



EUROPEAN COMMISSION

Brussels, 25.03.2010
C(2010)1916

Subject: **State aid N 30/2010 – Sweden**
State aid to broadband within the framework of the rural development program

Sir,

I. PROCEDURE

- (1) Following pre-notification discussions, by letter dated 20/01/2010 pursuant to Article 108 (3) of the TFEU¹, the authorities of Sweden notified a measure to the Commission for supporting the deployment of basic and next generation broadband access networks, which was registered as "*State aid to broadband within the framework of the rural development program*" (hereafter: "the measure").

II. DESCRIPTION OF THE MEASURE

- (2) **Context:** Sweden has specific geographical conditions, as a country that is large in area with a relatively small population who mostly live in urban areas. Around 85% of the population live in urban areas, while 3% live in small towns and around 12% are scattered around rural areas. Investments in infrastructure are expensive and necessitate a certain customer base to be profitable. As a result of the geographical structure, the prospects for investments in broadband are poorer in more sparsely populated areas. The need for broadband is, however, just as great in these areas as in other parts of the country. Rural areas in northern Sweden in particular have poor access to fixed broadband. According to the Swedish authorities, a third of small and medium-sized businesses in these areas still have dial-up modem access, while the equivalent proportion for the whole of Sweden is 2%.

¹ With effect from 1 December 2009 Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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- (3) Commercial operators have greater interest in making investments in densely populated areas, while the challenge is greater in the remote parts of the country where conditions for deploying infrastructure and upgrading technology are less favourable. Broadband through the fixed telephone network dominates in rural areas. However, this network is being partly eliminated as old and obsolete parts of it result in excessive operating costs by which approximately 50000 households will be affected until 2015. The vast majority will be able to obtain wireless or satellite services through the market, but there is a risk that the number of businesses and households lacking access to high-capacity broadband may increase. Another challenge is that the gap between a majority who have access to fast broadband and households and businesses in other areas that have to settle with significantly slower broadband may widen, which could lead to the rise of "digital divide" between these areas.
- (4) **Broadband availability in Sweden:** Despite the overall good basic broadband coverage in Sweden², there are still areas with permanent households and businesses without any access to broadband services³. Although the deployment of next generation access (hereafter: "NGA") networks⁴ is progressing well in Sweden, NGA-networks cover today mainly urban areas and 35% of the population, making the vast majority dependent on old broadband technologies. No more than 4% of the rural population in Sweden has access to NGA network and will most likely not be covered by next generation of mobile broadband services (such as LTE⁵) either. In 100 of Sweden's 290 municipalities, currently less than 10% of the population has access to NGA-network.
- (5) **The National Broadband Strategy:** On 2 November 2009, Sweden has endorsed a National Broadband Strategy⁶. The overall objective for Sweden is to have world-class broadband: in order to meet the challenges of economic growth, competitiveness, innovation, to help the country to tackle the challenges in the shape of increased globalisation, climate change and an ageing population in a scarcely populated country, it is essential to have access to high speed broadband throughout the country. Therefore the National Broadband Strategy aims to achieve the following objectives: (1) in 2020, 90% of all households and businesses should have access to broadband at a minimum speed of 100 Mbps, (2) in 2015, 40% of all households and businesses should have access to broadband at a minimum speed of

² According to the European Commission's Progress Report on the Single European Electronic Communications Market 2008 (hereafter "14th Implementation Report"), DSL coverage in Sweden increased from 95% at the end of 2006 to 98% at the end of 2007, and DSL coverage in rural areas stood at 90%, an increase of 6 percentage points over a year. Final report 2008 COM(2009) 140Final of 24 March 2009. The country chapter of Sweden is available at: http://ec.europa.eu/information_society/policy/ecomms/doc/implementation_enforcement/annualreports/14threport/se.pdf.

³ According to the data of the national regulatory authority, approximately 4400 premises (2500 households and 1900 businesses) in 190 municipalities still had no ability to get any wired or wireless broadband access in 2008.

