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**Subject: State aid SA.49614 (2018/N) - Lithuania
Development of Next Generation Access Infrastructure – RAIN 3**

Sir,

I am pleased to inform you that the Commission has assessed the measure " Development of Next Generation Access Infrastructure – RAIN 3" 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 20 September 2018, pursuant to Article 108 (3) of the TFEU, the Lithuanian authorities notified the measure "Development of Next Generation Access Infrastructure – RAIN 3" (in the following "RAIN 3") further expanding the measures approved by the Commission in the past: SA.28192 ("RAIN 1")¹, SA.34166 ("RAIN 2")², SA.36132 ("PRIP 1")³ and SA.46372 ("PRIP 2")⁴.

¹ 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

² State aid SA.34166; C(2012)3307 final of 16 May 2012;

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2. CONTEXT

- (2) The Europe 2020 Strategy (EU2020)⁵ and the Digital Agenda for Europe (DAE) 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. Building on the DAE, on 14 September 2016 the Commission adopted the Communication "Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society" where it stressed the role of broadband connectivity to achieve the full economic and social benefits of the Digital Single Market.
- (3) The notified measure will support the deployment of a Next Generation Network ("NGN") backhaul infrastructure offering wholesale access on an open and non-discriminatory basis to electronic communication operators wishing to connect end users with download speeds above 30 Mbps. This backhaul network is expected to facilitate the deployment of Next Generation Access ("NGA") networks (i.e. the "last mile" network segment) by commercial operators in under-served regions in order to provide broadband network coverage in rural areas. The measure therefore also aims at fostering the deployment of commercial NGA networks via the deployment of an NGN backhaul infrastructure.
- (4) The new fibre backhaul network will consist of active and passive elements including not only approximately 180 telecommunication towers but also cabinets facilitating the connection of both fixed and fixed-wireless access networks. The Lithuanian authorities plan to ensure that all of the households in Lithuania have access to broadband connections with download speeds above 30 Mbps by 2020. At the same time, Lithuania aims at reducing the differences between Lithuanian urban and rural areas concerning the availability and use of fast internet connections achieving download speeds above 30 Mbps. Open wholesale access to the subsidized NGN backhaul infrastructure will be provided to third party operators who will be able to connect their respective NGA infrastructure and provide broadband services to end-users.
- (5) In the past, Lithuania has already developed electronic communications networks (see recital (1)) for the provision of broadband services using funds from the European Regional Development Fund (ERDF). The initial project RAIN 1 – *"Development of Information Technologies Broadband Network for*

http://ec.europa.eu/competition/state_aid/cases/243182/243182_1335424_70_2.pdf

³ 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

⁴ State aid SA.46372; C(2017) 4530 final of 4 July 2017;
http://ec.europa.eu/competition/state_aid/cases/269367/269367_1921788_100_4.pdf

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

Rural Areas RAIN" – was approved in 2009. In 2012, the Commission approved its geographic extension (RAIN 2).

- (6) The RAIN-infrastructure was further expanded by the measure PRIP 1 ("Development of broadband network infrastructure in rural areas") which was set up in 2013 with funding from the European Agricultural Fund for Rural Development (EAFRD). PRIP 1 was designed to contribute to the development of NGN backhaul infrastructure in Lithuania, in line with the RAIN projects, with a special focus on remote agricultural areas. In 2017, it was expanded by the measure PRIP 2 which followed the same principles. The measures RAIN and PRIP therefore complement each other in that they expand a backhaul network to address a lack of connectivity in different rural areas of Lithuania.
- (7) All four previous measures – RAIN 1, RAIN 2, PRIP 1 and PRIP 2 - were approved by the Commission⁶. The total aid approved in the past for these four measures amounted to EUR 71.3 million.⁷ Due to the direct allocation of State funds to a state-owned network operator "*Plačiajuostis internetas*" ("PI") for all four measures, the Commission defined in its approval decisions a number of competitive safeguards⁸ aiming to ensure that the direct attribution of funds would not lead to undue distortions of competition.
- (8) The objective of the notified measure RAIN 3 is to further extend following the same procedure the coverage achieved under the previous measures to additional rural areas which were not targeted by the previously approved measures.
- (9) Like the previous measures, also RAIN 3 will be organised and managed by the state-owned network operator PI. The implementation of RAIN 3 will be carried out by PI. When planning the new measure, the Lithuanian authorities committed to avoid all duplication of funding. The new backhaul infrastructure will be deployed only in white NGA areas which are not served by NGN backhaul infrastructure provided by the aforementioned projects or where there are no similar current or planned private investments.

⁶ See Commission Decisions SA.28192, SA.34166, SA.36132 and SA.46372.

