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**Subject: State Aid SA.55742 (2019/N) – Czech Republic
Aid for the replacement of the frequency-dependent equipment for
broadcasting in the context of migration from the 700 MHz band**

Sir,

1. PROCEDURE

- (1) On 2 December 2016, the Czech authorities pre-notified a set of several measures including the one concerned by the present decision. On 18 November 2019, the Czech authorities decided to notify only one measure of the initial set of several measures, the measure concerned by the present decision. On 22 November 2019, the Commission asked for clarification. The Czech authorities replied by email of 27 November 2019.

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2. DESCRIPTION OF THE MEASURE

a. PURPOSE OF THE MEASURE

- (2) The notified measure (the Measure) is to support the replacement of the frequency-dependent equipment of terrestrial television networks.

b. CONTEXT OF THE MEASURE

- (3) The Measure takes place in the context of migration of terrestrial television services from the 700 MHz (694-790 MHz) band to the sub-700 MHz (470-694 MHz) band.

i. EUROPEAN SPECTRUM POLICY

- (4) Radio spectrum is a scarce public resource that is essential for some sectors and services, including television broadcasting and wireless broadband services. The radio spectrum is divided into frequency bands with conventional names designated by the International Telecommunications Union (ITU). Each band presents technical characteristics that suit only certain types of services. Frequency bands are therefore allocated only to a confined number of services. Therefore, their allocations may be limited, both in terms of number of users and of period of time.
- (5) Each country allocates the individual rights of use for radio frequencies. However, since spectrum is a non-tangible good that does not know barriers, its allocation and assignments to a particular service have to be coordinated at international level. The aim is to prevent cross-border interference. The international Geneva 2006 Agreement (GE06) regulates the use of the 470-790 MHz band for digital terrestrial television services. GE06 Agreement plans the frequency allotments and assignments in 118 countries, including Europe. GE06 Agreement also regulates the procedures for coordination among countries intending to modify the GE06 frequency plan. Cross-border coordination negotiations must take place in order to ensure that the modification of the frequency plan does not prevent the effective use of spectrum. These negotiations allow neighbouring countries to agree on a revised channels distribution plan.
- (6) Terrestrial television services could initially use the whole frequency band between 470 and 862 MHz. However, that frequency band presents technical characteristics which are of very high-value also for wireless broadband services. Consequently, terrestrial television services have progressively been squeezed in a narrower spectrum bandwidth.
- (7) The switch to more efficient television broadcasting technologies, namely the switch from analogue to digital technologies¹, resulted in the release of spectrum between 790-862 MHz (the 800 MHz band). Before the switch, the entire 800 MHz band was only allocated to terrestrial television services. As digital

¹ The Communication on the transition from analogue to digital broadcasting (from digital ‘switchover’ to analogue ‘switch-off’) of 17 September 2003 (COM/2003/0541 final) underlined the benefits of switching over to digital broadcasting. The Commission Recommendation of 28 October 2009 facilitating the release of the digital dividend in the European Union called for analogue broadcasting to be switched off by 1 January 2012 (OJ L 308, 24.11.2009, p. 24).

television services need less spectrum than analogue television services, the switch of technologies liberated spectrum that could also be used for other services.

- (8) In 2010, the Commission published a decision harmonising the technical conditions of use in the 800 MHz band for wireless broadband services.² In 2012, the European Parliament and Council decided that the 800 MHz band would be allocated solely for use by wireless broadband services as of January 2013.³ As a consequence, terrestrial television services migrated to the lower band, namely the 470-790 MHz band. Also in 2012, the World Radiocommunication Conference decided that the use of the 694-790 MHz band should be shared as of 2015 by broadcasting and wireless broadband services. Since then, the 470-790 MHz band is heavily used by both terrestrial television services and wireless broadband services.⁴ In 2015, the World Radiocommunication Conference finalised the international negotiations on technical and regulatory parameters for the use of the 700 MHz band for wireless broadband.
- (9) The Commission recognised in its Digital Single Market Strategy the importance of Internet and digital technologies and the opportunities they bring to the European Union in terms of innovation, growth and jobs.⁵ The Commission also acknowledged that radio spectrum is a vital building block for the deployment of wireless broadband services. More recently, the Commission underlined the necessity of having a suitable amount of spectrum for the development of wireless broadband services like 5G.⁶ The 5G Action Plan mentions the 694-790 MHz band as a pioneer band that is critical for 5G success.
- (10) In this context, the European Parliament and the Council, after a proposal in 2016⁷, decided in May 2017 that the 700 MHz band will be allocated exclusively to wireless broadband services as of June 2020.⁸ The 2017 European Parliament and Council Decision (the EPaC Decision) recognises that the spectrum in the 700 MHz band is of high value to wireless broadband services as it provides both additional capacity and universal coverage. It is hence very valuable for difficult coverage areas like rural, mountainous and insular areas as well as indoor uses.
- (11) Consequently, terrestrial television services must liberate the frequencies they currently use in the 700 MHz band and move to the lower band, the sub-700 MHz

² Commission Decision of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union (OJ L 117, 11.5.2010, p. 95).

