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**Subject: State Aid SA.103451 (2022/N) – Spain
RRF – Deployment of backhaul networks for mobile connectivity**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 2 August 2022, the Spanish authorities notified to the Commission the measure “*RRF –Spain – Deployment of backhaul networks for mobile connectivity*” (“the Measure”) pursuant to Article 108(3) TFEU.
- (2) By letter of 29 July 2022, Spain exceptionally agrees to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have this decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1 Context

- (3) The NextGenerationEU Communication² identifies as one of the key priorities of the Recovery and Resilience Facility³ (“RRF”) support for the digital transition

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

² Communication from the Commission COM(2020) 456 final to the European Parliament, the European Council, the Council, the European Economic And Social Committee and the Committee of the Regions of 27 May 2020, ‘Europe's moment: Repair and Prepare for the Next Generation’.

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through connectivity measures aimed, *inter alia*, at addressing market failures with respect to the deployment of performant networks. The RRF Regulation sets out that Member States should devote at least 20% of the allocated funding to measures fostering the digital transition⁴.

- (4) Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and for social and territorial cohesion. It supports business efficiencies and growth, ensures that economies can remain competitive, and enables citizens and businesses to benefit from online services and offerings.
- (5) The 2025 Digital Spain Agenda⁵ aims to ensure adequate digital connectivity for the whole population, promoting the reduction of the digital divide between rural and urban areas, with a target of 100 per cent of the population covered with at least 100 Mbps by 2025.
- (6) As part of the 2025 Digital Spain Agenda and the 2026 Digital Spain Roadmap⁶, the Strategy to boost 5G technology⁷, approved on 1 December 2020 by the Spanish Council of Ministers, aims to support 5G deployment in population centres, 5G deployment on transport corridors, and the deployment of an adequate mobile transmission network in 5G. Spain envisages accelerating the deployment of 5G technology and networks with the necessary capacity and performance for the provision of the new services and applications that can be enabled by this technology. Spain will accelerate this deployment by extending the coverage of performant mobile backhaul networks throughout the territory, particularly in rural and strategic areas, helping to close the current social, economic, gender and territorial digital divide. According to the Spanish authorities, this move towards the provision of 5G services and infrastructure goes beyond the development of a new generation of mobile telephony. 5G offers very high capacity, low latency and density of connections between objects, which will favour new uses and production models. As those uses and models will be essential for economic development in all territorial areas, 5G is likely to open up new possibilities for industrial and social transformation. Facilitating the roll-out of performing 5G networks across all

³ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17) (“RRF Regulation”) and Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433I, 22.12.2020, p. 23).

⁴ See Article 19(3)(f) and Annex VII of the RRF Regulation.

⁵ Information available here:
https://portal.mineco.gob.es/RecursosArticulo/mineco/prensa/ficheros/noticias/2018/Agenda_Digital_2025.pdf

⁶ Information available here:
https://portal.mineco.gob.es/en-us/ministerio/estrategias/Pages/00_Espana_Digital.aspx

⁷ Information available here:
https://portal.mineco.gob.es/RecursosNoticia/mineco/prensa/noticias/2020/201201_np_impulso5G.pdf

territorial areas is therefore a key task for the country's economic development and digital transformation.

- (7) In the framework of the Spanish Recovery, Transformation and Resilience plan (the "RRP")⁸, component 15 - 'Digital connectivity, boosting cybersecurity and 5G deployment' of the RRP has among its objectives the promotion of digital transformation, focusing on the roll-out of 5G networks across the whole territory, thus promoting the closing of the digital divide between rural and urban areas. According to the Spanish authorities, the notified Measure aims to ensure that eligible base stations ("BTSs") are provided with a fibre-based backhaul connection. The Spanish authorities consider that this is a prerequisite step that will in turn facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology, to be offered from those BTSs. These new services and applications will favour the economic development of the geographical areas in which these services may be offered.
- (8) By virtue of previous schemes, as well as private investment, Spain has made considerable progress in terms of connectivity, which is reflected in the improved availability of high-quality networks. However, according to the Spanish authorities, further progress is needed as regards the availability of, *inter alia*, mobile networks and services, including based on 5G, in order to address end-users' current and future needs, in line with Spain's objectives, as also set out in its Recovery, Transformation and Resilience Plan ("RRP").

2.2 Legal basis and standstill obligation

- (9) The Measure is to be adopted within the framework established by the Royal Decree-Law 36/2020⁹ of 30 December on urgent measures for the modernisation of the public administration and for the implementation of the Spanish RRP, as well as Regulation (EU) 2021/2411 of the European Parliament and of the Council of 12 February 2021 establishing the RRF. Pursuant to Article 61 of the Royal Decree-Law 36/2020 an Order will be adopted laying down the regulatory basis for the granting of aid for the provision of backhaul connection via optic fibre to public mobile network sites and a first call for applications. The Measure has been notified on the basis of a draft of the Order to be adopted ("the draft Order").
- (10) The present State aid decision is an integral part of the legal basis. Pursuant to the First Additional Provision of the draft Order, the aid will not be granted before the

⁸ Information available here: https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility/spains-recovery-and-resilience-plan_en

⁹ Real Decreto-ley 36/2020, de 30 de diciembre, por el que se aprueban medidas urgentes para la modernización de la Administración Pública y para la ejecución del Plan de Recuperación, Transformación y Resiliencia. Boletín Oficial del Estado n. 341 de 31 de diciembre de 2020, páginas 126733 a 126793.

notification of the Commission's decision approving the Measure, in accordance with Article 108(3) TFEU and Article 3 of Council Regulation (EU) 2015/1589¹⁰.

2.3 Objective and design of the Measure

- (11) The objective of the Measure is to ensure, under the RRP, the deployment of fibre-based backhaul¹¹ including the passive part and active elements (the "Infrastructure") to certain BTSs. Eligible BTSs are those which currently do not have, and will not have by 31 December 2025, a fibre-based backhaul ("Eligible BTSs"). The Measure will only apply to Eligible BTS that are situated in municipalities of less than 10 000 inhabitants, extra-urban roads and TEN-T corridors (the "target areas").
- (12) The coverage obligations related to rights to use spectrum do not include the municipalities of less than 10 000 inhabitants. Therefore, financing under the Measure will not be granted for the fulfilment of legal obligations attached to rights of use of spectrum.
- (13) The Infrastructure will have to cater for at least 4 operators and will have to be built in such a way that no further civil work is required up to the base station traffic delivery point.¹²
- (14) The Spanish authorities argue that the Measure is needed to remove the bottleneck caused by insufficient backhaul networks in the target areas. With this Measure Spain wishes to foster the development of performant mobile networks that address the end-users' current and future demand including for 5G connectivity in relation to a number of applications and services (e.g. smart & connected vehicles, autonomous vehicles, collaborative robots, remote monitoring, enhanced experience, remote operations, surveillance & safety, services of telemedicine and connected ambulance).
- (15) Public intervention under the Measure will only take place in target areas in order to connect BTSs which currently do not have, and will not have by 31 December 2025, a fibre-based backhaul. The Spanish authorities indicate that during mapping and public consultation exercises (see section 2.8), private operators confirmed that they are not willing to invest to deploy fibre-based backhaul to connect the Eligible BTSs by 31 December 2025, due to high deployment costs which are not balanced by the forecasted additional revenues. The Spanish authorities indicate that in the absence of public intervention, it is likely that this situation will continue in the medium to long term. Therefore, the Spanish authorities consider that there is no

¹⁰ 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 Union (OJ L 248 of 24.9.2015, p. 9).

¹¹ The Infrastructure includes both passive and active elements.

¹² Delivery point means the point to which the traffic of the active operators in the eligible site is delivered, for its aggregation and transport to the appropriate interconnection point. Therefore, the delivery point will be located in the eligible location.

alternative to granting public funding in order to ensure the availability by the end of 2025 of fibre-based backhaul networks connecting the Eligible BTSs.

- (16) The Spanish authorities consider that at the current stage of technological development of backhaul technology solutions, fibre-based backhaul is the only technical solution that can connect the identified Eligible BTSs in the target areas and facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology, with sufficient scalability to meet the Spanish end-users' current and future mobile connectivity needs in terms of capacity, speed, latency and reliability.
- (17) The replacement of the identified non-fibre-based backhaul networks currently connecting Eligible BTSs is necessary to enable the provision of performant new mobile services and applications, including those enabled by 5G technology and to cater for the expected exponential increase in mobile traffic. The characteristics of such performant new mobile services include lower latency, higher transfer rate, higher speed, better mobility, and entail higher requirements in terms of number of terminals per km², the traffic to be managed per km², among others. As regards end-users' needs, the Spanish authorities indicate that the various indicators provided by international organisations and associations of companies in the sector show considerable expected growth, both in terms of number of users and terminals connected and in mobile traffic on the network between 2015 and 2021, which will continue its trend in the following years.
- (18) The Spanish authorities consider that existent copper-based, satellite or microwave-links based backhaul networks cannot provide the same overall performance as fibre-based backhaul in terms of capacity, speed, latency and reliability. Due to their limited capacity and inherent technological specificities, such technological solutions are not suitable in the long term for backhaul networks required to support performant new services and applications, including those enabled by 5G technology, since they will likely not be scalable or upgradable in the future to cater for market developments and evolving end-users' mobile connectivity needs, as identified by the Spanish authorities. Many 5G native applications and services (including among others autonomous driving, e-Health, advanced cloud, telepresence, etc.) require performances in terms of bandwidth, latency, jitter, etc. which are not compatible with existing backhaul networks.
- (19) The Spanish authorities consider that a fibre-based backhaul network is a prerequisite to enable such performant new mobile services and applications, including those enabled by 5G technology, to be offered from the Eligible BTSs. Consequently, in view of private operators' confirmation that they are not willing to invest to deploy fibre-based backhaul to connect the Eligible BTSs by 31 December 2025 (see recital (15)), the Spanish authorities consider that the Measure is a necessary prerequisite step to ensure that the benefits that performant mobile services including those enabled by 5G technology will provide can also reach rural areas, contribute to their economic development and thereby reduce the digital divide.

- (20) The Spanish authorities indicate that, in the above analysis, they have been supported by a group of experts who prepared a report on technologies to be used for the roll-out of backhaul networks (“the Report”) which confirms the above assessment¹³. The Report in particular explains the reasons why alternative backhaul solutions such as satellite or microwave links are not adequate to support the provision, over the Eligible BTSs, of performant new mobile services and applications, in particular those enabled by 5G technology.¹⁴
- (21) In light of the foregoing, the Measure also aims to increase the competitiveness and attractiveness for living and investing in the target areas and to stimulate economic growth through the development of a modern digital economy. The Spanish authorities expect significant benefits from the Measure. In particular, the Measure would facilitate equal growth opportunities in the entire Spanish territory through the availability of performant mobile networks, thereby increasing the economic competitiveness and attractiveness of the target areas.

2.4 Duration, budget and aid intensity

- (22) Aid can be granted under the Measure until 31 December 2025.
- (23) The budget of the Measure amounts to EUR 500 million, funded by the RRF.
- (24) The Measure will cover up to 90% of the eligible costs associated with the construction of the Infrastructure. This is the maximum aid intensity that the participants to the tender can request. The ultimate aid amount will be determined as a result of the tender and cannot in any case go beyond that aid intensity. The Spanish authorities deem the 90% aid intensity appropriate considering in particular:
- (i) the orography of the target areas, which often entails difficulties in the deployment of the Infrastructure and, thus, requires high investments; and
 - (ii) the low profitability of the target areas due to the low population density (the majority of the target areas are located in rural and remote parts of the country) which is particularly relevant considering the high operating costs of mobile networks (e.g. maintenance and electricity).
- (25) The abovementioned elements, notably the Infrastructure’s higher costs and lower revenues than similar infrastructures in more populated areas, have an important impact on the economic viability of the investment needed to build the Infrastructure. The Spanish authorities consider that an aid intensity of up to 90% is

¹³ The experts supporting the Spanish Authorities are: J. Antonio Portilla Figueras, Silvia Jiménez-Fernández, Sancho Salcedo-Sanz and Luis Miguel Moreno-Saavedra of the ISDEFE-UAH: Observatorio en TIC e Inteligencia Artificial of the Universidad de Alcalá. The experts prepared the report “Ámbito de aplicación 5G y análisis de las tecnologías de transporte en la red de agregación de la 5G-RAN”.

