



## EUROPEAN COMMISSION

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### PUBLIC VERSION

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Subject: **State aid SA.38626 (2015/N) National Broadband Plan - Croatia**

Madam,

#### **1. PROCEDURE**

- (1) After pre-notification discussions, Croatia notified the above measure to the Commission on 16 October 2015 under Article 108(3) TFEU. The Commission requested additional information from Croatia on 5, 6, 10, 20 November and 9 December 2015. Croatia submitted the requested additional information on 6, 9, 10 and 23 November and 10 December 2015, and on 11 January 2016.

#### **2. DETAILED DESCRIPTION OF THE MEASURE**

- (2) The measure aims to promote the development of NGA networks in Croatia. In line with the "Europe 2020" strategy for more growth, the "Digital Agenda for Europe" and the Croatian broadband strategy, Croatia aims at gradually deploying NGA-networks country-wide in white NGA areas<sup>1</sup>, with a download speed of at least 40 Mbit/s and an upload speed of at least 5 Mbit/s.
- (3) The notified measure (the "Framework Programme") covers NGA access networks and is one of two programmes for high speed broadband development in Croatia, the other being an NGN backhaul scheme which is intended to be implemented in parallel during the same time period; from Commission

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<sup>1</sup> Areas in which currently no NGA broadband infrastructure is in place or planned to be developed in the next three years.

Prof. dr.sc. Vesna PUSIĆ  
Prva potpredsjednica Vlade RH i  
ministrica vanjskih i europskih poslova  
Trg N.Š. Zrinskog 7-8, 10000 Zagreb  
REPUBLIKA HRVATSKA

approval until 2023. The implementation of both schemes will be coordinated by the same body at national level. The present decision deals only with the access networks and is without prejudice to the assessment of the notified backhaul scheme.

- (4) Currently around 97 percent of the Croatian population has access to basic broadband over the existing copper network. Many have access to several parallel infrastructures: 72.4% in basic grey areas and 25.6% in basic black areas. The existing network is predominantly copper with a majority of connections based on ADSL with an upload speed limited to 768 Kbit/s. Currently available download speeds in the target areas subject to the notified measure are the following: 2-4 Mbit/s for 47.5% of the households, 4-10 Mbit/s for 37% of the households, and 10-20 Mbit/s for 15.5% of the households.
- (5) Until mid-2013, investment into NGA broadband infrastructure was limited to parts of large cities, such as Zagreb, Split, Rijeka and Osijek. In NGA areas download speeds of 30 Mbit/s are offered. The notified measure does not cover those areas. Target areas are mainly rural or suburban.
- (6) **Objective:** The purpose of the NGA access network measure is to promote the deployment of NGA broadband networks with a download speed of at least 40 Mbit/s and an upload speed of at least 5 Mbit/s in areas of Croatia that are currently un- or underserved with such broadband infrastructure; "white NGA areas".
- (7) **Duration:** The measure covers the time period from the Commission approval until 31.12.2023, which is the last date on which aid can be granted under the measure. The Croatian authorities have committed to respecting the standstill obligation and will not implement the scheme prior to the approval of the Commission.
- (8) **Legal basis:** the measure is based on the Electronic Communications Act (*Zakon o elektroničkim komunikacijama (NN 73/2008, 90/2011, 133/2012, 80/2013)*), Strategy for the development of broadband access in the Republic of Croatia between 2012 and 2015, Government of the Republic of Croatia (OG 144/2011, *Strategija razvoja širokopojasnog pristupa u Republici Hrvatskoj u razdoblju od 2012. do 2015. godine (NN 144/2011)*), Implementation Programme for the development of broadband access in the Republic of Croatia between 2012 and 2013 (NN144/2011) (*Provedbeni program Strategije razvoja širokopojasnog pristupa u Republici Hrvatskoj za razdoblje od 2012. do 2013. godine (NN 144/2011)*), Study on the selection of the most favourable funding models and incentives measures for infrastructure investment in broadband (*Studija o odabiru najpovoljnijih modela financiranja i poticajnih mjera za ulaganja u infrastrukturu širokopojasnog pristupa*).
- (9) **Budget and financing instruments:** The overall estimated (maximum) budget of the measure is EUR 252 million, of which EUR 117.2 million will be funded by ERDF and the remaining EUR 134.8 million by an EIB loan. It is expected that private funds will amount to EUR 120 million during the implementation of the project. The annual budget is EUR 31.5 million for the period 2016-2023.
- (10) **Aid amount and intensity:** Aid intensity will vary between 20% and 100% depending on the area of intervention and circumstances such as the exploitability of existing infrastructure, population and geographical size of the settlement, the choice of infrastructure solution (highest intensity for FTTH networks which implies the construction of new ducts), and whether there is a

pre-existing ducts network. Private investment is expected to amount to 40% of the total investment for the Framework Programme, and the average aid intensity is expected to be 40%.<sup>2</sup>

- (11) **Beneficiaries:** The recipient of the aid will be the selected operator of the network. Indirect beneficiaries will be electronic communication operators using the new network to offer retail services to end users, and the end users themselves.
- (12) **Target areas:** The measure is confined to white NGA areas (where speeds of less than 30 Mbit/s are available and where no NGA network is currently in place or planned to be deployed in the next three years).
- (13) During the public consultation on the backhaul scheme (case SA.41065, not the subject of this decision), the incumbent made known its plans to invest in the upgrading of active network equipment in its existing exchanges (by replacing ADSL DSLAMs with VDSL2 DSLAMs). The incumbent states that as a result of that investment it will be able to offer 30 Mbit/s and 40 Mbit/s services to customers located up to a maximum of 800 metres from exchanges. Such grey spots are estimated to cover 16% of the Croatian population. Considering the average geographical size of Croatian settlements, this means that these services will be available to an average of 32,5% households in any particular settlement. The remaining households (on average 67,5%), which are not close enough to exchanges, will be served with basic broadband services in the range of 5-20 Mbit/s. Beyond the above, the incumbent did not express any intention to invest into the deployment of new and/or upgrade of existing network, by which it would be able to deliver at least 30 Mbit/s in these settlements.
- (14) Consequently, only the areas beyond the reach of the incumbent's updated network as described above, are considered white NGA areas. In the majority of settlements where the incumbent announced its investment plans there is no other parallel basic or NGA broadband network, nor did any other operator express its intention to invest in NGA networks. The Croatian authorities have confirmed that the new subsidised network will go through spots defined as grey where necessary for the construction of the access network in the white areas, however without connecting end-users in the grey areas to the network.
- (15) **Detailed mapping and coverage analysis, consultation with stakeholders:** The Croatian authorities have undertaken a mapping exercise, i.e. a centralised inventory of existing infrastructure, in 2013. The mapping resulted in a list of all 6,755 Croatian settlements with their NGA colour qualification under the Framework Programme. The mapping exercise was based on the Croatian NRA's (HAKOM's) interactive map of availability of broadband infrastructure<sup>3</sup> (the "OBC"). The OBC is based on the data of geographical (geospatial) availability of broadband infrastructure that operators submit to the NRA and is updated on a quarterly base. The data of geographical availability of broadband infrastructure is categorised as follows: 2-30 Mbps, 30-100 Mbps, and at least 100 Mbps. *A first public consultation* on the Framework Programme was conducted between 18 November and 13 December 2013 by the Ministry of Maritime Affairs, Transport and Infrastructure, under the Electronic Communications Act. All Framework Programme documents were made

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<sup>2</sup> In individual cases, this may be higher, depending on the outcome of the tender procedure.

