



Brussels, 21.12.2022
C(2022) 9710 final

PUBLIC VERSION

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Subject: State Aid SA.102977 (2022/N) - RRF - Cyprus - Broadband connectivity vouchers

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 24 November 2022, the Cypriot authorities notified the measure '*Broadband connectivity vouchers*' (the 'measure') pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').
- (2) By letter submitted on 24 November 2022, Cyprus exceptionally agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 ⁽¹⁾ and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Objective of the measure

- (3) The measure is a voucher scheme, which aims to provide vouchers to households to cover part of the set-up costs and of costs of the first 12 months of subscription

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

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for broadband connectivity services providing at least 200 megabits per second ('Mbps') download speed ('eligible services', as defined in recital ((20))⁽²⁾). Cyprus is of the view that this threshold is needed to meet households' growing needs for connectivity related to the use of advanced broadband services.

- (4) The measure aims to boost households' demand for broadband services offered by any eligible service providers (see recital (17)).

2.2. Legal basis

- (5) The measure is based on the Cypriot Recovery and Resilience Plan ('RRP') and on an implementing decision to be adopted by the Council of Ministers of Cyprus.
- (6) The Cypriot authorities have confirmed that the present State aid decision is an integral part of the legal basis. After the notification of the Commission decision approving the measure, the Council of Ministers of Cyprus will adopt the implementing decision, where all aspects of the measure are regulated, as described in the present decision.
- (7) The Cypriot authorities committed to comply with the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589, according to which a new aid measure must not be put into effect before the Commission has taken a decision authorising them⁽³⁾.

2.3. Context of the measure

- (8) Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and for social and territorial cohesion. It supports efficiencies and growth, ensures that economies can remain competitive, and enables citizens and businesses to benefit from online services and offerings.
- (9) The Communication from the Commission NextGenerationEU⁽⁴⁾ identifies as one of the key priorities of the Recovery and Resilience Facility ('RRF')⁽⁵⁾ the support to the digital transition. The RRF Regulation requires that Member States devote at least 20% of the allocated funding to measures fostering the digital transition⁽⁶⁾.

⁽²⁾ At a later stage, the Cypriot authorities may consider an increase to 300 Mbps download speed. The Cypriot authorities confirmed that, should such modification be necessary, it will be notified to the Commission in accordance with Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ, L 248 of 24.9.2015, p. 9) and Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards the notification forms and information sheets (OJ L 325, 10.12.2015, p. 1).

⁽³⁾ Council Regulation No 2015/1589 of 13 July 2015, cited above.

⁽⁴⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic And Social Committee and the Committee of the Regions of 27 May 2020, 'Europe's moment: Repair and Prepare for the Next Generation', COM(2020) 456 final.

⁽⁵⁾ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17–75) ('RRF Regulation').

⁽⁶⁾ See Article 19 and Annex VII of the RRF Regulation.

- (10) The Cypriot RRP devotes 23% of its funds to the digital transition, including the financing of take-up measures, with a view to ensuring that as many households as possible can have access to effective broadband services, which in turn will allow them to access online services with optimal performance.
- (11) According to the Cypriot authorities, in Cyprus the take-up of performant broadband connections by households is low. Based on the Digital Economy and Society Index ('DESI') 2022 report ⁽⁷⁾, Cyprus ranks 12th amongst the 27 EU countries for connectivity ⁽⁸⁾. Even though in 2021 Cyprus began a comprehensive roll-out of fixed and mobile networks mirrored by an increase in take-up of broadband services and a reduction in prices ⁽⁹⁾, Cyprus still lags behind EU average in the take-up of fixed broadband services. According to DESI, only 26% of the households have a subscription to fixed broadband services providing at least 100 Mbps download speed, whereas the EU average is 41% ⁽¹⁰⁾. 0.17% of households have subscriptions to connections providing at least 1 Gbps download speeds, whereas the EU average is 7.58% ⁽¹¹⁾. This is despite the fact that 100% of households have access to networks offering a download speed of at least 30 Mbps (which is above the EU average of 90% ⁽¹²⁾) and around 67% have access to networks offering a download speed of more than 200 Mbps.
- (12) According to the Cypriot authorities, the main reason for this low take-up is the high cost of performant connections. This is confirmed by the broadband price index published in DESI, where Cyprus ranks 21th amongst the 27 EU countries with a score of 64, whereas the EU average is 73 ⁽¹³⁾. An additional reason for the low take-up of broadband services is the low digital literacy in Cyprus: according to DESI, in Cyprus only 50% of individuals have at least basic digital skills, against an EU average of 54% ⁽¹⁴⁾.

