



ΕΥΡΩΠΑΪΚΗ ΕΠΙΤΡΟΠΗ

ΓΕΝΙΚΗ ΓΡΑΜΜΑΤΕΙΑ ΤΗΣ ΕΠΙΤΡΟΠΗΣ

Βρυξέλλες, 1.8.2019
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Θέμα: ΑΠΟΦΑΣΗ ΤΗΣ ΕΠΙΤΡΟΠΗΣ (31.7.2019)

Η Γενική Γραμματεία σας παρακαλεί να διαβιβάσετε στον/στην Υπουργό Εξωτερικών τη συνημμένη απόφαση.

Για τον Γενικό Γραμματέα

Robert ANDRECS

Συνημμ. Έγγρ : C(2019) 5522 final

EL





EUROPEAN COMMISSION

Brussels, 31.7.2019
C(2019) 5522 final

Subject: State Aid SA.53135 (2019/N) – Greece - Ultrafast Broadband Infrastructure Scheme

Excellency,

1. SUMMARY

- (1) I am pleased to inform you that the Commission assessed the measure ‘*Ultrafast Broadband Infrastructure Scheme*’ (hereafter: ‘the scheme’ or ‘the measure’) as notified by Greece and described in this decision, and decided not to raise objections. The measure is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (‘TFEU’).

2. PROCEDURE

- (2) By letter registered on 21 January 2019, pursuant to Article 108(3) of the TFEU, Greece notified to the Commission the *Ultrafast Broadband Infrastructure Scheme*. The Commission requested additional information from Greece on 7 March and on 22 May 2019. Greece submitted the requested information on 10 April 2019, and on 2 and 15 July 2019.
- (3) By letter of 2 July 2019, the Greek authorities provided a language waiver and exceptionally agreed to waive their rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 of the Treaty in English.

3. CONTEXT

- (4) Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and to social and territorial cohesion. It supports business efficiencies, ensures that economies can remain competitive, and enables citizens to enhance their skills and to benefit from online services and offerings, including key public services.

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- (5) The Europe 2020 Strategy ('EU2020')¹ and the Digital Agenda for Europe initiative ('DAE')² have underlined the importance of broadband deployment to promote competitiveness, social inclusion and employment and set the following targets for broadband development in Europe to: (i) bring basic broadband access to all Europeans by 2013 and (ii) ensure that by 2020 all Europeans have access to much higher internet speeds of above 30 Mbps and 50% or more of the European households subscribe to internet connections above 100 Mbps.
- (6) On 14 September 2016, the Commission adopted the Communication 'Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society' ('Gigabit Communication')³. The Gigabit Communication further develops the DAE and, in order to address new broadband needs, sets out a vision for a European Gigabit society, where availability and take-up of very high capacity networks would enable the widespread use of products, services and applications in the Digital Single Market. The Gigabit Communication defines the following strategic objectives for 2025: (i) 100% coverage of all households with download speeds of at least 100 Mbps, upgradeable to 1 Gbps, (ii) 1 Gbps symmetric speeds for all main socio-economic drivers such as schools, transport hubs and main providers of public services as well as digitally intensive enterprises, (iii) uninterrupted 5G coverage for all urban areas and all major terrestrial transport paths (as intermediate objective for 2020: 5G connectivity available as a fully-fledged commercial service in at least one major city in each Member State, building on commercial introduction in 2018).
- (7) In line with the EU2020 and the DAE, in June 2015 the Greek authorities defined the national broadband strategy in a policy measure entitled 'National Plan for Next Generation Broadband Access 2014 – 2020'⁴ ('NGA Plan'). This strategy defines the following targets: (i) online access with speeds over 30 Mbps for all Greeks by 2020, and (ii) 50% household penetration of Internet available at a speed exceeding 100 Mbps. The NGA Plan was updated and embraced in 'The National Digital Strategy 2016-2021'⁵, launched in December 2016⁶. The updated

¹ Communication from the Commission – EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020.

² Communication from the Commission to the European Parliament, the Council, the Social Committee and the Committee of the Regions, COM (2010) 245 final.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2016) 587 final Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, accompanied by the Commission Staff Working Document (14.9.2016 SWD(2016) 300 final).

⁴ <http://mindigital.gr/index.php/evryzonikotita/1579-ver-2>

⁵ <http://mindigital.gr/index.php/%CE%BA%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%B1%CF%83%CF%84%CF%81%CE%B1%CF%84%CE%B7%CE%B3%CE%B9%CE%BA%CE%AF%CF%82/220-digital-strategy-2016-2021>

⁶ The National Digital Strategy focuses on seven intervention pillars (I. NGA Infrastructure Development; II. Acceleration of Digitalization of the Economy; III. Promotion of the ICT Sector for the Development of the Digital Economy and Employment; IV. Enhancement of the Digital Capabilities of the Economy's Human Capital; V. Reinvention of the Public Sector's Digital Services; VI. Removal of the Existing Barriers of the Digital Economy and Release of the Potential Benefits; VII. Enhancement of Security and Trust).

NGA Plan integrates the three main strategic objectives for 2025, as set by Gigabit Communication.

- (8) As a result of various broadband initiatives and State aid measures for broadband roll-out, basic broadband coverage is available to 96% of households in Greece, including 84.1% of rural households⁷. However, when it comes to higher speeds broadband coverage Greece lags behind EU average in relation to the DAE and the Gigabit Communication targets. In particular, NGA coverage is still at lower level (65.9% of total households) comparing to the EU average (83.1%). Especially in rural areas NGA coverage amounted only to 47.9% in 2018 (while the EU average reached 52.3%). Ultrafast broadband coverage (i.e. coverage with a broadband network able to support speeds above 100 Mbps download) reached 0.39% of Greek households (while the EU average reached 59.9%). In 2018, only 15.26% of the fixed broadband subscriptions were of speeds between 30-100 Mbps and broadband connections above 100 Mbps had just started being offered (0.14%) in Greece.
- (9) Therefore, in order to progress towards the achievement of the goals of the EU2020 strategy, the DAE as well as the Gigabit Communication, with the notified measure Greece intends to deploy ultrafast broadband infrastructures, i.e. broadband networks able to support speeds above 100 Mbps download, in areas where currently there is no next generation access network (NGA), i.e. no broadband network able to support speeds above 30 Mbps download and where private investors do not plan to build such infrastructure in the near future (NGA white areas).
- (10) The Greek authorities highlight that the public intervention in the target areas, where only basic broadband infrastructures are present or planned, is justified and necessary to address the lack of modern very high speed broadband infrastructure and to respond to the growing needs of the population. The Greek authorities further explain that private operators are reluctant to invest in the target areas, which are mostly remote, rural areas with low population density⁸, due, on the one hand, to considerable costs of the deployment of the infrastructure and, on the other hand, to a low profitability of such investment. Another factor discouraging private investments in the concerned areas is the relatively low purchasing power of local inhabitants and thus potential clients of telecommunications services⁹.
- (11) The Greek authorities are of the opinion that the problem of the lack of supply of very high speed broadband networks cannot be solved by less distortive measures such as demand stimulation or regulatory interventions. Thus, for instance, while in principle, demand-side measures could be an instrument of public intervention, these measures do not solve the illustrated problems on the supply side. Lowering the demand risk through, for example, a voucher scheme does not appear to be a sufficient incentive for private operators to invest in the targeted NGA white

⁷ In 2018, fixed broadband coverage in Greece reached 96.4% of total households (which is a number slightly lower than the EU average of 96.7%). Rural fixed broadband coverage was at 84.1% (comparing to the EU average of 87.4%).

⁸ Target areas cover 91% of rural areas and 9% of urban areas.

