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Subject: State Aid SA.57216 (2021/N) – Spain – Mobile coverage in rural areas in Galicia

Excellency,

1 PROCEDURE

- (1) Following pre-notification discussions, on 26 November 2021, the Spanish authorities of the Autonomous Community of Galicia notified the Commission of a support scheme to promote the deployment of mobile networks in Spanish Autonomous Community of Galicia¹ (hereafter ‘Galicia’).
- (2) The Spanish Authorities have committed to comply with the standstill clause of Article 108(3) TFEU, and with Article 3 of Council Regulation (EU) 2015/1589², according to which new aid measures must not be put into effect before the Commission has notified the decision not to raise objections to Spain.
- (3) By letter of 24 November 2021, the Spanish Authorities have provided a language waiver and exceptionally agreed to waive their rights deriving from Article 342

¹ Region with code NUTS ES11.

² 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.

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TFEU in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

2 DETAILED DESCRIPTION OF THE MEASURE

2.1 Context

- (4) Unlike fixed networks, mobile networks offer the end user the option of continuously changing the location while communicating. In the digital age, access to services that rely on mobile networks has become essential for businesses and consumers. These services have become an indispensable part of everyday life for citizens and to enable communication with emergency services. The performance of mobile communications technologies is developing so rapidly that they have become key technologies for the digital transformation in business and society. However, currently mobile network coverage does not meet everywhere the continuously growing expectations of business and society and there are still coverage gaps.
- (5) This is the case in Galicia where, despite the fact that, at present, 4G mobile coverage reaches 98% of the population, there are still rural and isolated areas where the mobile network coverage shows gaps in which not even mobile voice services are available, as demonstrated by the mapping and public consultation exercise carried out by the Spanish Authorities (the target areas) (see section 2.9). This is the case for remote rural areas and isolated villages as well as some areas around or linking such villages that have nonetheless an increased circulation of people, for example the “Camino de Santiago”. The Spanish Authorities clarified that in the Autonomous Community of Galicia there were about 290 villages with 7,096 inhabitants in areas with such coverage gaps. In particular, among these, 260 villages have less than 50 inhabitants, which makes private investment to fill these coverage gaps economically unattractive.

2.2 Objective and design of the measure

- (6) The objective of the measure is to close the gaps in mobile coverage in Galicia in areas where there is no mobile network present or planned. To this end, the Spanish Authorities aim at supporting the roll out of any mobile access networks which will provide at least mobile voice services. The Spanish authorities clarified that the measure is non prescriptive as regard which generation of mobile technology to use, the only requirement being to provide at least mobile voice services. The measure will also support the necessary backhaul network. While the objective of this measure is to guarantee the provision of mobile voice services, the infrastructure that will be supported may also be used to support the provision of additional services where possible. For example, where the network deployed will be based on technologies allowing also the provision of data services, such as 3G or 4G, it may also be used to provide mobile data services⁴.

³ Regulation No 1 determining the languages to be used by the European Economic Community. OJ 385 of 6 October 1958, p. 59.

⁴ The speed of data connectivity made available by the financed network will depend on the specific conditions present in the relevant areas (e.g. density of antennas).

As the measure does not include data connectivity among its objectives, there are no quality requirements regarding data speed and quality.

- (7) The measure is designed in the form of a scheme which aims to address the digital divide in Galicia, increase the attractiveness for living and investing in the region, stimulate economic growth as well as maintain and create jobs.
- (8) In particular, the measure will address the needs of touristic sector, which is of particular relevance for the Autonomous Community of Galicia in view of the attractiveness of the 'Camino de Santiago'. The extension of the mobile coverage in these areas will also reduce the potential safety problems posed by the lack of availability of mobile services in emergency situations.
- (9) The Spanish Authorities plan to carry out a twofold intervention:
 - a) the first intervention will involve the deployment of a state-owned passive mobile communications infrastructure ("passive mobile infrastructure")⁵ which will be put at the disposal of mobile network operators (MNOs).
 - b) the second intervention will provide support for the placement of active equipment on top of the financed passive infrastructure.
- (10) The Spanish Authorities consider that public intervention to support the deployment of active equipment is, in the specific circumstances of this case, considering the remoteness and low population density of the target areas, necessary for the provision of the mobile services in the target areas due to the lack of commercial attractiveness. According to the Spanish Authorities, without public support for the procurement of active equipment, the availability of the passive infrastructure would not provide a sufficient incentive for MNOs to provide mobile services in the target areas. The Spanish Authorities clarified that MNOs had shown no interest in providing mobile coverage even if the passive mobile infrastructure was made available. This is also the case in part of the intervention area in which the new passive infrastructure will be made available. According to the Spanish Authorities, this is due to the expected very low profitability of the target areas that in turn is due to the very low population density (260 villages out of 290 have less than 50 inhabitants) and high maintenance costs of the mobile networks in those areas.
- (11) The Spanish authorities clarify that State aid under the notified measure will not be granted or used to meet legal obligations, such as coverage obligations attached to rights of use for spectrum. In this regard, MNOs using the supported infrastructure must confirm in writing to the Granting Authority that they will not declare areas covered with this measure for the purpose of fulfilling any coverage obligation. In addition, the Spanish Authorities will notify the areas covered by the measure to the competent authorities in charge of verifying the fulfilment of any relevant coverage obligations. These conditions ensure that the aid scheme will complement any existing mobile coverage obligation imposed on the MNOs. Any breach of this commitment will result in the claw-back of the aid granted.

⁵ Passive mobile infrastructure covered by this measure includes the engineering, civil works (land, plots and accesses adaptation) and towers (30m high).

2.3 Investments and models of intervention

- (12) The Spanish Authorities plan to implement the measure by means of: (i) a direct investment model to deploy passive mobile infrastructures and (ii) a gap funding model to support also active equipment.

2.3.1 *Direct investment in passive access mobile infrastructure*

- (13) The deployment of the passive component of the access mobile infrastructure will be implemented in the target areas by the in-house public company RETEGAL⁶. The relevant public authorities will identify the areas where the infrastructure will be deployed, as well as the existing infrastructure that could be reused for the purposes of the measure (e.g. TV repeaters, water tanks, etc.).
- (14) RETEGAL will ensure the deployment of the passive mobile infrastructure (towers).
- (15) The Spanish Authorities estimate that in 8% to 10% of the cases, existing infrastructures could be reused, but in all cases the construction of new towers would be necessary⁷.
- (16) For each of the interventions necessary for guaranteeing the availability of mobile voice services in the intervention area, RETEGAL will organise competitive selection procedures to award construction contracts in a competitive selection process, in accordance with the Spanish and EU public procurement rules.
- (17) Once the infrastructure is built, RETEGAL will offer passive wholesale access to the State-owned network acting as a wholesale-only operator. The operation of the active elements of the network level will be organised as explained in section 2.3.2.
- (18) The deployed passive mobile infrastructure will have enough capacity to allow the operation of all MNOs holding spectrum in Spain.
- (19) The supported passive mobile infrastructure will be made available to all interested MNOs at cost-oriented prices set by the Spanish Authorities and based on fair and transparent terms, taking into account the recommendation provided by the NRA.