<sup>3</sup> <http://bbzone.hakom.hr/Home/SirokopojasniPristup#sthash.sOXdjYCE.dpbs>

accessible on the ministry's web page.<sup>4</sup> All potential stakeholders were invited to comment on the planned measure. During the public consultation the ministry received comments from 17 different parties: 8 local municipalities, 6 legal entities (companies), the 2 largest operators (the incumbent Hrvatski Telekom, and VIPnet) and the NRA. All comments were analysed and a summary table was published on the ministry's web site.<sup>5</sup> A summary of comments and submissions received from all parties has been submitted to the Commission together with an indication from the Croatian authorities of what comments have been taken into account. No stakeholder expressed a negative opinion on the Framework Programme as such. Many comments relate to detailed aspects of the programme, and a large number of these were taken into account by the Croatian authorities. The incumbent's comments on the definition of target areas are no longer relevant: the measure as notified is confined to white NGA areas. The Croatian authorities modified the programme in accordance with the suggestion of the incumbent that it be clear that a public authority must remain legally responsible for projects. The incumbent suggested that financing model B be used only after a call for expression of interest to all private operators. The Croatian authorities maintained the right for CAs to choose this model where considered the most expedient due to particular needs within a local community. The incumbent further proposed the removal of the possibility for public authorities to offer services to parts of its own structure. The Croatian authorities have not accepted to exclude this, on the basis that this is a public good and one of the priorities for co-financing from EU funds. The incumbent also proposed that the private partner in a PPP should be allowed to be vertically integrated. This was not accepted by the Croatian authorities.

- (16) Local authorities, acting as Competent Authorities (CAs) for each individual project, are required to notify projects to the CAFP (the Competent Authority for the Framework Programme) which will approve the project, if it is compliant with the Framework Programme. CAs will undertake *a second mapping exercise* prior to the implementation of each individual project. As part of the second mapping exercise the CAs are required to update the state of the broadband infrastructure with the most recent data from the OBC. The second mapping exercise will be performed at individual project level, and at a more detailed spatial level - street address level, in case of all settlements with more than 500 inhabitants.
- (17) *A second public consultation* shall be carried out by CAs before the start of implementation of each project, with the purpose of collecting all operators' plans for investments within the next three years, and is a necessary condition for approval of a project under the Framework Programme. The public consultation must be initiated when the draft project specification is prepared by the CA. The duration of the public consultation, i.e. the period during which comments from all interested parties are accepted, including private investors' plans for investment in the near future (three years), may not be shorter than 30 days. The opening of a public consultation for an individual project must be published on the CA's website and, at national level, on CAFP's website, so that information on the public consultation and the project can be available to a wide circle of interested parties. CAs must include in their public consultation

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<sup>4</sup> <http://www.mppi.hr/default.aspx?id=10457>

<sup>5</sup> [http://www.mppi.hr/UserDocsImages/ELKOM%20JS%20ONP%20Primjedbe%2020-3\\_14.pdf](http://www.mppi.hr/UserDocsImages/ELKOM%20JS%20ONP%20Primjedbe%2020-3_14.pdf)

documentation all relevant characteristics of the planned project, including the results of the second mapping exercise. In addition to the results of the second mapping exercise, the relevant characteristics of the planned project include the required type of services that should be offered over the subsidised network, supported wholesale products, public procurement criteria within the project and planned use of existing infrastructure. The Croatian government has informed the Commission of its intention to appoint by formal decision the NRA (HAKOM) to perform the role of CAFP.

- (18) ***Choice of network operator and obligations imposed on it:*** Three main investment models may be used within the framework programme; models A, B and C, as explained in the following.
- (19) **Investment model A – private DBO model:** A private operator is responsible for the design, building and operation of the network (*design, build, operate* – DBO) and is the permanent owner of the developed network. *Network design* refers to the development of detailed technical specifications for building the network in accordance with all the relevant regulations, on the basis of general specifications prepared by CAs.
- (20) **Investment model B – public DBO model:** Under this model, public authorities are responsible for the design, building and operation of the network (public DBO model) and the developed network will permanently remain in public ownership. Although public authorities are, as CAs, responsible for all basic units of implementation of the project in model B, in some activities specialised private companies may be engaged. Furthermore, private companies may be engaged for network construction, maintenance and operation in model B. Where private companies are engaged for activities in model B, CAs must comply with the relevant public procurement regulations. Where investment model B is used, it is subject to general restrictions, such as the obligation for public network operators to pursue a wholesale business model providing wholesale access to the subsidised infrastructure, refraining from activities at retail level, to limit their activity to areas that exclude commercially attractive areas (white NGA areas), to fulfil a non-profit obligation, and to have an accounting separation between the funds used for the operation of the networks and those used for other operations within the public authority's scope of responsibility. The target area is limited to the area under the administration of the contracting authorities. A public network operator may, as an exception, provide services to end users where these are public users that form part of the public authority in question, since in those cases service provision represents a public interest and may be, among other things, one of the reasons for the implementation of the project.
- (21) **Investment model C – public-private partnership (PPP)<sup>6</sup>:** In the context of projects for building of broadband access infrastructure, a private partner in the PPP model usually takes the responsibility for design, building, operation and management of the network, and in practice also partially finances network building (the remaining part of the network financing is ensured by a public partner, fully or partially, through state aid). The private partner will be selected through a competitive selection process. The built network, after the expiry of the PPP contract and at the latest after 40 years, is returned to public ownership.

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<sup>6</sup> Investment model C (PPP) shall be applied in accordance with the Croatian PPP Act (Zakon o javno-privatnom partnerstvu, NN 78/2012, NN 152/2014).

