Brussels, 26 February 2026
Case No: 95327
Document No: 1537072
Decision No 046/26/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090
Dep 0032 Oslo
Norway

Subject: **Aid scheme for broadband rollout in Norway**

1 Summary

(1) The EFTA Surveillance Authority ("ESA") wishes to inform Norway that, having assessed the aid scheme for broadband rollout in Norway ("the measure"), it considers that it constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections[1] to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

2 Procedure

(2) Following pre-notification contacts, the Norwegian authorities notified the measure on 23 January 2026.[2]

(3) On 27 and 29 January 2026,[3] ESA requested information from the Norwegian authorities. On 28 and 30 January 2026,[4] the Norwegian authorities replied to the information requests.

3 Context

3.1 Background

(4) Norway has had a national State aid scheme for broadband rollout in place since 2014.

(5) The first scheme, in force from 2014 to 2017, was approved by ESA on the basis of the 2013 Guidelines on the application of State aid rules in relation to rapid deployment of broadband networks.[5] Under the scheme, support was granted to the rollout of broadband infrastructure in areas with no existing or credibly planned networks providing a download speed of at least 30 Mbit/s. The main focus was the

[1] Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
[2] Document No 1586448.
[3] Document No 1587325 and 1587770, respectively.
[4] Document No 1587328 and 1587900, respectively.
[5] See ESA Decision No 219/14/COL, *Aid scheme for broadband rollout*.

rollout of broadband networks in areas with a download speed of no more than 10 Mbit/s.

(6) From 2018 to 2025, the national State aid scheme for broadband rollout was based on the General Block Exemption Regulation ("GBER"). From 2018 to 2022, the scheme focused on areas with no existing or credibly planned networks with a download speed of at least 30 Mbit/s, the speed threshold being increased in 2023 to at least 100 Mbit/s.

3.2 Broadband availability in Norway

3.2.1 Fixed broadband

(7) The Norwegian authorities consider that overall, the broadband availability in Norway is good. According to the Norwegian authorities' estimates,[6] approximately 99.1% of all households have access to connections providing 100 Mbit/s download speed, while 96.2% of all households have access to gigabit connections.[7] Hence, 3.8% of Norwegian households are lacking access to gigabit networks, while 0.9% are lacking access to networks providing 100 Mbit/s.

(8) The estimates on broadband availability provided by the Norwegian authorities are based on homes passed ("HP"). For a household to be considered as HP, the offered connection should be available for a connection fee no higher than NOK 10 000 and the connection to the network should be provided within reasonable time. Further, the coverage figures are calculated based on all ground-based fixed solutions, including mobile solutions provided as fixed wireless access ("FWA").[8]

3.2.1.1 FTTP- and HFC-solutions

(9) The gigabit coverage of 96.2% consists of Fibre to the Premises ("FTTP")[9] and Hybrid Fibre-Coaxial ("HFC")[10] solutions. Most FTTP and HFC networks provide gigabit connectivity, while the rest is considered to be upgradeable on the basis of marginal investments to provide gigabit connectivity.

3.2.1.2 Copper network

(10) The copper network in Norway was fully decommissioned in September 2025 and is therefore not a part of the broadband network in Norway.

3.2.1.3 Satellite-based solutions

(11) GEO satellites[11] are considered as the "last option" due to poor coverage (resulting from a low inclination in combination with a demanding topography), low bandwidth

---

[6] These estimates are figures from the most current mapping, published by Nasjonal Kommunikasjonsmyndighet ("Nkom"), the Norwegian national regulatory authority, in May 2025 (https://nkom.no/statistikk/nokkeltall-og-interaktive-dashbord/bredbandsdekning).

[7] Gigabit connections are Internet connections that are capable of transferring data at one gigabit per second (1 000 megabits).

[8] FWA provide a connection via wireless signals rather than physical cable, while, unlike typical mobile connections, being fixed to a specific location - referred to as "geo-lock".

[9] FTTP refers to connections where fibre cables run all the way to the end user, rather than just to a central connection point.

[10] HFC refers to a combined connection, where fibre runs to a central connection point, such as a hub serving a specific neighbourhood, where it is then split into coaxial cables running to individual end users – cables transmitting electrical signals.

[11] GEO satellites are satellites in geostationary orbit, i.e. 35 786 km above the surface, where the satellite is stationary relative to the earth's surface. Ground antennas therefore do not need to be adjusted to track the satellites.

and high latency. LEO satellites[12] on the other hand provide higher bandwidth and lower latency and are the preferred option in areas with low broadband coverage. Still, LEO satellites are at the current stage not considered to provide reliable speeds for 100 Mbit/s and higher and do not fulfil expected user needs.

