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**Subject: State Aid SA.58261 (2020/N) – Austria
Broadband Austria 2020 Prolongation**

Excellency,

1. PROCEDURE

- (1) Following pre-notification on 18 August 2020, the Austrian authorities notified the European Commission of a planned two-year prolongation of and a modification to the authorised aid scheme *Broadband Austria 2020* on 1 October 2020. The original aid scheme has been approved by the Commission by decision of 17 December 2015 in case SA.41175 (“the 2015 decision”). By e-mail of 13 November 2020, the Austrian authorities informed the Commission of further amendments to the notified prolongation and modification of 1 October 2020.
- (2) By letter of 2 October 2020, the Austrian 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 1/1958¹ and that the decision be adopted in English as the authentic language.

¹ EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Seiner Exzellenz Herrn Alexander SCHALLENBERG
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2. DESCRIPTION OF THE MEASURE

2.1. The original scheme²

- (3) By decision of 17 December 2015, the Commission approved the Austrian scheme *Broadband Austria 2020*, a federal State aid scheme for Next Generation Access (“NGA”) network deployment bundling several types of interrelated instruments in order to ultimately achieve full NGA coverage with download speeds of 100 Mbps and above throughout the country.
- (4) This original aid scheme consists in particular of three programmes: (i) *Broadband Austria 2020 – Access*, (ii) *Broadband Austria 2020 – Backhaul* and (iii) *Broadband Austria 2020 – Ducts*. The corresponding legal bases are three special directives for access, backhaul and ducts.³

2.1.1. *Broadband Austria 2020 - Access*

- (5) The aim of the access funding is to stimulate investments in the deployment of broadband access networks. It aims to gradually achieve a substantial improvement in broadband coverage for households and businesses. By supporting investments in the deployment of NGA networks, it is expected that the wholesale market is stimulated, which would ensue competition on the retail market. Ultimately, this is supposed to lead to a significant increase in the availability of broadband access networks capable of delivering to end-users download speeds of at least 100 Mbps.

2.1.2. *Broadband Austria 2020 - Backhaul*

- (6) The aim of the backhaul funding is to modernize existing backhaul facilities⁴ in order to supply existing or future NGA networks with sufficient capacity.
- (7) The support thus targets the reinforcement of the feeder networks and the connection of isolated solutions to the backbone. This includes the retrofitting of existing connections with insufficient capacity based on, for instance, copper or fixed wireless access or local coaxial networks. The programme thus intends to close gaps with regard to the nationwide deployment of NGA broadband infrastructure. No deployment of access infrastructure is foreseen under *Broadband Austria 2020 – Backhaul*. The programme rather focuses on the upgrading of existing backhaul networks.

² For further details on the design and functioning of the original aid scheme it is referred to the Commission’s decision of 17 December 2015 in case SA.41175 at recitals (6) – (47).

³ Sonderrichtlinie Access – Breitband Austria 2020 - Zur Umsetzung von Maßnahmen im Rahmen des Masterplans zur Breitbandförderung (BBA2020_A); Sonderrichtlinie Backhaul – Breitband Austria 2020 - Zur Umsetzung von Maßnahmen im Rahmen des Masterplans zur Breitbandförderung (BBA2020_B); Sonderrichtlinie Leerrohr – Breitband Austria 2020 - Zur Umsetzung von Maßnahmen im Rahmen des Masterplans zur Breitbandförderung (BBA2020_Leerrohr); all available at: <https://www.bmlrt.gv.at/telekommunikation-post/breitband/breitbandaustria2020.html>.

⁴ “Backhaul” describes the connection of the network node of an access network to a backbone network, which in turn is the higher-level core area of a telecommunications network.

2.1.3. *Broadband Austria 2020 - Ducts*

- (8) The aim of the ducts funding is the laying of ducts at the occasion of municipal civil engineering works, primarily in municipalities without NGA broadband connections, with a view to later facilitate NGA or backhaul networks deployment.

