



EUROPEAN COMMISSION

Brussels, 07.05.2012
C(2012)3033 final

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 [...].

PUBLIC VERSION
WORKING LANGUAGE

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Subject: State aid SA.33151 (2011/N) - Slovakia
Basic broadband deployment in white areas of Slovakia

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Basic broadband deployment in white areas of Slovakia*" (hereafter: "the measure" or "the project") and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU).

II. PROCEDURE

- (2) Following pre-notification discussions, by letter registered on 8 June 2011, pursuant to Article 108 (3) of the TFEU, the Slovak authorities notified the above mentioned measure to the Commission. The Slovak authorities provided answers to the Commission's requests for information of 1 August 2011, 11 October 2011 and 6 March 2012 by letters received on 14 December 2011 and 2 April 2010.

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III. CONTEXT

- (3) Fixed broadband penetration¹ in Slovakia reached 17% in 2011 lagging behind the EU average of 27.2%.² Slovakia still has the fourth lowest rate in the EU. The overall fixed broadband access coverage in Slovakia remains relatively low, especially in rural areas.
- (4) In terms of broadband coverage, as in many countries in the EU, broadband services are available in more densely populated locations, whereas the rollout of basic broadband connections is lagging behind in rural and remote areas as these areas are not commercially attractive enough for the business operators to invest in new infrastructure. Consequently, only a minority of the public sector, business and residential users in rural areas of Slovakia are able to access adequate broadband services.
- (5) According to the market research conducted by the Slovak authorities, although fixed broadband coverage reaches 90.2% of the Slovak population,³ there are wide differences between urban and rural areas.
- (6) The Slovak authorities state that the two key reasons for the lack of investment in rural areas are the facts that (i) towns are geographically scattered rendering the necessary initial investments costs in rural areas much higher than in the areas with dense population, and that (ii) the inhabitants of rural areas have generally lower incomes and thus are unable to pay for the actual costs of the service. Consequently, in the rural areas where demand is not developed and the coverage of network cost is uncertain, the private operators have so far decided not to invest in construction of broadband connections resulting in a wide "*digital divide*" between the urban and the peripheral areas.

IV. DESCRIPTION OF THE MEASURE

- (7) **Objectives:** The project aims to develop an infrastructure of electronic networks offering wholesale broadband services in rural areas of Slovakia which are currently not served and where there are no plans for coverage in the near future. The measure was designated as an objective of the Priority axis 3 of the Operational Programme Information Society (PO3 OPIS).
- (8) The Slovak authorities aim to improve broadband availability for Slovak citizens and businesses in rural areas by tackling the lack of necessary broadband infrastructure. They expect that the creation of backhaul (i.e. middle-mile) network⁴ with the help of public funds in not served areas will reduce the entry barriers (by lowering investment costs) for commercial operators and thereby will encourage them to extend their broadband network coverage in rural areas. The network will offer open wholesale access basis to third-party operators who will be able to add their access infrastructures (i.e. the last mile network segment) and deliver broadband services to end-users.
- (9) The Slovak authorities argue that the availability of broadband services is one of the key factors for the local communities in attracting businesses, distance working, providing

¹ Number of fixed broadband internet connections per 100 inhabitants.

² See Digital Agenda Scoreboard 2011.

³ Number of inhabitants living in municipalities with fixed broadband internet connections (DSL, Cable Modem, WiMAX, FTTx) per 100 inhabitants as of 31 December 2010 without taking into account WiFi and mobile broadband access (Flash-OFDM, 3G/HSxPA).

⁴ Backhaul (or middle mile) networks comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

health care services and improving education and public services. The authorities expect that the measure will help (i) to eliminate the digital division concerning the availability of broadband services between urban and rural regions in Slovakia, (ii) to increase social cohesion and (iii) contribute to economic growth.

