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**Subject: State aid SA.46372 (2017/N) - Lithuania  
Support for broadband infrastructure (stage II) - PRIP 2**

Sir,

I am pleased to inform you that the Commission has assessed the measure "Support for the broadband infrastructure (stage II) (PRIP 2)" and decided not to raise objections, as presented in this decision. On that basis, the measure is compatible with the internal market, pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU).

## 1. PROCEDURE

- (1) Following pre-notification discussions, by letter registered on 3 May 2017, pursuant to Article 108 (3) of the TFEU<sup>1</sup>, the Lithuanian authorities notified the measure "Support for the broadband infrastructure (stage II)" (in the following "PRIP 2") further expanding the schemes approved by the

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<sup>1</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU); the two sets of provisions are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate.

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Commission in the past: SA.28192<sup>2</sup> ("RAIN 1"), SA.34166 ("RAIN 2")<sup>3</sup> and SA.36132 ("PRIP 1")<sup>4</sup>.

## 2. CONTEXT

- (2) The Europe 2020 Strategy (EU2020)<sup>5</sup> and the Digital Agenda for Europe (DAE) have underlined the importance of broadband deployment to promote competitiveness, social inclusion and employment in the EU and defined the aim to bring basic broadband access to all Europeans by 2013 and to ensure that, by 2020, (i) all Europeans have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households subscribe to internet connections above 100 Mbps.
- (3) The notified measure will provide backhaul infrastructure able of supporting speeds above 30 Mbps (next generation network – "NGN" – backhaul infrastructure). The Lithuanian authorities plan to ensure the accessibility of broadband connections of 30 Mbps and higher for all of the households in Lithuania by 2020. At the same time, the Lithuanian Rural Development Programme 2014–2020 aims at reducing the differences between Lithuanian urban and rural areas concerning the availability and use of fast internet connections achieving speeds above 30 Mbps. Lithuania expects that after deploying an NGN backhaul network in the areas which are not served, it will become easier for commercial operators to enter the market and deploy access infrastructure to expand their broadband network coverage in the rural areas. Indeed, open wholesale access will be provided on the subsidized NGN backhaul infrastructure to third party operators who will be able to connect their respective access infrastructure (i.e. the "last mile" network segment) and provide various broadband services for end-users.
- (4) In the past, Lithuania has already developed broadband communications networks using funds from the European Regional Development Fund (ERDF). This project – "*Development of Information Technologies Broadband Network for Rural Areas RAIN*" – was notified as an initial scheme (RAIN 1) in 2009. In 2012, it was geographically extended (RAIN 2).
- (5) The aforementioned projects, however, did not reach the agricultural sector, as the broadband infrastructure created by those projects does not connect distant rural objects to the broadband network. For this reason, the measure "*The development of broadband network infrastructure in rural areas*" ("PRIP 1") was added in 2013 based on funding from the European Agricultural Fund for Rural Development (EAFRD). PRIP 1 was designed to contribute to the

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<sup>2</sup> State aid SA.28192; C(2009)5808 final of 17 July 2009;  
[http://ec.europa.eu/competition/state\\_aid/cases/230497/230497\\_978155\\_39\\_1.pdf](http://ec.europa.eu/competition/state_aid/cases/230497/230497_978155_39_1.pdf)

<sup>3</sup> State aid SA.34166; C(2012)3307 final of 16 May 2012;  
[http://ec.europa.eu/competition/state\\_aid/cases/243182/243182\\_1335424\\_70\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/243182/243182_1335424_70_2.pdf)

<sup>4</sup> State aid SA.36132; C(2013) 2850 final of 13 May 2013;  
[http://ec.europa.eu/competition/state\\_aid/cases/247516/247516\\_1435107\\_91\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/247516/247516_1435107_91_2.pdf)

<sup>5</sup> EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020.

development of NGN backhaul infrastructure in Lithuania, in line with the RAIN projects. Hence, RAIN and PRIP complemented each other.

- (6) All three measures – RAIN 1, RAIN 2 and PRIP 1 - were approved by the Commission<sup>6</sup>. The total aid approved in the past for these three measures amounted to EUR 65.5 million.<sup>7</sup> Due to the direct allocation of State funds to a state-owned network operator "*Plačiajuostis internetas*" ("PI") for all three measures, the Commission defined in its approval decisions a number of competitive safeguards<sup>8</sup> aimed to ensure that the direct attribution of funds would not lead to undue distortions of competition.
- (7) The objective of the notified measure PRIP 2 is to further extend the coverage achieved under PRIP 1 in order to ensure the connections of additional distant rural areas not covered by the previous approved measures to the subsidized broadband network following the same procedure as PRIP 1.
- (8) Like the previous measures, also PRIP 2 will be organised and managed by the state-owned network operator PI. The implementation of PRIP 2 will be carried out by the Ministry of Agriculture. When planning the new measure, all duplication of funding will be avoided. The new broadband infrastructure will be developed only in white NGN backhaul areas which have not yet been covered by the aforementioned projects RAIN 1, RAIN 2 or PRIP 1 or by any current or planned private investments.

### 3. DESCRIPTION OF THE MEASURE

- (9) **Objectives:** In line with the EU2020 strategy for more growth and the DAE targets, the objective of the notified measure is to provide NGN infrastructure capable of delivering speeds of at least 30 Mbps. The notified measure aims to minimise the "digital divide" in Lithuania, which exists predominantly in rural and remote areas, and particularly in agricultural areas, which constitute the focus of the notified measure. With the notified measure, the Lithuanian authorities intend to accelerate the roll-out of NGN backhaul, in line with the EU's and Lithuania's priorities, and help drive further economic growth, producing further economic and social benefits. The Lithuanian authorities expect that the notified measure would also indirectly serve to accelerate the deployment of NGA broadband by commercial operators, via the possibility offered to connect to the new subsidised NGN backhaul networks in order to

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<sup>6</sup> See Commission Decisions SA.28192, SA.34166 and SA.36132.

<sup>7</sup> See Commission Decision SA.36132, para. 27 and footnote 6; Commission Decision SA.34166, para. 5 and Commission Decision SA.28192, para. 21.

<sup>8</sup> The competitive safeguards in case of the direct attribution of State aid to a public company which itself will deploy and operate the network are formalized in footnote 96 of the 2013 Guidelines for the application of State aid rules in relation to the rapid development of broadband networks ("the Broadband Guidelines", OJ C 25, 26.1.2013, p.1): (i) the publicly owned network operators shall limit their activity on the predefined target areas and shall not expand to other commercially attractive regions; (ii) the public authority shall limit its activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition on the retail levels with commercial operators; and (iii) to have an accounting separation between the funds used for the operation of the networks and the other funds at the disposal of the public authority. See also for instance Commission Decision SA.36132, paras. 36-41.

deploy NGA access infrastructure to expand their broadband network coverage in the rural areas.