2.1.4. *Beneficiaries, budget, amount of State aid and aid intensity*

- (9) The original scheme's overall budget amounts to €1 billion. Support is granted by the Austrian federal government from the federal Austrian budget in the form of non-repayable individual grants. After restructuring within the Austrian government, the granting authority is meanwhile the Austrian Federal Ministry of Agriculture, Regions and Tourism (*Bundesministerium für Landwirtschaft, Regionen und Tourismus*, "BMLRT").⁵ The beneficiaries are public electronic communications networks operators (*Broadband Austria 2020 – Access*, *Broadband Austria 2020 – Backhaul* and *Broadband Austria 2020 - Ducts*) and municipalities or inter-municipal co-operations (*Broadband Austria 2020 - Ducts*).
- (10) The individual aid amounts depend on the eligibility and the funding needs of individual projects. Notwithstanding the foregoing, under *Broadband Austria 2020 - Ducts* the maximum individual aid amount is fixed at €500 000 per project and the minimum individual aid amount is €10 000 per eligible project. The maximum intensity of the aid is limited at 50% of the eligible project costs.⁶
- (11) Funding under the scheme can be combined with funding under other schemes at federal, regional or EU level. However, in case of cumulation, the beneficiary's own contribution⁷ must amount to at least 25% (*Broadband Austria 2020 – Access* and *Broadband Austria 2020 – Backhaul*) or 10% (*Broadband Austria 2020 - Ducts*) of the eligible costs.

⁵ It used to be the Austrian Federal Ministry for Transport, Innovation and Technology (*Bundesministerium für Verkehr, Innovation und Technologie*, "BMVIT"), which no longer exists.

⁶ Eligible costs are in particular:

1. *Broadband Austria 2020 – Access*: investment costs for the deployment of NGA networks, *i.e.* for passive infrastructure (usually construction costs or costs for ducts, dark fibre and cabinets), in the target areas, and investment-related own contributions in the form of material and labour;
2. *Broadband Austria 2020 – Backhaul*: investment costs for strengthening the feeder networks and for connecting isolated solutions to the backbone network (backhaul connections) and investment-related own contributions in the form of material and labour. Usually these are construction costs and purchasing costs for components of the passive infrastructure;
3. *Broadband Austria 2020 – Ducts*: investment costs for the deployment of ducts systems with or without cables, including in particular costs for civil engineering works (excavation works including restoration), costs for ducts (sub-ducts, microtubes, etc.) including the laying, costs for fibre optic cables including related costs, investment-related own contributions in the form of material and labour, and investment-related planning costs, depending on the individual case, either up to €30 000 or up to 5% of the eligible expenses.

⁷ "Own contributions" can include own capital in the narrower sense as well as own material and labour, loans or contributions from private third parties.

- (12) During the effectiveness of the operating obligation of seven years, which starts at the moment of the last payment to the beneficiary, beneficiaries have to ensure that the supported investments will be used and maintained in accordance with the funding objectives.

2.1.5. Target areas

- (13) Funding is only permitted in underserved areas that are marked as target areas on the broadband map⁸. An area is underserved if it does not have access to broadband connections providing download speeds of at least 30 Mbps (“NGA white areas”) and in which market consultations conducted by the Austrian authorities have shown that no deployment of networks providing NGA speeds is planned in the next three years following the market consultation.⁹
- (14) Market consultations take place, in principle, before each call for tenders, but at least once a year. The original scheme’s final target areas on the broadband map are adjusted yearly according to the results of the market consultations.

2.1.6. Competitive selection procedure and economically most advantageous offer

- (15) The award of the individual aids 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 take place at least once a year and are published on the website of the BMLRT.¹⁰ The results of the tenders are published on the same website.
- (16) 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. 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.
- (17) The granting authority selects the most economic offer (best value for money) based on the award criteria.

