



EUROPEAN COMMISSION

Brussels, 13.05.2013  
C(2013) 2850 final

PUBLIC VERSION

This document is made available for information purposes only.

**Subject:**           **State aid SA.36132 (2013/N) – Lithuania**  
                          **Development of Rural Area Information Technology Network -**  
                          **Amendment**

Sir,

**1. PROCEDURE**

- (1) Following pre-notification discussions, by letter registered on 25 January 2013, pursuant to Article 108 (3) of the TFEU<sup>1</sup>, the Lithuanian authorities notified the expansion of geographic scope of the schemes approved by the Commission SA.28192<sup>2</sup> (the "initial scheme") and SA.34166 (the "2012 amendment")<sup>3</sup>, their prolongation by eight months and the corresponding budget increase. By letter registered on 21 February 2013, the Commission requested additional information on the proposed measure, to which the Lithuanian authorities submitted answers by letter registered on 28 February 2013. By

---

<sup>1</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU); the two sets of provisions are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate.

<sup>2</sup> State aid SA.28192; C(2009)5808 final of 17 July 2009;  
[http://ec.europa.eu/competition/state\\_aid/cases/230497/230497\\_978155\\_39\\_1.pdf](http://ec.europa.eu/competition/state_aid/cases/230497/230497_978155_39_1.pdf)

<sup>3</sup> State aid SA.34166; C(2012)3307 final of 16 May 2012;  
[http://ec.europa.eu/competition/state\\_aid/cases/243182/243182\\_1335424\\_70\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/243182/243182_1335424_70_2.pdf)

Mr. Linas LINKEVIČIUS  
Užsienio Reikalų Ministerija  
J. Tumo-Vaižganto g. 2  
LT-01511 Vilnius  
LIETUVOS RESPUBLIKA

letter of 2 May 2013, the Lithuanian authorities submitted additional information on the proposed measure.

## 2. CONTEXT

- (2) Through the initial scheme, the Lithuanian authorities introduced the measure "Development of Rural Area Information Technology Network" (RAIN). The Lithuanian authorities thereby aimed to develop a backhaul (i.e. middle-mile) network<sup>4</sup> infrastructure offering wholesale broadband services in non-served rural areas of Lithuania, to reduce entry barriers (by lowering investment costs) for commercial operators and thereby to encourage them to extend their broadband network coverage in rural areas. The 2012 amendment concerned exclusively the expansion of geographic scope of the initial measure, with no additional increase of the original budget.
- (3) This notified modification of the initial measure comes within the framework of the efforts undertaken by the Lithuanian authorities to better coordinate the RAIN project with other broadband projects in Lithuania, in order to maximize the covered areas and ensure the most efficient public spending. Thus, in order to give adequate attention to information and communication technologies as well as the Internet connection (in line with the Commission's recommendations), the Lithuanian authorities adapted their rural development program. The Commission approved<sup>5</sup>, pursuant to structural funds rules, the supplement of the Lithuanian Rural Development Programme for 2007-2013 with the Axis III "Quality of life in rural areas and diversification of rural economy" measure "*Village renewal and development*" with the submeasure "*The development of broadband network infrastructure in rural areas*" (hereinafter – the "submeasure" or the "PRIP project"). According to the Lithuanian authorities, the present State aid notification aims at the further development of the ongoing initial scheme (as amended in 2012) within the framework of this submeasure, with a view to contribute to the further development of broadband infrastructure in Lithuania. The notified aid therefore proposes to amend the initial scheme (including the 2012 amendment) to allow supplementing the RAIN project with the new PRIP project (the submeasure). For this purpose, the notified aid foresees additional financing<sup>6</sup>, the extension of the geographical scope of the initial scheme (as modified by the 2012 amendment)<sup>7</sup> and the prolongation of the initial measure by 8 months<sup>8</sup>.

---

<sup>4</sup> Backhaul (or middle mile) networks comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

<sup>5</sup> Decision C (2009) 10216 of 14 December, 2009.

<sup>6</sup> The initial scheme is amended to indicate that it will also be funded by the funds of European Agricultural Fund for Rural Development (EAFRD) (4,487,000 EUR) and by national funding (498,556 EUR). Total: 4,985,556 EUR.