⁷ See Commission Decision SA.46372, para. 15; Commission Decision SA.36132, para. 27 and footnote 6; Commission Decision SA.34166, para. 5 and Commission Decision SA.28192, para. 21.

⁸ 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 enumerated 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.

3. DESCRIPTION OF THE MEASURE

- (10) **Objectives:** In line with the EU2020 strategy for more growth and the DAE targets, the objective of the notified measure is to provide NGN backhaul infrastructure supporting the roll out of NGA networks capable of delivering reliably download speeds of at least 30 Mbps. The notified measure aims to minimise the "digital divide" in Lithuania, which exists predominantly in rural areas. With the notified measure, the Lithuanian authorities intend to accelerate the roll-out of NGN backhaul infrastructure, in line with the EU's and Lithuania's priorities, and help drive further economic growth and sustainable development of rural areas. The Lithuanian authorities expect that the notified measure will indirectly serve to accelerate the deployment of NGA networks by commercial operators in rural areas, thanks to the possibility offered to connect to the new subsidised NGN backhaul infrastructure.
- (11) The project RAIN 3 aims to extend the coverage achieved under the previous measures to develop the infrastructure of NGN backhaul infrastructure offering wholesale broadband services in additional rural areas of Lithuania. The new NGN backhaul infrastructure will only be deployed in areas currently not covered by NGA networks and lacking sufficient NGN backhaul infrastructure and where there are no plans for such coverage in the next three years (white NGN/NGA areas).
- (12) By setting up an extensive infrastructure of NGN backhaul infrastructure, 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 relying on access to the NGN backhaul infrastructure to roll NGA networks. The NGN backhaul infrastructure 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 increase the access to broadband infrastructure in areas where no such access and related broadband internet services are provided by the market⁹ and specifically to deploy an advanced, comprehensive and accessible broadband infrastructure in areas where no such infrastructure and related connectivity services are provided by the market and ensure the possibility to access this infrastructure for all residents¹⁰.
- (13) The Lithuanian authorities submit that the measure was prepared on the basis of a study ("the Project study")¹¹ conducted in August 2017 in order to verify the existing and foreseeable development of NGA networks based on existing or planned NGN backhaul infrastructure. The study demonstrated that in 2017, 91.05% of the total number of households had the possibility to subscribe to

⁹ Pursuant to the investment priority 2.1 "Broadband connectivity deployment and development of high bandwidth networks, support for new technologies and networks for the digital economy" of the Operational Programme for EU Structural Funds Investments for 2014-2020.

¹⁰ Pursuant to the goal 3.2.2.1 of the National Progress Programme for 2014-2020, confirmed by the decree No. 1482 of the Government of the Republic of Lithuania.

¹¹ "Investment Project for the Development of Next Generation Access Infrastructure", August 2017

NGA networks, but while this coverage reached 99.98% in municipal centres it was only 76.11% in rural areas. The NGA networks coverage was also forecasted for the year 2020 taking into account the network development plans of private providers as well as by PI (PRIP 2 is planned to be finalised in the course of 2018). The study estimated that by 2020, 92.99% of all households in Lithuania can be expected to have access to NGA networks. This translates into a household coverage of 99.99% in municipal centres and 81.27% for rural areas.

- (14) Therefore, the Lithuanian authorities consider there is still a great need to reduce the difference in terms of access to high-speed internet connections between residents in urban and rural areas. After implementation of RAIN 3, the NGA-coverage in the whole of Lithuania is expected to increase to 95.77% overall (i.e. to remain at 99.99% in municipal centres and to increase to 89.84% in rural areas).
- (15) The view of the Lithuanian authorities is that the public sector intervention is justified. NGN backhaul networks serving the areas concerned have not been deployed and are not planned by commercial operators. The Lithuanian authorities explained that in the course of the previous expansions of the RAIN/PRIP-network more and more remote areas have been targeted. In the remaining areas the lack of private investments can be explained by the high costs of reaching these increasingly remote targets with NGN backhaul infrastructure and the limited revenue base that can be expected on commercial terms due to low population density 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 communities.
- (16) The Lithuanian authorities have explained that despite various other measures (such as the exemption granted for the roll out of electronic communication networks from certain legal requirements in order to reduce planning and implementation costs), the digital divide could not be entirely eliminated. The Lithuanian authorities consider that without further public intervention this objective will not be achieved. In line with paragraphs 37-39 of the Broadband Guidelines, the Lithuanian authorities justify that no alternatives are available to public aid for extending the coverage of NGN backhaul infrastructure in the targeted areas of the country with no NGA network coverage.
- (17) **Legal basis:** The notified measure is based on (i) the Law on the Electronic Communications of the Republic of Lithuania¹², (ii) the Next Generation Internet Access Development Plan 2014–2020 of the Republic of Lithuania, confirmed with the order No. 3-410-(E) of 10 October 2014 by the Minister of Transport and Communications of the Republic of Lithuania¹³ and (iii) the Lithuanian Digital Agenda confirmed with the order No. 244 of 12 March 2014¹⁴.

