



## EUROPEAN COMMISSION

Brussels, 21.04.2015  
C(2015) 2660 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject:**            **State aid SA.39518 (2014/N) - Germany - NGA Cluster Nordhessen**

Sir,

### **I. SUMMARY**

- (1) I am pleased to inform you that the European Commission has assessed the measure "*Das NGA Cluster Nordhessen*" (hereafter: "the measure") and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)c of the TFEU.

### **II. PROCEDURE**

After intensive pre-notification discussions, Germany notified the measure to the Commission on 26 February 2015 pursuant to Article 108 (3) of the TFEU.

### **III. CONTEXT**

- (2) In line with the "Europe 2020" strategy for more growth, with the "Digital Agenda for Europe" and with the German federal broadband strategy (that calls for comprehensive

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broadband networks with download speed of at least 30 Mbit/s by the year 2018), the Region of Nord-Hessen aims at deploying NGA-networks; with download speed of at least 30 Mbit/s and with upload speed that is significantly higher than that of basic broadband networks or in case of proven demand, also upload speeds of 30 Mbit/s. It also endeavours to create the basic conditions for a potential future upgrade to achieve speeds of 100 Mbit/s, also symmetrically.

- (3) The present initiative comprises five administrative districts in the region of Nord-Hessen: Kassel, Schwalm-Eder, Waldeck-Frankenberg, Werra-Meißner and Hersfeld Rotenburg and concerns thus 1 million citizens, in a relatively scarcely populated area.
- (4) There have been fruitful municipal endeavors to provide the entire population with internet access of 1 Mbit/s. This project was closed in 2011. However, all five districts are below the federal average concerning the availability and quality of higher speed broadband supply.
- (5) At the same time, the region of Nord-Hessen has produced above average economic growth rates in the past, and the availability of communications infrastructure has been identified as a key element of sustaining this above average growth.
- (6) Therefore, the project aims at providing the entire population, with special attention to SMEs, with access to high speed communications infrastructure where private investment has not been able to achieve that goal.

#### IV. DESCRIPTION OF THE MEASURE

- (7) **Objective:** Purpose of the measure is to provide ubiquitous, full coverage NGA networks with download speed of at least 30 Mbit/s and in case of proved demand also of upload speeds of 30 Mbit/s for all municipalities and of the five administrative districts in the region of Nord-Hessen. This should contribute to the objectives of the Digital Agenda and as such to further enhance economic growth and development in the region.
- (8) **Description of the project:** The five administrative districts in question will team up for the project in order to exploit most synergies and keep costs down. To this end, they establish a separate limited company named **Breitband Nordhessen GmbH**. It will be entrusted with contracting out the construction of the passive physical infrastructure, which remains the property of the GmbH. Breitband Nordhessen GmbH will lease the passive infrastructure to a service provider that establishes the active network elements and manages the network, providing wholesale and retail broadband services. This operator will conclude a concession agreement with the network owner Breitband Nordhessen GmbH.
- (9) **Duration:** The measure will enter into force upon approval by the European Commission; investments are planned over a time horizon of 5 years.
- (10) **Legal basis:** Law governing the development bank of the region Hessen ("*Gesetz über die Wirtschafts- und Infrastrukturbank Hessen*") and its Guidelines on broadband loans, Budget Law of Hessen 2014 ("*Haushaltsgesetz des Landes Hessen*").
- (11) **Budget and financing instruments:** The overall estimated (maximum) budget of the measure is [...] million EUR. The [...] million EUR, necessary to establish the physical

infrastructure, are financed by a loan of the development bank of Hessen (WI-Bank) and ELER-grants up to [...] million EUR from the “EPLR Entwicklungsprogramm Ländlicher Raum Hessen 2014-2020”. Loan and grants be paid out gradually, along the implementation process during 2015-2019. At the point of the decision the exact conditions of this loan are not known but it is assumed that most probably it would run over 22 years at a [...] % yearly interest rate, with regular repayment of the principal (with the exception of 2 years). The region Hessen will guarantee this loan towards WI-Bank. The five participating municipalities contribute 25000 EUR as equity capital to the Breitband Nordhessen GmbH. Furthermore, they provide [...] million EUR as loan at an annual interest rate of [...] % for the operating expenses of the first, probably loss making years, with the option of [...].