⁴ According to paragraph 53 of the Broadband Guidelines, "NGA networks are wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks."

⁵ "Long Term Evolution" is the name of high speed mobile radio communication that may theoretically reach, if and when adopted, increased peak data rates of 100Mbps downlink and 50Mbps uplink.

⁶ Available at: <http://www.sweden.gov.se/content/1/c6/13/49/80/112394be.pdf>.

100 Mbps and (3) all households and businesses should have good opportunities to use electronic public services with broadband access.

- (6) **Objective:** The notified state aid measure is part of the Swedish broadband strategy. Its aim is to help to achieve its three objectives by increasing broadband availability in rural areas. The target of the scheme is to cover approximately 25 000 premises, out of which 80% are citizens (20 300) and 20% are companies (5100).
- (7) Firstly, the current measure aims to cover all areas where basic broadband services are still not available⁷ and where there are no plans of private operators to roll out such an infrastructure within the next three years ("*white areas*")⁸. Secondly, the current measure aims to support the deployment of NGA networks areas where such networks do not exist and unlikely to be developed in the next three years ("*white NGA areas*").
- (8) According to the Swedish authorities, after completion of the notified measure the third major objective of the National Broadband Strategy, namely that "all households and businesses should have good opportunities to use electronic public services with broadband access" will be fulfilled and progress will be made for the fulfilment of the first and second objectives.
- (9) The Swedish authorities explained that the reason to support the deployment of NGA networks with public funding (even in areas where basic broadband services might exist) is that more and more public services are being digitalised in Sweden while local service institutions are both down-sized and centralised. This implies increased dependency on digital networks to get hold of societal information and to get along with business and the everyday life. Also, reliable high speed networks are needed for the future in order to capitalise on education (for instance lectures provided through video streams), utilise home based health care (such as monitoring and diagnosing), develop business innovations (regardless of spatial locations), enjoy cultural events. In summary, digital infrastructure can provide a foundation for development in areas with limited commercial activities, be used as leverage for future growth and counteract divides in society⁹. Widespread

⁷ According to the Swedish authorities, currently satellite broadband offers do not provide adequate services on these areas for several main reasons: (1) due to Sweden's geographical location, the overall satellite coverage is not optimal in all rural areas; (2) as with other radio based solutions, deep forests and valleys make it difficult to achieve good coverage in all areas, (3) the price plans are not commercial attractive, some 4,5 € per Mb consumed traffic or 1 € per minute connected, (4) bandwidth does not reach requirements for decent broadband (2 Mbps), (5) asymmetric connections make uplink slow and create long response time, i.e. limit available services.

⁸ The Swedish authorities explained that even in white areas, certain telecommunication infrastructure may exist, but such infrastructure cannot be used to provide broadband services to end-users. These infrastructure concern fibre optic trunks – used for example for the national grid – that may be passing through an area but lacks access points, i.e. spots where it is possible to connect new fibre optic cables or active equipment.

⁹ According to a survey conducted by NRA measurement of the broadband quality that individuals receive shows that broadband networks already appear to be stretched and that end users – for all access technologies – often do not receive the capacity that they expect. Furthermore, the proportion of individuals who state that they receive their expected capacity fell from approximately 42% in 2005 to approximately 37% in 2008. Svenskarnas användning av telefoni och Internet - Individundersökning 2009 - PTS-ER-2009:28. Available at: <http://www.pts.se/sv/Dokument/Rapporter/Telefoni/2009/Svenskarnas-anvandning-av-telefoni-och-Internet---Individundersokning-2009---PTS-ER-200928/>.

availability of high speed networks can also help in meeting the major challenges that exist in the area of environment¹⁰.