⁽⁷⁾ <https://digital-strategy.ec.europa.eu/en/policies/countries-digitisation-performance>.

⁽⁸⁾ See DESI, p. 9.

⁽⁹⁾ See DESI, p. 9. As concerns policy developments, Cyprus adopted a new national broadband plan 2021-2025 and transposed the European Electronic Communications Code into its domestic legislation.

⁽¹⁰⁾ Cyprus ranks 22nd out of 27 EU Member States.

⁽¹¹⁾ Cyprus ranks 19th out of 27 EU Member States.

⁽¹²⁾ Among those networks, 41% offer gigabit connectivity, which is below the EU average of 70%.

⁽¹³⁾ See DESI, p. 9. The Broadband Price Index is a score that measures the prices of over 30 representative broadband consumption baskets of different speeds and different products (standalone internet, double play, triple play and quadruple play). 100 is the best possible performance, 0 the worst possible performance. In general: the lower the score; the higher the relative price for the subscription for broadband services. Accordingly, Cyprus' score (64) means that the broadband connections in Cyprus are on average more expensive than at the average EU level (whose score is 73).

⁽¹⁴⁾ See DESI, p. 6.

- (13) The Cypriot authorities explained that, without a demand side measure, households are unlikely to change their behaviour and purchase performant broadband services, failing to reap the benefits of such connectivity (e.g. on-line educational services, teleworking, cloud computing). Hence, without State aid, Cyprus would risk low penetration of high-speed broadband compared to the EU average, as well as an insufficient digital inclusion of the population.

2.4. Detailed description of the measure

- (14) The measure is a scheme providing direct grants in the form of vouchers to households, which are identified by means of a tax code and do not exercise an economic activity.
- (15) **Beneficiaries:** The final beneficiaries of the measure are households that do not have an active subscription or that have a subscription to a connection providing less than 100 Mbps download speed. Each household may receive one voucher.
- (16) The Cypriot authorities estimate that approx. 82 000 households (23% of Cypriot households) will benefit from the measure ⁽¹⁵⁾.
- (17) Indirect beneficiaries are all service providers capable of offering the eligible services, irrespective of the fact that they offer the service using their own networks or through wholesale access to the networks of other operators and irrespective of the technology/platform chosen. The Cypriot authorities explained that there will be no discrimination based on the origin of the service providers or of the products/services concerned. Moreover, the Cypriot authorities clarified that all areas of Cyprus where eligible services are provided are targeted by the measure; eligible areas will be updated on a rolling-basis upon operators' request.
- (18) **Granting authority and implementing body:** The Department of Electronic Communications ('DEC') will be the granting authority, in charge of managing the measure and performing the checks to verify its correct implementation. The Cypriot authorities explained that the National Regulatory Authority ('NRA'), OCECPR, has been working closely with DEC in designing the measure.
- (19) **Budget:** The overall budget of the measure is approx. EUR 12 million of which approx. EUR 10 million will be made available through the RRF assigned to Cyprus and approx. EUR 2 million from State budget.
- (20) **Duration:** The measure will enter into force following the notification of the Commission's decision approving the measure and the consequent adoption of the implementing decision (see recital (6)). It will be in force until 30 June 2025 (i.e. no voucher can be activated beyond this date).
- (21) **Eligible Services:** The eligible services will be fixed connectivity services offering at least 200 Mbps download speeds under usual peak time conditions ⁽¹⁶⁾, irrespective of the technologies used. The vouchers can be used to

⁽¹⁵⁾ The vouchers will be available on a first-come-first-served basis.