¹⁴ In this regard, the Spanish authorities made reference to BoR (20) 165; BEREC Guidelines on Very High Capacity Networks; 1 October 2020.

therefore necessary to ensure that operators will build the Infrastructure in the target areas.

2.5 Eligible costs

- (26) The eligible costs will be the costs for the deployment of the Infrastructure i.e. the passive and active components of the fibre-based backhaul network to connect the Eligible BTSs.
- (27) The following items are considered eligible for aid as they are linked to deployment of the above mentioned passive and active components of the Infrastructure:
 - (a) Infrastructure and civil engineering;
 - (b) Equipment and other materials (e.g. active elements necessary for fibre lighting and for data traffic management);
 - (c) Staff costs; and
 - (d) Other costs, such as project preparation, permit management, equipment strictly necessary to carry out the project, etc.
- (28) Costs linked to the set-up of irrevocable rights of use (IRUs) for the connection of the Eligible BTSs will also be considered as eligible.
- (29) The Spanish authorities explain that, in any case, costs related to the fulfilment of legal obligations (e.g. investments needed to meet the coverage obligations attached to the rights of use of spectrum) cannot be covered by the Measure (see also section 2.3). The Infrastructures will not be taken into account to meet any coverage obligations attached to rights of use of spectrum. The call for tenders expressly provides that the aid beneficiaries must commit in writing that they will not report the deployment of the Infrastructures to fulfil the coverage obligations.

2.6 Intervention model

- (30) The Measure will be implemented by means of a gap funding model, through direct grants to the undertakings selected via a competitive selection procedure. The grants will be a percentage of the overall amount of the eligible costs. The Infrastructures will be fully owned by the beneficiaries.

2.7 Beneficiaries

- (31) The aid beneficiaries will be the undertakings that will be awarded the tenders for the deployment of the Infrastructures in the target areas included in the Measure.
- (32) The draft Order provides that the beneficiaries of the aid must provide other operators with access to the Infrastructure, including to the active elements, for a period of at least ten years, and with regard to the passive part of the Infrastructures for an unlimited period of time, from the date of the Infrastructure's completion.

Access must be provided under transparent, fair and non-discriminatory conditions¹⁵. Thus, access seekers will also indirectly benefit of the Measure, through the provision of wholesale access services.

- (33) Beneficiaries must also operate the Infrastructure for at least ten years from the completion of the aided project.
- (34) The same access obligations must be enforced irrespective of any change in ownership, management or operation of the Infrastructure.
- (35) Aid will not be granted under the Measure to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest, nor to undertakings in difficulty in accordance with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹⁶.

2.8 Identification of target areas, mapping and public consultation

- (36) The Spanish authorities indicate that the Measure is split between fifty intervention areas (corresponding to the Spanish provinces¹⁷) covering the territory of Spain. The Spanish authorities also indicate that the choice of fifty intervention areas is justified by the specificities of the Spanish market. Historically, mobile markets in Spain have evolved towards a division between the provision of infrastructure (for mobile services) and the provision of mobile services. As a result, several infrastructure companies of different sizes and addressing different service areas operate in Spain. With the aim of taking this specificity into account and enabling the participation under the present Measure of various types of undertakings, the Spanish authorities have designed the Measure to comprise fifty intervention areas with a possibility of having more than one beneficiary per intervention area. The reduced dimension of the intervention areas therefore facilitate the participation of smaller operators in the tenders. At the same time, having more than one beneficiary per intervention area will also improve competition and facilitate the entry of new operators. Within the fifty intervention areas, aid can only be granted for deploying fibre-based backhaul to connect Eligible BTSs in the target areas. These Eligible BTSs provide services to areas that are mainly rural, less populated and which are often located in topographically difficult, remote parts of Spain. The Eligible BTSs include BTSs serving target areas (i.e. municipalities with less than 10 000 inhabitants, extra-urban roads and TEN-T corridors) and are identified in accordance with the results of the mapping phase, the public consultation and the tender procedure (see recitals (38), (41)(43) and (54)).

¹⁵ Article 7.2 of the draft Order.

¹⁶ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. *OJ C 249, 31.7.2014, p. 1–28.*

¹⁷ With the exception of Ceuta and Melilla due to the fact that there is no any eligible site identified for this Measure.

- (37) In order to clearly identify the Eligible BTSs and the corresponding target areas in each intervention area for the application of the Measure, on 31 May 2022, the Spanish authorities first requested the providers of supporting infrastructure (towers) and the providers of electronic communications services to provide information regarding BTS sites in certain municipalities (initially of less than 20 000 inhabitants¹⁸) and to confirm whether fibre-based backhaul networks are present in such locations or if they had plans to deploy such infrastructure without State aid by 31 December 2025.
- (38) Based on the results of this first request for information to infrastructure operators, the Secretary of State of Telecommunications and Digital Infrastructures elaborated a preliminary list of eligible BTSs which did not have the possibility to be connected to fibre-based backhaul. This list was included in the public consultation.
- (39) A general public consultation for the Measure took place between 17 June and 18 July 2022, published on the Ministry of Economic Affairs and Digital Transformation website¹⁹. The consultation contained a comprehensive description of the planned Measure as well as the list of the preliminarily identified eligible BTSs and target areas. Stakeholders were specifically asked for their views on the proposed Measure.
- (40) The public consultation included the preliminary list of eligible BTSs located in municipalities with less than (initially) 20 000 inhabitants identified through the mapping exercise which do not currently have the possibility to connect to a fibre-based backhaul network. In the public consultation, the Spanish authorities also requested that stakeholders identified among those eligible BTSs, those for which there were plans to provide such a fibre-based backhaul within the next three years, i.e. by 31 December 2025.
- (41) To finalise the mapping, all the information obtained via the contributions to the public consultation as well as via contacts with infrastructure operators and mobile operators was consolidated to obtain the final list of Eligible BTSs located in the target areas in the fifty intervention areas. All of the elements of the methodology and the underlying technical criteria used to map the target areas and identify eligible BTSs were made publicly available in the public consultation.
- (42) A total of nineteen submissions were received and assessed by the Spanish authorities.
- (43) The mapping and public consultation identified the eligible BTSs for backhaul intervention taking into account all backhaul networks present and credibly planned by 31 December 2025. The results of the mapping and public consultation showed

¹⁸ The municipalities were revised to less than 10 000 inhabitants further to the results of the public consultation.

¹⁹ <https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/consultapublica/Paginas/Consulta-publica-identificacion-emplazamientos-redes-publicas.aspx>

that approximately 12 000 of the existing BTSs in the target areas can be considered Eligible BTSs as they will not have fibre-based backhaul by end-2025.

2.8.1 Observations on the Measure

- (44) Most of the respondents to the public consultation supported the design of the Measure as described in the consultation documentation. The main topics covered by the submissions received in the public consultation were the following:
- **Backhaul technology.** Two respondents suggested that other backhaul technologies, such as satellite or radio-link connections, should be assessed in order to temporarily or permanently accelerate the deployment of performant mobile networks in the target areas of the Measure. In particular, a satellite operator noted that the use of satellite links for backhaul networks was a mature technology and that thousands of base stations were currently deployed worldwide. According to the Spanish authorities, however, the satellite operator's comments were not supported by concrete data on the overall performance, including capacity, speed, latency and reliability that a satellite backhaul connection could offer to ensure the provision of performant new mobile services and applications including those enabled by 5G technology, in view of the 5G capabilities and service characteristics. Moreover, the Spanish authorities consider that the Report, as well as the recent technical studies mentioned therein, show that fibre-based backhaul is the only solution that is able to connect the eligible BTSs in target areas in order to facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology as envisaged under the Measure, with sufficient scalability to meet the Spanish end-users' current and future mobile connectivity needs in terms of capacity, speed, latency and reliability.
 - **Maximum aid intensity:** Several replies proposed that the aid intensity to extend the number of BTSs covered by the Measure should be reduced in order to allow more than one beneficiary per area, if alternative projects were available in the relevant area. Some replies also indicated that the obligation to submit a minimum target of 10% of eligible BTSs located in each Autonomous Community (as originally defined by the Spanish authorities) might confer an advantage on larger operators. The Spanish authorities do not consider it appropriate to reduce the aid intensity as set out in the draft Order. In any event, in the framework of the competitive selection procedure, applications allowing fibre-based backhaul in a higher number of BTSs with the available funding will receive additional points. The Spanish authorities were in favour of selecting more than one beneficiary per intervention area, as well as of selecting at least two beneficiaries in those areas where more than one application is submitted (see section 2.10). Moreover, the obligation to submit a minimum target of deploying fibre-based backhaul to 10 % of eligible BTSs in each intervention area was removed.
 - **Geographical scope and area of competition:** The replies received suggested that the geographical scope should be reduced to province level, so that applications can also be submitted by smaller operators that do not have a

nation-wide footprint. Furthermore, one respondent proposed that the target areas should be limited to municipalities with less than 10 000 inhabitants. In view of these comments and with the aim of increasing the number of potential bidders, the Spanish authorities amended the draft Order and established that the intervention areas will be fifty Spanish provinces and eligible BTSs will be limited to those located in municipalities of less than 10 000 inhabitants extra-urban roads and TEN-T corridors (see recital (11)).

- **Material scope:** the respondents suggested:
 - (a) including further details on the scope of the aid, with a more precise definition of the backhaul network, the point of delivery and the most appropriate interconnection point;
 - (b) including the costs for long-term leases of fibre (irrevocable rights of use or IRUs) as eligible costs for the amount recognised as ‘right-of-use assets’ on the asset side of the lessee’s balance sheet;
 - (c) considering the operating and maintenance costs for the period in which the exploitation is compulsory as eligible costs;
 - (d) limiting the sites to be included in the project so that there are only up to 30% of sites used by a single operator and at least 10% of the sites currently used by each operator in the area; and
 - (e) removing sites that have received funding under the State Aid SA.64394 measure.²⁰

With regard to the above, the draft Order has been amended and contains more detailed definitions of the point of delivery and the interconnection point, as well as of the wholesale services to be provided by the beneficiaries. Eligible costs do not include operating and maintenance costs, in line with the requirements of the RRF Regulation. The Spanish authorities have included IRUs for the long-term leases of fibre as eligible costs. Finally, the draft Order has been amended and establishes the possibility to designate more than one beneficiary per intervention area, as well as of at least two potential beneficiaries in those intervention areas for which more than one application has been submitted in the competitive selection procedure. The Spanish authorities will ensure that the Measure will not overlap with other state aid measures, including State Aid SA.64394 (see Section 2.20).

- **Budget, financing and implementation deadline:** Infrastructure operators suggested that it would be preferable not to extend the obligation to operate the subsidised infrastructure to more than 7 years. The Spanish authorities indicate that the deadlines established in the draft Order comply with the EU Guidelines

²⁰ Approved by the Commission decision of 15 December 2021, State Aid SA.64394 (2021/N) – RRF - Spain- National aid scheme for passive infrastructure for mobile networks.

for the application of State aid rules in relation to the rapid deployment of broadband networks²¹ and that the suggestion has not been accepted.

