



EUROPEAN COMMISSION

Brussels,
C(2011)

Subject: **State aid SA.32866 - Greece**
 Broadband development in Greek rural areas

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "Broadband development in Greek rural areas" 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 intense pre-notification contacts and meetings, the Greek authorities notified on 15 July 2011 the above mentioned measure to the Commission, pursuant to Article 108 (3) of the TFEU. A language waiver was submitted on 16 September 2011, by means of which the Greek authorities accepted to be informed of the decision of the Commission in English. An additional submission was sent on 12 October 2011.

III. CONTEXT

- (3) Due to its geographical features, Greece is a country characterised by a significant number of remote and dispersed residential departments all over the territory of the country. Most of these areas are mountainous or insular, economically disadvantaged and scarcely populated. According to the information provided by the Greek authorities, population in such areas represents only 7,56% of the total Greek population, with about 50% of the residents over 55 years of age. These areas correspond to almost 45% of the Greek territory in terms of geographical coverage and number of villages.

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- (4) Due to technical, geographical and socioeconomic characteristics of such rural areas, there is a significant infrastructural gap as regards broadband networks, compared to the more populated and less impervious areas of the country.
- (5) The Greek authorities intend to undertake the necessary effort to close the abovementioned infrastructural gap and to achieve the main policy goals set in their strategy: reaching sufficient broadband coverage, provide reliable and affordable up-to-date broadband services, deploy a future-proof network, foster competition and investments by commercial operators. This way, the Greek authorities hope to contribute to achieving the goals set in the Digital Agenda for Europe¹.
- (6) The previous broadband intervention assessed and approved by the Commission in case N201/2006², targeted both supply-side and demand-side issues and resulted in the coverage of a part of those underserved areas by the incumbent or by other operators. The scheme, however, was not sufficient for the most remote and isolated rural areas which constitute the object of the new notified measure.
- (7) It is the objective of the Greek authorities to close the “broadband gap” between the white rural areas and the grey/black areas in Greece. Commercial operators do not have sufficient incentives to upgrade or expand the existing networks. Also the data collected in the initial planning phase of the measure (historical data, operators’ presence, market status, public consultation) confirmed the lack of commercial interest in the targeted areas.

IV. DESCRIPTION OF THE MEASURE

Objective and design of the measure:

- (8) The objective of the Greek authorities for this measure is to provide broadband infrastructure coverage to a substantial part of the unserved areas of the country as well as reliable and affordable connectivity services. The Greek authorities realised that a very severe market failure affects the most remote areas of the country, and therefore a mere financial contribution to the commercial operators would not be sufficient to give enough incentives to the infrastructure rollout. The broad objectives of the Greek authorities with the overall broadband strategy are to contribute to the Digital Agenda 2020 goals by promoting infrastructure penetration targets of 20% in the short-term and up to 35% in the medium-term and providing a basis for a gradual increase to 30Mbps for each prospective customer. The intervention also aims at fostering a competitive market in the targeted areas, preventing that a single operator gains special advantages.
- (9) To achieve the mentioned objectives, the Greek authorities intend to develop and operate a public broadband network infrastructure which will be open to all network operators requesting access. While the ownership of the infrastructure will remain public, the construction, management and operation of the network will be awarded to a winning contractor through an open tender process. The winning contractor will only offer wholesale services and will not be able to offer retail broadband services. End users will be served by third party telecom operators or internet service providers, who will gain access

¹ Communication of the Commission of 26.8.2010 COM(2010) 245 final/2 A Digital Agenda for Europe.

² Commission Decision of 04.07.2006, case N201/2006 – Broadband access development in underserved territories of Greece.

to the new network at a fee which will be set and monitored by the Greek National Regulatory Authority EETT.

- (10) The network will comprise both backhauling elements (connection to the regional concentration points) and access segments and will include both passive and active elements in order to ensure that final users are in condition to obtain the desired service. At the access level, bidding operators can propose the technological solution of their choice which is able to achieve the requirements of the Greek authorities. As to the backhauling part, the Greek authorities have concluded that fibre technology will be the only future-proof solution, at least for the biggest rural settlement (i.e. those with more than 400 inhabitants). They consider this in line with the existing practice of the Commission regarding backhaul networks.
- (11) In line with the ambitious objectives of the Digital Agenda, the Greek authorities require the network to be able to offer two types of services: "Class A" services of 30 Mbit/s and "Class B" services of 8 Mbit/s. The former should be available for at least 45% of the targeted population, including all residential departments with more than 400 inhabitants. Class B is accepted for the other rural areas but is considered only an intermediate step and Class A services should gradually become available for all areas during the duration of the contract. Overall, the measure aims at achieving coverage of at least 75% of the population of the rural areas and at least 50% of the areas (including the totality of the settlement having more than 400 inhabitants). The competing bidders are encouraged to cover as many areas and population as possible, exceeding the above set thresholds.