- (10) As a result of the new subsidized broadband infrastructure, the broadband network coverage will be extended from the current 90.2% to approximately 96% of the Slovak population thus allowing additional 305 933 residents living in 729 rural municipalities (6.36 % of the Slovak population living outside the region of Bratislava) to gain access to broadband services by fixed, mobile, wireless or other technologies.
- (11) **Legal basis:** The notified measure is based on (i) Act No 610/2003 on Electronic Communications, (ii) Act No 275/2006 on Information Systems of the Public Administration, (iii) Act No 528/2008 on Support and Aid provided from the Funds of the European Community, (iv) Act No 523/2004 on Budget Rules of the Public Administration, and (v) Act No 231/1999 on State aid.
- (12) **Target areas:** The Slovak authorities conducted a detailed mapping and coverage analysis to identify the target areas where State intervention is necessary.⁵ The measure will cover 729 municipalities where no adequate broadband services are available. Backhaul fibre lines will be placed as a result of the notified measure where no such infrastructure is currently available and there are no commercial plans of private operators to undertake such investments with the near future of three years.
- (13) **Public consultation:** Based on the database of the Research Institute of Posts and Telecommunications, the Slovak authorities identified 719 municipalities (with total population of 284 592) as white spots and the list has been published in December 2010.⁶ On this basis, the Slovak authorities conducted a public consultation in a transparent manner, with publication of the relevant information (including the target areas, aim and scope of public intervention, etc.) on the internet allowing all stakeholders to comment. Information on the measure, including the target areas and routes of planned optical fibre lines has been provided to the private operators. In March and April 2011, National Agency for Network and Electronic Services ("NASES") carried out additional consultations of telecommunications operators, which resulted in adjustment of the number of white spots to 775 municipalities (populated by 333 898 people) in May 2011. Following the update of its investment plans, in case of 46 municipalities [...] demonstrated credible investment plans for the next three years, and thus the number of white spots subject to public intervention has been reduced to 729 municipalities (inhabited by 305 933 people) accordingly⁷.
- (14) During the consultation phase, several internet service providers also demonstrated interest to use the planned publicly funded network and to extend their broadband coverage to currently not covered areas by connecting their access infrastructure to the

⁵ The Research Institute of Posts and Telecommunications created the Database of Broadband Internet Access Availability in Slovakia using statistical methods. This database is updated on a regular, biannual basis by written requests for information sent to the most significant operators on the market and by monitoring the websites of the operators. This database served as a basis for the mapping of target areas for projects of PO3 OPIS (available at: www.vus.sk/broadband/databaza/broadband.php).

⁶ The call for cooperation of telecommunication operators in the preparation of documents and conditions of the measure as well as the first version of the list of municipalities were published at: <http://nases.gov.sk/23592/vyzva-operatorom-k-spolupraci-na-priprave-podkladov-a-podmienok-pre-operacny-program-informatizacia-spolocnosti-prioritna-os-3---zvysenie-pristupnosti-k-sirokopasmovemu-internetu.php>.

⁷ The final list of municipalities is available here: <http://nases.gov.sk/data/files/8099.pdf>.

new publicly funded backhaul network. None of the operators raised concern on the measure during the public consultation.

- (15) The Slovak authorities have undertaken discussions with the National Competition Authority and the National Regulatory Authorities, both of them viewing favourably the public intervention. By letter of 7 May 2010, the Anti-monopoly office of the Slovak Republic recommended that the infrastructure allow open access under transparent and non-discriminatory conditions and be constructed only in white areas. The National Regulatory Authority agreed with the execution of the project by letter of 24 November 2011. It expressed its opinion that the services for internet service providers should be provided in compliance with the principles of transparency and non-discrimination, prices common on the market should be applied and the role of the authority would be to intervene in case of dispute between operators.
- (16) **Project design:** The subject of the measure is to build a regional optical network (backhaul infrastructure), through which it will be possible to combine the access networks of private operators into a higher communication layer (transport networks). The construction works (civil works, ducts, dark fibre, etc.) will be carried out by private operators selected by the means of an open tender in line with the relevant national and EU Procurement Directives. The newly created network will remain in the ownership of NASES, a public legal entity.⁸ NASES, as the receiver of aid, shall build and operate regional optical network in the form of passive dark fibre. The basic and only wholesale product shall be the rental of unlit optical fibres (dark fibre) to parties interested in constructing and operating broadband access networks in white areas. NASES does not pursue any activities in the wholesale or retail electronic communications markets, except the future operation of the backhaul network at stake.⁹
- (17) The Slovak authorities have undertaken¹⁰ that (1) the network operators will limit its activity on the pre-defined target areas and will not expand to other commercially attractive regions; (2) NASES will not aim to make profit, but expenses and income will be balanced. Any profits made from the operation of the network will be reinvested within the scope of the measure; (3) NASES will only maintain the passive infrastructure and to grant wholesale access to it, but will not engage in competition on the retail levels with commercial operators. The management of the network and offering of wholesale services to the third party service providers will be carried out by NASES. The maintenance and