- (10) The project PRIP 2 aims to extend the coverage achieved under the previous measures, and in particular PRIP 1, to develop the infrastructure of NGN backhaul networks offering wholesale broadband services in additional rural areas of Lithuania. The new NGN backhaul networks will only be deployed in areas currently not served by NGN backhaul networks and where there are no plans for such coverage in the next three years (white NGN backhaul areas). The project has a particular focus on ensuring high-speed broadband connectivity for the agricultural sector of Lithuania.
- (11) By setting up an extensive infrastructure of NGN backhaul networks, the Lithuanian authorities aim to create the preconditions to ensure that the public administrations, economic operators and residents of the targeted additional rural areas will benefit from high-speed connectivity on the basis of the services provided by various operators accessing the NGN backhaul networks. The NGN backhaul networks will serve to provide higher quality services, which would increase the economic competitiveness and attractiveness of these areas for investors. The Lithuanian authorities have explained that they aim to promote social inclusion, poverty reduction and economic development in rural areas<sup>9</sup> and specifically to enhance the accessibility, use and quality of information and communication technologies in rural areas, to promote innovation and to grant internet access to all currently underserved rural areas.
- (12) The Lithuanian authorities submit that after implementing the previous State aid projects, the overall NGA broadband coverage has reached 91% of Lithuanian households (overall, urban and rural areas combined). However, rural areas still have a lower NGA coverage compared to urban areas where NGA coverage approaches 100%. NGA coverage in rural areas is 76% compared to 99.98% of households in urban areas.<sup>10</sup> Therefore, the Lithuanian authorities consider there is still a great need to reduce the difference between the possibility for residents in urban and rural areas to access high-speed internet connections.
- (13) The view of the Lithuanian authorities is that the public sector intervention is justified. In the areas concerned, NGN backhaul networks have not been deployed and are not planned by commercial operators. The Lithuanian authorities explained that the essential problem in rural areas is the lack of private investments, which can be explained by the high costs of reaching agricultural targets with NGN backhaul infrastructure and the limited revenue base that can be expected on commercial terms due to low population density

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<sup>9</sup> Pursuant to the sixth priority of the EU rural development policy.

<sup>10</sup> "Naujos kartos prieigos plėtros investicijų projekto parengimo paslaugos" ("The Preparation Of Investment Project Of Next Generation Access Development") is a project during which the comprehensive mapping, selection of technical solutions and other related issues (financial, legal, etc.) of development of NGA infrastructure in Lithuania were determined. The results of the project are contained in a complete feasibility study of development of NGA infrastructure in Lithuania to allow Lithuania to reach the DAE targets. The indicated figures (NGA broadband coverage: 91% of all Lithuanian households, 76% of households in rural areas and 99.98% of households in urban areas) were identified by gathering thorough data from market players later assessing the collected data with stakeholders during public consultations – see "Parama plačiajuosčio ryšio infrastruktūrai, Galimybių studija – investicijų projektas" ("Support for broadband network infrastructure, Feasibility study – investment project").

in such areas. This impediment cannot be addressed by other less distortive measures, such as ex-ante regulation or demand stimulation. An effective, reliable and secure broadband infrastructure network is deemed essential to the future growth and sustainable development of rural and agricultural communities. The Lithuanian authorities have explained that despite various other measures (such as the exemption of the construction of telecommunication lines from certain legal requirements for permission, design and construction in order to reduce planning and implementation costs), the digital divide could not be removed. Despite the crucial role that regulation plays in ensuring competition and supply in the market for electronic communications, the regulatory measures imposed by the Lithuanian regulatory authority (such as obligations on access and use of specific network elements, transparency, non-discrimination and price-control) did not solve the problems related to the lack of broadband infrastructure and services in the targeted areas. The Lithuanian authorities consider that without further public intervention, reducing the "digital divide" between the remaining NGN white areas and the rest of the country does not seem possible. In line with paragraphs 37-39 of the Broadband Guidelines, the Lithuanian authorities see no alternative but to grant public aid to extend the coverage of NGN backhaul networks in the targeted areas of the country.

- (14) **Legal basis:** The notified measure is based on (i) the Next Generation Internet Access Development Plan 2014 – 2020<sup>11</sup>, (ii) the Rules on implementing the area of activity "Development of Broadband Network Infrastructure in Rural Areas" of the Lithuanian Rural Development Programme 2014–2020 measure "Village Renewal and Development"<sup>12</sup>, (iii) the Lithuanian Rural Development Programme 2014-2020<sup>13</sup>, (iv) the Law on the Electronic Communications of the Republic of Lithuania<sup>14</sup>, (v) the National Progress Programme 2014-2020, adopted by Resolution No. 1482 of the Government of the Republic of Lithuania of 28 November 2012<sup>15</sup>, (vi) the Informational Society Development Programme 2014-2020 "Digital Agenda of the Republic of Lithuania", adopted by Resolution No. 244 of the Government of the Republic of Lithuania of 12 March 2014<sup>16</sup> and (vii) the Inter-institutional Action Plan for Implementation of Informational Society Development Programme 2014-2020 "Digital Agenda of the Republic of Lithuania", adopted by Resolution No. 84 of the Government of the Republic of Lithuania of 20 January 2016<sup>17</sup>.
- (15) **Budget and financing instruments:** The overall estimated (maximum) aid amount of the PRIP 2 project is EUR 5 760 560, to be allocated as a direct grant in three instalments over three years. A share of 85% of this amount will

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<sup>11</sup> <https://www.e-tar.lt/portal/lt/legalAct/7e1fdab0600411e4bad5c03f56793630>

<sup>12</sup> <https://www.e-tar.lt/portal/lt/legalAct/8d22aea06cbc11e5906bc3a96c765ff4>

<sup>13</sup> [https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/lt/fulltext\\_lt.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/lt/fulltext_lt.pdf)

<sup>14</sup> <https://www.e-tar.lt/portal/lt/legalAct/TAR.82D8168D3049/ZSBYjBkMuv>

<sup>15</sup> <https://www.e-tar.lt/portal/lt/legalAct/TAR.31A566B1512D/OKkwPNbfzS>

<sup>16</sup> <https://www.e-tar.lt/portal/lt/legalAct/dbd546f0b04011e39a619f61bf81ad0a/GIVRcGMwtl>

<sup>17</sup> <https://www.e-tar.lt/portal/lt/legalAct/7a0bc140c5a311e583a295d9366c7ab3>

be funded from the European Agricultural Fund for Rural Development (EAFRD). The remaining 15% will be funded from Lithuania's general budget. The Lithuanian authorities have confirmed that there is no possible cumulation of aid or *de minimis* aid<sup>18</sup> received from other local, regional or national sources to cover the same eligible costs.