- (10) **Legal basis:** The granting of aid will be in accordance with the general conditions of the (1) Swedish Rural Development Programme¹¹ and the specific conditions of the measure (321) Basic services for the rural economy and population under axis III, cf. articles 52 (b) (i) and 56; (2) Annex III of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development ("EAFRD")¹² and (3) Regulation No 1290/2005 on the financing of the common agricultural policy¹³. These conditions are implemented through "*Förordningen om stöd för landsbygdsutvecklingsåtgärder*" (the Government Decree on support for rural development measures, hereafter the "Decree").
- (11) **Project owners:** The role of the "project owners" (that are typically municipalities or local non-profit organizations) is to prepare the necessary steps detailed in paragraph (15) for applying aid from the Decision Making Authorities.
- (12) **Decision making authorities:** The County Administrative Boards¹⁴ and the Sami Parliament¹⁵ are referred to as the Decision Making Authorities. According to the Decree an application of aid by the project owner is submitted to the County Administrative Board of the County where the investment is planned to take place or to the Sami Parliament. The Decision Making Authorities will prioritise projects on the basis of the Regional Strategy, the project plan, the purposes of the Rural Development Programme and the National Strategic Plan for rural development. Eligible projects must be essential for a sustainable local, social and economic development.
- (13) **Subject of the aid:** In line with Annex III of Council Regulation (EC) No 1698/2005¹⁶, the following types of operations will be subject to state aid: (1) creation of and enabling access to broadband infrastructure including backhaul facilities and ground equipment (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies), (2) upgrade of existing broadband infrastructure, (3) laying down passive broadband infrastructure (e.g. civil engineering works such as

¹⁰ According to the Swedish authorities, for example, the monitoring and control using IT can reduce energy use in buildings by up to 17% and reduce carbon dioxide emissions in transport logistics by up to 27%. Access to broadband also makes easier to work remotely, allows increased use of cloud computing, thereby reducing total energy consumption.

¹¹ Commission decision of 27/6/2007 K (2007) 3093 Final, on approval of the Swedish Rural Development Programme. CCI 2007 SE 06 RPO 001.

¹² Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) OJ L 277/1 20.10.2005 p.1. as amended by Council Regulation (EC) No 473/2009 of 25 May 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). OJ L 144/3, 9.6.2009, p.1.

¹³ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy. OJ L 209, 11.8.2005, p.1.

¹⁴ Sweden comprises 21 counties. The County Administrative Boards are government authorities in charge with a range of charged with a range of tasks, including: implementing national objectives, co-ordinating the different interests of the county, promoting the development of the county, establishing regional objectives, safeguarding the rule of law.

¹⁵ The Sami Parliament in Sweden was established in 1993 as a publicly elected body and a state authority, with the overall task of working to achieve a living Sami culture.

¹⁶ For reference, see footnote 12.

ducts, and other network elements such as dark fibre, etc.) also in synergy with other infrastructures (energy, transport, water, sewerage networks, etc). The market analysis will decide which type of intervention is the most suitable for the area concerned. The open tender procedure will ensure the cost effective implementation. In basic broadband "white areas", the creation and enabling of access to any broadband infrastructure, while in "white NGA areas", all three types of interventions will be possible.

- (14) **Identification of the target areas and consultation with operators:** To ensure that state aid is only used in areas where no basic broadband or NGA broadband networks are available and not planned by private operators in the near future, the Swedish authorities will undertake the following procedure.
- (15) Before approving state aid for a project (1) a market analysis will be conducted by the project owners to identify the existing broadband networks and services on the target areas¹⁷. (2) The result of the market analysis, including the mapping, the exact target areas as well as the subject of the measure (NGA or basic broadband) will be published at the website of the Decision Making Authority and at the website of the Managing Authority for the Rural Development Programme in Sweden. The documents will be published for at least one month. If any operator during this time raises concerns on the planned state aid measure, the Decision Making Authority will analyze the concerns in detail¹⁸. (3) Aid may only be granted if, as a result of such market analysis and consultation with stakeholders, there is no comparable broadband offer provided or expected to be provided by the market in the next three years.
- (16) **Budget and funding instruments:** The total amount of public funding available for the measure is €28.152 million, of which 75% will stem from EAFRD funds and 25% from Swedish government funds. The aid cannot be cumulated with aid received according to other aid schemes. The planned yearly spending is detailed below:

	Total public funding	Of which EAFRD (75 %)	Of which Sweden (25 %)
<i>Year</i>	<i>Euro</i>		
2010	5 630 400	4 222 800	1 407 600
2011	11 260 800	8 445 600	2 815 200
2012	8 445 600	6 334 200	2 111 400
2013	2 815 200	2 111 400	703 800
Total	28 152 000	21 114 000	7 038 000

¹⁷ A list with municipalities and the coverage of households and businesses will be provided by the NRA, and will be published at the website of the Managing Authority for the Rural Development Programme in Sweden ("the Swedish Board of Agriculture").

