



EUROPEAN COMMISSION

Brussels, 08.11.2011

C(2011)8118 final

Subject: **State aid SA.33077 (2011/N) – United Kingdom**
 Northumberland Uplands Rural Community Broadband

Sir,

1. PROCEDURE AND SHORT DESCRIPTION OF THE MEASURE

- (1) On 4 October 2011, the United Kingdom (hereafter: "UK") notified to the Commission the above-mentioned aid measure. The measure was notified under the Notice on simplified procedure, in particular point 5(b)(v) of the Notice.
- (2) A description of the relevant features of this measure can be found in the summary of the notification, as published on the website of the Commission at http://ec.europa.eu/competition/elojade/isef/dsp_simple_notif.cfm and annexed to the present decision.
- (3) Through previous public support under the North East Objective 2 ERDF programme 2000-2006, all exchanges in Northumberland are broadband enabled. However, currently deployed ADSL technology restricts the effective range of broadband services to maximum 5km from the exchange¹. Because of the remote nature of rural Northumberland and such technical limitations of the existing network, approximately 3 500 households and businesses² are without access to basic broadband service in that area. These consumers are widely distributed throughout rural Northumberland but significant concentrations have

¹ Due to technological reasons, the available bandwidth via copper network using ADSL technology is significantly deteriorating as the distance between the exchange and the end users sites increases.

² Of the 3 500 households and businesses without basic broadband access, approximately 2 300 are located in the Uplands area (1 200 in the Coast and Lowlands area).

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been identified in several (priority) areas,³ where access to broadband services can be less than 50% of premises.

- (4) The objectives of the notified measure are (i) to provide basic broadband services (minimum of 2Mbps) in the remote rural parts of the Northumberland Uplands LEADER area that currently have no such broadband coverage (existing white areas)⁴ and (ii) to provide more advanced ("NGA") broadband services at Rothbury, a key location for the rural economy in that area, which already has basic broadband coverage.
- (5) The public consultation and market research conducted by the granting authority⁵ evidenced that there are no prospect for the roll-out of such networks in the near future of three years on commercial terms. Hence the UK authorities decided to support broadband roll-out with public funds.
- (6) The amount of public funding is GBP 500 000 (approximately EUR 578 168⁶), which will derive inter alia from the Rural Development Programme for England (RDPE) and from the budget of the Northumberland County Council.
- (7) The aid intensity will depend on the outcome of the open tender procedure, but will be maximum 70%.
- (8) The entire project was submitted to the national regulator OfCom⁷, who gave a favourable opinion by letter registered on 26 May 2011.
- (9) The Commission did not receive any substantiated comments of third parties upon publication of a summary of the notification on its website.

2. ASSESSMENT OF THE MEASURE

2.1. Existence of aid

- (10) As shown by the features of the measure described in the summary of the notification, the current measure will be financed by State resources. It will provide selective economic advantage to the electronic communication operator selected via the tender procedure and for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidized networks. There will be also an advantage for the businesses in the targeted areas.
- (11) The measure has the potential to distort competition. At the level of the network operators, support given to one operator may discourage other operators to deploy or expand their own networks in the targeted area on commercial terms. Public funding could also encourage local undertakings to subscribe to the

³ These priority areas are Rothbury Moor, Chevio and Tyne Dale (Uplands area).

⁴ Northumberland is located in the North East region of the UK and has a population of approximately 311 000, of which 32 000 live in the Uplands area.

⁵ The entire project was described on the dedicated broadband portal of Northumberland: www.northumberland-broadband.net, as well as in the press and in public presentations. Also the procurement exercise includes the Question and Answer process with a mandatory stand-still process, allowing concerns to be raised.

⁶ ECB exchange rate (EUR 1 = GBP 0.86480) as of 7.10.2011.

⁷ The independent regulator and competition authority for the UK communications industries.

services offered via the subsidized networks instead of more expensive market-based solutions. Insofar as the intervention is liable to affect providers of electronic communications services from other Member States and distorts competition between end users located in the UK and elsewhere in Europe, the measure has an effect on trade. The markets for electronic communication services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States.

- (12) The Commission therefore concludes that the notified aid measure constitutes State aid within the meaning of Article 107(1) TFEU as moreover confirmed by the notifying Member State during the notification.