- (16) **Duration of the measure:** The project implementation period is expected to last 36 months. Implementation of the project will commence upon conclusion of the contract for financial assistance. The notified measure will only be implemented after the Commission's approval, respecting the stand-still clause<sup>19</sup>.
- (17) **Granting authority:** The Ministry of Agriculture is the main granting authority responsible for the infrastructure built under the PRIP 2 project. The wholesale access pricing for wholesale access to the PRIP 2 network will, however, be under the competence of the Ministry of Transport and Communication, as for the rest of PI's broadband network deployed under the previous State aid measures RAIN 1 and 2 and PRIP 1.
- (18) **Design of the measure:** With the PRIP 2 project, the existing RAIN/PRIP-broadband infrastructure will be extended in order to ensure the connection of a number of new locations. The construction works will be carried out by companies selected by means of an open tender in line with the relevant national and EU Procurement Directives. The newly created PRIP 2-network will remain in the ownership of the state. The management of the network and the offering of wholesale services to the third party service providers will be carried out by the state-owned network operator PI (as for the existing RAIN/PRIP-networks). The maintenance and support of the network will continue to be carried out also by companies selected by means of an open tender (as for the existing RAIN/PRIP-networks).
- (19) The network will consist of backhaul fibre networks<sup>20</sup> as the most suitable technological solution providing for speeds of more than 30 Mbps. The network will offer open wholesale access to commercial operators on a non-discriminatory basis and in respect of the principle of technological neutrality. The Lithuanian authorities explain that this will allow commercial operators to connect their own access infrastructure (i.e. the last mile network segment) to the publicly funded PRIP 2 network and to provide services for end users. The commercial operators will be free to choose their access technology (for instance, to provide fixed-line, wireless or mobile solutions). Thus, the backhaul fibre networks will be open for interconnection with any other networks without excluding any particular technology.

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<sup>18</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1) and Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

<sup>19</sup> Included as clause 2.1 in the contract for the grant.

<sup>20</sup> Backhaul (or middle mile) networks comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

- (20) **Target areas:** The Lithuanian authorities have undertaken a study<sup>21</sup> for the new PRIP 2 project in order to identify the target areas where further State intervention is necessary. Furthermore, a study was undertaken to verify the coverage of Lithuania with NGA.<sup>22</sup> (Both studies together are in the following referred to as "the two studies".)
- (21) The PRIP-2 infrastructure is designed as a system of NGN backhaul networks that will be deployed in white NGN areas, i.e. areas where no other operators have current investments into NGN backhaul networks or plan such investments in the next three years. The Lithuanian authorities consider that the measure will also stimulate private investments into "last mile" infrastructures which could be connected to the new NGN network. It is expected that the NGN infrastructure created in rural areas will stimulate investments of the electronic communications network operators into underserved NGA-white "last mile" (access) connections in areas which have been so far unattractive to the market participants. The measure is intended to ensure the connection of ca. 400 - 520 nodes (locations). These nodes will be rural activities centres, such as farmer homesteads, agricultural companies, rural tourism homesteads, food processing companies, advisory offices, state forests and rural communities, or others. The end points will not be end-customers, but technologically-neutral nodes from which any internet provider could connect and provide services to end-customers.
- (22) **Mapping and Public consultation:** The Lithuanian authorities have explained that in the two studies<sup>23</sup> of 2015 and 2017 new maps were created to identify the planned PRIP-2 infrastructure and the NGA-coverage in Lithuania was assessed. According to the Lithuanian authorities, the NRA has created a register of broadband infrastructures in which digital maps are available (on the website <http://e-infrastruktura.lt>), which displays the underground spatial data infrastructure. In particular, the maps show where public and private owners/operators have previously identified themselves as having infrastructure in place. Access to the data is available to all operators wishing to design, provide and/or to begin planning the provision of electronic communications networks and/or services. The PRIP 2 measure, including a detailed description of the measure and the planned infrastructure, including a list of targeted areas that would be connected, was presented for public consultation and market participants were invited to comment.<sup>24</sup>
- (23) The public consultations have been started in October 2015, and will continue to be open for all the targeted areas listed for the entire duration of the implementation of the measure. The Lithuanian authorities informed the

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<sup>21</sup> "Parama plačiajuosčio ryšio infrastruktūrai, Galimybių studija – investicijų projektas" ("Support for broadband network infrastructure, Feasibility study – investment project").

<sup>22</sup> "Naujos kartos prieigos plėtros investicijų projekto parengimo paslaugos" ("The Preparation Of Investment Project Of Next Generation Access Development").

<sup>23</sup> "Parama plačiajuosčio ryšio infrastruktūrai, Galimybių studija – investicijų projektas" ("Support for broadband network infrastructure, Feasibility study – investment project") of 2015 and "Naujos kartos prieigos plėtros investicijų projekto parengimo paslaugos" ("The Preparation Of Investment Project Of Next Generation Access Development") of 2017.

<sup>24</sup> <https://www.placiajuostis.lt/lt/naujienos/del-viesuju-konsultaciju-planuojant-nauju-objektu-prijungima-80>; <https://www.placiajuostis.lt/lt/numatoma-prip-pletra>.

Commission that by 3 May 2017 (date of the notification) no concerns were raised and no investment plans for the next three years were presented by any stakeholders. No investment plans were presented by any of the market participants which would propose an equivalent NGN backhaul infrastructure that could duplicate the PRIP 2 fibre lines planned under the notified measure. The Lithuanian authorities explained that the list of targeted areas for which PRIP 2 intends to ensure connections will remain on the website of PI and the project website even during the implementation of PRIP-2, allowing even for later comments from market participants.