¹⁸ For instance, if an operator plans to invest in a comparable broadband network on the targeted area in the near future, in line with paragraph 68 of the Broadband Guidelines, it has to prove the credibility of such investment plans: the operator could supply its business plan, a detailed calendar deployment plan, proof of adequate financing or any other type of evidences that would demonstrate the credible and plausible character of its planned investment.

- (17) According to the Swedish authorities the total investments can reach €70 million and they foresee that a major part of the investments will come from non-paid voluntary work as defined in Article 54 of Commission Regulation (EC) No 1974/2006¹⁹ and in the Common Monitoring and Evaluation Framework²⁰.
- (18) **Objective to minimize public funding:** The Swedish authorities actively encourage the use of existing infrastructure to avoid unnecessary and wasteful duplication. There is an ongoing dialogue at local, regional and national level about mechanisms to ease access to existing infrastructure and the use of existing telecommunication infrastructure (such as existing fibre ducts, copper lines).
- (19) **Tender procedure:** After the Decision Making Authorities approved a project application prepared by the project owner in line with the principles detailed in paragraph (12), the aid will be allocated on the basis of a public tender. The tender procedure shall be conducted in accordance with the principles of the law on public procurement²¹ which ensures equal and non-discriminatory treatment of all bidders and that the tender is conducted openly. A bid must contain a project plan that demonstrates the credible and plausible character of the planned investment as well as a time schedule that shows that the planned investment will be completed within a reasonable timeframe²².
- (20) **Award criteria:** The Swedish authorities foresee the following award criteria in the Government Decree concerning the aid scheme: the amount of aid requested, the quality and quantity of the broadband, how long the applicant commits itself to offering services in the subsidized network, the end user prices in the subsidized network. Apart from these criteria other criteria may be set by the project owners in the open tender process. Priority will be given to projects delivering broadband to widest coverage at the lowest cost in the rural areas and the bidder that offers the lowest price for the similar quality and quantity will receive more priority points within the overall assessment of the bid. The project owner will specify in advance the relative weighting which it will give to each of the qualitative criteria chosen.
- (21) It can be anticipated that the project owner could also own the network in the two cases. (1) The Swedish measure has a bottom-up approach: the need for broadband could in many cases be identified and initiative taken by citizens and small enterprises in rural areas that could organize themselves in for example a non-profit organization. In rare cases, the Swedish authorities foresee that if these organizations undertake the majority part of the investments costs (e.g. through non-paid voluntary work, like undertaking the civil works), these organizations could decide to own the networks themselves and select the network operator through an open tender procedure. (2) The Swedish authorities also foresee that in rare occasions the operator selected through an open tender procedure does not

¹⁹ Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). OJ L 368/15, 23.12.2006.

²⁰ The Common Monitoring and Evaluation Framework (CMEF) provides a single framework for monitoring and evaluation of all rural development interventions for the programming period 2007-2013. Available at: http://ec.europa.eu/agriculture/rurdev/eval/index_en.htm.

²¹ Lagen (2007: 1091) om offentlig upphandling. Available at: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=2007:1091>.

²² In line with footnote 31 of the Broadband Guidelines.

want to own the network, but is only interested in operating it (for instance, due to the high maintenance costs in comparison with the potential revenues that could be generated). In such circumstances, the Swedish authorities foresee the possibility for the project owners to own the network.