⁹ The average GDP per capita in the target areas (EUR 13.827) is lower than the national average (EUR 16.294), based on the most recent data of 2015.

areas¹⁰. According to the Greek authorities, *ex ante* regulation, despite its crucial role in ensuring competition and supply in the market for electronic communications, is not a sufficient instrument to enable the supply of ultrafast broadband service in the intervention areas, particularly because of inherent low profitability of such services in those areas. The cost of deploying NGA broadband to those areas is significantly higher than the cost of reaching urban densely populated areas (on a per premises basis). Moreover, the achievable revenue base is more limited due to low population density in those areas. This impediment cannot be addressed by other less distortive measures, such as *ex ante* regulation. The Greek authorities explain that regulatory measures (i.e. regulatory access obligations that enable the re-use of the incumbent's existing infrastructure¹¹, regulatory obligations regarding transparency, non-discrimination and price-control¹² as well as measures aimed at reducing the cost of civil engineering in the deployment of broadband¹³) have not been enough to overcome obstacles to the deployment of NGA broadband infrastructure and services in the targeted areas, particularly because of the limited availability of physical infrastructure that could be reused for the deployment of new networks, high deployment costs, and low take-up of broadband services¹⁴.

- (12) Consequently, the Greek authorities consider that without public intervention it does not appear possible to reduce the 'digital divide' between the remaining NGA white areas and the rest of Greece. The Greek authorities consider furthermore that in the intervention areas there is no alternative to granting public funding in order to incentivise the deployment of NGA infrastructures capable of offering ultrafast broadband. The Greek authorities expect significant benefits from the deployment of ultrafast broadband networks in the designated areas. Residential users, enterprises and the public sector in the target areas will benefit from improved broadband services and coverage. The measure will constitute a stimulus for development of the modern electronic economy and e-government. It will have positive impact on a job creation and, as a consequence, it will favour development of areas of the knowledge-based economy.

¹⁰ According to a mapping exercise and public consultation carried out by Greece in 2018, which revealed that lowering the demand risk through a voucher scheme would not be sufficient to incentivise private operators to invest in the NGA white areas.

¹¹ EETT decision 859/3 'Regulation for co-location and shared use of facilities' (https://www.eett.gr/opencms/export/sites/default/admin/downloads/telec/apofaseis_eett/kanonistikes_apofaseis_eett/AP859-003.pdf).

¹² EETT decision 792/09 'Definition of national wholesale central access market at fixed location for mass market products, Definition of SMP and their obligations (4th round of Analysis)' https://www.eett.gr/opencms/opencms/admin/downloads/telec/apofaseis_eett/kanonistikes_apofaseis_eett/AP792-009.pdf

¹³ The transposition of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p.1). Law 4463/2017 (ΦΕΚ 42/Α/30-3-2017) http://www.et.gr/ids-cnph/search/pdfViewerForm.html?args=5C7QtC22wEsrjP0JA1xBXdTvSoClrL8FRqs4cKiLsflI9LGdkF53UIxsx942CdyqXSQYNuqAGCF01fB9H16qSYtMQEKEHLwnFqmgJSA5W1sluV-nRwOI0KqSe4BIOTSpEWYhszF8P8UqWb_zFijAJ6IdGDcaesVnARcUDb6cwwCkIqUN2CZebpk0b-XdRv

¹⁴ According to the European Commission Digital Scoreboard of 2019, despite a coverage of 66% only 11% of Greek households subscribe to fast broadband (NGA).

4. DESCRIPTION OF THE MEASURE

- (13) **Objective and design of the measure:** The objective of the measure is to support the roll-out of very high speed broadband networks able to guarantee broadband internet access speeds of at least 100 Mbps download upgradable to 1 Gbps¹⁵ in white NGA areas in Greece.
- (14) The Greek authorities have divided target areas into two clusters: Class A and Class B areas. All Class A areas will be covered by networks able to provide download speeds of at least 100 Mbps, upgradeable to 1Gbps without further significant investment ('Gigabit capable services')¹⁶. In Class B areas, 100 Mbps download speeds will be guaranteed in the first stage and progressively, within 26 years from the signature of contracts with operators selected in a tender procedure, the selected infrastructure operators will have to ensure connections capable of providing 1 Gbps without additional public support¹⁷. Class B areas represent not more than 37% of the total target areas, corresponding to the most remote and difficult to reach NGA white areas and therefore subject to higher roll-out costs. In line with its national policy, the Greek authorities have decided to prioritise Class A areas (63% of the total target areas), while at the same time foreseeing progressive coverage in Class B areas. 'Major socio-economic drivers'¹⁸ in Class A or Class B areas will be covered with Gigabit symmetric capable services.
- (15) **Legal basis:** The notified measure is based on the following legal acts: Law 4070/2012 (Official Governmental Gazette 82/A) on 'Provisions for Electronic Communications, Transport, Public Works and Other Provisions' (as amended); Act for Public-Private Partnerships (PPP) (Act 3389/2005, as amended); Law 4413/2016 'On the award of concession contracts – Alignment with Directive 2014/23/EU'; Law 4412/2016 (Official Governmental Gazette 147A); Decision of the PPP Inter-Ministerial Committee of 17 January 2019 and published on 'Transparency Portal' (ΔΙΑΥΓΕΙΑ), under no Ω6ΩΥ465X18-ΘΘ1; Request for Proposals (Request for Expression of Interest) as approved by the Minister of Digital Policy, Telecommunication and Media (Decision ref no. 377-B 20/5/2019

¹⁵ The Greek authorities define the target areas and the services to be provided based on speeds that can be reliably delivered to the end-user. 'Reliable' speeds per subscriber are understood as speeds that can be guaranteed at peak times.

¹⁶ The Greek authorities explain that this means that all the necessary infrastructure and network elements to upgrade the end-user to Gigabit connectivity will be put in place. Following a request by the end-user, the infrastructure operator will have to upgrade the network within a few hours, without any field works, making only necessary software configurations on the network management platform.

¹⁷ Class B areas are those where at least 100 Mbps connectivity will be offered, without obligation to be readily upgradable to Gigabit services in the first stage. Nevertheless, in line with the contractual obligations, the infrastructure operator will have to modernise the network in order to be able to provide 1 Gbps services before the end of the concession period and without additional State aid (this may require field works, installation of new infrastructure on the field, new customer equipment etc.). The contract with the private operator will foresee that at the latest 5 years before the end of the concession period the operator will have to submit a roadmap for the modernisation that will fall due to be completed 1 year before the end of the concession period.

¹⁸ I.e. public service providers, such as schools and public libraries, train stations and long-distance bus stations, airports, ports, hospitals and health centres.

and modified by Decision ref. no 1439 30/5/2019); Decision ref no. 377-B 20/5/2019, as modified by Decision ref. no 1439 30/5/2019; the PPP framework contract; Law 4463/2017 (Official Governmental Gazette 42/A) 'Measures to reduce the cost of deploying high-speed electronic communications networks– Harmonization with the EU Broadband Cost Reduction Directive 2014/61/EU and other provisions'; EETT Decision No. 750/7/2015 (Official Governmental Gazette 513/B) on the collocation and facility sharing of providers on fixed networks for the development of new generation infrastructure (NGN, NGA) and on wireless networks; Joint Ministerial Decision 48263/959/2012 (Government Gazette 2997B) 'Antenna Construction Facilities of Low Electromagnetic Environmental Nuisance exempted from licensing in accordance with paragraph 23 of Article 30 of Law 4070/2012', regarding the development of the wireless networks to be implemented by the Contractors; Joint Ministerial Decision 13913/319/2012 (Government Gazette 862B) 'Installations of Small Stations and Construction of Low-Nuisance Antennas exempted from licensing according to article 29 par. 9 of Law 4053/2012'; Joint Ministerial Decision 11926/261/2011 (Government Gazette 453B) 'Special Licensing Procedure for the Installation of Standard Wire Constructions'; Law 4314/2014 (A 265) 'On the Management, Supervision and Implementation of developmental interventions for the Programme Period 2014-2020'; NSRF Communication Guide 2014-2020. The Greek authorities have confirmed that the current decision is part of the legal basis.

