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**Subject: State Aid SA.63098 (2022/N) – Lithuania
Modification of the measure “Development of Next Generation
Access Infrastructure – RAIN 3”**

Excellency,

1. PROCEDURE

- (1) Following pre-notification on 14 May 2021, ensuing discussions and further information exchanges between the Lithuanian authorities and the European Commission (the “Commission”), on 12 September 2022 the Lithuanian authorities notified the Commission of a planned amendment to the authorised aid measure “*Development of Next Generation Access Infrastructure – RAIN 3*” (the “original measure”). The original measure was approved by the Commission by decision of 12 October 2018 in case SA.49614¹ (“the 2018 decision”).
- (2) On 4 July 2022, Lithuania exceptionally agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 3 of Regulation No 1/1958,² and to have this decision adopted and notified in English.

¹ Commission Decision of 12 October 2018 C(2018) 6613 final, SA.49614 (2018/N) – Lithuania, Development of Next Generation Access Infrastructure – RAIN 3 (OJ C 424, 23.11.2018); available at: https://ec.europa.eu/competition/state_aid/cases/276342/276342_2023529_137_2.pdf.

² Regulation No 1/1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Mr. Gabrielius Landsbergis
Užsienio Reikalų Ministerija
J. Tumo-Vaižganto g. 2
LT-01511 Vilnius
LIETUVA/LITHUANIA

2. DESCRIPTION OF THE MEASURE

2.1. The original measure³

- (3) The original measure is a national measure that supports the deployment of Next Generation Network (“NGN”) backhaul⁴ infrastructure⁵ in Lithuania through the direct allocation of State funds to the state-owned network operator “*Plačiajuostis internetas*” (“PI”).
- (4) PI operates the supported NGN backhaul infrastructure and offers open, effective, comprehensive and non-discriminatory wholesale access to that backhaul infrastructure to electronic communications operators that use the access for connecting their access networks for the purposes of providing broadband retail services to end users with reliable download speeds of at least 30 Mbps. The supported NGN backhaul infrastructure is expected to facilitate the deployment of Next Generation Access (“NGA”) networks by other operators, using their own private funds, in under-served rural areas. The original measure thus aims to foster the private deployment of NGA networks via the supported deployment of an NGN backhaul infrastructure.
- (5) The supported NGN backhaul infrastructure was planned to consist of active⁶ and passive network elements suitable for connecting both fixed and fixed wireless access (“FWA”) networks. The Lithuanian authorities had identified approximately 600 NGA white areas⁷. Among those 600 areas, 420 had existing nodes and infrastructure that could be reused, such as cabinets, optical distribution frames and others. Therefore, for these 420 areas, the Lithuanian authorities planned to deploy only optical fibre cable backhaul infrastructure and reuse the existing infrastructure and nodes. For the remaining 180 areas without such reusable existing infrastructure, the Lithuanian authorities planned to build also electronic communications towers and cabinets. At the time of notification of the present modification of the original measure, although deployment of the optical fibre cable backhaul infrastructure is well underway in order to connect the approximately 600 NGA white target areas⁸, the deployment of the electronic

³ Further details on the design and functioning of the original measure are contained at recitals (10)-(45) of the 2018 Decision.

⁴ Backhaul networks within the meaning of the original measure comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

⁵ The NGN backhaul infrastructure consists of (i) fibre backhaul networks and (ii) electronic communications towers that also contain cabinets (see recital (22) of the 2018 decision).

⁶ The term ‘active elements’ within the meaning of the original measure covers only core/aggregation network elements (routers, switches, etc.) that are needed for the proper operation of the infrastructure that enable the provision of wholesale data transmission services, but not equipment that is needed to activate end-user services (such as base stations, access points or similar).

⁷ Pursuant to recital (75) of the 2013 Broadband Guidelines (see recital (27) below and footnote 16), NGA white areas are areas “[...] where NGA networks do not at present exist and where they are not likely to be built within 3 years [...] by private investors, [...]”.

⁸ At the time of notification of the present modification, 1 092 km out of 1 200 planned km of optical fibre cable backhaul infrastructure have been deployed. The remaining 108 km are expected to be completed by the end of October 2022.

communications towers and cabinets in the 180 NGA white areas without reusable existing infrastructure has not yet begun.

