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Subject: **State aid SA.33324 – Latvia**
Next generation network for rural areas

Sir,

I. SUMMARY

(1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Next generation network for rural areas"* (hereafter: "the measure" or "NGN") and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)c of the TFEU.

II. PROCEDURE

(2) Following pre-notification discussions, Latvia notified on 17 September 2011 the above mentioned measure to the Commission, pursuant to Article 108 (3) of the TFEU.

III. CONTEXT

(3) Latvia presents a mixed picture of information society developments. Internet connection satisfying at least elementary needs is accessible practically throughout Latvia. 60 % of Latvian households have access to internet at home, 66% of the enterprises have broadband access.

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(4) By January 2011, the network share of high-speed lines above 10 Mbps grew to 41.3%, slightly above the EU average share of 38.9%. The share of low-speed lines (up to 2Mbps) is 5%, the share of lines in the 2 to10 Mbps range is 53.7%. The establishment of next-generation networks and high-speed broadband services which rely on an optical fibre network is taking place in urban areas only.

(5) The existing infrastructure in rural areas is not suitable for high-speed broadband services. However, in large parts of Latvia, the establishment of high speed internet connections is not commercially viable for service providers. Because of an estimated low demand, the private operators have so far decided not to invest in these areas in the construction of high speed broadband connections, resulting in a wide "*digital divide*" between the urban and the peripheral areas.

(6) Therefore the Latvian Government intends to take State measures for enabling high speed broadband deployment in areas, where private investors are not intending to provide such services in the near future. This is set out in the Sustainable Development Strategy of Latvia until 2030[1], which envisages that internet will become faster and shall offer new, interactive services, and the Latvian National Development Plan[2] where one of the objectives is ensuring access to broadband data transmission networks and developing public internet access points, thus promoting the harmonized development of all parts of the country.

(7) Latvia expects that the NGN aid scheme will reduce the entry barriers for commercial operators and will encourage them to extend their high speed broadband access network coverage in rural areas. Only if there are sufficient speed capacities available on the backhaul part of the network, providers can connect end users with their respective access technologies and provide enhanced broadband services to them. In the absence of such measures Latvia fears the building up of a digital divide between urban and rural areas.

IV. DESCRIPTION OF THE MEASURE

(8) ***Objectives***: The NGN project foresees the support of the development and establishment of fibre backhaul infrastructure for wholesale broadband services in rural areas which are currently not served and where there are no plans for development of a next generation network in the near future.

(9) NGN will support a next generation network project which will ensure the possibility for anybody wishing so to obtain NGA service via optical fibre in 95% of Latvian rural territory. The measure is divided into two phases. By 2015, the first phase will ensure connection for approximately 165 points (1900 – 2000 km of fibre lines). By 2020 the second phase (2014 – 2018) will ensure infrastructure for the remaining areas with eventually 500 connection points to NGN and approximately 7000 km of fibre.

(10) Latvia expects that the NGN project's first phase will increase the percentage of individuals regularly using internet from 63% (2010) to 75% (2013) and the percentage of households which have broadband access from 53% (2010) to 75% (2013).[3]

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1 http://www.latvija2030.lv/upload/latvija2030_en.pdf

2 http://www.nap.lv/lat/

3 Source: Digital Agenda Scoreboard 2011, http://ec.europa.eu/digital-agenda.

(11) The Latvian authorities argue that even with a great effort on regulatory and information measures, it will not be possible to achieve the objective of the wide availability of very high speed internet provision without State aid. Commercial operators often do not have sufficient commercial incentives to upgrade the existing networks, as in particular in less densely populated areas they would not expect to get an adequate return on their investment.

(12) The Latvian authorities expect that the measure will help to eliminate the digital division between urban and rural regions, increase social cohesion and contribute to economic growth. The availability of the necessary broadband infrastructure is a key factor for the local communities in attracting businesses, distance working, providing health care services and improving education and public services. It is expected that the creation of a high speed backhaul (i.e. middle-mile) network[4] in not served areas will reduce the entry barriers for commercial operators and thereby will encourage them to extend their high speed broadband access network coverage in these areas. Only if there are sufficient speed capacities available on the backhaul part of the network, providers can connect end users with their respective access technologies and provide enhanced broadband services to them.

(13) The completed network connections must be available on an unlimited basis to all interested operators in order to ensure free competition in providing services to end users. The network will offer open wholesale access to electronic communication operators who will be able to add their access infrastructures (i.e. the last mile network segment) and deliver broadband services to end-users.