- (12) ***Aid amount and intensity:*** The exact amount of the aid cannot be quantified at this stage. The final aid amount will depend on the final credit conditions – not final at the date of the present decision - and on the actual capital expenditure required to build the network, which will be the result of a tendering exercise. The German authorities consider that, if at all, the credit conditions generate only a limited aid amount, as the finally agreed interest rate from WI bank could be close to a market rate. However, there is also a presence of aid in form of the municipal contributions for the establishment of Breitband Nordhessen GmbH and in form of a guarantee from the Region: the commercial risk is not born entirely by the project. Furthermore, according to the Business Case, the expected profitability of the project is [...] %, which would not attract private capital, thus the intervention is regarded as aid within the meaning of Article 107 TFEU; State resources are necessary.
- (13) ***Beneficiaries:*** Breitband Nordhessen GmbH and thus the participating administrative districts will be beneficiaries of the measure. Furthermore, the network operator leasing the passive infrastructure will also benefit from the measure to some extent. According to the German authorities, although the leasing price will be tendered and thus a market price is expected to be paid for the passive infrastructure, without the State intervention the commercial network operator would not have been in the position to offer NGA services in the target area. Downstream, the beneficiaries of the aid will be the end users who will be able to benefit from NGA services at an acceptable price.
- (14) ***Coverage analysis:*** The authorities have commissioned a Feasibility Study for the project to an external consultant. The study includes the assessment of broadband coverage on local- and municipal level. Citizens and SMEs have been separately analysed. The assessment differentiated the four areas along the availability of broadband infrastructure: percentage of households with 1 Mbit/s (under-supplied), 2 Mbit/s (basic supply), 6 Mbit/s (moderate supply) or NGA. The results of this analysis have been crosschecked with the federal Broadband-atlas ("Bundesbreitbandatlas") of TÜV Rheinland. Results show that the five administrative districts are undersupplied compared to the German average (up to 20% of households are undersupplied while the German average is around 5%). In terms of basic supply – with the exception of the city Kassel- the districts are also worse off than the federal average; the 93-94% coverage is not attained in any of the districts in question. In the higher broadband categories (moderate and NGA), penetrations are well below the German average, partly 60% lower. Just above 20% of households on average have NGA.

- (15) **A demand survey** among the population of the target area has also been conducted between 01.07.2013 and 21.09.2013. It had a 8-9% voluntary response rate from citizens and SMEs. In both cases, 97-99% of respondents indicated a demand for high speed, 30-50 Mbit/s internet access.
- (16) **Target areas:** The target area is the full territory of the five administrative districts (with the exception of the city of Kassel), which does not currently have an NGA network in place or planned to be deployed in the next three years: The measure only encompasses "NGA white" areas where no other operator is present offering NGA. As a result of the consultation with stakeholders, those areas where an operator indicated the intention to develop NGA within the next three years were taken out of the project.
- (17) **Consultation with stakeholders:** 3 consecutive market consultations were conducted among telecommunications operators in 2012, 2013 and 2014, whether they plan to deploy NGA in any of the areas in question in the coming 3 years. 20 regional and federal network operators were contacted in writing. Furthermore, an enquiry containing all relevant information about the measure was published in the European and regional tendering databases (TED and HAD<sup>1</sup>) on 18.06.2013 with deadline for replies of 18.07.2013 Those areas within a municipality where a market player expressed interest to develop NGA over the coming 3 years, were taken out of the project. No operator raised concerns about the project.
- (18) **Detailed mapping of existing infrastructure:** As civil engineering works, laying the ducts constitutes a large part of the investment needed for the construction of NGA. A detailed mapping was necessary to reduce the cost through exploiting synergies. Every involved municipality gave reports on its existing stock of usable civil infrastructure and further short term planned works which included mainly ducts. Also regional energy providers (e.g. [...], [...]) have been addressed in order to find synergies for the routing of the physical infrastructure. Finally, the results of this mapping exercise have been cross-examined with the infrastructure atlas (Infrastrukturatlas<sup>2</sup>). All available data were fed into the geo-information system.
- (19) **A Technical Feasibility Study and a set of Business Cases** were carried out for the project by an external consultancy. This includes a draft engineering concept for the future network in terms deployable technological options and network topologies taking into account the regional specificities and the already available infrastructure. The study concluded that for the region of Nordhessen it would be most efficient to rely on a combination of FTTC, FTTH and sporadically wireless solutions. This draft network concept allowed for a more precise estimation of the construction costs and the calculation of the Business Case. However, the bidders for the construction of the network will be free to choose the final technological solution or solutions that will in the end prove the most effective and most efficient.
- (20) **Choice of the intervention scheme:** 3 separate Business Cases have been calculated for three different setups for the project: Under the first scheme, the municipality constructs the passive network and leases it out to a private operator, under the second, the