- (6) The supported NGN backhaul infrastructure is owned by the Lithuanian State. All construction works, as well as the maintenance of the supported NGN backhaul infrastructure, have to be carried out by companies that have been selected for this purpose by means of open tender procedures in line with the applicable EU and national public procurement law.
- (7) Relevant details of the original measure have also been published by the granting authority.⁹

2.1.1. Budget, granting authority, aid instrument and beneficiary

- (8) The maximum overall budget of the original measure is EUR 49 745 731. The Lithuanian Ministry of Transport and Communications as the granting authority directly allocated financial support under the original measure to the sole recipient, PI, a fully state-owned public undertaking, in the form of a direct grant, paid out in three instalments over three years.
- (9) The Commission stipulated in the 2018 decision that PI shall: (i) limit its activity under the original measure to the predefined target areas and not expand to other commercially attractive regions; (ii) limit its activity under the original measure to granting access to the NGN backhaul infrastructure at wholesale level and not to engage in competition on the retail level with commercial operators; and (iii) have an accounting separation between the funds used for the operation of the supported NGN backhaul infrastructure and the other funds at its disposal.

2.1.2. Target areas

- (10) The supported NGN backhaul infrastructure is to be deployed only in areas without existing or planned NGN backhaul infrastructure (“NGN white areas”) in order to foster the provision of broadband retail services to end users at reliable download speeds of at least 30 Mbps in currently NGA white areas.

2.1.3. Wholesale access and prices

- (11) PI as the wholesale-only operator of the supported NGN backhaul infrastructure offers open, effective, comprehensive and non-discriminatory wholesale access to electronic communications operators in compliance with the principle of technological neutrality. Wholesale access is offered to all elements of the supported NGN backhaul infrastructure for access seekers to connect their NGA networks for the purposes of providing retail broadband services to end users at download speeds of at least 30 Mbps.
- (12) Wholesale access to passive infrastructure elements has to be granted on an indefinite basis and wholesale access to active infrastructure elements has to be granted for at least seven years. PI’s wholesale access obligations can be enforced irrespective of any change in ownership and/or operation of the supported NGN backhaul infrastructure.

⁹ See at <http://www.sumin.lrv.lt>.

- (13) All prices for access to the supported NGN backhaul infrastructure at wholesale level are determined by the granting authority and published by PI on its website following the Lithuanian National Regulatory Authority's ("NRA") approval.
- (14) The 2018 decision is based on electronic communications operators being able to use wholesale access to the supported NGN backhaul infrastructure for the connection of fixed or fixed wireless NGA networks.

2.2. The notified amendment

- (15) The Lithuanian authorities explain that it has become apparent during the implementation of the original measure that costly and lengthy design stages and administrative procedures exist in relation to the construction permits for the approximately 180 electronic communications towers, including cabinets. This situation is further amplified by significantly increased construction costs for such towers and cabinets. The combination of these factors means that it will only be possible to construct a reduced number of electronic communications towers including cabinets with the available overall budget and within an acceptable period of time.
- (16) With the present modification of the measure, the Lithuanian authorities plan to prioritise a reduced number of only 25 electronic communications towers including cabinets in 25 out of the initially planned 180 NGN and NGA white target areas without reusable existing infrastructure, while also seeking to widen wholesale access to them in order to foster the further development of competition in these 25 areas.¹⁰
- (17) Such modification does not affect the Lithuanian authorities' plan to complete the deployment of the still outstanding 108 km of optical fibre backhaul infrastructure as planned under the original measure.
- (18) For up to 67 out of the remaining 155 NGN and NGA white target areas that do not have any reusable existing infrastructure, the Lithuanian authorities are planning to connect these areas to an optical fibre cable backhaul infrastructure without electronic communications towers or cabinets.¹¹ In these areas, last mile

¹⁰ According to the Lithuanian authorities, at the time of notification of the present modification, building permits for 25 electronic communications towers have been granted, the public procurement procedures for their construction have been completed and the deployment contracts have been signed. 20 electronic communications towers are planned to be deployed by the end of March 2023 and the remaining five electronic communications towers are planned to be deployed by the end of June 2023.

