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**From:** Yvonne McCarthy  
**Sent:** 27 June 2007 13:26  
**To:** 'Alexander.RIEDL@ec.europa.eu'; 'Lambros.Papadias@ec.europa.eu'  
**Cc:** Kenneth Spratt; 'Eric Tomkins'; 'Majella.ODea@dfa.ie'  
**Subject:** Draft PN 47/2007 – NBS Ireland  
**Importance:** High  
**Sensitivity:** Confidential

Dear Alexander and Lambros,  
Firstly, please accept my apologies for the delay in sending the draft pre-notification National Broadband Scheme (NBS) documents. Please find attached the draft pre-notification document (Draft PN 47 2007 – NBS Ireland) and supporting documents (Appendix A, B and C).

As you are aware the tender process for the NBS is currently underway, as a result an early meeting with DG Competition to discuss the Department's proposed approach to grey areas (outlined in Annex 1 of the draft pre-notification) would be very helpful. We are available Wednesday 4<sup>th</sup> July for a meeting in Brussels, alternatively we are available for a conference call earlier next week. If you have any queries do not hesitate to contact me.

Kind Regards,  
Yvonne

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Dublin 2

Phone - 01 6783187  
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**PART I. GENERAL INFORMATION**

**STATUS OF THE NOTIFICATION**

Does this notification concern:

a notification pursuant to Article 88 (3) EC?

This is a draft pre-notification document, submitted for the purpose of pre-notification discussions between the Irish authorities and the European Commission.

**Standard form for notification of State aids pursuant to Article 88 (3) EC and for the provision of information on unlawful aid**

This form shall be used by Member States for the notification pursuant to Article 88(3) EC of new aid schemes and individual aid except for the State aid to fisheries and aquaculture where a specific form exists. It shall also be used when a non-aid measure is notified to the Commission for reasons of legal certainty.

Member States are also requested to use this form when the Commission requests comprehensive information on alleged unlawful aid.

The present form consists of three parts:

General Information: to be completed in all cases

Summary Information for publication in the Official Journal

Supplementary Information Sheet depending on the type aid

Please note that failure to complete this form correctly may result in the notification being deemed as incomplete. The completed form shall be transmitted on paper to the Commission by the Permanent Representative of the Member State concerned. It shall be addressed to the Secretary General of the Commission.

If a Member State intends to avail itself of a specific procedure laid down in any regulations, directives, frameworks and other texts applicable to State aid, a copy of the notification shall be sent addressed to the Director General of the Commission department responsible.

## 1. IDENTIFICATION OF THE AID GRANTOR

1.1. Member State concerned

Ireland

1.2. Region(s) concerned (if applicable)

Southern and Eastern Region and Border Midlands and Western Region.

Responsible contact person:

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1.3. Responsible contact person at the Permanent Representation

Name : Majella O'Dea  
Telephone : 0032 2 2823234  
Fax : 0032 2 2806847  
Email : majella.oddea@dfa.ie

If you wish that a copy of the official correspondence send by the Commission to the Member State should be forwarded to other national authorities, please indicate here their name and address:

Name: Eric Tomkins, Commission for Communications Regulation  
Address: Block DFF-Abhey Court, Irish Life Centre, Lower Abhey Street, Dublin 1

## 2. IDENTIFICATION OF THE AID

2.1. Title of the aid (or name of company beneficiary in case of individual aid)

The National Broadband Scheme (the 'NBS') - Ireland

2.2. Brief description of the objective of the aid.

(a) *The background to the NBS*

Ireland is notifying the Commission of its intention to introduce a National Broadband Scheme (the "NBS"). The objective of the NBS is to encourage and secure the provision of broadband services to certain target areas in Ireland in which broadband services are not currently available and are unlikely to be available in the near future. It is envisaged that the NBS will lead to a broadband product being available to fixed locations in these areas which is affordable, sustainable and scalable. It is intended that the broadband service delivered under the NBS will be broadly comparable to the products enjoyed in the majority of currently served areas, now and in the future.

