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**Subject: State Aid SA.41175 (2015/N) – Austria
Broadband Austria 2020**

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the measure "Broadband Austria 2020", as laid down in the "Sonderrichtlinie des Bundesministeriums für Verkehr, Innovation und Technologie zur Umsetzung von Maßnahmen im Rahmen des Masterplans zur Breitbandförderung" (hereafter: "the measure"), together with its Evaluation Plan, and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) TFEU.

II. PROCEDURE

- (2) After extensive pre-notification discussions in course of 2015, Austria notified the measure to the Commission on 8 July 2015 pursuant to Article 108(3) TFEU. A further coordination meeting took place on 24 September 2015. The Austrian authorities replied to the Commission's request for information of 9 September 2015 by email registered on 7 October 2015.

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III. CONTEXT

- (3) In line with "Digital Agenda for Europe" and pursuant to the Austrian Federal Broadband Strategy 2020, Austria aims at reaching a full coverage high capacity broadband infrastructure throughout the country wherever private investment has failed to provide it. The aim is to provide Austria with a near full NGA coverage with download speeds higher than 100 Mbit/s and at least doubled upload speeds by 2020. By 2018, 70% of households should be covered.
- (4) Current coverage of Austria with NGA of at least 30 Mbit/s is 70.2% while 100 Mbit/s is available to 44.5% of the population.
- (5) According to 2011 estimates by the European Investment Bank, reaching the "Digital Agenda" objectives namely download rates of 30 Mbit/s for all citizens and at least 50% of households subscribing to internet connections above 100 Mbit/s by 2020 would require over EUR 5 000 million investments in Austria between 2015 and 2020. Private operators in Austria would not be able to invest these amounts in the given timeframes, thus public support is required.

IV. DESCRIPTION OF THE MEASURE

- (6) **Objective:** Purpose of the measure is to achieve a full coverage high capacity broadband networks in order to secure a better service to citizens while promoting competition through transparency, open access and technology neutrality, for the sake of lower prices, more choice and innovation.
- (7) **The measure** is a federal State aid scheme for NGA deployment bundling four types of interrelated instruments in order to ultimately achieve full NGA coverage with connection speeds of 100 Mbit/s and above:
 - (a) Broadband Austria 2020 - Backhaul: For the upgrade of existing but insufficiently performant backhaul connections to symmetrical, very high capacity fibre optics to serve already existing or new NGA connections in regions that are difficult to reach, in order to enable the provision of full coverage high speed internet access networks and thus allow a greater number of users to benefit from a significant improvement in service levels. By 2020, it is expected that 70% of the existing points of presence will have been up-graded.
 - (b) Broadband Austria 2020 - Access: For the extension of coverage for high capacity access networks. Beneficiaries are telecommunication operators that can apply to establish new or modernise old access networks for citizen and businesses.
 - (c) Broadband Austria 2020 - Ducts: aims to encourage co-investment into communication infrastructure during communal civil engineering works thus helping to fill the gaps in coverage by reducing construction costs at the same time. In view of their future use in NGA-capable infrastructures, ducts with or without cabling can be financed. Coverage of territory or connection of subscribers (private and business) are both eligible approaches. However, the works to be subsidised must fit into a broader strategy for NGA-network development. Demonstrating this

constitutes a condition for obtaining the financing. This measure is in first place destined for municipalities, from which there are 2 100 in total. It is expected that 10%-25% of them will manifest interest in the measure. In second place this funding line is also open to telecommunication operators, if the municipality does not manifest interest.