- (24) Thus, according to Lithuanian authorities, the list of the targeted areas which have been preliminarily identified as needing connection to the new network includes ca. 1500 agricultural sector areas. However, only a portion of these will ultimately be connected (estimated at ca. 400 - 520) depending on the available budget, and depending on verifying that the target areas are truly NGN white and NGA white, as described in paragraphs (20)-(21) of this Decision (in the frame of the on-going verifications concerning the preliminarily identified list of objects). Public intervention will take place only if this exercise confirms that the areas are truly NGA white and NGN white as described in paragraphs (20)-(21) of this Decision.
- (25) **Opinion of the NRA:** The National Regulatory Authority was consulted by the Lithuanian authorities and has not raised any objection to the scheme according to the new PRIP 2-project is going to be implemented. As required by the Broadband Guidelines, in order to ensure that the design of the measure limits distortions to competition, the Lithuanian authorities have sought and will continue to seek the technical advice of the Lithuanian regulatory authority in relation to the notified measure, including in respect of: the design of the measure, wholesale-access pricing and conditions and dispute resolution regarding wholesale-access.
- (26) **Beneficiaries:** The direct recipient of the aid will be the wholesale operator of the network, PI. PI is a non-profit public legal person 100% owned by the State. Indirect beneficiaries will be electronic communication operators seeking wholesale access to the new network in order to offer retail services to end users.
- (27) **Selection process:** The intervention model chosen by the Lithuanian authorities relies on direct investment, where the public authorities deploy and manage the NGN backhaul network through the fully owned wholesale operator of the network, PI. The Lithuanian authorities have demonstrated that PI is appointed in line with the requirements of footnote 96 of the Broadband Guidelines. Thus, the Lithuanian authorities confirmed that PI will not act as retail broadband operator, and will not provide broadband services to final users, but will simply organise and manage wholesale access to the NGN backhaul infrastructure. The Lithuanian authorities confirmed that PI will limit its activity to the predefined target areas and will not expand to other commercially attractive regions. PI will not engage in any profit making operation of the network, but has to balance income and expenses and limit its activity to the administrative management of the passive infrastructure. PI will grant open access at fair, transparent and non-discriminatory conditions to the infrastructure operated by this public entity. The Lithuanian authorities confirmed that PI keeps accounting separation between the funds used for the operation of the subsidized networks and the other funds at the disposal of PI.



- (28) The implementation of the project will commence upon the conclusion of the contract for financial assistance and is expected to be completed within 36 months. The project implementation comprises the following main phases: (i) technical assistance services, (ii) construction of fibre-optic infrastructure, (iii) installation of network equipment and systems, (iv) deployment of services and testing and (v) project publication. The construction works, the maintenance and support of the NGN backhaul network will be tendered out in full compliance with the EU and national public procurement rules in line with the principles of openness, non-discrimination and transparency.
- (29) **Technological neutrality:** The chosen network topology will ensure the technological neutrality of the PRIP 2-network (and the overall PRIP network). Several alternative platforms will be able to utilise the new network as a backhaul connection to offer their own services to end users. Wholesale access products will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.
- (30) **Step change:** The Lithuanian authorities confirmed that in line with the paragraph (51) of the Broadband Guidelines the PRIP 2 measure will ensure a "step change" in that the new investments in the NGN backhaul network will bring significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition as a result of the public intervention in white NGA / NGN areas. The new NGN backhaul infrastructure will cover new agricultural areas and should enable connections to the broadband infrastructure for about 400 - 520 nodes.
- (31) **Use of existing infrastructure:** The new PRIP 2 NGN backhaul networks will cover only white NGN areas where no NGN backhaul infrastructure exists. The new PRIP 2 infrastructure will expand the existing NGN backhaul infrastructure deployed in the framework of the previous RAIN/PRIP measures and thus extend the coverage of NGN backhaul networks in Lithuania.
- (32) The Broadband Guidelines also recommend that Member States should set up a national database on the availability of existing infrastructure that could be reused for broadband rollout (this includes both commercial infrastructure assets and those owned by public bodies etc.). In this respect, the Lithuanian authorities clarified that, in addition to the digital maps made available by the NRA on the website <http://e-infrastruktura.lt/>, the required transparency will be achieved by placing relevant information on the websites of the Ministry of Agriculture, National Paying Agency, and PI. Furthermore, Lithuania will ensure access to information on existing and planned physical infrastructure through the implementation of Directive 2014/61/EU, in particular the requirement under Articles 4 and 6 to ensure access to certain minimum information. All information about PRIP 2 planned physical infrastructure will be placed on the website of NRA as a part of the implementation of Directive 2014/61/EU.
- (33) **Wholesale access:** Following the requirements of Article 78 (g) of the Broadband Guidelines, the Lithuanian authorities have confirmed that the new network will offer wholesale backhaul access on an open, non-discriminatory basis, respecting the principle of technological neutrality. Electronic communication operators will be able to use such wholesale access in order to connect end users via any access technology they wish to choose. In line with the requirements of the Broadband Guidelines, access to active and passive infrastructure, such as dark fibre and nodes, will be provided. The access

obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure. Effective wholesale access to the new passive infrastructure elements (such as dark fibre) will be ensured unlimited in time. Effective wholesale access to active infrastructure elements will be ensured for at least 7 years. The wholesale operator of the network, PI will not offer retail services.

- (34) **Wholesale access pricing:** The Lithuanian authorities have committed that the provision of wholesale inputs will be on the basis of fair and reasonable pricing. The tariffs for the wholesale services are established by the Ministry of Transport and Communications and published by PI<sup>25</sup>. The objective of the Lithuanian institutions is to provide wholesale access services to the NGN backhaul networks for similar prices as wholesale access services provided in urban areas. However, in order to ensure the affordability of fast internet connections for the end-consumers, the Ministry has also taken into consideration the average price of the retail services paid by end users in urban areas, where such services are provided without the State funding. Wholesale access prices have been submitted and agreed upon by the Communications Regulatory Authority of the Republic of Lithuania, which is authorised to supervise the telecommunication markets of Lithuania.
- (35) **Monitoring and claw-back mechanism:** The Lithuanian Law on Electronic Communications<sup>26</sup> establishes that the receiver of the aid (PI) shall publish information concerning wholesale-access (including technical specifications, conditions for provision and use as well as prices for access and related services). The same law also requires PI to provide non-discriminatory open access to all electronic communications operators. Any possible surplus generated by PI through the operation of the network will be used for the maintenance of the network or development of broadband in rural areas. The Ministry of Agriculture of the Republic of Lithuania will regularly monitor PI and the proper implementation of the measure, including as regards wholesale access conditions and pricing.
- (36) **Transparency:** The objectives of the measure, the full text of the final aid scheme and the implementing provisions, the beneficiary of the aid and the amounts of State aid granted to it, as well as the aid intensity and technology used will be published on the internet site of [www.zum.lrv.lt](http://www.zum.lrv.lt).<sup>27</sup> In addition, the Lithuanian authorities confirm that the aid beneficiary PI will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under the State aid measure on PI's website [www.placiajuostis.lt](http://www.placiajuostis.lt).<sup>28</sup> As above mentioned (see