¹² <https://www.e-tar.lt/portal/lt/legalAct/TAR.82D8168D3049/ZSBYjBkMuv>

¹³ <https://www.e-tar.lt/portal/lt/legalAct/7e1fdab0600411e4bad5c03f56793630>

¹⁴ <https://www.e-tar.lt/portal/lt/legalAct/dbd546f0b04011e39a619f61bf81ad0a>

- (18) **Budget and financing instruments:** The overall estimated (maximum) aid amount of the RAIN 3 project is EUR 49 745 731, to be allocated as a direct grant in three instalments over three years. A share of 85% of this amount will be funded from the European Regional Development Fund (ERDF). 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* aid¹⁵ received from other local, regional or national sources to cover the same eligible costs.
- (19) **Duration of the measure:** The project implementation period is expected to start in 2018 with a planned timeframe for construction of 36 months. The notified measure will only be implemented after the Commission's approval, respecting the stand-still obligation.
- (20) **Granting authority:** The Ministry of Transport and Communications is the granting authority responsible for the infrastructure built under the RAIN 3 project. The same ministry is responsible for establishing the wholesale access tariffs to the RAIN 3 network as for the rest of PI's broadband network deployed under the previous State aid measures RAIN 1 and 2 as well as under PRIP 1 and 2.
- (21) **Design of the measure:** With the RAIN 3 project, the existing RAIN/PRIP-broadband infrastructure will be extended in order to ensure the connection of further rural areas. 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 RAIN 3-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) in line with the relevant national and EU Procurement Directives.
- (22) The measure will finance the deployment of passive infrastructure with active elements¹⁶, which will be used to provide data transmission services via passive infrastructure, consisting of:
- (a) fibre backhaul networks¹⁷, which Lithuania considers to be the most suitable technological solution for NGN deployments able to support access speeds of more than 30 Mbps download;

¹⁵ 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).

¹⁶ The term “active elements” covers only core/aggregation network elements (routers, switches, etc.) that are needed for the proper operation of the infrastructure enabling the provision of wholesale (dark fiber / WDM / Layer 2) data transmission services, but not equipment that is needed to activate end-user services (base stations, access points or similar).

¹⁷ Backhaul (or middle mile) networks comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

- (b) approximately 180 towers which will also contain cabinets. The new towers and cabinets will include active elements that are needed for the proper operation of the infrastructure and which will be used to provide data transmission services. The measure only intends to offer the passive infrastructure and data transmission services via open wholesale access to any access seekers.
- (23) The Lithuanian authorities have identified based on their mapping and public consultation exercise (described in recitals (27) - (31) below) approximately 600 underserved locations where no NGA network is available or planned. In order to facilitate the commercial establishment of NGA networks the Lithuanian authorities plan to deploy with this measure a suitable NGN backhaul infrastructure for NGA coverage to become possible. Among the 600 locations, 420 locations have existing nodes or existing infrastructure that could be reused for connections: these are cabinets and optical distribution frames (belonging to various operators), but also other objects or infrastructures, such as tall chimneys and water towers, which can be used for telecommunication purposes. For the remaining locations, where there are no existing nodes or infrastructure that can be reused, the Lithuanian authorities plan to build in the framework of the notified measure 180 telecommunication towers including also cabinets.
- (24) The network will offer open wholesale access to any operators on a non-discriminatory basis and in respect of the principle of technological neutrality. Access will be guaranteed to all the infrastructure deployed (fiber and all 600 nodes). The Lithuanian authorities explain that this will allow any operators to connect their own access infrastructures (i.e. the last mile network segment) to the publicly funded RAIN 3 network and to provide services for end users on this basis. The operators will be free to choose any access technology as long as it is capable of providing on a reliable basis download speeds of at least 30 Mbps. Thus, the subsidized backhaul networks will be open for interconnection with any NGA-networks without excluding any particular technology. It is expected that RAIN 3 will – once the expected access networks are constructed by private investors - allow to provide for the connection of 42 287 households in rural areas.
- (25) **Target areas:** In August 2017, the Lithuanian authorities have undertaken in August 2017 a study (the Project study)¹⁸ for the new RAIN 3 project in order to identify the target areas where further State intervention is necessary. The Project study was also undertaken to verify the coverage of Lithuania with NGN and NGA networks.
- (26) The RAIN 3 network is designed as a system of NGN backhaul infrastructure that will be deployed in white NGN areas, i.e. areas where no other operators have current investments into NGN backhaul infrastructure (i.e. backhaul infrastructure capable of supporting the deployment of NGA networks) or plan such investments in the next three years (starting from the latest public consultation as described in recital (28)). The Lithuanian authorities consider that the measure will also stimulate private investments into "last mile" infrastructures which could be connected to the new NGN infrastructure. It is expected that the NGN infrastructure created in rural areas will stimulate