For each project, it is necessary to check whether, in the long run, costs related to the implementation of the project on the basis of the PPP model are lower than costs of project implementation on the basis of model B. Where the PPP model is applied, the network shall be operated on a wholesale access basis only.

- (22) ***Competitive selection process:*** The Framework Programme delegates operational responsibility for the implementation of individual projects to local (municipalities) and/or regional governments (counties) as CAs. It is up to CAs to define the size of target areas, but each project must relate to at least the entire area under the administration of a single CA, which corresponds to a municipality or county (without prejudice to the exclusion of areas identified as grey spots as described in recital 13). Croatia has a relatively high number of municipalities (556). In order to avoid excessive fragmentation of individual projects with small geographical scope and number of users covered, which would reduce the effect of economy of scale considering the investment costs and the amount of state aid, the Framework Programme recommends that each individual project's target area should cover at least 10,000 potential users.
- (23) CAFPP will coordinate and monitor the preparation of individual projects by CAs (prior to their approval), and will comment on the proposed size of target area and advise on its modification, if necessary.
- (24) The Framework Programme lays down the structural rules of public procurement with which all projects under the Framework Programme must comply. These rules cover the following: public procurement procedures in the framework of specific projects must be carried out in compliance with the Public Procurement Act (PPA) and the associated subordinate legislation. The criterion which must be applied in the selection of the private partner to build the broadband network is the most economically advantageous offer, and the amount of aid requested must have the greatest weight of all specified selection criteria. In the case of Investment Model C, the selection procedure for a private partner in a public-private partnership must also comply with all the provisions of the Public-Private Partnership Act, which regulates public procurement procedures for the selection of private partners in public-private partnerships. In the case of Investment Model B, compliance with the provisions of the PPA concerns all those public procurement procedures where providers are subsequently selected for the services and works related to network design, construction, management and maintenance.
- (25) ***Technological neutrality:*** Notwithstanding the recommendation on the division of public procurement into segments, CAs must define qualitative criteria in the tender allowing bidders to propose a technology mix which they consider appropriate.

#### ***Broadband market situation in Croatia<sup>7</sup>***

- (26) In the Digital Economy and Society Index (DESI)<sup>8</sup> 2015, Croatia has an overall score<sup>9</sup> of 0.38 and ranks 24<sup>th</sup> out of the 28 EU Member States. 25% of SMEs in

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<sup>7</sup> All EU sources of market information date from October 2015.

<sup>8</sup> Digital Economy and Society Index 2015, Country Profile, Croatia, <https://ec.europa.eu/digital-agenda/node/66894>

<sup>9</sup> DESI scores range from 0 to 1, the higher the score the better the country performance.

Croatia sell online - well above the EU average of 15% - and 8.4% sell online across borders (against 6.5% at EU level). However, the country still lags behind on internet use (65% of Croats go online regularly, compared to an EU average of 75%). Despite the fact that fixed broadband is available to 97% of homes, only 61% of households subscribe to it. Although Croatia has a low level of development of online public services, 99% of all general practitioners use ePrescriptions (3<sup>rd</sup> highest in the EU).

- (27) According to EU reports<sup>10</sup>, the limited take-up of digital technology holds back the development of e-commerce. Only 40% of consumers (compared to the EU average of 63%) bought goods or services online in 2014. Consumers' confidence to buy online domestically or cross border is low. It can also be noted that in terms of internet use Croatians are very reluctant to making transactions involving the use of payment devices. This might be linked to a general mistrust of the security of online payment systems. This is all the more disturbing given that a quarter of Croatian SMEs sell online.<sup>11</sup>
- (28) According to the 2015 EU Report on Implementation of the EU regulatory framework for electronic communications<sup>12</sup> the Croatian broadband market shows a trend of consolidation, and there is unequal fixed broadband penetration throughout Croatia, with a low of 14.4% penetration rate. According to the European Commission Country Profile on Croatia of 2015, an NGA broadband connection is available to only 57% of homes (compared to 68% in the EU).<sup>13</sup> According to the 2014 EU Report, the regulatory climate is perceived by some operators as not providing incentives for investment in new infrastructure.<sup>14</sup>
- (29) According to the European Commission Country Report Croatia 2015<sup>15</sup> (the 2015 EU Report) and the Digital Agenda Scoreboard<sup>16</sup> Croatia has a very high cost of broadband subscriptions in relation to gross income. In terms of affordability, Croatia ranks last out of the 28 Member States. The price for fixed broadband in Croatia is 37% higher than the EU average and subscriptions are 21% lower. Competition between fixed internet platforms is 17% lower than

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<sup>10</sup> Digital Economy and Society Index 2015, Country Profile, Croatia, <https://ec.europa.eu/digital-agenda/node/66894>

<sup>11</sup> Country Report Croatia 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances (COM(2015) 85 final), part of the Results of the European Semester 2015; [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_croatia\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_croatia_en.pdf)

<sup>12</sup> Covering in particular key market and regulatory developments in 2012 and 2013; <http://ec.europa.eu/digital-agenda/en/news/2014-report-implementation-eu-regulatory-framework-electronic-communications>

<sup>13</sup> Digital Economy and Society Index 2015, Country Profile, Croatia; <https://ec.europa.eu/digital-agenda/en/scoreboard/croatia>

<sup>14</sup> European Commission DG CNECT; Country report Croatia 2014, [http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=6444](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=6444)

<sup>15</sup> Country Report Croatia 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances (COM(2015) 85 final), part of the Results of the European Semester 2015; [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_croatia\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_croatia_en.pdf)

<sup>16</sup> <http://ec.europa.eu/digital-agenda/en/scoreboard>

the EU average. According to the 2015 EU Report, this could be related to the market being dominated by the incumbent operator, Hrvatski Telekom, especially in fixed broadband (69% market share at the end of 2013), and a consequent lack of competition.

- (30) Regulation does not seem to have ensured an adequate price level for broadband services. The 2015 EU Report states as possible reasons for the low take-up (subscriptions) the lack of investment in fixed broadband infrastructure, insufficient e-skills among citizens and the very high cost of broadband subscriptions.<sup>17</sup> According to the 2015 EU Report, policy measures have improved the regulatory framework, but a low level of competition holds back further development of the digital economy. The 2015 EU Report finds that Croatia has made some progress with respect to broadband as far as administrative and financial decisions are concerned, but challenges remain as regards availability of fast broadband infrastructures and making internet access more affordable. According to the 2015 EU Report, greater competition in the market could reduce the costs of the internet for citizens and encourage greater take-up.<sup>18</sup>
- (31) According to the 2015 EU Report, in terms of connectivity Croatia performs worse than the other EU countries, with an overall Connectivity score of 0.33. Moreover, NGA is available to only one third of households, which is far below the EU average, as shown in the table below.