<sup>7</sup> The initial scheme is amended to reflect the geographical extension, pursuant to the PRIP submeasure to agricultural areas which are not served and where there are no plans for investment in broadband infrastructure in the near future. The geographical extension will therefore cover only white areas according to the revised Broadband Guidelines.

<sup>8</sup> The initial scheme is amended to reflect the fact that the submeasure "*The development of broadband network infrastructure in rural areas*" implemented by the Ministry of Agriculture of Lithuania must be completed until 31 August 2015. For clarification, all activities of RAIN project funded by ERDF must be implemented by 31 December 2014. The term extension concerns only the PRIP project, which is funded by EAFRD and which must be implemented (in accordance with the rules applicable to the Rain project – concerning procedures, parties, etc) until 31 August 2015.

- (4) In the past, pursuant to structural funds rules, 2 projects of development of broadband communications networks in the country's rural areas were implemented during the 2004-2006 programming period using European Regional Development Fund (ERDF) funds: the RAIN project<sup>9</sup> and the project "Creation of a Broadband Data Transmission Network in Lazdijai Region and Alytus Region Municipalities"<sup>10</sup>. ERDF support for the said projects was provided in accordance with measure 3 (Development of Information Technologies Services and Infrastructure) of priority 3 of the Lithuanian Single Programming Document for 2004-2006.
- (5) The objective of the RAIN project is to develop the missing part of the network infrastructure in the rural areas. The RAIN project is being implemented by the public establishment "Placiajuostis internetas". However, the RAIN project does not reach the agricultural sector, as the broadband infrastructure created by this project (as previously construed) does not connect distant rural objects to the broadband network. In this context, by linking the new submeasure to the RAIN project these two projects will complement each other and contribute to the development of broadband infrastructure in Lithuania.
- (6) When planning the new submeasure, all duplication of funding will be avoided. The new broadband infrastructure will be developed only in the areas, which have not yet been covered by the aforementioned RAIN projects (traditional white areas).
- (7) By implementing the submeasure administrated by the Ministry of Agriculture the same goals and objectives will be sought as for the ongoing RAIN project.
- (8) Indeed, the present notification concerns exclusively the expansion of geographic scope of the previously approved measure (the initial scheme, as previously amended), with increase of the original budget by additional financing from the EAFRD and prolongation of the measure by 8 months<sup>11</sup>.
- (9) All the remaining provisions of the initial measure remain unchanged. However, the Lithuanian authorities confirmed that they will adapt the initial measure (SA.28192) and its 2012 amendment (SA.34166) to all the new conditions of the EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (the "revised Broadband Guidelines")<sup>12</sup>, including as concerns transparency and reporting requirements.

### 3. DESCRIPTION OF THE MEASURE

- (10) **Objectives:** The project RAIN aims to develop an infrastructure of electronic networks offering wholesale broadband services in rural areas of Lithuania which are currently not

---

<sup>9</sup> RAIN project is considered state aid, which was approved by European Commission (initial scheme including the 2012 amendment).

<sup>10</sup> Project "Creation of a Broadband Data Transmission Network in Lazdijai Region and Alytus Region Municipalities" was considered to be state aid and was authorised by the European Commission (State Aid N 497 / 2007 – Lithuania, Commission Decision of 16.07.2008, OJ C/290/2008 of 13.11.2008). This existing broadband scheme and the RAIN project are complimentary: the former measure focused on the construction of last mile access networks in certain areas of Lithuania, while the Rain project aims at the development of backhaul connections.

<sup>11</sup> See also footnotes 6 and 7.

<sup>12</sup> *EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 25, 26.1.2013, p.1.

served and where there are no plans for coverage in the near future. The newly introduced submeasure focusses in particular on the use of this network in the agricultural sector of Lithuania.