³ Decision 243/2012 of the European Parliament and Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

⁴ Audio programme making and special events (PMSE) equipment also use that frequency band, but to a lower extent.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, 6.5.2015 (COM (2015) 192 final).

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 5G for Europe: An Action Plan, 14.9.2016 (SWD(2016) 306 final).

⁷ Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union, 2.2.2016 (COM/2016/043 final).

⁸ Decision 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union (OJ L 138, 25.5.2017, p. 131).

band (470-694 MHz band). However, the EPaC Decision also ensures that terrestrial television services have enough spectrum available until at least 2030.⁹ Moreover, the EPaC Decision states that the scope of and mechanism for possible compensation for completing the transition in spectrum use, in particular for end-users, should be analysed in accordance with the relevant national provisions and should be consistent with Article 107 TFEU.¹⁰

ii. SPECTRUM POLICY IN THE CZECH REPUBLIC

- (12) The Czech Republic approved the launching of digital television broadcasting in 2004 and the transition from analogue to digital took place between 2008 and 2012. In 2010, the Czech Republic published an interim report¹¹ on the state of digitalisation of television and radio broadcasting. The interim report already addressed the question of release of the 700 MHz band from digital terrestrial television.
- (13) Between 2013 and 2015, the Czech Republic organised a wide public discussion about the release of the 700 MHz band. On 20 July 2016, the Czech Republic adopted the Strategy for the Development of Terrestrial Digital Television Broadcasting.¹² It states the Czech Republic's views with regard to terrestrial television broadcasting development and mentions the possibility for compensation costs relating to the release of the 700 MHz band.
- (14) On 19 July 2017, the Czech Republic adopted an act laying down *inter alia*, the conditions under which the costs resulting from the change of frequencies would be reimbursed.¹³ The act regulates both privately and publicly managed digital terrestrial television nationwide networks.
- (15) On 29 August 2018, the Czech Republic adopted the Technical Plan for the Transition of digital terrestrial television from DVB-T standard to DVB-T2 standard.¹⁴ The Technical Plan lays down the conditions for releasing the 700 MHz band from terrestrial television services.
- (16) In parallel, the Czech Republic and its neighbouring countries undertook coordination negotiation on the frequency channels distribution. The revised agreements were signed on 13 September 2017 with Germany and Poland, 30 November 2017 with Slovakia, the 12 December 2017 with Hungary and in 28 December 2017 with Austria.

⁹ Article 4 of the EPaC Decision states that "Member States shall ensure availability at least until 2030 of the 470-694 MHz frequency band for the terrestrial provision of broadcasting services (...)".

¹⁰ Article 6 of the EPaC Decision states that "Member States may, where appropriate and in accordance with Union law, ensure that adequate compensation for the direct cost, in particular for end-users, of the migration or reallocation of spectrum use is provided (...)".

¹¹ Available here: https://www.ctu.cz/cs/download/digitalni_vysilani/prubezna_zprava_tpp_06-2010.pdf

¹² Resolution of the Government of the Czech Republic n°648 of 20 July 2016.

¹³ Act of 19 July 2017 amending Act n°127/2005 Sb., on electronic communications and amending certain related acts (the Electronic Communications Act), as amended, and Act n°483/1991 Sb., on the Czech Television, as amended.

¹⁴ Government Regulation of 29 August 2018, on the Technical plan for the transition of digital terrestrial television from DVB-T standard to DVB-T2 standard (Government Regulation on the Technical Plan for Transition to DVB-T2 standard).

iii. MARKET DESCRIPTION

- (17) The Czech broadcasting market is currently served by four technologies: terrestrial, cable, satellite and Internet Protocol Television (IPTV). 60% of the population watch television content via the terrestrial platform. More precisely, 46% of the households rely only on terrestrial television and do not use any other television platform. Satellite television is used by almost 26% of the households. Cable television is used by 20% of the households. IPTV is used by 4% of the households.¹⁵
- (18) With regard to terrestrial television, there are four entities that hold a right to use frequencies that are necessary for managing the four nationwide terrestrial television multiplexes.¹⁶

c. DETAILED DESCRIPTION OF THE MEASURE

- (19) The Measure consists of aid for adapting some elements of the terrestrial television transmission equipment to the new frequency channels.
- (20) The Measure excludes any other compensation measure (including aid for transitional broadcasting networks and upgrade of any technologies).