(14) ***Legal basis:*** Sustainable Development Strategy of Latvia until 2030; National Strategic Reference Framework 2007-2013; Operational Programme "Infrastructure and Services" 2007-2013; and the related (draft) Regulation of the Cabinet of Ministers (Noteikumi par darb•bas programmas "Infrastrukt•ra un pakalpojumi" papildin•juma 3.2.2.3.aktivit•ti "Elektronisko sakaru pakalpojumu vienl•dz•gas pieejam•bas nodrošin•šana vis• valsts teritorij• (platjoslas t•kla att•st•ba)).

(15) ***Budget, financing instruments and duration:*** The estimated overall costs of rolling out the network are estimated at LVL 83.6 million (€119 million), Phase 1 thereof will require LVL 18.6 million (€26.4 million), phase 2 LVL 65 million (€92.6 million). The planned overall aid amount is LVL 71.5 million (€101.71 million) (LVL 16.2 million/€23 million for phase 1, LVL 55.3 million/€78.71 million for phase 2). The aid takes the form of grants. Financial means will be obtained from the European Regional Development Fund (ERDF). The granting of the aid to beneficiaries is managed and implemented by the Ministry of Transport. The scheme will start on 1 January 2012, on condition that it is approved by the European Commission, and will run until 31 December 2020.

(16) ***Target areas:*** Support will only be granted in areas, in which there is currently no NGA backhaul broadband infrastructure available and where such networks are not likely to be built by private investors in the next three years. Accordingly, all areas already covered with backhaul fibre network capable of providing high speed internet services to end-users will not be covered by the measure. Only so called "white NGA areas" in the sense

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

of point 68 of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks[5] (the Broadband Guidelines) will be eligible.

(17) ***Detailed mapping and coverage analysis, consultation with stakeholders*:** The Latvian authorities conducted a detailed mapping and coverage analysis and a thorough public consultation with all stakeholders affected. In order to map the existing networks, information was collected on all operators' optical fibre networks and connection points. In addition, the data received was compared with publicly available data and data collected in previous years.

(18) A public consultation with major stakeholders, in particular telecommunication companies and municipalities, served to clearly identify which geographic areas will be covered by the supported network. Information on the measure, including the routes of planned optical fibre lines, has been provided to the private operators. The future plans of operators to invest into the extensions of existing fibre networks were collected. The location of inhabitants, existing networks and future investment plans of operators were mapped. The map was published on the internet to invite comments.

(19) As a result 363 white NGA areas were identified. They compose 64.4% of all territorial units of Latvia, in which 18.6% of the population reside. The newly created transmission infrastructure will be made public once it has been installed. Among the identified areas, 151 priority areas have been chosen for phase 1. The selection was guided by the objective to have NGN rolled out first where it has the largest impact. Criteria were the number of inhabitants, the existing penetration by classical broadband services, the number of electronic communication operators which showed interest in the provision of services in the territories, estimates of the local authorities regarding the increase of usage of broadband access in the future, and a balancing of the rollout among the regions.

(20) ***Project design:*** The NGN fibre network will link the existing backbone and backhaul networks with the identified white areas. It will be an intermediate (backhaul) network between the backbone and the end-user connection. It will not cover the connections between the backhaul network and the end-users (last mile).

(21) Support is planned only for the creation of passive infrastructure that must be available for multiple operators (ducts and dark fibre and street or indoor cabinets). The network owner does not install data communication equipment. It will only provide wholesale access to electronic communications enterprises on equal conditions and on an open, non-discriminatory basis. It will offer access to the passive level of the network (ducts and fibres) to all operators and will give them access to distribution points to connect to the network, like street cabinets. All operators renting the fibres will be able to use equipment space in such cabinets and install their equipment to these terminals of the network. Electronic communication enterprises can decide on their own which technology they will use (for instance adsl, cable, wireless or mobile networks) to provide connections to their end users. They can also decide which data transfer rates the connections they provide will have and which services they will provide with their connections. The wholesale operator (the owner) of the network will not offer retail services to end users. These obligations will last for the lifetime of the infrastructure.

[5] OJ C 235 of 30.9.2009, p. 7.

(22) The network will be constructed with sufficient capacity ensuring that even in the most remote connection points at least 14 physically separate pass-through connections to the backbone network will be available for different service providers so that at least 5 operators can provide their services in parallel. The network operator will be obliged to publish access-related information.