Based on market assessments conducted by the Department of Communications, Marine and Natural Resources (the 'DCMNR') it is understood that approximately 10%-15% of the geographical area of Ireland remains unserved by broadband for reasons of technical or commercial feasibility. It is estimated that up to 10% of the population do not currently have access to broadband services. Although this figure indicates that the majority of the population are already benefiting from a competitive broadband market, the unserved parts of Ireland illustrate the ongoing presence of a 'digital divide', where a number of communities in isolated areas are disadvantaged because of lack of access to affordable broadband services.

Typically, these unserved areas of Ireland are rural in nature and have low population densities to the extent that commercial operators see no commercial incentive to invest in the necessary infrastructure development for the provision of broadband services in these areas.

In order to address this broadband deficit, a new broadband scheme entitled the National Broadband Scheme is proposed. The DCMNR has commenced an open tender process through which it will use the competitive dialogue procedure under EU procurement rules. Interested service providers will submit bids and the DCMNR will select a successful service provider who will be required to provide broadband services to consumers, businesses and other operators (at a wholesale level) in certain target areas in Ireland for which funding will be provided by the State. The level of funding necessary to ensure the delivery of affordable broadband services will be determined during the procurement process.

The DCMNR considers that in the absence of intervention by the State in the form of the support to be made available under the NBS, service providers are unlikely to

invest in these areas within a reasonable timeframe, with the consequence that consumers and businesses in primarily rural and isolated areas will be denied access to and the benefits of broadband. The NBS is therefore designed to address a genuine market failure.

(b) **The objectives of the NBS**

The objective of the NBS is to facilitate the provision of broadband services to users in geographic areas that are unlikely, in the absence of government intervention or support, to have services commercially provided by the market. The NBS will result in the provision of a service to homes and businesses in these unserved areas which is affordable, sustainable and scalable. Ideally, the products provided will be broadly comparable to the products enjoyed by the majority of users in areas (such as urban Dublin) currently served by broadband. It is envisaged that prices charged for services delivered under the NBS will be benchmarked to those in areas where broadband services are already provided. The DCMNR wishes to ensure that the NBS is designed to contribute to the development of a competitive market for broadband services in the NBS areas.

(c) **Policy context - European broadband objectives**

The NBS objectives are closely aligned to those at a European level where the importance of broadband services has been identified as an important project of common interest. At a European level, the European Commission (the "Commission") has outlined in both its Communication '2010 - A European Information Society for growth and employment'<sup>3</sup> and the eEurope Action Plan 2005<sup>4</sup>, that it actively supports the widespread availability of broadband services. In order to achieve better broadband coverage, the Commission encourages Member States to put comprehensive national broadband strategies in place<sup>5</sup>. The key area of the Commission's focus includes "...increasing deployment in under-served areas, where market forces do not deliver the necessary investment".<sup>3</sup>

A number of similar initiatives aimed at addressing the deployment of broadband in underserved areas have taken place in other EU member States including Wales, Scotland, Spain and Greece. The objectives of the NBS are in line with 12010 objectives.

(d) **Policy context - National Broadband Objectives**

The NBS objectives are integral to the Economic and Social Infrastructure Priorities set out in Ireland's National Development Plan 2007-2013, namely 'To promote the availability of competitive broadband services and to achieve nationwide broadband coverage by the end of the Plan period'.<sup>6</sup>

<sup>3</sup> COM(2005)229 final '2010 - A European Information Society for growth and employment', 1 June 2005

<sup>4</sup> COM(2002)263 final, 'eEurope 2005: An information society for all', 28 May 2002

<sup>5</sup> COM(2004)369, 'Connecting Europe at High Speed - National Broadband Strategies', 12 May 2004

<sup>6</sup> Ireland National Development Plan 2007-2013

Ireland operates a regulated, liberalised telecommunications market where services are provided by private companies to business and residential users. The State is not a service provider in this market, however, where market failure occurs or national objectives cannot be met, the Irish authorities seek to facilitate the provision of services through a combination of regulation and, where regulation is insufficient, direct State funded intervention.<sup>6</sup>

Examples of previous State interventions in broadband in Ireland include the Metropolitan Area Networks (MANs) and the Group Broadband Scheme (GBS). The MANs Phase II and III were initially notified to the Commission in June 2005, in August 2006 the Commission published their decision<sup>7</sup> that the aid was compatible with Article 87(3) (c) of the EC Treaty.