2.3.2 *Gap funding – subsidies to MNOs for the placement of active equipment*

- (20) The subsidies for the placement of active equipment in the target areas on top of the passive mobile infrastructure deployed under the first type of intervention will be granted to MNOs through a competitive selection process.

⁶ RETEGAL is a public company established by Decree 58/1997, of February 20, of the Xunta de Galicia, which creates the company Redes de Telecomunicación Galegas Retegal, S.A. It manages and operates telecommunications infrastructures, systems and services within the Autonomous Community of Galicia (more information available on <https://www.retegal.gal/es>).

⁷ Based on estimations, 113 new towers have to be deployed to ensure coverage in the target areas.

- (21) The subsidies can be used to deploy active equipment for the access network and the backhaul network. The Spanish Authorities have clarified that, in line with the principle of technology neutrality, any technology may be used as long as it ensures that the objectives of the measure, i.e. providing adequate mobile voice services⁸, will be achieved.
- (22) According to the Spanish Authorities, providing subsidies for active equipment is necessary to ensure the actual provision of at least mobile voice services in all the target areas and to guarantee that at least one mobile network in each of the target areas will be available. As confirmed in the mapping and public consultation exercise, the availability of mobile passive infrastructure will not be enough to incentivise the MNOs to provide the service (see recital (10)). On this basis, the Spanish Authorities consider that without public support for the placement of active equipment, the private operators will not be interested in making the necessary investments to provide at least mobile voice service in the target areas, even in areas where the mobile passive infrastructure is deployed.
- (23) The Spanish Authorities indicate that in order to benefit from State aid the beneficiaries of this measure will be required to ensure the provision of at least mobile voice services to at least 90% of the inhabitants in the target areas with an outdoor signal level higher than 90 dBm.
- (24) MNOs receiving support for the purchase of active equipment are required to provide mobile services as described in recital (23) for at least seven years from the granting of the aid. They will also be responsible for the maintenance of the equipment. In addition, and for the same period of time, the beneficiary MNOs will provide active wholesale access to other MNOs at fair, reasonable and non-discriminatory conditions. The prices and conditions for wholesale access will be set by the NRA (Comisión Nacional de los Mercados y de la Competencia, “CNMC”) that is also competent for dispute resolution related to wholesale access conditions and prices. The beneficiaries will also make available to other MNOs all information regarding the network’s location and conditions of use, including wholesale access products and prices.

2.4 Legal basis

- (25) The notified measure is based on the following legal basis:
- a) Resolution of 21 January 2021 approving the legal basis for granting of subsidies following a competitive selection process for the deployment of mobile networks in rural, isolated areas, co-financed by the European Agricultural Fund for Rural Development (EAFRD) in the framework of Galicia’s Rural Development Plan 2014-2020. The Resolution was published in the Galicia Official Journal n. 26 of 9 February 2021.
 - b) Law 9/2007, of 13 June, on subsidies granted by Galicia⁹.

⁸ The measure requires the provision of an outdoor mobile voice signal above -90 dBm for at least 90% of the target areas’ population.

⁹ Available at: <https://www.boe.es/eli/es-ga/l/2007/06/13/9>

c) Decree 11/2009, of 8 January, approving the Regulation implementing the Law 9/2007, of 13 June, on subsidies granted by Galicia¹⁰.

d) Law 5/2007, of 7 May, on emergencies in Galicia¹¹.

e) Law 3/2013, of 20 May, on the promotion and organization of the telecommunication infrastructures in Galicia¹².

(26) The current Decision is also part of the legal basis.

2.5 Overlap with other aid measures

(27) The measure will run in parallel to other national measures aiming to support the deployment of mobile networks. RETEGAL and the Spanish Authorities, as well as the MNOs benefitting from the aid, will maintain adequate separate accounting clearly identifying the different sources of financing and the projects for which they are used. To ensure that there will not be any undue overcompensation of beneficiaries under the present measure, the Spanish Authorities will check when awarding aid directly to RETEGAL and to the selected MNOs that there is no other public financing for the same eligible costs and that all State aid rules are respected.

2.6 The Granting Authority

(28) The granting authority is Galicia's Technological Modernisation Agency which is attached to the regional government of Galicia.

(29) The Agency is responsible for the selection of the beneficiaries, the management of the costs and revenues of the project, as well as for its monitoring.

2.7 Budget and duration

(30) The budget of the measure is estimated at maximum EUR 9 million, out of which an estimate of EUR 5 million for the deployment of the mobile passive infrastructure and an estimate of EUR 4 million for the placement of active equipment.

(31) The measure will be financed by the Spanish and the Galician budgets as well as by the European Agricultural Fund for Rural Development ("EAFRD")¹³.

(32) The scheme will apply until 31 October 2023, which is the date until which aid can be granted under this measure.

¹⁰ Available at: https://www.xunta.gal/dog/Publicados/2009/20090129/Anuncio5556_es.html

¹¹ Available at: https://www.xunta.gal/dog/Publicados/2007/20070516/Anuncio14752_es.pdf

¹² In particular, Articles 2.2 and 14.1. Text available at: https://www.xunta.gal/dog/Publicados/2013/20130607/AnuncioC3B0-310513-0001_es.pdf

¹³ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005.

- (33) The eligible costs will be all costs for the construction, management and operation of a passive mobile network and the procurement of related active equipment. In the first intervention, the aid amount will not exceed the difference between the eligible costs and the operating profit of the investment during its lifespan. In the second intervention, the maximum aid amount will be established on the basis of a competitive selection process as set out in section 2.11.
- (34) Funding may only be granted for interventions that have not yet started or that were not already planned (under private or public initiative) within the next three years.
- (35) Additional funding can be granted by other measures to deploy additional passive infrastructure or install additional active equipment in order to provide a higher quality of service than the one achieved with this measure when justified under the conditions applicable to these measures. However, no other public financing can be granted for the same eligible costs (recital (27)).
- (36) The Granting Authority will observe and check if the fundamental prohibition of double funding is respected. In case this prohibition is infringed, the funding pertaining to this scheme will be returned to the Granting Authority.