⁸ NASES has the form of an allowance organization ("*príspevková organizácia*") which is a legal entity of the state, of which maximum 50% of costs are covered by its own sales and minimum 50% of costs are covered from the state budget. According to the Slovak authorities, the main task and subject of NASES activities is the administration, operation and development of the government data network GOVNET, and the operation and development of services of the Central Public Administration Portal as basic tools for informatisation of public administration in Slovakia. Further, according to its founding statutes, NASES may also carry out consulting, intermediation and training services in the fields of informatics and information and electronic communication networks, and other services related to networking and electronic services; these services are yet not carried out by NASES, although it cannot be excluded that this situation may change in the future. In any case, the Slovak authorities affirmed that, if NASES began to perform these commercial services, they would be separate in terms of accounts, organization and personnel from services provided regarding the subsidized networks.

⁹ In connection with the backhaul network building and operation, NASES will adhere to the principle of separate record-keeping, that is to keep separate accounting records of all activities relating to the provision of backhaul network access services and of the associated expenses and revenues in order to ensure compliance with the requirements for non-discrimination or avoidance of disadvantaging in the backhaul network access services through redistributing expenses and revenues of other economic activities pursued by NASES.

¹⁰ In line with Commission decision of 19 October 2011 in case SA.31316 *Programme national "Très haut débit"*.

support of the network will be carried out by a private operator selected by means of an open tender.

- (18) **Technology:** Bidder will be entitled to propose any technology solutions adequate to achieve the objectives of the measure. From the backhaul networks point of view, which are high capacity transport networks, according to the Slovak authorities, the chosen solutions in most cases will likely to be fibre optic networks as they are the most adequate technological means for backhaul networks. In areas with very difficult topographical situations (such as highly mountainous regions where settlements are difficult to reach), according to the Slovak authorities, most likely high speed wireless connections will be the most adequate solutions. From the access networks point of view, the chosen network topology ensures the technological neutrality of the measure: several alternative platforms will be able to utilise the new network as a backhaul connection to offer its own services to end users. End-users will have the opportunity to choose the retail operator, the services and the last mile technology according to their needs, be it fixed, wireless or any other types of infrastructures. Pursuant to the Slovak authorities, the construction of access networks (i.e. last mile to households) will be provided by commercial investors from their own resources.
- (19) **Wholesale access:** The new network will offer wholesale backhaul access on an open, non-discriminatory basis to electronic communication operators wishing to connect end users. Following discussions with the ISPs and the NRA, the subsidized infrastructure will offer the following wholesale access products: a) access to cable ducts, b) renting dark fibre, c) renting collocation places, d) renting masts inside and outside municipality limits for building and operating wireless access networks. Such access products will allow all types of technologies to connect to the backhaul network and serve the consumers with broadband internet services. Effective wholesale access to the subsidised infrastructure will be offered for the whole lifetime of the network independently from any change of ownership. In case of disputes on wholesale access conditions between the access seekers and the operator of the network, the NRA will be in charge to settle disputes in compliance with the Act No. 351/2011 Coll. on Electronic Communications.
- (20) **Wholesale pricing:** The tariffs of the wholesale service will be determined by NASES in consultation with the NRA. The objective of the Slovak authorities is to provide retail broadband services in the targeted areas at usual market prices in the broadband internet market, hence wholesale tariffs will be determined by taking into account the average price level on the telecommunication market in Slovakia and the operating costs of the network.
- (21) **Beneficiaries:** The direct recipient of aid will be the wholesale operator of the network, NASES. Indirect beneficiaries will be electronic communication operators utilising the new network for offering retail services to end users and the other undertakings which are end-users in the relevant area.
- (22) **Budget and financing instruments:** The overall amount of the measure is approximately EUR 113.2 million. The project will be financed from the resources of the European Regional Development Fund (85%) and from resources of Slovakia (15%). The aid takes the form of grants. Additional EUR 6.7 million from the Rural Development Programme and national funds are planned to be spent to foster access network deployment in the most disadvantaged region of Slovakia, but that aid will granted in line with 'de minimis' rules¹¹, hence this part of the measure does not form part of the current assessment.