Objective of the Measure

- (21) The Measure aims at allowing a swift and timely release of the 700 MHz. The Measure aims at compensating the costs occurred for adapting the terrestrial television transmission equipment to the new frequency channels distributed in the context of the release of the 700 MHz band. Without the replacement of the equipment, the terrestrial broadcasting transmission on the new frequency channels would no longer be possible. The Measure incentivises the operators to change their frequency related equipment as early as possible in order to ensure a smooth migration of the terrestrial television services without interruption. The Measure allows the Czech Republic to respect the deadlines set by the EPaC Decision for gradually changing the equipment.
- (22) The 700 MHz band frequency channels used represent in the Czech Republic more than 30% of the total frequency channels used for digital terrestrial television.¹⁷ That implies two consequences:
- (a) that the digital terrestrial television services using the 700 MHz band frequency channels will be given sub-700 MHz band frequency channels, and
 - (b) that the current distribution of the sub-700 MHz band frequency channels will be reviewed.

¹⁵ Figures from the Study Arthur D Little of 2017 submitted by the Czech authorities, p.10.

¹⁶ The four entities are Czech Television, Ceske Radiokomunikace, Czech Digital Group (100% owned by Ceske Radiokomunikace) and Digital Broadcasting. The current licenses' validity ends between 2021 and 2024.

¹⁷ *Economic and Social Impact of Repurposing the 700 MHz band for Wireless Broadband Services in the European Union*, Final Report, a study prepared for the European Commission by LS Telecom AF and Valdani Vicari & Associari, 2016.

Legal basis

- (23) The Measure rests *inter alia* on the following texts:
- (a) Resolution of the Government of the Czech Republic n°648 of 20 July 2016.
 - (b) The Digital Amendment of 19 July 2017, amending Act N° 127/2005 on electronic communications and amending certain related acts (the Electronic Communications Act), as amended, and Act n°483/1991 Sb., on the Czech Television, as amended.
 - (c) The Electronic Communications Act No 127/2005.
 - (d) The Technical Plan for Terrestrial Television, prepared by the Czech Telecommunication Office together with Ministry of Industry and Trade and approved by the Czech government on 29 August 2018 and issued as Government Ordinance No. 199/2018 Coll.

Origin of the resources

- (24) The Radio-communication account will finance the measure. The Radio-communication account is financed by fees paid by the authorised users of radio frequencies. The Government decides by regulation what part of the fees should finance the Radio-communication account. The Radio-communication account's resources are held with the bank. The interest of the account represents receipts to the State budget and the costs relating to the maintenance of the account represent an expenditure of the State budget.
- (25) The use of the available funds is decided by the Czech authorities and according to the law. The Czech Telecommunication Office (CTO) administers the Radio-communication account. The CTO is the national regulatory authority for electronic communications and postal services. The CTO must do a yearly report on the state of the account.

Decision-making procedure

- (26) The mechanism for the application, assessment and payment of the compensation of costs from the Radio-communication account is regulated by Section 27 of the Electronic Communications Act 127/2005.
- (27) The Czech Telecommunication Office (CTO) will review the applications. The CTO will assess the sincerity of the costs after they are completed and duly documented. The CTO will perform technical inspection of the equipment.

Beneficiaries

- (28) Compensation will only be granted to entities that hold a licence for using frequency channels necessary to manage a nationwide terrestrial television multiplex (see recital (18) above). The national legislation foresees that authorised users of radio frequencies may benefit from the reimbursement of costs expended because of harmonisation with, *inter alia*, European Union

obligations.¹⁸ In the case at hand, the costs result from the implementation of the European Union objective to liberate the 700 MHz band for wireless broadband services (see recital (11) above).

Eligible costs

- (29) The Measure aims at compensating costs of the technical components as well as the related work, as follows:
- (a) Combiners;
 - (b) Filters;
 - (c) Antenna systems;
 - (d) Works related to adjustment, installation, setting and measurement.
- (30) These costs do not imply any upgrade of technology and are not aimed at compensating costs for parallel broadcasting transmission. Besides, the Measure will not cover the overhead costs nor costs of capital (WACC).

Form, budget and intensity of aid

- (31) The aid will take the form of direct grants.
- (32) The Czech authorities have provided a detailed breakdown of the equipment that must be replaced, their average unit costs and the total cost. The total cost depends on:
- (a) The power of the transmitter. The equipment is more expensive for high power transmitters.
 - (b) For each category of equipment, the number of transmitters that have the equipment that must be changed.
- (33) The average unit costs have been defined on the basis of invoices provided by goods and services providers. The final amount of compensation will be checked against *ex post* invoices provided by the aid applicants to the granting authority.
- (34) The Czech authorities estimate the total budget of the Measure to amount to CZK 78,4 million (approx. EUR 3,1 million). Including the [...]*, the total budget for the change of the frequency-dependent equipment amounts to CZK [50-100]* million (approx. EUR [0-10]* million).
- (35) Consequently, the Measure will support 86% of the total costs of replacing the frequency-dependent equipment.

Cumulation, monitoring and overcompensation

- (36) The eligible costs cannot benefit from any other aid scheme.

¹⁸ Sections (19) and (27) of the Electronic Communications Act 127/2005.

- (37) The Czech Telecommunication office will control that the costs for which compensation is sought have efficiently and accurately been spent.

Duration

- (38) Costs incurred as from 20 June 2016 (date of the government decree) until June 2020 may claim compensation, provided they respect the national switch-off timetable. Reimbursement can be claimed until 31 December 2020.¹⁹

3. STAND-STILL OBLIGATION

- (39) The Czech authorities have confirmed that no aid has neither been awarded nor handed out before the Commission's approval.²⁰

4. ASSESSMENT OF THE MEASURE

a. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107 (1) OF THE TFEU

- (40) The Commission has examined whether the Measure in question can be qualified as State aid within the meaning of Article 107(1) of the Treaty, which provides that "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".
- (41) Consequently, classification as 'State aid' within the meaning of Article 107(1) TFEU requires that all the conditions set out in that provision are fulfilled²¹, namely:
- (a) There must be intervention by the State or through State resources, which is imputable to the State, for an economic activity.
 - (b) The intervention must confer a selective advantage on the recipient.
 - (c) The intervention must be liable to affect trade between Member States.
 - (d) The intervention must distort or threaten to distort competition.

i. STATE RESOURCES AND IMPUTABILITY

- (42) Broadcasting services constitutes an economic activity.²² In the Czech Republic, the Radio-communication account will reimburse some costs resulting from that activity. The Radio-communication account's resources stem from a portion of the fees paid for the right to use the spectrum frequencies. However, the fact that

¹⁹ This final deadline corresponds to the possibility for the aid applicants to submit their claims within 6 months after incurring the costs; if they incur the costs on 30 June 2020, they can submit their claim until 31 December 2020.

²⁰ This is also stated in paragraph II, 1. c) of the Government Resolution of 20 July 2016.

²¹ Judgment of 21 December 2016, *Commission v Hansestadt Lübeck*, C-524/14 P, EU:C:2016:971, paragraph 40.

²² Judgment of 1 July 2010, *M6 and TFI v Commission*, T-568/08 and T-573/08, ECLI:EU:T:2010:272, paragraph 123.

the funds come from the right holders does not exclude the scheme from the scope of Article 107(1) of TFEU.²³ Indeed, the use of the resources are imputable to the State in the case at hand, for the following reasons:

- (a) The fees paid by the right holders are charged by the national authorities;
 - (b) The amount of resources that must contribute to the account is decided by the national authorities;
 - (c) The Czech Telecommunication Office (CTO) opens and administers the Radio-communication account. The CTO must yearly report on the administration of the account.
 - (d) The costs and revenues resulting from the deposit of the account are attached to the State budget.
- (43) In conclusion, the support constitutes a State intervention that falls within the meaning of Article 107(1) of the TFEU.

ii. ECONOMIC ADVANTAGE

- (44) In order to qualify as State aid under article 107(1) TFEU, the measure has to grant an advantage that a beneficiary would not have received under normal market conditions, in the absence of State intervention.²⁴ The advantage may take the form of a positive financial support but also any measure that mitigates the charges which are normally included in the budget of an undertaking.²⁵ Within the scope of charges which are normally included in the budget of an undertaking there are costs of undertakings arising from regulatory measures.²⁶
- (45) The Commission considers that the Measure provides relief of a typical normal regulatory cost, for the reasons stated below.
- (46) The aid is granted to the terrestrial television platform operators holding a license allowing them to use the 470-790 MHz band. They were initially entitled to use the whole band until 2021-2024 (see recital (18) above). Therefore, the obligation to vacate the 700 MHz band occurs before the end of the period of validity of the licenses.
- (47) However, the possibility of being obliged to liberate frequencies or to undergo a modification of the licences, because of international coordination, before expiry of the right is not an occurrence that could have been unknown by the right holders. Indeed, the terrestrial television platform operators had to switch from the analogue to the digital technologies by the end of 2012 and already in 2010, the Czech Regulator mentioned the future question of releasing the 700 MHz

²³ Judgment of 22 March 1977, *Steinike & Weinlig v Federal Republic of Germany*, C 78/76, ECLI:EU:C:1977:52, paragraph 22.

²⁴ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, para. 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, para. 41.

²⁵ Judgment of 26 April 2018, *Cellnex Telecom SA and Telecom Castilla-La Mancha SA v Commission*, C-91/17 and C-92/17 P, ECLI:EU:C:2018:284, para. 111.

²⁶ Judgment of 30 June 2016, *Belgique/Commission*, C-270/15 P, EUCLI:C:2016:489, para. 35.

band (see recital (12) above). Moreover, in 2012, discussion at the international level had started on the new use of the 700 MHz band by mobile services and the debate was launched in 2013 in the Czech Republic (see recital (13) above). The obligation to vacate the 700 MHz band to mobile services is now enshrined in the 2017 EPaC Decision.

- (48) Pursuant to Article 288 TFEU, European Union Decisions are binding in their entirety on their addressees, which are in the present case the Member States. Therefore, Member States are obliged to take the necessary steps to liberate, by June 2020, the 700 MHz band from terrestrial broadcasting services. As a consequence, recipients of the aid would, at some point, be obliged to liberate the 700 MHz band and to bear the costs themselves in the absence of the Measure.
- (49) In that context, the Commission considers that operators are aware that they may be required to liberate frequencies before expiry of their rights. The Measure relieves these undertakings from regulatory costs that should be inherent to their business costs while other operators have to bear typical regulatory costs by themselves.
- (50) The Commission concludes that the Measure confers an economic advantage within the meaning of Article 107(1) TFEU to the terrestrial television platform operators holding a license.

iii. SELECTIVITY OF THE ADVANTAGE

- (51) In accordance with Article 107(1) TFEU, to be considered State aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods.
- (52) The aid will be granted to entities which are holding a license allowing them to manage a nationwide terrestrial television network. The beneficiaries of the Measure are undertakings in the sector of broadcasting transmission services, which operate via the digital terrestrial technology as compared to competing operators, such as satellite, cable or IPTV.
- (53) The EPaC Decision sets out a common schedule for the repurposing of the 700 MHz band for mobile services by June 2020 and asks Member States to ensure the availability of the 470-694 MHz frequency band for terrestrial provision of broadcasting services.
- (54) In *Belgium v Commission*²⁷, the ECJ compared the costs of operators in the bovine sector for BSE screening tests with costs which undertakings in other sectors are also obliged to perform to place their products on the market. The Court stated: "*It is clear [...] that the situation of operators in the bovine sector was implicitly but necessarily compared to that of all the undertakings which, like them, are subject to inspections which they are required to perform before placing their products on the market*". It furthermore confirmed that "*the tests which [the operators] were required to perform before placing their products on the market or trading in them were provided free of charge, whereas undertakings in other sectors were unable to avail themselves of that possibility*".

²⁷ Judgment of 30 June 2016, *Belgium v. Commission*, C-270/15 P, ECLI:EU:C:2016:489, para.50.

The Court confirmed that even if BSE screening tests were specifically designed for the bovine sector which differed from tests that other sectors had to bear, the relief of these costs were regulatory costs that are typical for any producer of goods that are subject to tests.

- (55) The Measure at hand allows terrestrial television network operators to fulfil the obligations imposed on them by law, meaning to migrate from the 700 MHz band. In the absence of the Measure, the terrestrial television network operators would also be obliged, at some point in time, due to the entry into force of the EPaC Decision, to fulfil the obligation of migrating from the 700 MHz band and therefore to bear all the costs associated. Moreover, the scheme ensures terrestrial television network operators to carry on with their terrestrial television transmission activities with continuity.
- (56) Although it appears that the economic operators that are directly affected by the obligation to liberate the 700 MHz band from terrestrial broadcasting services are the terrestrial television platform operators, also other economic operators offering broadcasting services with other technologies are subject to comparable regulatory constraints. Satellite operators for example are also subject to spectrum legislation and the obligation to obtain a frequency assignment and possibly re-assignment. Accordingly, the Commission concludes that the Measure is selective.

iv. DISTORTION OF COMPETITION AND EFFECT ON INTRA-UNION TRADE

- (57) State measures fall within the scope of Article 107(1) of the Treaty in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case law of Union Courts, the concept of “effect on trade between Member States” is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that “*In particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid*”.²⁸
- (58) As explained above, the Measure favours the terrestrial television platform operators. The beneficiaries of the Measure compete with other alternative providers (satellite, cable, IPTV) and they are active at international level. The Commission considers that the television services sector is open to competition within the EU.²⁹
- (59) Therefore, the Measure may result in distortions of competition among platform operators and would have the potential to distort competition in the internal market and to have an effect on intra-Union trade.

²⁸ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

²⁹ Commission decision of 24 January 2007, on the State aid implemented by the Italian Republic for the subsidised purchase of digital decoders, para. 113.

v. CONCLUSION ON THE EXISTENCE OF AID

- (60) On account of the preceding considerations, the Measure fulfils the criteria laid down in Article 107(1) of the Treaty and constitutes State aid within the meaning of that Article.

b. COMPATIBILITY OF THE AID

- (61) With regard to the notified Measure, the Commission acknowledges that the existing frameworks and guidelines interpreting Article 107(3) of the TFEU cannot be applied for assessing its compatibility with the internal market. The Commission therefore considers that the compatibility assessment needs to be based directly on Article 107(3)(c) of the TFEU.
- (62) Article 107(3)(c) 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” may be considered compatible with the internal market.
- (63) In order for the aid to be compatible with the internal market under Article 107(3)(c), the Commission balances the positive and negative effects of the aid. In applying the balancing test, the Commission assesses the following questions:
- 1) Is the aid measure aimed at a well-defined objective of common interest?
 - 2) Is the aid well designed to deliver the objective of common interest (i.e. does the proposed aid address a market failure or other objective)? In particular:
 - a) Is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?
 - b) Is the aid necessary, is there an incentive effect, i.e. does the aid change the behaviour of the recipient as compared to the situation without aid?
 - c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - 3) Are the distortions of competition and effect on trade limited so that the overall balance is positive?
 - 4) Does the aid measure comply with the transparency obligations?

i. COMPATIBILITY OF THE MEASURE

Aid aimed at a well-defined objective of common interest

- (64) In its Communication of 6 May 2015 entitled 'A Digital Single Market Strategy for Europe'³⁰, the Commission recognised the importance of the 700 MHz frequency band for ensuring the provision of high quality broadband services. It further stressed the need for a coordinated release of that frequency band while ensuring the specific needs of broadcasting services distribution.
- (65) On 14 September 2016, the Commission adopted the Gigabit Communication³¹, which states the objective of 5G coverage of all urban areas and all major terrestrial transport paths for 2025. In order to achieve this goal, the Commission acknowledged the necessity of rapid availability of new spectrum, like the 700 MHz band for 5G coverage in rural areas and indoor use in cities.
- (66) Effective and coordinated management of spectrum has been deemed a condition for the industrial shift to 5G, which will create a favourable environment for electronic communications networks and services to develop, thus maximising the growth potential of the digital economy. In that context, it is considered that the 470-790 MHz frequency band represents an opportunity for the development of those new digital services, but it is currently shared across the Union between digital terrestrial television services and mobile services.
- (67) The EPaC Decision provides a coordinated approach for the efficient use of the 470-794 MHz frequency band. As described above (see recital (10) above), the objective of the Decision is to vacate the 700 MHz band from the terrestrial television services and PMSE, which will migrate to the sub-700 MHz band, in order to allow the use of the 700 MHz band by mobile services.
- (68) The EPaC Decision names also another objective of the Union. It states in recital 20 that Member States should ensure continuity for the television broadcasting services that vacate the 700 MHz band. More specifically, Article 4 of that decision states that "Member States shall ensure availability at least until 2030 of the 470-694 MHz frequency band for the terrestrial provision of broadcasting services".
- (69) The Measure at hand has the same objective as the EPaC Decision. It is therefore aimed at a well-defined objective of common interest.

Aid well designed to deliver the objective of common interest

Market failure

- (70) Only where market forces alone, in the absence of aid, would not be able to reach an efficient outcome, a market failure can be considered to exist. In this case,

³⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Single Market Strategy for Europe', 6.5.2015, COM(2015) 192 final.

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society', 14.9.2016, COM(2016) 587 final.

State intervention may correct the market failure and allow reaching the common interest goal.

- (71) To assess whether the Measure aims to achieve the objective of common interest, the market failures hampering that achievement must be identified. With regard to spectrum use, a market failure may arise, for instance, where market players are unwilling to agree on a common timetable to free the frequencies (coordination problem). It may also arise where market players do not take into account the positive effects of liberation of the frequency band for society as a whole, because they do not have the right incentives to do so (positive externalities).
- (72) State intervention is necessary in the present case, as the allocation and use of terrestrial frequencies is not subject to market forces but fully regulated. The terrestrial television platform operators were entitled to use the 700 MHz band until 2021-2024, and Member States are not obliged to switch before June 2020 (or even 2022 in some circumstances). Furthermore, the terrestrial television platform operators have no market incentive to liberate, as such, a certain part of the spectrum and move to another part of it for the benefit of other operators. Migration as such entails costs for the former but does not offer new possibilities for their activities. In view of this, the terrestrial television platform operators have neither a legal nor a commercial incentive to give up the respective band before June 2020.
- (73) Consequently, the Commission considers that market failure exists in the present case as market players would not enter into the planned migration project by themselves. Market players are not even entitled to arrange such reallocation on their own initiative. It is even possible, on the contrary, that they rather try to block that process by initiating court procedures.

Appropriate instrument

- (74) The Measure enables the smooth and coordinated release of the 700 MHz band. It ensures the agreement of the right holders to return their licences in exchange for new licences and compensation of the costs directly resulting from the vacation of the 700 MHz band.
- (75) Right holders are in principle entitled to use their licences as agreed at the moment of their award until their end of validity (see recital (18) above). The Measure constitutes a trade-off between right holders and the State limited only to the technical impacts suffered by right holders. It is only aiming at ensuring the status quo with regard to the terrestrial television platform operators' activities.
- (76) The EPaC Decision also alludes to the possibility of Member States offering compensation of the direct cost of migration and reallocation (see recital (11) above).
- (77) In the proposed Measure, only the direct costs resulting from the vacation of the 700 MHz band would be compensated. The Measure is therefore appropriate.

Incentive effect

- (78) The Commission has acknowledged that a measure like the one under investigation accelerates the migration and conversion of the terrestrial television

transmission from the 700 MHz band to the sub-700 MHz frequency band.³² There is no legal obligation for right holders to give up their frequency licences before Czech Republic is obliged by the EPaC Decision to have the 700 MHz band liberated for use by mobile services by June 2020. The Measure aims at ensuring that that liberation will have been completed ideally before June 2020 without interruption of the services and that it will not be necessary to ask for an extension, which the EPaC Decision allows under certain circumstances.

- (79) The terrestrial television platform operators have no commercial incentive to liberate a certain part of the spectrum and move to another part of it for the benefit of mobile telephony operators. The migration as such does not provide any technical improvement that could incentivise them to complete the transition on their own.
- (80) It is important for the European Union that Member States engage with the relevant undertakings, in order to allow the EU wide simultaneous introduction of 5G mobile services from 2020. In order to reach the objective, Member States need to be able to start the assignment of 5G licences; they need to be able to give reliable dates to the telecommunication operators, to which they sell the licences. Delays in the availability of the frequencies may lead to damages claims or at least delayed payments of the licence fees.
- (81) There is also an interest in the joint smooth transition because frequency assignments have to be coordinated between neighbouring countries in order to avoid conflicting programme transmissions. Delays in one country could thus block migration in other Member States.
- (82) Moreover, with the voluntary and compensated release of the 700 MHz band, terrestrial television platform operators allow starting the rollout of 5G mobile networks already before the date where it would have been obligatory for Member States to mandate such a migration. The shift to 5G will significantly increase the growth potential of the digital economy and for the development of new digital services. The increasing economic and social importance of the digital economy makes enhanced wireless mobile network capacity imperative.³³ The Commission has underlined the importance of rapid availability of the 700 MHz band.
- (83) In light of the above, it can be concluded that the Measure will ensure the continuous functioning of the terrestrial television services.
- (84) The fact that the costs spent before the approval of the Measure are eligible does not contradict that conclusion. The Commission must assess the context in which the eligible costs were spent, including the communication of the national authorities.³⁴

³² Commission Decision SA.47258 – Germany – Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band, 12.12.2018 and SA.51080 – Spain - Audiovisual broadcasting transmission aid for audiovisual service providers, 02.8.2019.