2.8 Beneficiaries and aid intensity

- (37) In the first intervention, under the direct investment model, the State aid beneficiaries are RETEGAL and the regional authorities that plan, build and operate the elements of the passive mobile infrastructure. The aid intensity will be 100% of the difference between the eligible costs and the operating profit of the investment. RETEGAL will provide only wholesale services using the subsidised network. RETEGAL and the regional authorities will ensure accounting separation between the funds used for the operation of the network and other funds at the disposal of RETEGAL and the regional authorities.
- (38) In the second intervention, Spanish Authorities under a gap funding model to support the placement of active equipment, the beneficiaries are MNOs selected through an open, transparent and non-discriminatory competitive selection process, in line with the principles of public procurement rules and respecting the principle of technology neutrality without prejudice to the applicable public procurement rules, based on the most economically advantageous offer¹⁴. Only MNOs which have the right to provide mobile electronic communication services in Spain will be eligible to receive State aid under this measure. The maximum aid intensity will be 90% of the eligible costs, as established pursuant the competitive selection procedure. The Spanish Authorities have clarified that eligible costs under the present measure cannot exceed the corresponding market value for the placement of comparable active equipment. The reasonableness of the costs principle will apply, in accordance with Article 48(2) e) of Commission Implementing Regulation No 809/2014¹⁵. For this purpose, the beneficiaries will,

¹⁴ As defined by the General Telecommunications Law 9/2014 of 9 May 2014.

¹⁵ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.

with regard to all eligible costs for the procurement of active equipment, either solicit three offers from different suppliers or carry out a selection procedure guaranteeing that the best technical and economic proposals are chosen. Companies linked to the beneficiaries are excluded.

2.9 Mapping

- (39) In 2019, given the lack of precise data on the availability of mobile voice services coverage in Galicia, the regional Authorities asked the MNOs to provide such information. However, the Spanish Authorities indicate that in reply to their request, MNOs only provided theoretical data, lacking sufficiently granular information regarding coverage in small areas. On this basis, in 2020, the Spanish Authorities requested the local authorities to provide information about mobile coverage gaps affecting their territories. 94 local authorities reported the existence of gaps in the mobile coverage.
- (40) Based on the information received, the Spanish Authorities carried out measurements campaigns aimed at confirming the existence of the coverage gaps claimed by the local Authorities. As a result, 386 areas were included in the targeted areas to be verified through public consultation.

2.10 Public consultation

- (41) The public consultation took place between 19 November 2020 and 10 December 2020. The consultation contained a summary of the planned support measures and a description of the potentially targeted areas. The market operators were specifically asked for their views on the proposed measure, as well as on their potential plans to deploy mobile networks in those areas, which could improve the coverage and allow the provision of at least mobile voice services, over the next three years.
- (42) The public consultation, as well as the submissions received, were published in the website of AMTEGA (Agencia para la Modernización Tecnológica de Galicia)¹⁶.
- (43) Eight submissions were received¹⁷. The respondents requested that certain areas are added or removed from the list of targeted areas provided by the Spanish Authorities. In particular, 96 out of the 386 areas were reported as already covered in the public consultation. On this basis, the Spanish Authorities carried out new measurements to establish the availability of mobile services in these areas and concluded that mobile coverage was not de facto available, but, in the interest of competition and to limit the risks of any potential competitive distortions, the Spanish Authorities decided to remove the 96 areas from the list of targeted areas.
- (44) On the basis of the public consultation, it was confirmed that there is no network present or credibly planned in the next three years in the remaining areas (i.e. 290 areas).

¹⁶ <https://amtega.xunta.gal/es/coberturamovil>

¹⁷ One from a private citizen, three submissions from MNOs and four from local authorities.

2.11 Competitive selection procedure

- (45) The intervention model chosen by the Spanish Authorities in the first step relies on direct investment, whereby the public authorities deploy and manage the mobile passive infrastructure through a fully owned wholesale only network operator, RETEGAL.
- (46) The Spanish Authorities have confirmed that:
- (i) the publicly owned network operator RETEGAL will limit its activity to the predefined target areas and will not expand to other areas;
 - (ii) RETEGAL will not engage in competition at retail level with commercial operators but will limit its activity to maintain the passive infrastructure and to grant wholesale access to the passive infrastructure at fair, transparent and non-discriminatory conditions;
 - (iii) any concession or other entrustment to a third party to build or operate the passive network will be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, without prejudice to the applicable public procurement rules, based on the most economically advantageous offer;
 - (iv) the Spanish Authorities and RETEGAL will maintain an accounting separation for the funds used for the construction and operation of the network (separate from any other funds at the disposal of the Spanish Authorities and RETEGAL).
- (47) The selection of the beneficiaries of the subsidies for the placement of the active equipment will be carried out by means of a competitive selection procedure based on the most economically advantageous offer.
- (48) The Granting Authority will evaluate the bids against six qualitative award criteria established and published in advance by the Spanish Authorities.
- (49) The award criteria are: (i) number of areas covered; (ii) target population covered; (iii) weighted value of the proposed total coverage against the amount of aid requested¹⁸; (iv) deployment plan; (v) technological solution; and (vi) monitoring and control plan.
- (50) To benefit from aid, offers must obtain a minimum of 30% of the maximum possible score.
- (51) The Spanish Authorities committed to ensure that all selection procedures must:
- (i) be in line with the spirit and principles of public procurement rules and respecting the principle of technology neutrality, without prejudice to the applicable public procurement rules, based on the most economically

¹⁸ The Granting Authority will award more priority points to projects presenting a better ratio between the requested amount of aid and the areas covered.

advantageous offer; (ii) ensure transparency for all interested bidders; (iii) ensure equal and non-discriminatory treatment of all bidders and objective evaluation criteria; (iv) be published on a dedicated website.

2.12 Step change

- (52) The Spanish Authorities confirmed that the measure will ensure a “step change” in comparison to the existing and credibly planned networks in the target areas. The measure will support the provision of at least mobile voice services in areas where such services are currently unavailable. Moreover, the public intervention, bringing new investments in the mobile networks will enable (where compatible with the structure of the measure¹⁹) other and significant new capabilities to the market, including access to mobile data services.
- (53) The measure will also pave the way to the future development of advanced services (i.e. 5G) by lowering the initial barrier to their implementation.
- (54) The Spanish Authorities consider that significant investments in infrastructure will be made as part of the first step of the measure, aiming to deploy passive mobile infrastructures with sufficient capacity to serve all the MNOs active in Spain. The Spanish Authorities also underline that support for active equipment will only be granted on top of the significant investment in new passive infrastructure, whereas marginal or standalone investments related only to the upgrade of the active components of the network will not be considered eligible for State aid. In addition, the Spanish Authorities submit that the subsidised network will allow effective access at different levels of the infrastructure in the way indicated in section 2.14, hence lowering the barriers to competition.