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<sup>25</sup> [https://www.placiajuostis.lt/upload/files/SM\\_isakymas\\_del\\_PI\\_tarifu\\_2015.pdf](https://www.placiajuostis.lt/upload/files/SM_isakymas_del_PI_tarifu_2015.pdf)

<sup>26</sup> <https://www.e-tar.lt/portal/lt/legalAct/TAR.82D8168D3049/UoRamswEXz>

<sup>27</sup> And in particular: <http://zum.lrv.lt/lt/veiklos-sritys/kaimo-pletra/lietuvos-kaimo-pletros-2014-2020-m-programa/priemones/7-priemone-pagrindines-paslaugos-ir-kaimu-atnaujinimas-kaimo-vietovese> leading to [http://zum.lrv.lt/uploads/zum/documents/files/LT\\_versija/Veiklos\\_sritys/Kaimo\\_pletra/Lietuvos\\_kaimo\\_pletros\\_2014%E2%80%932020%20m\\_programa/Priemon%C4%97s/7%20priemone/Apie%20placiajuosti%202016%20spalis.docx](http://zum.lrv.lt/uploads/zum/documents/files/LT_versija/Veiklos_sritys/Kaimo_pletra/Lietuvos_kaimo_pletros_2014%E2%80%932020%20m_programa/Priemon%C4%97s/7%20priemone/Apie%20placiajuosti%202016%20spalis.docx)

<sup>28</sup> The rates for access are published under the following link: [https://www.placiajuostis.lt/upload/files/SM\\_isakymas\\_del\\_PI\\_tarifu\\_2015.pdf](https://www.placiajuostis.lt/upload/files/SM_isakymas_del_PI_tarifu_2015.pdf).

paragraph (31)), PI has also published detailed information concerning wholesale-access conditions and prices.

- (37) **Reporting:** The Lithuanian authorities have committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589<sup>29</sup>. In line with paragraph 78(k) of the Broadband Guidelines, the Lithuanian authorities will also report key information on the implementation of the measure to the European Commission every two years. Such reports will at least contain information on: the information made public in line with transparency obligations (see paragraph (32) above) and in particular: the date when the network is put into use, the wholesale access products offered and access conditions and pricing, the number of access seekers and type of technology used to connect to the network, the number of houses passed, take-up rates, information regarding any disputes regarding the project, if any, and in particular concerning wholesale access, as well as how such disputes were resolved.
- (38) **Language waiver:** By letter dated submitted with the notification of 3 May 2017, Lithuania agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958 and to have the present decision adopted and notified in English.

#### 4. ASSESSMENT OF THE MEASURE

##### 4.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (39) The notified measure constitutes State aid within the meaning of Article 107(1) TFEU, as also confirmed by the notifying Member State during the notification.
- (40) 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 to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect trade between Member States.
- (41) **State resources:** The measure is financed by Lithuanian funds (15%) and EU funds (85%), which are allocated under the control of the Lithuanian authorities to PI using an element of discretion. Hence, the measure uses state resources and is imputable to the State.
- (42) **Selective economic advantage:** The measure supporting the deployment of a wholesale-only backhaul network is selective in nature in that it targets undertakings that are active only in certain regions or in certain segments of the overall electronic communications services market (provision of broadband services), to the exclusion of other electronic communications services and

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<sup>29</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ L 248, 24.9.2015, p. 9).

other economic activities. The measure attributes a selective economic advantage to PI as well as to electronic communication operators.<sup>30</sup>

- (43) *Direct beneficiary*: The state-owned non-profit legal entity PI operating the network will receive financial support which will enable it to enter the market and provide wholesale broadband services on conditions not otherwise available on the market. 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>31</sup> The public operation of a broadband network, even if limited to a mere passive network infrastructure, is an economic activity in the meaning of Article 107(1) TFEU. Therefore, the measure confers a direct economic advantage to PI.
- (44) *Indirect beneficiaries*: The measure will enable third party electronic communication operators to provide retail broadband services to end users by utilising the new, public-owned broadband infrastructure. Thereby these operators will receive an indirect economic advantage by having access to wholesale services at conditions that would not be available under normal market conditions without State support.
- (45) *Distortion of competition*: The markets for electronic communications services (including the wholesale markets and the retail broadband markets) are open to competition between operators and service providers, which generally engage in activities that are subject to competition and trade between Member States. By favouring certain operators and service providers, the notified measure is therefore liable to distort competition and affect trade between Member States.
- (46) Moreover, the intervention of the State can alter existing market conditions, in that a number of undertakings could now choose to subscribe to the services provided by PI or the various access seekers instead of existing, possibly more expensive alternative market-based solutions. It will provide a selective advantage to PI and will benefit all third party providers who use the new infrastructure to compete with other third party providers.<sup>32</sup>
- (47) *Effect on trade*: Insofar as the intervention may affect network operators and service providers from other Member States, the measure has an effect on trade. Therefore, the fact that an improved broadband service and additional wholesale capacity becomes available can distort competition and affect trade between Member States.<sup>33</sup>
- (48) *Conclusion*: In consideration of the above, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107 (1)

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<sup>30</sup> See Broadband Guidelines, paras. 12 and 13.

<sup>31</sup> Case C 118/85, judgment of 16 June 1987, Commission of the European Communities v Italian Republic, European Court Reports 1987 -02599, paragraph 13 (ECLI identifier: ECLI:EU:C:1987:283); and Joined Cases T-443/08, T-455/08, judgment of 24 March 2011, Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission, not yet published, paragraphs 88 and 89 (ECLI identifier: ECLI:EU:T:2011:117).

<sup>32</sup> See Broadband Guidelines, para. 14.

<sup>33</sup> See Broadband Guidelines, para. 15.

TFEU and it is necessary to consider whether the measure can be found to be compatible with the common market.

#### **4.2. Compatibility of the aid**

- (49) The Commission has assessed the compatibility of PRIP 2 according to Article 107(3)(c) TFEU which states that: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" shall be considered to be compatible with the internal market. In its assessment, the Commission has taken into account the Broadband Guidelines, which contain a detailed interpretation of Article 107(3)(c) TFEU as it applies to that area of State aid law.
- (50) As explained in paragraph 33 of the Broadband Guidelines, to be considered compatible with the internal market every aid measure must comply with the following cumulative conditions:
- (a) the aid must contribute to the achievement of objectives of common interest;
  - (b) absence of market delivery due to market failures or important inequalities;
  - (c) the aid must be appropriate as a policy instrument;
  - (d) the aid must have an incentive effect;
  - (e) the aid is limited to the minimum necessary (proportionality);<sup>34</sup>
  - (f) negative effects must be limited (step change); and
  - (g) the aid measure must be transparent.
- (51) If those conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against the potential negative effects.