¹⁸ "Investment Project for the Development of Next Generation Access Infrastructure", August 2017.

investments by electronic communications networks and services providers in "last mile" (access) connections in white NGA areas which have been so far unattractive to the market participants. A condition for commercial network operators wanting to use the RAIN 3 backhaul network will on this basis consist in connecting to RAIN 3 only access networks which are capable to reliably deliver download speeds above 30 Mbps and to deploy such NGA access networks to serve white NGA-areas only.

- (27) **Mapping and Public consultation:** The Lithuanian authorities have explained that in the Project study of August 2017 maps were created to assess the NGA-coverage in Lithuania and on that basis plan the new RAIN 3 infrastructure. According to the Lithuanian authorities, the NRA has created a register of broadband infrastructures in which digital maps are publicly available on the website <http://e-infrastruktura.lt>. 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.
- (28) The RAIN 3 measure, including a detailed description of the measure and the planned infrastructure as well as a list of targeted areas that would be connected, was presented for public consultation on the internet site of PI and market participants were invited to comment.¹⁹ The public consultations started in December 2016 and continued until September 2017. The list of targeted areas for which RAIN 3 intends to provide connections will remain on the website of PI and on the project website also during the implementation of RAIN 3, allowing even for later comments from market participants. Moreover, the Lithuanian authorities committed to organise public consultations regarding particular fiber optical lines and telecommunication towers will be held before installation. Public intervention will take place only if this exercise confirms that the areas are truly NGA white and NGN white as described in paragraphs (25)-(26) of this Decision.
- (29) The Lithuanian authorities explain that the public consultation process was complemented by discussions in two separate groups to which numerous participants were invited:
- (a) The Informal Work Group ("IWG")²⁰: a group of technical, legal, financial delegates from main electronic communications operators and their associations. IWG was established by PI to assess the project

¹⁹ <https://www.placiajuostis.lt/lt/naujienos/pradedamos-nkp-ip-viesosios-konsultacijos-136>;
<https://www.placiajuostis.lt/lt/naujienos/kvieciame-susipazinti-su-lietuvos-naujos-kartos-prieigos-tinklo-infrastrukturos-zemelapiu-142>;
<https://www.placiajuostis.lt/lt/naujienos/viesosios-konsultacijos-del-nkp-ip-projekto-metu-suformuotu-tarifu-komponenciu-153>;
<https://www.placiajuostis.lt/lt/naujienos/kvieciame-susipazinti-su-parengtu-lietuvos-naujos-kartos-interneto-prieigos-infrastrukturos-pletros-investiciju-projektu-154>

²⁰ Participants of the Informal Work Group: AB Telia Lietuva, UAB Cgates, UAB TELE2, AB Lietuvos radijo ir televizijos centras, UAB BITĖ Lietuva, Lietuvos verslo konfederacija (Lithuanian Business Confederation), Lietuvos kabelinės televizijos asociacija (Lithuanian Cable Television Association), Lietuvos interneto paslaugų teikėjų asociacija (Lithuanian Internet Service Providers Association), RRT (National Regulatory Authority) and Informatikos ryšių departamentas prie VRM (Information Technology and Communications Department under the Ministry of Interior of the Republic of Lithuania).

implementation including the maps, technological solutions, investment plans of operators, preliminary routes of fiber optical lines, methodical principles of setting of tariffs and preliminary wholesale service tariffs with stakeholders.