- (11) The Lithuanian authorities aim to improve broadband availability for Lithuanian citizens and businesses in rural areas by tackling the lack of necessary broadband infrastructure. This should increase rural areas' attractiveness, business competitiveness and employment in rural areas. In addition the new submeasure should create an e-infrastructure system, allowing for State and local government agricultural institutions, organizations of the rural part of the country as well as all the interested SMEs to provide public services.
- (12) The Lithuanian authorities explained, that currently, profound differences remain in Lithuania between the opportunities of the populations of different areas to use advanced information infrastructure: 99 % of urban residents and only 32% of rural residents in Lithuania have the opportunity to use broadband electronic communications services.
- (13) The country's rural areas are unattractive to business investors into broadband electronic communications infrastructure firstly due to a relatively low number of possible subscribers, spread out settlements and expensive construction costs.
- (14) The Lithuanian authorities expect that the creation of backhaul (i.e. middle-mile) network<sup>13</sup> in not served areas will reduce the entry barriers (by lowering investment costs) for commercial operators and thereby will encourage them to extend their broadband network coverage in rural areas. The network will offer open wholesale access basis to third-party operators who will be able to add their access infrastructures (i.e. the last mile network segment) and deliver broadband services to end-users.
- (15) **Legal basis:** The notified measure is based on (i) the Law on Electronic Communications<sup>14</sup>, (ii) the Development Strategy of the Broadband Infrastructure of Lithuania for 2005-2010<sup>15</sup>, (iii) the Action Plan for the Implementation of the Development Strategy of the Broadband Infrastructure of Lithuania for 2005-2010<sup>16</sup>, (iv) Operational Program on Economic Growth for 2007–2013<sup>17</sup>, (v) the Complement to Operational Program on Economic Growth for 2007–2013<sup>18</sup>, (vi) the Description of Terms and Conditions of Financing of the Project Implemented under Implementation Measure No. VP2 3.2 IVPK 01 "Broadband Networks" of Priority 3 "Information Society for All" of the Economic Growth Operational Program approved by Order No T-66 dated 15 April 2008 of the Director of the Information Society Development Committee under

---

<sup>13</sup> Backhaul (or middle mile) networks comprise the intermediate links between backbone (core) networks and access (or last mile) networks.

<sup>14</sup> Lietuvos Respublikos Elektroninių ryšių įstatymas (Valstybės žinios: 2004-04-30 Nr.69-2382).

<sup>15</sup> Dėl Lietuvos plačiajuosčio ryšio infrastruktūros 2005-2010 metų plėtros strategijos patvirtinimo (Valstybės žinios: 2005-11-19 Nr.137-4920).

<sup>16</sup> Dėl Lietuvos Respublikos Vyriausybės 2005 m. lapkričio 16 d. nutarimo Nr. 1231 "Dėl Lietuvos plačiajuosčio ryšio infrastruktūros 2005-2010 metų plėtros strategijos patvirtinimo" pakeitimo (Valstybės žinios: 2008-10-23 Nr.122-4637).

<sup>17</sup> Adopted by the Commission's Decision of 30 July 2007 No K(2007)374017

<sup>18</sup> Dėl Projekto, vykdomo pagal Ekonomikos augimo veiksmų programos 3 prioriteto "Informacinė visuomenė visiems" įgyvendinimo priemonę Nr. VP2-3.2-IVPK-01 "Plačiajuosčiai elektroninių ryšių tinklai", finansavimo sąlygų aprašo patvirtinimo Valstybės žinios: 2008-04-19 Nr.45-1717.

the Government of the Republic of Lithuania.<sup>19</sup> With regard to Council Regulation (EC) No 1083/2006<sup>20</sup> the RAIN project qualifies as a major project. In addition to the above legal basis in place since the commencement of the initial scheme (including its 2012 amendment), the legal basis was completed with the rules for implementation of the submeasure “*The development of broadband network infrastructure in rural areas*” (under measure “*Village renewal and development*” for the axis III “The quality of life in rural areas and diversification of rural economy” of Rural Development Programme for Lithuania 2007-2013<sup>21</sup>).