¹¹ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid.

- (23) The Slovak authorities have confirmed that there is no cumulation possible with aid received from other local, regional, national or EU schemes to cover the same eligible costs.
- (24) **Duration of the measure:** The implementation of the project is planned to start in 2012 upon its State aid approval by the Commission and to finish at the end of 2015.
- (25) **Procurement:** The Slovak authorities envisage two phases of the tender procedures. During the first phase, the construction of the networks will be procured to the most economically advantageous offer(s). During the second phase, the maintenance and technical support of the network will be tendered out selecting the most economically advantageous offer(s). All tender procedures will be conducted in full compliance with the EU and national public procurement rules.
- (26) **Monitoring:** The monitoring process will be conducted by the Government Office of the Slovak Republic as the managing authority of the Operational Programme Information Society in cooperation with the National Regulatory Authority. The duration of the monitoring period will be five years after the completion of project activities and monitoring will be carried out on a half-yearly basis.
- (27) **Clawback:** In case NASES reports profit from the operation of regional networks, these additional funds will be for purposes of achieving the strategic objective of the Slovak Republic used for expanding regional networks in the municipalities listed in the list of white spots, which had not been connected in this project, given the fact that the available funds will not be sufficient for connecting all municipalities listed in the present list of white spots. These white spots will be connected in the same way and under the same conditions as approved for the project presented under this notification.

V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (28) According to Article 107 (1) of the 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 to be qualified 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.

State resources

- (29) The measure is financed by the EU funds, which are put at the disposal of the Slovak authorities and resources of Slovakia. Hence, State resources are involved.

Economic advantage

- (30) Operating the network, even if the network is limited to a mere passive network infrastructure, is an economic activity within the meaning of Article 107 (1) TFEU, as it consists of offering goods and services on a wholesale level to broadband operators¹². In line with recent jurisprudence, also the construction of the broadband network, which is

¹² The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. See for instance Judgment of the Court of 23 April 1991 in case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*.

intrinsically linked to the exploitation and the network is built exclusively for that purpose, is thus to be qualified as an economic activity¹³. Therefore, the measure confers a direct economic advantage to NASES, which operates the network.

- (31) The measure will enable third party electronic communication operators to provide retail broadband services to end users by utilising the new, publicly funded broadband infrastructure. Thereby these operators will receive an indirect economic advantage by having access to wholesale services at conditions that would not be available under normal market conditions without State support.

Distortion of competition

- (32) The measure supporting the deployment of a wholesale broadband network is selective in nature in that it targets undertakings that are active only in certain regions or in certain segments of the overall electronic communications services market¹⁴. Moreover, the intervention of the State tends to alter existing market conditions, in that a number of firms would now choose to subscribe to the services provided by the selected suppliers instead of existing, possibly more expensive alternative market-based solutions (for instance, leased lines services).

Effect on trade

- (33) Insofar as the intervention is liable to affect service providers from other Member States, the measure has an effect on trade. The markets for electronic communications services (including the wholesale markets and the retail broadband markets) are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States.

Conclusion

- (34) Having established that the measure confers economic advantage to the electronic communication operators utilising the State funded infrastructure that distorts competition and has an effect on trade between Member States, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107 (1) of the TFEU and it is necessary to consider whether the measure can be found to be compatible with the internal market.

VI. COMPATIBILITY ASSESSMENT

- (35) The Commission has assessed the compatibility of the 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 networks¹⁵ (hereinafter the "Broadband Guidelines").
- (36) As described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the internal market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition. In particular, the measure shall be assessed with respect to the following questions:

¹³ See in this regard Judgment of the General Court in cases T-443/08 and T-455/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, not yet published, paragraphs 90 seq.