- ***Obligations of beneficiaries and conditions of access to the use of passive infrastructure:*** some replies suggested the inclusion of an assessment criterion relating to the quality of the wholesale offer submitted by the bidders. Some other respondents suggested including wholesale obligations to encourage use by third parties of the aided Infrastructure, thus expanding the number of undertakings which would benefit from these network improvements, as well as the list of minimum services and prices. Some of the responses set out the practical difficulty in achieving the reuse of existing infrastructure and suggest either the submission of a prior agreement or removing it as an assessment criterion. The Spanish authorities have modified the draft Order and included a more detailed definition of the wholesale offer, as described in section 2.14, which will be considered during the competitive selection procedure as one of the qualitative criteria of the bid. Concerning the use of existing infrastructure, the Spanish authorities amended the draft Order so as to include a requirement to submit the relevant agreement in case of use of existing third party infrastructure.

- ***Beneficiaries:*** Several responses have focused on the requirements to be met by the beneficiaries. A large majority of contributions suggested that there should be more than one beneficiary per intervention area. As indicated, the draft Order has been amended and establishes the possibility for more than one beneficiary per intervention area, as well as of at least two beneficiaries in those intervention areas for which more than one application has been submitted in the competitive selection procedure. Furthermore, the draft Order contains a provision whereby those undertakings which are subject to an outstanding recovery order following a decision of the Commission declaring aid unlawful or incompatible with the common market may not be granted aid under the Measure. The same applies to undertakings in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.²²

- ***Assessment criteria:*** Some replies suggested introducing new criteria for the assessment of the bids or to redefine one or more of the existing criteria.²³ A new assessment criterion has been added to the draft Order according to which the

²¹ 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. 1–26.

²² Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, (2014/C 249/01), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01)&from=EN)

²³ With regard to the first criterion ‘Number of sites’, in the public consultation it was proposed that it be weighted by: the volume of users benefiting or having a higher coverage, the number of operators hosted, the total number of sites in the bidding zone, the services offered from the site. For example, sites from which critical or emergency public services are provided. Other proposed criteria included, among others the assessment of each site separately, assessing the project with the least aid requested; and removing the minimum of 10 % BTS per intervention area.

bids proposing sites where a higher number of MNOs can provide the services will receive additional points in the tender (see section 2.10).

2.9 Granting authority

- (45) The granting authority is the Secretary of State for Telecommunications and Digital Infrastructures (hereafter: “the Granting Authority”). The Granting Authority will implement the Measure as explained in this decision, and in particular:
- (i) it has carried-out both the mapping and the public consultation, as described in section 2.8;
 - (ii) it will decide on the granting of the aid following verification that the potential beneficiary fulfils the conditions and requirements provided in the call for tenders and the present State aid decision, as described in section 2.10; and
 - (iii) it will check that the aid will be used in compliance with the present State aid decision.

2.10 Competitive selection procedure

- (46) The beneficiaries will be selected through an open, transparent and non-discriminatory competitive selection procedure. Pursuant to Article 16.1 of the draft Order, the award procedure must be conducted in accordance with the principles of publicity, transparency, objectivity, equality and non-discrimination, and must be initiated ex officio by the Granting Authority. The Spanish authorities consider that the proposed design of the competitive selection procedure, based on fifty intervention areas that include target areas (see recital (11)) and permitting the selection of several beneficiaries per intervention area, as described in this decision, aims to foster the widest possible participation thus incentivising competition in the context of the tender.
- (47) As the Measure is funded with resources from the RRF, the beneficiaries of the funds, as well as subcontractors, where applicable, will have to comply with the applicable European and national rules, including the obligations arising from the RRF Regulation²⁴.
- (48) Each competitive selection process will :

²⁴ In particular: the principle of no significant harm, avoidance of conflicts of interest, fraud, corruption, lack of double financing, communication, transfer of data, rules on subcontracting, among others.

- (i) comply with the relevant principles of EU²⁵ and Spanish public procurement rules, as well as with the principle of technological neutrality (see section 2.12);
 - (ii) be published on the official website of the Ministry of Economic Affairs and Digital Transformation;
 - (iii) ensure equal and non-discriminatory treatment of the interested parties as well as effective competition among them. Furthermore, it is designed in a way to foster the widest possible participation (e.g. number of intervention areas, size of target areas, several beneficiaries possible per area);
 - (iv) require the provision of proof from each applicant that it has the status of a duly authorised operator under the sector specific rules. The applicant must also provide evidence of the technical and economic capacity necessary for the development of a project under the Measure.²⁶ In the case of a group of undertakings, the document attesting to the creation of the group, its representative or sole representative must be produced, as well as the information already indicated with regard to duly authorised operators; and
 - (v) consortia or other groupings of undertakings may participate in the competitive selection procedure, in accordance with the Spanish Public Procurement legislation and the principles imposed by EU Public Procurement rules.
- (49) In the assessment of the qualitative criteria of the bid, the following criteria will be taken into account:
- (a) the number of Eligible BTSs to which backhaul is to be provided covered by the application;
 - (b) the number of Eligible BTSs connected covered by the application and which can accommodate the highest number of MNOs;
 - (c) the offer of additional wholesale access products on top of the minimum set will be taken into account as a criterion together as well as, among others, the level of detail of such offers' description, the corresponding prices and advertising plan;
 - (d) the degree to which the project intends to reuse exist infrastructure;

²⁵ See Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

²⁶ The financial standing of the applicant must be deemed to be proven if the amount allocated in the call for funding of the projects applied for is less than the total sum of the annual investments for the last three financial years.

- (e) the technical solution proposed by the bidders to deploy the Infrastructure;²⁷
 - (f) the extent to which the project will result in net job creation in Spain, participation of SMEs, micro-SMEs, self-employed and start-ups, and territorial cohesion; and
 - (g) the quality and detail of the business plan.
- (50) Aid may be awarded to more than one beneficiary in each competition area, in accordance with the provisions laid down in the relevant call for applications, as presented in recital (55).
- (51) Additional requirements must also be met for aid to be granted to a beneficiary. The following are the most relevant:²⁸
- not having any debts for repayment of aid, as also explained in recital (35).
 - having fulfilled any obligations to repay any other loans or advances previously granted from the General State Budget.
 - not being granted any other aid, revenue or resources for the purposes of the project for which the aid is proposed, from any public administration or private, national, European Union or other international organisation.
 - a written commitment to grant the necessary rights and access to ensure that the European Commission, OLAF, the European Court of Auditors, the EPPO and the competent national authorities exercise their competences.
- (52) The Measure considers each of the fifty intervention areas as a bidding zone. Each project eligible for support has to adjust its geographical scope of action to correspond to one of the fifty intervention areas. Each applicant may submit one project for each of the fifty intervention areas. According to the Spanish authorities, this favours the widest possible participation in the tender and facilitates the participation of small operators, and the most efficient use of public resources. Based on the structure of the economic sector concerned, in particular the provision of mobile communications services, the Spanish authorities are of the view that there is no need to impose a cap on the number of bids awardable to the same

²⁷ The quality and concrete nature of the project will be assessed in terms of the technical solution proposed and the project implementation plan, with particular attention to the details of all the backhaul network provided, its location, the activities and resources involved, with particular attention to the participation of women in management positions, the identification of phases and milestones and the identification and management of associated risks (contingencies) and the inclusion of measures that make an extraordinary contribution to the environmental objectives of the Do No Significant Harm (DNSH) principle.

²⁸ Additional requirements are: (i) Not being subject to any of the prohibitions referred to in Article 13 (2) of Law 38/2003 of 17 November, in compliance with Articles 26 and 27 of the Regulation approved by Royal Decree 887/2006 of 21 July; (ii) Be up to date with tax and social security obligations.

operator at national level (in all intervention areas). This is because the mobile sector in Spain is characterised by the presence of four major MNOs, that compete on price and quality of services provided and are active both at the wholesale and retail level. Each of these operators holds rights of use of spectrum for the provision of 5G services. In addition, many tower companies and smaller communication operators currently own and operate sites. In this market context, imposition of a cap on the number of bids awardable to the same operators would negatively affect the possibility for reaching economies of scale and density (and, thus, efficiency in the use of public resources) that bidders could take into account in their offers.

- (53) The number and size of the intervention areas are set on the basis of the following criteria:
- the need to ensure efficient use of public resources by achieving adequate economies of scale and density, and, more broadly, the widest efficiencies in the deployment of the Infrastructure, as well as the minimisation of the administrative costs; and
 - the results of the mapping and public consultation exercises, to identify intervention areas and target areas not unduly fragmented and designed in such a way as to stimulate the widest participation in the tender, even by small operators.
- (54) Offers received in the course of the competitive selection procedures will be assessed using qualitative award criteria established and published in advance by the Granting Authority. For each of the intervention areas, the offers that will achieve the highest scores based on the award criteria will be selected. The Spanish authorities indicate that as the available budget may not be enough to cover all of the eligible BTSs, the award criteria established will allow for the identification of projects that, with the available budget, are able to deploy the Infrastructure under the best conditions as the most economic advantageous offers. The Spanish authorities explain that, depending on the results of the competitive selection processes, the Spanish authorities expect that the Measure will finance up to 70% of the overall Eligible BTSs deployed in the target areas.
- (55) In the event of there being several applications for a bidding zone, a maximum of 60 % of the maximum amount of aid will be awarded to the application which meets the requirements described above (see recital (51)) and obtains the highest number of points in the procedure. The remaining amount of aid will be used to cover the Eligible BTSs proposed in the second best application, once the Eligible BTSs covered by the this application that coincide with the Eligible BTSs included in the winner application are excluded. In the event that the maximum amount of aid after allocation to the first and second applications is not exhausted, the allocation exercise will be conducted with the remaining applications in the order of points obtained in the competitive selection procedure until the budget is exhausted.
- (56) The terms of the calls for tender impose on the successful bidders an obligation to ensure wholesale access (see section 2.14).

2.11 Use of existing infrastructure

- (57) In the planning process for the construction of the Infrastructure, the Granting Authority will take into account all existing infrastructure in the relevant intervention areas that can be re-used. Moreover, the reuse of existing infrastructures to reduce the cost of the Measure will be encouraged in the calls for tenders.
- (58) In this regard, in order to facilitate the reuse of existing infrastructure, any operator which owns or controls an existing infrastructure that could be used in the intervention area and which wishes to participate in the tender, will have to inform other bidders about the presence and availability of such infrastructure and the conditions for accessing it²⁹.
- (59) Moreover, the Spanish authorities also indicate that in 2008 the Comisión Nacional de los Mercados y la Competencia (the Spanish regulator, “CNMC”) imposed on the incumbent operator (Telefónica) an obligation to give access to its existing physical infrastructures (with an obligation to provide an alternative solution and notably access to dark fibre, if access to physical infrastructure could not be granted), and to publish a Reference Offer for its use³⁰. Since then, Telefonica’s MARCO offer constitutes a useful tool for other operators, and includes detailed cartographical information of existing infrastructure, access and use procedures as well as cost oriented prices. This information is widely known and used by all operators in Spain and will be available to all bidders in the competitive selection procedure under the Measure.
- (60) The Spanish authorities are in the process of setting-up a national database where all existing infrastructures that could be re-used for the deployment of broadband networks will be included. Once available, the database will be made public.

2.12 Technological neutrality

- (61) The Spanish authorities explained that the beneficiaries will be selected on the basis of objective criteria in line with the principle of technological neutrality.
- (62) The role of backhaul networks’ function is to transport the traffic of, normally more than one, fixed and/or mobile access networks. They therefore need to be able to provide a significantly higher transmission capacity than the access networks whose traffic they are supposed to carry. This is particularly true where, as in this case, backhaul networks need to cope with the upgrade of access networks with increasing needs for improved data transmission and increased performances. The Measure is aimed at building a more performing backhaul network connecting Eligible BTSs so as to avoid that the backhaul network becomes a bottleneck for the development of performant mobile networks, including 5G networks, which need enhanced performances in terms of capacity, speed, latency and reliability. A market failure may thus be present where the present or planned backhaul network

²⁹ For instance, in line with the provisions of articles 4 and 5 of Royal Decree 330/2016, of 9 September, regarding measures to reduce the cost of deploying high-speed electronic communications networks.