(23) The management of the NGN and the provision of wholesale services to the service providers will be carried out on a non-profit basis by a public legal entity. The construction works (civil works, installation of ducts, dark fibre, etc.) will be carried out by private operators selected by that public legal entity by means of an open tender in line with the relevant national and EU procurement rules. The support is limited to the construction stage; all further maintenance and operating costs will be covered by the network manager.

(24) The national competition authority, the Latvian Competition Council, and the national regulatory authority SPRK were consulted during the preparation of the measure and agreed with the project design. A steering committee representing other Ministries (Ministry of Environment and Regional Development, Ministry of Finance) and users (ICT Associations, Internet Associations, and the Consumer Right Protection centre) is set up by the Ministry of Transport in order to ensure open access, fair tariffs and supervision during the project implementation process.

(25) ***Choice of the network owner:*** The Latvian government chose to organise the NGN rollout on its own. The network owner will be the Latvia State Radio and Television Centre (LVRTC), a sub organisation of the Ministry of Transport organised as a State Joint Stock Company in 100% State ownership. LVRTC itself will not provide retail communication services to end users. It will be obliged to provide wholesale service and access under equal conditions. This approach to choose a body which is controlled by the responsible Ministry is motivated by the desire of the government to keep a decisive influence on the subsidized network and to ensure governmental control of the NGN aid scheme implementation.

(26) LVRTC's current tasks are certification services and telecommunication solutions for broadcasting and telecommunications operators by providing program distribution infrastructure. LVRTC is not active outside Latvia. To ensure transparency of the NGN project financing, LVRTC will be obliged to keep a separate accounting system for the NGN implementation.

(27) ***Aid intensity:*** The costs for constructing the network may be supported by up to 87.18%.

(28) ***Technology*****:** The chosen network topology ensures the technological neutrality of the measure. The NGA architecture will support effective and full unbundling. The NGN is a passive network, consisting of dark fibre, equipment installation spaces in street lockers, and electrical supply for the equipment. Several alternative platforms will be able to use the new network as a backhaul connection and allow all types of network access that operators may seek to offer their 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.

(29) ***Use of existing infrastructure:*** The existing infrastructure of operators will not be duplicated. The NGN network will not be built in areas with existing fibre network.

Existing infrastructure will be utilized if possible. New network parts will proceed from the existing fiber-optic backbone and backhaul networks. While planning the NGN aid scheme the locations of the present access networks of the communications operators were taken into account.

(30) ***Wholesale access:*** The network owner must provide all service providers with wholesale optical fibre rental service under equal conditions for the lifetime of the network. The whole network will be constructed with sufficient capacity ensuring that even in the most remote connection points at least 5 operators can provide their services in parallel. The multiple fibre architecture will allow full independence between access seekers. Thus the NGN provides for sufficient capacity for all interested parties.

(31) ***Pricing*****:** The objective of NGN is to enable access to retail broadband services in the targeted areas at a price similar to urban areas; hence wholesale access prices will be based on average prices that prevail in urban areas that do not benefit from State funding. The Ministry of Transport will ensure, in consultation with the Competition Authority and the national regulatory authority, that wholesale access pricing in the subsidized network is reasonable. It will determine the tariffs for the wholesale services and monitor the effect of wholesale prices on the retail prices. The national regulatory authority may set relevant obligations for the network owner and for telecommunication operators.

(32) ***Beneficiaries:*** The direct recipient of the aid will be the wholesale operator of the network, LVRTC. Indirect beneficiaries will be electronic communication operators utilising the new network for offering retail services to end users, and business end users.

(33) ***Claw-back mechanism to avoid over-compensation:*** The direct beneficiary of the aid for the construction of the network will be required to refund any potential surplus generated through the operation of the network. The Ministry of Transport will supervise the annual accounting of LVRTC and review the compensation.

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

(34) According to Article 107 (1) TFEU, "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*". It follows that in order for a support measure to be qualified as State aid, it has to be granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.

(35) The measure is financed by EU funds administered by Latvia according to its priorities and own financial resources. Hence, State resources are involved. The subsidy awards are imputable to the State.

(36) The financial support will enable the state owned and controlled non-profit entity LVRTC to own and manage a network to provide wholesale broadband services on conditions not otherwise available on the market. Electronic communication operators will be able to provide retail high speed broadband services to end users by utilising the new infrastructure at conditions that would not be available under normal market conditions without State support. Furthermore, the measure aims at improving the provision of existing broadband services to business users and residential users. Whereas residential

users are not subject to State aid rules, businesses in the targeted areas will therefore ultimately benefit from the improved broadband services and coverage in comparison with what would be provided on a purely commercial basis. Therefore, the measure allows a selected number of undertakings to be relieved by means of State resources of a part of the costs they would normally have to bear for the deployment of or the access to an NGA network. It confers an economic advantage to these undertakings.