##### **4.2.1. The aid contributes to the achievement of objectives of common interest**

- (52) As mentioned before, the Europe 2020 Strategy (EU2020) and the Digital Agenda for Europe (DAE) have underlined the importance of broadband deployment to promote competitiveness, social inclusion and employment in the EU and defined the aim to bring basic broadband access to all Europeans by 2013 and to ensure that, by 2020, (i) all Europeans have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households subscribe to internet connections above 100 Mbps. Key Action 8 of the DAE calls upon Member States "*to use public financing in line with EU competition and State aid rules*" in order to meet the coverage, speed and take-up targets.
- (53) In particular, a well-targeted State intervention in the broadband field can facilitate the reduction of the "digital divide" that sets apart areas or regions

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<sup>34</sup> As regards limiting the distortions of competition, the Commission also examines in the context of the proportionality of the measure whether such measure fulfils the conditions listed in paragraph 78 of the Broadband Guidelines.

within a country where affordable and competitive broadband services are on offer from areas where such services are not available.

- (54) The planned measure PRIP 2 complements the previous measures (RAIN 1 and 2, PRIP 1) and contributes to achieving the EU objectives as highlighted in the EU2020 and the DAE. By the notified project, the Lithuanian authorities intend to allow the use of the subsidised network to bridge the traditional "digital divide" as regards both NGN and NGA broadband, as presented in recitals (9) and (13) above. This concerns specifically NGN "white areas" where no equivalent NGN broadband infrastructure currently exists and where such networks are not likely to be built within three years by private investors on commercial terms (see recital (23)). By extending high speed broadband coverage of minimum 30 Mbps download speeds to rural areas of the country where private operators have no commercial interest to invest in the near future, the Lithuanian authorities pursue genuine cohesion and economic development objectives, in line with the DAE. Thus, the measure under examination will make a significant contribution to the achievement of the objectives of the DAE and is therefore in line with the common interest.

#### **4.2.2. Absence of market delivery due to market failures or important inequalities**

- (55) PRIP 2 addresses a market failure as it targets only white NGN and white NGA areas, where download speeds above 30 Mbps are currently not available and where there are no plans by private investors to roll out infrastructure to support them in the near future. Furthermore, the targeted areas have been and will continue to be checked on the basis of mapping and public consultation exercises to verify that there are no private investment plans in the near future and thereby ensure that crowding-out of private investment is avoided. Those elements demonstrate the absence of market delivery due to market failures and/or important inequalities in the targeted areas.
- (56) The Lithuanian authorities have demonstrated that despite significant progress in the past regarding broadband deployment, a significant divide between the cities on the one hand and the rural areas on the other hand with NGA broadband infrastructure remains. The Lithuanian authorities have submitted recent studies of 2015 and 2017<sup>35</sup> according to which after implementing the previous State aid projects, the overall NGA broadband coverage has reached 91% of Lithuanian households (overall, urban and rural areas combined). However, rural areas still have a lower NGA coverage compared to urban areas where NGA coverage approaches 100%. NGA coverage in rural areas is 76% compared to 99.98% of households in urban areas.
- (57) The measure PRIP 2 was designed with the objective to improve the NGA coverage in rural areas in Lithuania. Therefore, with PRIP 2 the Lithuanian authorities aim to deploy a wholesale-only NGN backhaul infrastructure in white NGN areas, which would serve, via its open access features, to also ensure the connection of white NGA access areas (by private operators). The

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"Naujos kartos prieigos plėtros investicijų projekto parengimo paslaugos" ("The Preparation Of Investment Project Of Next Generation Access Development") and "Parama plačiajuosčio ryšio infrastruktūrai, Galimybių studija – investicijų projektas" ("Support for broadband network infrastructure, Feasibility study – investment project")

Lithuanian authorities have committed to ensure that the new PRIP 2-infrastructure will be built in white NGA/NGN-areas only.

#### **4.2.3. Appropriateness of State aid as a policy instrument**

- (58) The Lithuanian authorities have explained that the essential problem in ensuring NGA / NGN coverage in rural areas in Lithuania is the lack of private investments into the necessary infrastructure (see also recital (13) above). The lack of private investments is difficult to address by other less distortive measures, such as ex-ante regulation or demand stimulation. The Lithuanian authorities explain that alternative instruments, such as the exemption of the construction of telecommunication lines from certain legal requirements for permission, design and construction in order to reduce planning and implementation costs, have been implemented, however these are not of themselves sufficient to remedy the lack of supply (namely non-existence of the infrastructure) and remove the "digital divide" in the country. Upgrading broadband in NGA / NGN white areas requires significant upfront investments that are amortized over a long period of time. According to the Lithuanian authorities, without further public intervention, reducing the "digital divide" between the remaining NGA white areas and the urban areas in Lithuania does not seem possible and the difficulties resulting from the lack of supply of broadband networks cannot be satisfactorily addressed. In view of the information provided by the Lithuanian authorities, the Commission agrees that reducing the "digital divide" between different areas of the country does not appear to be possible without further public intervention, which could lead to the economic exclusion of local undertakings. The State aid measure proposed – complementing the earlier measures RAIN 1 and 2 as well as PRIP 1 – is an appropriate instrument to achieve the desired objectives.

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

- (59) As set out in paragraph 45 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken without any State aid.
- (60) According to the results of the mapping exercises and the public consultation carried out by the Lithuanian authorities, no comparable private investment is present or planned in the targeted rural areas in the next three years. It follows from this that the investment would not be made within the same timeframe without the aid, which therefore has an incentive effect in that it allows PI to perform the investment which is not being offered by private investment alone. Moreover, by granting access to the public network to third party operators, the measure facilitates and encourages investments in last mile networks.
- (61) Therefore, the aid shall provide a direct and appropriate investment incentive for the selected operator PI and for third party beneficiaries.