- (d) "Austrian Electronic Network": Support programme for the development of applications and their use.
- (8) Instruments (a), (b) and (c) are subject to this decision, and (d) falls under the Regulation on *de minimis* aid¹.
- (9) For the coordination of these instruments, communication to the public and promotion of pilot projects, a Competence Centre was established within the Broadband Office of the Ministry for Transport, Innovation and Technology ("BMVIT").
- (10) Up to 2% of the total budget will be used for accompanying communication measures aimed to inform citizen about possibilities and risks of broadband technologies and improve their digital integration. This enhanced consciousness is expected to generate increased demand for high quality services, reducing thus the need for public support measures in the long run.
- (11) **Duration:** Instrument (d) start in November 2015 while (a) (b) and (c) should enter into force upon approval by the European Commission and remain in force until 31.12.2020.
- (12) **Legal base:** Special Directives "Breitband Austria 2020_Access", "Breitband Austria 2020_Backhaul", "Breitband Austria 2020_Leerverrohrungsprogramm".
- (13) **Budget and financing instruments:** The total overall budget amounts to EUR 1 000 million and the aid consists of one off non-refundable subsidies. The granting authority is BMVIT.
- (14) It is possible for the projects to apply for additional European financing (e.g. European Agricultural Fund for Rural Development). Applications for grants must present a budget and a financing plan, including all other sources of financing. If other grants are used the other granting authority must contact the federal ministry (BMVIT) in order to avoid overcompensation.
- (15) **Aid amount and intensity:** Up to 50% of total investment costs of any project can be granted as aid. Even in case of additional public financing, 25% at least must be own funds in case of the Access and Backhaul instruments and 10% in the Ducts scheme.
- (16) **Beneficiaries:** Beneficiaries are private network owners and operators and municipalities.

¹ Commission Regulation (EC) 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, of 24.12.2013

- (17) **Target areas:** Support can be granted for deployment of broadband networks in "NGA-white" areas, that is, areas where private investment into NGA is not available and not planned over the coming three years.
- (18) The measure encompasses all 35 NUTS 3 regions of Austria. Within these, the target areas have been defined by way of market consultation and based on the Broadband Atlas of the BMVIT and the Infrastructure Register maintained by the Austrian regulatory authority for telecommunications ("RTR GmbH") in April 2015. Target areas are defined the way so as to avoid any unnecessary overlap of infrastructure.
- (19) **Public consultation:** An initial public consultation of the planned measure was carried out between July and October 2014. Network operators throughout Austria were contacted to provide information on current service delivery and plans for further investment in the coming three years. 75 entities provided input. This information formed the basis for the initial map of target areas. The map was adjusted in April 2015 again on the basis of new incoming information from the operators. Subsequently, yearly consultations will be done in order to identify newly built infrastructure for inclusion into the Broadband Atlas and in order to inquire about other upcoming private investments in NGA that the operators plan. The target areas are adjusted yearly according to the results of this, at least yearly consultation.
- (20) In addition, in principle before each call for tenders, but at least once a year, the granting authority conducts a public consultation to identify if there is private interest in developing NGA in the target area over the coming three years. The consultation is published on the central website www.breitbandfoerderung.at. It contains the description of the intended measure and the target areas. The consultation must be open for at least 4 weeks and results will be published on www.breitbandfoerderung.at.
- (21) So that the public measure does not get held up by unimplemented private deployment plans, the granting authority may require specific commitments from the operator an declaring interest in developing NGA; including contractual agreements, milestones to be achieved and reporting on progress. In the event that a milestone is not achieved by the private operator, a public project can be initiated.
- (22) **Mapping and coverage analysis:** The basis for the mapping and definition of the target areas is the Broadband Atlas for which data provision from operators is voluntary and updates are requested regularly but at least annually. It is also publicly available on <http://breitbandatlas.info/map.php>. Coverage data can be consulted to a depth of a 100*100 meter detail.
- (23) Additionally, participants to the public consultation must declare their available infrastructures for updating the target areas and for use in the tendering process.
- (24) On the basis of the information gathered, target areas must be defined in such a way that they cover the "NGA-white" areas without causing overlaps of new or existing infrastructure unless, under exceptional circumstances, such overlap cannot be avoided in order to ensure coverage of the targeted "NGA-white" areas. In such a case, the new network being deployed must not be used to connect end-users in areas that are not "NGA-white".

