



Brussels, 26.4.2024  
C(2024) 2577 FINAL

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**Subject: State Aid SA.55953 (2023/N) – Slovakia – Compensation to Towercom for the costs resulting from the release of the 700 MHz band**

Excellency,

## 1. PROCEDURE

- (1) Following pre-notification contacts, on 27 July 2023, the Slovak authorities notified an aid measure (the ‘Measure’) to compensate Towercom a.s. (‘Towercom’), *i.e.*, the network operator of digital terrestrial television (‘DTT’) in Slovakia, for the costs incurred due to the release of the 694-790 MHz frequency band (the ‘700 MHz band’).
- (2) The Commission services sent four requests for additional information to the Slovak authorities: the first request sent on 7 September 2023, to which the Slovak authorities replied on 13 October 2023; the second request sent on 6 November 2023, to which the Slovak authorities replied on 22 November 2023; the third request sent on 9 December 2023, to which the Slovak authorities replied on 18 December 2023 and the fourth request sent on 16 January 2024, to which the Slovak authorities provided responses on 19 January 2024 and on 12 February 2024.

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## 2. OBJECTIVE OF THE MEASURE

- (3) The Measure aims to enable the effective and speedy release of the 700 MHz band for terrestrial wireless broadband electronic communications services (the ‘WBS’), while maintaining the continuity and availability of DTT in the 470-694 MHz band (the ‘sub-700 MHz band’).
- (4) To this end, the Measure intends to compensate Towercom <sup>(1)</sup> for the technical costs incurred as a result of the release of the 700 MHz band by DTT services. As explained in more detail in section 3.2, in order to make available the 700 MHz band for WBS, the Slovak authorities had to modify both existing individual authorisations (‘IA’) <sup>(2)</sup> and terrestrial operating authorisations (‘TOA’) <sup>(3)</sup> granted to Towercom, during their period of validity and before their expiry, in order to allow the terrestrial provision of broadcasting services in the sub-700 MHz band. According to the Slovak authorities, these modifications were necessary for the following reasons:
- (a) reorganise the sub-700 MHz band frequency plan. This means that frequency channels assigned to Towercom in accordance with TOAs had to be replaced by other frequency channels. The change of frequency channels entailed costs by Towercom, namely costs for the replacement of frequency-related equipment;
  - (b) switch the multiplex 1 <sup>(4)</sup>, operated by Towercom, to more advanced transmission equipment to support the transition from DVB-T to DVB-

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<sup>(1)</sup> Towercom is an operator of electronic communications infrastructure since 1926 in Slovakia. The sole owner of the shares of Towercom is ST Networks Holdings, S.à.r.l. owned by the Macquarie European Infrastructure Funds 4 group. Macquarie is a global leader in infrastructure management.

<sup>(2)</sup> IA is a decision determining the conditions under which frequencies may be used. It contains: (a) name of the site where the transmitting antenna is located; (b) geographical coordinates (latitude and longitude) of the transmitting antenna site; (c) altitude of the site above sea level; (d) type of the radio equipment; (e) identification (name) of the terrestrial multiplex; (f) maximum effective radiated power (horizontally polarized component or vertically polarized component) in the horizontal plane; (g) source coding (video compression standard); (h) height of transmitting antenna above ground level; (i) beam tilt angle of transmitting antenna; (j) value of the antenna attenuation (of the horizontally polarized component or vertically polarized component), at 36 different azimuths in 10° intervals, measured in the horizontal plane from True North in a clockwise direction; (k) polarization; (l) modulation; (m) FFT mode (number of carriers); (n) service information codes; (o) frequency; (p) DTT standard; (q) name of the allotment; (r) technical and operational conditions necessary for the avoidance of harmful interference; (s) obligations arising from international treaties and other international documents binding on the Slovak Republic; (t) period of validity of the individual authorization; (u) recurring charge for the right to use the frequency.

<sup>(3)</sup> TOA is a decision on allocation of frequencies and is a result of a selection procedure. TOA contains: (i) name of the allotment; (ii) frequency; (iii) electronic communications service; (iv) electronic communications network; (v) conditions for efficient use of the frequency (one of the conditions is that TOA holder may use the allocated frequency only on the basis of decision determining the conditions under which frequency may be used); (vi) conditions for the transfer or lease of rights arising from the allocation of frequency; (vii) period of validity of the TOA; (viii) commitments assumed by participant of the selection procedure in the course of the selection procedure and included in the offer; (ix) one-off charge for the allocation of frequencies based on the outcome of the selection procedure,

<sup>(4)</sup> A multiplex is a package of channels broadcast digitally via one frequency channel.

T2 compatible equipment and to more advanced encoding standard <sup>(5)</sup>. The switch to more advanced transmission equipment and encoding equipment entailed costs by Towercom.

- (5) Moreover, the Measure intends to compensate Towercom for the costs of information campaigns needed to inform end-users of the ongoing changes in DTT broadcasting (see recital (22)).

### 3. CONTEXT OF THE MEASURE

#### 3.1. European Radio Spectrum Policy

- (6) Radio spectrum is a key but scarce public resource that is essential for some sectors and services, including television broadcasting and WBS <sup>(6)</sup>. The radio spectrum is divided into frequency bands with conventional names designated by the International Telecommunications Union <sup>(7)</sup>. Each frequency band presents technical characteristics that suit only a limited number of services. Therefore, their allocation may be limited, both in terms of number of users and of period of time, and is subject to international coordination <sup>(8)</sup>.
- (7) In 2012, the World Radiocommunication Conference <sup>(9)</sup> decided that the 700 MHz band should be allocated to both broadcasting and WBS as of 2015 in Region 1 (which includes Europe) <sup>(10)</sup>. By opinion of 19 February 2015, the Radio Spectrum Policy Group, which assists the Commission in radio-spectrum policy matters, recommended the adoption of a coordinated approach across the Union to make the 700 MHz band available for WBS by the end of 2020 <sup>(11)</sup>.
- (8) In that context, the European Parliament and Council adopted Decision (EU) 2017/899 (the ‘EPaC Decision’) <sup>(12)</sup>, which provides for the release of the 700 MHz band for terrestrial systems capable of providing WBS. In particular, the EPaC Decision:

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<sup>(5)</sup> DVB-T stands for Digital Video Broadcasting-Terrestrial. It is a standard for the broadcast transmission of DTT. DVB-T2 is the most advanced standard for the broadcast transmission of DTT.

<sup>(6)</sup> See, among others, Commission Decision of 2.8.2019, in case SA.51080 – *Spain – Audio-visual broadcasting transmission aid for audio-visual service providers*, OJ C 303 of 6.9.2019, p. 1, recital 3.

<sup>(7)</sup> The ITU is the United Nations specialized agency for information and communication technologies.

<sup>(8)</sup> See, among others, Commission Decision of 23.1.2020, in case SA.55742 – *Czech Republic – Aid for the replacement of the frequency-dependent equipment for broadcasting in the context of migration from the 700 MHz band*, OJ C 144 of 30.4.2020, p. 5, recital 3.

<sup>(9)</sup> The World Radiocommunication Conference is organised by the ITU and is tasked to review and revise, if necessary, the radio regulations.

<sup>(10)</sup> See <https://search.itu.int/history/HistoryDigitalCollectionDocLibrary/4.133.43.en.100.pdf>.

<sup>(11)</sup> Recital (13) of the EPaC Decision (as defined in recital (8) of this Decision).