- (22) **Technology:** The selection procedures will be technology neutral, allowing tenderers to propose any suitable technological solutions.
- (23) **Wholesale access:** Third party operators will have wholesale access to the subsidised broadband networks in a non-discriminatory way during a period of 7 years from the completion of the project. The period of seven years can be prolonged if the operator of the infrastructure in question has significant market power in the specific market concerned.
- (24) If the subject of the measure is an NGA network, third party access includes both passive and active infrastructure. This open access policy 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 and bitstream access). The supported NGA infrastructure will have to provide access for at least three operators at the infrastructural level and access for any operators at the highest levels at bitstream level.
- (25) The Swedish national regulatory authority ("NRA"), Post- och telestyrelsen, ("PTS") will regulate ex ante or monitor very closely the competitive conditions of the overall broadband market and impose where appropriate the necessary remedies provided by the applicable regulatory framework. This includes the compliance with the open access provision of the selected operators. The NRA will, where appropriate, impose the necessary remedies provided by the applicable regulatory framework. Furthermore, the Decision Making Authorities together with the NRA will approve the access conditions under the applicable Community rules upon demand of third party operators. .
- (26) **Pricing:** The price for wholesale access will be based on average prices for comparable services in more competitive areas. The NRA will monitor the pricing of broadband services and will serve the public authorities who have the task to monitor this.
- (27) **Beneficiaries:** The direct beneficiaries of the aid will be electronic communications operators offering broadband services. In some rare cases, when the project owner will own the network, the direct beneficiary can be a non-profit local group or a municipality. Indirect beneficiaries will be electronic communication operators utilising the new network for offering retail services to end users and primarily micro-enterprises in the areas concerned who will benefit from better broadband services.
- (28) **Duration of the measure:** The scheme will be put into effect as soon as possible after the Commission's decision to approve the aid scheme. Aid may be granted until the 31 December 2013, payments may be effectuated until the 31 December 2015.
- (29) **Monitoring and clawback mechanism:** According to the draft Decree, the Decision Making Authority will for a period of seven years be responsible to

monitor all obligations in line with Regulation (EC) no. 1975/2006²³ and also the financial results of the subsidized network. A claw-back mechanism will also be part of the contracts: the bidders must commit themselves to pay back part of the payment if the demand for broadband in the target area grows beyond anticipated levels and this leads to that the support granted is deemed to be unreasonably high. The claw back mechanism will be maintained for 5 years after the network is operational. Profits will be calculated cumulatively and checked after the five year period has expired. If the cumulative profitability in these 5 years was higher than the average profitability of the industry, the Decision Making Authority will reclaim the part of the extra profit that corresponds to the aid intensity of the measure.

III. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (30) 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 measure to qualify as state aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (31) The notified aid measure allows a selected number of undertakings to be relieved, by means of State resources, of a part of their costs regarding the financing of the deployment of a broadband network in Sweden which they would normally have to bear themselves. Moreover, the third party providers of broadband services and business end users located in the coverage area might also benefit indirectly from the measure at stake. Consequently, the support from the state strengthens the position of a selected number of beneficiaries in relation to their competitors in the Community and therefore has the potential of distorting competition. Since the direct beneficiaries are active in deploying broadband networks, a market which is, at least potentially, subject to intra-Community trade, this support is likely to affect trade between Member States.
- (32) 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. Having established that the project involves aid within the meaning of Article 107(1) TFEU to the selected service provider, third party providers and businesses, it is necessary to consider whether the measure can be found to be compatible with the internal market.

²³ Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures. OJ L 368/74, 23.12.2006, p.1.

IV. ASSESSMENT OF THE MEASURE: COMPATIBILITY

(33) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*²⁴. The Broadband Guidelines contain a detailed interpretation of Article 107(3)(c) TFEU in this area of State aid law.