- (25) **Open tender:** The award of the aid is conducted by way of open, transparent and non-discriminatory tender procedures in full compliance with Austrian and European public procurement rules. The calls for tender will be published at least once a year on the central website www.breitbanfoerderung.at.
- (26) Selection and award criteria must be made explicit to every bidder. Tenderers must present a step-change, the proof that the investment would not be feasible without public support and proof of financing for the own funds.
- (27) The use of existing infrastructure and co-use possibilities for other industries (e.g. cooperation with energy and water companies and road construction) are also evaluation criteria in the tender.
- (28) Finally, the results of the tender must also be published on the central online portal www.breitbandfoerderung.at.
- (29) All participants to the tendering process must provide relevant information about their available infrastructures in the target area to other bidders in a timely manner, in a way that they can include these into their respective bids.
- (30) The evaluation of the bids along the selection criteria will be made by independent experts selected from a previously established expert pool. Values achieved in the selection criteria will be balanced against the funding gap required to be covered by the public funding.
- (31) The granting authority selects the most economic offer (best value for money) based on the award criteria.
- (32) If less than three candidates participate in the tender, the amount of costs and funding gap shall be verified by an external independent expert audit.
- (33) The call for tenders must respect technology-neutrality and allow all technologies to bid, which can deliver on the quality requirements. However, considering the sporadic presence of cable in rural areas in Austria, the most probable delivery of 100 Mbit/s speeds will be through optical fibre based architectures; FTTC with vectoring, FTTB or FTTH.
- (34) All bidders must commit in their offers to providing open and non-discriminatory access to the network and include a reference offer.
- (35) Where ducts are laid, beyond the use of the existing infrastructures and coordination of civil works, the planning must also take into account ducts to be large enough to host several network providers and to cater for point to point architectures in line with the Directive for Cost Reduction for the Construction of High Speed Communications Networks².
- (36) **Obligations imposed on the network owner and operator:** The selected network operator must provide open and non-discriminatory wholesale access to the subsidised infrastructure; including access to ducts, dark fibre, bitstream access³,

² 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

³ Except in case of the subsidization of a passive infrastructure only.

unbundled local loop and street cabinets⁴. If vectoring or any other solution where physical unbundling is technically or economically not feasible is deployed, an equivalent virtual unbundling product⁵ must be offered. Enough capacity must be reserved to enable co-use for third operators. For the design of ducts in order to fulfil this condition, the BMVIT provides on its website publicly available technical guidance.

- (37) All applications for grant must contain a reference offer for the access products to be offered. Should any of the involved parties be discontent with the access conditions or in case any granting authority raises any doubts about the fairness of these, RTR GmbH shall be called upon to review them.
- (38) The reference offers must be published on the beneficiary's website and upon request of access seekers they have to provide all relevant information within four weeks.
- (39) The applications for subsidised infrastructure must provide accurate information to all interested network operators about the physical infrastructure – e.g. ducts, street cabinets, fibre, etc. in order to be included into the Geo-Information System (GIS) and be made available publicly.
- (40) Wholesale access shall be ensured for a period of seven years while access to the passive infrastructure shall be unlimited in time.
- (41) Wholesale access prices need to be oriented along the regulated and approved prices of the RTR GmbH or be benchmarked on the basis of comparable wholesale access products in competition-intensive regions. In the case of demand for access products where no price had been determined, the network operator and the access seeker should come to an agreement. Should issues linked to the agreement on access conditions arise, RTR GmbH must be called upon to decide within four weeks.
- (42) **Transparency, Monitoring, and Control:** All projects benefiting from State funding under the measure must be published on www.breitbandfoerderung.at
- (43) The infrastructure constructed must be documented. For this, beneficiaries must feed the created infrastructure into the Web-GIS application at latest eight weeks after completion. The granting authority ensures including these into both the Broadband Atlas of the BMVIT and Infrastructure Register.
- (44) Coordination of projects will be done by the Broadband Competence Centre within the BMVIT in collaboration with the regional broadband coordinators.
- (45) All projects must report back to the granting authority periodically, as defined case by case by the granting authority but at least once a year, about progress and the use of funds.

⁴ See access products specified in Annex II of the Broadband Guidelines.

⁵ As described in the Reference Offer, examined and approved by the European Commission: http://cdn2.a1.net/final/de/media/pdf/Virtuelle_Entbuendelung.pdf, as fulfilling the requirements laid down in point 4.2.2.1 the Explanatory Note of the Commission (SWD(2014) 298) Accompanying the document Commission Recommendation on relevant product and service markets.

- (46) Every two years, key information (e.g. starting date of operation of the infrastructure, wholesale access products, number of access seekers, service providers on the network potential subscriber numbers and current exploitation levels.) will be communicated to the European Commission.
- (47) For projects exceeding 10 million EUR a clawback mechanism will be put in place; if after a three year period actual profits exceed expected profits by more than 30% with no reduction in customer prices, the granting authority may introduce a recovery demand.