- (16) **Granting authority:** The Ministry of Transport and Communication is the main granting authority responsible for the infrastructure built under the RAIN project and the price setting for the RAIN services. However, the projects under the EAFRD will be administrated by the Ministry of Agriculture.
- (17) **Project design:** The project is composed of two layers: (I.) broadband connection networks will be built by creating a ring infrastructure in the form of six regional distribution rings. The construction works (civil works, ducts, dark fibre, etc.) will be carried out by private operators selected by means of an open tender in line with the relevant national and EU Procurement Directives. The newly created RAIN network will remain in the ownership of the state. (II.) The management of the RAIN network and offering of wholesale services to the third party service providers will be carried out by a public non-profit legal entity, called the “*Plačiajuostis internetas*”. The maintenance and support of the RAIN network will be carried out also by private operators selected by means of an open tender.
- (18) **Target areas:** The Lithuanian authorities made during the feasibility study<sup>22</sup> of the new PRIP project a detailed mapping of coverage areas identifying the additional target areas where state intervention is necessary. The notified expansion will cover 150 additional rural areas with population of about 20 000 people and should connect to the broadband infrastructure or increase the bandwidth, of approximately 400 agricultural institutions

---

<sup>19</sup> Dėl Informacinės visuomenės plėtros komiteto prie Lietuvos Respublikos Vyriausybės direktoriaus 2008 m. balandžio 15 d. įsakymo Nr. T-66 “Dėl Projekto, vykdomo pagal Ekonomikos augimo veiksmų programos 3 prioriteto “Informacinė visuomenė visiems” įgyvendinimo priemonę Nr. VP2-3.2-IVPK-01 “Plačiajuosčiai elektroninių ryšių tinklai”, finansavimo sąlygų aprašo patvirtinimo” pakeitimo Valstybės žinios: 2008-12-30 Nr.149-6074.

<sup>20</sup> Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999. OJ L210 of 31.7.2006.

<sup>21</sup> Approved by Commission Decision No C (2007) 5076 of 19 October 2007.

<sup>22</sup> A market research “Demand for Fiber-optic Internet: Survey of Farmers and Organizations in Rural Areas” was carried out in January – February, 2012 as a part of feasibility study “Rural Development Programme for Lithuania 2007–2013, Axis III “The quality of life in rural areas and diversification of the rural economy” measure under the priority “Village renewal and development” submeasure “The development of broadband infrastructure in rural areas” with the aim to diagnose the internet penetration in rural areas and to identify the demand for fiber-optic internet. Several groups of potential users of fiber-optic internet participated in the survey: farmers, agricultural companies, rural tourism homesteads, food processing companies, advisory offices, state forests and rural communities.

The results of the survey showed that access to the internet is almost at the same level as computerization: 86% of all respondents have an access to internet. Considerable number of farmers uses dial-up connection (47%) or wireless internet connection (22%). Fiber-optic internet is used by 8 % of all respondents.

and organizations, production and processing enterprises, rural communities, educational institutions, libraries, public internet centres, etc..<sup>23</sup> The measure will cover only areas where no adequate broadband infrastructure is available ("traditional white areas"). As in the previous decisions concerning the initial scheme as amended<sup>24</sup>, backhaul fibre lines will only be placed as a result of the notified measure where no such infrastructure is available of other private operators.

- (19) **Public consultation with stakeholders:** The Lithuanian authorities conducted a public consultation with major stakeholders on the new areas to be covered under the notified scheme. A detailed list of planned infrastructure nodes together with relevant maps was published on the public institution's "*Plačiajuostis internetas*" website<sup>25</sup>. During the consultation phase, no concerns were raised by the existing operators. Indeed, they have not presented any investment plans which would duplicate PRIP fibre lines to be constructed under the notified measure.
- (20) **Opinion of the NRA:** The National Regulatory Authority has not raised any objection to the scope increase of RAIN project as long as it is compatible with the State Aid Decisions of EC SA.28192 and SA.34166 i.e. initial scheme and its 2012 amendment. The Project has been also endorsed by the Competition Council of the Republic of Lithuania, as long as it is not recognized that the provider has significant market power ("SMP")<sup>26</sup>.
- (21) **Beneficiaries:** The direct recipient of the aid will be the wholesale operator of the network, *Plačiajuostis internetas*. *Plačiajuostis internetas* is a non-profit public legal person owned by the State. Indirect beneficiaries will be electronic communication operators utilising the new network for offering retail services to end users.
- (22) **Procurement and the most economic advantageous offer:** The Lithuanian authorities envisage three phases of the tender procedures. During the first phase, the construction of the networks will take place selecting the lowest price offer. During the second phase, technical support of the network will be tendered out selecting the most economically advantageous offers. During the third phase, network equipment will be tendered out selecting the lowest price and the most technically advantageous offers. All tender procedures will be conducted in full compliance with the EU and national public procurement rules in a transparent manner. The Lithuanian authorities explained that all the on-going tender procedures on broadband State aid will be announced on a dedicated central website at the national level and that the competitive outcome of these will be respected.
- (23) **Technological neutrality:** As specified in the initial measure, the chosen network topology ensures the technological neutrality of the measure: several alternative platforms will be able to utilise the new network as a backhaul connection to offer their own services to end users.