³⁰ Available at: https://www.movistar.es/operadores/ServiciosRegulados/ficha/PRO_MARCO

cannot cope with the expected development of corresponding mobile access network. In this regard, the Spanish authorities have concluded that existent copper-based, satellite or microwave-links based backhaul networks cannot provide the needed overall performance in terms of capacity, speed, latency and reliability to facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology (see section 2.3). This conclusion is corroborated by the results of the Report as well as of the other studies to which it makes reference. Based on the information collected also in the public consultation, the Spanish authorities indicate that, at the current stage of technological development, fibre-based backhaul networks are the only technological solution for backhaul that can ensure the offer of 5G services characterised by low latency, high reliability and high capacity necessary to address the Spanish end-users' current and future needs in terms of mobile connectivity (see recitals (16) and (17)). Spain also indicates that, in the near future and based on the mentioned studies, fibre-based backhaul networks are the appropriate solution also as regards network scalability. In light of the foregoing, Spain has chosen to rely on fibre-based solutions as the only solution to achieve the objectives of the Measure (see recital (16)).

- (63) The Spanish authorities committed to ensure that bidders will offer effective wholesale access to any access seekers who request it and irrespective of the technology chosen by the access seekers, on open, transparent, fair and non-discriminatory terms (see section 2.14).

2.13 Step change

- (64) The Spanish authorities indicate that the State-funded backhaul network will ensure a step change in comparison to the backhaul network(s) present and credibly planned to be deployed in the target areas by the end of 2025. Credibly planned networks are taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the same time horizon.
- (65) The Spanish authorities consider that a step change is ensured since, as a result of the State intervention, the funded backhaul network represents a significant investment and adequately supports the increasing needs of mobile access networks. According to the Spanish authorities, this is the case since the State-funded backhaul network, in contrast to the present or credibly planned network(s), is based on fibre (see recital (17)). The Measure foresees substantial investments in passive infrastructure. As a consequence, the Spanish authorities consider that, also in this regard, the Measure ensures a step change, since it provides a significant improvement in comparison to existing and credibly planned backhaul networks in the target areas (see recital (18)).
- (66) In particular, the Spanish authorities explained that as an effect of the Measure, the BTSs in the intervention areas which are not and are not planned to be connected with fibre-based backhaul networks, will be connected with a fibre-based backhaul network. The Measure will therefore replace existing copper-based, satellite or microwave-links based backhaul networks with fibre-based backhaul networks. Spain explained that this constitutes an adequate step-change due to the limited

capacity and inherent technological specificities of the existing backhaul networks using other technologies (i.e. copper, radio-links and satellite) which do not provide the same overall performance as fibre in terms of capacity, speed, latency and reliability. Moreover, Spain also indicates that at the current stage of technological development, there are no other technologies providing the same or similar performances as a fibre-based backhaul network (see recital (16) and (18)) notably reliability and latency which are necessary to facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology.

2.14 Wholesale access to the Infrastructure

- (67) The Spanish authorities explain that aid beneficiaries must provide passive and active wholesale access to the network to access seekers³¹ on a transparent, fair and non-discriminatory basis and at least under the minimum conditions identified below. The network must be constructed in such a way that no additional civil work is subsequently required up to the base station's traffic delivery point.
- (68) The minimum mandatory access services to be provided include: access to passive infrastructure, including access to ducts (requiring a sufficient size of duct deployment), access to dark fibre (requiring a sufficient number of dark fibres) and at least one active wholesale service.
- (69) The beneficiaries must provide effective wholesale access in a transparent, fair and non-discriminatory way. Effective wholesale active access must be provided for a period of at least ten years. Effective wholesale passive access must be available for the lifespan of the infrastructure concerned starting from the date of completion of the project.
- (70) To be effective, the same wholesale access conditions must apply on the entirety of the network, including parts of the network that have not been State-funded, have not been deployed by the aid beneficiary, and including infrastructure.
- (71) The Spanish authorities explain that they have carried out a thorough assessment of the target area to determine whether it is necessary to upgrade or consolidate the existing towers of the Eligible BTSs, in order to guarantee effective access.
- (72) The Spanish authorities clarify that the Measure is limited to the financing of the roll-out of fibre backhaul with virtually unlimited capacity to host all access seekers. However, the Spanish authorities also demonstrate, with detailed and objective cost calculations, that it would be disproportionate in terms of cost to upgrade all of the towers of the Eligible BTSs to be able to host all four MNOs active in Spain.
- (73) The Spanish authorities submit that, according to data provided by current operators active in Spain in the construction of BTSs (i.e. tower companies and

³¹ Access to the newly deployed backhaul infrastructure will be granted to mobile operators, but also, for instance, to fixed operators and fixed wireless access operators.

MNOs), the average cost to increase capacity of an existing site so to allow up to four MNOs to place their active equipment, is around EUR 35 000/site on average.

- (74) In addition, the Spanish authorities indicate that there are various situations where it would not be viable to intervene to expand the capacity of a BTS so to make room for the active equipment of four MNOs e.g.: sites with physical limitations that cannot be upgraded in any case and sites where available electric connections are not sufficient to cater for the electricity needs of active equipment of four MNOs. In these scenarios, a new site should be built in order to ensure capacity for four MNOs which would cost around EUR^o85 000 per site. Such extra cost would not be counterbalanced by the extra revenues generated from selling hosting services to access seekers.
- (75) Spain also argues that even if existing Eligible BTSs were upgraded to ensure sufficient capacity for more than two MNOs, such upgrade is unlikely to deliver significant benefits in terms of increased competition. In this respect, the Spanish authorities clarified that, although there are four MNOs in Spain, most of the Eligible BTSs are not used by all four MNOs. The majority of target areas are small, remote rural areas, with low population density. Based on the current occupation of the BTSs by MNOs as well as on the competitive situation in the Spanish market, the Spanish authorities indicate that the likelihood that operators will actually need and request access to the Eligible BTSs is limited.
- (76) Consequently, the Spanish authorities indicate that the minimum required capacity for existing towers that are part of Eligible BTSs must ensure access for at least two MNOs, and allow for further access to such towers upon reasonable demands being submitted by further access seekers. An access seeker's demand will be considered reasonable if: (a) the access seeker provides a business plan that justifies the development of the product on the network; and (b) no comparable access product is already offered in the same geographic area by another undertaking at prices equivalent to those in more densely populated areas. If the conditions are fulfilled, access will be granted within a period which is customary for the particular market. In the case of conflict, the Granting Authority will consult the CNMC.
- (77) The details of the wholesale access offer must be available to interested operators at least six months in advance of the start of the commercial operation of the network by the beneficiary.
- (78) The access obligations will be enforced irrespective of any change in ownership, management or operation of the network. The same access conditions will apply on the entirety of the subsidised network, including on the parts of such network where existing infrastructures have been used (e.g. existing pipeline).
- (79) The beneficiaries of the aid must operate the subsidised Infrastructure for at least ten years from completion of the Infrastructure.
- (80) Wholesale access under the Measure will not be granted or used to meet legal obligations, such as any coverage obligations attached to rights of use of spectrum (see also recitals (12) and (29)). The call for tenders expressly provides that the aid

beneficiaries must commit in writing that they will not report the deployment of the Infrastructure to fulfil the coverage obligations.

- (81) Access prices for the subsidised elements, or part of them, will be based on the pricing principles established by the CNMC or on the wholesale prices that it has set for the same or similar services³². In the absence of an equivalent reference offer, the reference will be the average prices in Spain and, if there is no such reference, the cost-orientation criterion will be applied, taking into account the aid received for the provision of fibre-based backhaul.
- (82) The bids must contain all of the conditions for the provision of the wholesale access, including the prices. The Granting Authority will clearly set the wholesale access products and benchmark principles in a transparent manner in the tender documents and must include them in the contracts concluded with the winning bidders. The bidders are encouraged to provide further improved wholesale access conditions as part of their bid in the competitive selection procedure (see recital (49)). The wholesale offers, including conditions and prices, will be assessed in the competitive selection procedure. If necessary, the Spanish authorities will consult the CNMC to verify that the wholesale offer complies with the above mentioned requirements and benchmarks (e.g. for access products for which there are no similar regulated products).
- (83) The CNMC will resolve disputes between operators requesting access and operators benefiting from aid.
- (84) The aid beneficiary must provide access seekers with full and non-discriminatory access to information on the infrastructure deployed, wholesale access products and conditions, including prices.
- (85) The beneficiary must publish and keep up to date on its website the information regarding wholesale access to the network for each of the wholesale services included in the Measure, for both the passive and active elements, for available capacity and for prices, and must communicate the corresponding reference offers and publication web link to the CNMC.

2.15 Claw-back mechanism

- (86) Since the aid amount is estimated by the aid beneficiary on an ex ante basis so as to cover the expected funding gap over the lifespan of the investment, Spain will closely monitor the deployment of the Infrastructures for the entire duration of the Measure. The Spanish authorities have designed a mechanism that will allow the Granting Authority to clawback any amount exceeding a reasonable profit, in order to avoid over-compensation, for all projects where the amount of aid awarded through the tender exceeds EUR 10 million. The clawback mechanism will operate as follows.

³² Prices set by CNMC for services similar to the ones mandated must in any case be regarded as maximum prices.

- (87) For the tender, the bidders must submit a financial plan, which will be taken into account in awarding the tender and will be used to apply the claw-back mechanism. The financial plan³³ must include:
- (a) the projected investments and the operating costs needed to deploy and maintain the Infrastructures³⁴;
 - (b) the profits expected over the reference period as defined in the call for tender³⁵; and
 - (c) the aid intensity required as determined by the aid beneficiary on an ex ante basis so as to cover the expected funding gap.
- (88) Based on the above, the Spanish authorities will claw-back: (a) the difference between the costs estimated by the aid beneficiary in the tender and the actual costs of deployment of the Infrastructure and/or, (b) the difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the Infrastructure. To incentivise efficiency gains in the deployment of the Infrastructure, the mechanism will allow the beneficiary to keep a reasonable profit and an additional incentive set at a maximum of 30% of the reasonable profit³⁶. Spain will not claw-back any extra profit below that threshold. Any profit in excess of the identified incentive threshold will be shared between the aid beneficiary and Spain, according to the actual aid intensity resulting from the tender (minimum 10% for the aid beneficiary and maximum 90% for Spain).
- (89) To allow the authorities to perform the checks, the aid beneficiary must ensure accounting separation between the costs and revenues related to the deployment of the Infrastructures and any other activities.
- (90) The Spanish authorities will monitor the existence of possible extra-profits on a yearly basis, starting from the completion of the Infrastructure and during 15 years³⁷.

³³ The Granting Authority will use the weighted average cost of capital (“WACC”) currently in force for the integrated electronic communications operators with significant market power determined annually by CNMC.

³⁴ The Spanish authorities will check whether the costs estimated by the bidder to deploy the subsidised networks are comparable with the costs that an efficient operator would have incurred in deploying a comparable network.

³⁵ The reference period is defined on the basis of the lifespan of the different elements constituting the Infrastructures.

³⁶ Reasonable profit is intended as the rate of return on capital that would be required by a typical company, taking into account the level of risk specific to the broadband sector and the type of services provided. The required rate of return on capital is determined by the WACC. Prices set by CNMC for services similar to the ones mandated must in any case be regarded as maximum prices.

³⁷ For each year the aid beneficiary will submit the final balance of costs and profits deriving from the Infrastructures.