Despite these interventions there are some areas in the State, where service providers consider that it is not commercially viable to deploy broadband infrastructure and these parts of the country remain disadvantaged. The NBS will focus on the delivery of services to consumers and businesses in those areas of the country where service providers do not provide services and that are unlikely to have broadband services provided commercially within a reasonable timeframe. The DCMNR recognises that it will be necessary to provide funding for the construction of some infrastructure under the NBS, however the primary focus of the NBS will be on the delivery of active services to consumers and businesses. The DCMNR intend to ensure that this focus on consumers and businesses is reflected in the payment mechanism negotiated with the successful service provider.

Please indicate primary objective and, if applicable, secondary objective(s):

- | Primary objective<br><i>(please tick one only)</i>  | Secondary objective <sup>8</sup>    |
|---|-------------------------------------|
| <input checked="" type="checkbox"/> Services of general economic interest                         | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> Execution of an important project of common European interest | <input type="checkbox"/>            |

<sup>6</sup> The Commission for Communication Regulation (ComReg) was established by the State and is the independent authority with responsibility for the regulation of the electronic communications market.

<sup>7</sup> State Aid number N 284/2005 - Ireland Regional Broadband Programme: Metropolitan Area Networks, phases II and III

<sup>8</sup> A secondary objective is one for which, in addition to the primary objective, the aid will be exclusively earmarked. For example, a scheme for which the primary objective is research and development may have as a secondary objective small and medium-sized enterprises (SMEs) if the aid is earmarked exclusively for SMEs. The secondary objective may also be sectoral, in the case for example of a research and development scheme in the steel sector.

**Scheme - Individual aid\***

1. Does the notification relate to an aid scheme?

No

2. Does the notification relate to individual aid?

Yes

➤ If yes, please tick the following appropriate box

aid based on a scheme which should be individually notified

Reference of the authorised scheme:

Title: .....

Aid number: .....

Letter of Commission approval: .....

individual aid not based on a scheme

**3. NATIONAL LEGAL BASIS**

3.1. Please list the national legal basis including the implementing provisions and their respective sources of references:

Community Support Framework (CSF) underpinning the National Development Programme (2007-2013), and Ministers and Secretaries Acts 1924 to date

3.2. Please indicate the document(s) enclosed to this notification:

A copy of the relevant extracts of the final text(s) of the legal basis (and a web link, if possible)

A copy of the relevant extracts of the draft text(s) of the legal basis (and a web link, if possible)

3.3. In case of a final text, does the final text contain a clause whereby the aid granting body can only grant after the Commission has cleared the aid (stand still clause)?

The initial tender documentation for the NBS has been published. This documentation states that the NBS contract award is subject to State aid clearance. Please see section 3.4 of the Information Memorandum in Appendix (A), for further details. The final NBS contract will contain a similar clause.

According to Article 1(e) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1), individual aid shall mean aid that is not awarded on the basis of an aid scheme and notifiable award of aid on the basis of a scheme.

**BENEFICIARIES**

✓ **Location of the beneficiary(ies)**

✓ **mixed: specify**

Beneficiaries will be selected as part of the competitive dialogue process to select a successful service provider.

The DCMNR has commenced an open tender process using the Competitive Dialogue procedure as set out in the European Communities (Award of Public Authorities' Contracts) Regulations 2006, which implements Directive 2004/18/EC. Interested parties have been asked to submit proposals for the provision of broadband services in the unserved areas of Ireland (the "NBS Areas"). A copy of the OJEU Notice can be found at the following link <http://ted.europa.eu/FXESS/noticeDetail.do?noticeId=141D6R37C685C6761CD8E69DB625C5394&instance=1>  
[http://DataFlow>ShowPageAll&Template=TED/N\\_one\\_result\\_detail\\_curr.htm&docnumber=105759-2007&docId=105759-2007&StatLang=EN](http://DataFlow>ShowPageAll&Template=TED/N_one_result_detail_curr.htm&docnumber=105759-2007&docId=105759-2007&StatLang=EN) and the associated tender documents are attached at Appendix [B].

The DCMNR intends, subject to receiving State aid approval, to award a contract to the bidder whose solution meets the NBS requirements and offers the most economically advantageous tender.