2.1.7. Wholesale access

- (18) Aid can only be granted if fair and non-discriminatory access at wholesale level is guaranteed by the beneficiary. The selected network operator must provide open and non-discriminatory wholesale access to the supported infrastructure, including access to ducts, dark fibre, unbundled local loop and street cabinets. If vectoring or any other solution where physical unbundling is technically or economically not feasible is deployed, an equivalent virtual unbundling product

⁸ *Breitbandatlas*, available at: <https://breitbandatlas.gv.at/>.

⁹ Market consultations including the description of the intended measures and the target areas as well as the results of all market consultations are available at: <https://www.bmlrt.gv.at/telekommunikation-post/breitband/breitbandaustria2020.html>.

¹⁰ Cf. at <https://www.bmlrt.gv.at/telekommunikation-post/breitband/breitbandaustria2020.html>.

must be offered. Enough capacity must be reserved to enable co-use for third operators of the passive infrastructure.

- (19) Wholesale access shall be ensured for a period of seven years while access to the passive infrastructure shall be unlimited in time.

2.1.8. *Claw-back mechanism*

- (20) Under *Broadband Austria 2020 – Access* and *Broadband Austria 2020 – Backhaul*, for projects exceeding €10 million, a claw-back mechanism is in place. If after a three-year period actual profits exceed expected profits by more than 30%, the BMLRT may introduce a recovery demand.

2.2. The notified prolongation and amendment

- (21) The original scheme is due to expire on 31 December 2020.
- (22) The Austrian authorities explained that the Covid-19 pandemic that struck Europe in March 2020 and that still lasts at the time of the adoption of this decision has led to delays in the implementation of the original scheme. Moreover, the Austrian authorities expect returns from already approved but unused funds under the original scheme in the amount of €400 million. A prolongation is therefore necessary in order for the Austrian authorities to be able to use all funds available for the original scheme, which is why the Austrian authorities intend to prolong the original scheme in a modified version by two years, *i.e.* until 31 December 2022, without increasing the initially allocated budget.
- (23) The scheme shall thus be applicable in a modified version from 1 January 2021 to 31 December 2022 (“period of prolongation”).¹¹ The modifications that will be applicable as from 1 January 2021 are the following.

2.2.1. *Broadband Austria 2020 – Access*

- (24) For the period of prolongation, support under *Broadband Austria 2020 – Access* for investments in the deployment of NGA networks will not only be possible for the improvement of connections of private households and businesses but will also be possible for the improvement of connections of public educational institutions. For the period of prolongation, support will only be granted for investments in the deployment of passive infrastructure enabling the roll-out of NGA networks capable of offering a downlink of at least 100 Mbps, upgradable to Gigabit speed.
- (25) The maximum intensity of the aid remains, as a general rule, limited at 50% of the eligible project costs.¹² However, if the supported investment is undertaken in target areas that are served with networks providing speeds of less than 2 Mbps, the maximum aid intensity can be increased to up to 65%.

¹¹ The implementation period for contracts concluded until 31 December 2022 extends until 31 December 2026.

¹² For eligible costs see at fn.6 above.

- (26) Furthermore, the Austrian authorities clarified that mobile and wireless networks are excluded from funding under *Broadband Austria 2020 – Access* for the period of prolongation and that fair and non-discriminatory access at wholesale level must be granted unlimited in time.

2.2.2. *Broadband Austria 2020 - Backhaul*

- (27) The programme *Broadband Austria 2020 – Backhaul* shall not be prolonged and shall expire on 31 December 2020. It will no longer be part of the scheme for the period of prolongation and no contracts under this programme may be concluded after 31 December 2020.¹³