⁽¹⁶⁾ Speed under usual peak time conditions is understood as the speed that households are expected to achieve during the entire peak-hour period. This represents the real capacity of the network irrespective of the electronic communication access services offered to households.

subscribe to a new broadband service or to upgrade an existing subscription (if the existing subscription provides less than 100 Mbps download speed) ⁽¹⁷⁾.

- (22) **Form and value of the vouchers:** The vouchers will have a fixed amount of EUR 120 ⁽¹⁸⁾. The vouchers will cover part of the set-up costs and of the costs for the first 12 months of subscription to the eligible services. The set-up costs will include the equipment (modem/router), the installation costs and any activation fee. The Cypriot authorities clarified that the value of the vouchers has been set taking into account the average price of fixed broadband services available on the market ⁽¹⁹⁾. The vouchers will cover less than 50% of the above-mentioned costs.
- (23) **Technological neutrality:** The vouchers will be technologically neutral. Households will be able to use the voucher to procure the eligible services irrespective of the technology/platform used by the service provider chosen, provided that the required connectivity speed is ensured.
- (24) **Implementing procedure:** The granting authority will carry out the administrative and procedural tasks linked to the management of the measure. It will:
- (a) Manage the dedicated on-line platform for the implementation of the measure. All service providers capable of providing the eligible services may request to be included in the platform and in the list of eligible providers at any time. Households may consult the list of eligible providers (which is updated on a rolling basis) at any time;
 - (b) Check the fulfilment of the eligibility criteria by both households and service providers. Households applying for a voucher will have to give access to their premises to allow speed checks as well as to make the subscription contracts in force available prior to, and after, the receipt of the voucher. Audits may be carried out at the service providers' premises to enable the authorities to establish that vouchers were implemented in accordance with the measure. Should the granting authority conclude that the eligibility criteria have not been fulfilled, the household or the service provider responsible for the infringement of the eligibility criteria will have to return the amount of the voucher already granted (and potentially pay further fines as provided for by the relevant national law);
 - (c) Manage the payment of the vouchers. The voucher will be paid on a six-monthly basis directly to the service provider chosen by the household.
- (25) The main procedural steps of the implementing procedure are the following:

⁽¹⁷⁾ In order to demonstrate the fulfilment of this requirement, each household will have to declare that it does not have a subscription to the broadband services covered by the measure. The fulfilment of this condition will be verified by the granting authority. A false declaration will lead to recovery of the voucher amount and other sanctions, as provided for by the relevant national law.

⁽¹⁸⁾ The voucher is conceived as a lump sum. There is no cost allocation between installation costs and subscription costs.

⁽¹⁹⁾ According to the Cypriot authorities, the cheapest annual subscription for connections providing 200 Mbps download in Cyprus is equal to approx. EUR 498, plus EUR 69 as installation costs.