	Croatia				EU
	DESI 2015		DESI 2014		DESI 2015
	value	rank	value	rank	value
<b>1a1 Fixed BB Coverage</b> % households	97% (2013)	16	97% (2013)	16	97% (2013)
<b>1a2 Fixed BB Take-up</b> % households	61% (2014)	22	61% (2013)	18	70% (2014)
<b>1b1 Mobile BB Take-up</b> Subscribers per 100 people	69 (2014)	10	66 (2013)	10	72 (2014)
<b>1b2 Spectrum</b> % of the target for spectrum to be harmonised at EU level	38% (2014)	27	38% (2013)	26	70% (2014)
<b>1c1 NGA Coverage</b> % households, out of all households	57% (2013)	24	33% (2013)	26	68% (2013)
<b>1c2 Subscriptions to Fast BB</b>	1.1%	28	n.a.	-	26%

<sup>17</sup> Country Report Croatia 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances (COM(2015) 85 final), part of the Results of the European Semester 2015; [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_croatia\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_croatia_en.pdf)

<sup>18</sup> Country Report Croatia 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances (COM(2015) 85 final), part of the Results of the European Semester 2015; [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_croatia\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_croatia_en.pdf).



% of subscriptions >= 30Mbps, out of fixed BB subscriptions	(2014)				(2014)
<b>1d1 Fixed BB Price</b>	2.5%	25	3%	28	1.4%
% individual gross income spent for the cheapest standalone Fixed Broadband subscription (lower values are better)	(2014)		(2013)		(2014)

- (32) Only 61% of the households have a broadband subscription, lower than the EU average (70%), and only 1.1% of the fixed Internet subscriptions are to high-speed connections (22% in the EU), the lowest in Europe. One of the possible reasons for the low take-up (subscriptions) might be affordability, since the standalone fixed broadband subscription in Croatia costs as much as 2.5% of the average gross income, more than the overall EU average of 1.4%. Another reason for low fixed broadband take-up might be the users' preference for mobile solutions, where Croatia scores slightly above the European average and ranks 10<sup>th</sup> in Europe (probably linked to the country's topology with many islands). Croatia falls into the cluster of low-performance<sup>19</sup> countries, where it performs slightly below average.
- (33) The Croatian authorities underline that public intervention in the areas concerned would result in socio-economic benefits largely for SMEs, increasing SME's productivity and creating additional employment. This would also enable SMEs in the areas concerned to acquire affordable and quality high speed broadband connections, instead of expensive leased lines. Public intervention in the areas concerned would also decrease regional discrepancies between rural/suburban and dense urban areas of Croatia, enabling uniform development of all regions of Croatia and also consequently helping to combat depopulation of rural areas.
- (34) **Role of the National Regulatory Authority (NRA):** The NRA will coordinate the implementation of the Framework Programme at national level and monitor the compliance of individual projects with the Framework Programme<sup>20</sup>.
- (35) The NRA will be consulted when target areas are being identified and with regard to determining wholesale access prices and conditions. When the second mapping exercise is being performed by a local authority (CA) at project level, the NRA interactive map (OBC) for broadband availability will be used as a first step to evaluate the targeted area at detailed project level. CAs shall consult with the NRA on all matters relating to the broadband availability indicated by the OBC.
- (36) The NRA will prepare guidelines for local authorities regarding wholesale access and pricing principles. Further, any operator managing the subsidised

<sup>19</sup> In the DESI 2015, the low-performance cluster of countries comprises Bulgaria, Cyprus, Greece, Croatia, Hungary, Italy, Poland, Romania, Slovenia and Slovakia.

<sup>20</sup> The legal base for the involvement of the NRA in State aid broadband projects is the *Electronic Communications Act* (Article 5. - NRA scope of activities) and the national *Decree on the bodies of the management and control systems for the usage of the European Social Fund (ESF), the European Regional Development Fund (ERDF) and the Cohesion Fund, in relation to the "Investment for growth and jobs" goal*.

network shall propose wholesale prices and access conditions in accordance with the rules of the Framework Programme and deliver them with a detailed explanation of the process to the NRA. The NRA will give its opinion on the proposed prices and conditions. Upon the receipt of the NRA's opinion, the operator of the subsidised network shall, where necessary, adjust the previously proposed wholesale prices and conditions to the NRA's recommendations.

- (37) Disputes between access seekers and the subsidised infrastructure operator will be resolved by the NRA, according to the procedure defined in the *Electronic Communications Act* and relevant ordinances. All new infrastructure must according to the *Electronic Communications Act* be reported to the NRA within 30 days of putting it into function.

***Use of existing infrastructure and wholesale access:***

- (38) Practical rules for the use of existing infrastructure are set out in the *Ordinance on manner and conditions for access to and shared use of electronic communications infrastructure and other associated facilities (OG 136/11)*. The Ordinance contains rules for sharing of cable ducts, buildings, and antenna masts. All disputes among operators relating to implementation of this Ordinance shall be resolved by the NRA.
- (39) All operators participating in the public consultation will be required to provide data on the available existing infrastructure that may be used for building the network, including conditions and prices for access. Any operator which owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the tender, will (i) inform the aid granting authority and the NRA about that infrastructure during the public consultation, and (ii) provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid.
- (40) As soon as the Framework Programme is approved by the Commission, the competent authority for the Framework Programme, CAFP, will set up a central website for the publication of information on State aid measures in accordance with point 78(j) of the Broadband Guidelines 2013.
- (41) The NRA has regulated the access to the incumbent's duct infrastructure. The incumbent has published a related reference offer for duct access and has already made available electronic access to its duct database to all interested third party operators. This ensures that all operators have access to information on the incumbent's existing duct infrastructure
- (42) All relevant information on existing infrastructure can be accessed by all interested parties, including third party operators, as set out in the relevant Ordinance, and regulatory remedies are imposed on the incumbent regarding access to ducts (related to the majority of existing ducts in Framework Programme target areas). Any additional information on existing infrastructure which has not been available to third party operators and/or CAs, will be collected by CAs during the second stage project consultation on project level.
- (43) The CA will make available all relevant information on existing infrastructure in a final project specification document (BIDP), following the public consultation on project level. This ensures that all relevant information is available to all other potential bidders at a time allowing them to include such infrastructure in their bids.