2.13 Technological neutrality

- (55) The Spanish Authorities confirmed that the beneficiaries will be selected based on objective criteria in line with the principle of technological neutrality.
- (56) In the first intervention, the Spanish Authorities have confirmed that although this is a direct investment model, RETEGAL will use or combine in the deployment of the passive mobile infrastructure (see recitals (14)) any technology suitable to deliver the objectives of the measure.
- (57) Any MNOs capable of providing mobile voice services in the targeted area will be eligible as beneficiaries in the second intervention. Wholesale access to other MNOs will be offered on fair, open, non-discriminatory terms in line with the principle of technological neutrality.

2.14 Wholesale access products and conditions

- (58) The Spanish Authorities have confirmed that for both types of interventions the beneficiaries will offer wholesale access on an open and non-discriminatory basis.

¹⁹ The measure is exclusively aimed at allowing the provision of mobile voice services. Availability of mobile broadband services is possible exclusively as a spillover of the investments necessary for the provision of voice services i.e. additional costs for the provision of broadband services cannot be financed.

- (59) Access to the passive mobile infrastructure deployed by means of the direct investment model (see recital (9)) will be unlimited in time irrespective of any possible future change in the ownership of the infrastructure. RETEGAL will not offer any retail services. RETEGAL will act as wholesale-only operator and will offer only passive wholesale access.
- (60) As regards the second type of intervention, the selected MNOs will provide active wholesale access to other MNOs. Active wholesale access services will be granted for a minimum of seven years.
- (61) The granting authority will define in a clear manner the conditions to ensure wholesale access to third-party operators and will ensure that the requirements for wholesale access will be outlined in a transparent manner in the contract with RETEGAL and in the competitive selection procedures' documents. The same access conditions will apply on the entirety of the network (including the part of it where existing infrastructure will be used). The access obligations will be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure.
- (62) Wholesale access services for both interventions will be provided on fair and non-discriminatory conditions to all access seekers on the basis of terms and conditions set by the CNMC which will also have competence to solve disputes on the application of the wholesale access obligations.
- (63) The Spanish Authorities indicated that for both types of interventions wholesale access will be provided at cost-oriented prices set by the Spanish Authorities and based on fair and transparent terms, taking into account the recommendation provided by the NRA.

2.15 National Regulatory Authority

- (64) The CNMC has been informed of the planned support scheme and was given the possibility to comment.
- (65) The CNMC welcomes the obligations imposed on the beneficiaries to provide wholesale access. The NRA indicated that the required fair and non-discriminatory access to the aided network should allow the operators requesting access to replicate the retail offerings. In addition, the network access obligation should be imposed for a minimum period of seven years. The Spanish Authorities took note of the NRA's comments and amended the applicable provisions of the measure.

2.16 Monitoring

- (66) The correct use of the funds will be monitored by the Granting Authority. In case of improper use, the Granting Authority will recover those funds .
- (67) The Grating Authority will monitor, in particular, the organisation of the competitive selection procedures and the deployment and operation of the networks in the targeted areas, including fulfilment of all requirements under the measure, based on the reporting obligations of beneficiaries.

- (68) In the event of breaches of the requirements set out under the measure, the aid received will be recovered by the Granting Authority. For instance, this will apply if the beneficiaries do not comply with the obligation to use the active equipment benefiting from State aid for the purposes of the present aid measure (as described in section 2.2) during at least seven years from the completion of the project. Moreover, should the expenses actually incurred by the beneficiaries in the second intervention be lower than the estimate expenses declared in the competitive procedure on the basis of which aid was granted, the Granting Authority will claw-back such amounts. Clawed-back amounts will be at the disposal of the Granting Authority who may decide to reinvest such amounts in further projects under the present scheme, in line with the requirements of the measure.

2.17 Transparency and reporting

- (69) The Spanish Authorities will ensure, for the entire duration of the measure, that all transparency requirements are met at each phase. The relevant information about the mobile network expansion will be published on the website of the Granting Authority that will allow easy access to all relevant acts and information regarding the measure.
- (70) The following information will be published: the full text of the approved aid scheme and its implementing provisions, the date of granting, the name of the aid beneficiaries, aid amounts and aid intensities as well as the technology used. This information must remain published for at least ten years and be available for the general public without restrictions.
- (71) The Granting Authority as well as the beneficiaries are obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on the mobile passive infrastructure (including ducts, dark fibre, electricity connection, foundation, access routes and masts) deployed under the measure, which will facilitate other operators' access to the infrastructure.
- (72) The Granting Authority and the beneficiaries will also publish detailed information concerning wholesale access conditions and prices.
- (73) The Spanish Authorities will report to the Commission about the application and the progress of the measure every year. The report will contain the following key data concerning the aid project: the information already published in accordance with the transparency requirements (as above); the date on which the networks are expected to become operational; the wholesale products and access conditions and pricing; the number of parties seeking access and service providers in the network; information regarding any disputes regarding the project, if any, and in particular concerning wholesale access, as well as how such disputes were resolved.

3 ASSESSMENT OF THE MEASURE

3.1 Lawfulness of the measure

- (74) By notifying the measure before putting it into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU.

3.2 Existence of aid

- (75) According to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."
- (76) 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.

3.2.1 Undertaking

- (77) 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 financed.²⁰
- (78) The construction and operation of the mobile passive infrastructure as well as the procurement, installation and operation of active equipment with a view of providing mobile services on a commercial basis constitutes an economic activity. The operation of an electronic communication network is an economic activity within the meaning of Article 107(1) TFEU.²¹ The beneficiaries engage in activities consisting in offering services on the electronic communications market i.e. construction and operation of mobile infrastructure as well as provision of mobile services. They are thereby considered undertakings within the meaning of Article 107(1) TFEU.
- (79) In particular, in line with the functional character of the notion of "economic activity" in Article 107(1) TFEU, it is irrelevant whether the recipient of the funds is an entity with a separate legal status or an integrated part of the administration.²² The operation of a network by a public entity, even if limited to a passive network infrastructure, is an economic activity within the meaning of Article 107(1) TFEU.²³ Therefore, RETEGAL exercises an economic activity.

3.2.2 State resources and imputability

- (80) 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

²⁰ Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

²¹ Judgment by the General Court of 24 March 2011, Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission, T-455/08, ECLI:EU:T:2011:117, paragraph 90 and following.

²² Case C-188/85, Commission v. Italy, ECR 1987 p. 2599, paragraph 13; see also, with further references in this regard, judgment by the General Court, Freistaat Sachsen and Land Sachsen-Anhalt v. Commission, T-455/08, ECLI:EU:T:2011:117, paragraphs 88 and 89.