2.2. Compatibility of the aid

- (13) The Commission's compatibility assessment of the notified measure in this case did not imply any serious difficulties.
- (14) The Commission has assessed the compatibility of the notified measure with the internal market in the light of the Broadband Guidelines⁸, which contain a detailed interpretation of Article 107(3)(c) of the TFEU in this area of State aid law. As regards the applicable substantive provisions, the Commission has essentially analysed the measures in the light of the criteria developed in paragraphs 31 to 79 of the Broadband Guidelines. In order to be compatible under Article 107(3)(c) of the TFEU, the aid must pursue an objective of common interest in a necessary and proportionate way.
- (15) The primary objectives of the measure are to extend basic broadband services with minimum 2 Mbps download speed to areas where such services are currently unavailable and to provide NGA broadband services at Rothbury. In the areas concerned, the public consultation evidenced that no similar services are planned by market operators on commercial terms in the foreseeable future of three years. The measure at stake therefore pursues well defined EU policy objectives laid down in paragraphs 37 to 40 and 52 to 58 of the Broadband Guidelines. The objectives of the measure are in line with the European Commission's Digital Agenda⁹ which calls Member States to use public financing in line with EU competition and State aid rules in order to meet the coverage, speed and take-up targets defined in the Europe 2020 Strategy.
- (16) The Commission's analysis confirms that the measure is well designed to deliver those common interest objectives.
- (17) First, insofar as it is aimed at extending the basic broadband services with minimum 2 Mbps to areas where such services are currently unavailable and to provide NGA services at Rothbury, where only basic broadband is available, the measure is appropriate. This is so because although a network operator is present in the zones targeted by the State intervention, this network would not have been upgraded without state intervention and certain categories of users are

⁸ Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ C 235, 30.9.2009, p.7.

⁹ A Digital Agenda for Europe. COM/2010/0245 f/2. The objectives of the Digital Agenda are to bring basic broadband to all Europeans by 2013 and seek to ensure that, by 2020, (i) all Europeans have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households subscribe to internet connections above 100 Mbps.

still not adequately served in the sense that some (basic or – for Rothbury - NGA) broadband services they requested were not available to them. In addition, the network operators present do not intend to upgrade the existing networks in the near future of three years to ensure that the entire targeted area has basic broadband access, or, for Rothbury, to ensure NGA coverage, and there are no prospects that third parties would build an alternative infrastructure in the near future of three years. Hence the measure targets "*white areas*" within the meaning of paragraphs 41 and 42 of the Broadband Guidelines or, for Rothbury, a "*white NGA area*" within the meaning of paragraph 68 of the Broadband Guidelines, and there are no valid alternatives to public funding to overcome those obstacles.

- (18) The measure at stake is considered proportionate because the conditions indicated in paragraph 51 of the Broadband Guidelines are respected, and amongst other features, the following can be identified:
- a) A detailed mapping and coverage analysis has been conducted by the UK authorities to clearly identify which geographic areas will be covered by the support measure in question. An open, transparent public consultation verified that no market operators have plans to invest in similar infrastructure in the near future of three years.
 - b) Open tender process: the aid will be awarded on the basis of an open tender in accordance with the principles of the EU and national procurement rules.
 - c) Selection of the most economically advantageous offer: within the context of an open tender to select the infrastructure provider and wholesale operator of the network, the granting authorities will select the most economically advantageous offer. In line with paragraph 51 c) of the Broadband Guidelines, for the purpose of determining the most economically advantageous offer, the awarding authority has specified in advance the relative weighting, which it will grant to each of the qualitative criteria chosen (see fn. 55 of the Broadband Guidelines).
 - d) The measure is technologically neutral: bidders are entitled to propose the provision of broadband services using whatever technology they deem most economically effective.¹⁰
 - e) The measure ensures the use of existing infrastructure to the extent possible; there is only one supplier with any existing infrastructure in the area. Regulation in the UK provides for access by alternative suppliers to exchange buildings and wholesale backhaul owned by BT Openreach on an open basis, enabling potential suppliers to the project to focus resources on the "last mile" where there is currently no effective provision.
 - f) Wholesale access: According to the invitation to tender, the preferred supplier has to provide "open access". The access shall be on the same basis as applies to other infrastructure provided by the supplier elsewhere

¹⁰ The tender documents do not make any reference to the technology to be used but only to minimum targets to be reached in terms of (inter alia) broadband connectivity. Therefore, the tender is open to all technologies able to provide those minimum service requirements, including satellite and mobile network technology.

in the UK. The service provider(s) chosen for all stages of the project will moreover be required to provide wholesale access to the subsidised network to all third parties for at least 7 years in conformity with point 51(f) of the Broadband Guidelines.