Legal basis:

- (12) The relevant legal basis for this measure are the following legislative acts Act 3389/2005 "Partnerships between the public and private sectors" Act 3614/2007 "National Strategic Reference Framework 2007-2013"; Common Ministerial Decision No2201 (FEK 638/B/13.5.2010)

Duration of the measure:

- (13) For the rollout of the infrastructure, the relevant duration is from 2012 to 2015. Subsequently, the contract for management and operation of the network will have duration of 10 years. Afterwards, the Greek authorities (who retain the ownership of the network) may proceed with a new awarding procedure.

Detailed mapping and coverage analysis:

- (14) The measure targets traditional broadband "white" rural areas. More specifically, the measure will cover those areas eligible for funding according to the 3rd Axis of the Greek "Operational Program for Agricultural Development". These areas are rural, mountainous or insular, remote, and economically disadvantaged. Among these areas, the measure will target only those where no broadband services are available and where operators have no incentives to provide such services on commercial terms.
- (15) The mapping exercise included: collecting recent data from network operators concerning broadband infrastructure coverage and commercial offering of broadband services; carrying out a study to estimate broadband coverage and classify rural areas in single residential

departments; conducting a public consultation³, in order to validate the "colour" of each target area, especially for those that had been classified as "white" during the study, and to verify operators' investment plans in the near future. The Greek authorities stated that six operators (fixed, mobile and satellite) responded to the public consultation and one of them submitted concrete evidence of investment plans in some of the listed areas, which, as a consequence, have been excluded from the targeted areas.

Budget and funding instruments:

- (16) The rollout of the network requires the use of public funding. The sources of public funding are the Rural Development Program of Greece 2007-2013 (EARFD), the Operational Program "Digital Convergence" (ERDF), and other national funds, to cover specific non-eligible expenses of the above European funds. The maximum amount of public funding (all sources included) may come up to €250.000.000. The contract will be awarded through an open tender procedure, hence the final public contribution is expected to be lower.
- (17) Because of the seriousness of the market failure, the new infrastructure will be 100% financed by public funds. At this stage, before completion of the tender process, the aid intensity cannot be calculated, because the "total value" of the network and the value of the investment by the third party providers cannot be accurately determined.

Tender process and award criteria:

- (18) The targeted areas will be divided in three lots of equal weight in terms of population size, geographical characteristics and estimated costs. Only one tender process will be organised for the three lots but each of them shall be awarded to a different bidder in order to increase the level of competition in the rural areas and to provide a back-up scenario in case one of the winning contractors would fail or withdraw. The offers to be selected will be the most economically advantageous ones. The winning bidder should create a special purpose company to rollout the subsidised infrastructure. In case, i. the tender process does not yield a winning contractor for one or more lots or ii. a selected bidder of a lot withdraws from the project later on, then the winning contractor for these lots may be determined through a 2nd round of the tender process, among other valid offers that fulfil all the selection criteria. In this case, the above set limit of the one maximum lot will not apply any more.
- (19) The eligibility of the bidders will be tested on the basis of their economic characteristics, their technical expertise and quality assurance standards. The award criteria include total geographical coverage (with a minimum of 50% of the residential departments), coverage of the biggest settlements with more than 400 inhabitants, population coverage (with a minimum of 75%), quality of the services, the financial characteristics of the offer.

³ Public consultation ran between 21/01/2011 and 18/02/2011 (extended until 14/03/2011) on the website <http://www.digitalplan.gov.gr/portal/resource/Dhmosia-Diaboleysh-gia-th-drash-Anaptyxh-Ypodomwn-Eyryzwnikh-s-Prosbashs-se-Agrotikes-kai-Nhsiwitikes-Periohes> (Text in Greek).

Technology:

- (20) The selected bidders will choose the technology, topology and technical architecture they prefer. As regards the backhaul part of the network, the Greek authorities demand that the chunk connecting residential departments with 400 or more inhabitants should be based on fibre optic technology since it is the only technology able to provide a suitable level of service for this type of network, in line with the objectives of the Digital Agenda and with the Commission's practice. Moreover, this choice will enable operators to use any technology they like for the connection of the access segments to the backhaul part and will enable future developments towards rollout of NGA networks. In addition, to increase competition among technologies, the Greek authorities expressly foresee that in case an operator intends to provide wireless access, the relevant frequencies will be made available by the geographically concerned authorities.