2.16 Ex post evaluation plan

- (91) The Spanish authorities have notified, together with the Measure, an evaluation plan, taking into account the best practices recalled in the Commission Staff Working Document on a Common methodology for State aid evaluation. The main elements of the evaluation plan are described below.
- (92) The evaluation plan describes the objectives of the Measure and comprises evaluation questions that, through both quantitative and qualitative analysis, address the direct effects of the Measure, its proportionality and appropriateness, as well as a number of indirect effects, including potential distortive effects on competition.
- (93) Proportionality and appropriateness of the Measure are assessed by checking whether the objectives of the Measure were achievable with a lower aid intensity.
- (94) The evaluation plan describes the result indicators that will be used to assess the degree of achievement of the Measure's objectives and which are matched with the evaluation questions, as well as the methodology applied to identify the impact of the Measure.
- (95) The Spanish authorities confirm that the final evaluation report will be published on the official website of the Spanish government.
- (96) An interim report will be submitted to the Commission within two years after the approval of the Measure and will focus on the analysis of the compatibility of the calls for tender with the relevant principles of EU law as well as with the Measure as notified. Moreover, this report will contain a first assessment of the impact of the Measure, based on the data that will be available at that time.
- (97) The final evaluation report for the period 2022-2025 will be submitted to the Commission by 31 December 2025. It will focus on the assessment of the direct and indirect impacts of the Measure in the medium term.
- (98) The Spanish authorities have committed to continue the evaluation beyond the duration of the Measure and to submit in 2028 an additional evaluation report, which will assess the overall effectiveness of the Measure (which will come to an end in December 2025).

2.17 Transparency and reporting

- (99) The Spanish authorities ensure that: i) the granting of aid under the Measure will be subject to the publicity rules provided for in Article 34(2) of the RRF Regulation; and ii) for the entire duration of the Measure, all transparency requirements are met at each phase of its implementation. The relevant information about the Infrastructure will be published on the website of the Ministry of Economic Affairs and Digital Transformation. On this website both operators and end-users will have easy access to all relevant acts and information regarding the Measure and its implementation.

(100) The Spanish authorities will publish the following information³⁸:

- (i) the full text of the approved Measure;
- (ii) the aid beneficiaries' name and identifier;
- (iii) the type of aid beneficiary (SME, large enterprise);
- (iv) the region in which the beneficiary is located;
- (v) the main sector of activity of each beneficiary at NACE group level;
- (vi) the aid element expressed in full in EUR or, where different from the aid element, the nominal aid amount, expressed in full in EUR;
- (vii) The aid instrument;
- (viii) The identity of the granting authority; and
- (ix) The reference of the Measure, as stated in this decision.
- (x) This information must remain published for at least ten years as from the granting of the aid and be available for the general public without restrictions.

(101) The beneficiaries will:

- (i) provide access seekers with comprehensive and non-discriminatory access to information on the Infrastructures; and
- (ii) publish detailed information concerning wholesale access conditions and prices.

(102) The Spanish authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain, besides the information already made public pursuant to recital (100), the following key data concerning the Measure:

- (i) the total cost (or estimated total cost) for the deployment of the Infrastructures;
- (ii) the aid amount awarded and aid expenditure, as well as aid intensity;
- (iii) the sources of public financing;
- (iv) the BTSs with fibre-based backhaul prior to, and after, the Measure (both in absolute and in percentage terms);

³⁸ Information will be updated every 6 months.

- (v) the date when the Infrastructures were put in use;
- (vi) the technology deployed;
- (vii) the minimum and average (up- and download) speeds of the backhaul services provided;
- (viii) the wholesale access products offered, including conditions for access and prices/pricing methodology;
- (ix) the number of access seekers and service providers using wholesale access.

(103) The Spanish authorities also committed to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.

2.18 Monitoring

(104) Spain will monitor the Measure on an on-going basis. The scope of such monitoring will include: the tendering process, the deployment of the Infrastructures, and the fulfilment of all requirements under this decision, for the entire duration of the Measure. Spain will maintain detailed records regarding the Measure. Such records will include all information necessary to establish that all of the compatibility conditions of the decision are fulfilled. Spain will maintain those records for ten years as from the date of award of individual support under the Measure and will send them to the Commission upon request within a period of 20 working days or such longer period as may be fixed in the request.

2.19 Role of the Comisión Nacional de los Mercados y la Competencia

(105) The Spanish authorities have consulted with the CNMC from the early stages of the Measure.

(106) On 13 June 2022, the Granting Authority requested that the CNMC prepare a report aimed at analysing the draft Order and expressing its views on the Measure. On 13 July 2022 CNMC issued the report on the draft Order, which included the following main observations:

- ***Geographical scope and intervention/target areas***: according to the CNMC, mobile network operators (“MNOs”) have unbundled their sites (passive infrastructure) from their other networks and services. As a result, most of the sites used in Spain are not owned exclusively by MNOs; instead, different undertakings (including tower companies and regional and local companies) own such infrastructure and deal with its operation and development. Considering this, the CNMC considered that splitting the Spanish territory in four intervention areas and selecting only one beneficiary in each of these areas could grant an advantage to those beneficiaries and could exclude undertakings operating sites in areas smaller than the originally designed intervention areas. The Spanish authorities have taken into consideration these observations and amended the design of the Measure, as explained, by splitting it into fifty

intervention areas corresponding to the Spanish provinces. Moreover, more than one beneficiary may be selected per intervention area (see recitals (36) and (50)).

- **Technology neutrality:** the CNMC recommended that, based on the technology neutrality principle, the draft Order should not specifically require backhaul only based on fibre, but to establish minimum eligible capacity or quality technical requirements, without reference to a particular technology. The objective of the Measure is to support the deployment of backhaul with the necessary overall performance in terms of capacity, speed, latency and reliability to enable the development of new performant mobile access networks, including based on 5G. The Spanish authorities have not accepted the CNMC's recommendation on this point for the reasons explained in section 2.3³⁹.

(107) The CNMC is also the competent authority for dispute settlement concerning wholesale access conditions and pricing.

2.20 Overlap with other public support measures

(108) All beneficiaries will ensure accounting separation between the costs and revenues related to the deployment of the Infrastructure and any other activities. Furthermore, the Spanish authorities will ensure that any aid granted under the scheme will not be cumulated with other State aid granted for the same eligible costs.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of the aid

(109) According to Article 107(1) TFEU, “[s]ave as otherwise provided in the Treaties, 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”.

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

³⁹ In its report concerning the measure, the CNMC stated that backhaul capacity is a key factor in ensuring that several operators can access sites to offer very high-speed broadband services. Furthermore, because fibre-based backhaul networks offer high transmission capacity and scalability, they remove bottlenecks between the access network and the trunk network, have low maintenance costs and are more sustainable in terms of energy consumption.

3.1.1. Undertaking

- (111) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed⁴⁰.
- (112) The deployment and operation of fibre-based backhaul networks with a view to facilitating the provision of performant new mobile services and applications, including those enabled by 5G technology, on a commercial basis constitute economic activities within the meaning of Article 107(1) TFEU⁴¹.
- (113) The aid beneficiaries engage in activities consisting in offering goods and services on the electronic communications market against remuneration, including the deployment and operation of backhaul networks for providing mobile communications services.
- (114) Hence, the aid beneficiaries are undertakings within the meaning of Article 107(1) TFEU.

3.1.2 State resources and imputability

- (115) 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 it⁴².
- (116) As described in section 2.4, the Measure is financed with RRF funds assigned to Spain. RRF funds assigned to a Member State constitute State resources as they are subject to the Member State's control. The Measure is based on the legal acts provided in recital (9) and the Granting Authority (which is a public authority) will decide on the granting of the aid and will check that the aid will be used in compliance with the present decision (see recital (45)).
- (117) Hence, State resources are involved and the Measure is imputable to the State.

3.1.3 Economic advantage

- (118) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention⁴³.

⁴⁰ Judgment of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

⁴¹ Judgment of 24 March 2011, *Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission*, T-455/08, ECLI:EU:T:2011:117, paragraphs 90 and ff.

⁴² Judgement of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294.

⁴³ Judgment of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

- (119) The overall amount of subsidies that will be awarded under the Measure for the deployment of the Infrastructure amounts to approximately EUR 500 million. This will enable the aid beneficiaries to provide electronic communication services in the intervention areas on conditions that would otherwise not be available under normal market conditions. This includes access seekers which will benefit from wholesale access under conditions better than those provided by the market. Therefore, the Measure confers an advantage on the aid beneficiaries by expanding the coverage of their networks and services at a lower cost than they would have to bear under normal market conditions as compared to undertakings investing only based on private funds under the same technical, commercial and legal conditions in the liberalised market without public financial support.
- (120) Hence, the Measure grants an economic advantage to the aid beneficiaries, which they would not have had under normal market conditions.

3.1.4. Selectivity

- (121) To fall within the scope of Article 107(1) TFEU, a State measure must favour “certain undertakings or the production of certain goods”.
- (122) The Measure is aimed at the beneficiaries identified in section 2.7 and, thus, targets undertakings that are active in one industrial sector (electronic communications sector) and only in certain segments of the overall electronic communications sector (deployment of backhaul networks with a view to providing mobile communications services), to the exclusion of other undertakings active in other segments of the overall electronic communications market or in civil engineering works and infrastructure operation that cannot meet the requirements set out in the Measure⁴⁴.
- (123) As concerns the identification of the particular legal framework against which selectivity can be assessed, the deployment of the Infrastructure is a liberalised economic activity usually conducted by commercial operators on the basis of private investments in the market. Economic activities in this sector normally do not receive subsidies. The deployment of the Infrastructure in target areas is not justified by the nature of the liberalised market and the regulatory framework. In any event, the features of this legal framework cannot provide any justification for granting subsidies.
- (124) In the context of this particular legal regime, the Measure has the effect of conferring an advantage on the beneficiaries over other undertakings active in other segments of the overall electronic communications market or in civil engineering works and infrastructure operation, which are, in the light of this legal regime, in a comparable factual and legal situation.
- (125) Hence, the Measure is selective.

⁴⁴ Judgment of 15 June 2006, *Air Liquide Industries Belgium*, Joined Cases C-393/04 and C-41/05, ECLI:EU:C:2006:403, paragraph 31.

3.1.5 Effect on trade and competition

- (126) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case-law of Union courts, the concept of “effect on trade between Member States” is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that “[i]n particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid”⁴⁵.
- (127) The Measure concerns the deployment of the Infrastructures to be used for the provision of mobile communications services in the intervention areas in Spain. When looking at the communications sector in Spain, it must be concluded that there is significant private financing of the deployment of infrastructures used to provide mobile communications services all over the country. The Measure will ensure the availability of networks that would not be provided under normal market conditions. State support may deter other operators from setting up or developing their own networks under commercial conditions and may also encourage local undertakings to take advantage of electronic communications services offered through the Infrastructures rather than other market solutions.
- (128) The electronic communications sector is subject to significant intra-EU and international trade and competition, also by virtue of the process of liberalisation at the level of the Union. The deployment of the Infrastructures, as well as the granting of wholesale access to them, could also be delivered by an undertaking from another Member State having cross-border activities. By favouring certain operators and service providers, the Measure alters the existing market conditions and is liable to distort competition and affect trade between Member States.
- (129) Hence, the Measure is capable of distorting competition and has an effect on trade between Member States.

3.1.6. Conclusion on the existence of aid

- (130) In view of the above, the Commission concludes that the Measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2 Compatibility

- (131) The Commission has to assess whether the aid is compatible with the internal market.
- (132) According to Article 107(3)(c) TFEU, “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely

⁴⁵ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

affect trading conditions to an extent contrary to the common interest” may be considered to be compatible with the internal market.

(133) Given the specificity of mobile networks (as opposed to the fixed networks which do not allow for the provision of voice and data services “on the move”), the Measure is not assessed under the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (hereafter: “Broadband Guidelines”)⁴⁶. In addition, in 2021, the Broadband Guidelines were subject to an evaluation process assessing whether they were still fit for their main purpose of facilitating the development of economic activities consisting in broadband network deployment and related broadband network services, while not adversely affecting trading conditions to an extent contrary to the common interest. The evaluation showed that the Broadband Guidelines work well, are broadly fit for purpose and have made an important contribution to the deployment of broadband networks. At the same time, the evaluation showed that some targeted adjustments of the existing rules are necessary to reflect the latest market and technological developments and fast evolving connectivity needs, including with respect to recent developments as concerns mobile connectivity. Such aspects are particularly relevant for the assessment of the conditions under which Member States may grant support inter alia with respect to the need for public intervention for mobile connectivity (existence of a market failure) and to the performance that the new mobile networks must achieve (step change)⁴⁷.