- (b) Supervision Committee ("SC")²¹: a group of delegates from state and municipal institutions, associated structures of electronic communications operators and other stakeholders. SC assessed all outcomes of preparation of investment project of NGA project: mapping, technological solutions, methodical principles of setting of tariffs and preliminary wholesale service tariffs, financial and economic calculations of NGA project and its contribution to achievement of Digital Agenda for Europe 2020 goals.
- (30) The Lithuanian authorities indicate that all major steps in the planning of the current measure were discussed in the two working groups and that no objections related to the measure have been raised from neither IGW nor SC. The IWG with the main e-communication operators and their representative associations held meetings 3 – 4 times a month during which the members of the group expressed their opinions for the development of the project. All solutions and assumptions are approved by the members of the group.
- (31) The Lithuanian authorities informed the Commission that by the 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 RAIN 3 fibre network planned under the notified measure.
- (32) **Opinion of the NRA:** The National Regulatory Authority was consulted by the Lithuanian authorities and has not raised any objection to the scheme RAIN 3 or its planned implementation. The Lithuanian authorities have indicated that on 14 July 2017, the National Audit Office has issued a report²² criticizing the NRA for not monitoring to a sufficient extent the wholesale access prices set for the RAIN/PRIP-network. In this regard, the Lithuanian authorities have explained that in reaction to this report the Minister of Transport and Communications has by order No. 3-357 of 7 August 2017 initiated a plan on the implementation of the recommendations by the National Audit Office by creating an independent mechanism for the supervision of the wholesale access

²¹ Participants of the Supervision Committee: Susisiekimo ministerija (the Ministry of Transport and Communications of the Republic of Lithuania); Asociacija "Infobalt" (Association "Infobalt" represented by delegates from Telia Lietuva, AB, UAB Bitė Lietuva among others); Informacinės visuomenės plėtros komitetas (Information Society Development Committee under the Ministry of Transport and Communications of the Republic of Lithuania); Krašto apsaugos ministerija (the Ministry of Defence of the Republic of Lithuania); Lietuvos kabelinės televizijos asociacija (Lithuanian Cable Television Association); Lietuvos interneto paslaugų teikėjų asociacija (Lithuanian Internet Service Providers Association); Lietuvos savivaldybių asociacija (Association of Municipalities of Lithuania); Socialinės apsaugos ir darbo ministerija (the Ministry of Social Care and Labour of the Republic of Lithuania); Švietimo ir mokslo ministerija (the Ministry of Education and Science of the Republic of Lithuania); Vilniaus universiteto Matematikos ir informatikos institutas (Institute of Mathematics and Informatics of Vilnius University); Žemės ūkio ministerija (the Ministry of Agriculture of the Republic of Lithuania); Vidaus reikalų ministerija (the Ministry of Interior of the Republic of Lithuania).

²² Report by the National Audit Office of 14. July 2017 "Development of the electronic communications infrastructure of the State", No. VA-2017-P-900-1-15, www.vkontrole.lt

prices for the RAIN/PRIP-network. For this purpose the Law on Electronic Communications shall be amended in order to attribute to the NRA additional functions, in particular the approval and coordination of wholesale access tariffs. The law is planned to be adopted in the course of the year 2018.

- (33) **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 providers of electronic communications networks and services seeking wholesale access to the new network in order to connect NGA networks that will be used to offer broadband access services to end users.
- (34) **Selection process:** The intervention model chosen by the Lithuanian authorities relies on direct investment, where the public authorities deploy and manage the NGN backhaul infrastructure 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 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.
- (35) The implementation of the project is intended to be started in 2018 and is expected to be completed within 36 months. The first and part of the second year from the start of the project are planned to be dedicated for the design and creation of the new fibre network. In the second year it is planned to build 72 telecommunication towers and in the third year 108 towers.
- (36) **Technological neutrality:** The Lithuanian authorities explain that the chosen technology (i.e. fibre) was based on studies proving that, in terms of quality and cost, only this technological solution could have been selected, thereby allowing commercial operators to connect their own access infrastructure (i.e. the last mile network segment) to the publicly funded NGN network and to provide services for end users. The chosen network topology will ensure the technological neutrality of the RAIN 3-network (and the overall RAIN/PRIP network) on wholesale level. Various alternative platforms / technologies will be able to utilise the new backhaul network (including the towers and the cabinets) to offer via their NGA access networks internet broadband services to end users. Wholesale access products will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.
- (37) **Step change:** The Lithuanian authorities confirmed that in line with paragraph (51) of the Broadband Guidelines the RAIN 3 measure will ensure a "step change" in that the new investments in the NGN backhaul infrastructure 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 rural areas and should also enable connections to the fibre broadband infrastructure for about 600 nodes, including approximately 180 new towers as well as related cabinets which will form part of the notified measure. The subsidized NGN infrastructure will thus also enable any NGA access network to connect and therefore cover the white NGA areas: fixed wireless access networks and also fixed access networks.