2.2.3. *Broadband Austria 2020 - Ducts*

- (28) For the period of prolongation, support under *Broadband Austria 2020 – Ducts* for investments in the deployment of ducts will not only be possible for the improvement of coverage and of connections of private households and businesses but will also be possible for the improvement of connections of public educational institutions. The ducts deployed will support the roll-out of NGA networks capable of offering a downlink of at least 100 Mbps, upgradable to Gigabit speed.
- (29) The maximum intensity of the aid remains, as a general rule, limited at 50% of the eligible project costs.¹⁴ However, if the supported investment is undertaken in target areas that are served with networks providing speeds of less than 2 Mbps, the maximum aid intensity can be increased to up to 65%. As regards the individual aid amounts that can be granted per project under *Broadband Austria 2020 – Ducts*, the minimum individual aid amount is increased to €50 000 per project.
- (30) Furthermore, the Austrian authorities clarified that mobile and wireless networks are excluded from funding under *Broadband Austria 2020 – Ducts* for the period of prolongation.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (31) The original scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), as stated at recitals (66) - (70) of the 2015 decision. The prolongation by two years and the modifications to the scheme explained at recitals (24) - (30) above do not affect this assessment.

3.2. Compatibility

- (32) In the 2015 decision, the Commission assessed the compatibility of the original scheme according to Article 107(3)(c) TFEU and in the light of the EU

¹³ The implementation period for already concluded projects extends until 31 December 2024.

¹⁴ For eligible costs see at fn.6 above.

Broadband Guidelines¹⁵. In order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest. In particular, under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities. Under the second condition, the Commission weighs up the positive effects of the planned aid for the development of the activities that the aid is intended to support and the negative effects that the aid may have on the internal market, in terms of distortions of competition and adverse effects on trade caused by the aid (namely, whether the State intervention is needed, appropriate and proportionate and addresses a market failure to achieve the objectives pursued by the measure, ensuring also transparency of the aid).

3.2.1. *Contribution to the development of the economic activity*

- (33) The Austrian authorities have submitted that the measure contributes to the development of the economic activity of deploying fixed broadband access networks in underserved NGA white areas.
- (34) The Commission acknowledges that by providing financial support for the deployment of the mentioned networks, Austria contributes to the development of that economic activity in a manner that promotes the roll-out of broadband networks capable of providing download speeds of at least 100 Mbps.
- (35) Therefore, the Commission acknowledges that the amended scheme will continue contributing to the development of fixed broadband networks.

3.2.2. *Weighting the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade*

3.2.2.1. Positive effects of the aid

- (36) Support under *Broadband Austria 2020 – Access* will only be granted for investments in the deployment of passive infrastructure supporting the roll-out of NGA networks capable of providing broadband access offering a downlink of at least 100 Mbps, upgradable to Gigabit speed. Likewise, *Broadband Austria 2020 – Ducts*, for the period of prolongation, supports this objective. The Commission therefore acknowledges that the Austrian government, by prolonging an amended version of the scheme, would support an improvement of broadband connectivity in line with the objectives specified in the Commission's 2016 Gigabit

¹⁵ Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p.1.

Communication¹⁶ and the Commission's 2020 Shaping Europe's Digital Future Communication¹⁷.

3.2.2.2. Limited negative effects: the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest

- (37) Article 107(3)(c) TFEU requires the assessment of any negative effects on competition and on trade in the relevant product markets, that is, in this case, the provision of broadband infrastructure supported by the aid.
- (38) Through the amended scheme, the Austrian authorities ensured that the negative effects of the measure are limited to intervention in market failure areas only, using State aid as the appropriate policy instrument.

(a) Market failure and incentive effect

- (39) The Commission acknowledges that the amended scheme addresses a market failure in the scheme's target areas, *i.e.* NGA white areas where market consultations have shown that no private operators are planning to invest in NGA networks within three years from the market consultation (see recitals (13) - (14) above and recitals (20) – (21) of the 2015 decision). This also gives sufficient certainty that the investments supported under the amended scheme would not be undertaken within the same time frame without any State aid. *Broadband Austria 2020*, as amended, therefore also has an incentive effect for the period of prolongation.