- (a) Eligible households submit requests for vouchers directly to the service provider of their choice;
 - (b) The service provider collects a self-declaration of the interested household, where the latter confirms that it does not have an active subscription or that it has an active subscription providing less than 100 Mbps download speed;
 - (c) Once the service provider receives confirmation from the granting authority that the voucher is available, the service provider performs the activities needed to provide the eligible service to the household;
 - (d) A speed test proving that the required speed is delivered at the household's premises is carried out and countersigned by both the household and the service provider;
 - (e) The service provider redeems, on a six-monthly basis, the voucher against payment through the dedicated platform.
- (26) **Public consultation:** The Cypriot authorities carried out a public consultation on the measure between 11 March and 12 April 2022. The public consultation was published on the official website of the Cypriot government ⁽²⁰⁾. The public consultation invited potentially interested parties to comment on the measure, including on the technical requirements and the eligible services. Three operators responded to the public consultation and generally approved the measure. The Cypriot authorities confirmed that they took into account stakeholders' views and, where appropriate, revised the measure on the basis of the input received ⁽²¹⁾.
- (27) **Market assessment:** To limit the risk that the measure may unduly distort competition, the Cypriot authorities carried out an assessment of the impact of the measure on the market. According to the Cypriot authorities, the market assessment revealed that the measure will not confer a disproportionate advantage on certain service providers to the detriment of others. The measure will rather benefit all service providers capable of offering the eligible services, irrespective of the fact that they offer the eligible services using their own network or through access to the network of other operators. The Cypriot authorities consider that the measure is likely to be neutral and is unlikely to have a significant impact on the market shares of the operators.

⁽²⁰⁾ https://dec.dmid.gov.cy/dmid/dec/ws_dec.nsf/All/667EBE9F0CD58141C22588020042FD7F?OpenDocument.

⁽²¹⁾ The results of public consultations have been published on the same official website https://dec.dmid.gov.cy/dmid/dec/ws_dec.nsf/All/667EBE9F0CD58141C22588020042FD7F?OpenDocument. In particular, the Cypriot authorities accepted respondents' requests concerning the identification of the eligible areas (the Cypriot authorities agreed to update the list of eligible areas on a rolling basis upon request from the relevant operators – see recital (17)) and the eligible services (the Cypriot authorities agreed to set the download speed at 200 Mbps – see recital (3)).

- (28) The Cypriot authorities further explained that the voucher will have a fixed and pre-defined amount, irrespective of the price of services offered by the service providers. This will ensure, on the one hand, that service providers will have the incentive to compete on the economic terms of their respective offers and, on the other hand, that the measure will not lead to price discrimination between households. Therefore, the measure is also likely to have the positive effect of bringing down prices.
- (29) Finally, the Cypriot authorities confirmed that all major service providers in Cyprus have wholesale access obligations, pursuant to the sectoral regulatory framework. According to the Cypriot authorities, this ensures that a provider that is vertically integrated and has a retail market share above 25% will offer, on the corresponding wholesale access market, at least one wholesale access product to any other service provider. This allows access seekers to reliably provide the eligible services under open, transparent and non-discriminatory conditions. The wholesale access prices are determined based on the cost orientation principle and are audited and approved by the NRA.
- (30) **Transparency:** The Cypriot authorities have committed to complying with applicable transparency requirements. In particular, the information concerning the measure will be published on the website of the granting authority and will be updated for the entire duration of the measure. It will include:
- a) the full text of the decision approving the aid scheme, and its implementing provisions, or a link to it;
 - b) information on each individual aid award exceeding EUR 100 000, including the identity of the granting authority, the identity of the aid beneficiaries, the type of beneficiaries (for example SME, large company), the region where the beneficiary is located (at NUTS level 2) and the principal economic sector of the beneficiaries (at NACE group level), the aid amount, the aid instrument.
- (31) The Cypriot authorities further submitted that the transparency of the measure is strengthened by the public consultation and by the fact that all eligible service providers are enlisted on an online platform accessible to the public.
- (32) **Reporting:** The Cypriot authorities have committed to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589⁽²²⁾. In addition to the annual reports, the Cypriot authorities will submit a report to the Commission every two years containing key information on the measure. This will include, in addition to the information already made public pursuant to recital (30), sources of public financing, duration of the measure, voucher value(s), type of subscriptions/services eligible, in-building wiring and/or drop down cable within a private domain (if applicable), take-up rates before and after implementation of the measure, number of households having benefited from the aid measure, type of subscriptions/services subscribed, number of eligible broadband service providers, number of broadband service providers that have actually benefited from the measure, evolution of the market position of operators by type of subscriptions/services supported, taking into account the

⁽²²⁾ Council Regulation (EU) 2015/1589 of 13 July 2015, cited above.

relevant infrastructure and technologies (FTTH, FTTC, DOCSIS, FWA, etc.), wholesale and retail prices before and after implementation of the measure.