- (16) **Stand still obligation:** The Greek authorities have confirmed that the granting of the aid is conditional on the decision of the Commission on the notified measure, pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 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 Union¹⁴, according to which new aid measures must not be put into effect before the Commission has taken a decision authorising it.
- (17) **Overlap with other schemes:** The measure will run in parallel but will not overlap with the Rural Broadband Project (SA.32866)¹⁹ and the Superfast Broadband Voucher Scheme (SA.49935)²⁰. Target areas covered by the above-mentioned projects are excluded from the scope of the present measure.
- (18) **Budget and financing instruments:** The overall estimated (maximum) aid amount, to be allocated as a direct grant, is EUR 300 million, of which EUR 265 million will be funded by the European Regional Development Fund (ERDF) and EUR 35 million by the European Agricultural Fund for Rural Development (EAFRD). The aid intensity and final aid amount will ultimately depend on the particular geographic and population density characteristics of each area and on the outcome of the competitive selection procedures. The Greek authorities have confirmed that it is not possible to cumulate aid or *de minimis* aid²¹ received from other local, regional or national sources to cover the same eligible costs.

¹⁹ State aid case SA. 32866 - Broadband development in Greek rural areas; http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32866

²⁰ State aid case SA. 49935 - Superfast Broadband Project http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49935

²¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352,

- (19) **Duration:** The measure will enter into force and be implemented after approval by the Commission, respecting the standstill obligation. The measure will be implemented in two phases: (1) the construction phase, which is scheduled to last 3 years; (2) the operation phase, which is scheduled to last until the end of the concession period. The total duration of the two phases will be 26 years maximum. The aid may be granted until 30 October 2023.
- (20) **Investment and business model:** The General Secretariat of Telecommunications and Post of the Ministry of Digital Policy, Telecommunications and Media is the granting authority. The measure will be implemented by the Executive Agency-ICT Sector of the Ministry of Digital Policy, Telecommunications & Media ('implementing authority'), which will select operators to design, deploy and manage the passive and active layers of the subsidised infrastructure. The passive infrastructure deployed under the scheme will remain in public ownership. The implementing authority will coordinate all interventions at a State-wide level, including the use of public funds and implementation of individual aid grants under the scheme.
- (21) **Role of the Greek national regulatory authority:** The Greek national regulatory authority (NRA), the *Hellenic Telecommunications and Post Commission* (EETT), was consulted by the Greek authorities and has not raised any objection to the proposed measure. In addition, EETT will (i) evaluate and approve the terms and conditions for the provision of the wholesale services; (ii) monitor and audit the provision of wholesale services; (iii) control and approve the wholesale access prices; (iv) establish a dispute-resolution mechanism between access seekers and the selected infrastructure operator; (v) perform periodical cost audits and verify the application of the clawback mechanism.
- (22) **Mapping:** In order to define the intervention areas of the scheme, the Greek authorities undertook a mapping exercise (i.e. a centralised inventory of existing infrastructure) between 4 May and 30 September 2018. EETT approved the mapping methodology, provided necessary data for the mapping and participated in meetings with the granting authority. All operators/other investors, including utilities operators, had a possibility to declare their existing infrastructure (capable of delivering reliably at least 30Mbps download speed) as well as such upcoming investments in the target areas until the end of 2023. The granting authority has created a central database where the information about targeted areas has been freely accessible by market participants²². Based on the information provided during the mapping exercise, some areas, covered by private investment plans, were excluded from the scope of the present measure.
- (23) **Public consultation:** In order to verify the results of the mapping, a public consultation was carried out by the Greek authorities. The results of the mapping, including target areas, and a description of the measure (together with the description of technical requirements and speeds to be guaranteed) has been

24.12.2013, p. 1) and Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

²² <http://www.mindigital.gr/index.php/26-g-g-1-1/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CF%83%CE%B5%CE%B9%CF%83/3165-ultrafast-broadband-ufbb>

published for consultation on the central website²³ with reference (links) to the maps. The public consultation took place between 7 November 2018 and 7 December 2018, during which operators were invited to comment. Six operators responded to the public consultation. None of them objected to the planned scheme or to the identification of the NGA white intervention areas. The results of public consultations have been published on the central website²⁴.

- (24) **Target areas:** The target areas of the measure spread across the entire territory of Greece. The support will however be granted only in white NGA areas, mostly rural and remote localities²⁵, where currently no NGA networks are in place or expected to be deployed until the end of 2023. The mapping exercise established and the public consultation confirmed that the existing and planned broadband networks in these areas are based on wireless and/or fixed technologies (in large majority being copper pairs)²⁶ that can support only basic broadband speeds below 30 Mbps download.
- (25) **Step change:** The Greek authorities consider that the measure ensures a 'step change' within the meaning of paragraph 51 of the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (hereafter the 'Broadband Guidelines').²⁷ The measure only targets white NGA areas where only basic broadband speeds can be supported by the current or planned infrastructure. The Greek authorities inform that the present measure does not foresee the grant of aid for marginal investments related merely to the upgrade of active components of the network (e.g. vectoring alone), which, as indicated in paragraph 51 and footnote 64 of the Broadband Guidelines, do not normally ensure a 'step change' and are therefore not eligible for State aid. However, a step change may be achieved for example by combining a substantial investment to bring the fibre closer to the end user, such as by deploying of FTTC together with vectoring, if it ensures that speeds of at least 100Mbps download can be supported. The Greek authorities explain furthermore that the new infrastructure will bring significant new capabilities to the market in terms of broadband service availability and capacity, speeds and the level of competition compared to existing as well as concretely planned commercial network roll-outs. In particular, the subsidised infrastructure will guarantee, in areas where networks able to support download speeds above 30 Mbps are not currently in place or planned, in the first stage availability of at least 100 Mbps download connectivity in the target areas exceeding 98% of the targeted active lines and 75% of the targeted settlements, while ensuring Gigabit connectivity without further significant investment needed (Gigabit capable connectivity) to the majority of

²³ <http://www.mindigital.gr/index.php/26-g-e-t-t-%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CF%83%CE%B5%CE%B9%CF%83/3165-ultrafast-broadband-ufbb>

²⁴ <http://mindigital.gr/index.php/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CF%83%CE%B5%CE%B9%CF%82/3165-ultrafast-broadband-ufbb>

²⁵ Target areas cover 91% of rural areas and 9% of urban areas.

²⁶ 99.84% of all access lines in fixed location all around Greece use copper as transmission medium, 0.12% use fibre optic and 0.04% fixed wireless access.

²⁷ Communication from the Commission, EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C25, 26.01.2013, p.1.

the target areas (at least 63% of the targeted active lines). Progressively, all targeted areas will be covered with networks capable of providing Gigabit connectivity. The design of the measure guarantees an equal and non-discriminatory access to the network's resources of telecommunications operators that may thus develop their own businesses for instance by offering retail services. The Greek authorities expect that as a result competition among private operators will rise, fostering innovation, improving the quality of services offered and lowering prices for consumers. Finally, by offering enhanced broadband capacity, new services and applications, such as e-health, e-learning, eGovernment, cloud computing, smart-grid and smart-building improving the management of energy-using facilities, will be developed.