¹¹ According to the Lithuanian authorities, it is estimated that the measure's overall budget will be used as follows once the present modification of the measure has come into effect:

- Approximately EUR 7.65 million for the deployment of 25 electronic communications towers (permits, land and construction);
- Approximately EUR 18.73 million for the deployment of optical fibre cables;
- Approximately EUR 5.91 million for the deployment of passive optical network splitters;
- Approximately EUR 15.85 million for the deployment of active equipment;
- Approximately EUR 800 000 for technical project support; and
- Approximately EUR 560 000 for administration costs and other activities.

operators will be able to seek wholesale access to the supported backhaul infrastructure in order to cover households with various solutions, such as Gigabit Passive Optical Networks (“GPON”), a fixed optical fibre technology. The Lithuanian authorities indicated that due to limited available funds, it is not possible at the moment to plan further connections for the remaining 88 target areas that do not have any reusable existing infrastructure. The Lithuanian authorities will continuously revise the possibility for extending further connections in these areas, subject to the availability of further funding, for instance via profits from the operation of the new backhaul infrastructure (see at recital (48) below). The notified amendment’s target areas are all located in rural areas of Lithuania, which renders the cost of deploying the backhaul infrastructure higher and the expected return from selling wholesale access lower than in urban and densely populated areas.

- (19) As a result of the notified amendment, the overall number of households covered by the measure remains between 40°000 and 45°000. Originally it was estimated that 22°971 households, *i.e.* roughly 50% would be served via the approximately 180 electronic communications towers and cabinets by either FWA networks or other types of fixed NGA networks. The Lithuanian authorities explained that they expect that NGA operators in these concerned areas would still access the available backhaul infrastructure and facilitate the coverage of all the households concerned by different NGA access networks solutions connecting to the supported backhaul.
- (20) In order to foster effective competition in the 25 target areas in which the Lithuanian authorities still plan to construct new electronic communications towers including cabinets, the Lithuanian authorities propose to extend wholesale access to those electronic communications towers/cabinets so that they also benefit mobile network operators. More precisely, in addition to the wholesale access already foreseen (see recital (14) above), the Lithuanian authorities also envisage allowing wholesale access to the 25 electronic communications towers for the provision of mobile services to end users in the respective 25 NGA white areas. This would enable both fixed and mobile operators to provide a variety of fixed and mobile services in the 25 areas to the benefit of end users, fostering competition and thereby further market development. To that effect, the Lithuanian authorities will ensure that all towers can accommodate at least eight fixed wireless access and/or mobile network providers.¹²
- (21) The Lithuanian authorities submit that wholesale access for mobile networks to the supported electronic communications towers will only be granted for the provision of services to end users in the 25 re-confirmed NGA white areas (see recitals (23) and (24) below). According to the Lithuanian authorities, only technically unavoidable spill-overs¹³ into adjacent areas on a very limited scale will be acceptable. The Lithuanian authorities will ensure that wholesale access

¹² It is planned that all 25 electronic communications towers have three sections for network provider equipment. In the upper section (height between 50 and 60 metres) it is planned to have two circular structures in two different levels that will be designed to host equipment of up to four operators. In the two lower sections (height between 40 and 50 metres and between 30 and 40 metres) it is planned to host smaller-sized and lighter equipment of up to four additional operators.

¹³ A spill-over is technically unavoidable if it is necessary in order to allow for a fluent handover between cells and a sufficient quality at the periphery of cells.

for mobile networks will not be granted or used to fulfil legal obligations, such as coverage obligations attached to spectrum rights of use. That means that the supported 25 electronic communications towers and the mobile services provided using these towers will not be taken into account for the fulfilment of any legal obligations attached to the relevant spectrum rights of use. Access seekers wanting to connect a mobile network to the supported electronic communications towers must make a commitment in this regard and confirm this in writing to PI. PI will submit such written commitment to the granting authority. This written commitment will include information on, and evidence of: (i) the current situation of mobile network coverage in the NGA white area concerned; and (ii) the planned situation following connection of the mobile network to the supported electronic communications tower in the same area.

- (22) All other wholesale access conditions and wholesale access pricing will remain unchanged and apply henceforth to the notified amendment as well.
- (23) The main characteristics of the notified amendment were made public on PI's website and on the websites of the public authorities on 30 November 2020.¹⁴ A description of the notified amendment was provided and electronic communications operators, other interested stakeholders and the wider public were consulted in particular on:
- (a) The prolongation of the time-frame for the implementation of the project approved in the 2018 decision with a view to the deployment of the NGN backhaul infrastructure in the NGN white areas that had been delayed and not yet completed under the original measure;
 - (b) an indicative list of sites and maps showing where the reduced number of electronic communications towers including cabinets would be deployed, as explained in the present decision;
 - (c) Updates on the mapping of existing and planned broadband infrastructure in the NGA/NGN white target areas identified under the original measure and, with a view of deploying NGN backhaul infrastructure in those areas, feedback from stakeholders regarding their plans to deploy such infrastructure in these target areas until December 2023 with, if relevant, supporting documentation and the classification of those areas as white areas.
 - (d) General observations regarding the notified amendment.
- (24) The public consultation was open for one month from 30 November 2020 to 30 December 2020. No stakeholders submitted new deployments or provided deployment plans in the target areas until December 2023, objections to or concerns regarding the use of the reduced number of electronic communications towers for the provision of mobile services in the re-confirmed NGA white areas. In addition to that, just before the concrete deployment of backhaul infrastructure in any of the target areas, the Lithuanian authorities will re-confirm the mapping and public consultation results by organising public consultations regarding

¹⁴ <https://www.placiajuostis.lt/lt/naujienos/viesosios-konsultacijos-del-naujos-kartos-interneto-prieigos-infrastrukturos-pletros-projekto-keitimo-226>; <http://www.sumin.lrv.lt>; <http://www.esinvesticijos.lt>.

particular fibre optical lines and telecommunication towers (and cabinets) before installation. Public intervention will take place only if this exercise confirms that the areas are truly NGA white and NGN white¹⁵.

- (25) The notified amendment will enter into force as from notification of the Commission's approval of the notified amendment.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (26) The original measure constitutes State aid within the meaning of Article 107(1) TFEU, as stated at recitals (46)-(59) of the 2018 decision. The notified amendment described at recitals (15)-(25) above does not affect this assessment.

3.2. Compatibility

- (27) In the 2018 decision, the Commission assessed the compatibility of the original measure according to Article 107(3)(c) TFEU and took into account the 2013 EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks ("2013 Broadband Guidelines")¹⁶.
- (28) However, in 2021, the 2013 Broadband Guidelines were subject to an evaluation assessing whether they were still fit for their main purpose of facilitating the development of economic activities consisting in broadband network deployment and related broadband network services, while not adversely affecting trading conditions to an extent contrary to the common interest. The evaluation showed that the 2013 Broadband Guidelines work well, are broadly fit for purpose and have made an important contribution to the deployment of broadband networks. At the same time, the evaluation showed that some targeted adjustments of the existing rules are necessary to reflect the latest market and technological developments and fast evolving connectivity needs.
- (29) Against this background, the Commission has assessed the notified amendment on the basis of the 2013 Broadband Guidelines, taking into account, where justified, adjustments needed to reflect technological and market developments, based on the information provided by the Lithuanian authorities.
- (30) The notified amendment as described at recitals (15)-(25) above concerns the continued necessity of the delayed deployment of the NGN backhaul infrastructure not yet completed under the original measure as well as the expansion of wholesale access to the electronic communications towers to include also the possibility for mobile networks to connect and thus the wider question of its impact on the proportionality assessment in the 2018 decision. The notified

¹⁵ See also recital (28) of the 2018 Decision.

¹⁶ Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p.1.

amendment must not adversely affect trading conditions to an extent contrary to the common interest.¹⁷

- (31) In this regard, the Commission assesses whether the notified amendment is necessary and proportionate. The Commission also assesses the notified amendment's negative effects on competition and trade between Member States and its transparency.
- (32) As a final step, the Commission balances the identified negative effects of the notified amendment on the internal market with its positive effects.

3.2.1. Continued necessity of the aid: absence of market delivery due to market failure

- (33) State aid may be deemed necessary where it can bring about a material improvement that the market alone does not deliver. Indeed, State aid measures can, under certain conditions, correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness. This applies as well to the continuation of State aid under an original measure in the case of delays to its deployment.
- (34) A market failure exists if markets, left to their own devices, without public intervention fail to deliver an efficient outcome for society. This may arise, for instance, when certain investments are not being undertaken even though the economic benefit for society exceeds their cost.
- (35) The notified amendment's target areas are NGN white areas, *i.e.* areas where currently no NGN backhaul infrastructure exists, and where such NGN backhaul infrastructure is needed in order to enable third operators to provide fixed NGA broadband services to end users in currently NGA white areas. In addition, the notified amendment's target areas are areas where the rollout of NGN backhaul networks is neither expected nor planned to be made by December 2023. These areas were first identified through the mapping and public consultation under the original measure (see recitals (27)-(31) of the 2018 decision) and confirmed through the public consultation on the notified amendment carried out in November/December 2020 (see recitals (23) and (24) above).
- (36) As explained in recital (24) above, these results are once again re-confirmed via public consultations before the concrete deployment of backhaul infrastructure in any of the target areas. The map of target areas is thus updated on a regular basis.
- (37) In this respect, the Lithuanian authorities have demonstrated that delayed and not yet deployed NGN backhaul infrastructure, *i.e.* optical fibre backhaul infrastructure and the 25 towers/cabinets, would not be deployed in the target areas – or at least not within a foreseeable timeframe – without continued support under the notified amendment. As mentioned in recital (18) above, the notified amendment's target areas are all located in rural areas of Lithuania, which renders the cost of deploying the backhaul infrastructure higher and the expected return from selling wholesale access lower than in urban and densely populated areas.

¹⁷ Cf. judgment of 22 September 2020, Case C-594/18 P, Austria v Commission (Hinkley Point C), ECLI:EU:C:2020:742, para. 19.

- (38) It can therefore be concluded that the notified amendment addresses a market failure in its target areas. These areas are characterised by the lack of NGN backhaul networks where such networks are needed to enable third operators to provide fixed NGA broadband services to end users in currently NGA white areas. Moreover, in these areas, the rollout of such networks is neither expected nor planned until at least the end of 2023, and in all cases the Lithuanian will verify this is the case by organising public consultations before the actual deployment (see recital (24) above). The Commission therefore considers the notified amendment necessary to support the development of the economic activities foreseen under the original measure (see recitals (10)-(16) of the 2018 decision).
- (39) Further, as concerns the proposal to extend wholesale access to the 25 electronic communications towers/cabinets so that they also benefit mobile network operators, the Lithuanian authorities have justified that NGN backhaul networks are necessary to transport the traffic of both fixed and mobile access networks in the target areas. This takes into account the needs of end users and the ongoing rapid upgrade of fixed or mobile access networks with increasing needs for improved data transmission and increased performances (including for new mobile generations). In light of the results of the mapping and public consultation, the demonstrated continued need for NGN backhaul networks in the targeted NGN white areas and in order to avoid potential bottlenecks in the provision of mobile services, the Lithuanian authorities consider it necessary to allow wholesale access to the 25 electronic communications towers/cabinets also for mobile network operators. The Commission agrees that NGN backhaul networks are a prerequisite for the deployment of NGA networks. NGN backhaul networks have the potential to stimulate competition in the access areas to the benefit of all access networks and technologies. A performant NGN backhaul network may stimulate private investments to connect end users, provided that the NGN backhaul network ensures wholesale access on open, transparent and non-discriminatory conditions for all access seekers and technologies. This is indeed the case for the measure under assessment, as presented in section 2.1.3 above. The present measure supporting the deployment of the electronic communications towers/cabinets and their use via wholesale access by fixed and mobile network operators fosters competition and investments at the access level as it enables third-party access seekers to roll out access networks and offer connectivity services to end users.

3.2.2. *Proportionality of the notified amendment*

- (40) In line with recitals (46) and (78) of the 2013 Broadband Guidelines, the notified amendment is considered proportionate if the amended aid measure continues to be limited to the minimum necessary and the potential distortions of competition continue to be minimised.

3.2.2.1. Mapping and public consultation

- (41) Pursuant to recital (78)(a) and (b) of the 2013 Broadband Guidelines, Member States should clearly identify which geographic areas will be covered by and give adequate publicity to the main characteristics of aid measures by publishing the relevant information and inviting electronic communications operators and other

interested stakeholders to comment. This applies also to relevant amendments to the characteristics of approved aid measures.

- (42) As already foreseen under the original measure (see recital (28) of the 2018 decision), at the end of 2020, PI consulted interested stakeholders and the wider public again on existing broadband infrastructure in the remaining (due to delays in the deployment of NGN backhaul infrastructure) NGA/NGN white target areas identified under the original measure and on any broadband infrastructure deployment plans in these areas until December 2023. PI also requested comments on the planned continued classification of these target areas as NGA/NGN white areas (see recitals (23)(c) and (24) above). According to the information submitted by the Lithuanian authorities, no new existing broadband infrastructure or deployment plans were notified and no objections to the continued classification of the target areas as NGA/NGN white areas were raised.
- (43) Therefore, the assessment of the mapping exercise and of the identification of target areas in the 2018 decision (see recitals (76)-(78) of the 2018 decision) was confirmed by the results of the mapping and public consultation undertaken by the Lithuanian authorities at the end of 2020. The main characteristics of the notified amendment were published and consulted on in the above-mentioned public consultation at the end of 2020 (see recitals (23) and (24) above). PI provided detailed information on the areas affected by delayed deployment of NGN backhaul infrastructure, the planned locations of the electronic communications towers and requested stakeholders' views on the proposed expansion of the use of these towers to mobile network technology. According to the information received from the Lithuanian authorities, no objections to or concerns regarding the notified amendment were communicated by stakeholders. Finally, in all cases, the Lithuanian authorities will once more verify this by organising public consultations before the actual deployment (see recital (24) above)

3.2.2.2. Wholesale access and pricing

- (44) Pursuant to recital (78)(g) and (h) of the 2013 Broadband Guidelines, subsidised networks must offer effective wholesale access under open, transparent, fair and non-discriminatory conditions to all operators who request it.
- (45) As explained at recitals (40)-(41) and (90)-(94) of the 2018 decision (see also recitals (11)-(14) above), PI has to offer wholesale access to the supported 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 are currently able to use such wholesale access for connecting end users in the NGA white areas identified under the original measure to fixed or fixed wireless NGA networks, which can provide on a reliable basis download speeds of at least 30 Mbps.
- (46) Pursuant to the notified amendment, wholesale access to the 25 electronic communications towers will be extended also to mobile networks for the provision of end user services in the 25 re-confirmed NGA white areas (see recitals (23) and (24) above). All other wholesale access conditions and wholesale access pricing remain unchanged (see recital (22) above) and will apply henceforth also under the notified amendment and thus also to wholesale access for mobile networks.

- (47) Wholesale access to mobile networks contributes to increased competition, not only within the same broadband technology but also between different broadband technologies, by providing end users at the retail level in the 25 NGA white target areas concerned with a potentially larger pool of broadband network providers, and, hence, a greater degree of competition. In light of the technological developments since the start of implementation of the original measure in 2018 (see recital (39) above), the notified amendment is likely to encourage increased private investments into the fixed broadband networks in the NGA white target areas concerned in order to provide end users with download speeds of significantly more than 30 Mbps under usual peak time conditions. The notified amendment will likely, thus, have positive effects for end users at the retail level in the 25 NGA white target areas concerned.

3.2.2.3. Conclusion on proportionality of the notified amendment

- (48) The expansion of wholesale access to the 25 electronic communications towers to include also mobile networks as well as the continued deployment of the delayed and yet uncompleted NGN backhaul infrastructure do not affect the finding that the amended aid measure continues to be limited to the minimum necessary. The overall budget remains unchanged and no additional aid will be paid out to PI as a result of the notified amendment. The notified amendment will lead to an increased choice of wholesale access products for different technologies and is therefore set to increase state owned PI's revenues from operating the 25 electronic communications towers. As explained at recital (42) of the 2018 decision, PI does not engage in any profit making by operating the network but has to balance income and expenses. Any inadvertent surplus generated by PI through the operation of the network is used for the maintenance of the network or the deployment of additional electronic communications towers with cabinets.
- (49) The Commission considers at the same time that the notified amendment does not pose a discernible risk of distortion of competition in fixed or mobile network markets in the areas concerned, in light of the competitive safeguards foreseen by the Lithuanian authorities (see recital (21) above). Wholesale access must be granted in an open, transparent, fair and non-discriminatory manner to all interested access seekers and the provision of mobile services from the 25 electronic communications towers is limited to 25 NGA white target areas (only unavoidable spill-overs will be accepted). Moreover, any mobile network coverage in the 25 NGA white target areas concerned via access to the 25 electronic communications towers cannot be reported under obligations attached to mobile network operators' spectrum rights of use, which has to be confirmed by mobile network operators in corresponding written commitments when they request access to the towers.
- (50) As concerns the other wholesale access conditions and pricing under the original measure, these remain unchanged and unaffected by the notified amendment. The corresponding assessment in the 2018 decision (see recitals (91)-(94) of the 2018 decision) therefore remains valid.
- (51) In light of the considerations at recitals (41)-(50) above, the Commission considers that the notified amendment is proportionate.

3.2.3. *Transparency, monitoring, reporting*

- (52) In line with recital (78)(i), (j) and (k) of the 2013 Broadband Guidelines, the Commission's considerations on transparency, monitoring and reporting under the original measure continue to apply and will henceforth apply to the notified amendment as well (see recitals (95)-(96) and (99)-(100) of the 2018 decision).
- (53) In particular, the Lithuanian Ministry of Transport and Communications will continue to monitor PI and the implementation of the amended measure, including the wholesale access conditions and pricing. PI will continue to be obliged to publish access related information, including wholesale access conditions and prices, in line with the Lithuanian Law on Electronic Communications.

3.2.4. *Negative effects on competition and trade between Member States*

- (54) Article 107(3)(c) TFEU requires the assessment of any negative effects on competition and on trade in the relevant product markets. This applies to relevant amendments to the characteristics of approved aid measures, as well.
- (55) None of the 25 electronic communications towers have been deployed by the time of adoption of this decision (see recitals (5) and (16) above and in footnote 10 above).
- (56) However, it cannot be excluded that private operators may see the profitability of their prior investment decreasing because of the notified amendment, or that they may decide to reduce their own future investment, withdraw from the market altogether or decide not to enter into a new market or a geographic area. The notified amendment may also encourage mobile network operators to have recourse to accessing to the electronic communications towers rather than seeking other market solutions.

3.2.5. *Weighing the positive effects of the notified amendment against any negative effects in terms of distortions of competition and adverse effects on trade*

- (57) It should be ensured that the overall balance of the effects of the notified amendment is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (58) The notified amendment has positive effects for end users at the retail level in all NGA white target areas concerned. It contributes to increased competition by providing end users at the retail level in these areas with more and better products and prices. It is also likely to encourage increased private investments into the fixed and mobile broadband networks in these areas (see recital (39) above) in order to provide even more competitive end user download speeds of significantly more than 30 Mbps under usual peak time conditions (see recital (47) above). The notified amendment will therefore provide better choice for consumers, higher quality and innovation and thus help to reduce inequalities and the digital divide in Lithuania.
- (59) The notified amendment is also proportionate (see section 3.2.1 above) and its effects are confined to the NGA white target areas concerned. These are areas

where private investors do not intend to invest as was re-confirmed by the public consultation undertaken at the end of 2020 (see recital (24) above) and as will be in all cases once again re-confirmed in public consultations before the actual deployment (see recital (24) above).

- (60) The Commission considers that any potential negative effects would not unduly affect trading conditions to an extent contrary to the common interest. In particular:
- (a) Potentially affected future private investors into fixed or mobile broadband networks in the NGA white target areas concerned and existing operators of fixed broadband networks or mobile networks in the NGA/NGN white target areas have been publicly consulted on the main characteristics of the notified amendment and on their broadband network deployment plans in the affected areas for the next three years at the end of 2020 (until December 2023). No stakeholder notified any deployment plans that could be affected by the notified amendment and no stakeholder voiced any objections or concerns with regard to the notified amendment, which could be expected if the notified amendment were to have negative effects that could unduly affect trading conditions. Moreover, according to the practice established by the Lithuanian authorities, all known operators will be consulted via public consultations before the actual deployments.
 - (b) A future withdrawal from the market of an existing fixed broadband operator in an affected NGA white target area because of the notified amendment is unlikely because such operators continue to benefit from the deployment of the supported NGN backhaul infrastructure in an unchanged manner.
 - (c) In light of the specificities of the supported NGN backhaul infrastructure under the original measure with its electronic communications towers, potential distortions of competition related to the likelihood of mobile network operators having recourse to the access to the electronic communications towers rather than to seeking other market solutions are minimised since the number of electronic communications towers is limited to 25. Given that all 25 electronic communications towers will provide enough space for all three mobile network operators active on the Lithuanian market at the same time, potential distortions of competition in those 25 areas concerned are also deemed limited. In general, all access seekers will benefit from open, fair and non-discriminatory access to the towers, which can be used by eight mobile and fixed wireless access operators at the same time.
- (61) In light of the above, the Commission considers that the positive impact of the notified amendment outweighs any potential negative effects on competition and trade. On balance, the measure is in line with the objectives of Article 107(3)(c) TFEU.

4. CONCLUSION

The Commission accordingly decides not to raise objections to the amended aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If this letter contains confidential information that should not be disclosed to third parties, please inform the Commission within 15 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
Executive Vice-President