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<sup>1</sup> Hessische Ausschreibungsdatenbank

<sup>2</sup> 'Infrastrukturatlas' is maintained by the German regulatory authority, Bundesnetzagentur, updated yearly by new additions of infrastructure by all broadband operators in the country. The 'Infrastrukturatlas' is public.

municipality constructs and operates also the active network while a private service provider supplies the customers, in third case the municipality would be entrusted with all three tasks; network construction, active network management and service provision. All Business Plans underwent a risk analysis changing key parameters. Result of this analysis was to establish the municipal network and lease all the assets under a concession agreement to a private operator that provides all wholesale and retail services and bears all commercial risk of exploitation. This set up is expected to yield the highest, even a positive net present value.

- (21) ***Size of the target area:*** The authorities have analysed whether smaller target areas should be chosen, in particular to separate the development per administrative district and to establish five management companies. This would have reduced the size of the project and may have facilitated the participation of smaller service providers, thus allowing for more competition. However, this approach has been discarded based on the calculations in the feasibility study: a single management company would result in lower administrative costs, economies of scale for purchases, synergies in terms of technical expertise and management knowledge. With a view to reduce the aid element to the minimum, the larger project was maintained. In addition, the public consultation of the service providers, (from 21.05.2014 to 23.06.2014 published in TED and HAD), has shown sufficient interest from a number of competitors to bid even for the large target area.
- (22) ***Choice of the network operator:*** The network operator will be selected by way of an open, transparent and non-discriminatory selection procedure. A notice regarding the selection has been published in TED and HAD. In this notice the contract has been defined as a service concession agreement. The concession agreement is tendered in line with EU and German public procurement principles; the procurement process is open to all bidders who are evaluated against the following criteria: 1. Amount of the offered rental payment for the passive network; 2. How far the operator's assumptions concerning the Business Case are in line with the municipal objectives; 3. Transmission capacity and – quality, 4. Announced consumer prices. The call for tenders is designed to be technology neutral.
- (23) ***Construction of the physical infrastructure*** will equally be tendered. The construction works will be tendered subsequently to the selection of the network operator. The network operator's offer will determine the precise technological and engineering requirements for the passive network construction. Important award criteria in the competitive tender for the construction of the network will be the possible best use of the existing infrastructure; synergies with communal, telecom operators' and also energy networks.
- (24) ***Rights and obligations under the concession agreement:*** Under the concession agreement, the operator takes over the entire management of the assets (i.e. passive infrastructure) owned by Breitband Nordhessen GmbH: The operator has the right to use the passive infrastructure, to set up the active network and offer consumer services on it. Preferred duration of such a concession is at least 20 years, where the operator pays a rental fee to the owner of the passive infrastructure and carries all the risk of business operations. The operator must also provide wholesale open access to any other operator that may seek access.

- (25) **Wholesale access pricing:** As regards wholesale access to the passive infrastructure and also to the active network, the regulated prices of the Bundesnetzagentur will apply. In case the access product is not priced by the Bundesnetzagentur, further benchmarking will be carried out with other comparable regions. The concession contract will be made conditional on the operator agreeing upfront on the (cost based or the regulated) calculation of access prices.
- (26) **Transparency, Monitoring, Control and Claw-back mechanism:** The concession agreement will be published on the federal website: [www.breitbandausschreibung.de](http://www.breitbandausschreibung.de). Consequently, name and deployed technology of the beneficiary, the amount and intensity of aid will also be public. The established infrastructure has to be documented and added to the "Breitbandatlas". The operator is obliged to submit its business plan to the granting authority. This will form the basis to determine the rental fees. However, if over time the actual profits exceed the expected profits by over 30%, the excess amounts must be returned to the Breitband Nordhessen GmbH. From the time the network becomes operational, every 2 years Breitband Nordhessen GmbH will report key information about the project to the European Commission.