²³ Judgment by the General Court, Freistaat Sachsen and Land Sachsen-Anhalt v. Commission, T-455/08, ECLI:EU:T:2011:117, paragraph 90 and following.

conferred on it.²⁴ Resources of local and regional authorities are State resources for the purposes of the application of Article 107(1) TFEU.²⁵ As described in recital (31), the measure is financed from the budget of Spain and Galicia and Union funds. The financing is allocated to the beneficiaries under the control of the Granting Authority, which, as shown in recitals (28) and (29), is an agency attached to the regional government of Galicia and designated to administer the measure. The Granting Authority will be in charge of implementing the measure, will decide the grant of the aid once the conditions are fulfilled and will check if the aid has been correctly spent.

- (81) Hence, State resources are involved and the measure is imputable to the State.

3.2.3 *Economic advantage*

- (82) 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 intervention²⁶.
- (83) Beneficiaries will receive grants amounting up to about EUR 5 million for the rolling out of mobile passive infrastructure in Galicia and about EUR 4 million for the placement of active equipment. This enables the beneficiaries to provide services in the target areas on conditions that would otherwise not be available under normal market conditions.
- (84) The measure thus confers an advantage to the beneficiaries by reducing the costs that they would normally have to bear under normal market conditions, as compared to companies investing into mobile networks and services only on the basis of private funds under the same technical, commercial and legal conditions in the liberalised market without public financial support.
- (85) In geographic areas where no equivalent commercial investment exist or is envisaged in the near future, the intervention of the public authorities cannot be perceived as being carried out on market terms. RETEGAL will construct the passive infrastructure in the interest of the public interest with a view to attracting and supporting investments in those areas. Unlike a private market investor, the Spanish Authorities through their in-house company Retegal, pursue the wider policy interests to increase mobile connectivity to the benefit of citizens and businesses in Galicia.
- (86) It is hence considered that Galicia grants an advantage to the identified beneficiaries which they would not have had under normal market conditions.

²⁴ Case C-482/99 *France v Commission* (hereafter: "*Stardust Marine*") ECLI:EU:C:2002:294.

²⁵ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08 *Nord-Pas-de-Calais*, not yet published, paragraph 108.

²⁶ Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

3.2.4 *Selectivity*

- (87) To fall within the scope of Article 107(1) TFEU, a State measure must favour "certain undertakings or the production of certain goods". In the case at hand, the measure is aimed at the beneficiaries identified in (recitals (37) and (38)).
- (88) The measure thus targets only certain undertakings that are active in one industry sector (the electronic communications sector) and only in certain segments of the overall electronic communications market (deployment and operation of mobile networks), to the exclusion of other electronic communications services and other economic activities.²⁷ The measure is therefore sector-specific. The measure favours in particular certain companies providing mobile communication services (RETEGAL and eligible MNOs that will be selected in the competitive selection procedures). It excludes, in principle, other types of electronic communications networks and services providers such as fixed network or services providers, or other providers, when these cannot provide mobile communications services.
- (89) As concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the construction and operation of mobile networks as well as the provision of mobile services is a liberalised economic activity usually conducted by commercial operators on the basis of private investments in the market. In such a framework, economic activities normally do not receive subsidies. Indeed, the deployment and operation of mobile passive infrastructure as well as the provision of mobile services in the 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 the granting of subsidies.
- (90) The measure is moreover territorially selective as the measure is set up with the aim of rolling out mobile passive infrastructure and provide mobile services only in the target areas in Galicia.
- (91) The measure is therefore selective.

3.2.5 *Effect on trade and competition*

- (92) As regards the construction of infrastructure, the Commission considers that an effect on trade between Member States or a distortion of competition is normally excluded in cases where at the same time (i) an infrastructure typically faces no direct competition, (ii) private financing is insignificant in the sector and Member State concerned and (iii) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large.
- (93) The present case concerns the development of mobile passive infrastructure to be used only for the provision of mobile services and the provision of such services in target areas in Galicia. When looking at the mobile communications sector in Galicia and in Spain in general, it must be concluded that there is significant private financing of the deployment of mobile passive infrastructure all over the country.

²⁷ See also Judgment of the Court of 15 June 2006 Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, paragraph 31.

- (94) The markets for deployment and operation of and access to mobile passive infrastructure, and the provision of mobile voice services are open to competition between providers, which generally engage in activities that are subject to trade between Member States. Moreover, the construction and operation of the mobile passive infrastructure may be delivered by a company from other Member States having cross-border activities.
- (95) By favouring certain operators and service providers, the notified intervention alters the existing market conditions and is liable to distort competition and affect trade between Member States. It will create the availability of passive and active infrastructure which 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 services offered in the subsidised network rather than more expensive market solutions.
- (96) It must therefore be considered that the support scheme in question is capable of distorting competition and has an effect on trade between Member States.

3.2.6 Conclusion

- (97) The Commission concludes that the notified support scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.3 Compatibility

- (98) The Commission has to assess whether the aid can be found compatible with the internal market.
- (99) 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”²⁸), the measure is not assessed under the Broadband Guidelines²⁹. Therefore, the Commission assesses the compatibility of the measure with the internal market pursuant to Article 107(3)(c) TFEU and in analogue application of the Broadband Guidelines, where appropriate³⁰.

²⁸ Performance gaps persist between fixed and mobile technologies in terms of capabilities (speed, latency, sensitivity to external electromagnetic and meteorological interferences). Therefore, mobile broadband was found to be complementary (not substitutable) to fixed broadband. See Study prepared for the European Commission DG Communications Networks, Content & Technology by WIK Consult, “Future electronic communications product and service markets subject to ex-ante regulation Recommendation on relevant markets, Final report” page 29-33, (“WIK Study”) available at: <https://op.europa.eu/en/publication-detail/-/publication/7309fa31-b758-11ea-bb7a-01aa75ed71a1>. The Commission reach a similar conclusion underlining also differences in price, stability on the network connection and secured access, in merger case M.8864 Vodafone / Certain Liberty Global Assets, paragraph 53, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8864

²⁹ 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 (hereafter the “Broadband Guidelines”).

³⁰ See also State Aid SA.48324 (2018/N) – Germany Mobilfunk Bayern available at: https://ec.europa.eu/competition/state_aid/cases/275029/275029_2029861_118_2.pdf.