IV.1. The balancing test and its application to aid for the broadband network deployment

(34) As described in paragraphs 34 and 35 of the Broadband Guidelines, in order to assess whether a measure is compatible under article 87(3)(c), the Commission balances positive and negative effects of the aid according to the criteria set out in the Guidelines. In applying the balancing test, the Commission will assess the following questions²⁵:

- (1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
- (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate instrument?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

IV.2. Objective of the measure

The aid is in line with the policy of the European Union

- (35) The current measure targets areas where either no basic broadband or no NGA broadband coverage is currently available and where there are no plans by private investors to roll out such infrastructures in the near future. The measure will also contribute to achieve the EU's paramount objective of "broadband for all" by enabling all Swedish households and businesses to have access to affordable broadband services.
- (36) Hence the objective of the measure is in line with Section 3.1 of the Broadband Guidelines: by extending basic or NGA broadband coverage to areas where private operators have no commercial interest to invest, the Swedish authorities pursue genuine cohesion and economic development objectives.

Aid is the appropriate instrument

- (37) The Swedish government has adopted a comprehensive broadband strategy with the overall objective for Sweden to have world-class broadband. The strategy also

²⁴ OJ C 235 of 30.9.2009, p. 7.

²⁵ As described paragraph 35 of the Broadband Guidelines.

envisages several alternative measures to support broadband and NGA deployment in the country to achieve the main objectives of the document.

- (38) For instance, the NRA, as part of its remit, coordinates with municipal organization with the objective reduce the difficulties of private companies to obtain the necessary permits for the deployment of a broadband infrastructure. The NRA also plans to improve the coordination and information managements for excavation works, with the aim to facilitate collaboration between different players in the expansion of infrastructure and to increase the opportunities for competition at physical infrastructure level. The Swedish government has also introduced demand side measure with the objective to support take-up rate of broadband services.
- (39) However, in the situation currently under assessment, the efforts from alternative instruments (including *ex ante* regulation) do not solve the problems related to the lack of supply of basic or high speed broadband on the targeted areas. In line with paragraphs 47 and 48 of the Broadband Guidelines, in order to ensure the supply of basic and high-speed broadband services the Swedish Government sees no alternative but to grant public aid to the construction of basic and NGA broadband networks in the sparsely populated areas of the country.
- (40) The Commission can agree that without further public intervention, avoiding the emergence of a new "*digital divide*" between rural and urban areas seems not possible, which could lead to the economic and social exclusion of the local citizens and undertakings. Hence in the current situation, State aid is an appropriate instrument to achieve the set objectives.

The aid provides the right incentives to operators

- (41) Regarding the incentive effect of the measure, the Broadband Guidelines set out in paragraph 50 that it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. The market analysis and the public consultation described in paragraphs (11) and (15) will guarantee that in the targeted areas no basic or NGA broadband network investment would take place without public funding, hence the aid produces a change in the investment decisions of the operators. Moreover, as explained in paragraph (19), the recipients of the aid will be selected by public tender. Therefore, the aid should provide a direct and appropriate investment incentive for the selected operators.

IV.3. Design of the measure and the need to limit distortions of competition

- (42) In order to minimise the State aid involved and the potential distortions of competition, the notified measure has to meet a number of necessary conditions.
 - (a) *Market research and consultation:* As set out in detail in paragraph (15), the Swedish authorities also taking into account the existing market information provided by the NRA will undertake a detailed analysis of the existing broadband infrastructure in order to clearly identify the areas where state intervention is necessary. The consultation with existing operators through an open, transparent way ensures that public funds are used only in areas where such private investment exists or is planned to build basic or high speed broadband networks.