- (38) **Use of existing infrastructure:** The new RAIN 3 NGN backhaul infrastructure will cover only white NGN areas where no NGN backhaul infrastructure exists (i.e. backhaul infrastructure capable of supporting the deployment of NGA networks). The new RAIN 3 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 infrastructure in Lithuania.
- (39) 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 the relevant information on the websites of the Ministry of Transport and Communications²³, the Central Project Management Agency²⁴, PI²⁵ as well as on the relevant platform of the European Commission²⁶. 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 RAIN 3 planned physical infrastructure will be placed on the website of NRA as a part of the implementation of Directive 2014/61/EU.
- (40) **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. Providers of electronic communications networks and services will be able to use such wholesale access in order to connect end users via any NGA 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 or nodes/towers, 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.

²³ <http://www.sumin.lrv.lt>

²⁴ <http://www.esinvesticijos.lt>

²⁵ <https://www.placiajuostis.lt/>

²⁶ <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

- (41) **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 will be published by PI²⁷. 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 more competitive, 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 to the Communications Regulatory Authority of the Republic of Lithuania. Lithuania has confirmed that a new law which is planned to be adopted in the course of 2018 will ensure further competencies for the national regulator in the supervision of these wholesale access prices (see also recital (32)).
- (42) **Monitoring and claw-back mechanism:** The Lithuanian Law on Electronic Communications²⁸ 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. PI will not engage in any profit making operation of the network, but has to balance income and expenses. Any inadvertent surplus generated by PI through the operation of the network will be used for the maintenance of the network or improvement of broadband in rural areas. The Ministry of Transport and Communications of the Republic of Lithuania will regularly monitor PI and the proper implementation of the measure, including as regards wholesale access conditions.
- (43) **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.²⁹ 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.³⁰ As above mentioned (see paragraph (40) and (41)), PI will also published detailed information concerning wholesale-access conditions and prices.
- (44) **Reporting:** The Lithuanian authorities have committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589³¹. In line with paragraph 78(k) of the Broadband

²⁷ The prices for the services will be available on <https://www.placiajuostis.lt/lt/paslaugos>

²⁸ <https://www.e-tar.lt/portal/lt/legalAct/TAR.82D8168D3049/ZSBYjBkMuv>

²⁹ EC: <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>
Ministry of Transport and Communications: <http://www.sumin.lrv.lt>
Central Project Management Agency: <http://www.esinvesticijos.lt>

³⁰ PI: www.placiajuostis.lt

³¹ 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).

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 (43) 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.

- (45) **Language waiver:** By letter dated 15 June 2018, 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

- (46) 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.
- (47) 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 and be imputable to the State, 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.
- (48) **State resources and imputability:** 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.
- (49) **Selective economic advantage:** The measure attributes a selective economic advantage directly to PI as well as indirectly to electronic communication operators.³²
- (50) **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

³² See Broadband Guidelines, paras. 12 and 13.

part of the State administration.³³ The public operation of a broadband network is an economic activity in the meaning of Article 107(1) TFEU as the aid beneficiary will provide services on the overall electronic communications services market. Therefore, the measure confers a direct economic advantage to PI.

- (51) *Indirect beneficiaries*: The measure will enable third party electronic communications networks and services 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.
- (52) 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 other economic activities.³⁴ It does not concern general infrastructure (e.g. general civil engineering works regarding for example roads) which would be open on a non-discriminatory basis to all potential users, but it is limited to electronic communication operators.³⁵ The measure is therefore sector-specific. It is, moreover, territorially selective. It was set up with the aim of improving NGA broadband coverage only in selected underserved regions (white NGA/NGN areas) within Lithuania.
- (53) As concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the construction and operation of broadband networks is an economic activity conducted by commercial operators on the basis of private investments in the market. The market has even been liberalized in the past and a regulatory regime was set up in order to open the market for competition. Within this reference framework, the granting of aid – as under the notified measure – to some selected individual companies reduces the costs of those direct and indirect beneficiaries as compared to companies investing into broadband networks and services only on the basis of private funds.
- (54) The broadband network operators which operate purely on the basis of private funds and do not receive this aid are in a comparable factual and legal situation as the beneficiaries operating in Lithuania under the same technical, commercial and legal conditions in the field of broadband networks and

³³ 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, paragraphs 88 and 89 (ECLI identifier: ECLI:EU:T:2011:117).

³⁴ See also Judgment of the Court of 15 June 2006 Joined Cases C-393/04 and C-41/05 Air Liquide Industries Belgium [2006] ECR I-5293, paragraph 31.

³⁵ See also N 383/09 – Germany – Amendment of N 150/08 Broadband in the rural areas of Saxony. See also Commission Decision 2003/227/EC of 2 August 2002 on various measures and the State aid invested by Spain in "Terra Mítica SA", a theme park near Benidorm (Alicante) (OB L 91, 8.4.2003, p. 23—37).

services. There are no differences between the target areas and the rest of Lithuania which would call for a different treatment.