(134) Therefore, the Commission will assess the compatibility of the Measure pursuant to Article 107(3)(c) TFEU and, where appropriate, conduct an assessment analogous to that required under the Broadband Guidelines while, at the same time, taking into account, where justified, adjustments needed to reflect technological and market developments, based on the information provided by the Spanish authorities⁴⁸.

⁴⁶ 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).

⁴⁷ See Commission Staff Working Document – Evaluation of the State Aid rules for broadband infrastructure deployment (SWD(2021) 195 final). On 19 November 2021, the Commission published for consultation a draft of revised broadband guidelines (hereafter: “Draft Guidelines”), which relies largely on the results, evidence and data collected in the context of the evaluation in combination with the Commission’s market experience stemming from its case practice (see https://ec.europa.eu/competition-policy/public-consultations/2021-broadband_en). The proposed revision aims to ensure that the market and technological developments are appropriately taken into account in the assessment of State aid in the broadband sector. The main proposed revisions concern: (i) alignment of the intervention threshold for aid for fixed broadband networks with current and expected technological and market developments; (ii) aid in the form of demand-side measures supporting the take-up of fixed and mobile networks; (iii) guidance regarding an operator’s use of its own resources to connect to the publicly-funded infrastructure to provide services outside the area for which the aid was granted; (iv) adjustment of wholesale access obligations to reflect technological progress; (v) clarifications and further guidance on mapping, public consultation, selection procedure, wholesale access pricing, claw-back mechanism; (vi) aid for the deployment of mobile networks.

⁴⁸ See Commission Decision of 15 December 2021, C(2021) 9551 final, case SA.64394 (2021/N) – *RRF – Spain-National aid scheme for passive infrastructure for mobile networks* (OJ C 90, 25.2.2022, p. 6)

(135) To be declared compatible, the aid must contribute to the development of certain economic activities or areas (first condition) and it must not adversely affect trading conditions to an extent contrary to the common interest (second condition)⁴⁹.

(136) Under the first condition, the Commission assesses:

- (i) the economic activity facilitated by the Measure;
- (ii) the incentive effect of the Measure, that is: whether it changes the behaviour of the undertakings concerned in such a way that they carry out an additional activity which they would not carry out without the Measure or would carry out in a restricted or different manner or location; and
- (iii) the existence of a breach of any provision of Union law in relation to the Measure.

(137) Under the second condition, the Commission weighs the positive effects of the Measure 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. In this regard, the Commission assesses:

- (i) the positive effects of the aid;
- (ii) whether the aid is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing important inequalities;
- (iii) whether the aid is an appropriate policy instrument to meet its objective;
- (iv) whether the aid is proportionate and limited to the minimum necessary to attain its objective and stimulates additional investment or activity in the area concerned;
- (v) whether the aid is transparent. To measure and minimise the impact on the internal market, Member States, stakeholders, the general public and the Commission must have easy access to information on the aid awarded; and
- (vi) the negative effects of the aid on competition and trade between Member States.

(138) As a final step, the Commission balances the identified negative effects on the internal market of the Measure with the positive effects of the planned aid on the supported economic activities.

See also Commission Decision 16 December 2018, C(2018) 7540 final, case 48324 (2018/N) – *Germany Mobilfunk Bayern* (OJ, C 462, 21.12.2018, p. 3).

⁴⁹ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

3.2.1 First condition

(139) ***Economic activities facilitated by the Measure.*** The Measure subsidises the deployment of backhaul networks, which will in turn facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology (see section 2.3). As evidenced by the results of both the mapping exercise and the public consultation (see section 2.8), the Measure will finance the deployment of infrastructures that would not be deployed by private operators in the absence of the State support. The Measure supports the deployment of backhaul networks necessary to connect Eligible BTSs and thus in turn facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology, capable of addressing the current and evolving connectivity needs of citizens, businesses and public administrations in the target areas⁵⁰. Eligible BTSs are those which currently do not and will not have by 31 December 2025 a fibre-based backhaul. In this regard, the Spanish authorities consider that fibre-based backhaul is necessary to facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology, with sufficient scalability to meet the Spanish end-users' current and future mobile connectivity needs in terms of capacity, speed, latency and reliability and to cater for the expected exponential increase in mobile traffic (see section 2.3). The Spanish authorities therefore consider that the Measure is a necessary prerequisite step to ensure performant mobile services including those enabled by 5G technology can also reach rural areas thus increasing the competitiveness and attractiveness for living and investing in such areas, and thereby contributing to their economic development and to reducing the digital divide. The Measure aims at overcoming market failures related to the lack of fibre-based backhaul, which jeopardise the ability of citizens, businesses and public administrations in the target areas to have access to mobile communications services capable of addressing their needs, as identified by the Spanish authorities. The Spanish authorities consider that the Measure contributes to ensuring equal growth opportunities in the entire Spanish territory and provides a stimulus for the development of a modern digital economy in Spain. The Commission acknowledges that the Measure contributes to the development of the economic activity of deployment of fibre-based backhaul networks.

(140) ***Incentive effect.*** To ensure an incentive effect, the Spanish authorities carried out a mapping exercise and a public consultation to seek the views of electronic communications network operators, other interested stakeholders and the wider public in general on the design of the Measure, the intervention areas, the target areas and the eligible BTSs, as well as relevant private investment plans (see section 2.8). In that context, the operators communicated their plans, in particular the existing BTSs that are or will be by 31 December 2025 connected to fibre-based backhaul. The Measure concerns only those BTSs that are not and will not – by 31 December 2025 – be connected to a fibre-based backhaul network (i.e.

⁵⁰ The connectivity needs have been identified and assessed by the Spanish authorities with the support of the group of experts that have produced the Report.

Eligible BTSs) and which are situated in target areas. Based on the results of the mapping and public consultation, the Spanish authorities estimated that approximately 12 000 BTSs of the existing BTSs in target areas can be considered Eligible BTSs as they will not have fibre-based backhaul by end-2025. The Measure will not finance the costs related to investments needed to meet coverage obligations attached to the beneficiaries' respective rights of use of spectrum (see recitals (29) and (80)). On this basis, the Measure demonstrates an incentive effect to further develop the roll-out of backhaul networks that support the provision of performant mobile services to the benefit of consumers, businesses and public administration in the intervention areas. The Measure will change the behaviour of potential beneficiaries in such a way that they carry out activities, which they would not carry out without the Measure or would carry out in a restricted or different manner or not in the target areas described in recital (11).

- (141) ***Compliance with other provisions of Union Law.*** If a State aid measure, the conditions attached to it (including its financing method when that method forms an integral part of the aid measure) or the activity it finances entail a violation of a provision or general principles of Union law, the aid cannot be declared compatible with the internal market⁵¹. The Commission has not received any information identifying any breach of Union law that would prevent the Measure from being declared compatible with the internal market.

3.2.2. Second condition

3.2.2.1. Positive effects of the aid

- (142) The Spanish authorities will award aid for the deployment of performant backhaul networks in the areas of the Spanish territory where, based on the results of the mapping and the public consultation (see section 2.8), BTSs are not connected by fibre-based backhaul networks and where there are no private investment plans for the roll-out of such fibre-based backhaul networks by 31 December 2025 (see section 2.1).
- (143) The Measure brings about a material improvement in the availability of high-quality backhaul networks, which in turn will facilitate the provision of performant mobile communications services (including those enabled by 5G technology), which form a part of the fundamental needs of a modern society. At the same time, considering that all target areas are in less densely populated parts of the country, the Measure is expected to contribute to correcting social or regional inequalities and reduce the digital divide between rural and urban areas in Spain. The Measure will ensure the availability of backhaul networks in the target areas that are a precondition to facilitating the provision of performant mobile services and ultimately the take-up by end-users of a number of applications and services (e.g. smart & connected vehicles, autonomous vehicles, collaborative robots, remote monitoring, enhanced experience, remote operations, surveillance & safety, services of

⁵¹ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI: EU:C:2020:742, paragraph 44.

telemedicine and connected ambulance), which will improve the digital transition and the further development of activities in related economic sectors (see section 2.3). The Commission considers that the rules and conditions for wholesale access under the Measure (see section 2.14) will have positive effects on competition at the retail level, since all mobile operators will have the right to access the Infrastructure and to propose their retail offers on the market offering end-users enhanced services and performances that they would have not been able to provide absent the aid. The Measure will also contribute to the achievement of the Union's digital policy objectives and, more specifically, to reducing the digital divide across Spain. This can be seen against a wider ambition of the Union to achieve ambitious connectivity objectives throughout its territory, aiming at 5G coverage for all populated areas by 2030⁵².

(144) Hence, the Measure is expected to have positive effects in the target areas.

3.2.2.2. Necessity for State intervention

(145) State intervention may be deemed necessary where it can bring about a material improvement that the market alone does not deliver. Indeed, State aid measures can, under certain conditions, correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness.

(146) A market failure exists if markets, left to their own devices, without public intervention fail to deliver an efficient outcome for society. This may arise, for instance, when certain investments are not being undertaken even though the economic benefit for society exceeds their cost. In such cases, the granting of State aid may produce positive effects and overall efficiency can be improved by adjusting the economic incentives for stakeholders.

(147) In the present case, the necessity for State intervention is supported by the following considerations:

- (i) By supporting the deployment of fibre-based backhaul networks, which represents a prerequisite step to enable the provision of performant new mobile services and applications, the Measure will contribute to achieving Spain's objectives regarding nationwide deployment of performant mobile networks by 2026, which are necessary in order to bridge the digital divide and be prepared for the continued strong increase in global data usage in private and professional contexts as well as the ever-increasing performance of devices (see section 2.1). Therefore, the Measure's objectives are justified in view of

⁵² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee the Committee of Regions of 9 March 2021, '2030 Digital Compass: the European way for the Digital Decade' (COM/2021/118 final). See also the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee the Committee of Regions of 19 February 2020, 'Shaping Europe's digital future' (COM/2020/67 final) and the Proposal for a Decision of the European Parliament and of the Council establishing the 2030 Policy Programme 'Path to the Digital Decade', COM(2021) 574 final, 2021/0293 (COD).

the current and future challenges posed by digitalisation and mobile connectivity, especially in rural and remote areas in Spain. These objectives adequately take account of the longevity of networks needed to guarantee an adequate return on investments as well as of Spain's objectives of ensuring equal opportunities for all citizens in terms of their ability to fully participate in the possibilities generated by digitalisation;

- (ii) The Spanish authorities have demonstrated that the Infrastructure would not be deployed in the target areas to connect the eligible BTSs without support under the Measure. The cost of deploying the Infrastructures to connect the eligible BTSs in the target areas is significantly higher than the cost of connecting BTSs with fibre-based backhaul networks in urban and densely populated areas, because the target areas are mainly in less populated areas often located in topographically difficult, remote parts of Spain (see section 2.3). Moreover, the achievable revenue is likely to be more limited in the target areas than elsewhere in Spain due to low population density;
- (iii) The Spanish authorities carried out a detailed mapping and public consultation exercise aimed at identifying the BTSs that do not currently have and will not have by 31 December 2025 a fibre-based backhaul network (see section 2.8). In particular, the Spanish authorities requested that stakeholders submit substantiated information regarding their current networks and those credibly planned to be deployed by 31 December 2025. The Spanish authorities carried out a public consultation, thereby allowing interested parties to comment on the Measure (see section 2.8). In particular, Spain published on the official websites the main features of the Measure and the results of the mapping exercise, including the list of the target areas and eligible BTSs identified, inviting interested parties to comment. In order to finalise the identification of the eligible BTSs, the target areas, the intervention areas and to further refine the design of the Measure, nineteen submissions were received and assessed by the Granting Authority.
- (iv) The mapping exercise and the public consultation ensure that only areas where there is no actual or future interest of the market players to undertake private investments are targeted under the Measure, thereby limiting risks of crowding-out private investments and distorting competition. This is supported by the following considerations:
 - Operators were invited to identify their current and future investment plans deploying backhaul networks in the target areas until 31 December 2025 that would connect the eligible BTSs. In the target areas, the private operators do not intend to deploy such infrastructures in the absence of the public intervention (see section 2.8);
 - The Infrastructure will not be taken into account to meet any coverage obligations attached to the relevant rights of use of spectrum (see recitals (12) and (29));

- The design of the Measure, including with respect to the identification of eligible BTSs, the target areas and the intervention areas, was discussed in the public consultations and largely endorsed; relevant comments have been duly taken into account (see section 2.8).
- The CNMC was consulted by the Granting Authority as from the early stages of the development of the Measure and its relevant recommendations were duly taken into account (see section 2.19).
- The need for a fibre-based backhaul network has been duly demonstrated by the Spanish authorities – with the support of an expert opinion on the basis of a thorough assessment of the current state of technological development of backhaul technology solutions (see section 2.3).