- (44) The Croatian authorities have set up a national database on the availability of existing infrastructures that could be used for broadband rollout. Pursuant to the *Implementation program of the Broadband development Strategy 2014-2015*, a national infrastructure database on existing infrastructures that could be used for broadband rollout has been prepared by the following measures: a) preparation of a database on existing EC infrastructure and other available infrastructure which can be used for broadband networks and b) preparation of a database of planned civil works which contains planned EC infrastructure until the end of 2015. This database is different than the Croatian NRA's (HAKOM's) interactive map of availability of broadband infrastructure (recital 15): Whereas the OBC is maintained by the NRA (HAKOM) and indicates the availability of broadband services per speed ranges (2-30 Mbps, 30-100 Mbps and above 100 Mbps) and per type of service (wired/wireless), the second one will be maintained by the State Geodetic Administration of Croatia and will indicate the availability of electronic communications infrastructure (e.g. ducts, fibres,...) that can be used for deployment of broadband networks. It will also include data on planned civil works that contain electronic communication infrastructure.
- (45) Creation and maintenance of this database comply with measure 4 of the Draft National Broadband Development Strategy 2016-2020: Establishment of the Central Repository of the Cadastre of Lines, with the GIS ECI module, as well as of a single information point for the exchange of data on planned works – description of the measure: An information system for keeping the cadastre of lines in electronic form at the national level will be established, with the initial input of data on the existing lines infrastructure. The system would also serve as a single information point at the national level, which is in line with the Directive on Reducing the Cost of Deploying High-Speed Electronic Communications Networks (Draft Act on Reducing the Cost of Deploying High-Speed Electronic Communications Networks – will be in the Parliamentary procedure in Q1 2016.)
- (46) Access to all passive network infrastructure (ducts, poles, dark fibre and street cabinets) will be granted for an unlimited amount of time, and wholesale access to State aid financed networks will be granted for at least seven years. Operators who are direct beneficiaries of aid must provide all mandatory wholesale services for at least 7 years from the moment that the network became operational. When the minimum time of 7 years has passed, the appropriate wholesale access measures may be retained or modified, if the network operator is designated as an operator with significant market power, within the framework of regulatory analyses and measures implemented by the NRA.
- (47) The obligation to give wholesale access to passive network infrastructure built in projects (cable ducts, poles, dark fibre and space in street cabinets) must be of unlimited duration for network operators and wholesale access services must be available at least 6 months before the network becomes operational, in accordance with the European Commission Recommendation on regulated access to NGA networks.
- (48) Regarding the effectiveness of access, all subsidised network operators are required to publish a reference wholesale offer where all supported wholesale products, conditions and prices should be laid out. All disputes among operators, pertinent to the application of wholesale reference offer, will be resolved by the NRA.

- (49) The prescribed conditions for wholesale access refer to all new infrastructure built during the implementation of the project, to the existing infrastructure used in the project, and to all other network parts related to the newly built or existing infrastructure in the project, which are functionally necessary for the provision of wholesale services.
- (50) All operators who so request will be granted effective and full unbundling to the subsidised networks within the Framework Programme in accordance with the Broadband Guidelines 2013. The Framework Programme document contains a list of obligatory wholesale access products that shall be supported by subsidised networks, including the wholesale products which support access to physical (passive) access network infrastructure
- (51) The NRA will prepare guidelines for local authorities for wholesale access and pricing principles. All information will be permanently available on the Ministry of Maritime Affairs, Transport and Infrastructure (MMATI) and the NRA web sites. Approval of all wholesale access conditions and tariffs will be based on opinions issued by the NRA.
- (52) The same access conditions will be applied on the entirety of the subsidised network, including where existing infrastructure has been used.
- (53) **Wholesale access pricing:** Wholesale access pricing will be based on the pricing principles set out by the NRA and on benchmarks.
- (54) The operator of the subsidised network is required to propose access prices. It shall base its pricing proposal on:
- benchmarking applied to identical or comparable services offered in other areas of the Republic of Croatia in which operators operate under normal market conditions, including services provided by SMP operators (operators with significant market power) and those whose prices have been determined through application of the NRA's regulatory measures;
  - if equivalent or comparable services are not provided in Croatia, the benchmarking method must be applied to identical or comparable services in other EU Member States, taking into account all the differences and peculiarities of the Croatian market compared to markets of other EU Member States;
  - if prices may not be determined through the application of the benchmarking method to identical or comparable services in Croatia and other EU Member States, prices must be determined on the basis of cost-orientation.
- (55) The proposed pricing set by operators is submitted to the NRA for opinion. If the NRA opinion is negative, the operator is required to update its pricing proposal, according to the observations included in the NRA opinion (both with respect to methodology applied and final pricing values).
- (56) The consent of the NRA, including the CAFPP (that will, according to the Croatian authorities, be set up as a division of the NRA), is necessary for the final pricing decision taken by the CA.
- (57) **Monitoring and claw-back mechanism:** The Croatian authorities have defined the measures for implementing a monitoring and claw-back mechanism in each project within the Framework Programme. The amount of aid (aid intensity) is

fixed *ex ante* as an outcome of the procurement process. In the event that the aid amount exceeds EUR 10 million, the project will include a claw-back procedure.

- (58) The monitoring and claw-back mechanism for each project within the Framework Programme shall be implemented in two phases. The first phase (initial aid verification procedure) requires verification of investment costs (and State aid amount required, corresponding to State aid intensity) upon the completion of the network construction (planned investment costs are compared against expenditures incurred). The second phase (subsequent aid verification procedure) is required only in case of projects in which the aid amount exceeded 10 million EUR. Both CAFP and NRA are required to jointly assist CAs throughout this procedure, where their opinion shall be considered as a final decision on claw-back, in case the CA and the operator cannot reach an agreement on the amount of aid to be reclaimed.
- (59) Winning bidders of projects with an aid component exceeding EUR 10 million shall apply accounting separation as regards the subsidy received so as to facilitate monitoring of the scheme and any extra profit generated. After selection of the operator, the Croatian authorities will go through the planned investment with the winning bidder and establish a cost plan as well as an investment plan, which are subsequently to be used for *ex post* comparison by the authorities, who are responsible for establishing whether there is a need for clawback in each case. *Ex ante*, a limit beyond which clawback will be executed is set at 30% of profit.
- (60) **Transparency:** CAFP, as the body responsible for carrying out the Framework Programme as a State aid scheme, shall at the latest immediately after the Commission's approval of the State aid scheme set up a central web page that will contain the following documentation: A full text of the approved Framework Programme, including all implementing provisions. As individual projects are initiated and implemented on CA level, CAFP will regularly update the web page with the most recent information applicable to each project being implemented under the Framework Programme. This includes, independently of funding model:
- basic project data: identity of CA, target area covered, funding model, name of the private partner selected, implemented technology;
  - project status information: current phase of the project (preparation, design, construction, operation), links to the project activities that should have full publicity at the time they are carried out, i.e. public consultation at project level and tendering;
  - project financial data: total investment costs, aid amount requested and paid, aid intensity, aid amount reclaimed (in case of claw-back);
  - link to the approved wholesale conditions and prices (reference offer).
- (61) CAFP will rely on CAs to provide all necessary information on individual projects. Operators of subsidised networks within projects shall provide all necessary information on their physical infrastructure (ducts, poles, cabinets, dark fibre) to all interested third parties which require access to it. Such an access obligation, including the obligation of infrastructure operators to provide all necessary information related to the infrastructure, is defined by the national *Electronic Communications Act* and related *Ordinance on Manner and Conditions of Access and Shared Use of Electronic Communications Infrastructure and Other Associated Facilities*.