¹⁴ As regards the sectoral specificity, see for instance Judgement of the Court in case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2001] ECR-I8365.

¹⁵ 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.

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

a. The support of broadband rollout is in line with the EU interest

Union policy

- (37) Broadband connectivity is a key component for the development, adoption and use of information and communication technologies in the economy and in society. Broadband is of strategic importance because of its ability to accelerate the contribution of these technologies to growth and innovation in all sectors of the economy and to social and regional cohesion. The Commission actively supports the widespread availability of broadband services for all the European citizens as laid down in the Europe 2020 strategy.
- (38) In “A Digital Agenda for Europe”¹⁶, the Commission has acknowledged that not only shall universal broadband coverage be ensured to all citizens by 2013 but also that, by 2020, (i) all Europeans should have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households should subscribe to internet connections above 100 Mbps. The Digital Agenda (in Key Action 8) 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 Europe 2020.
- (39) By extending broadband coverage to unserved areas of Slovakia, the measure helps achieving greater cohesion and is therefore in line with the common interest.

Cohesion objective and market failure considerations

- (40) The economics of broadband provision are such that the market will not always find it profitable to invest in it. Due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs of investment, unit costs increase strongly as population densities drop. As a result, broadband networks tend to profitably cover only part of the population. Remoteness, such as larger distances from existing telecommunication infrastructures could also significantly increase the investment costs necessary to roll out adequate broadband networks.
- (41) Typically, these underserved regions are rural areas with a low population density so that commercial providers have no economic incentives to invest in electronic communications networks to provide adequate broadband services. This leads to a “digital divide” between the areas which have access to adequate broadband services and those

¹⁶ A Digital Agenda for Europe, COM/2010/0245 f/2.

that have not. The gap between the broadband coverage in rural areas and the national average is particularly significant in Slovakia.

- (42) Availability of adequate broadband services would be beneficial from a wider economic perspective, e.g. due to the positive spill-over effects on the local economies (such as increased economic activity, job creation and retention). The availability of such services would also improve access to an essential means of communication services to all actors in society, thereby improving social and regional cohesion.
- (43) Hence, by providing financial support for the establishment of infrastructure to provide wholesale broadband services in the targeted areas of Slovakia, the authorities pursue genuine cohesion and economic development objectives.

b. Well-designed aid

Aid is the appropriate instrument

- (44) Demand-side measures in favour of broadband (such as connecting of schools to the internet) or development of e-Government services have been in place in Slovakia for several years. However, these measures do not solve the above described problem on the supply side, i.e. the absence of adequate broadband network infrastructure in sparsely populated rural areas of Slovakia with lower standard of living than the average and lower purchasing power, where operators from the commercial point of view are not interested in building infrastructure and providing broadband services.
- (45) Although *ex ante* regulation has facilitated broadband deployment in urban and more densely populated areas, it is unlikely to lead to sufficient investments for the provision of broadband services to underserved areas as it presupposes the existence of broadband access infrastructure.
- (46) Without further public intervention, reducing the "*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.
- (47) In view of these considerations, the Commission concludes that, in the case at hand, there is no alternative to granting public funding to overcome the lack of broadband connectivity. State aid could remedy the described market failure and would be effective in contributing to the referred equity objectives. The current measure is part of the overall Information Society strategy of Slovakia aiming to reduce digital divide caused by geographic and economic conditions and to develop information society by developing e-services and e-content (such as e-Government, e-Health, e-Learning or e-Business services) and developing broadband infrastructure.
- (48) Hence in the current situation, State aid is an appropriate instrument to achieve the set objectives.

The aid provides the right incentives to operators

- (49) The construction of the wholesale broadband network infrastructure can provide an investment incentive for other electronic communication operators to provide retail broadband services to end users. The infrastructure developed during the project excludes the last mile access network segment and enables several different technological solutions to utilise the current infrastructure. The new infrastructure will reduce entry barriers for other operators and is expected to attract commercial investments into the last mile infrastructure, as supported by the letters of intents submitted by the Slovak authorities.

Hence the current measure will provide a direct and appropriate investment incentive to operators.