(b) Appropriateness of State aid as a policy instrument

- (40) The Commission considers that the amended scheme is an appropriate policy instrument to contribute to the provision to all Austrian households, businesses and public educational institutions of broadband access of at least 100 Mbps, upgradable to Gigabit speed. As explained in the 2015 decision (see at recital (77) of the 2015 decision), 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

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society, COM(2016) 587 final. This Communication contains the strategic objective for 2025 that “[a]ll European households, rural or urban, will have access to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit speed”. Building on the Digital Agenda for Europe 2020 targets, 100 Mbps connections should be made available to all households by 2025, with a further development path to higher capacity data provision.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Shaping Europe's digital future, COM(2020) 67 final. This Communication also refers to the EU's 2025 connectivity objectives, which require for all European households, rural or urban, an internet connectivity of at least 100 Mbps, upgradable to Gigabit speed, and clarifies that this “reflects the Commission's expectation that, as the decade progresses, households will increasingly need 1 Gbps. This is in line with the Commission's observation of exponentially growing network capacity demands and the need to ensure sustainable investments into networks capable of offering symmetric (*i.e.* upload and download) Gigabit speeds to cater for the European data economy beyond 2025”.

grants, vouchers or tax incentives to end users, do not provide the critical mass needed to remedy the lack of supply (namely the non-existence of the infrastructure), in particular not in rural areas with low population density. *Ex ante* regulation is serving the effectiveness of the scheme but is in itself not sufficient to trigger large scale network deployment. Coordination between and consistency with various other Austrian support schemes for broadband deployment are ensured by the Broadband Office within the BMLRT.

(c) Proportionality: Aid limited to the minimum necessary

- (41) As regards the proportionality of the amended scheme, the Commission notes the following.
- (42) The Austrian authorities have given adequate publicity to the main characteristics of the original scheme and to the potential target areas by publishing the relevant information and inviting the market to comment already in 2014. The original scheme and the map of potential target areas was subsequently adjusted on the basis of the comments received from the market in 2015 (see at recital (19) of the 2015 decision). After the start of the implementation of the original scheme, according to the information provided by the Austrian authorities, the BMLRT constantly updated the final target areas following regular and recurring market consultations (at least once per year and before each call for tenders). This approach will continue to be used for the amended scheme during the period of prolongation and all final target areas of the amended scheme will always be identified and indicated in the openly accessible national broadband map (*Breitbandatlas*)¹⁸. The Commission considers that the notified amendments to the original scheme are limited in substance so that a renewed public consultation is not required.
- (43) The award of individual aid under the amended scheme will be conducted, as under the original scheme, by way of open, transparent and non-discriminatory tender procedures in full compliance with Austrian and European public procurement rules (see also at recitals (25) – (32) of the 2015 decision). All calls for tenders will be published on the BMLRT website.¹⁹ The BMLRT will select the beneficiaries in each case on the basis of previously established and published award criteria weighed against the requested aid amount, choosing the most economically advantageous offer. As regards the possibility of granting a higher aid intensity to projects in most underserved target areas with broadband access of less than 2 Mbps, the Commission considers this as an increased incentive to provide coverage also to the economically least attractive, likely most sparsely populated and most inaccessible target areas, where deployment costs are likely to be higher on average, and as such to be appropriate if clearly enshrined in the award criteria within a public tender procedure. Given that the BMLRT will choose only the most economically advantageous offers, weighing the achieved geographical coverage against the requested aid amount in each individual case, aid will be limited to the minimum necessary and no additional impact on competition is expected.

¹⁸ See fn.8 above.

¹⁹ See at: <https://www.bmlrt.gv.at/telekommunikation-post/breitband/breitbandaustria2020.html>.