3.2.1.4 Mobile-based FWA solutions

(12) FWA solutions based on mobile frequencies deliver speeds in the range from 10 to 100 Mbit/s based on high-band 4G and in the range from 100 to 500 Mbit/s based on high-band 5G. These solutions provide competition to FTTP-based and HFC-based solutions in the market and reliable connectivity in areas where no FTTP-based and HFC-based solutions exist. In areas lacking FTTP and HFC, mobile-based FWA solutions are the most commonly used broadband connection, but with a high variation in the provided top speed, ranging from 10 Mbit/s to 500 Mbit/s.

3.2.1.5 Other FWA solutions

(13) Except for mobile-based solutions, the use of FWA in Norway is limited and mainly based on license-free frequencies. The range and throughput are limited with top download speeds at around 100 Mbit/s.

3.2.2 Mobile broadband

(14) Norway has overall a high mobile coverage, both in terms of basic area coverage and available upload and download speeds. Still, due to a demanding topography, some households, socio-economic drivers and important transport routes lack mobile coverage.

(15) Mobile coverage in Norway is based on 2G, 4G and 5G[13] networks. Mobile networks based on 3G were decommissioned in Norway in 2020. 2G networks are expected to be decommissioned by the end of 2027.

(16) Currently, 99.7% of households in Norway have access to at least basic 5G coverage and almost 100% have access to basic 4G or 5G coverage.[14] However, 98.4% of households are covered by 4G or 5G mobile networks with at least 30 Mbit/s download speed, whilst 83.7% are covered with at least 100 Mbit/s. The numbers vary between regions, with the most northern counties being 5% behind the national average. There is also a considerable difference between urban and rural areas, with rural areas having 91.1% and 43% coverage of 30 Mbit/s and 100 Mbit/s, respectively.

(17) The importance of mobile broadband coverage is not limited to households, but to general geographic areas - especially along important transport routes. A study[15] of mobile coverage conducted by Analysys Mason[16] in 2022 for the Norwegian Ministry of Local Government and Regional Development found a significant

[12] LEO satellites are satellites in low-earth orbit, i.e. maximum 2 000 km above the earth's surface, though most are considerably closer than this, where the satellite orbits a minimum of 11.25 orbits a day. The closer distance allows for quicker response times.
[13] 2G, 3G, 4G, and 5G are generations of mobile network technology, with each "G" standing for "generation" and denoting advancements in speed and capabilities.
[14] "Basic coverage" refers to connections above at least -106 dbm for 5G and at least -107 dbm for 4G on the RSSI scale. Connections approaching these minimum thresholds would be relatively weak and inconsistent, and the quality of the connection could therefore vary considerably within what is defined as basic coverage.
[15] Utredning – mobildekning langs riksveier - regjeringen.no.
[16] Analysys Mason is a global technology, media and telecoms management consulting firm.

number of “coverage holes”[17] along major Norwegian roads. As regards the current total area coverage in Norway, 84.5% of the area is covered by basic 4G or 5G, 44.8% of the area by 30 Mbit/s and 8.5% of the area by 100 Mbit/s.[18] There is a considerable difference in coverage between counties, and rural areas experience significantly reduced coverage compared to urban areas.[19] In such areas, coverage might just be provided by low-band frequencies which provide limited bandwidth. In line with the statistics regarding households, these areas are more relevant for State aid.

3.3 The Norwegian national digitalisation strategy

(18) In 2024, the Norwegian government launched a new national digitalisation strategy, “The Digital Norway of the future”, setting out the direction for digital Norway towards 2030.

(19) This strategy set out the goal that all households and businesses should have access to broadband with a download speed of at least 100 Mbit/s by the end of 2025 and at least 1 Gbit/s by the end of 2030. Further, high-speed mobile coverage should be available to households. The Norwegian authorities consider that access to high-speed mobile networks is important not only where people live, but also where people work and travel. The goal of providing high-speed mobile coverage to everyone and gigabit connectivity to all end-users at a fixed location by 2030 is also in line with targets set in Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030.[20]

(20) The Norwegian authorities consider that mobile and broadband networks are a central part of Norway’s digital infrastructure and are prerequisites for further digitalisation of society. The Norwegian authorities take the view that as society is becoming increasingly dependent on these networks, it is necessary to continuously improve the digital infrastructure.