Use of existing infrastructures:

- (21) Use of existing infrastructures is encouraged in order to avoid wasteful duplication of resources, however since the measure targets white area it is difficult to envisage such a situation for the access part of the network, while for the backhauling part this may be more likely. Purchase and long-term lease of existing infrastructure are encouraged, thereby resulting in comparable conditions whether the bidding operators own infrastructures or not. The possibility to use the available spectrum will also be encouraged by the Greek authorities by releasing frequencies for the exclusive use of providing (at the access level) wireless broadband services to the targeted rural areas.

Wholesale access

- (22) The winning contractor will offer wholesale network access at fair, transparent and non discriminatory conditions to third party service providers at different levels, including passive infrastructure (ducts, dark fibre, antenna towers etc), co-location, leased lines to deploy a separate access network, bitstream access. Access should be guaranteed for at least three operators and the obligations will remain in place for the whole 10 years operational period.

Price benchmarking:

- (23) Wholesale access prices will be based on the average regulated wholesale prices that prevail in other comparable, more competitive areas of the country, or in the absence of such regulated prices, on prices that the Greek NRA (EETT) will set, based on benchmarking for the corresponding markets and services. Where ex ante regulation is already in place, wholesale prices for access to a subsidised infrastructure should not be lower than the access price imposed on the SMP operator by the EETT for the same area.

Monitoring:

- (24) The Managing Authority of the Operation Plan "Digital Convergence 2007 – 2013" (granting authority) will undertake the monitoring of the measure's implementation in close cooperation with the Managing Authority for O.P. "Rural Development 2007 – 2013" and the Greek NRA (EETT). During the 10 year operational period, the granting authority will undertake the main role of monitoring the fulfilment of contractual obligations and audit

and will be in charge of the overall project and contract management. EETT will take up specific activities, mostly connected to its regulatory role in ensuring fair market conditions.

- (25) In order to facilitate the abovementioned monitoring by the relevant authorities, cost accounting and accounting separation are required. If the winning bidder is also active on the retail market, it will have to ensure legal and functional separation of the two businesses in order to avoid any concern of possible anticompetitive exploitation of possible advantages deriving from the subsidised activity.

Clawback mechanism:

- (26) To ensure that the selected bidder is not overcompensated, in case where demand for broadband in the target area grows beyond anticipated levels, or extra revenues would occur, a claw-back mechanism will be part of the contract. The provision of such a mechanism can ex post/retroactively minimise the amount of aid deemed initially to have been necessary. The mechanism foreseen by the Greek authorities provides that if profits surpass the level of a fair profit margin (identified at 15%) then 40% of the exceeding part may remain at the contractor's disposal, increasing its total profit levels, while 60% of the exceeding part will form a special taxable reserve which can be used during the next year for specific broadband development initiatives, such as: extending network's coverage in white areas under the same conditions highlighted in the present decision, upgrading service level, speed and capacity, stimulating demand of local communities.

Beneficiaries:

- (27) The direct beneficiaries of the aid will be electronic communications operators rolling out the broadband infrastructure and subsequently managing the subsidised network at wholesale level. Indirect beneficiaries include third party electronic communication operators that will be able to offer their services via wholesale access to the subsidised network, third-party access seekers and businesses (mostly SMEs) in the targeted areas which will ultimately benefit from the improved broadband services and coverage in comparison with what would be provided on a purely commercial basis.

V. PRESENCE OF AID

- (28) The measure at hand constitutes aid in the sense of Article 107 (1) TFEU, according to which support by a Member State to undertakings qualifies as State aid if it meets the cumulative conditions that 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, and 4) the measure has to affect intra-Community trade.
- (29) The current measure will be directly financed by the Greek authorities for the construction of the network. It will provide a selective economic advantage to the electronic communication operators and infrastructure investors selected via the tender procedure and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidised network. It enables undertakings to subscribe to the services offered via the subsidised network instead of more expensive market-based solutions. Thereby the support from the State resources creates advantages

for a selected number of beneficiaries belonging to a specific sector in a specific area of the European Union and has the potential to distort competition. Since the beneficiaries are active in deploying and operating broadband networks, a market which is, at least potentially, subject to trade between Member States, the Greek measure is also likely to affect trade between Member States.

VI. COMPATIBILITY ASSESSMENT

- (30) 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 networks⁴ (hereinafter the "Broadband Guidelines").

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

- (31) In application of State aid rules and, in particular as described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the common 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.
- (32) 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?

Objective of the measure

The aid is in line with the Community policy

- (33) This measure employs the funds made available by the European Economic Recovery Plan (together with additional funds) to ensure provision of broadband services to the so-called "*white areas*" in rural areas, where adequate broadband is currently not available at all and where there are no plans by private investors to roll out such infrastructure in the near future. Hence, objectives of the measure are in line with paragraphs 37-40 of the

⁴ *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.