- (26) **Beneficiary:** Direct beneficiaries of the aid will be the selected operators that will deploy and operate the subsidised infrastructure only at wholesale access level. The measure will enable wholesale access seekers to purchase access to the subsidised infrastructure from the infrastructure operators and provide retail broadband services to end users. This way, these third party operators may obtain an indirect economic advantage by receiving access to wholesale services made available by State funding, which would not be available under normal market conditions and therefore would have to be considered as indirect beneficiaries. The Greek authorities confirm that the aid under the notified measure will not be granted to companies against which an open recovery order for incompatible aid exists. It also will not be granted to companies which, on the basis of the Guidelines on State aid for rescuing and restructuring non-financial undertakings, have to be considered as companies in financial difficulties.

- (27) **Selection procedure:** The deployment, management and exploitation of the network will be assigned jointly to the selected operators via an open, transparent and non-discriminatory selection procedure in accordance with the EU and Greek procurement rules. Tender notices for the selection of infrastructure operators will be published on the central (country-wide) website of the Ministry of Digital Policy, Telecommunication and Media and in the Official Journal of the European Union. All information on available existing infrastructure will be publicly available prior to the invitation to tender. Qualitative selection criteria and their weighting will be specified in advance, in accordance with the public procurement legislation. The tender will specify the requirements for the target network which will consist of the minimum services and coverage requirements. It will also indicate the wholesale access obligations. The qualitative criteria have to be weighed against the requested aid amount. The bidders that request the lowest amount of aid for otherwise comparable if not identical quality and quantity will receive most priority points. Therefore, the contract will be awarded to the operator offering the most economically advantageous offer.

- (28) More particularly, the Greek authorities explain that the competitive procedure will consist of two steps: evaluation of participation requirements (i.e.: financial and economic capacity and technical and professional capability) and a competitive dialogue procedure (with specific awarding criteria and their weights). The measure will be implemented in seven lots, in order to maximise competition. The implementing authority will seek the opinion of the National Court of Auditors prior to adopting the call for tenders for each lot. The Greek authorities explain that there may be three allocation phases. Combining lots will be possible and may enable economies of scale. Each lot will consist on several

regional units (Περιφερειακές Ενότητες). Each participant will be requested to submit an offer for seven lots but will be allowed to define the maximum number of lots it wishes to be granted. Bidders can participate in as many lots as they wish, but only maximum three lots can be awarded to each bidder in the first phase. In case there are still lots unallocated, a second phase will be organised and the limitation of maximum three lots per bidder will be waived. In case there are still lots unallocated, a third phase is organised where the bidder with the highest score per lot would be asked if it accepts the allocation of a specific lot (exceeding the maximum number of lots limit that the bidder has set). In case there is a lot that remains unallocated, this procedure is repeated for the next bidder in the rank. If after the end of the third allocation, there are still lots that remain unallocated, then these lots are tendered in a (new) tendering procedure. The Greek authorities consider this will allow smaller operators to participate without the risk of being granted more lots than they could financially sustain. According to the Greek authorities, the balance between ensuring in the first phase that a maximum of three lots can be assigned to the same bidder but also allowing that this limitation may be waived if, after the first round of the allocation process, there are lots that have not been successfully allocated, will allow for more competition during the selection process.

- (29) **Existing infrastructure:** Where possible, existing infrastructure²⁸ has to be used in order to limit the overall costs of the measure and avoid unnecessary and wasteful duplication of existing networks. In this respect, specific rules for intra-sector infrastructure sharing²⁹ as well as cross-sector infrastructure sharing³⁰ have been in place since 2012. Additionally, the Greek authorities commit to set up a nationwide digital infrastructure registry on the availability of existing infrastructure (including commercial infrastructure as well as infrastructure owned by public entities). Furthermore, the Greek authorities will ensure access to information on existing and planned physical infrastructure through implementation of Directive 2014/61/EU³¹, in particular the requirement under Articles 4 and 6 to ensure access to certain minimum information³². Finally, any

²⁸ Including for instance: use of suppliers' own infrastructure; use of other suppliers' infrastructure (including regulated products as available); use of other existing utilities infrastructure (including, for example, water and sewerage pipes and relevant electricity infrastructure); reutilisation of radio masts; ease of access rights; public infrastructure such as public buildings (e.g. schools) or network assets, if any; and coordination of civil works. Only bidders who do not own or control regulated existing infrastructure may decide to use a regulated access product in their bid.

²⁹ EETT Decision 750/007/19-2-2012, Regulation of co-installation and joint use of facilities; EETT Decision 859/7/16-7-2018

³⁰ Law 4463/2017 (ΦΕΚ 42/Α/30-3-2017)

³¹ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, p.1, transposed in Law 4463/2017 (ΦΕΚ 42/Α/30-3-2017), http://www.et.gr/docs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEsrjP0JA1xBXdTvSoClrL8FRqs4cKiLsftI19LGdkF53UIxsx942CdyqxSQYNuqAGCF01fB9H16qSYtMQEkEHLwnFqmgJSA5W1sluV-nRwO1oKqSe4BIOTSpEWYhszF8P8UqWb_zFijAJ61dGDcaesVnARcUDb6cwvCk1qUN2CZebpk0b-XdRv.

³² According to Article 4, at least the following information should be available: (a) type and current use of the existing infrastructure, (b) location and route, (c) contact point. According to Article 6, the following minimum information concerning on-going or planned civil works should be available to operators: (a) the location and the type of works; (b) the network elements involved; (c) the estimated date for starting the works and their duration; and (d) a contact point.

operator which owns or controls infrastructure (irrespective of whether it is actually used) in the target areas and which wishes to participate in the tender, has to inform the aid granting authority and the NRA about the infrastructure during the public consultation and will have to provide all relevant information to other bidders at least 3 months prior to the deadline for the submission of offers allowing the latter to include such infrastructure in their bids. Bidders will be free to choose the method for the network deployment, including the building of new infrastructure, buying or leasing existing infrastructure or a combination of these options.

- (30) **Technological neutrality:** The main goal of the measure is to develop an ultrafast network able of providing end-users with at least 100 Mbps download connectivity, upgradable to 1 Gbps, mostly in rural and remote localities. The Greek authorities inform that bids will be assessed on the basis of objectively defined criteria and that no specific technology or platform will be defined or favoured or excluded in the tender procedure. The implementing body will verify that the technological solutions proposed by bidders are technologies able of providing the targeted speeds. Therefore, the measure will allow for the use of any technology as long as the network allows for the reliable provision of targeted speeds. Similarly, wholesale access products will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.
- (31) **Wholesale access:** Only white NGA areas are targeted by the measure. Therefore, the subsidised network can be used to provide targeted speeds only in NGA white areas. No services can be provided by the selected network operators or by private or public access seekers on the basis of the subsidised network in grey NGA and/or black NGA areas. The Greek authorities indicate that access to the subsidised active and passive infrastructure (including but not limited to: bitstream, access to ducts, poles, dark fibre, street cabinets, full and effective unbundled access or its virtual equivalent if already approved by the NRA and the Commission) will be offered in open, transparent and non-discriminatory manner and in respect of the principle of technological neutrality. Wholesale access to the subsidised active infrastructure will be offered during at least seven years. If at the end of the seven years period the operator of the infrastructure in question is designated as having significant market power in the market concerned, access obligations will need to be imposed in accordance with the Electronic Communications Regulatory Framework. Full and effective access to the new subsidised passive infrastructure will be offered without limitation in time. In case ducts are constructed, those will be large enough to cater for several (at least three) cable networks and to host point-to-multipoint as well as point-to-point solutions.
- (32) In line with the requirements of the Broadband Guidelines, full and effective physical unbundling will be ensured. Under the present scheme, the selected operators may choose different technologies. Where physical unbundled access is not feasible, it will be substituted by an equivalent virtual unbundled local access (VULA) product³³. As part of the regulatory review³⁴ of the market for wholesale