(148) It can therefore be concluded that the notified Measure addresses a market failure related to the lack of fibre-based backhaul current and credibly planned (by 31 December 2025) to connect Eligible BTSs in target areas. The Commission therefore considers the notified measure necessary to support the development of the economic activities at issue (the deployment of fibre-based backhaul).

3.2.2.3. Appropriateness of the Measure as a policy instrument

(149) The State aid measure proposed must be an appropriate policy instrument to address the problem of absence of market delivery due to market failure.

(150) In order to be appropriate, the subsidised mobile networks must provide significantly enhanced characteristics in comparison to existing networks. Thus, State funded mobile networks should be able to ensure a step-change. A step-change can be demonstrated if, as the result of the public intervention, the new mobile network:

- i.* represents a significant new investment in the electronic communications network, and
- ii.* brings significant new capabilities to the market in terms of service availability, capacity, speeds and competition.

(151) The step-change is assessed by comparing the characteristics of the current and credibly planned backhaul network(s) and the characteristics of the new backhaul network. Credibly planned networks have not been taken into account for the assessment of the step-change unless they would, on their own, provide similar performance to that of the planned State funded network within the relevant time horizon (i.e. 31 December 2025). Based on the information provided by the Spanish authorities, the Measure ensures a step-change, since, as a consequence of the Measure, significant new investment in the backhaul network is to be undertaken and the subsidised backhaul network will be based on fibre, as opposed to the existing or credibly planned networks within the relevant time horizon. As mentioned at section 2.3 the characteristics and performances of the fibre-based backhaul networks (capacity, latency, jitter, etc.) if compared with other type of backhaul networks (e.g. satellite, radio-links, etc.) are necessary to facilitate the provision of performant new mobile services and applications, including those enabled by 5G technology (e.g. much bigger traffic, lower latency, higher speeds, etc.). The project includes substantial investments in passive infrastructure. The BTSs in the intervention areas which are not currently connected and are not planned to be connected with fibre-based backhaul networks will be connected with a fibre-based backhaul network (see section 2.3).

(152) Hence, in view of the significantly enhanced characteristics of the fibre-based backhaul network in comparison to existing networks in the target areas, the Measure allows for a step change.

(153) State aid is not the only policy instrument available to Member States to boost investment in the deployment of backhaul networks. Member States can use alternative instruments, such as mobile coverage obligations attached to rights to use spectrum and demand-side measures. As described in recitals (12) and (29), the Measure cannot in any case subsidise the costs triggered by the need to comply with the coverage obligations. Moreover, the target areas are defined in a way that they do not overlap with areas falling under the relevant coverage obligations (i.e. municipalities with more than 20 000 inhabitants). Accordingly, coverage obligations will not be able to ensure a proper development of this economic activity (deployment of backhaul networks to connect the eligible BTSs within the target areas). Furthermore, demand-side measures are not appropriate means to develop the economic activity of deploying backhaul networks. The necessary fibre-based backhaul networks do not yet exist and their construction would not be economically viable for private investors.

(154) Hence, the Measure is an appropriate policy instrument for developing the economic activity in the intervention areas.

3.2.2.4. Proportionality of the Measure

(155) Member States must demonstrate that the aid is proportionate to the problem tackled, essentially showing that the same change in behaviour (as per the incentive effect) would not be obtained with less aid or fewer distortions. Aid is considered proportionate if its amount is limited to the minimum necessary to achieve its

objectives and the potential distortions of competition are minimised. In this respect, the following elements in the design of the Measure are of relevance.

(156) **Mapping and public consultation.** In order to clearly identify the Eligible BTSs and the target areas for the application of the Measure, on 31 May 2022, the Spanish authorities requested that providers of supporting infrastructure (towers) and operators of electronic communications services to provide information regarding BTS sites in municipalities (initially of less than 20 000 inhabitants, revised to less than 10 000 inhabitants further to the results of the public consultation) and to confirm whether fibre-based backhaul is present in such locations or whether there are plans to deploy such infrastructure without State aid by 31 December 2025. Taking into account the results of the public consultation, the Spanish authorities have defined fifty intervention areas (corresponding to the Spanish provinces⁵³) covering the whole territory of Spain. Nineteen operators submitted substantiated information regarding their current networks and those credibly planned to be deployed by 31 December 2025 in the target areas as well as the coverage obligations attached to their respective rights of use of spectrum. The mapping and public consultation exercise showed that approximately 12 000 of the existing BTSs in the target areas will not be connected with fibre-based backhaul by the end of 2025. Operators were asked to provide information on their investment plans up to the end of 2025 – also taking into account the coverage obligations attached to their respective rights of use of spectrum. The main characteristics of the Measure and the identification of the eligible BTSs, of the target areas and of the intervention areas have been made public in the public consultation (see section 2.8). The target areas were identified on the basis of the public consultation, taking into account comments received and, in particular, the fact that the operators declared that they did not intend to invest in those areas to deploy the Infrastructures, due to the high deployment costs which are not balanced by forecasted revenues. Thus, all eligible BTSs and the target areas have been identified in an open and transparent manner through the mapping exercise and the public consultation. This ensures that the Measure covers only areas where the intervention is necessary.

(157) **Competitive selection procedure.** To ensure that aid is proportionate and limited to the minimum amount necessary, Member States should organise open, transparent and non-discriminatory competitive selection procedures in line with the EU public procurement principles and in a manner capable of attracting a sufficient number of participants to guarantee an adequate degree of competition and an efficient outcome. Moreover, Member States must ensure that the most economically advantageous solution is selected by establishing objective, transparent and non-discriminatory qualitative award criteria and specifying the relative weighing of each criteria in advance. Based on the information provided by the Spanish authorities (see section 2.10), the Measure complies with these requirements:

⁵³ With the exception of Ceuta and Melilla.

- (i) the successful tenderers are selected through an open and non-discriminatory competitive selection procedure, in line with the principles of public procurement, in order to ensure the efficient use of public resources. The calls for tenders (see section 2.10) ensure equal treatment of the interested parties, regardless of their legal status, as well as effective competition among them;
 - (ii) the call for tenders is designed in a way to foster wide participation, in particular through the split of the Spanish territory into fifty intervention areas corresponding to the Spanish provinces⁵⁴; this will allow the participation even of small operators in the tender;
 - (iii) the aid beneficiaries must provide passive and active wholesale access to the Infrastructures as explained in this decision (see section 2.14);
 - (iv) temporary groupings of horizontal or vertical undertakings, consortia or other groupings may participate in the competitive selection procedure, in accordance with the Spanish Public Procurement legislation and the principles imposed by EU Public Procurement rules;
 - (v) the Spanish authorities will ensure compliance with transparency obligations (see section 2.17);⁵⁵ and
 - (vi) the award criteria are defined in advance and are based on objective, transparent and non-discriminatory factors (see section 2.10).
- (158) **Technological neutrality.** Public intervention must not favour or exclude any particular technology, both in the selection of beneficiaries and in the provision of wholesale access. As different technological solutions exist, the call for tender must not favour or exclude any particular technology or network platform. Bidders should be entitled to propose the provision of the required electronic communication access services using or combining whatever technology they deem most suitable. This is without prejudice to the possibility for the Member States to determine the desired performance.
- (159) Based on the information provided by the Spanish authorities (see section 2.12), the Measure is technologically neutral:
- (a) the decision of the Spanish authorities to rely on fibre-based solutions is duly reasoned. In particular, the Spanish authorities have demonstrated – also with the support of an expert opinion – that, at the current stage of technological development, fibre-based backhaul networks are the only technological solution for backhaul that can enable the provision of performant new mobile services and applications, including those enabled by 5G technology, and cater for the expected exponential increase in mobile traffic, to address the Spanish

⁵⁴ With the exception of Ceuta and Melilla.

⁵⁵ See footnote 42.

end-users' current and future needs, as identified by Spain and in line with the objectives of the Measure (see section 2.3);

- (b) under the Measure, wholesale access will be offered on open, transparent, fair and non-discriminatory terms in line with the principle of technological neutrality. Several alternative operators will be able to use the new networks via wholesale access to offer their own services to end-users, independent of the access seekers' choice of technology (see section 2.14).

(160) ***Use of existing infrastructure.*** In order to limit the aid amount to the minimum necessary, Member States should incentivise the use of existing infrastructure. Moreover, the Member State should encourage operators participating in a competitive selection procedure to have recourse to any available existing infrastructure. Based on the explanations provided by Spain (see section 2.11), the Commission considers that the Measure contains sufficient incentives for the use of the existing infrastructure by the aid beneficiaries. In particular, the call for tenders expressly encourages bidders to take into account the use of existing infrastructures in the planning and implementation of the intervention. Moreover, as part of the competitive selection procedure, in order to be considered eligible to participate, any operator that owns or controls existing infrastructure in the target areas must be required to: (i) provide all relevant information including the prices for accessing the existing infrastructure to the Granting Authority and to the other bidders at a point in time which would allow the latter to include such infrastructure in their bid; and (ii) provide a commitment to offer fair, non-discriminatory access to their existing infrastructure.