---

<sup>23</sup> A detailed list of planned objects to be connected to the broadband infrastructure is being published here: [http://www.placiajuostis.lt/index.php?option=com\\_content&view=article&id=93&Itemid=46&lang=lt](http://www.placiajuostis.lt/index.php?option=com_content&view=article&id=93&Itemid=46&lang=lt)

<sup>24</sup> State aid SA.28192 C(2009)5808 final of 17 July 2009; and State aid SA.34166; C(2012)3307 final of 16 May 2012.

<sup>25</sup> Direct link:

[http://www.placiajuostis.lt/index.php?option=com\\_content&view=article&id=93&Itemid=45&lang=en](http://www.placiajuostis.lt/index.php?option=com_content&view=article&id=93&Itemid=45&lang=en)

<sup>26</sup> The Lithuanian authorities explained that in case the Placiajoustis internetas is recognized as SMP the obligation for SMPs will be applied.

- (24) **Use of existing infrastructure:** The measure supports only white areas where no existing infrastructure is available.
- (25) **Wholesale access:** Following the requirements of Article 78 (g) of the revised Broadband Guidelines, the Lithuanian authorities have confirmed that the new network will offer wholesale backhaul access on an open, non-discriminatory basis to electronic communication operators wishing to connect end users for the period of the network's lifetime (approximately 20 years). The wholesale operator of the network, *Plačiajuostis internetas* will not offer retail services.
- (26) **Wholesale access pricing:** The tariffs of the wholesale service will be determined by the Ministry of Transport and Communications. The objective of the Lithuanian authorities is to provide retail broadband services in the targeted areas at a price similar to urban areas, hence wholesale tariffs will be determined by also taking into account average retail prices paid by end-users in urban areas that do not benefit from State funding. Wholesale prices will be set in coordination with the National Regulatory Authority which is authorized to supervise telecommunication markets in Lithuania.
- (27) **Budget and financing instruments:** The aid takes the form of direct grants. The overall amount of the RAIN Project is increased, according to the present notified amendment, by the financing from EAFRD, and is approximately LTL 226 million (approximately EUR 65.5 million). The project is financed from resources of the European Regional Development Fund (ERDF) amounting to EUR 51.4 million, the European Agriculture Fund for Rural Development (EAFRD) amounting to EUR 4.5 million<sup>27</sup> and from resources of Lithuania amounting to EUR 9.6 million<sup>28</sup>. The Lithuanian authorities have confirmed that there is no cumulation possible with aid received from other local, regional, national or Community schemes to cover the same eligible costs.
- (28) **Duration of the measure:** The implementation of the RAIN Project is planned to finish by 31 December 2014. However, according to the present notified amendment, the PRIP project can be implemented until 31 August 2015<sup>29</sup>. The notified expansion of geographic scope will only be implemented after the Commission's approval, respecting the stand still clause.
- (29) **Monitoring and clawback mechanism :** As stipulated in the Law on Electronic Communications, the beneficiary of the measure, *Plačiajuostis internetas* is obligated to publish access-related information (*inter alia*, technical specification, terms and conditions, prices for access and related services) for interested parties and to provide open access to all electronic communication operators. Compliance with the obligations will be supervised by a Supervisory Committee based on annual reports submitted by the company. According to the information provided by the Lithuanian authorities, any potential surplus generated by the *Plačiajuostis internetas* through the operation of the network will be used to maintain the network or for rural broadband development.