- (62) A national electronic register on physical infrastructure will become available in Croatia (at the time of this decision, the development of an electronic register is in an early preparatory phase), all operators of subsidised networks within the Framework Programme will have to report and regularly update all information on infrastructure to this central electronic register. The central electronic register will be operated by the Central Geodesy Office of Croatia.
- (63) **Reporting:** CAFP, as the central body responsible for operation of the Framework Programme at national level, will collect and consolidate all necessary information from individual projects for its reporting to the European Commission. Besides the information on projects already listed in relation to the issue of transparency, CAFP will also collect and consolidate information on coverage of population by subsidised networks and the information on actual utilisation of these networks (the number of active end users (take-up rate), the number of third party operators accessing the networks and the number and types of wholesale products supported).
- (64) **Fair and non-discriminatory treatment:** The Framework Programme requires that networks implemented through investment models B and C be operated exclusively under the wholesale-only model. The operators of the network in models B and C are not allowed to be active in the retail market, thereby preventing vertical integration.
- (65) Investment model A, DBO, relies on selected operators' existing networks and allows vertical integration. In order to prevent any conflict of interest which could lead to undue discrimination towards access seekers or content providers and any other hidden advantages, the following safeguards are defined by the Framework Programme:
- wholesale conditions and determination of an access price mechanism is subject to the consent of CAFP and the NRA;
  - all reported disputes between operators, including the disputes related to access to networks, are resolved by the NRA in accordance with the Electronic Communications Act;
  - a recommendation that operators proposing the wholesale-only model are awarded additional points during the public procurement process.

### 3. ASSESSMENT OF THE MEASURE

#### EXISTENCE OF AID

- (66) According to Article 107(1) TFEU, "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*". It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States.

- (67) State resources: The measure is financed from the national budget and thus by State resources.
- (68) Economic advantage: Although a competitive tender procedure tends to reduce the amount of financial support required, the selected operators of the network will receive financial support and in some intervention forms also profit from the exploitation of the network. Even in those cases in which, according to Croatia, the operator is a public entity (financing model B without tendering) an economic advantage exists when a public operator can receive funds under the notified measure for the construction and operation of a network. As financing model B is applied in geographic areas where no commercial investment in the near future is envisaged (NGA white areas), the public operator's activity cannot be perceived as being carried out on market terms. Rather, the public operator constructs and exploits the passive infrastructure in the interest of the public good with a view to attract broadband investments in those areas. Instead of acting like a private market investor, the public operator activity fulfils the wider policy interest of Croatia to increase NGA broadband access for the whole of the Croatian population. 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.<sup>21</sup> The public operation of a broadband network, even if limited to a passive network infrastructure, is an economic activity within the meaning of Article 107(1) TFEU.
- (69) Third party providers of broadband services will be able to access the enhanced network under non-discriminatory terms and they will therefore also indirectly benefit from the state resources.
- (70) Selectivity: The scheme is selective in that it is addressed to undertakings active only in certain specific sectors (provision of broadband services), to the exclusion of other electronic communications services and other economic activities.
- (71) Distortion of competition: The intervention of the State alters the existing market conditions. It will provide a selective advantage to the bidders prevailing in the tender procedures and will moreover benefit all third party providers who use the improved infrastructure to compete with other third party providers.
- (72) In addition, despite the Croatian authorities' intervening only in those areas in which private initiatives are not going to take place, it cannot be excluded that commercial operators may find it viable to invest in some of the targeted areas in the long term. The aid beneficiaries will, thus, establish their business and develop their customer base earlier than prospective competitors, enjoying a first mover advantage.
- (73) Effect on trade: Insofar as the intervention affects providers of electronic communications services from other Member States, the measure has an effect on trade. The markets for electronic communication services are open to

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<sup>21</sup> Case C 188/85 , Commission v. Italy, ECR 1987 p. 2599, paragraph 13, see also, with further references See 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.

competition between operators and service providers, which generally engage in activities that are subject to trade between Member States.

### Conclusion

- (74) The Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU. It is necessary to consider whether the measure can be found to be compatible with the internal market.

#### COMPATIBILITY ASSESSMENT

- (75) The Commission has assessed the compatibility of the measure on the basis of Article 107(3)(c) TFEU and in the light of the Broadband Guidelines 2013.<sup>22</sup>
- (76) As explained in point 33 and following of the Broadband Guidelines 2013, for aid to be found compatible with the internal market pursuant to Article 107(3)(c) TFEU, the following conditions must be fulfilled:
1. The aid must contribute to the achievement of objectives of common interest
  2. Absence of market delivery due to market failures or important inequalities
  3. The aid must be appropriate as a policy instrument
  4. The aid must have an incentive effect
  5. The aid is limited to the minimum necessary
  6. Negative effects must be limited
  7. The aid measure must be transparent
- (77) If these conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against its potential negative effects.

#### **3.1. The aid contributes to the achievement of objectives of common interest and eliminates market failures**

- (78) In its Europe 2020 strategy<sup>23</sup> the Commission defined the Flagship Initiative "*A Digital Agenda for Europe*", which aims "*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 upon Member States "*to use public financing in line with EU*

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<sup>22</sup> EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25 of 26.1.2013, p. 1.

<sup>23</sup> EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, 3.3.2010, page 12.



*competition and State aid rules*" in order to meet the coverage, speed and take-up targets.