³³ Vectoring technology could be eligible for State aid under the scheme only if it leads to a significant improvement in infrastructure and brings the fibre closer to the end user, for instance in case of FTTC deployment and if it ensures that speeds of at least 100Mbps download can be supported. A vectoring upgrade alone would not be eligible because it does not qualify as a step change, in line with paragraph 51 of the Broadband Guidelines.

local access provided at a fixed location, EETT notified to the European Commission the technical specifications of a VULA product as a functional substitute for physical VDSL subloop unbundling in the case of the implementation of VDSL vectoring, or a wholesale product over a FTTH or FTTB architecture, if the operator has chosen to implement an alternative NGA solution. In its Decision³⁵ the Commission did not object to the technical specifications of the VULA product for FTTC, FTTB and FTTH architectures described in the notification. Therefore, the Greek authorities may rely on this VULA product for FTTC, FTTB and FTTH architectures.

- (33) The type of access obligations will be defined (on the basis of products specified in Annex II to the Broadband Guidelines) and monitored by the EETT. The same access conditions will apply on the entirety of the network, including the parts where existing infrastructure has been used³⁶. The access obligations should be enforced irrespective of the model of the operation of the network and any changes in management, operation and ownership of the infrastructure.
- (34) **Wholesale access prices:** The wholesale access pricing will be based on the pricing principles set by the EETT. Benchmarking will be used as a tool for ensuring that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets. The prices will be based on average published wholesale prices for comparable services in more competitive areas of Greece or the European Union, or, in the absence of such published prices, on prices specified or approved by EETT. In case those are not available, the pricing will follow the principles of cost orientation and the method prescribed by the regulatory framework for the sector. The wholesale network access prices will also take into account State aid granted to the network operator. The benchmarking criteria will be clearly indicated in the tender documents. The contract between the public authorities and the selected operators will specify rules for calculation of prices for access to the infrastructure. Additionally, prices charged by the infrastructure operator will be approved, monitored and verified by the EETT. The Greek authorities have indicated that under regulatory rules the EETT is expected to notify to the Commission a model for the determination of prices for the VULA products described in recital (32) above. Finally, the EETT will be also competent to resolve potential dispute between infrastructure operators and access seekers.
- (35) **Monitoring and clawback mechanism:** The measure will be monitored on a regular basis by the implementing authority, by an external auditor and by EETT. The implementing authority will be responsible for the implementation of the

³⁴ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

³⁵ Commission decision of 21 June 2018 concerning Case EL/2018/2078: Wholesale local access provided at a fixed location in Greece – Remedies (technical specifications of VULA), Comments pursuant to Article 7(3) of Directive 2002/21/EC, C (2018) 4036 final.

³⁶ Bidders who do not own or control the existing infrastructure will provide access to such infrastructure where it is possible from the technical (e.g. taking into account capacity constraints) and legal perspective (e.g. taking into account regulatory restrictions governing access to existing infrastructure).

measure and will monitor, together with an external auditor, the fulfilment of contractual obligations by the selected operators. The EETT will ensure regular monitoring and supervise State aid compliance. The monitoring will be performed during the entire duration of the measure. In particular, EETT will evaluate, approve and monitor prices as well as terms and conditions under which the wholesale services will be provided. EETT will also establish a dispute-resolution mechanism for resolving potential conflicts between selected operators and access seekers.

- (36) A claw-back mechanism will be put in place to avoid any overcompensation of the infrastructure operators during the whole lifetime of the measure. In this context, EETT will conduct annual audits of each infrastructure operator. In case profits exceed a net profit margin of 15%, 40% of the exceeding part will remain with operator, increasing its total profit levels, while 60% of the exceeding part will form a special taxable reserve, which should be used within three years and only for specific broadband development initiatives to increase the broadband coverage in white NGA target areas of the present measure and under the same conditions as highlighted in the present decision. The Greek authorities consider that this way a normalisation of profits will be achieved between different lots and the potential surplus will be directed to the local community increasing socio-economic benefits of the measure.
- (37) **Transparency obligations:** The Greek authorities commit to comply with the transparency requirement as laid down, *mutatis mutandis*, in paragraph 78(j) of 2013 Broadband Guidelines (as amended by the Commission Communication 2014/C 198/02³⁷). In particular, the Greek authorities will ensure the publication of the following information on the relevant Commission internet site (Transparency Award Module)³⁸ and on a comprehensive State aid websites³⁹, at national or regional level: objectives of the measure, the full text of the approved aid scheme and its implementing provisions, or a link to it, the identity of the granting authority, the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such a requirement can be waived with respect to individual aid awards below EUR 500 000. The information will be published within 6 months from the granting act and the information will be kept for at least 10 years and will be available to the general public without restrictions. The Greek authorities also inform that the aid beneficiaries will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on their infrastructure (including, *inter alia*, ducts, street cabinets and fibre) deployed under the aid scheme.

³⁷ Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30-34

³⁸ <https://webgate.ec.europa.eu/competition/transparency/public/search/home>

³⁹ <http://www.et.gr/index.php/anazitisi-fek>; <http://www.mindigital.gr>;
<http://www.antagonistikotita.gr/epanek/>; <http://www.agrotikianaptixi.gr/el>

- (38) **Reporting:** The Greek authorities commit to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589⁴⁰ and 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.
- (39) Moreover, in line with paragraph 78(k) of the Broadband Guidelines, the Greek authorities commit to report every two years starting from the date when the network is put into use and for the duration of the aid scheme, all relevant information on the scheme to the European Commission. Such reports will at least contain (i) the information made public in line with transparency obligations (see recital (37) above) (ii) as well as the information on the date when the network is put into use, the wholesale access products, access conditions and pricing, the number of access seekers and service providers on the network, the number of houses passed and take-up rates.

5. ASSESSMENT OF THE MEASURE

5.1. Existence of aid

- (40) According to Article 107(1) TFEU, ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market’. It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States.
- (41) **State resources:** 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.⁴¹ Funding from European funds such as the European Regional Development Fund and the European Agricultural Fund for Rural Development constitute State resources, when these funds are allocated at a Member State's discretion⁴². As described in recital (18) above, the measure at hand is financed by the European Regional Development Fund and the European Agricultural Fund for Rural Development, which will be allocated under the control of the Greek authorities. Therefore, the measure uses State resources and is imputable to the State.
- (42) **Selective economic advantage:** The present measure is selective. The measure supporting the deployment of a broadband network is selective in nature in that it targets undertakings that are active only in one industry sector

⁴⁰ 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, 24.9.2015, p. 9).

⁴¹ Case C-482/99 France v Commission [2002] ECR I-4397.

⁴² See Commission Decision in Case N 157/06 — United Kingdom South Yorkshire Digital Region Broadband Project.

(telecommunications) and only in certain segments of the overall electronic communications market (deployment and operation of broadband networks), to the exclusion of other electronic communications services and other economic activities beyond the sector of telecommunications⁴³. It does not concern general infrastructure (e.g. general civil engineering works regarding for example roads) which would be open on a non-discriminatory basis to all potential users, but is limited to electronic communication operators⁴⁴. The measure is therefore sector-specific. The measure is moreover territorially selective as it is set up with the aim of improving broadband coverage in underserved areas in Greece (NGA white areas).