The open tender approach ensures that there is transparency for any service provider wishing to participate in the competition to award the NSB contract. Equally so, it provides that the level of funding to be provided by the State under the NBS contract is subject to a competitive bidding process which should result in minimising the level of funding required to deliver the NBS requirements.

**Sector(s) of the beneficiary(ies):**

✓ 64 Post and telecommunications.

**In case of an aid scheme:**

**Type of beneficiaries:**

✓ **the following beneficiaries:**

Beneficiaries will be selected as part of the competitive dialogue process. The DCMNR have adopted a technology neutral approach with respect to procuring services for the NBS. The successful service provider chosen by the DCMNR for the NBS contract will be required to provide broadband services to residential and business locations in areas covered by the NBS within a defined timeframe. The Information Memorandum (IM) sets out anticipated NBS requirements, please see section 10 of this notification for details of the areas included in the NBS and also Appendix [A] for details.

Estimated number of beneficiaries:

✓ under 10

**S. AMOUNT OF AID / ANNUAL EXPENDITURE**

**In case of an aid scheme, indicate the annual amount of the budget planned and the overall amount (in national currency):**

The budget will be determined during negotiations as part of the competitive dialogue process to select the successful service provider. The amount will not be known until conclusion of the competitive dialogue process.

**For tax measures, please indicate the estimated annual and overall revenue losses due to tax concessions for the period covered by the notification:**

The measure is not a tax measure.

**If the budget is not adopted annually, please specify what period it covers:**

The DCMNR anticipates awarding a contract for five years, which is the estimated timeframe for implementation of the NBS requirements and roll-out of services to the NBS target areas. It is anticipated that the majority of the budget is likely to be paid during the initial years of the NBS contract, with an amount being retained up to the end of the contract for performance guarantee purposes.

**7. DURATION**

7.2. In the case of an aid scheme:

Indicate the date from which the aid may be granted

The date on which payments will commence is subject to negotiations during the competitive dialogue process. The DCMNR anticipates that the NBS contract will be awarded in January 2008, and that milestone payments will be granted to the successful service provider when agreed targets (in terms, for example, of reaching the agreed roll-out targets and numbers of consumers and businesses receiving active service) have been reached.

Indicate the last date until which the aid may be granted

This date is subject to negotiations during the competitive dialogue process. The DCMNR anticipates that the contract will end in 2013. However, the DCMNR wishes to ensure that final payments will only be made once the threshold number of consumers and businesses receiving active broadband service has been reached. It is anticipated that the majority of the budget is likely to be paid during the initial years of the NBS contract, with an amount being retained up to the end of the contract for performance guarantee purposes.

**FORM OF THE AID AND MEANS OF FUNDING**

Specify the form of the aid made available to the beneficiary(ies) (where appropriate, for each assure):

Direct grant

To ensure that the successful service provider is not over-compensated in the event that demand for broadband in defined areas grows beyond projected targets, the DCMNR will be inserting a reverse payment mechanism, (also termed a 'claw back' mechanism) in the NBS contract. Given the different financial and commercial issues associated with the various technology solutions that could be deployed by the successful service provider the exact details of the mechanism will be determined as part of the competitive dialogue process.

Specify the financing of the aid: if the aid is not financed through the general budget of the State/region/municipality, please explain its way of financing:

Other (please specify)

Financed through the general budget of the State and/or EU funding.

**CUMULATION OF DIFFERENT TYPES OF AID**

Can the aid be cumulated with aid received from other local, regional, national or community schemes to cover the same eligible costs?

No

so, describe the mechanisms put in place in order to ensure that the cumulation rules are respected:

Not applicable

**9. PROFESSIONAL CONFIDENTIALITY**

Does the notification contain confidential information which should not be disclosed to third parties?

Yes

If so, please indicate which parts are confidential and explain why:

The Department envisages that the final formal notification will include confidential information. That confidential information will be identified as such in the formal notification.

If no, the Commission will publish its decision without asking to the Member State.

## 10. COMPATIBILITY OF THE AID

Please identify which of the existing regulations, frameworks, guidelines and other texts applicable to State aid provide an explicit legal basis for the authorisation of the aid (where appropriate please specify for each measure) and complete the relevant supplementary information sheet(s) in part III.