- (55) It is the very purpose of the measure to give - in line with national and European targets - an advantage to PI and the indirect beneficiaries in order to improve broadband network coverage in certain Lithuanian regions. There is no justification for the advantage resulting from the nature of the reference framework since the latter is the in principle economic activity relying on private investments in the field of broadband networks and services in Lithuania.
- (56) ***Distortion of competition:*** The markets for electronic communications networks and 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.
- (57) 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.³⁶
- (58) ***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.³⁷
- (59) ***Conclusion:*** In consideration of the above, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107 (1) 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

- (60) The Commission has assessed the compatibility of RAIN 3 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.

³⁶ See Broadband Guidelines, para. 14.

³⁷ See Broadband Guidelines, para. 15.

- (61) 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);³⁸
 - (f) negative effects must be limited (step change); and
 - (g) the aid measure must be transparent.
- (62) 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

- (63) 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. 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.
- (64) 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 within a country where affordable and competitive broadband services are on offer from areas where such services are not available.
- (65) The planned measure RAIN 3 complements the previous measures (RAIN 1 and 2, PRIP 1 and 2) 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 the provision of broadband services on the basis of NGN infrastructure directly as well as NGA networks indirectly, as presented in recitals (10) and (16) above.
- (66) Indeed, this scheme concerns specifically NGN "white areas" where no equivalent NGN broadband infrastructure (i.e. backhaul infrastructure capable of supporting the provision via NGA networks of broadband access services) currently exists and where such networks are not likely to be built within three years by private investors on commercial terms (see recital (26)). The

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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.

subsidised NGN infrastructure will be used exclusively to connect NGA white areas – areas where no NGA access infrastructure currently exists or is planned to be built within three years by private investors on commercial terms (absent the NGN infrastructure). Any operator will be able to connect to the subsidized NGN infrastructure via wholesale access, in order to connect an NGA white area with the NGA access infrastructure of its choice. As described above in recital (23), the Lithuanian authorities have identified 600 locations (NGA white areas) that could be connected to the new subsidised NGN infrastructure. 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

- (67) RAIN 3 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 such speeds 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.
- (68) As shown in paragraph (13), 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 infrastructure remains.
- (69) The measure RAIN 3 was designed with the objective to improve the NGA coverage in rural areas in Lithuania. RAIN 3 is expected to increase the NGA coverage in rural areas to 89.84%. With RAIN 3 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 ensure the connection of white NGA access areas (by private operators). The Lithuanian authorities have committed to ensure that the new RAIN 3 infrastructure will be built in white NGA/NGN-areas only. Any operators can connect their NGA access networks to the RAIN 3 infrastructure if they are capable of reliably providing speeds above 30 Mbps download. Such NGA access networks connected to RAIN 3 will only serve white NGA areas.

4.2.3. Appropriateness of State aid as a policy instrument

- (70) The Lithuanian authorities have explained that the essential problem in ensuring sufficient NGA / NGN coverage in rural areas in Lithuania is the lack of private investments into the necessary infrastructure (see also recital (15) 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.

- (71) 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 and 2 – is an appropriate instrument to achieve the desired objectives.

4.2.4. The aid has an incentive effect

- (72) 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.
- (73) 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 (see recital (26)). 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.
- (74) 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

- (75) The Lithuanian authorities have designed the RAIN 3 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:

- (76) As described in recitals (27) - (31) above, the Lithuanian authorities have organised a study, on the basis of which existing infrastructure was identified and maps were created in order to clearly identify the RAIN 3 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 following the latest public consultation, as described in recitals (27) - (31)).

- (77) The detailed mapping process performed via the Project study was validated via public consultation, in line with the requirements of the Broadband Guidelines. During the public consultation feedback was sought from all interested stakeholders, 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. In the public consultations 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 was published. The public consultation will remain 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 infrastructure. Additional public consultations regarding exact location of lines and towers will be held shortly before ordering the contractors (planned in November 2018).
- (78) The Lithuanian authorities confirmed in their notification that until the date of the notification no objections to the published list of target areas have been raised. 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 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 the minimum the necessary 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:

- (79) In line with footnote 96 to paragraph 78 (c) of the Broadband Guidelines, the Lithuanian authorities have chosen to deploy measure RAIN 3 similarly to the previous measures RAIN 1 and 2 as well as PRIP 1 and PRIP 2, 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.
- (80) The network will remain in public ownership. PI will ensure the deployment of the network by selecting appropriate private constructors via open tenders, and 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 RAIN 3 network will be carried out also by private operators selected by means of an open tender in line with EU procurement rules. As indicated above (see recital (21)), the contracts for the construction of the infrastructure and for the maintenance and support of the NGN backhaul infrastructure 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.
- (81) 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).