<sup>(12)</sup> Decision (EU) 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).

- (a) requires that spectrum in the 700 MHz band, used for DTT services, had to be made available for the provision of WBS by 30 June 2020 <sup>(13)</sup>;
- (b) establishes the possibility for Member States to provide compensation for the direct costs associated with the migration or reallocation of spectrum use as a result of the release of the 700 MHz band <sup>(14)</sup>;
- (c) provides that Member States must ensure availability at least until 2030 of the sub-700 MHz band for terrestrial broadcasting services on the basis of national needs <sup>(15)</sup>.

### 3.2. Implementation of the EPaC Decision in Slovakia

#### 3.2.1. State of the market before and after the release of the 700 MHz band

- (9) There are four types of television services in Slovakia, namely DTT, IPTV <sup>(16)</sup>, cable television and satellite television. According to a survey carried out in the second half of 2022, approx. 95 % of viewers in Slovakia use pay-tv services. [50 % - 60 %]<sup>(\*)</sup> of pay-tv users use IPTV or cable and [35 % - 45 %] satellite television. Only [0 % - 10 %] of users use DTT to receive – pay or free-to-air – television services <sup>(17)</sup>.
- (10) The release of the 700 MHz band was completed on 28 May 2020. Prior to the release, there were four nationwide DTT multiplexes <sup>(18)</sup>, all operated by Towercom. The table below summarises the main features of the multiplexes <sup>(19)</sup>.

MULTIPLEX	BROADCAST CONTENT	TRANSMISSION AND ENCODING STANDARD	EXPIRY OF TOAs
Multiplex 1 ('mux1')	FTA and pay-tv content of Towercom's pay-tv Plustelka and third-party commercial broadcasters	DVB-T/MPEG-2 <sup>(20)</sup> and MPEG-4	31.5.2021 <sup>(21)</sup>
Multiplex 2 ('mux2')	FTA content of third-party commercial broadcasters (JOJ and TA3)	DVB-T/MPEG-2	9.9.2029 <sup>(22)</sup>

\* Confidential information

<sup>(13)</sup> Article 1 of the EPaC Decision.

<sup>(14)</sup> Article 6 of the EPaC Decision.

<sup>(15)</sup> Article 4 of the EPaC Decision.

<sup>(16)</sup> Internet Protocol Television, namely the delivery of television content over Internet Protocol networks.

<sup>(17)</sup> Market survey carried out by Atmedia in the second half of 2022.

<sup>(18)</sup> A multiplex is a package of channels broadcast digitally via one frequency channel.

<sup>(19)</sup> The Slovak authorities explained that in Slovakia there are two additional multiplexes. However, individual authorisations for the use of frequencies for those two multiplexes have never been issued. Part of the frequencies originally allocated for those multiplexes disappeared in connection with the release of the 700 MHz band. The Slovak authorities further clarified that it is not foreseen that these multiplexes may become operational in the future and that, should they eventually become operational, they will not be able to be operated with full coverage.

<sup>(20)</sup> MPEG stands for Moving Picture Experts Group. It is a standard for media coding. MPEG-2 and MPEG-4 represent progressive development of the standard.

<sup>(21)</sup> The TOA for mux1 was granted on 19.7.2011.

<sup>(22)</sup> The TOA for mux2 was granted on 9.9.2009.

Multiplex 3 (‘mux3’)	Public broadcasting service FTA content	DVB-T/MPEG-2 and MPEG-4	9.9.2009 <sup>(23)</sup>
Multiplex 4 (‘mux4’)	Pay-tv content of Towercom’s pay-tv Plustelka	DVB-T2/MPEG-4	9.9.2009 <sup>(24)</sup>

*Table 1: Main features of the multiplexes before the release of the 700 MHz band*

- (11) After the release of the 700 MHz band and the subsequent technical migration, Towercom continued to operate all four active nationwide multiplexes. In terms of transmission standards, mux1 now operates in DVB-T2, whereas the other multiplexes did not change. In terms of encoding standard, in mux1 it is MPEG-4 and HEVC <sup>(25)</sup>, in mux2 it is MPEG-2, MPEG-4 and HEVC, in mux3 it is MPEG-4, in mux4 it is MPEG-4 and HEVC.
- (12) The Slovak authorities indicated that Towercom did not have any commercial incentive to bear the high investments needed to migrate from the 700 MHz band to the sub-700 MHz band within the timeframe set by the EPaC Decision due to:
- (a) the declining trend of the DTT market in Slovakia: in 2013, DTT market share was approx. [10 % - 20 %], whereas in 2022 it was equal to [0 % - 10 %] (see recital (9)), which means a decline of approx. [45 % - 55 %] of DTT relative market share. According to the Slovak authorities, this excludes Towercom’s interest in bearing the costs to replace frequency-related equipment, considering that a significant part of Towercom’s revenues come from the fees paid by broadcasters for having access to its network <sup>(26)</sup>;
  - (b) the low DVB-T2 penetration in Slovakia: according to estimates made by the Slovak authorities, most households (about 80%) will be equipped with DVB-T2 television receivers only after 2024 <sup>(27)</sup>. This is mainly due to a lack of awareness of the possible benefits of the switch to DVB-T2 television receivers <sup>(28)</sup>. Moreover, Towercom could not expect to recoup the costs of switching to DVB-T2 given the lack of interest from broadcasters due to expected loss of customers and of advertising revenues

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<sup>(23)</sup> The TOA for mux3 was granted on 9.9.2009.

<sup>(24)</sup> The TOA for mux4 was granted on 21.12.2011.

<sup>(25)</sup> HEVC stands for High Efficiency Video Coding and is the most advanced video compression standard.

<sup>(26)</sup> The Slovak authorities clarified that, if Towercom were to change transmission frequencies without the agreement of the broadcasters, this would amount to a substantial breach of contractual terms and the broadcasters concerned would have the right to unilaterally terminate the agreements. Given that, as explained above, revenues coming from the fees paid by broadcasters to have access to the DTT platform constitute a significant part of Towercom’s revenues, the termination of contracts with the broadcasters, or their material change, could have a serious impact on its financial results.

<sup>(27)</sup> According to the Slovak authorities, based on the sales statistics of DVB-T2 TV sets, Slovakia lags behind compared to EU average in terms of the replacement period for televisions by households. On top of this, the segment of viewers of DTT FTA services belongs to an economically weaker (low-income) group, for which the statistical period of changing the television receiver is even longer, being equal to up to 8 years.

<sup>(28)</sup> Market survey carried on by The Nielsen Company (US) LLC in the third quarter of 2022.

(<sup>29</sup>). According to the Slovak authorities, this excludes Towercom's interest in bearing the costs to switch to more advanced transmission and encoding standard DVB-T2 on mux1.

- (13) According to the Slovak authorities, Towercom's lack of interest in bearing the costs related to the release of the 700 MHz band is also confirmed *ex post* by comparing costs, revenues and margins under the basic scenario of continued DVB-T broadcasts against the scenario which reflects costs, revenues and margins following the switch to DVB-T2. In particular, following the release of the 700 MHz band, up until at least 2029, Towercom would have been expected to generate additional costs in the context of its operation of the DTT network without generating any additional revenues, and its margin would have been reduced by almost EUR [10 - 20] million.

### 3.2.2. Release of the 700 MHz band

- (14) In 2017, the Slovak authorities and Towercom started discussions on network adjustments needed to release the 700 MHz band as well as on modalities for compensation, which were a key element of discussion. During the discussions, Towercom informed the Slovak authorities that it would not be able to carry out the network adjustments without compensation for the related costs.
- (15) In 2017, Slovakia signed international agreements on cross-border frequency coordination with Austria, Poland, Czech Republic, Hungary, and Ukraine.
- (16) In December 2018, the Slovak authorities determined the technical parameters of the DTT network to be operated after the release of the 700 MHz band, including new frequencies to be used and a timetable for releasing the frequencies (<sup>30</sup>).
- (17) Taking into consideration i) the deadline set in the EPaC Decision for releasing the 700 MHz band (*i.e.*, 30 June 2020), ii) the standard delivery deadlines for technical equipment (<sup>31</sup>), and iii) the necessary period for planning equipment installation, in 2018 Towercom decided to launch market surveys to map available equipment on the market and the relevant commercial conditions (price, delivery time, payment conditions, warranty period, etc.). This market survey was launched without prejudice to Towercom's position that it would not be able to carry out the network adjustments without compensation for the related costs. As clarified by the Slovak authorities, the market survey amounted to a standard tendering process, since – as already mentioned – it included also a request for quotation. In that context, the interested suppliers submitted their technical and commercial proposals, including prices. Afterwards, a three-round negotiation process took place, which resulted in a shortlist and a final two-round price negotiations with two bidders. According to the Slovak authorities, this process ensures that the aid

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(<sup>29</sup>) In particular, the Slovak authorities submitted the statements made by Towercom's CEO, Mr. Rudolf Urbánek, which repeatedly confirmed that both broadcasters MAC TV and RTVS were strongly against migration from standard DVB-T to DVB-T2.

(<sup>30</sup>) For the sake of clarity, the transition of mux1 to the DVB-T2 broadcasting standard resulted from the fact that, considering the number of allocated frequencies for mux1, this could not be fulfilled in the DVB-T broadcasting standard (see recital (23)(b)).

(<sup>31</sup>) According to the Slovak authorities, delivery periods could last up to 4 months due to the increased demand for such equipment related to the EPaC Decision requirements applicable across the Union.

is limited to the minimum necessary.

- (18) From 20 December 2018 to 3 January 2019, the Slovak authorities submitted to public consultation a draft legislative text establishing the conditions for the award of compensation in situations such as the one subject of this Decision <sup>(32)</sup>. On 27 March 2019, the law establishing the conditions for the award of compensation conditioning granting of aid to a decision of the Commission declaring that the aid is compatible with the internal market was adopted (recital (24)). On 16 April 2019, the law entered into force.
- (19) On 17 January 2019, the regulatory authority published on its website the announcement of its intention to change existing TOAs for nationwide DTT in all four multiplexes, before their expiry (see table at recital (10)) <sup>(33)</sup>.
- (20) Following the publication of the draft legislative text establishing the conditions for the award of compensation in situations such as the one subject of this Decision (thus, following the awareness that, in principle and subject to the conditional clause in the legal base concerning approval under State aid rules, Towercom would qualify for compensation), on 28 February 2019 <sup>(34)</sup>, Towercom commissioned the first relevant equipment on the basis of the outcome of the market survey (see recital (17)), the commissioning of the first facilities took place.
- (21) In May 2019, the Slovak authorities published an invitation to tender – addressed to network operators – concerning the TOA for mux1 from 1 June 2021 to 9 September 2029. Towercom was the only undertaking to submit a bid and was awarded the tender on 1 June 2021 <sup>(35)</sup>.
- (22) Between April 2019 and May 2020, Towercom realised extensive information campaigns (press, television, radio, info line, billboards, online media, etc.) to

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<sup>(32)</sup> That legislative text does not deal with the technical parameters of the release of the 700 MHz band. The Slovak authorities received submissions from 15 stakeholders. Slovak Telecom (provider of IPTV services) was the only market operator that contributed. Slovak Telecom mainly asked to: 1) “*Add a definition of the rights and obligations of the entities concerned during the period of transition from the original to the new individual authorisation*” – comment rejected because no transitional period is envisaged. 2) “*Add ‘compensation for a proportion of the one-off payment paid by the undertaking under the individual authorisation to use the frequencies affected by the amendment’*” – comment rejected because contrary to EPaC Decision. 3) “*Extend the period for applying for aid from 6 months to 1 year*” – comment rejected because time limit was considered appropriate. 4) “*Add compensation for ‘associated financial losses’*” – comment rejected as against EPaC Decision. Information on the legislative process can be found on the website <https://www.slov-lex.sk/legislativne-procesy/SK/dokumenty/LP-2018-950>.

<sup>(33)</sup> Announcement of the Office for Electronic Communications and Postal Regulation of the intention to implement a change to existing terrestrial operating authorisations issued to Towercom, a.s.: [https://www.teleoff.gov.sk/data/files/49254\\_oznamenie-o-zamere-vykonat-zmenu-v-povoleni-twc.pdf](https://www.teleoff.gov.sk/data/files/49254_oznamenie-o-zamere-vykonat-zmenu-v-povoleni-twc.pdf).

<sup>(34)</sup> In particular, Towercom launched a market survey for transmitters in October 2018, on the basis of which it started commissioning the first transmitting equipment in April 2019, and a market survey for distribution systems in February 2018, on the basis of which the commissioning of the first distribution systems equipment took place in February 2019.

<sup>(35)</sup> In this regard, the Slovak authorities clarified that the tender was open to all interested market players and that Towercom did not have any advantage, if compared to other potentially interested market players, also because also other market players would have been in principle eligible for compensation, if they had participated and awarded the tender.

inform end-users of the ongoing changes in DTT broadcasting <sup>(36)</sup>. The Slovak authorities explained that:

- (a) such information campaigns were a prerequisite for the successful implementation and completion of the entire process of release of the 700 MHz band: in the absence of them, there would have been a high risk that end-users would not have been ready to switch in time and would not have been able to receive television broadcasts on their receivers once DTT transmissions in the 700 MHz frequency band would have been terminated. As a confirmation of this, in the legal basis <sup>(37)</sup>, the costs for information campaigns were expressly included among the eligible costs, since they were considered directly related and necessary to the successful release of the 700 MHz band and migration of the DTT services to the sub-700 MHz band;
  - (b) the necessity of information campaigns was discussed and agreed between the Ministry of Transportation, the NRA, broadcasters (RTVS and TV JOJ) and Towercom <sup>(38)</sup>;
  - (c) the provider of the information campaigns, THIS IS LOCCO s.r.o., was selected via a competitive selection procedure <sup>(39)</sup>;
  - (d) it was not possible for the Slovak authorities to carry-out directly the information campaigns for lack of specific competence on this field.
- (23) Between March 2019 and 28 May 2020 (when the release of the 700 MHz band was completed), the Slovak authorities implemented the changes necessary for the release of the 700 MHz band, namely:
- (a) reorganisation of the frequency plan. In particular, TOAs and related frequency channels assigned to Towercom, were changed as follows:

MUX	ALLOTMENT	RETUNING DATE	ORIG. CHANNEL	NEW CHANNEL
MUX 1	BL – Bratislava	4.3.2019	44	39
	TN – Trenčín	23.3.2020	53/55	39
	ZA – Žilina	23.3.2020	35	47
	NO – Námestovo	No change	44	-
	BB – Banská Bystrica	10.7.2019	49	47
	VK – Veľký Krtíš	4.3.2019	49	32
	NI – Nitra	24.6.2019	50	28
	PP – Poprad	No change	41	-
	RS – Rimavská Sobota	12.8.2019	57	47
	KE – Košice	10.7.2019	50	23

<sup>(36)</sup> The campaign was realised by the specialised agency THIS IS LOCCO, s.r.o.

<sup>(37)</sup> In particular, § 34a, par. 4, letter d) at the time in force of the Act no. 351/2011 Coll. On electronic communications (see recital (24)).

<sup>(38)</sup> The Slovak authorities submitted the minutes of a meeting held on 25.8.2018.

<sup>(39)</sup> Three suppliers submitted an offer.



MUX	ALLOTMENT	RETUNING DATE	ORIG. CHANNEL	NEW CHANNEL
	MI – Michalovce	24.6.2019	57	23
	BJ – Bardejov	19.2.2020	49	47
MUX 2	BL – Bratislava	1.4.2020	56	37
	TN – Trenčín	23.3.2020	52/56	21
	ZA – Žilina	23.3.2020	52	35
	NO – Námestovo	19.2.2020	59	46
	BB – Banská Bystrica	10.7.2019	51	37
	VK – Veľký Krtíš	1.4.2020	60	21
	NI – Nitra	2.7.2019	21	45
	PP – Poprad	13.8.2019	55	24
	RS – Rimavská Sobota	12.8.2019	27	21
	KE – Košice	10.7.2019	59	37
	MI – Michalovce	24.6.2019	59	37
	BJ – Bardejov	19.2.2020	40	46
MUX 3	BL – Bratislava	4.3.2019	27	44
	TN – Trenčín	23.3.2020	57	23
	ZA – Žilina	No change	32	-
	NO – Námestovo	No change	26	-
	BB – Banská Bystrica	No change	33	-
	VK – Veľký Krtíš	No change	33	-
	NI – Nitra	No change	48	-
	PP – Poprad	13.8.2019	24	42
	RS – Rimavská Sobota	12.8.2019	54	52
	KE – Košice	No change	25	-
	MI – Michalovce	No change	25	-
	BJ – Bardejov	19.2.2020	54	40
MUX 4	BL – Bratislava	4.3.2019	39	27
	TN – Trenčín	23.3.2020	23	27
	ZA – Žilina	23.3.2020	39	30
	NO – Námestovo	19.2.2020	46	29
	BB – Banská Bystrica	16.7.2019	40	30
	VK – Veľký Krtíš	4.3.2019	32	27
	NI – Nitra	No change	31	-
	PP – Poprad	13.8.2019	39	38
	RS – Rimavská Sobota	No change	22	-
	KE – Košice	16.7.2019	21	22
	MI – Michalovce	No change	22	-
	BJ – Bardejov	19.2.2020	46	30

**Table 2:** Modification of the frequency channels in the context of the reorganisation of the frequency plan

Moreover, 120 IAs were modified <sup>(40)</sup>. In this context, due to refarming of frequencies and the lack of available frequencies for DTT services resulting

<sup>(40)</sup> In particular, 19 out of 24 in mux1; 62 out of 63 in mux2; 27 of 67 in mux3; 12 out of 16 in mux4.

from it, large Single Frequency Networks <sup>(41)</sup> ('SFNs') were created in all multiplexes <sup>(42)</sup>;

- (b) a change of the network characteristics needed for mux1 to operate with DVB-T2 instead of DVB-T <sup>(43)</sup> and with more advanced encoding standard. The Slovak authorities explained that, due to refarming of the frequencies for WBS and the resulting lack of available frequencies for DTT services, larger SFNs were created in all four multiplexes, and in mux1 and mux4, were created five super-allotments <sup>(44)</sup>. The Slovak authorities explained that, as a result of the release of the 700 MHz band, DVB-T transmitters would have no longer functioned properly, and the increased distance between transmitters in super-allotments (in excess of 100 km) would have put additional constraints on the network such as higher demand for synchronisation and accuracy in the distribution system. The creation of the SFNs and the super-allotments required therefore the change in mux1 of the transmission standard from DVB-T to DVB-T2 otherwise the network system would have caused massive mutual interference on approx. 35 % of the Slovak territory and affect 45 % of the Slovak households <sup>(45)</sup>.

#### 4. DETAILED DESCRIPTION OF THE MEASURE

##### 4.1. Legal base

- (24) The Slovak authorities have notified the individual award of compensation to Towercom in connection with the release of the 700 MHz band. The support will be granted by means of a decision of the Office for the Regulation of Electronic Communications and Postal Services. Towercom is the only entity affected by the amendment of individual authorisations for the use of radio-spectrum in connection with the release of the 700 MHz band and is therefore the only entity

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<sup>(41)</sup> A SFN is a broadcast network where several transmitters broadcasting in an area simultaneously send the same signal over the same frequency channel. The use of a SFN enables the coverage of an area by several individual transmitters using a single frequency, rather than multiple frequencies.

<sup>(42)</sup> In particular, in mux1, three SFNs covering super-allotments (*i.e.* large areas where transmitters transmit on one frequency channel with a distance between transmitters of more than 100 km) were created; in mux2, one larger SFN was created; in mux3, one larger SFN was created; in mux4, two SFN covering super-allotments were created.

<sup>(43)</sup> The Slovak authorities explained that DVB-T transmitters using the same frequency channel do not function properly when they are more than 67 km apart from each other, which is a situation occurring as a result of the release of the 700 MHz band. In addition, super-allotments (when the distance between transmitters is of more than 100 km) put additional constraints on the network such as higher demand for synchronisation and accuracy in the distribution system. For these reasons, the Slovak authorities explained that the DTT network must function with DVB-T2. 5 super-allotments (constituted of areas within which transmitters transmit on one frequency channel over a large area (approx. 100+ km)) were created in mux1 and mux4. The authorities explained that because of the creation of super-allotments, it was necessary to change the transmission standard of mux1 from DVB-T to DVB-T2. Without a DVB-T2 DTT network, according to the Slovak authorities, the system would cause massive mutual interference on roughly 35 % of the territory and for 45 % of households.

<sup>(44)</sup> See footnote 35.

<sup>(45)</sup> The problem did not arise for mux4, which was already operating with DVB-T2 standard. Moreover, the change of transmission standard was not required for mux2 and mux 3, since for them the Slovak authorities did not need to create super-allotments.

that can legitimately claim compensation for costs related to the release of that band <sup>(46)</sup>. Section 34a of Act 351/2011 Coll. on Electronic Communications lays down a procedure for compensation related to the exceptional amendment of an individual authorisation for the use of the radio-spectrum, when such amendment takes place before the expiry of its validity period and the amendment is necessary to comply with obligations of the Slovak Republic arising from its membership to the EU or to international organisations <sup>(47)</sup>. In accordance with Section 9 of Act 358/2015 Coll. of 10 November 2015, State aid may be granted only after approval of the Measure by the European Commission <sup>(48)</sup>. Pursuant to paragraphs (1), (7), (8) and (9) of Section 34a of Act 351/2011 Coll., aid may be granted only if the Commission declares the aid compatible with the internal market.

#### **4.2. Budget**

- (25) The budget of the Measure amounts to EUR 11 675 073 and originates from the State budget.

#### **4.3. Duration**

- (26) The Measure is applicable from the notification of the Commission's decision approving the measure until 30 June 2025.

#### **4.4. Granting authority**

- (27) The granting authority is the Office for the Regulation of Electronic Communications and Postal Services.
- (28) The granting authority will (i) review Towercom's application, (ii) assess the sincerity of the costs after they are completed and duly documented, and (iii) perform a technical inspection of the equipment to verify that only eligible costs are compensated.

#### **4.5. Form of the aid**

- (29) The aid takes the form of a direct grant to Towercom.

#### **4.6. Beneficiary**

- (30) As indicated in recital (25), aid will be granted to Towercom by means of a decision of the Office for the Regulation of Electronic Communications and Postal Services. In Slovakia, Towercom is the only holder of relevant authorisations to use

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<sup>(46)</sup> Towercom was the only holder of individual authorisations in the 700 MHz band. Towercom had been allocated frequencies in that band on the basis of selection procedures.

<sup>(47)</sup> Section 34a 'Reasonable compensation for the costs of amending an individual authorisation' of Act 351/2011 Coll. on Electronic Communications was introduced by Act 94/2019 Coll. of 27 March 2019 (date of promulgation) and entered into force on 16 April 2019.

<sup>(48)</sup> The Slovak authorities explained that, since the beginning of the negotiations with Towercom about the necessary changes to the network and the related compensation, any possibility for State aid was clearly made conditional upon the Commission's approval.

frequencies for DTT services in the 700 MHz band, which the Slovak authorities had to modify before their expiry date, in the context of the release of the 700 MHz band as established by the EPaC Decision.

- (31) The Slovak authorities committed to suspend the granting and the payment of any aid to an undertaking which has benefited from earlier unlawful aid declared incompatible by a Commission decision until the undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest <sup>(49)</sup>.

#### 4.7. Eligible costs

- (32) Costs listed in recitals (33)-(37) are eligible as they are directly related to the release of the 700 MHz band <sup>(50)</sup>. The Slovak authorities commissioned a technical report from an independent expert <sup>(51)</sup>, on the necessity of the costs incurred by Towercom because of the modification of the individual authorisations as a result of the release of the 700 MHz band <sup>(52)</sup>. The technical report identifies the existing DTT network equipment (each item's brand and function), the impacts of the release of the 700 MHz band and the resulting necessary changes of equipment. On that basis, the Slovak authorities listed the costs directly related to the release of the 700 MHz band that were eligible to the Measure (including the costs for information campaigns).
- (33) The following equipment located in the **head-end** part of the network, which relates to the switch to a more advanced DTT network for mux1, is eligible for compensation:

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<sup>(49)</sup> Section 7(5)(b) of Act n° 358/2015 regulating certain relations in the field of State aid and de minimis aid and amending certain acts.

<sup>(50)</sup> The procedure set out in Section 34a of Act 351/2011 (see recital (25)) only allows net direct costs that a) are reasonable, economical, efficient and necessary, b) have been incurred as a result of the exceptional amendment of the individual authorisation, and c) have been incurred and demonstrably spent up to the date on which the amendment is to take place. Those costs can only include a) the procurement or technical modification of equipment, b) the dismantling and decommissioning of equipment, c) the installation and commissioning of equipment to replace decommissioned equipment, d) a related information campaign for end-users, e) repayment of credits, loans and other financial instruments at arm's length. Those costs cannot include a) VAT costs, when VAT costs are deductible, b) costs related to acquiring, depreciating and operating means of transport, and c) current operating costs.

<sup>(51)</sup> The expert was selected on the basis of a competitive procedure in line with procurement rules. The procedure set out in Section 34a of Act 351/2011 (see recital (25)) requires that the granting authority, by itself or through a competent and independent professional, shall assess the costs included in an application. This includes the inspection of the accounting documents, books and records, technical documents and any other documents necessary for the assessment.

<sup>(52)</sup> Summary report, *Assessment of the necessity of the costs incurred by the company Towercom, a. s., caused by the change of the individual authorisation after the release of the 700 MHz band, from a technical point of view for 2019 and 2020 (assessment of the necessity and expediency of the change of equipment and technical components in the equipment)*, April 2021.

- (a) **Multiplexers hardware and software:** this equipment is common to all four multiplexes and must be replaced because of the creation of large DVB-T2 SFNs in mux1 and mux4 (see recital (23)(a)) <sup>(53)</sup>.
  - (b) **Source encoding hardware:** this equipment uses a higher encoding standard and is used by all four multiplexes. The replacement is necessary to ensure full interoperability with the new multiplexers <sup>(54)</sup>.
  - (c) **Necessary accessories and installation costs** relating to the multiplexers and source encoding hardware.
  - (d) **T2 gateways and relating accessories,** which must be added to guarantee functioning of the head-end with the large DVB-T2 SFNs.
  - (e) **Costs** relating to additional monitoring equipment <sup>(55)</sup>.
- (34) The following equipment located in the **distribution part** of the network, which relates to the switch to a more advanced DTT network for mux1, is eligible for compensation <sup>(56)</sup>:
- (a) **Capacity extension:** operation of mux1 and mux4 in DVB-T2 entails higher capacity requirements due to the characteristics of the new DVB-T2 SFNs and transition from DVB-T to DVB-T2 in mux1 <sup>(57)</sup>.
  - (b) **GPS receivers:** additional GPS receivers in selected network nodes are necessary to ensure additional synchronization.
- (35) The following equipment located in the **broadcasting part of the network,** which relates to the change of frequencies and to, as concerns transmitters in mux1, switch to a more advanced DTT network, of the network is eligible for

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<sup>(53)</sup> The Slovak authorities explained that the original multiplexers (Cisco DCM D9900) do not support large DVB-T2 SFNs.

<sup>(54)</sup> The costs of source encoding software (either MPEG-2, MPEG-4, or any upgrade to HEVC) are not included.

<sup>(55)</sup> In particular, the costs for the purchase and installation of the necessary extension cards and additional probes to monitor the head-end part of the network, *i.e.* investment costs. In this regard, the Slovak authorities clarified that these costs are directly related to the release of the 700 MHz band, as the extension of the monitoring system was enforced by the installation of new equipment due to the release of the 700 MHz band. In particular, the new equipment (in particular, the transmitters) required the extension of the Bridgetech monitoring system with probes and their interconnection with the central monitoring system. In the absence of the release of the 700 MHz band, these costs would not have been incurred by Towercom.

<sup>(56)</sup> The technical report also concluded that contrary to what the authorities initially planned, there was no need to replace the network infrastructure/routers, which have thus been excluded from compensation.

<sup>(57)</sup> As concerns mux1, the Slovak authorities explained that the transition from DVB-T to DVB-T2 required the television content to be streamed in the distribution system on the one hand in DVB-T standard and on the other in DVB-T2 standard during the whole retuning period. Practically, each transmitter in mux1 transmitted only one content at the time (viewers in one area could not watch DVB-T content and DVB-T2 content simultaneously). In total, retuning transmitters and transition to DVB-T2 of mux1 required a distribution capacity of 53.31 Mbit/s (mux1/DVB-T flow of 19.91 Mbit/s and mux1/ DVB-T2 flow of 33.4 Mbit/s) during the retuning period. The Slovak authorities indicated that the old distribution system had to be replaced. They indicated that the distribution network and thus its switch is common to all multiplexes.

compensation:

- (a) **Transmitters:** transmitters must be replaced or added to function with the new DVB-T2 network in mux1 and the new frequency plan.
  - (b) **Filters, power combiners, repeaters / gap fillers:** these items must be replaced or added following the change of frequencies.
- (36) The Slovak authorities explained that **investment costs** required for the monitoring of the broadcasting network are eligible, as monitoring forms part of the overall successful implementation of the migration process <sup>(58)</sup>.
- (37) Cost incurred for the **information campaign** mentioned in recital (22) are also eligible to compensation, since needed for the successful implementation and completion of the entire process of release of the 700 MHz band and migration of the DTT services in the sub-700 MHz band.
- (38) According to the Slovak authorities, eligible costs amount to EUR 11 876 196 <sup>(59)</sup>.

#### 4.8. Aid intensity

- (39) Aid may compensate up to 98.3 % of the eligible costs. The Slovak authorities will undertake audits of all eligible costs submitted by Towercom before paying out the aid <sup>(60)</sup>.

#### 4.9. Cumulation

- (40) The aid cannot be cumulated with any other aid for the same eligible costs.

#### 4.10. Transparency

- (41) The Slovak authorities committed to publish information on the Measure on a national website as well as to publish information on individual aid exceeding EUR 500 000 in the central register <sup>(61)</sup> and the Transparency Aid Module of the Commission.

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<sup>(58)</sup> As explained in footnote 55, these are investment costs related to the purchase of necessary extension cards and probes, in this case needed to Bridgetech monitoring system for broadcasting network.

<sup>(59)</sup> In particular: (a) costs for the equipment located in the head-end part of the network amount to EUR 297 139; (b) costs for the equipment located in the distribution part of the network amount to EUR 1 157 191; (c) costs for the equipment located in the broadcasting part of the network amount to EUR 6 885 533; (d) broadcasting network monitoring costs amount to EUR 46 580; (e) costs for the information campaigns amount to EUR 3 489 753.

<sup>(60)</sup> Article 34a (6) of Act 351/2011 Coll.

<sup>(61)</sup> <https://semp.kti2dc.sk/>.

## 5. ASSESSMENT OF THE MEASURE

### 5.1. Existence of aid

- (42) The Commission has examined whether the Measure can be qualified as State aid within the meaning of Article 107(1) TFEU, 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*”.
- (43) In order to qualify a measure as aid within the meaning of Article 107(1) TFEU, the following cumulative conditions must be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

#### 5.1.1. State resources and imputability

- (44) The Measure is financed by the State budget (recital (25)) and is based on the legal acts mentioned in recital (24). Moreover, the Slovak authorities decide on the granting of the aid (recital (27)). The Measure is thus financed by State resources and is imputable to the State.

#### 5.1.2. Economic advantage

- (45) An advantage within the meaning of Article 107(1) TFEU is an economic benefit, which a beneficiary would not have received under normal market conditions, in the absence of State intervention<sup>(62)</sup>. 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<sup>(63)</sup>. Among the charges that are normally included in the budget of an undertaking are costs arising from regulatory measures inherent in the exercise of a regulated economic activity<sup>(64)</sup>.
- (46) In the present case, aid is granted to Towercom, namely an undertaking that offers television transmission services, which constitute an economic activity<sup>(65)</sup>, and mitigates charges which should normally be included in the budget of that undertaking. In particular, the Measure intends to compensate costs that arose from regulatory measures, namely the decision of the Slovak authorities to change the assigned frequency channels and the DTT network parameters, taken during the period of validity of the relevant on-going DTT authorizations. Obligations arising from these regulatory measures placed on Towercom are inherent to its

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<sup>(62)</sup> Judgment of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60. Judgment of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

<sup>(63)</sup> Judgment of 26 April 2018, *Cellnex Telecom SA and Telecom Castilla-La Mancha SA v Commission*, C-91/17 and C-92/17 P, EU:C:2018:284, paragraph 111.

<sup>(64)</sup> Judgment of 30 June 2016, *Belgium v Commission*, C-270/15 P, EU:C:2016:489, paragraphs 35-36.

<sup>(65)</sup> Judgment of 1 July 2010, *M6 and TFI v Commission*, T-568/08 and T-573/08, EU:T:2010:272, paragraph 123.

economic activity. They pertain to holding of authorisations to use frequencies, the initial validity of which went beyond the deadline set by the EPaC decision.

- (47) In line with previous cases <sup>(66)</sup>, the Commission considers that the Measure relieves Towercom from costs that are inherent in its business. In the absence of the Measure, the operator would have been obliged to bear all the costs linked to the release of the 700 MHz band stemming from regulatory measures. Therefore, the Commission concludes that the Measure confers an economic advantage to Towercom.

#### 5.1.3. Selectivity

- (48) 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.
- (49) The only beneficiary of the Measure is Towercom, namely an undertaking active in the sector of television transmission services, which operates via the DTT network. Given that the present case concerns an individual aid measure, the identification of the economic advantage (see recitals (45) – (47)) is sufficient to support the presumption that the measure is selective <sup>(67)</sup>. In any case, it does not appear that other operators transmitting television services via other means such as satellite, cable or IPTV benefit from the Measure. Therefore, the Commission concludes that the Measure is selective.

#### 5.1.4. Distortion of competition and effect on intra-Union trade

- (50) 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. In this regard, the General Court stated that “*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*” <sup>(68)</sup>.
- (51) The Measure applies to Towercom, which competes with other operators active in the provision of television networks (e.g., cable) and which are also active at

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<sup>(66)</sup> See Commission Decision of 12.12.2018, in case SA.47258 – *Germany – Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band*, OJ C 40 of 1.2.2019, recital (44). Commission Decision of 2.8.2019, SA.51080 – *Spain – Audio-visual broadcasting transmission aid for audio-visual service providers*, OJ C 303 of 2.8.2019, recital (54). Commission Decision of 23.1.2020, in case SA.55742 – *Czech Republic – Aid for the replacement of the frequency-dependent equipment for broadcasting in the context of migration from the 700 MHz band*, OJ C 144 of 30.4.2020, recital (49).

<sup>(67)</sup> Judgement of 4 June 2015, *Commission v. MOL*, C-15/14 P, EU:C:2015:362, paragraph 60. Judgement of 30 June 2016, *Belgium v Commission*, C-270/15 P, EU:C:2016:489, paragraph 49. Judgement of 13 December 2017, *Greece v Commission*, T-314/15, EU:T:2017:903, paragraph 79.

<sup>(68)</sup> Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, EU:T:2001:115, paragraph 41.



international level<sup>(69)</sup>. The Commission considers that the television infrastructure sector is open to competition within the EU.

- (52) Therefore, the Measure may result in distortions of competition among television services providers and would have the potential to distort competition in the internal market and to have an effect on intra-Union trade.

#### 5.1.5. Conclusion on the existence of aid

- (53) In light of the above, the Commission concludes that the Measure fulfils the criteria laid down in Article 107(1) TFEU and constitutes State aid.

### 6. LAWFULNESS OF THE MEASURE

- (54) By including a standstill clause in the legal base of the Measure (recital (24)) conditioning the granting of the aid to the Commission declaring that the Measure is compatible with the internal market, the Slovak Republic complied with the obligation stemming from Article 108(3) TFEU<sup>(70)</sup>.