- (79) A well targeted State intervention in the broadband field contributes to bridging 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 is confined to connecting users in white NGA areas within the meaning of point 75 of the Broadband Guidelines 2013, where 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. By promoting the development of NGA networks with download speeds of at least 40 Mbit/s and upload speeds of at least 5 Mbit/s in white NGA areas, the measure will contribute greatly to achieving the objectives of the Digital Agenda and therefore to achieving an objective of common interest.
- (80) Indeed, because telecom undertakings have not been willing to invest in NGA networks in sparsely populated areas or in deprived areas in cities, 75.3% of the population of Croatia live in white NGA areas with access to download speeds of less than 30 Mbit/s. In the target areas, average download speeds before the intervention are the following: 2-4 Mbit/s for 47.5% of the households, 4-10 Mbit/s for 37% of the households, and 10-20 Mbit/s for 15.5% of the households (recital 4).

### **3.2. The aid is an appropriate policy instrument**

- (81) In the situation under assessment, due to the economics of broadband networks, the problem of lack of supply of high speed broadband networks cannot be solved by measures involving demand stimulation or regulatory interventions alone (including *ex ante* regulation). Despite its crucial role in ensuring competition and supply in the market for electronic communications, regulation has not been able to ensure effective competition and has not led to sufficient investments to bridge the "*digital divide*" affecting certain areas.
- (82) In line with point 40 and following of the Broadband Guidelines 2013, the measure is designed as a national scheme – ensuring consistency and coordination of local initiatives at national level. Moreover, a high degree of transparency is ensured.
- (83) The NRA is given a coordinating role at national level and will approve all projects receiving funding under the measure. The NRA will also be consulted with regard to determining wholesale access prices and conditions and is consulted in case of disputes between access seekers and the subsidised infrastructure operator (recitals 34-37).
- (84) The Commission recognises that without further public intervention, it would seem impossible to prevent the emergence of a new "*digital divide*" between areas that benefit from high speed broadband connections and sparsely populated or deprived areas that do not. In view of these circumstances, State aid is an appropriate instrument to achieve the set objectives.

### **3.3. The aid has an incentive effect**

- (85) Under point 45 of the Broadband Guidelines 2013 on incentive effect of the measure, the question whether the broadband network investment concerned would not be undertaken within the same timeframe without any State aid needs

to be examined. The scheme ensures that aid can only be provided if it is established that in the targeted areas no comparable investment would take place without public funding within three years (recitals 12-14). It follows from this that the investment would not be made within the same timeframe without the aid, which produces a change in the investment decisions of operators and therefore has an incentive effect.

### **3.4. Proportionality - The aid is limited to the minimum necessary**

(86) Croatia has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from it. In this respect, the Commission notes the following necessary conditions in the design of the measure (cf. point 78 of the Broadband Guidelines 2013):

(a) *Detailed mapping and coverage analysis, consultation with stakeholders:* as described in recitals 12-17 local authorities (CAs) must demonstrate that they have conducted a thorough analysis of the existing broadband infrastructures (as well as investment plans for the next three years) in order to identify the areas where public intervention is necessary. This analysis and its results must be based on a public consultation involving all stakeholders and published on a central online portal, ensuring a high degree of transparency. As a result, public funds will be used only where it is necessary because there is no interest in commercial NGA deployment (in white NGA areas). This will reduce to a minimum the risk of crowding out private investments and distorting competition vis-à-vis existing operators.

(b) In order to avoid that the incumbent's plans to invest by upgrading exchanges in a number of grey spots, which are consequently included in the notified measure (recitals 13 and 14), do not materialise in time, unnecessarily stalling the public intervention, the aid granting authority may require certain commitments from the incumbent to ensure that significant progress in terms of coverage will be made within the 3-year period or for the longer period foreseen for the supported investment. It may further request the incumbent to enter into a corresponding contract which outlines the deployment commitments, including a number of 'milestones' which would have to be achieved during the 3-year period and reporting on the progress made. If a milestone is not achieved, the granting authority may go ahead with its public intervention plans including covering such areas initially targeted by the incumbent (point 65 of the Broadband Guidelines 2013).

(c) *Competitive selection process:* as described in recitals 18-21 the measure envisages three main financing modalities. In financing model A, the network operator is selected by way of a transparent and non-discriminatory selection procedure in full compliance with Croatian and European public procurement rules. All notices regarding selection procedures under the measure are published on a central online portal, allowing all potential bidders to be easily aware of all on-going projects. Public financing model B does not involve selecting a third party operator to deploy and operate the subsidised network. This situation is different from the case envisaged in point 78(c) of the Broadband Guidelines 2013, which targets investors who are in competition for State funding for the realisation of a broadband network. In such cases a competitive selection procedure prevents a disproportionate distortion of competition by pre-selecting the beneficiary or giving preference to one operator over others. In line with footnote 96 of the Broadband Guidelines, this financing model includes a number of features designed to safeguard the

current levels of competition achieved in particular as a result of the liberalisation of the sector: a) the project must be limited to the territory of the contracting authorities b) the operator must not generate any profit, c) the operator may not engage in activities at retail level, d) the operator must keep separate accounts, and e) the operator must grant access to the network at wholesale level. Thus, under Financing Model B, the need to prevent unnecessary distortion of competition is ensured through the pro-competitive use of the subsidised infrastructure: the obligation for the public owner to grant access at fair, transparent and non-discriminatory conditions to the infrastructure is complemented by the fact that the role of the public owner in this model is merely to organise and manage access to the infrastructure by any third-party operator interested in using it. A public network operator may, as an exception, provide services to end users where these are public users that form part of the public authority in question, since in those cases service provision represents a public interest and may be, among other things, one of the reasons for the implementation of the project. Financing model C is used where a PPP is formed. That entity must restrict its activities to the wholesale level: it will not engage in activities at retail level. The selection of private providers to carry out the services and works related to the project under model C (PPP) must comply with Croatian and European public procurement rules (recitals 22-24).