Where the existing regulations, frameworks, guidelines or other texts applicable to State aid do not provide an explicit basis for the approval of any of the aid covered by this form, please provide a fully reasoned justification as to why the aid could be considered as compatible with the EC Treaty, referring to the applicable exemption clause of the EC Treaty (Article 86(2), Article 87 2 (a) or (b), Article 87 paragraph 3 (a), (b), (c) or (d)) as well as other specific provisions relating to agriculture and transport.

### Scope of the NBS

The Irish authorities consider that they are acting to address a clear market failure to provide broadband services in Ireland. It is clear that in the absence of intervention by the DCMNR, in the short term, the market will be unable to deliver broadband services to approximately 10% of the population Ireland. In order to identify the extent of the market failure and to limit the NBS to what is strictly necessary to address the market failure, the DCMNR has undertaken the scoping exercise outlined at section 4 [below].

### Current broadband market figures in Ireland

There has been considerable progress in the roll-out of broadband in Ireland recently. According to the latest ComReg<sup>10</sup> quarterly report<sup>11</sup> the total number of broadband subscribers at the end of Q1 2007 was 602,000. Q1 2007 saw the highest number of new subscribers added in any single period since the launch of broadband services in Ireland. An additional 84,000 new subscriptions occurred between December 2006 and March 2007. DSL remains the largest broadband access platform in terms of subscribers, accounting for 72% of all broadband subscriptions, while Fixed Wireless Access broadband provision accounts for 16%, cable accounts for 11% and other technologies including satellite and fibre account for 1%.

eircom, the incumbent provider, has 1149 exchanges in Ireland. The DSL enablement status of these exchanges (on the basis of information provided to DCMNR by eircom in March 2007) is as follows:

- 463 exchanges have been DSL-enabled

- A further 112 exchanges are to be enabled in the period up to Q1 2008, with eircom recently having stated (subsequent to the announcement of the NBS) that an additional 319 exchanges are to be completed during the period up to 2009.
- the remaining 254 exchanges are not within any of eircom's enablement plans.

### Barriers to broadband in Ireland

Despite the above current and intended DSL roll-out, given technology and network limitations, a number of households and businesses will still be outside of the reach of the DSL service. The DCMNR has identified the following additional barriers to universal broadband provision:

- Cable broadband services in Ireland are limited to large urban areas and it is unlikely that cable operators will extend their infrastructure or services to sparsely populated rural areas as there is no commercial case for development in areas with low population density.
- Wireless service providers will not address the rural, sparsely populated areas, as there is no commercial case for broadband services in such areas.
- eircom has been designated as having Significant Market Power in the market for Wholesale Unbundled Access and is obliged, among other things, to provide access to LLU services. However, it is clear that the economics of providing broadband services via LLU in the remote rural areas are not viable and it is therefore unlikely that other service providers will avail of LLU to provide services in these areas.
- eircom has been designated as having Significant Market Power in the market for Wholesale broadband Access. eircom has indicated that it does not intend to enable 254 exchanges in the remote areas on the basis that it would not be commercially viable. As a consequence, no wholesale (or retail) broadband service is available from eircom in these areas.

### Scope of the NBS / Market Analysis completed

To identify where broadband services are not being provided by the market the NBS team, comprised of members of the DCMNR and ComReg, undertook the following comprehensive mapping process:

#### Step One

The DCMNR and ComReg contacted service providers and requested details of their current and planned broadband coverage. Representative samples of the following categories of service providers were contacted:

- licensed fixed service providers
- licensed wireless service providers
- known licensed exempt wireless service providers
- mobile service providers
- GBS service providers

<sup>10</sup>ComReg are the Commission for Communications Regulation in Ireland  
<sup>11</sup>Irish Communications Market – Quarterly Key Data Report June 2007

### Step Two

The data received from service providers was inserted on a broadband coverage map. In order to achieve as complete and accurate a map as possible, the NBS team then consulted with the Irish Regional Authorities to ask that they confirm as far as possible, the broadband coverage information provided in the maps,<sup>12</sup> and that the list of all service providers included in the mapping process was comprehensive. The Regional Authorities were requested to provide any additional information on service providers in their specific areas.