- (43) As concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the construction and operation of broadband networks is an economic activity conducted by commercial operators on the basis of private investments in the market. The market has even been liberalised in the past and a regulatory regime was set up in order to open the market for competition. In such a framework, economic activities normally do not receive subsidies.
- (44) Within this reference framework, the granting of aid – as under the notified scheme – to some selected individual operators reduces the costs of those direct beneficiaries as compared to operators investing into broadband networks and services merely on the basis of private funds. The broadband network operators which rely purely on private funds and do not receive this aid are in a comparable factual and legal situation as the beneficiaries since they operate in Greece under the same technical, commercial and legal conditions in the field of broadband networks and services. Therefore, the granting of State support for the deployment and operation of broadband networks is not justified by the nature or economy of the liberalised market and the regulatory framework. In any event, the features of this legal framework cannot provide any justification for the granting of subsidies.⁴⁵ It is the very purpose of the present measure to give - in line with national and European targets - an advantage to selected beneficiaries for the deployment and operation of ultrafast broadband networks in underserved white NGA areas in Greece.
- (45) A selective economic advantage will be therefore conferred directly to the companies, which will be selected in the selection procedures to build, maintain and operate the network. The selected network operators will receive financial support, which will enable them to provide broadband services on conditions not otherwise available on the market. Although a competitive tender procedure tends to reduce the amount of financial support required, the selected operators will offer services *prima facie* at lower prices than if they had to bear all costs themselves. Third party operators that will gain wholesale access to the subsidised

⁴³ See also Judgment of the Court of 15 June 2006 Joined Cases C-393/04 and C-41/05 Air Liquide Industries Belgium [2006] ECR I-5293, paragraph 31.

⁴⁴ See also N 383/09 – Germany – Amendment of N 150/08 Broadband in the rural areas of Saxony. See also Commission Decision 2003/227/EC of 2 August 2002 on various measures and the State aid invested by Spain in "Terra Mítica SA", a theme park near Benidorm (Alicante) (OB L 91, 8.4.2003, p. 23–37).

⁴⁵ See paragraph (13) of the Broadband Guidelines.

network and that will be consequently able to offer their services on conditions that would not be available under normal market conditions without State support might also benefit from the measure at hand.

- (46) ***Distortion of competition:*** The markets for electronic communications networks and services are open to competition between operators and service providers, which generally engage in activities that are subject to competition. By favouring certain operators and service providers, the notified measure is therefore liable to distort competition. The measure will create the availability of passive and active infrastructure, which would not be provided under normal market conditions. At network operator level, State support may deter other operators from setting up or developing their own networks under commercial conditions. The State support may also encourage local undertakings to take advantage of services offered in the subsidised network rather than more expensive market solutions. Therefore, the intervention of the State in the present measure will alter existing market conditions by allowing the provision of enhanced wholesale broadband services by the selected electronic communication operators and third party providers that would not be available under normal market conditions.
- (47) ***Effect on trade:*** The markets for electronic communication networks and services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. Insofar as the State intervention affects providers of electronic communications networks and services from other Member States, the measure has an effect on trade. Therefore, the fact that an improved broadband service and additional wholesale capacity becomes available can distort competition and affect trade between Member States.
- (48) ***Conclusion:*** In view of the foregoing, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by Greece during the notification contacts. It is necessary to consider whether the measure can be found to be compatible with the internal market.

5.2. Legality of the aid measure

- (49) As explained in recital (16) above, the Greek Authorities have confirmed that the granting of the aid is conditional upon the decision of the Commission on the notified measure, pursuant to the standstill obligation of Article 108(3) TFEU and to Article 3 of 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, according to which new aid measures must not be put into effect before the Commission has taken a decision authorising it.

5.3. Compatibility of the aid

- (50) The Commission has assessed the compatibility of the notified measure according to Article 107(3)(c) TFEU which states that: '*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*' shall be considered to be compatible with the internal market. In its assessment, the Commission has taken into account the Broadband Guidelines, which contain a detailed interpretation of Article 107(3)(c) TFEU as it applies to that area of State aid law.

- (51) As explained in paragraph 33 of the Broadband Guidelines, in order to be considered compatible with the internal market every aid measure must comply with the following cumulative conditions: a. the aid must contribute to the achievement of objectives of common interest; b. absence of market delivery due to market failures or important inequalities; c. the aid must be appropriate as a policy instrument; d. the aid must have an incentive effect; e. the aid must be limited to the minimum necessary; f. negative effects must be limited g. the aid measure must be transparent.
- (52) If all these conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against its potential negative effects

5.3.1. Contribution to the achievement of objectives of common interest

- (53) The EU2020 strategy and the DAE have underlined the importance of broadband deployment to promote competitiveness, social inclusion and employment in the EU⁴⁶. In the EU2020 Strategy, the Commission stated that the Digital Agenda for Europe flagship initiative has the *'aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra-fast internet and interoperable applications [...]'*. In pursuing this aim, *'at national level, Member States will need [...] to draw up operational high speed internet strategies and target public funding, including structural funds, on areas not fully served by private investments.'* Key Action 8 of the DAE calls upon Member States *'to use public financing in line with EU competition and State aid rules'* in order to meet the coverage, speed and take-up targets. In particular, a well-targeted State intervention in the broadband field can facilitate the reduction of the *'digital divide'* that sets apart areas or regions within a country where affordable and competitive broadband services are on offer from areas where such services are not available.
- (54) The strategic objectives of the DAE were complemented by the Commission's Gigabit Communication⁴⁷, which sets a vision for Europe where availability and take-up of very high capacity broadband networks enable the widespread use of products, services and applications in the Digital Single Market. While the connectivity objectives defined by the DAE remain valid up to 2020, the Gigabit Communication sets out further targets in order to respond to technological developments and future needs: by 2025 all European households, rural or urban, should have access to broadband networks offering a download speed of at least 100 Mbps, which can be upgraded to 1 Gbps, and socio-economic drivers should have access to speeds up to 1 Gbps symmetric.
- (55) The present measure aims to ensure the availability of broadband services of at least 100 Mbps download upgradable to 1 Gbps in areas where currently there is no coverage of NGA infrastructure and where private investors do not plan to build such infrastructure at least until the end of 2023 (white NGA areas). By providing very high speed broadband coverage in areas of the country where private operators have no commercial interest to invest in the near future, the Greek authorities pursue genuine cohesion and economic development objectives.

⁴⁶ See recital (5) above.

⁴⁷ See recital (6) above.

in line with the broadband support policy of the EU, as reflected in the EU2020, DAE and the Gigabit Communication. Therefore, the present aid measure will contribute to the achievement of the objectives of the EU2020/DAE and of the Gigabit Communication and is therefore in line with the common interest.

5.3.2. Absence of market delivery due to market failures or important inequalities

- (56) The present measure aims to address a market failure as it targets only white NGA areas, where no infrastructure able of sustaining download speeds of 30 Mbps and more is currently present and where such infrastructure is not likely to be built at least until the end of 2023 by private investors on commercial terms. This has been confirmed by the results of mapping and public consultation exercises as described above in recitals (22) and (23). As shown in recital (8), the Greek authorities have demonstrated that despite progress in the past regarding broadband deployment, a digital divide between urban and rural areas on the other hand remains. Those elements indicate that in the target areas the market generates, in light of the targets of the DEA and the Gigabit Communication, only insufficient private investment in broadband networks and thus demonstrate the absence of market delivery due to market failures and important inequalities, which justifies public intervention.