- (33) **Monitoring:** The Cypriot authorities committed to monitor the implementation of the measure during its entire duration. As clarified in recital (24)(b), the granting authority will regularly monitor and review the project's sound implementation by performing checks on the fulfilment of the eligibility criteria by households and service providers. Upon request, any household applying for a voucher will have to give access for the carrying out of speed checks of the new installation, as well as making available the subscription contracts entered into prior to, and after, the receipt of the voucher. By participating in the measure, service providers agree that audits may be carried out at their premises. This should enable the authorities to establish that claimed vouchers were implemented according to the specification of the measure.
- (34) The Cypriot authorities committed to maintain, for at least 10 years from the date of award of the aid, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or a different period as may be fixed in the request.
- (35) **Cumulation:** The Cypriot authorities confirmed that aid granted under the measure may not be cumulated with other State aid measures for the same eligible costs.
- (36) **Opinion of the Cypriot Competition Authority.** On 11 July 2022, the Cypriot Commission for the Protection of Competition ('CPC') issued a positive opinion on the measure. In particular, the CPC stated that the measure does not distort competition on the markets concerned, *inter alia* because the measure is technologically neutral and all major service providers have wholesale access obligations and will apply regulated wholesale access prices.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of the aid

- (37) 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*'.
- (38) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an undertaking, (ii) the measure has to be granted through State resources and be imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

3.1.1. Undertaking

- (39) Undertakings within the meaning of Article 107(1) TFEU are entities performing an economic activity, regardless of their legal status and the way in which they are financed ⁽²³⁾.
- (40) The final beneficiaries of the measure are households that do not engage in economic activities. Consequently, final beneficiaries are not undertakings and, thus, fall outside the scope of Article 107(1) TFEU.
- (41) The measure will, however, also benefit all broadband service providers capable of offering the eligible services (see recital (17)). The provision of such services constitutes an economic activity ⁽²⁴⁾.
- (42) Hence, broadband service providers, who will indirectly benefit from the measure, qualify as undertakings within the meaning of Article 107(1) TFEU.

3.1.2. State resources and imputability

- (43) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it ⁽²⁵⁾.
- (44) As described in recitals (3) and (5), the measure is set-up by the Cypriot authorities and is partially financed with the RRF fund assigned to Cyprus and partially through the State budget. RRF funds assigned to a Member State are under the control of the Member State and thus constitute State resources, as the funds from the State budget. Moreover, the financing is allocated to the beneficiaries under the control of the granting authority who will disburse the vouchers to the service providers for the provision of the eligible services (see recital (24)(c)) and will perform checks on the fulfilment of the eligibility criteria by both households and broadband service providers.
- (45) Hence, State resources are involved and the measure is imputable to the State.

3.1.3. Economic advantage and selectivity

- (46) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ⁽²⁶⁾.

⁽²³⁾ See Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, § 107.

⁽²⁴⁾ See Judgement of the General Court of 4 March 2009, *Italy v Commission*, T-424/05, EU:C:2007:367, § 108, according to which, where an advantage is granted to end-users (such as individual consumers) who do not carry out an economic activity, it may still amount to an advantage to certain undertakings and may thus constitute State aid under Article 107(1) TFEU. See also Judgment of the Court of Justice of 28 July 2011, *Mediaset v Commission*, C-403/10 P, EU:C:2011:533, § 81.

⁽²⁵⁾ See Judgement of the Court of Justice of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294.

⁽²⁶⁾ Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, § 41.

- (47) The measure may stimulate demand for the eligible broadband services by lowering the costs of the eligible households. Therefore, the measure will allow the providers of eligible services to expand their customer base and, thus, may strengthen their market position.
- (48) Hence, the measure grants an economic advantage to the service providers of eligible services, under conditions that would not be available under normal market conditions.