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

- (27) According to Article 107 (1) TFEU, “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”. It follows that in order for a support measure to be qualified as State aid, it has to be imputable to the State and granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.
- (28) The measure includes a loan from WI bank, for which the final agreed terms could be more favourable than market conditions. It involves a guarantee by the Land Hessen on the bank loan that WI-Bank grants to Breitband Nordhessen GmbH. It also requires that the participating five administrative districts contribute equity to Breitband Nordhessen GmbH, at terms which might not be market conform, and grant loans at a lower than market interest rate. Even if the German authorities consider that such measure could be profitable, the expected profit is below the level which a private investor would reasonably expect. The measure, which is financed through State resources and is imputable to the State, therefore grants a selective advantage to Breitband Nordhessen GmbH.
- (29) The measure also provides a selective economic advantage favouring the network operator that otherwise would not have had the opportunity to sell its services on the market. Future operators that may benefit of open access to the network can also become beneficiaries.
- (30) The measure is liable to distort competition in so far as the State financed infrastructure project may crowd out future private investment or negatively affect private companies already active on the market.

- (31) The measure is likely to affect trade in the EU, as many actors on the electronic communications market are active in several Member States and the State aid may strengthen the financial position of the beneficiary.
- (32) The Commission therefore concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

## **VI. COMPATIBILITY ASSESSMENT**

- (33) The Commission has assessed the compatibility of the measure according to Article 107(3)(c) of the TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>3</sup> (the "Broadband Guidelines") which contain a detailed interpretation of Article 107(3)(c) of the TFEU for this kind of State aid.
- (34) As explained in paragraphs 33 and following of the Broadband Guidelines, for aid to be found compatible with the Broadband Guidelines (and thus with Article 107(3)(c) of the TFEU), the following conditions must be fulfilled:
  - 1. The aid must contribute to the achievement of objectives of common interest
  - 2. Absence of market delivery due to market failures or important inequalities
  - 3. The aid must be appropriate as a policy instrument
  - 4. The aid must have an incentive effect
  - 5. The aid must be limited to the minimum necessary
  - 6. Negative effects must be limited
  - 7. The aid measure must be transparent
- (35) If these conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against the potential negative effects.

### **The aid contributes to the achievement of objectives of common interest**

- (36) In its Europe 2020 strategy<sup>4</sup> the Commission defined the Flagship Initiative "A Digital Agenda for Europe", which has the "aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra-fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps."
- (37) The measure is fully in line with these objectives, targeting speeds of at least 30 Mbit/s (symmetrically, in case of proven need), with the additional condition that the newly established networks should be scalable in order to be expanded to up to 100 Mbit/s in

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<sup>3</sup> OJ 2013/C 25/01

<sup>4</sup> EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, 3.3.2010, page 12.

future. The measure targets full coverage of the "NGA white" areas, bridging the digital divide and enabling affordable high speed broadband services in all areas where such services are not available through private roll-out.

#### **Absence of market delivery due to market failures or important inequalities**

- (38) The territory of Nord-Hessen is a relatively sparsely populated area and only around 20% of the population has access to download speeds of 30 Mbit/s or more.
- (39) Market consultation was conducted by directly contacting over 20 telecommunication service providers active in the target area and by way of publishing the initiative in TED and HAD. The market consultation revealed that in most of the areas no private roll out was planned in the coming 3 years. Those few areas where private interest was manifest were removed from the target area.
- (40) The Business Cases for the initiative examined several set ups for the investment, choosing the most profitable scenario; the construction and a subsequent leasing of the network through an open selection procedure. This presented a return on investment of [...]%, which was considered to be too low to attract any private investment. This also confirms the hitherto absence of market delivery.