### Step Three

The additional service providers identified by the Regional Authorities were contacted by the DCMNR and details of the service providers current and future coverage plans were requested and included in the map.

### Step Four

A number of geographic areas are excluded from the scope of the NBS, as the DCMNR has determined that existing coverage is adequate and/or there are already several service providers in the area. As a consequence, the NBS will not address the following areas:

- the 5 largest cities in the State (Cork, Dublin, Galway, Limerick and Waterford),
- areas within which telephone exchanges have been enabled for DSL, subject to a service radius of 4.5Kms, and
- areas served by wireless broadband provision, subject to (where appropriate) the service radius defined by license requirements and having regard to topographical effects on wireless coverage.

### The Indicative Map

The resulting broadband coverage map is the "indicative map"<sup>13</sup>, please see Appendix C for the latest version of the map, the initial map is available on the DCMNR's website at: [www.dcmnr.ie/communications](http://www.dcmnr.ie/communications). The indicative map sets out those areas of Ireland which, from information available to the DCMNR (based on the information gathering process outlined above) denotes the following:

- "black areas" are currently served by broadband,
- "grey areas" are currently unserved by broadband, but where service providers have indicated that they plan to provide broadband services in these regions in the foreseeable future, and
- "white areas" have been identified as currently unserved areas. There is currently no broadband service or no prospect (based on indications from service providers) that a

<sup>12</sup>The Irish Regional Authorities have two main functions: to promote the co-ordination of public service provision and to monitor the delivery of EU Structural Fund assistance in the regions. The Authorities have specific responsibility for preparing Regional Planning Guidelines and Regional Economic and Social Strategies and promoting cooperation, joint actions, arrangements and consultation among local authorities and other public bodies.

<sup>13</sup>Please note that this map has been developed having regard to the information available to the DCMNR at the time of issue of the Information Memorandum on 2 May 2007 and is expected to change and evolve as information becomes available during the course of this procurement process.

broadband service will be provided in the next two years. There is the possibility of a satellite solution in these areas, however, the cost of such services means that the delivery of broadband services which comply with the minimum requirements identified by the DCMNR below in section 6(b) mean that this is a highly unlikely option.

Since the announcement of the NBS a number of service providers have indicated to the DCMNR that they intend to serve new areas of Ireland, resulting in areas previously designated as "white" areas becoming "grey". Having carefully considered the matter, the DCMNR are of the view there is no viable way for the DCMNR to assess the commercial viability of service providers' future plans. Any such assessment would involve a cumbersome administrative burden and entail substantial administrative costs. It is thus not possible for the DCMNR to establish whether plans indicated by service providers are likely to result in the availability of broadband services to consumers in the short to medium term. The DCMNR is considering a number of options to address this problem, and these are set out in Annex 1 "NBS Proposed Approach to Grey Areas" to this draft notification. We would welcome the Commission's comments on the options discussed in this Annex.

### Compatibility of the Aid with Article 87(3)(c) of the EC Treaty

If the Commission takes the view that there is State aid within the meaning of Article 87(1) involved in the NBS, Ireland considers that the NBS is compatible with the Treaty on the basis of the exception laid down in Article 87 (3) (c). The objective of the NBS funding is to facilitate the development of specifically identified NBS target areas where there is market failure. The NBS has been designed to minimise any distortive impact, by consulting with the market and taking service providers current (and planned) broadband coverage into consideration when identifying the NBS target areas.

The Commission has already noted (N264/2006, Broadband for Rural Tuscany) that there is clear evidence of regional economic development benefits resulting from greater broadband deployment, including job creation and retention as well as improved health and education services. In order to achieve better broadband coverage, the Commission encourages Member States to put comprehensive national broadband strategies in place. The measure at hand forms an important part of the broadband strategy in Ireland. By improving broadband access for citizens and businesses in areas of Ireland where these services are not yet available, the measure helps achieving greater cohesion and is therefore in line with the common interest.