#### **4.2.5. Proportionality - Aid limited to the minimum necessary**

- (62) The Lithuanian authorities have designed the PRIP 2 measure to minimise the State aid involved and the potential distortions of competition arising from the measure. In that respect, as provided by paragraph 78 of the Broadband Guidelines, the Commission examines the following elements below:

***Detailed mapping and coverage analysis and Public consultations:***

- (63) As described in recitals (20)-(22) above, the Lithuanian authorities have organised two studies, on the basis of which existing infrastructure was identified and maps were created in order to clearly identify the planned PRIP-2 infrastructure. The Lithuanian authorities have confirmed that when implementing the measure, only areas for which no objections were raised (only NGN/NGA white areas) will be chosen (i.e. that there are no current or planned private investments in the next three years).
- (64) The detailed mapping process performed via the two studies was validated via public consultation, in line with the requirements of the Broadband Guidelines. The public consultations process started in October 2015, by publishing a summary of the planned aid measure, a description of the targeted areas and a list of targeted areas that would be connected on the internet website of PI<sup>36</sup>. The public consultation is ongoing and will remain open and accessible to all stakeholders for the entire duration of the implementation of the measure. This will ensure that there is a constant update as concerns the list of areas that would be connected by the new NGN network. The on-going public consultation seeks feedback from all interested stakeholders and invited comments, in particular inquiring about current or planned investments in similar broadband infrastructure in the targeted areas in the next three years from the first day of the public consultation. The Lithuanian authorities confirmed in their notification that until 3 May 2017 (the date of the notification) no objections to the published list of target areas have been raised. As the public consultation remains, the Lithuanian authorities confirmed that if stakeholders present objections in regard to the targeted areas presented in the list and submit sufficient evidence, confirming current or planned credible investments in the areas and objects concerned, then the areas concerned would be carved out from the of the target areas. The Lithuanian authorities have confirmed that when implementing the measure, only NGN / NGA white areas will be targeted, i.e. areas where no objections are raised during the public consultation. This will ensure that only those areas where no interest for commercial NGA / NGN deployment is present are developed. This will reduce to a minimum the necessary the aid amount and will serve to avoid risks of crowding-out private investments and distorting competition vis-à-vis existing operators.

***Direct attribution of aid to PI with competitive safeguards:***

- (65) In line with footnote 96 to paragraph 78 (c) of the Broadband Guidelines, the Lithuanian authorities have chosen to deploy measure PRIP 2 similarly to the previous measures RAIN 1 and 2 and PRIP 1, via a direct investment model where the public authorities deploy and manage the network through a fully owned entity, the publicly-owned network operator PI.
- (66) The network will remain in public ownership. PI will ensure the deployment of the network by selecting appropriate private constructors via open tenders, and

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<https://www.placiajuostis.lt/lt/numatoma-prip-pletra> and in particular <https://www.placiajuostis.lt/lt/naujienos/del-viesuju-konsultaciju-planuojant-nauju-objektu-prijungima-80>



will manage the network directly, at wholesale-only level, maintaining the public infrastructure accessible to any broadband operator interested in using it via wholesale access. The maintenance and technical support of the PRIP 2 network will be carried out also by private operators selected by means of an open tender. As indicated above (see recitals (18) and (28)), the contracts for the construction of the infrastructure and for the maintenance and support of the NGN backhaul network will be tendered out according to national and EU public procurement rules aiming to select the most economically advantageous offer and respecting the principles of openness, non-discrimination and transparency.

- (67) To ensure that the recourse to a direct investment model does not disproportionately distort competition but, to the contrary, ensures a pro-competitive use of the subsidised infrastructure, the Lithuanian authorities have put in place a number of competitive safeguards, in line with the Broadband Guidelines (paragraph 78, footnote 96).
- (68) The Lithuanian authorities confirm that the following safeguards will be respected by PI within the PRIP 2-project.
- (69) Firstly, the Lithuanian authorities have confirmed that the publicly owned network operator PI will limit its activity on the predefined target areas and shall not expand to other commercially attractive regions.
- (70) Secondly, the Lithuanian authorities have confirmed that PI shall limit its activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition on the retail levels with commercial operators. PI cannot act as retail broadband operator, and therefore cannot provide broadband services to final users, but simply organises and manages wholesale access to the infrastructure by any third party interested in using it. PI is obliged to grant an open access at fair, transparent and non-discriminatory conditions to the infrastructure operated by this public entity. PI, moreover, does not engage in any profit making operation of the network, but keeps income and expenses at an equilibrium and limits its activity to the administrative management of a mere passive infrastructure.
- (71) Thirdly, the Lithuanian authorities have confirmed that PI will maintain an accounting separation for the funds used for the operation of the networks (separate from any other funds at the disposal of PI).
- (72) Thus, this system eliminates at the root one of the potential risks for competition deriving from management of the network by operators, i.e. the incentive to exclude or degrade competitors on the same infrastructure.
- (73) The Commission can thus conclude that the safeguard mechanism is sufficient to avoid undue distortions of competition and no selection procedure is required.

***Use of existing infrastructures:***

- (74) With PRIP 2 the Lithuanian authorities intend to create an NGN backhaul infrastructure which expands the infrastructure deployed under the previously approved measures PRIP 1 and RAIN 1 and 2, which only concerned white areas. The new infrastructure will only be deployed in white NGN / NGA areas which are not covered by the previous approved measures.

- (75) The Broadband Guidelines also recommend that Member States should set up a national database on the availability of existing infrastructure that could be reused for broadband rollout. The mapping and public consultation exercise (still on-going for the latter) reveal information about available existing infrastructure and the new planned PRIP 2 infrastructure. Digital maps of underground spatial data infrastructure are made available by the NRA on the website <http://e-infrastruktura.lt/> (see recitals (22) and (32)). In addition, relevant information will be published on the websites of the Ministry of Agriculture, National Paying Agency, and PI. Furthermore, Lithuania will ensure access to information on existing and planned physical infrastructure through the implementation of Directive 2014/61/EU, in particular the requirement under Articles 4 and 6 to ensure access to certain minimum information. All information about PRIP 2 planned physical infrastructure will be placed in the website of NRA as a part of implementation of Directive 2014/61/EU (see recital (32)).

### ***Wholesale access conditions and pricing***

- (76) As described above in recital (33), PI will offer wholesale backhaul access to the subsidised NGN backhaul network to all interested operators in an open, transparent and non-discriminatory manner, respecting the principle of technological neutrality (see recital (19)). Electronic communication operators will be able to use such wholesale access in order to connect end users. PI will not exercise offer retail services. In line with the requirements of the Broadband Guidelines, access to active and passive infrastructure, such as dark fibre and nodes, will be provided. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure. Effective wholesale access to the new passive infrastructure elements (such as dark fibre) will be ensured unlimited in time. Effective wholesale access to active infrastructure elements will be ensured for at least 7 years.
- (77) Regarding wholesale access pricing, the Lithuanian authorities have committed that the provision of wholesale inputs will be on the basis of fair and reasonable pricing. The tariffs for the wholesale services are established by the Ministry of Transport and Communications and published by PI<sup>37</sup>. As described above in recital (34) and in line with the provisions of the Broadband Guidelines, the prices for wholesale access have been submitted and agreed upon by the Communications Regulatory Authority of the Republic of Lithuania, which is authorised to supervise the telecommunication markets of Lithuania.
- (78) PI's compliance with the access obligations will be closely monitored by the Lithuanian authorities and the NRA.
- (79) The Commission therefore considers that the wholesale access requirements are in line with paragraphs 78(g) and (h) of the Broadband Guidelines.

