not provide mobile services with technologies above 2G and are not willing to invest on a commercial basis in the near future, resulting in a positive development of the economic activity at issue.

(b) Appropriateness of State aid as a policy instrument and the design of the measure

- (119) It should also be assessed whether State aid is an appropriate policy instrument to further develop the economic activity at issue or whether there are alternative, better-placed instruments. Alternative instruments include mobile coverage obligations attached to spectrum licenses and demand-side measures.
- (120) Mobile coverage obligations aiming at promoting further mobile coverage of the German territory have been attached to spectrum licenses granted through a number of spectrum auctions. By virtue of these obligations by the end of 2019, 97% of the households in each Federal State in Germany must have mobile coverage with at least 50Mbps per antenna sector. By the end of 2022, at least 98% of households per Land have to be covered with at least 100 Mbps per

³³ See WIK Study, page 29-33 and Merger case M.8864 Vodafone/Certain Liberty Global Assets, paragraph 53.

antenna sector. Compliance with these obligations will however not provide full geographical coverage ensuring a proper development of this economic activity within the target areas.

- (121) As regards demand-side measures, these are not appropriate means to develop the economic activity as the required mobile passive infrastructure for the provision of mobile services on 4G (or above) networks in the target areas does not yet exist and its construction would not be profitable for network providers due to the low population density in these areas.
- (122) The Commission therefore considers the aid scheme to be an appropriate policy instrument for developing the economic activity by closing mobile coverage gaps in Land Brandenburg.

(c) Existence of incentive effect

- (123) It needs to be examined whether the mobile passive infrastructure would not have been rolled-out within the same time frame without any State aid.
- (124) The MNOs active on the German market will be asked if they intend to invest in mobile passive infrastructure in the scheme's potential target areas during the next three years. Only in case such investment is not foreseen, can the aid be granted. Also, the design of the scheme ensures that MNOs may not report the supported infrastructure under their obligations arising from their spectrum licences.
- (125) The aid will therefore only be granted in areas where no mobile coverage with technologies above 2G exist and where the potential direct beneficiaries are not obliged or are not planning to deploy a mobile network. Intervention will allow for all MNOs in Germany to provide mobile services on 4G (or above) on the aided sites.
- (126) The Commission therefore considers the aid scheme to have an incentive effect to further develop this economic activity.

(d) Proportionality: aid limited to the minimum necessary

- (127) In assessing the proportional character of the notified measure, the Commission has highlighted a number of necessary conditions to minimise the State aid involved and the potential distortions of competition.
- (128) **Detailed mapping and analysis of coverage:** Land Brandenburg identified all potential target areas in a map displaying the mobile coverage in Land Brandenburg (see recitals (32) and (33)). The final target areas will be identified following specific public consultations (see recitals (38) and (39)). The Commission considers this to be sufficient to clearly identify which geographic areas will be covered by the measure.
- (129) **Public consultation:** The main characteristics of the measure have been made public in the public consultation of 12 February 2020 as described in recitals (35) to (39)). Project specific public consultation will be organised for the precise identification of the target areas. The Commission considers this approach to be sufficient to ensure proper publicity.

- (130) **Competitive selection process and most economically advantageous offer:** Competitive selection processes as described in recitals (40) to (43)) ensure that there is transparency for all investors wishing to bid for the rolling out and/or operation of the subsidised projects. The direct beneficiaries will be chosen in a fair, transparent and non-discriminatory selection procedure in line with the applicable rules on public procurement. On the basis of the detailed explanation in recitals (44) to (48) above, the Commission is satisfied that all tenders organised within the scope of the competitive selection procedures regarding the selection of the direct beneficiaries will be assessed according to pre-established qualitative award criteria that will be weighed against the price offered in the bid. The Commission considers the requirements with regard to the competitive selection process and the most economically advantageous offer fulfilled.
- (131) **Step change:** A step change can be demonstrated if, as the result of the public intervention: (1) significant new investments are undertaken by the beneficiaries and (2) the subsidised infrastructure brings significant new capabilities to the market in terms of service availability, capacity, speeds and/or competition. As mentioned in recitals (49) to (53), the measure allows for significant new investments capable of providing for high performance voice and data mobile services in areas where no services or only voice services based on 2G technology was offered. It also allows for upgrading the backhaul infrastructure to provide for high performance voice and data mobile services. The aid is therefore not marginal and clearly allows for a step change.
- (132) **Technological neutrality:** As described in recital (54), any technology capable of supporting the provision of mobile broadband services at speeds of at least 50 Mbps symmetrical and latency of max. 150 milliseconds per antenna sector is eligible. Also, wholesale access will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.
- (133) At the current stage, LTE technology and above are capable to offer the required speed and latency per antenna sector. LTE based mobile networks and the following generations offer a superior performance for the combination of the essential qualitative criteria of voice and data transmission as well as unrestricted mobility. Namely, the LTE and following generations of mobile networks fulfil the following requirements: (i) they enable operators to provide services of advanced voice communication and high-speed data transmission, (ii) allow the use of a single device widely available for receiving both types of services, (iii) allow a wider range of roaming possibilities and (iv) can operate on the basis of increasingly more available (also re-farmed) spectrum allocations.³⁴
- (134) As regards other possible wireless technologies, these seem generally not to be able to offer an access equivalent in terms of its characteristics and quality to the access provided by mobile networks in view of the requirements of Land Brandenburg.

³⁴ The envisaged deployment of LTE corresponds to the requirement laid down in Article 6(3) of the Commission's Radio Spectrum Policy Programme (Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012, establishing a multiannual radio spectrum policy programme, OJ L 81, 21.3.2012, p.7) to foster network upgrades to the latest most efficient technology.