³³ See recitals 9 and 10 of the EPaC Decision.

³⁴ Judgment of 14 May 2002, *Graphischer Maschinenbau v Commission*, T-126/99, ECLI:EU:T:2002:116, paragraph 44.

- (85) The first national legislative text that mentioned the plan to compensate the licenses holders for their cost resulting from the liberation of the 700 MHz band dates from 20 July 2016. The Czech plan frames with the international recommendations (see recital (8) above) that were subsequently reflected in the European Digital Market Strategy (see recital (9) above) and eventually embodied in the 2017 EPaC Decision (see recital (10) above). The Czech plan announced the State's intention to compensate for the migration costs and incentivised thereby the operators to start the necessary works and acquisitions. The text also recalled the necessity for the Czech Republic to comply with the stand-still obligation (see (38) above). The national frequency release roadmap set up in the national technical plan sets deadlines that must be met, starting in 2017. In accordance with the national technical plan (see recital (23) above), the beneficiaries have already started to change the frequency equipment, in order to ensure that the migration is completed by June 2020 without interruption of the services. Indeed, the early start of the migration as of July 2016 guarantees a smooth progress of the vacation of the 700 MHz band given the fact that it is nationwide networks that must be adapted. Costs incurred as of 20 July 2016 are considered having an incentive effect in the context of the Measure.
- (86) In conclusion, the Commission finds that the Measure, in the form of an aid for the direct costs resulting from the migration of frequency, is an appropriate instrument to vacate the 700 MHz band and has an incentive effect.

Proportionality

- (87) The aid is limited to cover part of the direct costs that are necessary for adapting the technical equipment needed for completing the frequency conversion. The Czech Republic demonstrated that the aid amounts are based on market prices, for some of them resulting from the costs that have already been occurred, and are below the total amount of the costs incurred. The aid amount actually granted will be checked against invoices and inspection will be organised. That guarantees that over-compensation is excluded. No other cost that is not directly linked to implementation of the frequency shift will be compensated.
- (88) Hence, the Commission finds that the Measure is proportionate to the objective pursued.

Limited negative impacts

- (89) Compensation will only be granted for part of the direct costs strictly necessary for the implementation of the objective of the liberation of the 700 MHz band by terrestrial television services in the Czech Republic. The other broadcasting technologies (IPTV, cable or satellite) are not as such affected by the decision taken by the Council and Parliament to move terrestrial television service providers out of a certain transmission corridor which they currently occupy. Thus, only that technology is affected, while Member States agreed at the same time that it should still be maintained. In the absence of over-compensation, the operators which are active in several Member States do not benefit from funding that would allow them to strengthen their financial position with regard to activities in other Member States.
- (90) The Measure does not lead to a technology change; so it will not lead to an improvement of the quality of the terrestrial television signal and its competitive

position in comparison with other technology. The aim of the Measure is not to offer additional financial means to the normal operation of terrestrial television service providers. It is just covering part of the costs which arise due to State measures reorganising the spectrum. The Measure maintains the status quo ante.

- (91) Terrestrial television service providers are the only companies that can effectively support the objective of freeing the 700 MHz band in favour of mobile communications. They are the only operators that have frequency usage rights in the relevant frequency range.
- (92) Moreover, the proposed scheme treats equally all firms which are affected by the planned liberation of that band. It does not introduce distinctions between operators which would not be justified by their respective characteristics. This is unlike the context of the switch from analogue to digital television which affected also the competing transmission technologies of cable and satellite.³⁵ As a consequence, the competitive balance between the various platform operators is not affected to a degree that would not be justified by the objectives pursued by the EPaC Decision.
- (93) Accordingly, there is no negative impact on trading conditions contrary to the common interest.

Transparency

- (94) The Czech authorities have committed to publish the text of the Measure as well as the information related to the beneficiaries of any aid that exceeds EUR 500 000. Therefore, the Measure complies with the transparency requirements.

5. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe

³⁵ For that reason, the Commission had found it a discriminating violation of the principle of technological neutrality that only digital terrestrial television and not also cable or satellite transmission came into the benefit of support for simulcasting (Commission decision of 9 November 2005 in case C25/2004, DVB-T Berlin-Brandenburg, confirmed by the Court of Justice in judgment of 15 September 2011, Case C-544/09 *Germany v Commission*).

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Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President