Broadband Guidelines. The Greek measure constitutes a step ahead in achieving the ambitious objectives set in the Digital Agenda for Europe. By extending broadband coverage to such unserved areas, Greece pursues genuine cohesion and economic development objectives.

Aid is the appropriate instrument

- (34) The goal of the Greek authorities cannot be achieved by alternative means (such as regulatory measures concerning unbundling and third party access), since no private investments have taken place in the targeted areas or will take place during the next three years. Without further public intervention, no progress could be expected in the reduction of the digital divide between rural and urban areas. Member States are invited to address public funding to non-served areas. Hence, State aid is an appropriate instrument to achieve the set objectives, pursuant to paragraphs 47 and 48 of the Broadband Guidelines.

The aid provides the right incentives to operators

- (35) 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 results of the public consultation and market research conducted by the Greek authorities in the targeted areas no investment would take place without public funding, hence the aid will trigger a change in the investment decisions of the operators. Therefore, the aid should provide a real investment incentive for operators.

Design of the measure and the need to limit distortions of competition

- (36) As set out in paragraph 51 of the Broadband Guidelines, in assessing the proportional character of the notified measures in "white" areas, a number of conditions has to be met in order to minimise the State aid involved and the potential distortions of competition:
- (a) *Detailed mapping and coverage analysis, consultation with stakeholders:* as described above in paragraph (15) the Greek authorities have undertaken a thorough analysis of the existing broadband infrastructures in order to clearly identify the areas where state intervention is necessary. The Greek authorities further consulted existing operators and all the stakeholders and updated the target areas accordingly. Also the Greek NRA (EETT) was always involved in the design and discussion of the project. This way, the scheme ensures that public funds are used only in areas where it is necessary and limits the possibility of crowding out private investments and distortion of competition to the minimum possible.
 - (b) *Open tender process:* with the process described above in paragraphs (18) and (19) the Greek authorities will select the undertakings for the construction and the maintenance of the network in an open tender procedure ensuring transparency, and equal and non-discriminatory treatment, with the objective to minimise the aid necessary for the measure. The award criteria have been predefined as described in the mentioned paragraphs above in line with the provisions of the Broadband Guidelines.
 - (c) *Most economically advantageous offers:* within the context of the open tender, the Greek authorities will select the most economically advantageous offers. The bidders which request the lowest amount of aid for otherwise comparable quality and quantity

will be chosen. The awarding authority specified in advance the relative weighting, which it will give to each of the (qualitative) criteria chosen.

- (d) *Technology neutrality*: The Greek authorities have designed the measure in a way that 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 broadband services to end users.
- (e) *Use of existing infrastructures*: the Greek authorities will ensure during the tender procedure that existing civil infrastructures are considered by the bidders in the design of their offers. As explained above in paragraph (21), not only use of physical infrastructures is encouraged but also the available spectrum will be put at the disposal of operators wishing to provide wireless access services.
- (f) *Open wholesale access*: the operator of the new network will be obliged to provide for the whole duration of the contract (10 years) effective wholesale access to all interested parties in an open, transparent and non-discriminatory manner. Furthermore, to ensure that the winner does not cross-subsidise its other commercial activities, legal and functional separation of wholesale and retail activities are required.
- (g) *Price benchmarking*: In order to ensure effective wholesale access and to minimise potential distortion of competition, wholesale access prices on the subsidised network will be based on the average published (regulated) wholesale prices that prevail in other comparable, more competitive areas of Greece or, in the absence of such published prices, on prices already set or approved by the National Regulatory Authority for the markets and services concerned. The objective is to have an offer of retail access prices similar to those charged in non-subsidised areas. The benchmarking criteria will be clearly indicated in the tender documents.
- (h) *Claw-back mechanism to avoid over-compensation*: 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. Furthermore, to avoid overcompensation, the contract with the successful bidder will contain a claw back mechanism as described in paragraph (26) above.

The conditions listed in paragraph 51 of the Broadband Guidelines are therefore fulfilled.

Conclusion

- (37) 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.
- (38) The Commission takes note of the fact that the Greek authorities have exceptionally accepted to receive the text of this Decision only in English.

VII. DECISION

- (39) The Commission has accordingly decided to consider the aid measure "Broadband development in Greek rural areas" to be compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union and not to raise objections to it.
- (40) Greece is reminded that, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union, it is obliged to inform the Commission of any plan to extend or amend the measure.
- (41) The Commission further reminds the Greek authorities that in case of co-financing through Structural Funds of the Union and/or Cohesion Fund, the rules applicable to these Funds must be respected and 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")
- (42) 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.
- (43) Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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Yours faithfully,

For the Commission

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