- (135) WIFI technologies are, as a general rule, not equivalent as they do not provide full mobility. LTE technology networks (and above) offer much more coverage and wider reach than WIFI solutions, which force users to depend upon hotspots in each area and to switch after a short distance to another hotspot and possibly provider. With (at least) LTE technology on the other hand, users will be assured of seamless wide-area connectivity. In other words, whilst users would have to log in to a new WIFI network once they are leaving their current network, connectivity with LTE technology is not interrupted when moving into another antenna sector.
- (136) WIFI networks are also inferior in terms of online security, which is particularly important for business users. Whilst LTE (and above) networks offer enhanced privacy, security, and safety, WIFI solutions cannot offer this, especially not on mobile devices. Finally, WIFI solutions have a much higher latency and varying quality of the services offered.
- (137) As regards satellite technology solutions, whilst being a full mobile solution from the technological point of view³⁵, it has become in practice rather a substitute for fixed-line telecommunications services since the devices are of larger size and weight than mobile devices which makes them unsuitable for the use as mass market mobile device in the gigabit society. A user using a mobile device with one of the nation-wide mobile networks and who enters one of the target areas, would not be able to use that device by connecting to the satellite. He would therefore not be able to continue communicating seamlessly if only a satellite connection were available in the target area. Finally, in addition to their much higher latency, mobile satellite services and devices are generally also much more expensive than LTE services and devices which raises issues of affordability.
- (138) In light of the above, the Commission considers that the State aid scheme fulfils the condition regarding the principle of technology neutrality.
- (139) **Use of existing infrastructure:** As stated in recitals (55) to (59), the Brandenburg Authorities encourages recourse to any existing infrastructure so as to avoid unnecessary and wasteful duplication of resources and to reduce the amount of public funding.
- (140) The Brandenburg Authorities clarified that, in addition to the mapping and public consultation exercises, there will also be public access to the database encompassing all existing mobile masts in Germany.³⁶
- (141) In the planning process for the construction of the mobile passive infrastructure, the Granting Authority will take into account all existing infrastructure in the relevant target areas that can be accessed and used to realize synergies. Also, the option of upgrading existing masts will be duly considered in each single project before a final decision is made.
- (142) The Commission considers that this approach allows for finding the best and most cost-efficient solution and for avoiding unnecessary duplication of infrastructure.

³⁵ Mostly used in areas not covered by mobile communications services, for example on oceans, in deserts and other regions without human settlement.

³⁶ <http://emf3.bundesnetzagentur.de/karte/>

- (143) **Wholesale access and pricing:** As explained above in recitals (60) to, all interested parties will have fair, transparent and non-discriminatory access to the subsidised mobile passive infrastructure. The rent for using the mobile passive infrastructure is in all cases subject to negotiation between the mobile passive infrastructure providers and the MNOs.
- (144) Effective wholesale access to the mobile passive infrastructure will not be limited in time. The same access conditions will apply on the entirety of the network including on the part of it where existing infrastructure will be used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure.
- (145) The Commission therefore concludes that it supports the assessment of the measure as compatible with the State aid requirements regarding wholesale access.
- (146) **Monitoring and clawback mechanism:** As shown in recital (73), the Granting Authority shall closely monitor the implementation of aid schemes during the entire duration of the projects.
- (147) Concerning the claw-back, as shown in recitals (74) and (74), the Brandenburg Authorities will implement a claw-back mechanism. This will guarantee that direct beneficiaries cannot generate unreasonably excessive profits.
- (148) **Transparency and reporting:** The Brandenburg Authorities shall publish on a central website the necessary information as indicated in recitals (76) to (79). Direct beneficiaries are obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on their infrastructure deployed under the aid scheme. Furthermore, as indicated in recital (80), for the duration of the aid scheme, the Brandenburg Authorities will consolidate key information on the individual aid projects and report every year to the European Commission.³⁷

(e) Conclusion on limited negative effects

- (149) As shown above, the aid scheme does not crowd out private investment and the effects are confined to areas in Land Brandenburg that are characterized by mobile coverage gaps, i.e. areas where no high performance voice and data mobile services are available currently or within the following three years.
- (150) In the light of the above arguments, it can be concluded that negative effects of the aid scheme on the electronic communications market, if any, are limited. Thereby, the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest.

³⁷ Such information should at least include besides the information already made public on the central website, the date when the supported infrastructure is put into use, the number of mobile network providers using it, the number of houses covered by the mobile communications networks, take-up rates.

3.2.2.3. Weighting the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade

- (151) A carefully designed State aid scheme should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (152) As shown in section 3.2.2.1, the subsidised mobile passive infrastructure will enable the provision of high-performance voice and data mobile services to end-users, and bring about significant mobile network capabilities in terms of availability and capacity in the target areas. It will thereby help reducing the inequalities and digital divide, allow for seamless communication and reduce obstacles in emergency situations. The measure will deliver broadband access “on the move”, better choice for consumers, higher quality and innovation. Hence, consumers' access to mobile voice and data services in these areas will be strongly improved.
- (153) Also, as shown above, in section 3.2.2.2, the Brandenburg Authorities have designed the notified measure in such a way as to minimise the potential distortion of competition arising from the measure.
- (154) Furthermore, by granting access to the supported mobile passive infrastructure to all interested parties as described in recitals (60) to the measure avoids the creation of local monopolies and aims at creating additional competition in the target areas. The overall impact on competition is deemed to be positive. The negative effects on competition, if any are very limited.
- (155) Therefore, the positive impact of the aid measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade. On balance, the measure is in line with the objectives of Article 107 (3) (c) TFEU as it facilitates the development of high-capacity mobile voice and data services, where such aid does not adversely affect competition to an extent contrary to the common interest.

4. CONCLUSION

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 TFEU.

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>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President