(161) ***Wholesale access.*** The subsidised networks must offer effective wholesale access under fair and non-discriminatory condition to all operators who request it, since wholesale access enables third party operators to compete with the selected bidder and, thus, to develop competition in the target areas in the longer term, providing customers at the retail level with more and better services and prices. The provision of effective wholesale access amplifies the positive effects of aid measures and contributes to the aid being less distortive. At the same time, an increased choice of wholesale access products is set to increase the beneficiaries' revenues, thus likely increasing the profitability and thereby decreasing the amount of aid needed to close the funding gap. Based on the information provided by the Spanish authorities (see section 2.14), the Measure complies with these requirements:

- (a) the beneficiaries must ensure wholesale access to the passive infrastructure, including access to ducts/masts/towers, access to dark fibre and at least one active wholesale service to all service providers on open, transparent, fair and non-discriminatory basis, in accordance with the conditions detailed in this Decision. Effective and comprehensive wholesale access will be available for all access seekers irrespective of the technology of their choice. The wholesale access conditions, open to all service providers, also ensure that negative effects on competition and on trade in the markets for the granting of wholesale access to such networks are limited;

- (b) the bidders are encouraged to provide further improved wholesale access conditions as part of their bid in the competitive selection procedure;
- (c) the same access conditions shall apply on the entirety of the subsidised network, including on the parts of such network where existing infrastructures have been used;
- (d) effective active access must be provided for a period of at least ten years. Effective passive access must be provided for an unlimited period of time;
- (e) the aid beneficiaries have to design the network in order to ensure sufficient capacity. As described in Section 2.14, while the Measure finances the roll-out of fibre backhaul with virtually unlimited capacity to host all access seekers, the Spanish authorities have demonstrated on the basis of objective factors that requiring existing towers of Eligible BTSs to ensure sufficient capacity for more than two MNOs would entail disproportionate costs without delivering significant benefits in terms of increased competition. In order to ensure an appropriate balance, while ensuring sufficient access where needed, the Spanish authorities indicate that they will set the minimum required capacity for existing towers that are part of Eligible BTSs to that required for at least two MNOs, while requiring that access to such towers be granted to additional access seekers who submit a reasonable demand for such access.
- (f) the details of the wholesale access offer must be available to interested operators at least six months in advance of the start of the commercial operation of the network by the beneficiary;
- (g) the wholesale access obligations must be enforced irrespective of any change in ownership, management or operation of the Infrastructures;
- (h) the beneficiaries of the aid must operate the Infrastructures for at least 10 years (see recital (79));
- (i) wholesale access under the Measure must not be granted or used to meet legal obligations, such as any coverage obligations attached to the relevant rights of use of spectrum (see recital (80)); and
- (j) access prices for the subsidised elements, or part of them, must be based on the pricing principles established by the CNMC or on the wholesale prices that it has set for the same or similar services. The Spanish authorities will continue to consult the CNMC with regard, inter alia, to wholesale access products, conditions and pricing. The CNMC is also in charge of resolving disputes between operators requesting access and operators benefiting from aid (see section 2.19).

(162) **Claw-back.** To limit risks of overcompensation and distortions of competition, it is important that Member States closely monitor the implementation of a measure during its entire duration and foresee a claw-back mechanism making it possible to properly take into account information that the aid beneficiary did not take into

account in the original business plan when applying for State aid. The claw-back mechanism should be designed in a way to take into account and balance two objectives: (i) it should allow the Member State to recuperate amounts that exceed a reasonable profit; and (ii) it should not endanger the incentives for operators to participate in a tender and to strive for cost efficiencies when rolling out the network. To achieve a suitable balance between the two objectives, Member States should introduce incentive criteria related to gains in productive efficiency. The incentive amount should be set to a maximum of 30 % of the reasonable profit. Member States should not claw -back any extra profit below that threshold (that is to say, the reasonable profit increased by the incentive amount). Any profit in excess of the 30 % threshold should be shared between the aid beneficiary and the Member State, on the basis of the aid intensity resulting from the outcome of the competitive selection procedure.

(163) With regard to the Measure, if the amount of aid exceeds EUR 10 million, the Spanish authorities must implement a clawback mechanism based on a review of the conditions for granting the aid on the basis of the data provided by the beneficiary. The claw-back mechanism will allow the Granting Authority to clawback any amount exceeding a reasonable profit, in order to avoid over-compensation.

(164) Based on the information provided by the Spanish authorities, the Measure contains an adequate claw-back mechanism (see section 2.15). In particular:

- (a) The Spanish authorities will monitor on a yearly basis, starting from the completion of the Infrastructure and during 15 years, the existence of possible extra-profits.
- (b) The claw-back mechanism will be applied on the basis of the figures of the financial plans for the deployment of the Infrastructure submitted by the successful bidders in the competitive selection procedure.
- (c) The mechanism will allow the beneficiary to keep a reasonable profit and an additional incentive set at a maximum of 30% of the reasonable profit. The Spanish authorities will not claw-back any extra profit below that threshold. Any profit in excess of this threshold will be shared between the aid beneficiary and Spain, according to the actual aid intensity resulting from the tender (minimum 10% for the aid beneficiary and maximum 90% for Spain);
- (d) In order to allow the authorities to perform the checks, the aid beneficiary must ensure accounting separation between the costs and revenues related to the deployment of the Infrastructures and any other activities.

(165) Since the aid amount is estimated by the aid beneficiary on an *ex ante* basis so as to cover the expected funding gap over the lifespan of the investment, Spain will closely monitor the deployment of the Infrastructures for 15 years following completion (see section 2.15).

(166) Based on the above, the Spanish authorities will claw-back:

- (a) the difference between the costs estimated by the aid beneficiary in the tender and the actual costs of deployment of the Infrastructures; and
- (b) the difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the Infrastructures.

(167) **Accounting separation.** To ensure that the aid granted under the Measure remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, all beneficiaries must ensure accounting separation between the costs and revenues related to the deployment of the Infrastructures and any other activities (see section 2.20). Furthermore, if a beneficiary under other State aid measures will be among the beneficiaries of the Measure, the Spanish authorities will check that there will be no undue transfer between the funds allocated to the Measure and the funds allocated to other measures and there is no cumulation of aid for the same eligible costs (see section 2.20).

(168) In light of the above considerations, the Commission considers that the State aid involved and the potential distortions of competition to which it could give rise are limited to the minimum necessary.

3.2.2.5. *Transparency of the Measure*

(169) **Transparency, reporting and monitoring.** As described in section 2.17, the Spanish authorities committed to complying with the publicity rules provided for in Article 34(2) of the RRF Regulation. Moreover, for the entire duration of the Measure, all of the relevant information about the Infrastructure will be published on the official website of the Ministry of Economy and Digital Transformation, where both operators and end-users will have easy and unrestricted access to all relevant acts and information regarding the Measure and its implementation. In particular, the Spanish authorities will publish the information listed in recital (100) after the approval of the Measure and ensure its availability for the following ten years.

(170) The Spanish authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain, besides the information listed in recital (100), the additional key data mentioned in recital (102).

(171) The Spanish authorities also commit to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.

(172) **Ex post evaluation plan.** The Measure represents an aid scheme with an overall annual budget of approx. EUR 500 million. The Spanish authorities have submitted an evaluation plan in the context of the notification as an integral part of it.

- (173) The objective of the evaluation plan is to demonstrate, by means of both quantitative and qualitative analyses, the direct effects of the Measure, its proportionality and appropriateness; as well as a number of indirect effects including potential distortive effects on competition.
- (174) The Commission considers that the notified evaluation plan contains all of the necessary elements: the objectives of the Measure to be evaluated, including the evaluation questions; the result indicators; the envisaged methodology to conduct the evaluation; and the proposed timing of the evaluation including the date of submission of the final evaluation report (see section 2.16)⁵⁶. The Commission notes that:
- (a) the scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched result indicators. Moreover, the evaluation plan explains the main methods that will be used in order to identify the impacts of the Measure⁵⁷;
 - (b) the Spanish authorities commit that the evaluation will be conducted by an independent evaluation body in accordance with the criteria laid down in the notified evaluation plan;
 - (c) the proposed modalities for the publication of the evaluation results are adequate to ensure transparency;
 - (d) the commitment made by Spain to submit to the Commission an interim report by March 2024, a final evaluation report by 30 June 2025 and an additional evaluation report in 2028 is appropriate as the mentioned reports will contain the relevant information about the application and the progress of the Measure as well as the data relevant for the assessment of the effectiveness of the Measure.
- (175) The Commission notes that Spain must communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to identify and implement possible solutions.
- (176) Moreover, the Commission notes that the Measure must be suspended if the final evaluation report is not submitted in good time or is not of sufficient quality.

⁵⁶ As regards direct effects, the evaluation plan must check whether the measure is suitable for increase Spain's ultra-broadband coverage and the degree of sustainability of infrastructure development over time (network scalability, possibility of further extensions if necessary). As regards indirect effects, it will be necessary to measure the impact of the aid on the level of competition. The proportionality and appropriateness of the measure is assessed by verifying that the same objectives cannot be achieved with a lower aid intensity.

⁵⁷ The plan indicates that it is based on the best practices referred to in the Commission's *Staff working document on common methodology for state aid evaluation*.

3.2.2.6. Negative effects on competition and trade

- (177) Aid for the deployment of mobile networks may have negative effects in terms of market distortions and its impact on trade between Member States. The Commission has carefully assessed the significance of the distortion of competition and effect on trade of the Measure in terms of its actual and potential effects on competitors.
- (178) In this regard, it cannot be excluded that private operators may see the profitability of their prior investments decrease because of the aid, or that they may decide to reduce their own future investment, withdraw from the market altogether or decide not to enter into a new market or a geographic area. The public support may also encourage local service providers to have recourse to the Infrastructure rather than other market solutions.

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

- (179) A carefully designed State aid scheme should ensure that the overall balance of the effects of the Measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (180) Based on the information provided by the Spanish authorities, the Commission is of the view that the positive effects of the Measure outweigh its negative effects for the following reasons:
- (i) The Spanish authorities proved that the Measure contributes to the development of the supported economic activities, in particular the deployment of backhaul networks, compared to what would happen in the absence of the public intervention in the target areas. The Measure has various positive effects for end-users but also for competition in the intervention areas (see also section 2.3). Indeed, the Measure will ensure the availability of backhaul networks connecting the eligible BTSs in the target areas, which, in turn, facilitates the development of mobile networks capable of delivering high-quality and reliable mobile electronic communication services to end-users and of satisfying their current and evolving needs at conditions that would not be available under normal market conditions. It will thereby provide better choice for consumers, higher quality and innovation and help reduce inequalities and digital divide in the intervention areas. Moreover, the Measure is in line with the connectivity objectives set at the EU level (see recital (143));
 - (ii) The Measure addresses a market failure (see section 2.3) in that the deployment of the Infrastructure would not be made in the target areas to connect the eligible BTSs without the Measure. It also represents a step change as it provides a significant improvement in comparison to existing and credibly planned backhaul networks in the target areas (see section 2.13);
 - (iii) The Measure is also proportionate (see sections 2.8 and 2.10). Its design ensures that the aid is limited to the minimum necessary and that its negative effects on competition and on trade in the markets for the deployment of

backhaul networks supporting the provision of mobile services and for the granting of wholesale access to such networks are limited;

- (iv) The Spanish authorities proved that the negative effects are limited to the minimum necessary. The Measure is designed to limit crowding out private investment and its effects are confined to areas of the Spanish territory where private investors do not intend to invest to deploy fibre-based backhaul networks to connect the eligible BTSs (see section 2.8);
- (v) Potentially affected private operators have been publicly consulted before the start of the implementation of the Measure on its design, its legal bases, its intervention areas and their planned investments to connect the eligible BTSs in the target areas by the end of 2025 and their comments have been taken into account in the final design of the Measure (see section 2.8);
- (vi) The design of the Measure ensures no overlap with legal obligations such as coverage obligations related to rights of use of spectrum (see recitals (12) and (29));
- (vii) The overall aid intensity is limited to the minimum necessary (see sections 2.8 and 2.10);
- (viii) Any financial support for the deployment of Infrastructure under the Measure will be awarded through a competitive selection procedure in line with the EU and national public procurement rules and the Measure is technologically neutral (see section 2.12);
- (ix) By ensuring effective wholesale access to the Infrastructures to interested parties, the Measure aims at incentivising competition in the intervention areas (see section 2.14);
- (x) The Measure features an adequate claw-back mechanism (see section 2.15);
- (xi) The Measure ensures transparency and monitoring and reporting obligations will be complied with (see section 2.17);
- (xii) As described in section 2.16, Spain submitted an adequate *ex post* evaluation plan. The plan will allow the Commission to verify:
 - Whether the assumptions and conditions which led to this decision have been realised;
 - The effectiveness of the Measure in light of its predefined objectives;
 - The impact of the Measure on markets and competition; and
 - That no undue distortive effects arise throughout the duration of the Measure that are contrary to the interests of the Union.

(181) In light of the above, the positive impact of the Measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade. On balance, the Measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the deployment of backhaul networks that further support the provision of performant mobile services. Moreover, such aid does not adversely affect competition to an extent contrary to the common interest. The overall impact on competition is deemed to be positive. The negative effects on competition, if any, would be very limited.

4. CONCLUSION

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

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

Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