- (100) Article 107(3) TFEU provides for certain exemptions to the general rule set out in Article 107(1) TFEU that State aid is not compatible with the internal market. In particular, pursuant Article 107(3)(c) TFEU the following may be considered compatible: "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest". To be declared compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest³¹.
- (101) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities and in particular:
- a) the economic activity facilitated by the aid measure;
 - b) the incentive effect of the aid, in that 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 aid or would carry out in a restricted or different manner or location;
 - c) the existence of a breach of any provision of Union law in relation to the measure at stake.
- (102) Under the second condition, the Commission weighs up the positive effects of the planned aid for the development of the activities that the aid is intended to support and the negative effects that the aid may have on the internal market, in terms of distortions of competition and adverse effects on trade caused by the aid. In this regard, and also by analogy with the Broadband Guidelines, the Commission assesses:
- a) the positive effects of the aid;
 - b) 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;
 - c) whether the aid is an appropriate policy instrument to meet its objective;
 - d) 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;
 - e) 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;

³¹ Judgment of 22 September 2020, Case C-594/18 P, Austria v Commission (Hinkley Point C), ECLI:EU:C:2020:742, para. 19.

f) the negative effects of the aid on competition and trade between Member States.

- (103) As a final step, the Commission will balance the identified negative effects on the internal market of the aid measure with the positive effects of the planned aid on the supported economic activities.

3.3.1 First condition: facilitation of the development of an economic activity

3.3.1.1 Mobile network as facilitators of economic activities

- (104) The Spanish Authorities have submitted that the measure supports the development of an economic activity consisting in the deployment and operation of mobile passive infrastructure as well as the provision of at least mobile voice services in the target areas. To this end, Galicia, through RETEGAL (see recital (37)) will deploy the mobile passive infrastructure in areas in which private operators would have not invested otherwise. In addition, the measure will provide support for MNOs to place active equipment on the financed passive infrastructure and provide at least mobile voice services in the same target areas. The measure hereby aims at overcoming market failures which jeopardize the ability to ensure that citizens and businesses in the target areas have access to mobile communications infrastructure and services that address their needs.

3.3.1.2 Incentive effect

- (105) As shown in section 2.9, the measure would facilitate the development of the above mentioned economic activity in areas where such activity was neither present nor credibly planned.
- (106) As shown in section 2.10, to ensure an incentive effect for the development of the indicated economic activity, a public consultation was carried out to verify that in the intervention areas there was no interest to deploy mobile networks with private funds in the next three years. The Spanish Authorities confirmed that the target areas would have not been supplied on the basis of the coverage obligations attached to rights of use of spectrum (see recital (11)). Only in case such investments are not foreseen in the target areas can the aid be granted. The Spanish authorities also indicated that MNOs using the supported infrastructure had to confirm in writing to the Granting Authority that they would not declare areas covered with the support of this measure for the purpose of fulfilling any coverage obligation. The Spanish Authorities will also notify the areas covered by the measure to the competent authorities in charge of verifying the fulfilment of any relevant coverage obligations. Any breach of this commitment will result in the claw-back of the aid granted.
- (107) The Commission therefore considers the aid scheme to have an incentive effect to further develop this economic activity in a manner that promotes connectivity and access to at least mobile voice services by citizens and businesses in the target areas.

3.3.1.3 Compliance with other provision of the Union law

- (108) 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 market³².
- (109) As concerns this measure, the Commission is not aware of any possible breach of Union law that would prevent the measure from being declared compatible with the internal market.
- (110) In view of the above, the Commission considers that the notified measure facilitates the development of the economic activity of the mobile communications sector, as required by Article 107(3)(c) TFEU.

3.3.2 *Second condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest*

3.3.2.1 Positive effects of the aid

- (111) The measure will facilitate the deployment of passive mobile infrastructure and access to (at least) mobile voice services which are necessary in the modern society. Furthermore, the availability of mobile networks will reduce the potential safety problems posed by the lack of availability of mobile services in emergency situations, which is of particular importance in view of the touristic interest of the Autonomous Community of Galicia due to the presence of the ‘Camino di Santiago’ (see recital (8)). As shown in recitals (43) and (44), in Galicia, once the coverage obligations are fulfilled and taking into account the planned private and public investments, there will still remain approximately 290 villages and surrounding areas where suitable mobile infrastructure and services will not be provided under normal market conditions. The measure will provide support in these gap areas, taking into consideration the results of the mapping and the public consultation.
- (112) The measure will allow for people living, working or travelling in the target areas to receive access to (at least) mobile voice services. This will allow people entering and moving through such areas (e.g. for touristic reasons) to continue communicating seamlessly. It will also facilitate the work of emergency doctors serving the target areas. Indeed, being into an area without mobile coverage have serious consequences for people facing emergency situations.
- (113) The measure will thus contribute to correct social or regional inequalities, and achieve equity objectives, as a way of improving access to an essential means of communication and participation in society, thereby improving social and territorial cohesion.
- (114) The measure will contribute to the achievement of objectives of Union digital policy, and more specifically, to reduce the ‘digital divide’. All this can be seen against a wider ambition of the Union that there should be access to mobile

³² Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

connectivity throughout the territory, in all places where people live, work, travel and gather³³. The European Electronic Communication Code also identifies the general objective of promoting connectivity and access to, and take-up of very high capacity networks, including mobile networks, by all citizens and businesses of the Union³⁴.

(115) Therefore, the notified measure has positive effects in the target areas.

3.3.2.2 Necessity of the aid: absence of market delivery due to market failures or important inequalities

- (116) A market failure exists if markets, left on their own, without 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 the cost.
- (117) Access to mobile services is needed to address the needs of citizens and businesses in the target areas, also taking into account the touristic sector of particular relevance for the region in view of the attractiveness of the ‘Camino de Santiago’.
- (118) As shown by the current mapping and verified in the public consultation, private companies do not find it profitable to invest in the targeted remote or less densely populated areas of Galicia. The target areas will not count towards the coverage obligations attached to spectrum use. As shown in recital (11), the MNOs will not report subsidised infrastructure under their coverage obligations arising out of their spectrum rights of use. Furthermore, potential fixed services in those areas cannot meet the needs covered by mobile services, namely to provide access to (at least) voice mobile services "on the move".
- (119) The Spanish Authorities have carefully considered the possible ways to address this market failure in view of minimizing the scope of the intervention. In particular, they have assessed whether limiting the intervention only to the passive mobile communications infrastructure (see recital (9) and (10)) would have provided a sufficient incentive to MNOs to provide mobile services in the target areas. The Spanish Authorities clarified that MNOs had declared that they would have no interest in providing mobile coverage even if the passive mobile infrastructure was available. As clarified in recital (10), MNOs expect the profitability associated with the provision of services in the target areas to be very limited due to the very low population density and high maintenance costs.
- (120) On this basis, the Commission considers that in these circumstances, where there are no alternatives to the financing of active equipment, in the specific circumstances of this case, in the absence of the additional public support for the

³³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Connectivity for a Competitive Digital Single Market: Towards a European Gigabit Society, COM(2016) 587 final, (“Gigabit Communication”) page 8.

³⁴ See Article 3 (2) (a) and (d) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

placement of active equipment, the market failure would have continued to exist to the detriment of citizens and businesses.

- (121) To determine the existence of a market failure the Spanish Authorities have carried out a detailed mapping and public consultation: the Spanish Authorities have identified all potential target areas on the basis of a detailed mapping exercise (see section 2.9) and public consultation involving all stakeholders and published on a central online website, ensuring a high degree of transparency (see section 2.10) which also included the main characteristics of the measure.
- (122) The Commission considers this to be sufficient to ensure proper publicity and identify which geographic areas will be covered by the measure. The Spanish Authorities have demonstrated that a thorough analysis of existing mobile networks, as well as investment plans for the near next three years, has been conducted in order to identify the areas where public intervention is necessary. The Spanish Authorities confirmed in their notification that no objections to this measure, as amended following the public consultation, and to the identification of target areas, had been raised. This will ensure that only areas where there is no interest for commercial deployment are developed and no overlapping infrastructures are created. This will serve to avoid risks of crowding-out private investments and distorting competition vis-à-vis existing operators.
- (123) It can therefore be concluded that the notified measure contributes to addressing a market failure in sparsely populated and topographically difficult areas of Galicia where private operators do not currently provide any mobile voice services and are not willing to invest on a commercial basis in the near future, resulting in a positive development of the economic activity at issue.

3.3.2.3 Appropriateness of the aid measure as a policy instrument

- (124) It should also be assessed whether State aid is an appropriate policy instrument to further develop the economic activity at issue or whether there are alternative, less-distortive instruments.
- (125) In order to be appropriate, the State funded mobile networks must provide significantly enhanced characteristics in comparison to existing networks. Thus, the new mobile networks should be able to ensure a step-change. A step-change can be demonstrated if as the result of the public intervention (i) the new mobile network deployment represents a significant new investment in the electronic communications network and (ii) the State funded network brings significant new capabilities to the market in terms of mobile service availability, capacity, speeds and competition.
- (126) The step-change is assessed by comparing the characteristics of the current mobile network(s) and the characteristics of the new mobile network. Credibly planned network roll-outs are not 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. As clarified in sections 2.9 and 2.10 the passive mobile infrastructure and the active equipment will be deployed in areas in which there is no present or credibly planned mobile network.

- (127) As clarified in section 2.12 the Spanish Authorities the public intervention will bring significant new investments in the electronic communications network (see recital (30)) and significant new capabilities to the market as the measure will support the provision of at least mobile voice services in areas where such services are currently unavailable. The Spanish Authorities clarified that the measure would constitute a significant investment since it supports both the deployment of new passive infrastructure and, in a second intervention, the procurement of active equipment in an area where no mobile networks exist. The new network will provide at least mobile voice services.
- (128) State aid is not the only policy instrument available to Member States to boost investment in the deployment and operation of mobile networks. Member States can use alternative instruments, such as mobile coverage obligations attached to rights of use of spectrum and demand-side measures. As shown in recital (11) compliance with the coverage obligations will not ensure a proper development of this economic activity within the target areas. Furthermore, demand-side measures are not appropriate means to develop the economic activity. In fact, the required mobile network for the provision of mobile services in the target areas does not yet exist and its construction would not be economically viable for MNOs due to the low population density in these areas.
- (129) The Commission therefore considers the aid scheme to be an appropriate policy instrument for developing the economic activity in the target areas in Galicia.

3.3.2.4 Proportionality of aid measure: aid limited to the minimum necessary

- (130) The Spanish Authorities have designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the public intervention. In this respect, and by analogy with the Broadband Guidelines³⁵ the Commission notes the following elements in the design of the State aid scheme:
- (131) **Mapping and public consultation:** The Spanish Authorities identified all potential target areas following mapping and public consultation (see section 2.9. and 2.10). The main characteristics of the measure have been made public in the public consultations of 19 November 2020 and 10 December 2002. The final target areas were identified pursuant the public consultation and taking into account comments made as part of this process (recital (43)). The Commission considers this to be sufficient to ensure that the measure covers only target areas where the intervention is necessary.
- (132) **Competitive selection process and most economically advantageous offer:** As regards the first intervention, under the direct investment, RETEGAL was not chosen by way of a competitive selection process. The Spanish Authorities have chosen to deploy the measure via a direct investment model where the public authorities deploy and manage the network through a fully owned entity, the in-house company RETEGAL. However, the Commission considers the Spanish

³⁵ See in particular recital 78 of the Broadband Guidelines.

Authorities have put in place a number of safeguards which ensure that no distortion of competition occurs:

- (i) the publicly owned network operator RETEGAL will limit its activity to the predefined target areas and shall not expand to other commercially attractive regions;
 - (ii) RETEGAL shall not engage in competition on the retail levels with commercial operators but shall limit its activity to maintain the passive infrastructure and to grant wholesale access to the passive infrastructure under fair, transparent and non-discriminatory conditions;
 - (iii) any concession or other entrustment to a third party to build or operate the passive network shall be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, without prejudice to the applicable public procurement rules³⁶, based on the most economically advantageous offer;
 - (iv) the Spanish Authorities and RETEGAL will maintain an accounting separation for the funds used for the construction and operation of the network (separate from any other funds at the disposal of the Spanish Authorities and RETEGAL). They will moreover select the companies that will build the passive infrastructure via an open, transparent and non-discriminatory competitive selection procedure. The network will remain in public ownership and RETEGAL will manage the network directly at wholesale level.
- (133) As regards the second intervention, the selection of MNOs which will place active equipment will be tendered out according to national and EU public procurement rules aiming to select the most economically advantageous offer and respecting the principles of openness, non-discrimination and transparency. This will help minimize budgetary costs and the potential State aid involved.
- (134) The competitive selection process carried out as described in section 2.11 will ensure that there will be transparency for all operators wishing to bid for the placement of active equipment. The beneficiaries will be chosen in a fair, transparent and non-discriminatory selection procedure. On the basis of the explanation in section 2.11 recitals (48) and (49), the Commission is satisfied that all bidders will be assessed according to pre-established qualitative award criteria that will be weighed against the price offered in the bid.
- (135) The following minimum requirements must be fulfilled for all competitive selection processes, whether for the construction of the passive mobile infrastructure, or for the selection of operators to place active equipment and provide mobile services: (i) all selection procedures must be in line with the spirit

³⁶ Concession Directive 2014/23/EU will be applied to award of concessions.

and principles of the EU public procurement directives; (ii) all selection procedures must ensure transparency for all interested bidders; (iii) all selection procedures must ensure equal and non-discriminatory treatment of all bidders and objective evaluation criteria; (iv) all selection procedures must be published on a dedicated website; (v) all bids will be assessed according to pre-established and weighted qualitative award criteria (see recitals from (48) to (50)), and in order to minimize the amount of aid to be granted, the bidder requesting the lowest amount of aid under comparable or even identical quality conditions will receive the most priority points within the overall assessment of its bid.

- (136) The Commission considers this to be sufficient to ensure for a competitive selection process and the most economically advantageous offers.
- (137) **Technological neutrality:** As described in Section 2.13, RETEGAL will use or combine in the deployment of the passive mobile infrastructure any technology suitable to deliver the objectives of the measure and, for the second intervention, any active equipment capable of supporting the provision of at least mobile voice services is eligible. The chosen network topology will ensure the technological neutrality of the network. Several alternative platforms will be able to use the new infrastructure to offer their own services to end users. Wholesale access will be offered on open and non-discriminatory terms in line with the principle of technological neutrality.
- (138) In view of the requirements of Galicia, other possible wireless technologies do not seem generally capable of offering an access equivalent, in terms of its characteristics and quality, to the access provided by mobile networks.
- (139) The Commission therefore considers that the State aid measure ensures the respect of the principle of technology neutrality.
- (140) **Use of existing infrastructure:** As explained in recitals (13) and (15) the Spanish Authorities will identify, through the relevant local authorities, the existing infrastructure that could be reused for the purposes of the measure (e.g. TV repeaters, water tanks, etc.). The Spanish Authorities estimate that in 8% to 10% of the cases, existing infrastructures such as ducts could be reused.
- (141) The Commission therefore considers that the State aid measure ensures the reuse of existing infrastructure.
- (142) **Wholesale access and pricing:** As explained in section 2.14, all interested parties will have fair, transparent and non-discriminatory access to the subsidised mobile passive infrastructure.
- (143) Effective wholesale access to the mobile passive infrastructure will not be limited in time. As regards the second intervention, active wholesale access will be provided for at least 7 years. The same access conditions will apply on the entirety of the network including where existing infrastructure will be used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure.
- (144) As concerns the sale of wholesale access by RETEGAL, the Spanish Authorities confirmed that RETEGAL will act as wholesale-only operator and provide passive wholesale access on an open, non-discriminatory basis. RETEGAL will

not offer retail services. The selected MNOs for the second intervention will provide active access. The wholesale access services will ensure fair and non-discriminatory conditions, in compliance with the requirements of the NRA, which will also have competence to solve disputes on the application of these conditions (recital (63)).

- (145) The Spanish Authorities indicated that for both types of interventions wholesale access will be provided at cost-oriented prices set by the Spanish Authorities and based on fair and transparent terms, taking into account the recommendation provided by the NRA.
- (146) The Commission therefore considers that the State aid measure ensures fair, transparent and non-discriminatory wholesale access for the first and the second intervention.
- (147) **Monitoring, reporting, transparency:** As shown in section 2.16, the Granting Authority will closely monitor the implementation of the aid scheme during the entire duration of the measure.
- (148) A clawback mechanism is not foreseen in relation to RETEGAL because a claw-back is not necessary in case of publicly-owned, wholesale only infrastructures managed by a public authority/in-house company with the sole purpose to grant fair and non-discriminatory access to all operators. For the MNO benefiting from the second intervention, a claw-back mechanism will be implemented see recital (68).
- (149) The Spanish Authorities will publish on a central website the necessary information as indicated in section 2.16. RETEGAL as well as the selected MNOs are obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on infrastructure deployed under the aid scheme, which will facilitate other operators' access to the infrastructure. RETEGAL and the MNOs will also published detailed information concerning wholesale-access conditions and prices.
- (150) Furthermore, for the duration of the aid scheme, the Spanish Authorities will provide information on the implementation of the measure and report every two to the Commission³⁷. These reports will at least contain information on: the information made public in line with transparency obligations and in particular: the date when the network is put into use, the wholesale access products offered and access conditions and pricing, the number of access seekers and type of technology used to connect to the network, information regarding any disputes regarding the project, if any, and in particular concerning wholesale access, as well as how such disputes were resolved. The Spanish Authorities also committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589.

³⁷ Such information will at least include besides the information already made public on the central website, the date when the supported infrastructure is put into use, the number of mobile network providers using it, the number of houses covered by the mobile communications networks, take-up rates.

- (151) These are important tools to minimise the measure's impact on the internal market since stakeholders or the Commission will be able to react against possible unlawful aid.

3.3.2.5 Negative effects on competition and trade

- (152) Aid for the deployment of mobile networks may have negative effects in terms of market distortions and 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 effects on competitors.
- (153) As concerns the measure under consideration, negative effects on competition and trade may not be excluded. It cannot be excluded that private operators may see the profitability of their prior investment decreasing 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 services offered by the State funded network rather than other market solutions. While the measure is not targeted at beneficiaries likely to be already dominant on the market, it is not excluded that in certain circumstances the public support may strengthen the position of operators already dominant on the market and may affect the overall competition on the mobile market as the aid measure could weaken the competitive constraints that competitors can exert.

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

- (154) 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.
- (155) The Spanish Authorities have demonstrated that the measure will provide positive effect on the supported economic activities (mobile connectivity) compared with what would have happened without the aid. As shown in section 3.3.2.1, the subsidised mobile passive infrastructure and placement of active equipment will enable the provision of (at least) mobile voice services to end-users that otherwise would not be available under normal market conditions. It will thereby help reduce the inequalities and digital divide, allow for seamless communication and reduce obstacles in emergency situations. The measure will deliver at least voice services "on the move" where these services are currently unavailable.
- (156) The Spanish Authorities have demonstrated that the negative effects are limited to the minimum necessary. The Spanish Authorities have designed the notified measure in such a way as to minimise the potential distortion of competition arising from the measure. The aid scheme is designed to avoid crowding out private investment and its effects are confined to areas in Galicia that are characterized by mobile coverage gaps, i.e. areas where no mobile voice services are available currently or within the following three years.
- (157) Furthermore, by granting access to the supported mobile passive infrastructure and providing wholesale active mobile access to all interested parties as described in section 2.14, the measure avoids the creation of local monopolies and aims at creating additional competition in target areas. The overall impact on competition

is deemed to be positive. The negative effects on competition, if any, would be very limited.

- (158) In light of the above, the positive impact of the aid 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 and operation of mobile passive infrastructure and the provision of (at least) mobile voice services. Moreover, such aid does not adversely affect competition to an extent contrary to the common interest.

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) of the Treaty on the Functioning of the European Union.

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

Your request should be sent electronically to the following address:

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Directorate-General Competition
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