(37) An economic advantage also exists when the recipient is a State owned non-profit organisation. As the investment by LVRTC takes place in geographic areas in which no commercial investment in the near future is envisaged, LVRTC's activity cannot be perceived as being carried out on market terms. LVRTC constructs and exploits the passive infrastructure in the interest of the public good with a view to attract broadband investments in areas where private market investors are not prepared to invest, as the mapping has demonstrated.

(38) Even if supposing that LVRTC formed part of the State administration, its intervention is also not outside the State aid rules. In line with the functional character of the notion of 'economic activity' in Article 107 (1) TFEU it is irrelevant whether the recipient of the funds is an entity with a separate legal status or an integrated part of the State administration.[6] The operation of a broadband network, even if it is limited to a mere passive network infrastructure, is an economic activity in the meaning of Article 107 (1) TFEU, as it consists of offering goods and services on a wholesale level to broadband operators. In line with recent jurisprudence, also the mere construction of a broadband network, which is intrinsically linked with the exploitation and built exclusively for that purpose, is thus to be qualified as an economic activity.[7]

(39) Finally, the support from the state strengthens the position of a selected number of beneficiaries of a specific sector in relation to their competitors and has the potential of distorting competition. The principle beneficiaries are active in deploying and operating broadband networks, a market which is, at least potentially, subject to trade between Member States. Therefore this support is also likely to affect trade between Member States and to constitute State aid.

VI. COMPATIBILITY ASSESSMENT

(40) 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 networks*[8] (hereinafter the "Broadband Guidelines") which contain a detailed interpretation of Article 107(3)(c) of the TFEU for this kind of activity.

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6 Case C 188/85, *Commission v. Italy*, ECR 1987 p. 2599, paragraph 13, see also, with further references in this regard, judgment by the General Court, *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, T-455/08, not yet published, paragraphs 88 and 89.

7 See in this regard, judgment by the General Court, *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, T-455/08, not yet published, paragraphs 90 seq.

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.

The balancing test and its application to aid for broadband network deployment

(41) When 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.

(42) In applying this balancing test, the Commission will assess the following questions:

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?

(43) The individual steps of the balancing test in the field of broadband are set out in detail in Sections 2.3.2 and 2.3.3 of the Broadband Guidelines.

The aid is in line with the Community policy

(44) The importance of full high speed internet coverage of the territories of Member States and the need to encourage joint initiatives of stakeholders has been explicitly identified by the European Council of March 2009 (in point 17 of its conclusions): "the European Council recalled the fundamental role of telecommunications and broadband development in terms of European investment, job creation and overall economic recovery. Taking account of the risks taken by the investing undertakings, efficient investment and innovation in new and enhanced infrastructure should be promoted. To this end, various cooperative arrangements between investors and access seeking parties to diversify the risk of investment should be permitted, whilst ensuring that the competitive structure of the whole market and the principle of non-discrimination are maintained."

(45) Investments in broadband will have to come primarily from commercial operators. However, due to the economic characteristics of the industry, private investments alone will not suffice to attain such ambitious coverage goals. 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. Therefore governments will have to step in with public funds to extend high-speed network coverage to those areas in which market operators are unlikely to invest on commercial terms.

(46) In its Europe 2020 strategy of 3 March 2010[9] the Commission defined the Flagship Initiative "A Digital Agenda for Europe", which has the "aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps." In pursuing this aim, "at EU level, the Commission will work …to facilitate the use of the EU's structural funds in pursuit of this agenda", and "at national level, Member States will need … to draw up operational high speed internet strategies, and target public funding, including structural funds, on areas not fully served by private investments." Key Action 8 of the Digital Agenda 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.

(47) A well targeted State intervention in the broadband field contributes to bridge the *'digital divide'* that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not. The notified measure addresses a market failure as it targets NGA white areas where, due to difficult geographic conditions and/or low density of the population, very high speed broadband is currently not available and where there are no plans by private investors to roll out such infrastructure in the near future. The measure helps achieving greater cohesion and is therefore in line with the common interest.

Well-designed aid

Aid is the appropriate instrument

(48) Alternative instruments, such as demand side measures could provide grants or tax incentives to end users. 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 (non-existence of infrastructure) of high speed broadband in the targeted areas and would fail to deliver the wider economic benefits of a widespread next generation broadband network. The Latvian authorities see no alternative but to grant public aid to the deployment of NGA broadband networks in the targeted areas of the country. Furthermore, the mapping exercise carried out by the Latvian authorities ensures that State aid will only be granted in areas where no interest for commercial NGA deployment is present.