V. EVALUATION

- (48) The Broadband Guidelines (point 53) state that certain aid schemes may require an "...evaluation in order to assess whether the assumptions and conditions which led to the compatibility decision have been realised; (ii) the effectiveness of the aid measure in light of its predefined objectives; (iii) its impact on markets and competition and that no undue distortive effects arise under the duration of the aid scheme that is contrary to the interests of the Union. Given its objectives and in order not to put disproportionate burden on Member States and on smaller aid projects, this only applies for national aid schemes and aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The evaluation shall be carried out by an expert independent from the State aid granting authority on the basis of a common methodology and shall be made public. The evaluation shall be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid measure and in any case upon expiry of the scheme. The precise scope and modalities of the evaluation shall be defined in the approval decision of the aid measure. Any subsequent aid measure with a similar objective shall take into account the results of that evaluation."
- (49) The present scheme fulfils the criteria of being a national aid scheme with a large budget; therefore it will be subject to an evaluation. Austria, in light of this provision, and taking into account the best practices recalled in the Commission Staff Working Document on Common methodology for State aid evaluation⁶, has submitted an Evaluation Plan for the measure, covering all four instruments described in paragraph (7). The main elements of the evaluation are described below.
- (50) The evaluation questions address the measure's outputs, its general effects and effects on competition and the proportionality of the aid, as well as some indirect effects of the measure.
- (51) The questions addressing outputs and general effects will be answered by looking at the development of a selection of result indicators such as coverage, number of connections, broadband quality and technology. For the ducts scheme, an important result indicator will be the cost-reduction-ratio by joint-use and / or joint-laying of infrastructure.

⁶ Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

- (52) Demand-side effects will also be investigated, looking at indicators covering in particular the number of subscriptions and the type of services in the target areas compared with more competitive regions in Austria.
- (53) Proportionality of the aid will be examined by considering the deployment costs per residence, technology type and geographical unit-of-measure taking into account also coverage, service quality and the technological solutions employed. The funding ratio and these costs can then be compared to non-funded implementations. Whether or not clawback has been triggered will also serve as an indicator to assess proportionality.
- (54) In order to examine the effect of the measure on competition, the Evaluation Plan suggests comparing the price levels between funded and non-funded areas – controlled for quality of service. To further assess competition on the level of the service providers, the target areas will be compared with more competitive regions as to the number of access seekers and the number of providers present, as well as entry and exit and their position on the market.
- (55) Also the outcome of the call for tenders will be analysed with respect to the market power and size of the winning companies and the recurrence of any pattern in relation to the tender conditions.
- (56) The incentive effect of the aid will be examined in the target areas observing whether the aid changed the behaviour of the firms and their investment patterns improved outcomes beyond the target area.
- (57) As concerns indirect impacts, it is widely acknowledged that NGA can have an impact on variables such as GDP, population retention, innovation, housing prices or greenhouse gas emissions. However, it is acknowledged that causality is challenging to establish with the aid that will be granted under the measure. The evaluation will nonetheless seek to provide evidence on some of these elements, specifically on real estate, employment and the environment, through a qualitative assessment.
- (58) To the extent possible, control groups of areas not receiving support under this measure will be identified in order to estimate the causal impact of the aid. Depending on the evaluation question, "NGA white" areas presenting similar characteristics can be taken as counterfactual. In other cases, it may be more suitable to rather use "NGA grey" areas or even fully competitive ones.
- (59) For the purposes of evaluating the scheme, the Austrian authorities have confirmed that a combination of existing data sources and additional data collection will be used.
- (60) Tender participants are required to provide financial and technical data about the projects in target areas, including take up of service, the profitability of the project, access seekers and access conditions. Data on coverage, infrastructure, technologies and services offered will be collected on a granular scale also from non-beneficiaries into the Austrian authorities' Geo-information System. Socio-economic data will be collected for various national and international statistical data sources.