### ***Monitoring and claw-back mechanism:***

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[https://www.placiajuostis.lt/upload/files/SM\\_isakymas\\_del\\_PI\\_tarifu\\_2015.pdf](https://www.placiajuostis.lt/upload/files/SM_isakymas_del_PI_tarifu_2015.pdf).

- (80) As explained in recital (35), the Lithuanian authorities will ensure regular monitoring and supervise State aid compliance. The implementation of the measure will be examined on a regular basis and the monitoring mechanism implemented will ensure that if the beneficiary fails to comply with the rules, the granting authorities will be in a position to recover the aid granted. The Lithuanian Ministry of Agriculture will monitor PI and the implementation of the measure, including as regards wholesale access conditions and pricing. PI will moreover be obliged to publish access related information, in line with the Lithuanian Law on Electronic Communications. By ensuring that any surplus generated by PI through the operation of the network will be used for the maintenance of the network or development of broadband in rural areas, the Lithuanian 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 deemed to have been necessary.

#### **Reporting:**

- (81) The Lithuanian authorities committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589, and also to submit every two years reports on key information on the implementation of the measure, in line with paragraph 78(k) of the Broadband Guidelines (see recital (37)). As concerns the latter reports, these will at least contain information on: the information made public in line with transparency obligations and in particular: the date when the network is put into use, the wholesale access products offered and access conditions and pricing, the number of access seekers and type of technology used to connect to the network, the number of houses passed, take-up rates, information regarding any disputes regarding the project, if any, and in particular concerning wholesale access, as well as how such disputes were resolved.

#### **4.2.6. Limited negative effects (white areas and step change)**

- (82) Given the design of the measure and its compliance with the conditions of paragraph 78 of the Broadband Guidelines, it is unlikely to have a crowding out effect on private investments.
- (83) As described in recital (30) above, the Lithuanian authorities confirmed that in line with the paragraph (51) of the Broadband Guidelines the planned networks will ensure a "step change" in that PI makes significant new investments in the broadband network and the subsidised infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition as a result of the public intervention into white NGN areas, which would enable the connection, via private investments, of white NGA access areas. The new NGN backhaul infrastructure will cover new agricultural areas and should enable connections to the broadband infrastructure for about 400 - 520 nodes. Indeed, the measure supports only white NGN and NGA areas where no broadband connection is available and where without the public support the investment would not take place.

#### **4.2.7. Transparency**

- (84) Concerning the transparency requirement as defined in the paragraph 78 (j) of the Broadband Guidelines, the Lithuanian authorities have published all

information relative to the notified aid measure on their web site [www.zum.lrv.lt](http://www.zum.lrv.lt)<sup>38</sup>, including: objectives of the measure, the full text of the final aid scheme and the implementing provisions, the beneficiary of the aid and the amounts of State aid granted, as well as the aid intensity and technology used. Furthermore, the aid beneficiary PI will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under the State aid measure, information which will be available on PI's website [www.placiajuostis.lt](http://www.placiajuostis.lt).<sup>39</sup> As above mentioned (see recital (34)), PI has also published detailed information concerning wholesale-access conditions and prices.

- (85) Regarding the reporting obligation the Lithuanian authorities will submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589 as well as reports on the implementation of the measure every two years from the date the network is put in use in line with the requirements set in the paragraph 78 (k) of the Broadband Guidelines (see recital (37)).

#### **4.2.8. Overall balancing. Positive effects expected to outweigh potential negative effects**

- (86) The objective of the measure is to bridge the "digital divide" and provide access to broadband services where they are currently unavailable by making possible the deployment of broadband in sparsely populated areas where private operators are not planning any investments in the near future.
- (87) The Lithuanian authorities have designed the measure under examination in such a way as to minimise the State aid involved and potential distortion of competition arising from the measure.
- (88) On balance, the measure is in line with the objectives of Article 107 (3) (c) TFEU as it facilitates the development of certain economic activities (wholesale and indirectly retail broadband services) in remote and rural areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (89) The Commission therefore considers that the notified measure will offset a geographical and commercial handicap in the rural and agricultural areas of Lithuania enhancing the supply of high-speed broadband services across these areas and, thus, is objectively justified to address the lack of availability of high speed broadband services in the targeted areas.

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<sup>38</sup> And in particular: <http://zum.lrv.lt/lt/veiklos-sritys/kaimo-pletra/lietuvos-kaimo-pletros-2014-2020-m-programa/priemones/7-priemone-pagrindines-paslaugos-ir-kaimu-atnaujinimas-kaimo-vietovese> as well as [http://zum.lrv.lt/uploads/zum/documents/files/LT\\_versija/Veiklos\\_sritys/Kaimo\\_pletra/Lietuvos\\_kaimo\\_pletros\\_2014%E2%80%932020%20m\\_programa/Priemon%C4%97s/7%20priemone/Apie%20placiajuosti%202016%20spalis.docx](http://zum.lrv.lt/uploads/zum/documents/files/LT_versija/Veiklos_sritys/Kaimo_pletra/Lietuvos_kaimo_pletros_2014%E2%80%932020%20m_programa/Priemon%C4%97s/7%20priemone/Apie%20placiajuosti%202016%20spalis.docx)

<sup>39</sup> The rates for access are published under the following link: [https://www.placiajuostis.lt/upload/files/SM\\_isakymas\\_del\\_PI\\_tarifu\\_2015.pdf](https://www.placiajuostis.lt/upload/files/SM_isakymas_del_PI_tarifu_2015.pdf).

#### 4.2.9. Conclusion

- (90) The Commission concludes that the PRIP 2-measure meets the compatibility criteria set out in the Broadband Guidelines. Therefore, the aid involved is compatible with the internal market in line with Article 107 (3) (c) TFEU.
- (91) The Commission notes that Lithuania exceptionally accepts the adoption of this Decision in English language.

#### 5. DECISION

- (92) The Commission therefore finds that the notified measure PRIP 2 is compatible with Article 107 (3) (c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (93) The Lithuania authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.

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>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