(49) The Commission can also 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

[9] EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, page 12.

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

(50) As set out in paragraph 50 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. According to the data presented by Latvia, in the targeted areas no investment would take place without public funding within three years. Hence the aid produces a change in the investment decisions of the operators.

Proportionality

(51) Latvia has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes the following positive elements in the design of the measure:

(a) Detailed mapping and coverage analysis, consultation with stakeholders: as described above in paragraphs 17 - 19, Latvia carried out a thorough analysis of the existing broadband infrastructures in order to identify the areas where public intervention is necessary, involving all stakeholders. Thereby it ensured that public funds will be used only in areas where it is necessary. This will limit the possibility of crowding out private investments and distorting competition to a minimum.

(b) Open tender process: The Latvian government will not choose a market broadband operator to construct and/or exploit the network on its behalf but will create and maintain with the help of LVRTC a public infrastructure accessible to any broadband operator which would like to use it. The network will remain in public ownership. LVRTC will be in charge of the construction, maintenance, and administration of that publicly owned network, including the management of the access requests by all commercial operators.

This is in line with the underlying principles and objectives of the Broadband Guidelines. Paragraph 51 b) of the Guidelines, which request a public tender procedure for the selection of network owners, only addresses the situation where the State aims to provide support to private market actors which are in competition with each other for the State funding and on the telecommunication market. In such a situation of competition between private investors, conducting an open non-discriminatory selection procedure will guarantee that the State does not disproportionately distort competition by pre-selecting the beneficiary or give preference to one broadband operator over alternative operators.

The case where a government decides to arrange the rollout of and the access to the infrastructure by its own means and organisations represents a different scenario than the one referred to in paragraph 51 b). Logically, a Member State cannot conduct a tender procedure where it decides to organise a certain task by its own institutions. Such a configuration does not disproportionately distort competition but, to the contrary, ensures a pro-competitive use of the subsidised infrastructure thanks to the multiple safeguards inherent to the system itself.

The first pro-competitive safeguard is represented by the obligation for LVRTC to grant under direct State supervision access at fair, transparent and non-discriminatory conditions to the infrastructure, for its entire lifetime. This system eliminates at the root one of the potential risks for competition deriving from private management of the network, i.e. the incentive to exclude or degrade competitors on the same infrastructure. It ensures low market entry barriers for commercial telecommunication operators without affecting competition among them on the market for end users.

This character is enhanced by the fact that LVRTC will not act as fully fledged broadband operator but simply organise and manage access to the infrastructure by any third-party interested in using it. Additional safeguards contribute to the pro-competitive nature of the system, namely: a) LVRTC does not engage in any profit making operation of the network, but keeps income and expenses at an equilibrium and limits its activity to the administrative management of a mere passive infrastructure; b) it will not offer any retail services on the infrastructure; c) it is not operating outside Latvia; d) LVRTC is required to keep the funds from the NGN programme separate from other revenues. In any event, the contracts for the construction of the infrastructure will be tendered out according to public procurement principles. Only the construction costs may be supported, which have to be established by a tender and will be verified once the investment is made. The actual costs of operating the network have to be borne by the network owner. For the construction work, LVRTC is obliged to select within the context of an open competitive procedure the economically most advantageous offers. The awarding criteria are established in the call for tender, including the relative weighting which LVRTC will give to each of them. At similar quality conditions, the bidder with the lowest amount of aid requested will receive more priority points in the assessment of its bid.

Consequently the Commission concludes that the entrustment of a government agency with the rollout and management of a NGA network is not affecting trade and competition to an extent contrary to the common market, provided the safeguards mentioned above are in place.

(c) *Technology neutrality:* The current measure does not favour any particular technology or network platform leaving it to commercial operators to come up with the most appropriate technological solutions for the last mile to provide broadband services to end users.

(d) *Use of existing infrastructure*: The existing infrastructure of operators will not be duplicated. The NGN network will not be built in areas with existing fibre network. New network parts will proceed from the existing fiber-optic backbone and backhaul networks. While planning the NGN aid scheme the locations of the present access networks of the communications operators were taken into account.