#### **The aid is appropriate as policy instrument**

- (41) The measure consists of the construction of a full coverage NGA network in a large rural area. This requires a high upfront investment. Alternative instruments (e.g. demand side measures, such as grants or tax incentives to end users or vouchers for equipment installation) would not be sufficient to incentivise a provider to construct a non-existent, large scale infrastructure.
- (42) In line with points 40 and 41 of the Broadband Guidelines, the measure is designed as a sub-regional scheme grouping the municipalities of five administrative districts where the project is managed by Breitband Nordhessen GmbH, thus ensuring consistency and more coordination. Also, this provides for a higher transparency.
- (43) Hence, the Commission recognizes that State aid is an appropriate instrument to achieve the set objectives.

#### **The aid has an incentive effect**

- (44) The market consultation revealed that the broadband network investment in question would not have been undertaken without any State aid. It creates a new platform for competition though deploying a higher quality network where open access conditions prevail. Thus the aid thus may produce a change in the investment decisions of the operators and service providers and therefore has an incentive effect.



### **The aid is limited to the minimum necessary**

- (45) The measure is designed in such a way as to minimise the State aid involved and thus it also minimises competitive distortions arising from financially strengthening the beneficiaries. This assumption relies on the following design elements in the scheme (as also set out among the criteria in paragraph 78 of the Broadband Guidelines):
- (a) *Detailed mapping and coverage analysis, consultation with stakeholders:* as described in recitals (22) an external study has been commissioned to collect information from municipalities and to conduct a demand survey in order to determine the degree of undersupply and the target area. The "Breitbandatlas" has also been used to this end. All service providers active in the region have been individually consulted to signal their NGA roll out plans for the coming 3 years. The areas where private investment was planned over this period had been taken out of the project. A call for expression of interest, describing all relevant information about the planned measure, was published with a sufficiently long delay for replies. Therefore, public funds will be used only in areas, where public intervention is necessary due to the lack of interest for commercial NGA. This limits the possibility of crowding out existing operators.
  - (b) *Open tender process:* As described in recitals (22) and (23), Breitband Nordhessen GmbH's only activity will be to contract out the construction of the passive physical infrastructure and to lease it to a service provider selected through an open tender. Therefore, Breitband Nordhessen GmbH will not be actively operating the infrastructure, neither on wholesale level only, nor on wholesale and retail level. The right to operate the assets will be transferred through a concession agreement to an operator selected through an open tender. The construction of the physical infrastructure shall also be tendered subsequent to the choice of the operator. The selection shall be transparent and non-discriminatory, in line with German and European public procurement principles, published in European, German federal and the German Regional tendering databases, TED and HAD. The operation of the network will then be conducted under a concession contract.
  - (c) *Most economically advantageous offer:* The proposals will be evaluated balancing the offered lease fee with quality of service and planned end-consumer prices. The offers should converge to the original Business Case calculated for the project. The network construction will be awarded to the company that is able to produce the maximum number of synergies with existing infrastructure.
  - (d) *Technology neutrality:* The feasibility study, taking into account the use of available infrastructure and based on a cost-benefit analysis identified as most effective and efficient engineering solution a mix of FTTC, FTTH and wireless technologies. Although the tender documents clearly state this, they also put forth that any other equivalent solution is also eligible.
  - (e) *Use of existing infrastructure:* as explained in recital (14) a detailed list of existing usable infrastructure has been set up in collaboration with the municipalities and service providers identifying mainly usable ducts. The tender for the network construction will explicitly ask for submitting offers that include the optional use of these infrastructure elements.

- (f) *Wholesale access*: as laid down in paragraphs 78(g) and 80(a) of the Broadband Guidelines, the network operator must provide open access to the active and passive infrastructure for at least 7 years. The concession contract will be made conditional on the operator signing up to the access conditions, which will explicitly dictate unbundled fibre access, bitstream layer 2 and 3, access to dark fibre to street cabinets and to ducts.
- (g) *Pricing*: In line with paragraph 78(h) of the Broadband Guidelines, wholesale access prices to active and passive infrastructure will be based in the first place on the regulated prices of the Bundesnetzagentur, so far published. If for an access product no published price of the Bundesnetzagentur is available, the price will be set by benchmarking from offers that exist in comparable regions. In addition a bottom up cost based price calculation under the guidance of the Bundesnetzagentur under the regulatory framework shall be used. The contract with the network operator will specify explicitly that the regulated wholesale access prices shall be used or in absence of these, the recommendation of the Bundesnetzagentur shall be binding.
- (h) *Monitoring and claw-back provision*: As described in recital (26) the beneficiary, the technology and the concession contract will also be published on a central online portal.  
  
During the tendering procedure the participants are required to submit their Business Plans. This will form the basis for negotiating the leasing fees. The contract will oblige the selected operator to reimburse all profit to the GmbH that exceeds the original forecast by more than 30%. This is in line with paragraph 78(i) of the Broadband Guidelines.
- (i) *Transparency*: In line with paragraph 78(j) of the Broadband Guidelines, the beneficiary, the used technology, the aid amount and intensity together with the concession contract will be published on the newly created website for broadband projects of the German Ministry for Transport and Digital Infrastructure. In addition, information about the newly created network will be made public by taking it up in "Breitbandatlas" and in "Infrastrukturatlas".
- (j) *Reporting*: The GmbH will automatically report back key information to the European Commission every two years after the launch of the network.

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

- (46) Given the design of the measure and its compliance with the conditions of Article 78 of the Broadband Guidelines (see recital (45) above), it is unlikely to have a crowding out effect on private investments.
- (47) The measure is confined to NGA-white areas where no other NGA service provider is present and no private investment is planned within the next three years.
- (48) The chosen investment model is the one that minimises the amount of public financial contribution for the project: The publicly established entity owns the infrastructure that is leased out to a broadband network operator under a concession contract. The initiative is

expected to yield a positive net present value for the public undertaking, meaning that State aid amounts are expected to be offset by the rental fees over the duration of the concession contract.

- (49) The service provider, selected through an open tender, is bearing the risk of business operations and is thus incentivized to recoup costs and investments. Therefore, the financial advantage the beneficiary receives is considered to be limited. The most tangible advantage the service operator receives is the possibility to gain access to a new market – being able to serve "NGA-white" areas.
- (50) Furthermore, the operator and the builder of the network are to be selected by competitive tender in conformity with the principles of public procurement rules, resulting in a competitive rental price, which also limits the financial advantage the operator obtains.
- (51) Future competition is enabled through the obligation of the operator to grant full open access to the subsidized infrastructure and there are several mechanisms to prevent wholesale access prices from being excessive.
- (52) In line with point 80(b) of the Broadband Guidelines, the selection procedure, the access and pricing conditions and the high level of transparency, monitoring and control (see recitals (22)(23)(24)(25)(26) ensure that the subsidised infrastructure will enable the provision of competitive and affordable services to end-users by competing operators.
- (53) In view of the characteristics of the project and of the safeguards applied, as discussed above, the overall impact on competition is deemed to be positive.
- (54) The increase in network capacity is expected to stimulate market entry by service providers and the provision of a larger variety of services. Access of competing operators is ensured by requiring open access to the established network on equal and non-discriminatory terms, which has a pro-competitive impact, as it allows several broadband service providers to use the subsidized infrastructure and compete. The risk of crowding out private investments and the negative effects of the measure are expected to be limited (see recitals (46)-(52)). On the effect on trade, there does not appear to be any significant negative spill-over for other Member States. Accordingly, the measure is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest and is in line with the objectives of Article 107(3)(c) TFEU.

## **Conclusion**

- (55) The Commission concludes that the amended measure notified by Germany meets the compatibility criteria set out in the Broadband Guidelines and is thus compatible with Article 107(3)(c) TFEU.

## **VII. CONCLUSION**

- (56) The Commission has accordingly decided that the aid measure is compatible with the TFEU, in accordance with Article 107 (3)(c) TFEU.

- (57) The Commission would remind Germany of the requirement to submit every two years reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to amend/extend this measure.
- (58) 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>.
- (59) Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) or, alternatively, by registered letter or fax to:

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Yours faithfully,  
For the Commission

*Margrethe Vestager*  
Commissioner