---

<sup>27</sup> The additional funding for PRIP project is 4.99 million EUR (4.49 million EUR from EAFRD and 0.5 million EUR from the national budget)

<sup>28</sup> See also footnote 6.

<sup>29</sup> See also footnote 8.

- (30) **Transparency:** The objectives of the measure, full text of the final aid scheme and the implementing provisions, the beneficiaries of the aid and amounts of state aid granted to them, as well as the aid intensity and technology used will be published on the internet site of [www.zum.lt](http://www.zum.lt). In addition, the Lithuanian authorities confirm that the aid beneficiary will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure (including *inter alia* ducts, street cabinets and fiber) deployed under a State aid measure in aid beneficiary's website [www.placiajuostis.lt](http://www.placiajuostis.lt). The information will include map of planned infrastructure within frames of the measure; measure assumptions; information about management of the measure; information about planned fiber-optic infrastructure (incl. maps); information (links) about ongoing and planned public procurement procedures and other relevant information.
- (31) **Reporting:** The Lithuanian authorities have committed to submit reports on the implementation of the scheme (including the date the network was put into use, the wholesale access products offered, the number of access seekers and service providers on the network, the number of houses passed and take-up rates) every 2 years since the date the network was put in use and during the whole duration of the aid measure.

#### 4. ASSESSMENT OF THE MEASURE

##### 4.1. Existence of aid within the meaning of Article 107(1) of the TFEU<sup>30</sup>

- (32) The changes introduced to the notified measure do not alter the prior conclusion of the Commission in the cases SA.28192 and SA.34166 that the measure constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the notifying Member State during the notification.

##### 4.2. Compatibility of the aid

- (33) The Commission's analysis did not imply any serious difficulties and confirms that the expansion of geographic scope and the prolongation by 8 months with the respective budget increase of the measure does not modify the original compatibility assessment<sup>31</sup> regarding the approved measures SA. 28192 and SA.34166. Moreover, the measure is in line with the revised Broadband Guidelines.<sup>32</sup>
- (34) In this regard, the Commission notes that the Lithuanian authorities apply the same requirements and principles for the new areas eligible under the support in terms of mapping and coverage analysis, procurement, technological neutrality, public consultation, pricing, obligation of open access, monitoring and others as set in the initial scheme SA.28192.

---

<sup>30</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

<sup>31</sup> Based on article 107.3.(c) of TFEU (formerly article 87.3.(c) of the EC Treaty) and the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 235, 30.09.2009, p.7).

<sup>32</sup> *EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 25, 26.1.2013, p.1.



- (35) As already mentioned in the case SA.34166, the Commission notes that *Plačiajuostis internetas* (the beneficiary) has not been selected in an opened tender procedure.

In the case at hand *Plačiajuostis internetas* will not choose a broadband operator to construct and/or exploit the network on its behalf, but will create and maintain a public infrastructure accessible to any broadband operator which would like to use it. The network will remain in public ownership. The *Plačiajuostis internetas*- a publicly owned non-profit legal entity - will carry out the administration of that publicly owned network, including the management of the RAIN network (including the PRIP project) and offering of wholesale services to the third party service providers. The maintenance and support of the RAIN network will be carried out also by private operators selected by means of an open tender.

- (36) The construction and the management of the RAIN network corresponds to the situation described in the footnote 96 of the revised Broadband Guidelines (inserted in paragraph 78 (c) of the Guidelines) where the public authority decides to deploy and manage the network directly or through a fully owned entity.
- (37) In such cases, footnote 96 of the revised Broadband Guidelines foresees that several safeguards should be put in place in order to preserve the competition in the electronic communications sector, in particular on the retail broadband market:

(i) the publicly owned network operators shall limit their activity on the predefined target areas and shall not expand to other commercially attractive regions;

(ii) the public authority shall limit its activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition on the retail levels with commercial operators; and

(iii) to have an accounting separation between the funds used for the operation of the networks and the other funds at the disposal of the public authority.