- (44) Ducts will be large enough to cater for several cable networks. Furthermore, the legal bases of the amended scheme do not favour or exclude any particular technological solutions and neither will the individual calls for tenders favour or exclude any particular technological solutions. Bidders will be entitled to propose the provision of the required broadband services using or combining whatever technology they deem most suitable.
- (45) As for the original scheme, the amended scheme's funding conditions require aid applicants to consider any existing infrastructure in their project plans and tenders will call for bidders to have recourse to existing infrastructure. Aid applicants are required to publish information on their infrastructure, which can then possibly be used by any other bidder.
- (46) Furthermore, under the amended scheme's funding conditions, aid applicants must grant comprehensive and effective access at wholesale level to all supported infrastructure for unlimited time. All other aspects of wholesale access and the conditions under which it must be granted remain unchanged under the amended scheme (see for more details at recitals (36) – (39) and (41) of the 2015 decision).
- (47) The BMLRT will closely monitor the implementation of the amended scheme during the period of prolongation. The claw-back mechanism in the original scheme remains in place under the amended scheme for *Broadband Austria 2020 – Access* (see at (20) above). The BMLRT will publish on its website at least the following information on the amended scheme: the full text of the amended aid scheme's legal bases, the names of the aid beneficiaries, the individual aid amounts, the individual aid intensities and the used technology. Such information shall be published after the granting decision has been taken, shall be kept for at least 10 years and shall be available for the general public without restrictions. Aid beneficiaries are 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 amended scheme.
- (48) The reporting obligations as laid down in the 2015 decision at recitals (45) and (46) continue to be applicable under the amended scheme.
- (49) In light of the considerations in recitals (42) - (48) above, the Commission considers that the State aid involved and the potential distortions of competition are limited to the minimum necessary under the amended scheme and for the period of prolongation.

(d) Conclusion on limited negative effects

- (50) The amended scheme will only support investments in the deployment of passive infrastructure capable of supporting the deployment of NGA networks that will enable access to or result in an improvement of internet connectivity to connections offering a downlink of at least 100 Mbps, upgradable to Gigabit speed, in NGA white areas. The Commission recalls that these target areas are areas that are currently served at most with basic broadband networks offering a downlink of less than 30 Mbps and where, without State aid, no operator is willing to invest in NGA infrastructure in the next three years following the relevant market consultation.

- (51) Any existing basic broadband operator in the target areas will feel encouraged by the amended scheme to either commit to private NGA investments during the relevant market consultation in order to avoid State aid projects in the area or to apply himself for individual aid under the amended scheme in order to upgrade his basic broadband network and participate as a competitor in one of the fair and non-discriminatory tenders subsequently organized by the BMLRT. The Commission therefore considers it unlikely that any competitors of beneficiaries will be crowded out because of the amended scheme.
- (52) Furthermore, all beneficiaries will have to grant comprehensive and effective access at wholesale level to all supported infrastructure for unlimited time (see at recitals (18) and (46) above and for more details see at recitals (36) – (39) and (41) of the 2015 decision).
- (53) Therefore, any negative effects of the amended scheme are expected to be limited for the period of prolongation.

3.2.2.3. Transparency

- (54) All individual aid under the amended scheme during the period of prolongation will be awarded in a transparent manner. Member States, economic operators, the interested public and the Commission will have easy access to all relevant acts and pertinent information about the individual aids awarded under the amended scheme (see at recitals (47) and (48) above).

3.2.2.4. Weighting the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade

- (55) The amended scheme will enable the deployment of passive infrastructure supporting the roll-out of broadband networks offering a downlink of at least 100 Mbps, upgradeable to Gigabit speed, to households, businesses and public educational institutions that are currently underserved, having access to at most basic broadband connections, *i.e.* broadband access with a downlink of less than 30 Mbps. The new passive infrastructure will allow several network operators to place their own fibre optic cables and/or active equipment leading to a significant increase in network capacity and stimulating both market entry by new service providers as well as the provision of more and better services by existing providers. The amended scheme therefore contributes to the development of the economic activity also as encouraged in the Commission's 2016 Gigabit Communication and the Commission's 2020 Shaping Europe's Digital Future Communication. The roll-out of this new broadband infrastructure in the target areas would not be made without the support under the amended scheme (see at recital (39) above). The amended scheme will thus contribute to delivering additional capacity and speed on the market as well as better choice for consumers, higher quality and innovation. The roll-out of the supported passive infrastructure will result in better access for consumers to online resources and is likely to stimulate an increase in demand. This will contribute to the completion of the Digital Single Market and bring benefits to the EU economy as a whole.
- (56) The supported passive infrastructure will also ensure a "step change" in terms of broadband availability. The beneficiaries will make significant new investments in passive infrastructure supporting the roll-out of broadband networks capable of