- (61) The evaluation may also involve additional and targeted data collection, including new surveys.
- (62) This independent evaluator will be selected by way of an open, competitive and non-discriminatory tender procedure. Specific skills and experience on evaluation will be required during the tendering.
- (63) An evaluation is undertaken every two years in Austria as part of the mandatory programme evaluation as defined by Article 17 of the Austrian Federal Budget Act (Wirkungsorientierte Folgenabschätzung). There are significant overlaps with the present Evaluation Plan, mainly in terms of assessing outputs and results.
- (64) An evaluation report based on the present Evaluation Plan will be submitted to the Commission by December 2020 at the latest. In addition, Austria intends to conduct an ex post evaluation report to be prepared by 2024.
- (65) The Evaluation Plan and the evaluation reports will be published on the relevant Austrian Government website.⁷

VI. STATE AID ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (66) 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 support measure to be qualified as State aid, it has to be granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.
- (67) As described in recital (13) the measure encompasses financing initiatives by the Austrian authority BMVIT; public funds under the control of this authority are allocated to the beneficiaries on the basis of criteria that include an element of discretion. Hence, State resources are involved and they are imputable to the State.
- (68) The scheme results in a selective economic advantage for both the electronic network operators selected in the tendering procedure and for third parties who gain wholesale access to the subsidised network and can consequently offer their services on conditions not otherwise available on the market, since the infrastructure would not have been created without the aid.
- (69) Finally, the measure is liable to distort competition. At network operator level, State support may deter other operators in the region 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. In so far as the intervention is (at least potentially) liable to affect providers of electronic communications services from other Member States, the measure has an effect on trade. The markets for electronic communications services are open to

⁷ Currently <http://www.bmvit.gv.at/telekommunikation/breitbandstrategie/publikationen/index.html>

competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. Therefore this support is also likely to affect trade between Member States.

- (70) The Commission therefore concludes that the notified aid measure constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the Member State in the notification.

VII. COMPATIBILITY ASSESSMENT

- (71) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) TFEU and in the light of the *EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*⁸ (the "Broadband Guidelines").

- (72) As explained in paragraphs 33 and following of the Broadband Guidelines, for aid to be found compatible with Article 107(3)(c) TFEU, the following conditions must be fulfilled:

1. The aid must contribute to the achievement of objectives of common interest
2. Absence of market delivery due to market failures or important inequalities
3. The aid must be appropriate as a policy instrument
4. The aid must have an incentive effect
5. The aid is limited to the minimum necessary
6. Negative effects must be limited
7. The aid measure must be transparent.

- (73) If those conditions are fulfilled, the Commission balances the positive effects of the aid measure in reaching the objective of common interest against the potential negative effects.

The aid contributes to the achievement of objectives of common interest

- (74) In its Europe 2020 strategy⁹ the Commission defined the Flagship Initiative "A Digital Agenda for Europe", which 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, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps." In pursuing this aim, "at EU level, the Commission will work ...to facilitate the use of the EU's structural funds in pursuit of this agenda", and "at national level, Member States will need ... to draw up operational high speed internet strategies, and target public funding, including structural funds, on areas

⁸ OJ C 25, 26.1.2013, p.1.

⁹ EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020, 3.3.2010, page 12.

not fully served by private investments." Key Action 8 of the Digital Agenda calls 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.

- (75) The ambitious aim of the Austrian Broadband Strategy 2020 is to provide almost complete coverage with download speeds of at least 100 Mbit/s by 2020. (see recital (3)). Thus the measure will make a significant contribution to the achievement of the objectives of the Digital Agenda and therefore contribute to the achievement of an objective of common interest.

Absence of market delivery due to market failures or important inequalities

- (76) As explained in recital (17), the measure targets the deployment of broadband networks in so called "NGA white" areas, where very high speed broadband is currently not available and where it is established, by way of detailed market consultation (see recitals (20) and (21)), that there are no plans by private investors to roll out such infrastructure in the next three years.

The aid is appropriate as a policy instrument

- (77) Upgrading broadband in "NGA white" areas requires significant upfront investments that are amortised over a long period of time. Alternative instruments alone, such as demand side measures in the form of grants, vouchers or tax incentives to end users, do not provide the critical mass needed to remedy the lack of supply (namely non-existence of the infrastructure). Ex ante regulation is serving the effectiveness of the scheme but is in itself not sufficient to trigger large scale network deployment.
- (78) The present federal scheme is the continuation of a previous previously approved scheme¹⁰. In line with points 40 and 41 of the Broadband Guidelines, the federal scheme allows putting coherent requirements on all local initiatives; coordination and transparency are designed from the start into the measure. This implies the systematic involvement of the central platform www.breitbandfoerderung.at, the Broadband Competence Centre and RTR GmbH. (See recitals (9), (21), (26) and (38)).