3.1.4. *Selectivity*

- (49) To fall within the scope of Article 107(1) TFEU, a State measure must favour “*certain undertakings or the production of certain goods*”.
- (50) The measure confers an advantage to undertakings that are active only in the electronic communications sector and only in certain segments of the overall electronic communications sector for the provision of certain broadband services to households (the eligible services), to the exclusion of other segments of the overall electronic communications market. The provision of broadband services is a liberalised economic activity usually conducted by commercial operators on market terms, within the regulatory framework and without State support.
- (51) Hence, the measure is selective.

3.1.5. *Distortion of competition and impact on trade*

- (52) State measures fall within the scope of Article 107(1) TFEU 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 ‘*[i]n 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*’ (27).
- (53) The measure applies to the electronic communications sector, which is subject to intra-EU and international trade and competition. As the measure gives an economic advantage to the providers of the eligible services, it may distort competition.
- (54) Hence, the Measure is capable of distorting competition and affecting trade between Member States.

3.1.6. *Conclusion on the existence of aid*

- (55) In view of the above, the Commission considers that, as the measure is imputable to the State, involves State resources, provides a selective advantage to certain beneficiaries engaged in an economic activity, distorts or threatens to distort

(27) Judgment of the General Court of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, § 41.

competition in the internal market and to affect trade between Member States, the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Lawfulness of the Measure

- (56) By notifying the measure before putting it into effect, the Cypriot authorities respected their obligations under Article 108(3) TFEU.

3.3. Compatibility of the Measure

- (57) The Commission assesses the compatibility of the measure pursuant to Article 107(3)(c) TFEU, according to which: ‘*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 to be compatible with the internal market. Thus, in order to be declared compatible, first, the aid must be intended to facilitate the development of an economic activity (or area) and, second, it must not adversely affect trading conditions to an extent contrary to the common interest ⁽²⁸⁾.
- (58) Under the first condition, the Commission examines:
- (a) the economic activity being facilitated by the measure;
 - (b) the incentive effect of the measure, in that it changes the behaviour of the undertakings concerned in such a way that they carry out an additional activity which they would not carry out without the measure or would carry out in a restricted or different manner or location;
 - (c) the compliance of the measure with other provisions of Union law.
- (59) Under the second condition, the Commission assesses the positive effects of the measure for the development of the activities that it intends to support and the negative effects that the measure may have on the internal market, in terms of distortions of competition and adverse effects on trade. In this regard, the Commission assesses:
- (a) the positive effects of the aid;
 - (b) whether the aid is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing important inequalities;
 - (c) whether the aid is an appropriate policy instrument to meet its objective;
 - (d) whether the aid is proportionate and limited to the minimum necessary to attain its objective and stimulate additional investment or activity in the area concerned;

⁽²⁸⁾ Judgment of the Court of Justice, 22 September 2020, Case C-594/18 P, *Austria v Commission (Hinkley Point C)*, ECLI:EU:C:2020:742, § 19.

- (e) whether the aid is transparent, in that stakeholders, the general public and the Commission have easy access to information on the aid awarded;
 - (f) the negative effects of the aid on competition and trade between Member States.
- (60) As a final step, the Commission balances the identified negative effects of the measure on the internal market with its positive effects on the supported economic activities.