providing a downlink of at least 100 Mbps upgradeable to Gigabit speed in areas that are currently underserved, having access at most to basic broadband networks. The deployment of the passive infrastructure supported under the amended scheme will thus bring significant new capabilities to the market in terms of broadband service availability, capacity and speeds. It will also bring significant new capabilities to the market in terms of broadband service competition as beneficiaries will have to grant comprehensive and effective access at wholesale level for unlimited time (see recital (46) above).

- (57) Moreover, the amended scheme is designed to keep negative effects on competition to a minimum (see recitals (42) - (48) above).
- (58) Finally, the period of prolongation is limited to two years until 31 December 2022 and, in the 2015 decision, the Commission required an evaluation of the original scheme in order to verify (i) whether the assumptions and conditions which led to the compatibility decision have been realised, (ii) the effectiveness of the original scheme in light of its predefined objectives, and (iii) its impact on markets and competition and that no undue distortive effects arose under the duration of the original aid scheme that are contrary to the interests of the Union (see for further details, such as the precise scope and modalities of the evaluation at recitals (49) to (65) of the 2015 decision).
- (59) The final evaluation report for the original scheme has not yet been submitted to the Commission.²⁰ The Austrian authorities only submitted two interim evaluation reports.²¹ These interim evaluations were carried out by experts independent from the BMLRT and were made public on the website of the BMLRT.²²
- (60) As regards the original scheme's effects on competition, the interim evaluations draw a differentiated picture. Positive effects on competition were attested to *Broadband Austria 2020 – Access* and *Broadband Austria 2020 – Ducts* for the creation of Open Access Networks that stimulated competition in the fixed broadband market. While these effects are yet locally limited, they are at the same time very sustainable. Negative effects on competition were seen mainly in the concentration of funds on certain beneficiaries. However, the picture here is different for each programme under *Broadband Austria 2020*. Support granted to beneficiaries in years 2016 to 2018 has been deconcentrated under *Broadband Austria 2020 – Ducts* and has become more deconcentrated under *Broadband Austria 2020 – Access* in phase 2 of the programme if compared to phase 1. Critical effects on competition were identified only under *Broadband Austria 2020 – Backhaul*, which expires on 31 December 2020 and is not part of the amended scheme for the period of prolongation.
- (61) In light of the foregoing, on balance the amended measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of

²⁰ It is due for submission to the Commission by December 2020 (see at recital (65) of the 2015 decision).

²¹ WIK-Consult - *Evaluierung der Breitbandinitiative BMVIT 2015/2016* and WIK-Consult – *Evaluierung der Breitbandinitiative BMLRT 2017/2018*.

²² See at: <https://www.bmlrt.gv.at/telekommunikation-post/breitband/publikationen/evaluierung.html>.

broadband networks, where such aid does not adversely affect competition to an extent contrary to the common interest. Therefore, the positive impact of the aid measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade.

3.2.3. *Evaluation*

- (62) The Commission notes that Section 7 of the evaluation plan (proposed timeline for the evaluation) is modified as follows:
- 30.06.2022: final report 2020 (counterfactual evaluation with the data available);
 - 31.12.2025: additional evaluation report (final evaluation).
- (63) The Austrian authorities will submit a final evaluation report by 30 June 2022 covering the available years of implementation of the original scheme and the amended scheme during the period of prolongation. The evaluation shall be completed in the course of 2025, covering up to the fiscal year 2024 to the extent possible and the results of the evaluation shall be included in the Additional Evaluation Report, which will be submitted to the Commission by 31 December 2025.

4. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