(e) *Wholesale access and price benchmarking:* LVRTC will have to provide access to the subsidised network to operators on equal and non-discriminatory terms for the lifetime of the network. Access wholesale prices are based on the average wholesale prices which prevail in other, more competitive, parts of the country. The regulatory

authority has various possibilities to intervene in case the prices do not seem adequate, see paragraph 31.

(f) Monitoring and clawback provision: The direct beneficiary of the aid for the construction of the network is not supposed to make profits. However, in case of a potential surplus generated through the operation of the network, it will be required to refund them to the Ministry of Transport which will also supervise the annual accounting.

Special conditions for NGA deployment

(52) Latvia will respect the conditions of paragraph 73 of the Guidelines for those NGA white areas, which are grey for basic broadband purposes. Deployment is only envisaged where existing services are not capable to meet the demand for enhanced services, which has been documented by the mapping and consultation exercise. Latvia explained that regulatory means have so far not proven successful to achieve the costly investment for NGA deployment and are unlikely to remedy that problem of absence of investment in the future.

(53) Concerning NGA white areas which are black for traditional basic broadband provision, Latvia respects paragraphs 77, 78 and 75 of the Guidelines. According to paragraph 77 the Commission considers that in these areas the existing network operators should have sufficient incentives to upgrade their networks to very fast NGA networks, without public support. During the mapping, Latvia did in fact identify several areas where existing operators expressed their willingness to introduce NGA services. Therefore, these areas did not qualify as target areas for the funding. However, for the traditional basic broadband areas identified as eligible for funding, Latvia rebutted the assumption expressed in paragraph 77. Latvia analysed during the mapping exercise individually the investment practice and plans of the existing broadband operators and inquired about their historic investment. Analysis of the historic investment patterns showed that the fixed infrastructure was constructed with the objective to provide basic broadband transmission. No efforts were made to upgrade these networks; Additional investments were made only in wireless infrastructure which is not capable of providing NGA. Latvia also established that there is actually demand for high speed services in the areas not served by NGA

(54) Market conditions prevented potential operators from making the investment necessary to enter the NGA market, in particular due to the distance of the supported area from areas with optical fibre backhaul infrastructure. Regulation is not sufficient to stimulate the necessary investment. Accordingly, Latvia verified that State aid is indeed necessary to fill a lacuna in investment rather than pre-empting an investment on commercial terms.

(55) The programme will further respect the conditions of paragraph 79 of the Guidelines. LVRTC will offer effective access to the passive infrastructure of the network, as required by the first indent of this paragraph. This access obligation lasts for more than seven years. The National Regulatory Authority had been consulted on the project and did not raise any concerns. It will continue to regulate ex ante and monitor closely the competition conditions of the overall broadband market and impose, where necessary, remedies. The network has multiple fibre architecture and will support effective and full

unbundling and offer all different types of network access as required by paragraph 79, third indent.

The distortions of competition and the effect on trade are limited, so that the overall impact of the measure is positive

(56) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of enhanced broadband services due to the commercial unattractiveness of upgrading existing broadband services in the targeted areas.

(57) In view of the characteristics of the project and of the safeguards applied, the overall impact on competition is deemed to be positive. Deploying a passive infrastructure has a pro-competitive impact, as it allows several network operators to use it and compete. The significant increase in network capacity is expected to stimulate market entry by service providers and the provision of a much larger variety of services. As public authorities will remain owners of the infrastructure, one may expect them to be able to address any possible conflict of interest as regards future access by competing operators. On the effect on trade, the Commission does not identify negative spill-over for other Member States. Accordingly, the measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of certain economic activities (broadband services) in certain 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.

(58) In view of the co-financing of NGN through the European Regional Development Fund (ERDF) the Commission reminds Latvia that the EU legislation applicable to the ERDF has to be complied with, in particular the provisions laid down in Council Regulation (EC) No 1083/2006 ("General Regulation on Structural Funds") and Regulation (EC) No 1080/2006 of the European Parliament and of the Council ("ERDF Regulation").

Conclusion

(59) The Commission concludes that the NGN project notified by Latvia meets the compatibility criteria set out in the Broadband Guidelines. The notified measure will offset a geographical and commercial handicap in the rural areas of Latvia and will enhance the competitive supply of high speed 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.

VII. DECISION

(60) The Commission has accordingly decided that the aid measure "*Next generation network for rural areas"* is compatible with the TFEU, in accordance with Article 107 (3)(c) TFEU.

(61) Latvia is reminded that, pursuant to Article 108(3) TFEU, it is obliged to inform the Commission of any plan to extend or amend the measure.

(62) 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

(63) 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 Registry
Rue Joseph II. 70.
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President