3.3.1. First condition: facilitation of the development of an economic activity

- (61) The measure will facilitate the development of an economic activity by supporting the take-up of the eligible services. In particular, the measure will incentivise households to subscribe to the eligible services, thereby increasing connectivity and access to broadband services in the mentioned context of market failure in the take-up of the eligible services in Cyprus (see recitals (11) and (13)). On the other hand, all eligible service providers will be able to offer the eligible services through the vouchers and, thus, to expand their customer base and increase their sales/revenues.
- (62) ***Incentive effect:*** The measure will have an incentive effect. First, the voucher will only cover part (namely, less than 50% – see recital (22)) of the set-up costs and of the costs of the first 12 months of subscription (see recital (3)). Second, only households that do not have an active subscription or that have a subscription to a connection providing less than 100 Mbps download speed will be eligible under the measure (see recital (15)). Third, the service providers will have an incentive to adjust their marketing strategy, in order to attract the eligible households to subscribe to the eligible services. Fourth, as explained in recitals (11)-(12), despite a wide availability of broadband networks in Cyprus, the take-up rate of performant broadband connections in Cyprus is relatively low. This is mainly due to their high costs, which the measure intends to address. Hence, it can be concluded that, without the measure, the take-up of eligible services by households would be limited and would take a longer time to materialise.
- (63) ***Compliance with other provisions of Union law:*** There are no elements which suggest that the measure or the activity financed entails a violation of relevant provisions of Union law. The Commission notes in this regard that the measure is open to any provider of the eligible services and that there is no discrimination based on the origin of the provider or the services concerned (see recital (17)).
- (64) Based on the above, the Commission considers that measure may effectively facilitate the development of a range of economic activities by supporting the take-up of the eligible services.

3.3.2. Second condition: the aid must not unduly affect trading conditions to an extent contrary to the common interest

- (65) ***Positive effects of the aid:*** The measure will have positive effects in that it will facilitate access of households to the eligible services, which are necessary in the modern society and the digital economy. In particular, the measure will enable households to reap the benefits of performant digital connectivity, which is an

essential means of communication and participation in society and economy, thereby improving social and territorial cohesion (see recital (13)). The measure will also contribute to the achievement of objectives of Cyprus national digital policy, in particular the objective of promoting connectivity and access to, and take-up of, performant connections by all citizens and businesses.

- (66) ***Necessity of the aid:*** As described in Section 2.3, the measure is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself. In Cyprus, the take-up of performant broadband connections by households is low, despite a wide availability of networks capable of offering a download speed of at least 200 Mbps (see recital (11)). The current take-up level is a strong indicator that, without the measure, households are unlikely to change their behaviour and purchase eligible services.
- (67) ***Appropriateness of the aid as a policy instrument:*** The measure is an appropriate means to pursue the objective of encouraging the take-up of performant broadband services. First, the measure aims to overcome the main barrier to the take-up of the eligible services, *i.e.* the high subscription costs in Cyprus, by lowering such cost (see recital (12)). Second, the measure is designed in such a way to be technologically neutral (see recital (23)). Third, there are no less restrictive means to achieve the objective of the measure (see recital (3)): for example, regulation would not be an appropriate alternative instrument, because retail prices of broadband connections are typically set by service providers under competitive conditions and without *ex ante* regulation. Hence, the measure is an appropriate policy instrument for pursuing its objectives.
- (68) ***Proportionality:*** The aid is proportionate and limited to the minimum necessary to attain its objective:
- (a) As described in recital (24), the granting authority will set-up an online registry of all eligible service providers to ensure the openness, transparency and non-discriminatory nature of the measure. Households will have the possibility to consult the registry, in order to obtain information about all service providers able to provide the eligible services. Moreover, all service providers capable of providing the eligible services may request to be included in the list of eligible providers. The measure therefore ensures equal treatment of all service providers and the widest choice for the households eligible for the measure;
 - (b) As described in recital (17), all areas of Cyprus where eligible services are available are targeted by the measure;
 - (c) As described in recital (26), the Cypriot authorities conducted a public consultation on the measure, allowing interested parties to comment on its main characteristics. The Cypriot authorities took into account suggestions and comments received in the public consultation. The public consultation demonstrated the general support of service providers for the measure;
 - (d) As described in recital (27), the Cypriot authorities carried out a market assessment. The results of that market assessment indicate that the measure will not give a disproportionate advantage to some service providers to the detriment of others;