The aid has an incentive effect

- (79) As set out in paragraph 45 of the Broadband Guidelines, in order to assess the incentive effect of the measure, the Commission must examine whether the broadband network investment concerned would not be undertaken within the same timeframe without any State aid. The scheme ensures that aid can only be provided if it is established that in the targeted areas no comparable investment would take place without public funding within three years (see public consultation in recital (21)). Hence the investment would not be made within the same timeframe without the aid, which thus produces a change in the investment decisions of the operators and has an incentive effect.

The aid is limited to the minimum necessary

¹⁰ Commission Decision in Case SA.35884 Breitband Austria 2013, [as of 18.01.2013, OJ C56, 26.02.2013](#)

- (80) Austria has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes the following elements, which are considered as necessary to the design of a measure that is in line with the Broadband Guidelines (point 78 of the Broadband Guidelines):
- (a) *Detailed mapping and coverage analysis, public consultation:* as described in recital (23), the granting authority is on an on-going basis and at least once a year organising consultations to better delineate the target areas and the kind and size of public intervention needed. Operators must communicate, within the framework of the consultations, existing broadband infrastructures for inclusion into the Broadband Atlas. Such an opportunity is also offered systematically before the call for tenders where operators are invited also to communicate own investment plans for the coming three years. In this manner it will be possible to ensure that public funds are used only to deploy broadband networks in "NGA white" areas and that overlapping infrastructures are avoided, to the extent possible. The public consultation also serves to ensure that only those areas where no interest for commercial NGA deployment is present are developed. This will reduce to a minimum the possibility of crowding out private investments and distorting competition vis-à-vis existing operators (see recitals (20), (21) and (24)).
 - (b) *Competitive selection process:* as described in recital (26), the award of the aid is conducted by way of open, transparent and non-discriminatory tender procedure in full compliance with Austrian and European public procurement rules. All notices regarding selection procedures under the measure are moreover published on a central online portal, www.breitbandfoerderung.at, thus allowing all potential bidders to be easily aware of the calls.
 - (c) *Most economically advantageous offer:* On the basis of predefined and published objective criteria, the network operator offering the best value for money will be selected (see recital (32)).
 - (d) *Technological neutrality:* The tender documents must be technology and provider neutral, leaving it to commercial operators to propose the technological solutions they find most effective and efficient to achieve the objectives (see recital (34)).
 - (e) *Use of existing infrastructure:* as explained in recitals (28) and (36), the tender calls for bidders to have recourse to existing infrastructure. It requires participants to publish information on their infrastructure, which will then be potentially used by any other bidder for the project. The ducts scheme explicitly targets the coordination of civil engineering works (see recital (6)c) Unnecessary and wasteful duplication of resources should in this way be avoided and the funding gap (and hence the funding requirements) should thus be minimised.
 - (f) *Wholesale access:* in line with points 78(g) and 80(a) of the Broadband Guidelines, the selected operator must ensure full and effective unbundling and provide full open access to the subsidised network (including but not limited to access to ducts, dark fibre, street cabinets, and bit-stream and unbundled access to fibre) on fair and non-discriminatory terms for at least seven years. Where physical unbundled access is technically or economically not feasible, it can be substituted by an equivalent virtual access product. The access must be granted as early as possible before the launch of the services concerned in order to ensure level playing field for competitors (see point 78(g) footnote 108 of the Broadband

Guidelines). Furthermore, full access, without limitation in time, is always to be guaranteed to any new passive infrastructure elements, such as ducts and poles (see recital (37)).

- (g) *Wholesale access pricing*: As described in points 78(h) of the Broadband Guidelines, wholesale access prices are to be based on the price set or approved by RTR GmbH or benchmarked against average wholesale prices of comparable access services in other, more competitive, parts of the country. In case of disputes between the network operator and access seekers or where the price is not regulated, the RTR GmbH must be consulted with the objective to keep prices at a reasonable and non-discriminatory level (see recitals (38) and (39)).
- (h) *Transparency, monitoring and clawback*: In line with point 78(j) of the broadband guidelines, all relevant information regarding any aid granted will be published on a central online portal www.breitbandfoerderung.at. This is also where projects have to report to and publish at least yearly milestones. The created infrastructure is to be reported eight weeks after completion at the latest. (see recitals (43), (44), (45) and (46)). The Broadband Competence Centre ensures regular monitoring and supervises State aid compliance. Where the funding of a project exceeds EUR 10 million, a claw-back mechanism is put in place (see recital (48)). As foreseen in point 78(k) of the Broadband Guidelines, every two years, key information is reported to the European Commission.