### Cohesion objective and market failure considerations

Lack of broadband coverage is due, among others, to some of the typical economic problems associated with networks industries. 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, unit costs escalate dramatically as population densities drop. Remoteness also plays a role, requiring bridging longer distances in the backhaul and in the last mile. The Commission has pointed to estimates that suggest approximately 65-70% of the costs associated with the deployment of broadband in the access network is related to civil infrastructure. In addition, although equipment costs have fallen as volumes increase, they remain a significant cost and major barrier to roll-out. In areas where demand is not very developed and coverage of cost is

uncertain, private operators might find it difficult to find a source of funding for broadband infrastructure, which has a long life and amortisation period.

Hence, by providing financial support for the establishment of infrastructure to provide basic wholesale and retail broadband services in areas of Ireland where broadband is currently not available, the Irish authorities pursue genuine cohesion and economic development objectives.

This section sets out the principles which have been applied by the DCMNR in designing the NBS. Ireland considers that these principles will ensure that no market distortions will arise from the implementation of the NBS.

**(a) The aid measure is aimed at a well-defined objective of common interest.**

As stated above in response to section 2.2, the proposed measure is part of an integrated approach consistent with EU and national policy including the Commission's 'i2010 - A European Information Society for growth and employment'<sup>16</sup> and Ireland's Economic and Social Infrastructure Priorities set out in the National Development Plan 2007-2013, namely 'To promote the availability of competitive broadband services and to achieve nationwide broadband coverage by the end of the Plan period.'<sup>17</sup>

In order to define the objectives of the NBS, Ireland has undertaken an extensive analysis of the market for the provision of broadband services, and the NBS is designed to remedy only the lack of broadband coverage identified by that analysis.

**(b) The aid measure is well designed to deliver the objective of common interest. In particular:**

**- The NBS is an appropriate instrument, as there are no other better-placed instruments.**

The NBS is integral to the DCMNR's integrated approach to dealing with the problems encountered in the delivery of broadband in the State. Ireland considers that there is no alternative to the grant of direct funding to overcome the lack of service provision.

Ireland has also engaged in regulatory activity to address some of the barriers to broadband provision. eircom, the incumbent provider, has been designated as having Significant Market Power in the market for Wholesale Broadband Access and is obliged, among other things, to provide access to wholesale bitstream services. However, this is unlikely to result in the provision of broadband services to the unserved areas, and it is unlikely that regulatory activity alone will be adequate to address the ongoing digital divide. The Commission has already recognised that the 'market evidence shows that regulation has so far neither ensured effective

competition in various Irish markets for electronic communications nor led to sufficient investments to bridge the "broadband gap"....<sup>16</sup>

Ireland has also taken steps to generate considerable demand-side encouragement to address the broadband gap, and a wide range of e-governance services are available to the public online and supported by the Government, please see [www.reach.ie](http://www.reach.ie) and [www.citizensinformation.ie](http://www.citizensinformation.ie) for details. However, such measures are not sufficient to solve the demonstrated problems on the supply side.

Ireland considers that in view of the severe broadband gap that continues to exist in rural areas in Ireland, the development of wholesale services with government support is the only appropriate instrument to achieve the objectives of EU and National policy.

**- Is there an incentive effect, i.e. does the aid change the behaviour of firms?**

The NBS will ensure that bidders tendering for the NBS will indicate the amount of aid they consider necessary to carry out the required investment on the basis of the anticipated total investment, operating costs and anticipated revenues. The design of the programme aims to provide a neutral, open, wholesale infrastructure and wholesale service to reduce the high fixed cost of establishing a network. In areas of low population density this high cost represents the most important barrier to market entry to alternative service providers. Ireland's objective in this regard is that the State aid provided will provide a direct and appropriate investment incentive limited to the amount required for the successful service provider. It is hoped that at the end of the contract period the market will deliver broadband services to all consumers.

**Is the aid measure proportionate, i.e. could the same change in behaviour be obtained with less aid?**

In order to ensure that the NBS operates in a proportionate manner, the DCMNR has designed the NBS on the following core principles:

**Open tender process:** The NBS contract will be awarded on foot of a competitive bidding process which will minimise the level of funding required to deliver the NBS.