- (d) *Most economically advantageous offer*: On the basis of predefined and published technical specifications, the network operator offering the best value for money is to be selected. Pursuant to the Broadband Guidelines 2013, the award criteria are set out in the call for tender and the awarding authority specifies in advance the relative weight of each of the criteria. An exception to this rule is made where financing model B (public operator) is used, because no tender is carried out if the CA decides to itself deploy the NGA network.
- (e) *Technology neutrality*: The tender documents must be technology and provider neutral, leaving it to commercial operators to propose the most appropriate technological solutions (recital 25).
- (f) *Use of existing infrastructure*: as explained in recital 39 the CA will require that all operators participating in the public consultation provide data on the available existing infrastructure that may be used for building the network, including conditions and prices for access. Bidders will have knowledge of existing infrastructure, including that of other bidders, through publication in the tender notice of information on any known infrastructure that can be used for the project and any work that it may intend to perform itself. The Croatian authorities will set up a data base gathering information on existing infrastructure. Unnecessary and wasteful duplication of resources should in this way be avoided and the profitability gap (and funding requirements) minimised.
- (g) *Wholesale access*: in conformity with points 78(g) and 80(a), first paragraph, of the Broadband Guidelines 2013 the selected operator must ensure full and effective unbundling and provide full open access to the subsidised network (including but not limited to access to ducts, dark fibre, street cabinets, bit-stream and unbundled access to fibre) on equal and non-discriminatory terms for at least 7 years (recital 46). Such access shall apply to the entirety of the subsidised network, including the parts of such a network where existing infrastructure has been used (recital 49). If, at the end of the 7 year period, the

operator of the infrastructure in question is designated as having significant market power in the market concerned, the access obligation may be extended. Full access, without limitation in time, is always to be guaranteed to all new and existing infrastructure of the subsidised network. Independent experts and the NRA are consulted in settling conflicts regarding access prices and conditions and the NRA is to be consulted on any draft contract between a selected operator and any access seeker, allowing it to assess concrete wholesale access price and conditions (see recitals 38-39 and 46-52).

- (h) *Price benchmarking*: Access wholesale prices are to be based on the regulated prices or the average wholesale prices which prevail in other, more competitive, parts of the country for the same or comparable access services (benchmarking). The wholesale access price should be set taking into account the aid received by the network operator. In the absence of published or regulated prices, the pricing should follow the principles of cost orientation pursuant to the methodology established in accordance with the sectorial regulatory framework. The NRA must be consulted with the objective to keep prices at a reasonable and non-discriminatory level (recitals 53-56).
- (i) *Monitoring and claw-back provision*: The amount of aid (aid intensity) is fixed *ex ante* as an outcome of the procurement process, and further supplemented with a claw-back procedure, in case of large amounts of aid. By ensuring that any extra profit generated through the operation of the network will be clawed back as explained in recitals 57-59, the Croatian authorities ensure that the recipient of the aid will not benefit from overcompensation and will minimise *ex post* and retroactively the amount of aid initially awarded.
- (j) *Transparency*: As explained in recitals 60-62, the measure ensures that the interested public and the Commission have easy access to all relevant acts and information about aid awarded. The aid beneficiary will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under the measure (recital 61).
- (k) *Reporting*: The Croatian authorities confirmed that from the moment the network is put into use and for the duration of the measure, the State aid granting authority will report all necessary information on projects to the European Commission (recital 63).

### **3.5 The aid has limited negative effects**

- (87) Given the design of the measure and its compliance with the conditions of point 78 of the Broadband Guidelines 2013, it is unlikely to have a crowding-out effect on private investments.
- (88) In particular, the measure is confined to deploying a network in NGA white areas, where no operator is willing to invest in NGA infrastructure without State aid in the next three years. What is more, the NGA networks financed by the Framework Programme must provide download speeds of at least 40 Mbps and upload speeds which are at least twice as high as the current upload speed and at least 5 Mbit/s. The subsidised infrastructure therefore brings about significant new capabilities in terms of broadband service availability and capacity.
- (89) As regards the grey spots referred to in recitals 13 and 14, the Croatian authorities have confirmed that the State aid funded access network that is the subject of this decision will pass through the grey spots, without the aid

beneficiary making any connections to end-users in the grey spots. Passing through such grey spots is, as confirmed by the Croatian authorities, necessary in order to avoid additional costs of construction. To allow the State aid funded network to pass through grey spots is necessary also in cases where the new network needs to be connected to the exchange of the pre-existing backhaul network. To the extent that other operators subsequently make connections to the publicly funded network on the basis of the open access requirements set out in the Broadband Guidelines 2013, this has to be done entirely on the basis of their private investment.

- (90) The operator is to be selected by competitive tender in conformity with EU public procurement rules. In the event that no selection procedure takes place because the public authority has decided to attribute the contract to a public entity, a number of additional conditions apply in order ensure fair and open competition and efficient use of State aid. A third option is setting up a PPP, in which case particular rules also apply with the same purpose (recitals 18-24).
- (91) In line with point 80(b) of the Broadband Guidelines 2013, the selection procedure, including the alternative procedures with their additional safeguards, the access and pricing conditions and the high level of transparency, monitoring and control ensure that the subsidised infrastructure enables the provision of competitive and affordable services to end-users by competing operators.
- (92) For these reasons negative effects of the measure, if any, are expected to be limited.

### **3.6 Transparency**

- (93) As explained in recitals 59-61, the measure ensures that the interested public and the European Commission have easy access to all relevant acts and information about the aid. Recital 86(j) records the compliance of the measure with the requirements set out at point 78 of the Broadband Guidelines 2013 in that respect. As a result, it appears that aid will be awarded in a transparent manner.

### **3.7 Overall balancing – the positive effects of the aid measure are expected to outweigh its potential negative effects**

- (94) 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 the target areas. In view of the characteristics of the project and of the safeguards applied, the overall impact on competition is deemed to be positive.
- (95) The significant increase in network capacity is expected to stimulate market entry by service providers and the provision of a broader range of services. Access by competing operators is ensured by requiring open access to the subsidised network on equal and non-discriminatory terms for at least 7 years, which has a pro-competitive impact, as it allows several network operators to use the subsidised infrastructure and compete. The risk of crowding out private investments and the negative effects of the measure are expected to be limited. From the point of view of effect on trade, there does not appear to be any significant negative spill-over on other Member States. The measure is designed in a way that does not distort competition or adversely affect trading conditions

to an extent contrary to the common interest and is in line with the objectives of Article 107(3)(c) TFEU.

- (96) The public intervention is designed to deliver a "step change" and on that basis does not crowd out comparable private investments, as the subsidised network must provide significantly better broadband quality and availability (faster, more reliable download and upload speeds) than is currently provided or will be provided within three years (recitals 6 and 12-14).
- (97) Building networks in grey areas can in principle produce distortions of competition. For this reason, the Croatian authorities have committed to not allowing the aid beneficiary to create any connection points on the publicly financed network within the grey spots, or to connect end-users in such areas. The potential distortion of competition created by a network that traverses a grey area is therefore expected to be limited.
- (98) On balance, the limited competition concerns do not justify the additional costs and burden on the taxpayers which would be generated by building a more complex access network which would be required to avoid the grey spots.

### **Conclusion**

- (99) The Commission concludes that the compatibility criteria set out in the Broadband Guidelines 2013 are met, and that the notified State aid measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## **4. CONCLUSION**

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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/competition/elojade/isef/index.cfm>.

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State Aid Greffe  
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[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Phil HOGAN  
Member of the Commission