5.3.3. Appropriateness of State aid as a policy instrument

- (57) The Greek authorities have explained that the essential problem in the target areas is the lack of the necessary infrastructure (see also recital (10) above). However, according to the Greek authorities the lack of supply of very high speed networks is difficult to address by alternative, less distortive means such as regulatory measures, since no private investments have taken place in the targeted areas or will take place until the end of 2023. Despite the crucial role that regulation plays in ensuring competition and supply in the market for electronic communications, the regulatory measures imposed by EETT (obligations on access and use of specific network elements, transparency, non-discrimination obligations and price-control requirements, see recitals (10) and (11)) did not solve the problems related to the lack of very high-speed broadband infrastructure in the targeted areas. *Ex ante* regulation has not been a sufficient instrument to enable the supply of very high speed broadband services in the intervention NGA white areas, due to the low profitability of such services in those areas. In the same vein, since there is no required infrastructure in the target areas demand-side measures are not appropriate means to solve the problem. Therefore, in view of the Greek authorities there is no alternative to granting public funding for the development of infrastructure necessary to achieve the objective of ensuring of very high speed broadband services coverage in white NGA areas in Greece.
- (58) Consequently, the Commission considers the present aid measure to be an appropriate policy instrument to achieve the set objectives.

5.3.4. Existence of incentive effect

- (59) The measure will only cover areas where no NGA infrastructure is provided and where there are no private plans to deploy such infrastructure until the end of 2023. It follows from this that no comparable private investment would take place in the target areas within the same timeframe without public funding. The

measure has therefore an incentive effect in that it provide support for a roll-out of the network which is not being deployed by private investment alone. In addition, open and non-discriminatory access to the subsidised network will incentivise private investments in further connectivity. By granting access to the subsidised network to third party operators, the measure will facilitate competition and encourage investments in the provision of the retail services in the intervention areas.

- (60) The Commission therefore considers that, in line with paragraph 45 of the Broadband Guidelines, the aid measure provides a direct and appropriate investment incentive for the selected operators and for third party operators.

5.3.5. Proportionality - Aid limited to the minimum necessary

- (61) Greece has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition. In this respect, as provided by paragraph 78 of the Broadband Guidelines, the Commission notes the following elements of the measure:
- (62) ***Detailed mapping, coverage analysis and public consultation:*** As described in recital (22) above, the Greek authorities undertook an analysis of the existing broadband infrastructures (as well as investment plans until the end of 2023) in order to identify the areas where public intervention is necessary. The results of the mapping were verified in the public consultation (see recital (23)), in line with the requirements of paragraph 78(b) of the Broadband Guidelines. All the relevant stakeholders have had the opportunity to submit their views and the regulatory authority's opinion has been gathered. As confirmed by the Greek authorities, no operator has objected to the measure. This way the Greek authorities ensure that the measure will provide support exclusively in white NGA areas and only if no interest for commercial deployment of very high speed broadband networks is expressed.
- (63) The Commission considers this to be sufficient to clearly identify which geographic areas will be covered by the support measure and to ensure proper publicity. This will contribute to minimising the risk of crowding out private investments and distorting competition.
- (64) ***Competitive selection process and most economically advantageous offer:*** As presented in recitals (27) and (28), aid under the scheme will be awarded by way of an open, public, transparent and non-discriminatory selection procedure in line with the Greek and European public procurement rules. The selection procedure will be published on the country-wide website of the Ministry of Digital Policy, Telecommunication and Media and in the Official Journal of the European Union. Selection criteria and their weighting will be specified in advance, in accordance with the public procurement legislation, in line with paragraph 78(d) of the Broadband Guidelines. The tender will specify certain minimum requirements (target speeds to be provided, minimum geographical coverage and wholesale access obligations). The contract will be awarded to the operator offering the most economically advantageous offer considering both the price and predefined technical and qualitative criteria (see recital (27)). This will help to minimise the State aid involved.

- (65) The Commission considers the requirements with regard to the competitive selection process and the most economically advantageous offer fulfilled.
- (66) **Technology neutrality:** No specific technology will be defined in the selection procedure leaving it to commercial operators to come up with the technological solutions they find most effective and efficient (see recital (30)). The contract will be awarded to the bidder who, based on objective awarding criteria, will submit the most suitable technological solution to achieve the objectives of the measure, i.e. to provide reliably at least 100 Mbps download speeds upgradeable to 1 Gbps in the target areas.
- (67) The selection procedure will therefore comply with the technological neutrality principle as stated in paragraph 78(e) of the Broadband Guidelines.
- (68) **Use of existing infrastructure:** As explained in recital (29), the Greek authorities will encourage the use of existing infrastructure. Any operator which owns or controls infrastructure in the target area and which wishes to participate in the tender, has to inform the granting authority and the NRA about that infrastructure during the public consultation and provide all relevant information to other bidders at least 3 months prior to the deadline for the submission of offers allowing the latter to include such infrastructure in their bid, in line with paragraph 78(f) of the Broadband Guidelines. The Greek authorities will also create a national database on the availability of existing infrastructure that could be reused for broadband rollout (this includes both commercial infrastructure assets and those owned by public bodies etc.). Furthermore, the Greek authorities will ensure access to information on existing and planned physical infrastructure through implementation of Directive 2014/61/EU, in particular the requirement under Articles 4 and 6 to ensure access to certain minimum information. The Commission considers that in that way unnecessary and wasteful duplication of resources should be avoided and the overall costs of the project minimised.
- (69) **Wholesale access:** In line with the requirements of paragraphs 78(g) and 80 of the Broadband Guidelines, access to the subsidised active and passive infrastructure (including but not limited to: bitstream, access to ducts, poles, dark fibre, street cabinets, full and effective unbundled access or its virtual equivalent if approved by the NRA and the Commission) will be offered in open, transparent and non-discriminatory manner and in respect of the principle of technological neutrality (see recital (31)). Access obligations will be defined and monitored by EETT. Effective wholesale access to the subsidised network will be granted for at least seven years and effective wholesale access to the passive infrastructure will not be limited in time. The wholesale products will correspond to those listed in Annex II to the Broadband Guidelines. Newly constructed ducts financed under the measure will be large enough to cater for several cable networks. Moreover, the selected operators must ensure full and effective unbundling. Where physical unbundled access is not feasible, it will be substituted by an equivalent virtual access product⁴⁸ (see recital (32)). Vectoring technology will be eligible under the scheme only in case of a significant improvement in infrastructure, for instance in

⁴⁸ The Greek VULA solution was recognised in the Commission decision of 21 June 2018 concerning Case EL/2018/2078: Wholesale local access provided at a fixed location in Greece – Remedies (technical specifications of VULA). Therefore, Greece may rely on this VULA product for FTTC, FTTB and FTTH architectures on subsidised infrastructure.

case of an FTTC deployment involving a substantial investment to bring the fibre closer to the end user and if it ensures that speeds of at least 100Mbps download can be supported. A vectoring upgrade alone would not be eligible for State aid because it does not qualify as a step change. The same access conditions will apply on the entirety of the network including on the part of it where existing infrastructure will be used. Access obligations will apply irrespective of any change in ownership, management or operation of the subsidised infrastructure.