**Duration:** The DCMNR anticipates awarding a contract for a duration of five years, which would include the timeframe for roll-out of services to the NBS target areas. A five-year contract is considered necessary to provide a balance between providing the successful service provider with the opportunity to construct a solid business case for infrastructure investment. The actual contract length will be determined as part of the competitive dialogue process once the implementation timescales are agreed between the DCMNR and the successful service provider, to ensure that a reasonable period for monitoring operational performance is available to the DCMNR. Public funding under the NBS will be limited to the provision of services to consumers and businesses in areas where the market has indicated that, without intervention, it will not provide broadband service in the near future.

<sup>16</sup> COM(2005)229 final 'i2010 - A European Information Society for growth and employment', 1 June 2005  
Ireland National Development Plan 2007-2013

<sup>17</sup> State aid No. N 284/2005 - Ireland Regional Broadband Programme: MANS, phases I and II at para. 68.

**Claw-back mechanism to avoid over-compensation:** To ensure the winning service provider is not over compensated if demand for broadband in defined target areas grows beyond anticipated levels, the DCMNR will be inserting a reverse payment mechanism into the contract. The DCMNR considers that these principles will ensure that the potential distortions of competition arising from the implementation of the NBS are minimised.

**Use of existing infrastructure:** In order to avoid any duplication of infrastructure, the NBS will not fund the provision of any infrastructure unless the service providers have stated the need for such infrastructure. The DCMNR considers that service providers are best placed to identify infrastructure requirements and therefore the bidding process will be used to ensure that there is no duplication of infrastructure provision. During the competitive dialogue process, discussions with prospective service providers will examine network plans and the DCMNR will insist on a breakdown of costs. Technical consultants on behalf of the DCMNR will analyse bids with the intention of eliminating any duplication of infrastructure.

**Technological neutrality:** The NBS is technology neutral. Bidders are entitled to propose the provision of broadband services using whatever technology they choose.

**Detailed service agreements:** The precise details of the service agreements with service providers will be discussed during the competitive dialogue process. However, the DCMNR intends to ensure that the contract contains a performance link based on the service providers' delivery of broadband services to consumers. This will aim to ensure that while a proportion of the funding is provided to the successful service providers up front for the delivery of necessary infrastructure, the delivery of further fixed sums agreed under the contract will take place on the achievement of certain milestones (such as the number of consumers with active service) by the successful service provider. During the conduct of the procurement process the DCMNR will seek to ensure that the NBS contract provides for the retention of 15% of the contract price until agreed performance targets are achieved.

**Wholesale access:** There will be a requirement for the successful service provider to provide a wholesale product, at an appropriate wholesale price, which will be available to other operators in the market. This product will be made available on a non-discriminatory basis and it is envisaged that the wholesale pricing will be set at a reasonable margin to allow competition. A Reference Offer and an associated wholesale Service Level Agreement will also be required. These details will be developed during the competitive dialogue process.

**Benchmarking consumer product with similar services in urban areas:** It is intended that the product to be provided by the NBS will be benchmarked with tariffs and products typically available in the existing market for broadband services. To that end, and subject to negotiations with bidders, it is intended that the product will have the following characteristics:

- always on service (no charge by connection time);
- downstream (i.e. Internet to subscriber) speed of 1024kbit/s (1Mbit/s) whereby the service must allow peak speeds up to 1024kbit/s;

- upstream (i.e. subscriber to Internet) speed of 128kbit/s whereby the service must allow peak speeds up to 128kbit/s;
- a maximum contention ratio equivalent to 48:1 (by reference to the technology employed by the successful service provider);
- minimum monthly limit on download capacity (uncharged) per retail subscriber connection of 10GB; and
- latency requirements such that common Internet Protocol (IP) applications such as Virtual Private Network (VPN), Voice over IP (VoIP) and gaming may be supported by the broadband service.
- To ensure prices in NBS areas remain comparable with those of services available in urban areas, the DCMNR intends that pricing in the NBS areas will broadly reflect that which is available in the served areas.

(c) *Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?*

On the basis of the principles outlined above, Ireland considers that the NBS will only provide aid to the extent necessary to develop the offer of broadband services in areas where a market failure has been clearly identified. The proposed intervention by the Irish authorities has been designed to ensure that there is no distortion of the market for broadband services, as service providers will ultimately be in a position to offer broadband services on a competitive basis.