### 7. COMPATIBILITY

- (55) As the Measure constitutes State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed. The grounds on which a State aid measure can or must be declared compatible with the internal market are listed in Articles 106(2), 107(2), and 107(3) of the Treaty.
- (56) In their notification, the Slovak authorities consider that the Measure is compatible with Article 107(3) (c) TFEU.
- (57) Article 107(3)(c) TFEU 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.
- (58) Therefore, in order to be declared compatible with the internal market under Article 107(3)(c) TFEU, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest<sup>(71)</sup>.

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<sup>(69)</sup> See, among others, Commission Decision of 23.1.2020, in case SA.55742 – *Czech Republic – Aid for the replacement of the frequency-dependent equipment for broadcasting in the context of migration from the 700 MHz band*, OJ C 144 of 30.4.2020, p. 5, recital 58.

<sup>(70)</sup> As clarified in footnote 48, also during negotiations with Towercom, any possibility for State aid was made conditional upon the Commission’s approval.

<sup>(71)</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 19.

## 7.1. Facilitation of the development of an economic activity

### 7.1.1. *Economic activity facilitated by the Measure*

- (59) To be compatible with Article 107(3)(c) TFEU, the aid must facilitate the development of certain economic activities.
- (60) The Measure supports costs incurred by Towercom to release the 700 MHz band to the benefit of WBS. As explained in recitals (4) and (23), the release of the 700 MHz band required the change of frequency channels and the switch to a more advanced DTT network for mux1, as well as information campaigns. This ensured the continuity and availability of DTT services for end-users in the sub-700 MHz band following the release of the 700 MHz band to the benefit of WBS (see recital (3)).
- (61) Therefore, the Commission concludes that the Measure facilitated the development of the provision of both DTT networks and services and WBS in Slovakia.

### 7.1.2. *Incentive effect*

- (62) To be compatible with the internal market, the Measure must have an incentive effect. To that end, it must be demonstrated that, in the absence of the Measure, the investment intended to implement the project at issue would not take place or would take place later or in a restricted manner. If that same investment would take place even without the Measure, the conclusion should be that the aid serves merely to improve the financial situation of the recipient undertaking, without, however, meeting the requirement in Article 107(3)(c) TFEU that it is necessary for the development of certain activities <sup>(72)</sup>.
- (63) The following indicates that the Measure gave an incentive to complete the release of the 700 MHz band in line with the deadline set by the EPaC Decision.
- (64) Available information indicates that, without the aid, Towercom would have had no incentive to undertake the changes resulting from the release of the 700 MHz band, thereby jeopardising continuity and availability of DTT services for end-users following the release of the 700 MHz band imposed by the EPaC Decision. In particular:
  - (a) Towercom held TOAs for mux1 until 31 May 2021 and for multiplexes 2-4 until 9 September 2029 (see recital (10)). Towercom was required to carry out its DTT transmission activity in accordance with the technical parameters in the TOAs (see footnote 3), which included the use of the 700 MHz band. The regulatory change intervened during the period of

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<sup>(72)</sup> Judgment of 12 September 2019, *Achemos Grupè and Achema v Commission*, T-417/16, EU:T:2019:597, paragraph 84.

validity of the relevant authorisations<sup>(73)</sup>, which were granted when the regulatory changes were not in sight<sup>(74)</sup>;

- (b) Towercom would have not invested in the replacement of frequency-related equipment, in the switch to a more advanced transmission and encoding standard for mux1 or in information campaigns, considering the declining trend of the Slovak DTT market, the low DVB-T2 penetration in Slovakia. Moreover, Towercom could not expect to recoup the costs of switching to DVB-T2 given the lack of interest from the broadcasters (recital (12));
- (c) Towercom commissioned the first relevant equipment for the migration only following the publication of the draft legislative text establishing the conditions for the award of compensation subject of this Decision (thus, following the awareness that, in principle and subject to the conditional clause in the legal base concerning approval under State aid rules, Towercom would qualify for compensation) (recital (20)).

(65) Based on the above, the Commission concludes that it is the Measure that incentivised Towercom to undertake the necessary investment for the release of the 700 MHz band.

#### *7.1.3. Compliance with other provisions of EU law*

- (66) If a State aid measure, the conditions attached to it (including its financing method when that method forms an integral part of the aid measure) or the activity it finances entail a violation of a provision or general principles of Union law, the aid cannot be declared compatible with the internal market<sup>(75)</sup>.
- (67) The Commission has not identified any elements of the Measure that would infringe any provision or principle of EU law.

### **7.2. The aid must not unduly affect trading conditions to an extent contrary to the common interest**

- (68) To conclude that the Measure does not unduly affect trading conditions to an extent contrary to the common interest, the Commission must examine the positive effects of the Measure and whether any negative effects of the Measure are minimised, namely that the Measure is necessary, appropriate, and proportionate.

#### *7.2.1. Positive effects of the aid*

- (69) The Measure brought positive effects to the supported activities by maintaining the continuity and availability of DTT in Slovakia following the release of 700 MHz band to the benefit of WBS, thus supporting the development of performing mobile services (see recital (3)).

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<sup>(73)</sup> Namely in December 2018 (see recital (16). The initial discussions with the Slovak authorities took place in 2017 (14).

<sup>(74)</sup> See footnotes 21-24.

<sup>(75)</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

- (70) Within the Union, it is commonly acknowledged that a well-functioning media landscape is useful for functioning democracies as well as Member States' economies. Therefore, by supporting the DTT broadcasting infrastructure, the Measure supports media which use the DTT platform to broadcast their programmes. Such media plays an important role in social cohesion by ensuring coverage of users which use DTT as their only means to receive television services, especially FTA channels (see recital (9)). In particular, the Measure ensures that DTT content remains available for end-users through supporting necessary changes on the DTT infrastructure, thereby preserving the diversity of television platforms.
- (71) Moreover, the Measure supports the timely release of the 700 MHz band in order to ensure the development of WBS to the benefit of the public generally, businesses and public administrations throughout the Slovak territory, thereby also contributing to a uniform coverage and to the reduction of the digital (and social) divide.
- (72) Therefore, the Commission concludes that the Measure has positive effects.

#### 7.2.2. *Necessity of the Measure*

- (73) State aid should be targeted towards situations where aid can bring about a material improvement that the market alone cannot deliver.
- (74) The Commission has recognised in previous cases <sup>(76)</sup> that access to, and use of, radio spectrum and frequencies are regulated by the national authorities. It is the authorities that decide, in accordance with the Union and national regulatory framework, under which conditions rights to use frequencies are assigned, including technical requirements such as the transmission standard that must be used. Hence, market players may not consider the positive effects of (positive externalities) freeing up frequencies and modifying network configurations, including transmission standards. That is because they should normally have planned to carry out their activity when receiving the rights to use spectrum for the duration for which those rights were granted, and in light of the conditions under which those rights of use were assigned.
- (75) The Commission acknowledges that the decision to release the 700 MHz band by June 2020 is a regulatory measure, coordinated at Union level, therefore not in the hands of the market. Therefore, considering the lack of commercial interest by Towercom in switching DTT transmission standard in the timeframe set by the release of the 700 MHz band in Slovakia (recital (64)), and the explained absence of positive effects at all for Towercom of migrating to different frequencies (see recital (13)), Towercom would not have decided on its own to retune frequencies and transmitters. In Slovakia, DTT services are marginal (see recital (9)), their market share is declining (recital (12)(a)) and DVB-T2 penetration is low (recital (13)(b)). Moreover, Towercom could not expect to recoup the costs of switching to DVB-T2 given the lack of interest from the broadcasters (recital (12)(b)). In this

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<sup>(76)</sup> See Commission Decision of 12.12.2018, in case SA.47258 – *Germany – Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band*, OJ C 40 of 1.2.2019. Commission Decision of 2.8.2019, SA.51080 – *Spain – Audio-visual broadcasting transmission aid for audio-visual service providers*, OJ C 303 of 2.8.2019.

context, in the absence of the regulatory change, Towercom would have had no incentive to undertake the investments needed to release the 700 MHz band and migrate to the sub-700 Mhz band in the timeframe set by the EPaC Decision (as confirmed at the national level). Without the regulatory measure which imposed the release of the 700 MHz band, the parameters for broadcasting channels in all multiplexes would not have been modified, enabling Towercom to continue carrying out the DTT transmission activities as before. With specific reference to the switch of the transmission standard of mux1 from DVB-T to DVB-T2, the Slovak authorities explained that such switch was needed to avoid problems of massive interference (see recital (23)(b)), which would have caused disruption in the provision of DTT services, thereby jeopardising the objective of the Measure (see recital (3)). Finally, according to the Slovak authorities, following on the release of the 700 MHz band, Towercom did not generate additional revenues but incurred additional costs (see recital (13)).

- (76) As concerns costs to be supported through the Measure, the Slovak authorities demonstrated, including based on an independent technical report (recital (32)), that all eligible costs are directly and necessarily related to the release of the 700 MHz band. In particular, the Slovak authorities demonstrated for each cost item the technical reasons for the necessary investment, notably based on the independent technical report (recitals (33)-(36)). The Slovak authorities commissioned the report from an independent expert and based on it the identification of the eligible costs. In addition, the information campaign constitutes a cost directly related to the release of the 700 MHz band as it aims to inform end users of the then upcoming changes resulting from the release of the 700 MHz band decided by the authorities (see recital (22)).
- (77) Therefore, the Commission concludes that the Measure is necessary to achieve its objective, as explained in recital (3).

### *7.2.3. Appropriateness of the Measure*

- (78) An aid measure would not be considered compatible with the internal market if it is not appropriate, that is to say if the same outcome is achievable through other, less distortive policies or aid instruments.
- (79) Objective of the Measure is to ensure the effective and speedy release of the 700 MHz band for WBS, while maintaining the continuity and availability of DTT (see recital (3)). The Measure intends to support costs that are directly related to the release of the 700 MHz band, namely costs for the replacement of frequency-related equipment, costs for switch to more advanced transmission and encoding equipment of mux1, as well as costs relating to information campaigns (see recitals (4)-(5)). The aid takes the form of a direct grant to Towercom as the only entity holding relevant DTT licenses in the 700 MHz band and its amount is calculated on the costs of the equipment and the costs of information campaigns.
- (80) The Measure is thus designed in a way that it provides financial support to only the equipment and associated costs that have a direct role to play to complete the release of the 700 MHz band and is calculated on the actual amount of those costs. The Measure is appropriate to achieve the required objective and there is no less restrictive mean that would be sufficient to this end. Aid to end-users would not address the costs resulting from the release of the 700 MHz band and would therefore not address the objective of the Measure. Alternative financing

instruments, such as loans or fiscal aid, would not overcome Towercom's lack of incentive to undertake the investments needed to release the band (recital (12)). The same applies to the information campaigns: as explained by the Slovak authorities, such campaigns were a prerequisite for the successful implementation and completion of the process of release of the 700 MHz band, since in the absence of them, there would have been a high risk that end-users would not have been ready to switch in time and would not have been able to receive television broadcasts on their receivers once DTT transmissions in the 700 MHz frequency band would have been terminated (see recital (22)).

(81) Therefore, the Commission concludes that the Measure is appropriate.

#### *7.2.4. Proportionality of the Measure*

(82) The Measure must be proportionate to reach its objectives. Aid is considered proportionate if its amount is limited to the minimum necessary for the aided activity to take place and the potential distortions of competition are minimised. The proportionality test aims to demonstrate that the amount of the aid is limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned, taking account of the benefits the supported additional investment will bring.

(83) As explained above:

- (a) The aid is limited to cover direct costs that are necessary for adapting the technical equipment needed for releasing the 700 MHz band and for the related information campaign, as established by an independent expert (see recital (32)).
- (b) The costs for the equipment and the information campaigns are market-based, since they are the result of a tendering process (see recital (17));
- (c) The Slovak authorities will undertake audits of all eligible costs submitted by Towercom before paying out the aid (see recital (39)). That guarantees that over-compensation is excluded.
- (d) No other costs that are not directly linked to implementation of the release of the 700 MHz band will be compensated.
- (e) The aid intensity is up to 98.3 % of the eligible costs (see recital (39)).
- (f) As no cumulation is allowed, the same costs may not receive compensation from any other national funds (recital (40)).

(84) Therefore, the Commission finds that the Measure is proportionate.

#### *7.2.5. Transparency*

(85) The Slovak authorities 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 (recital (41)). Therefore, the Measure complies with transparency requirements.

### 7.2.6. *Negative effects of the Measure*

- (86) With a view to undertake the balancing exercise, the Commission must identify the negative effects of the Measure.
- (87) The Measure helped Towercom continue providing DTT services on the market while reducing its costs for investment in updated equipment, considering its lack of incentive to make the investments needed to release the 700 MHz band (see recitals (64)). Operators providing television transmission services on alternative platforms also must invest in newer technologies, with private resources. The aid hence finance costs that Towercom should normally have paid, would it have aimed to keep its market position, however marginal.
- (88) The Measure helped Towercom to migrate its services to another frequency band and, at the same time, provided it with an upgraded network. This goes beyond maintaining DTT operators' *status quo ante* the release of the 700 MHz band <sup>(77)</sup>.

### 7.2.7. *Weighing the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade*

- (89) A carefully designed State aid measure 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.
- (90) In this regard, the Commission notes that the Measure:
  - (a) Facilitates the development of the provision of both DTT networks and services and WBS in Slovakia (see recitals (60)-(61)).
  - (b) Has an incentive effect by financing the necessary investment for the release of the 700 MHz band that Towercom would not have made (see recitals (63)-(65)). This way, the Measure also shows capability of addressing a market failure in the provision of DTT services (see recital (75)-(77)).
  - (c) Is appropriate (see recitals (78)-(81)) and proportionate (see recitals (83)-(84)) to reach its objectives.
  - (d) As regards the possible negative effects on competitors (recital (87)), the Commission notes that the draft legislative act providing for compensation was subject to public consultation and the alternative providers have not expressed serious concerns. The Commission therefore concludes that, should competitors have found that the impact of the Measure was to be too detrimental to them, they should have expressed such views in the course of the public consultation. Moreover, it is worth noting that the EPaC Decision only affected DTT broadcasting; therefore, a compensation targeting Towercom is justified under the specific circumstances of the case.

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<sup>(77)</sup> See Commission Decision of 12.12.2018, in case SA.47258 – *Germany – Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band*, OJ C 40 of 1.2.2019, recital (94).

7.2.8. *Conclusion on the balancing test*

- (91) In light of the above, the Commission concludes that the negative effects on competition and trade are limited, and that they are outweighed by the positive effects of the aid.

**8. 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) 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>.

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Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President