- (82) The Lithuanian authorities confirm that as in the previous RAIN/PRIP measures the following safeguards will continue to be respected by PI within the RAIN 3 project:
- (83) 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.
- (84) Secondly, the Lithuanian authorities have confirmed that PI shall limit its activity to maintain the passive infrastructure (with active elements) 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 the backhaul infrastructure.
- (85) 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).
- (86) 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.
- (87) 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:

- (88) With RAIN 3 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 also only concerned white NGN / NGA areas. The new infrastructure will only be deployed in further white NGN / NGA areas which are not covered by the previous approved measures.
- (89) 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 RAIN 3 infrastructure. Digital maps of underground spatial data infrastructure are made available by the NRA on the website <http://e-infrastruktura.lt/> (see recitals (27) and (39)). 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 RAIN 3 planned physical infrastructure will be placed in the website of NRA as a part of implementation of Directive 2014/61/EU (see recital (39)).

Wholesale access conditions and pricing:

- (90) As described above in recitals (40) - (41), PI will offer wholesale backhaul access to the subsidised NGN backhaul infrastructure to all interested operators in an open, transparent and non-discriminatory manner, respecting the principle of technological neutrality. Providers of electronic communications networks and services will be able to use such wholesale access in order to connect end users in white NGA areas to fixed or fixed wireless NGA networks which can provide on a reliable basis download speeds above 30 Mbps.
- (91) PI will not offer any retail services, but will be active only in selling wholesale access. In line with the requirements of the Broadband Guidelines (paragraphs 78 g) and h)), 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 or nodes/towers) will be ensured unlimited in time. Effective wholesale access to active infrastructure elements will be ensured for at least 7 years.
- (92) 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 will be published by PI. In line with the recommendations of paragraph 78 (h) of the Broadband Guidelines, the Lithuanian authorities ensure benchmarking against similar prices for wholesale access services provided in more competitive, urban areas and have also taken into consideration average retail prices in urban areas, in order to ensure the affordability of fast internet connections for the end-consumers. As described above in recital (41) and in line with the provisions of the Broadband Guidelines, the prices for wholesale access have been submitted to the Communications Regulatory Authority of the Republic of Lithuania. Furthermore, the Lithunaina authorities indicated that on the basis of a new law (adoption planned in the course of 2018) the NRA will receive further competencies to supervise the wholesale access prices, as recommended by the Broadband Guidelines³⁹.
- (93) PI's compliance with the access obligations will be closely monitored by the Lithuanian authorities and the technical opinions of the NRA will be sought in this respect, as recommended by the Broadband Guidelines.
- (94) In the light of this, the Commission therefore considers that the wholesale access requirements are in line with paragraphs 78(g) and (h) of the Broadband Guidelines.

³⁹ See Broadband Guidelines, para. 78 (g) and (h).

Monitoring and claw-back mechanism:

- (95) As explained in recital (42), 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 Transport and Communications 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 improvement 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:

- (96) 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 (44)). 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)

- (97) 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.
- (98) As described in recital (37) 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 rural areas and should enable connections to the broadband infrastructure for about 600 locations. 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

- (99) Concerning the transparency requirement as defined in the paragraph 78 (j) of the Broadband Guidelines, the Lithuanian authorities committed to publish all information relative to the notified aid measure on the websites of the Ministry of Transport and Communications⁴⁰, the Central Project Management Agency⁴¹, PI⁴² as well as on the relevant platform of the European Commission⁴³ (see recital (43)). The information will include 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 Lithuanian authorities committed to oblige the aid beneficiary PI 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. As above mentioned (see recital (41)), PI has also published detailed information concerning wholesale-access conditions and prices.⁴⁴
- (100) Regarding the reporting obligation the Lithuanian authorities committed to 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 (44)).

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

- (101) 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.
- (102) 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.
- (103) 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.
- (104) 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

⁴⁰ <http://www.sumin.lrv.lt>

⁴¹ <http://www.esinvesticijos.lt>

⁴² <https://www.placiajuostis.lt/>

⁴³ <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

⁴⁴ <https://www.placiajuostis.lt/lt/paslaugos>.

areas and, thus, is objectively justified to address the lack of availability of high speed broadband services in the targeted areas.

4.2.9. Conclusion

- (105) The Commission concludes that the RAIN 3 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.
- (106) The Commission notes that Lithuania exceptionally accepts the adoption of this Decision in English language.

5. DECISION

- (107) The Commission therefore finds that the notified measure RAIN 3 is compatible with Article 107 (3) (c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (108) 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

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION