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Subject: State aid SA.37864 (2013/N) – Portugal
High-speed broadband in Portugal - prolongation

Sir,

1. PROCEDURE

- (1) Portugal notified the State aid measure "High-speed broadband in Portugal - prolongation" ("the notified measure") to the Commission on 2 December 2013 pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"). The Portuguese authorities replied to the Commission's request for information of 8 January 2014 by e-mail of 10 January 2014.
- (2) By their letter of 10 January 2014, the Portuguese authorities informed the Commission that they accept that the present decision is adopted in English.

2. DESCRIPTION OF THE MEASURE

- (3) The notified measure constitutes a prolongation of the State aid scheme "High-speed broadband in Portugal" which was approved by Commission decision on 19 January

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2011 in case SA.30317¹ ("the Decision"). As described in the Decision, the measure consists of a national plan for the installation of high-speed networks in rural areas of the Portuguese territory, divided into five separate regions (North Region, Centre Region, Alentejo and Algarve Region, Azores Region and Madeira Region). Five public tenders were launched for deployment of next generation ("NGA") networks in these rural regions not served by private operators ("white NGA areas"), including the outermost regions of the Azores and Madeira.

- (4) Purpose of the approved measure was to promote the development of a broadband network in areas which had not yet access to NGA broadband infrastructure, and where broadband services were not being delivered by competing NGA broadband infrastructures. Therefore a network is being built which will allow an open access at equitable market conditions to all operators offering broadband services to end-users. All (wired and wireless) telecommunications operators will be able to connect to the network at equal and non-discriminatory conditions. There will be provision of services only in white NGA areas.
- (5) The installation of the NGA networks was concluded in the North, Centre, Alentejo and Algarve, and Azores regions by the end of 2013, in compliance with the deadline of 31 December 2013 specified in the Decision.
- (6) However, in the Madeira region (Autonomous Region of Madeira), which public tender was launched in July 2009 and the respective contract concluded on 18 April 2013, the works to install the high-speed network have not yet started, and were not therefore concluded by the end of December 2013.
- (7) Portugal therefore plans a prolongation of the duration of the measure by two years until 31 December 2015. All the remaining provisions of the initial scheme remain unchanged. The other elements of the scheme, like mapping and coverage, pricing, monitoring, control and claw-back mechanism, the choice of the network operators and obligations imposed on them, remain unaffected by this change. The contracts with the operators contain in particular an obligation for the rollout of the network two years of the date on which the contracts resulting from each of the tenders enter into force.
- (8) Portugal has also informed the Commission that the amounts of public funding are 23,456,109 EUR for the Alentejo and Algarve Region and 30,259,174 EUR for the Centre Region, which falls within the aid amounts initially requested of 23.9 EUR million and 30.9 EUR million (cf. recital 32 of the Decision).
- (9) There will be effective wholesale access to the subsidised network (including its existing infrastructure used for the project) on equal and non-discriminatory terms for an unlimited period of time. The network will support effective and full unbundling and satisfy all different types of network access that operators may seek (including but not limited to access to ducts, dark fibre, street cabinets, and bit stream and unbundled access to fibre).
- (10) Regarding transparency, the Portuguese authorities stated that on its website (www.anacom.pt), ICP-ANACOM ("the NRA") has published the main

¹ OJ C 136, 6.5.2011, p. 2,
http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N252_2010.

characteristics of the approved measure and relevant information about each of the tenders and subsequent contracts. Furthermore, the aid beneficiaries will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on the infrastructure. Finally, the Portuguese authorities will submit reports to the Commission on the implementation of the measure, every two years from the date when the network is put in use.

3. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURE WITH ARTICLE 107 TFEU

- (11) As described in section V of the Decision, the initial aid measure constitutes State aid within the meaning of Article 107(1) TFEU.
- (12) The Commission has assessed the compatibility of the original scheme 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*². Upon publication on 26 January 2013 in the Official Journal, the new *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks* (the "2013 Broadband Guidelines") entered into force³. They are now applicable for the assessment of the amended scheme.
- (13) The new guidelines do not require a new assessment of most of the elements of the scheme, for which the criteria of the former guidelines have not been changed in substance. The Commission re-assessed however the balancing test with regard to the required "step change", the requirements for the design of NGA deployment and the transparency obligations of the Member State as determined by the 2013 Broadband Guidelines.
- (14) The aid ensures a "step change" in terms of broadband availability, within the meaning of recital 51 of the 2013 Broadband Guidelines, as it allows the deployment of an NGA network in areas where no such network exists and there are no plans to deploy one in the near future.
- (15) The scheme is in line with the detailed criteria established in recital 78 of the 2013 Broadband Guidelines for the design of the aid for broadband roll-out. This concerns the necessity of the aid. It furthermore concerns its proportionality in terms of mapping, the tender process, technological neutrality, the use of existing infrastructure, wholesale access with full and effective unbundling and full open access to the subsidised network on equal and non-discriminatory terms, price benchmarking based on the principles set by the NRA and on published benchmarks in comparable and more competitive areas of the country or on advice given by the NRA, and monitoring and claw back provisions. As stipulated in recital 80 of the 2013 Broadband Guidelines with regard to deployment of NGA networks, it is also ensured that there will be effective, full and unbundled access to the subsidised passive network for an unlimited period of time, and all different types of network access that operators may seek will be satisfied.

² OJ C 235, 30.9.2009, p.7.

³ OJ C 25, 26.1.2013, p.1.

- (16) Concerning the transparency requirement as defined in recital 78 (j) of the 2013 Broadband Guidelines, the Portuguese authorities will publish all information relative to the notified measure on their web site. Furthermore, the aid beneficiaries will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under the State aid measure in conformity with the abovementioned provision.
- (17) Regarding the reporting obligation, the Portuguese authorities will submit reports to the Commission on the implementation of the measure every two years from the date the network is put in use. Hence, the Portuguese authorities fulfil the requirements set in recital 78 (k) of the 2013 Broadband Guidelines.
- (18) In view of the characteristics of the project and of the safeguards applied, as already concluded by the Decision, the overall impact on competition is deemed to be positive. The project design allows several network operators to use the subsidised infrastructure and to compete. The subsidised infrastructure creates NGA broadband service availability and capacity where there is none before the start of the implementation of the measure. The public intervention does not crowd out comparable private investments, as there is no NGA network available in the target areas and existing operators have confirmed that they do not have any current or planned investments in the target areas. The creation of network capacity is expected to stimulate market entry by service providers and the provision of services. On the effect on trade, there does not appear to be any significant negative spill-over for other Member States.
- (19) The Commission therefore concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of NGA broadband services in the target areas. Accordingly, the Commission concludes that the measure notified by Portugal meets the compatibility criteria set out in the 2013 Broadband Guidelines and 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 thus compatible with Article 107(3)(c) TFEU.

4. CONCLUSION

- (20) The Commission has therefore decided that the notified measure is compatible with the internal market in accordance with Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (21) The Commission would remind Portugal of the requirement to submit to it annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to amend or extend this measure. Furthermore, in line with recital 78 (k) of the 2013 Broadband Guidelines, starting from the date when the network is put into use, for the duration of the aid measure, the State aid granting authority is asked to report every two years key information on the aid projects to the Commission.
- (22) 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 by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President