The aid has limited negative effects

- (81) Given the design of the measure and its compliance with the conditions of Article 78 of the Broadband Guidelines (see recital (64) above), it is unlikely to have a crowding out effect on private investments.
- (82) Indeed, only projects that are confined to "NGA white areas", where no operator is willing to invest in NGA infrastructure without State aid in the next three years, are eligible to receive aid under the notified measure. What is more, where a broadband network already exists, the measure requires that a "step change" be achieved; the public intervention must result in significantly better broadband capacity and thus service availability and the selected bidder must carry out significant new investments in the existing broadband networks (see recitals (17) and (20)). In this way, the notified measure ensures that the public intervention does not crowd out comparable private investments.
- (83) Furthermore, the beneficiaries are to be selected by open tender; full open access is to be granted to the subsidised infrastructure and there are several mechanisms to prevent wholesale access prices from being excessive (see recitals (26), (37) and (42)).
- (84) Therefore, negative effects of the measure, if any, are expected to be limited.

Transparency

- (85) As explained in recitals (23), (43) and (47) the measure ensures that the interested public and the Commission should have easy access to all relevant acts and pertinent information about the aid awarded thereunder.

- (86) As stipulated by point 53 of the Broadband Guidelines, a scheme as this; a national framework scheme with large budget is subject to ex post evaluation. Therefore, by the end of this measure, an ex post evaluation will be carried out that includes verifying if the set objectives were achieved, if initial assumptions were realised, and assessing the overall effectiveness of the State aid measure in light of its general and specific objectives and the measure's impact on competition. The timeline of the evaluation, the evaluation questions, methodology and the data gathering requirements are to be set out upfront, in an Evaluation Plan prepared according to the Commission guidance as described in recital (49). Results will feed into the design of the follow up scheme.

Overall balancing: the positive effects of the aid measure are expected to outweigh its potential negative effects

- (87) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of high speed broadband services in the targeted areas.
- (88) In view of the characteristics of the project and of the safeguards applied, the overall impact on competition is deemed to be positive. The provision of NGA services by creating a high quality, high capacity infrastructure has a pro-competitive impact, as it allows several network operators to use the subsidised infrastructure and compete on services to the end user.
- (89) The increase in network capacity is expected to stimulate market entry by service providers and the provision of a greater variety of services. Access of competing operators is ensured by requiring open access to the subsidised network on equal and non-discriminatory terms for at least seven years. The risk of crowding out private investments and the negative effects of the measure are expected to be limited. The measure does not entail any negative effects on trade, there does not appear to be any significant negative spill-over for other Member States. Accordingly, the measure is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest measure and is in line with the objectives of Article 107(3)(c) TFEU.

Conclusion

- (90) The Commission concludes that the measure notified by Austria meets the compatibility criteria set out in the Broadband Guidelines.

VIII. COMPATIBILITY ASSESSMENT OF THE EVALUATION PLAN

- (91) As referred to in paragraph (48) the Commission can require that aid schemes with large budgets be subject to an evaluation. As this is the case for the present aid scheme, the Austrian authorities notified an Evaluation Plan.
- (92) The Commission considers that, as described in section V of this decision, the notified Evaluation Plan contains the necessary elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body

conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation.

- (93) The Commission notes that the scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched indicators for each and methodologies to address the questions. Data sources are individually defined for each question.
- (94) The Commission also acknowledges the commitments made by the Austrian authorities to conduct the evaluation according to the Evaluation Plan described in the present decision by an independent evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.
- (95) Finally, the Commission notes the commitment made by Austria to submit the final evaluation report at the latest in December 2020 but in any event before or together with the notification of the follow up scheme, which shall take into account the results of that evaluation.

IX. DECISION

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

The Commission reminds Austria of the requirement to submit to it annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to amend/extend this measure. The Commission also reminds Austria that the evaluation report must be submitted by December 2020 at the latest.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,
For the Commission

Marianne THYSSEN
Member of the Commission