Proportionality

- (50) The Slovak authorities have designed the measure in a way which minimises the State aid involved and potential distortions of competition. In this respect, the Commission notes, *inter alia*, the following positive elements in the overall design of the measure:
- (a) *Detailed mapping, coverage analysis and consultation with stakeholders:* The Slovak authorities have undertaken an analysis of the existing broadband infrastructures in order to clearly identify the areas where State intervention is necessary. By consulting all the stakeholders including existing operators in a transparent manner and modifying the list of white areas in order to reflect their investments in the near future and by consulting other relevant stakeholders such as the National Regulatory Authority and the National Competition Authority, the Slovak authorities ensured that public funds are used only in areas where it is necessary, limiting the possibility of crowding out private investments and distortion of competition to the minimum possible.
 - (b) *Open tender procedures:* The Slovak authorities will select the undertakings for the construction and the maintenance of the network in full compliance with national and EU public procurement rules. Open tender procedures are considered to be effective means to minimise aid necessary for the measure.
 - (c) *Most economically advantageous offer:* Within the context of open tender procedures, the Slovak authorities will select the most economically advantageous offers among those presented by the operators. Furthermore, in line with footnote 55 of the Broadband Guidelines, for the purposes of determining the most economically advantageous offer, the awarding authority will specify in advance the relative weighting which it gives to each of the (qualitative) criteria.
 - (d) *Technology neutrality:* The measure does not favour any particular technology or network platform. At the access level, the current measure will enable several alternative platforms (such as wireline, wireless, mobile solutions) to utilise the publicly funded infrastructure. Therefore, it 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:* Since the targeted areas are completely unserved by broadband networks, existing network infrastructure could be utilized on a broad scale. The Slovak authorities envisages to use roads, existing rights of way and optimize coverage taking into account the availability of existing telecom infrastructures.
 - (f) *Open wholesale access:* The operator of the new network will provide open wholesale access to all interested parties in an open, transparent, non-discriminatory manner for at least 7 years. The operator will not offer retail services to end users, its revenues will stem from the provision of wholesale access, hence will have strong incentives to attract third party operators to use the network, thereby strengthening choice and competition in the areas concerned. By allowing different broadband technology platforms to obtain open access to the new State funded network, the project has the potential of stimulating infrastructure-based competition in the targeted areas, similarly to adequately covered areas.

(g) *Benchmarking pricing exercise:* In order to ensure effective wholesale access and to minimise potential distortion of competition, access wholesale prices should be based on the average published wholesale prices that prevail in other comparable, more competitive areas of Slovakia or the Community. Wholesale prices on the subsidised network will be monitored and approved by the NRA with the objective to keep these at a reasonable and non-discriminatory level.

(h) *Monitoring and clawback mechanism:* The project will be examined on a regular basis and the monitoring mechanisms implemented will ensure that if the beneficiary fails to comply with the rules, the granting authorities will be in the position to recover the aid granted. By ensuring that any surplus generated by NASES through the operation of the network will be used to expand the infrastructure within the target areas, the Slovak authorities ensure that the recipient of the aid will not benefit from overcompensation and will minimise retroactively the amount of aid deemed initially to have been necessary.

c. The distortions of competition and the effect on trade are limited and the overall impact of the measure is positive

(51) The Commission concludes that the notified measure will offset a geographical and commercial handicap in the rural areas of Slovakia and will enhance the competitive supply of broadband services across the area. The design of the project ensures that any distortion of competition caused by the State intervention is kept to the minimum possible. On balance, the Commission concludes that the overall effect of the measure is deemed to be positive. The measure is clearly in line with the objectives of Article 107 (3)(c) of the TFEU as it facilitates the development of certain economic activities (wholesale and, indirectly, retail broadband services) in remote and rural areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Conclusion

(52) The Commission concludes that the compatibility criteria set out in the Broadband Guidelines are met, hence aid involved in the notified measure is compatible with Article 107(3)(c) of the TFEU.

VII. DECISION

(53) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*Basic broadband deployment in white areas of Slovakia*" is compatible with Article 107(3)(c) of the TFEU.

(54) The Slovak authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.

(55) 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.

- (56) 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
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Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President