- (70) The Commission therefore considers that the wholesale access conditions are in line with paragraphs 78 (g) and 80 of the Broadband Guidelines.
- (71) **Wholesale access pricing:** As described in recital (34), the wholesale access pricing will be based on the pricing principles set by the EETT. Benchmarking will be used as a tool for ensuring that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets. The prices will be based on average published wholesale prices for comparable services in more competitive areas of Greece or the EU, or, in the absence of such published prices, on prices specified or approved by EETT. In case those are not available, the pricing will follow the principles of cost orientation and the method prescribed by the regulatory framework for the sector. The wholesale network access prices will also take into account State aid granted to the selected network operators. The benchmarking criteria will be clearly indicated in the tender documents. The contract between the public authorities and the selected operators will specify rules for calculation of prices for access to the infrastructure. Additionally, prices charged by the infrastructure operators will be approved, monitored and verified by the EETT. Finally, the EETT will be also competent to resolve potential dispute between infrastructure operators and access seekers.
- (72) The Commission therefore considers that the wholesale pricing conditions are in line with paragraphs 78(h) of the Broadband Guidelines.
- (73) **Monitoring and claw-back mechanism:** As explained in recital (35), the Greek authorities will monitor the implementation of the measure during the entire duration of the scheme in accordance with paragraph 78(i) of the Broadband Guidelines. Furthermore, a claw-back mechanism, as described in recital (36) above, will ensure that the profit higher than in the original business plan will be shared between the beneficiary and the public authorities according to the aid intensity of the measure, in line with footnote (114) of the Broadband Guidelines. As explained in recital (18) above, the aid intensity will depend on the geographic and population density characteristics of each lot as well as on the outcome of the competitive selection procedure and in any case it will not exceed 50% of the eligible costs. Therefore, the Greek authorities will ensure that the recipients of the aid will not benefit from overcompensation and will minimise *ex post* and retroactively the amount of aid initially awarded, in line with the conditions set out in paragraph of 78(i) of the Broadband Guidelines.
- (74) **Reporting:** As described in recital (38), the Greek authorities commit to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589 and 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.

- (75) Moreover, in line with paragraph 78(k) of the Broadband Guidelines, the Greek authorities commit to report every two years starting from the date when the network is put into use and for the duration of the aid measure, all relevant information on the scheme to the European Commission. Such reports will at least contain (i) the information made public in line with transparency obligations (see recital (37)) (ii) as well as the information on the date when the network is put into use, the wholesale access products and access conditions and pricing, the number of access seekers and service providers on the network, the number of houses passed and take-up rates.

5.3.6. Limited negative effects and step change

- (76) Given the design of the scheme and its compliance with the conditions of paragraph 78 of the Broadband Guidelines, the present measure is unlikely to have a crowding out effect on private investments.
- (77) In particular, the measure is focused on white NGA areas, where no private operator is willing to deploy NGA infrastructure without State aid in the next future until the end of 2023. As described above in recital (25), the Greek authorities confirmed that in line with the paragraph (51) of the Broadband Guidelines the planned networks will ensure a 'step change' in that the selected operators will make significant new investments and the subsidised infrastructure will bring significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition.
- (78) More specifically, the present measure supports the deployment of infrastructure guaranteeing of at least 100 Mbps download connectivity upgradable to 1 Gbps, for which significant investments are needed. At the same time, the measure does not foresee any public support for marginal investments related merely to the upgrade of active components of a network (such as vectoring alone), which, as indicated in paragraph 51 and footnote 64 of the Broadband Guidelines, do not normally ensure a step change.
- (79) Therefore, the subsidised infrastructure will bring significant new capabilities to the market in terms of broadband service availability and capacity, speeds and the level of competition. In particular, the subsidised infrastructure will guarantee in the first stage availability of at least 100 Mbps download connectivity in the target areas (exceeding 98% of the targeted active lines and 75% of the targeted settlements), while ensuring Gigabit connectivity without further significant investment needed (Gigabit capable connectivity) to the majority of target areas (63% of the targeted active lines). Progressively, all targeted areas will be covered with networks capable of providing Gigabit connectivity. The scheme will support further NGA connectivity in the target white areas via wholesale access. The design of the measure guarantees an equal and non-discriminatory open access to the network's resources of telecommunications operators that may thus develop their own businesses for instance by offering retail services. In addition, there are mechanisms in place to prevent wholesale access prices from being excessive (see recital (34)). This way any potential risk of crowding out of private investments will be contained and competition among private operators will rise, fostering innovation, improving the quality of services offered and lowering

prices for consumers. Furthermore, the beneficiaries are to be selected through an open selection procedure, as described in recitals (27) and (28) above. Finally, the subsidised infrastructure offering enhanced broadband capacity will ensure that advanced applications and new services (such as e-health, e-learning, eGovernment, cloud computing, smart-grid and smart-building improving the management of energy-using facilities) will be developed, for which a demand of very high speeds is expected.

- (80) Therefore, the Commission concludes that the conditions for a step change are fulfilled and that negative effects of the measure, if any, are expected to be limited.

5.3.7. Transparency

- (81) As set out above (recital (37)), the Greek authorities commit to comply with the transparency requirement as laid down in paragraph 78(j) of the Broadband Guidelines (as amended by Communication C(2014) 3349/2). In particular, the Greek authorities will ensure the publication of the relevant information on the Commission internet site (Transparency Award Module) and on national or regional websites. The Greek authorities also inform that the aid beneficiaries will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure (including, inter alia, ducts, street cabinets and fibre) deployed under the aid scheme, in line with paragraph 78(j) of the Broadband Guidelines.
- (82) Moreover, as described above in recitals (38) and (39), the Greek authorities will submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589 as well as reports on the implementation of the measure every two years from the date the network is put in use in line with the requirements set in the paragraph 78 (k) of the Broadband Guidelines. Therefore, the Commission considers that the aid will be awarded in a transparent manner.

5.3.8. Overall balancing: Positive effects expected to outweigh potential negative effects

- (83) The objective of the measure is to guarantee broadband internet access speeds of at least 100 Mbps upgradable to 1Gbps in areas where there are currently no NGA network and where private operators are not planning investment in such networks at least until the end of 2023. The measure addresses the market failure in the targeted areas and constitutes a significant step towards the achievement of the EU's goals as expressed in the EU 2020/DAE and the Commission's Gigabit Communication. Consequently, the measure is objectively justified and is in line with the common interest.
- (84) The Greek authorities have designed the measure in such a way as to minimise the risk of crowding out private investments and the potential distortion of competition arising from the public intervention. Indeed, the measure supports only areas where NGA infrastructure is not provided by the market and where without the public intervention the investment would not take place, which was verified by the mapping and the public consultation. Moreover, the measure ensures open access to the subsidised network on equal and non-discriminatory terms in favour of all access seekers, thus favouring competition among operators. Deploying a high quality infrastructure to provide only wholesale

services will have a pro-competitive impact. The new subsidised infrastructure will bring additional capacity and speed on the market in the target areas. This in turn is expected to stimulate market entry by service providers and might eventually lead to lower prices and better choice for consumers, with services offering higher quality and innovation. The development of a national database of existing infrastructure will likely reduce the overall cost of development of new infrastructure by allowing a re-use of the networks already deployed.

- (85) In view of the characteristics of the project and of the safeguards applied, the Commission considers, based on the information available, that the aid measure's overall impact on competition will be positive.

5.3.9. Conclusion

- (86) The Commission concludes that the present measure meets the compatibility criteria set out in the Broadband Guidelines. Therefore, the aid involved is compatible with the internal market in line with Article 107(3)(c) TFEU.
- (87) The Commission notes that the Greek authorities exceptionally agreed to waive their rights deriving from Art. 342 TFEU in conjunction with Art. 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 of the Treaty in English.

6. DECISION

- (88) On the basis of the foregoing assessment, the Commission finds that the notified measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (89) The Commission reminds the Greek authorities of the requirement to submit annual reports on the application of the aid measure and to inform the Commission pursuant to Article 108(3) TFEU of all plans to amend/extend this measure.

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Your request should be sent electronically to the following address:

European Commission,
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B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