- g) Benchmarking pricing exercise: The objective of the project is to ensure that services provided at locations currently unserved due to their distance from exchanges may be priced at the same level as those that are currently served from the same exchange. Thus access wholesale prices will be based on the average published (regulated) wholesale prices that prevail in other comparable, more competitive areas of the country.
 - h) Monitoring and claw-back mechanism to avoid over-compensation: The project will be monitored by the Northumberland County Council. Initial monitoring of the project implementation will be the assessment of the project delivery against milestone plans. Once implemented, the project will be assessed against the number of connections enabled and the take-up. The service provider will be required to provide quarterly reports of enablement and take-up, and allow the Council to audit these reports. Payments to the supplier will be made on the basis of enablement. Clawback will be imposed if required levels of take-up are not met within the required timescale. The precise conditions of the claw-back mechanism still need to be agreed with the preferred supplier. This is acceptable taking into account the small scale of the project.
- (19) To the extent the measure aims to support the deployment of an NGA network in Rothbury, a "*white NGA area*", where one basic broadband network already exists (traditional "*grey area*") further conditions shall be met as laid down in paragraph 73 of the Broadband Guidelines. In this respect, the UK authorities proved that
- a) the broadband services provided over the existing networks at Rothbury are not sufficient to satisfy the continuously growing needs of citizens and business users in the area in question and commercial operators do not have sufficient commercial incentives to upgrade the existing networks;
 - b) there are no less distortive means (including ex ante regulation) to reach the stated goals .
- (20) Concerning the conditions laid down in paragraph 79 of the Broadband Guidelines, the UK authorities proved that the following conditions are met not only to the extent the measure supports NGA networks but concerning the whole subsidized network:
- a) The access obligations imposed on the chosen operator will include access to both passive and active infrastructure for at least 7 years (see also recital (18)f)). In particular, the access obligation imposed also includes the right to use ducts or street cabinets in order to allow third parties to have access to passive and not only to the active infrastructure.¹¹ This is without prejudice to any similar regulatory obligations that may be imposed by the NRA in order to foster effective competition or measures adopted after the expiry of that period.

¹¹ Access is granted not only to new, but also to all existing infrastructure.

- b) As mentioned in recital (8), the UK authorities consulted the NRA on the project. The NRA will continue to regulate ex ante and to monitor very closely the competitive conditions of the overall broadband market and impose where appropriate the necessary remedies provided by the applicable regulatory framework. Furthermore, the NRA – under the relevant regulatory obligations - will set the access conditions under applicable national and EU rules.
 - c) The NGA infrastructure that will benefit from State aid will support effective and full unbundling and satisfy all different types of network access that operators may seek, including active and passive access products on an open wholesale basis.
- (21) The Commission considers that the aid should provide a direct and appropriate investment incentive for the selected operator due to the use of an open tender process to select the beneficiaries.
- (22) On balance, the Commission concludes that the overall effect of the measure is deemed to be positive. The measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of broadband services in remote and rural areas. The intervention is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest.

2.3. Conclusion

- (23) On the basis of the foregoing assessment, the Commission's analysis confirms that the compatibility criteria set out in the Broadband Guidelines are met, hence the aid involved in the notified measure is compatible with Article 107(3)(c) of the TFEU.

3. DECISION

- (24) In view of the above, the Commission finds that the aid granted on the basis of the measure in question is compatible with the internal market in accordance with Article 107(3) (c) of the TFEU and has accordingly decided not to raise objections to the notified measure.
- (25) The Commission reminds the United Kingdom to submit annual reports on the application of the aid measure and to inform the Commission pursuant to Article 108(3) TFEU on all plans to approve a new or to modify this aid measure.
- (26) The United Kingdom is further reminded that, pursuant to Article 108(3) TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure. In view of the duration of the scheme, the Commission would like to draw the UK authorities' attention to future revisions of the Broadband Guidelines, which might make appropriate amendments to the scheme necessary.
- (27) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that

deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President

Annex: Summary of the notification based on the information provided by the Member State according to the standard form provided in Annex to the Notice on simplified procedure.

Summary of notifications

On 05/10/2011, the Commission received a notification of an aid measure pursuant to Article 108 of the Treaty on the Functioning of the European Union. On preliminary examination, the Commission finds that the notified measure could fall within the scope of the Commission Notice on a simplified procedure for treatment of certain types of State aid (JO C136, 16.06.2009, p. 3-12).

The Commission invites interested third parties to submit their possible observations on the proposed measure to the Commission. The main features of the aid measure are the following:

Reference number of the aid	SA.33077
Member State	United Kingdom
Member State reference number	
Region	
Granting authority	Northumberland County Council (Leader Programme) Regeneration Programmes & Funding Team, County Hall, Morpeth, NE61 2EF www.northumberland.gov.uk
Title of the aid measure	Northumberland Uplands Rural Community Broadband
National legal basis	Local Government Act 2003
Proposed Community basis for assessment	Broadband - Broadband Communication, 2009
Type of measure	Individual aid
Amendment of an existing aid measure	
Duration	01.11.2011
Economic sector(s) concerned	Telecommunications
Type of beneficiary	Only large enterprises
Budget	Overall amount: EUR 0,30 (in millions)
Aid instrument (grant, interest rate subsidy, ...)	Direct grant

Observations raising competition issues relating to the notified measure must reach the Commission no later than 10 working days following the date of this publication and include a non confidential version of these observations to be provided to the Member State concerned and/or other interested parties. Observations can be sent to the Commission by fax, by post or email under reference number SA.33077 to the following address:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42
Stateaidgreffe@ec.europa.eu