- (e) As described in recital (23), the measure is technologically neutral. Households are free to choose their provider capable of providing the eligible services, irrespective of the technology used for providing the services. The objectives of the measures are defined with reference to the download speed provided, without *a priori* discriminating or excluding any technological solutions that can support the eligible services;
 - (f) As described in recital (20), the measure is limited in time to a reasonable period, *i.e.* two years;
 - (g) As described in recital (22), the Cypriot authorities determined the value of the vouchers taking into account the average price of fixed broadband services available on the market. The amount of aid ensures that the vouchers cover less than 50% of the set-up costs and of the costs of the first 12 months of subscription. Thus, there is no risk of overcompensation of the cost for the eligible services;
 - (h) As described in recital (29), the Cypriot authorities confirmed that all major service providers in Cyprus have wholesale access obligations. Providers that are vertically integrated and have a retail market share above 25% must offer, on the corresponding wholesale access market, at least one wholesale access product to any other broadband service provider. Such access must be granted under open, transparent and non-discriminatory conditions. Moreover, the wholesale access prices are determined based on the cost orientation principle and are audited and approved by the NRA.
- (69) ***Transparency, reporting and monitoring:*** The measure complies with the requirements on transparency, reporting and monitoring. In particular:
- (a) As concerns transparency, the Cypriot authorities committed to comply with applicable requirements (see recital (30)). Information concerning the measure will be published on the website of the granting authority and will be updated for the entire duration of the measure. Moreover, all service providers capable of providing the eligible services will be included in an online registry accessible to the public (see recital (24)(a));
 - (b) As concerns reporting, the Cypriot authorities committed to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589, as well as a bi-annual report containing key information on the measure (see recital (32)). Moreover, the Cypriot authorities committed to maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or a different period as may be fixed in the request (see recital (34));
 - (c) As concerns monitoring, the Cypriot authority committed to monitor the implementation of the measure during its entire duration, in order to avoid any abuse by households and/or service providers (see recital (33)).

3.3.3. *Negative effects on competition and trade*

- (70) Voucher measures may have negative effects in terms of market distortions and impact on trade between Member States. The Commission carefully assessed the significance of the distortion of competition and effect on trade of the measure in terms of its potential effects on competitors.
- (71) In this regard, it cannot be excluded that the measure might alter conditions for investment and create distortions detrimental to the proper functioning of the market concerned. In particular, the measure could affect the competitive dynamic at either the retail or the wholesale level, for instance by creating disproportionate windfalls for some service providers while being unduly detrimental to other service providers.

3.3.4. *Weighing the positive effects of the aid against the negative effects on competition and trade*

- (72) A carefully designed State aid scheme should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (73) Based on the available information, the Commission is of the view that the positive effects of the measure outweigh its possible negative effects for the following reasons:
- (a) The Cypriot authorities proved that the measure will have positive effects on the supported economic activities compared with what would have happened without the aid. In particular, the measure will provide support to address insufficient take-up of broadband services by households, which are necessary in the modern society and the digital economy. Therefore, the measure will enable households to reap the benefits of performant digital connectivity, which is an essential means of communication and participation in society and economy, thereby improving social and territorial cohesion (see recital (13));
 - (b) The Cypriot authorities further proved that the negative effects are limited to the minimum necessary, *inter alia* because the vouchers will cover less than 50% of the eligible costs;
 - (c) The measure is designed in such a way as to minimise the potential distortion of competition arising from it. As proved by the market assessment (see recital (27)), the design of the measure will prevent conferring a disproportionate advantage on one or more specific service providers to the detriment of others, also in the light of the wholesale access obligations provided by the relevant national regulation (see recital (29)). Moreover, the respondents in the public consultation welcomed the measure (see recital (26)).
- (74) In light of the above, the positive impact of the measure 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 as it facilitates the development of an economic activity. Moreover, the measure does not adversely affect competition to an extent contrary to the common interest.

4. CONCLUSION

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

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
<mailto:Stateaidgreffe@ec.europa.eu>

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