- (38) The first safeguard sub (i) is represented by the fact that *Plačiajuostis internetas* cannot act as retail broadband operator, and therefore cannot provide broadband services to final users, but simply organises and manages wholesale access to the infrastructure by any third party interested in using it. In this regard, it is further observed that the Lithuanian authorities undertook to adapt the measure (initial measure as subsequently amended) to all the new conditions of the revised Broadband Guidelines. The Commission notes that the Lithuanian authorities also specifically committed to ensure that *Plačiajuostis internetas* shall limit its activity on the predefined target areas and shall not expand to other commercially attractive regions.

- (39) Concerning the safeguard sub (ii) the *Plačiajuostis internetas* cannot engage in any profit making operation of the network, but has to keep income and expenses at an equilibrium and limits its activity to the administrative management of a mere passive infrastructure. Moreover, the *Plačiajuostis internetas* is obliged to grant open access at fair, transparent and non-discriminatory conditions to the infrastructure operated by this public entity. Thus, this system eliminates at the root one of the potential risks for competition deriving from management of the network by operators, i.e. the incentive to exclude or degrade competitors on the same infrastructure. In addition, as indicated above, the contracts for

the construction of the infrastructure will be tendered out according to normal public procurement principles.

- (40) As concerns safeguard sub (iii), the Commission observes that the Lithuanian authorities undertook to adapt the measure (initial measure as subsequently amended) to all the new conditions of the revised Broadband Guidelines. The Commission notes that the Lithuanian authorities also specifically committed to ensure that there is accounting separation between the funds used for the operation of the networks and the other funds at the disposal of the Lithuanian authorities.
- (41) The Commission can thus conclude that the safeguard mechanism is sufficient to avoid undue distortions of competition and no additional selection procedure is required.
- (42) Concerning the other requirements introduced by the revised Broadband Guidelines, the Commission notes the following.
- (43) The Lithuanian authorities confirmed that in line with the paragraph (51) of the revised Broadband Guidelines the planned networks will ensure a "step change" in that (1) the selected bidder makes significant new investments in the broadband network and (2) the subsidised infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition as a result of the public intervention. Indeed the measure supports only white areas where no broadband connection is available and where without the public support the investment would not take place. The new infrastructure will cover 150 additional rural areas with population of about 20 000 people) and should connect to the broadband infrastructure or increase the bandwidth to about 400 agricultural institutions and organizations, production and processing enterprises, rural communities, educational institutions, libraries, public internet centres.
- (44) Concerning the **transparency** requirement as defined in the paragraph 78 (j) of the revised Broadband Guidelines, the Lithuanian authorities will publish all information relative to the notified aid measure on their [www.zum.lt](http://www.zum.lt) web site as described in the paragraph (30) Furthermore, the aid beneficiaries will be obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on its infrastructure deployed under the State aid measure in conformity with.
- (45) Regarding the **reporting** obligation the Lithuanian authorities will submit reports to the European Commission on the implementation of the measure every two years from the date the network is put in use. Hence, the Lithuanian authorities fulfil the requirements set in the paragraph 78 (k) of the revised Broadband Guidelines.
- (46) Moreover, all the newly introduced conditions of the revised Broadband Guidelines (e.g. transparency and reporting requirements) will be implemented also for the initial measure SA.28192 and its amendment SA.34166.
- (47) Consequently, as the distortion of competition is limited to the minimum and as, besides the geographic scope, budget increase and the prolongation of 8 months, there are no other significant amendments to the scheme, the Commission sees no reason to depart from its previous positive compatibility assessment in SA.28192 and SA.34166. However, the Commission's assessment is without prejudice to any further findings regarding the compatibility of the execution of the project with EU public procurement legislation.

## 5. DECISION

- (48) The Commission therefore finds that the existing measure SA. 34166 as amended by means of the measure notified in case SA.36132 is compatible with Article 107 (3) (c) of the TFEU and has accordingly decided not to raise objections to the notified measure.
- (49) The Lithuania authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.

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 by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) or, alternatively, by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
1 Place Madou / Madouplein 1  
MADO 12/59  
B-1210 Brussels  
Fax No: +32 2 29 61242

Yours faithfully,

For the Commission

*Joaquín ALMUNIA*  
Vice-President