- (b) *Open tender process*: The Swedish authorities will select the undertakings for the construction and the management of the network in an open, competitive tender. This procedure has the effect of maximising the effect of the aid provided while minimizing any potential advantage granted for the selected operator.
- (c) *Most economically advantageous offer*: Within the context of an open tender, the Swedish authorities will select the most economically advantageous offers among those presented by the operators. Under the terms of the open tender, the bidder with the lowest amount of aid requested receives more priority points within the overall assessment of the bid as explained in paragraph (20). Furthermore, in line with footnote 55 of the Broadband Guidelines, for the purposes of determining the most economically advantageous offer, the awarding authority should specify in advance the relative weighting which it will give to each of the (qualitative) criteria chosen.
- (d) *Technological neutrality*: The measure does not favour any particular technology or network platform leaving it to commercial operators to come up with the most appropriate technological solutions to provide retail broadband services to end users.
- (e) *Use of existing infrastructures*: To avoid unnecessary and wasteful duplication of resources, the Swedish authorities encourage the use of existing infrastructure as described in paragraph (18). In this way the bidders are encouraged to have recourse to any available existing infrastructure in the area, which limits the economic impact of the project for operators that may already have electronic communications infrastructure in place.
- (f) *Wholesale access*: The selected operator will have to offer wholesale services and access to the subsidised network to other operators for 7 years. The selected operator will have to offer other operators access to a network element or to the capacity of the network in an open, transparent and non-discriminatory manner.
- (g) *Price benchmarking*: In order to ensure effective wholesale access and to minimise potential distortion of competition, access wholesale prices should be based on the average published (regulated) wholesale prices that prevail in other comparable, more competitive areas of the country or the Community or, in the absence of such published prices, on prices already set or approved by the NRA for the markets and services concerned. Wholesale prices on the subsidized network will be monitored by the NRA with the objective to keep these at a reasonable and non-discriminatory level.
- (h) *Monitoring and claw-back mechanism to avoid over-compensation*: the project will be examined on a regular basis and the claw-back mechanisms implemented will ensure that any extra profit generated through the first five years of the operation of the subsidized networks will be clawed back (as explained in paragraph (29)). Thereby the Swedish authorities ensure that the recipients of the aid will not benefit from overcompensation and will minimise *ex post* and retroactively the amount of aid deemed initially to have been necessary.

- (43) To the extent the measure aims to support the deployment of an NGA network in "white NGA areas", where one basic broadband network may already exist²⁶ (traditional grey area) further conditions shall be met as laid down in paragraph 73 of the Broadband Guidelines. In this respect, the Swedish authorities proved that
- (i) the broadband services provided over the existing networks are not sufficient to satisfy the continuously growing needs of citizens and business users in the area in question (see paragraph (9)) and commercial operators do not have sufficient commercial incentives to upgrade the existing networks (see paragraphs (2) and (3));
 - (j) there are no less distortive means (including ex ante regulation) to reach the stated goals as described in paragraphs (38) and (39).
- (44) Concerning the conditions laid down in paragraph (79) of the Broadband Guidelines, as long as the measure supports NGA networks, the Swedish authorities proved that the following conditions are met:
- (k) Effective wholesale access: as the access obligations imposed on the chosen operator include access to both passive and active infrastructure for at least 7 years without prejudice to any similar regulatory obligations that may be imposed by the NRA. 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 active infrastructure. This is without prejudice to any similar regulatory obligations that may be imposed by the NRA in the specific market concerned in order to foster effective competition or measures adopted after the expiry of that period.
 - (l) As explained in paragraph (25), the NRA will be consulted in setting the conditions for wholesale network access and will actually be monitoring the compliance of the selected operator with the wholesale access obligations. Furthermore, the Decision Making Authorities together with the NRA will approve the access conditions under the applicable Community rules upon demand of third party operators.
 - (m) Effective and full unbundling: as explained in paragraphs (23) and (24), the NGA network architecture 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 but not limited to access to ducts, fibre and bitstream.

IV.4. Conclusion

- (45) The Commission concludes 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) TFEU in conjunction with the Broadband Guidelines. In view of the duration of the scheme, the Commission would like to draw the Swedish authorities' attention to future revisions of the Guidelines, which might make appropriate measures to the scheme necessary.

²⁶ See paragraph (2)

V. DECISION

- (46) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*State aid to broadband within the framework of the rural development program*" is compatible with Article 107(3)(c) TFEU and has decided to raise no objections to the notified measure.
- (47) The Swedish authorities are reminded that, pursuant to Article 108(3) TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.
- (48) 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/community_law/state_aids/state_aids_texts_sv.htm
- (49) 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 de Spa 3
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President of the Commission