(21) According to the Norwegian authorities, new services and applications based on fibre and 5G mobile technology are rapidly being established. They provide the basis for new ways of solving tasks and increased value creation and productivity. The Norwegian authorities consider it important that these services are made available also in sparsely populated areas. One hundred percent coverage is primarily important for individual citizens to be able to participate in the society, but it is also important for the development of businesses and for the public sector to maximise the benefits of digitalisation. The Confederation of Norwegian Enterprise (NHO) has published a study on the general societal use of expanding gigabit connectivity based on fixed broadband.[21] According to the Norwegian authorities, the report gives useful indications as to the positive effects of increasing available broadband speeds to end users.

---

[17] “Coverage holes” are areas where normal mobile phones could not maintain what the report defined as stable coverage, sufficient for modern mobile services.

[18] Further statistics are available at: https://nkom.no/statistikk/nokkeltall-og-interaktive-dashbord/mobildekning.

[19] Further statistics are available at Mobildekning - Nkom.

[20] Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030, OJ L 323, 19.12.2022, pp. 4–26.

[21] https://www.nho.no/contentassets/fd51a56919fb43a4b55ee8fb215e5bc8/r03-2022-samfunnsnytten-av-gigabitsamfunnet.pdf.

(22) Norway has achieved a high degree of digitalisation, as illustrated in the Digital Economy and Society Index (DESI) report.[22] According to the Norwegian authorities, this means that there is an increased digital divide as well as an increased barrier to participate in society for those lacking modern internet connectivity.

(23) The Norwegian authorities consider that participation and use of modern services are important where people live and for businesses, but should also be available where people work, travel and socialise. Thus, it is important to have a stable connection also along major transport routes for large amounts of private travel and transportation of goods and services.

(24) As regards mobile connectivity, end users generally require a low latency and reliable connection, though the exact needs may vary depending on the relevant area. According to the Norwegian authorities, network speed is of particular interest, as modern services and applications involve a higher requirement for download and upload speeds with low latency to be utilised effectively by end users. The Norwegian authorities take the view that it is therefore necessary to increase the area coverage of mobile networks to increase the available speeds and introduce new services to end users.

(25) The Norwegian authorities consider that a reliable and nationwide mobile connectivity is also necessary for the ability to contact emergency services, such as police, fire and rescue and ambulance services. For end users to be able to contact emergency services, at least one operator needs coverage in the area.

(26) Furthermore, emergency services use a dedicated network, Nødnett,[23] in their operations, separate from the generally available network to normal end users. Currently, Nødnett is a dedicated network with basic services separate from the commercial networks. However, according to the Norwegian authorities, a major modernisation of Nødnett is currently ongoing, as a result of which Nødnett will be provided through the commercial 4G and 5G networks and will take advantage of enhanced services. As such, it will directly benefit from investments in mobile coverage under this scheme and enable emergency services to utilise modern mobile capabilities in their operations in areas which currently lack coverage.

4 Description of the measure

4.1 Objective

(27) The main objective of the measure is to improve the overall broadband and mobile coverage in Norway and reduce the digital divide across areas.

(28) The measure will incentivise the rollout of broadband in geographical areas where there is an insufficient commercial basis for investments. The aim is to contribute to providing access to ultra-fast broadband networks to all households and businesses, and high-speed mobile coverage to all households and businesses, and along important transport routes. The measure will thus bring significant new capabilities to the market in terms of broadband and mobile service availability and

[22] Digital Economy and Society Index (DESI) 2022 | Shaping Europe's digital future.

[23] Nødnett is Norway's nationwide digital critical communication network. It is designed to provide secure, reliable, and efficient communication for the emergency agencies (the police, fire departments, health services) and other organisations with emergency and preparedness responsibilities (dsb.no).

capacity, speed and competition, helping to overcome limits and restrictions in providing innovative services which businesses and citizens require.

4.2 National legal basis

(29) The measure's legal basis are national guidelines issued by the Norwegian Ministry of Digitalisation and Public Governance ("the Ministry") which are binding for the aid granting authorities, setting out the detailed conditions for the implementation and granting of aid under the scheme, as described in detail in the following sections.

4.3 Aid grantors and other relevant authorities

(30) Aid is granted by the counties[24] that select the areas and projects eligible for aid within their territory (see section 4.7.1), based on a mapping exercise carried out by Nkom, the national regulatory authority, to identify intervention areas eligible for aid under the measure (see section 4.8).

(31) Each county conducts the competitive selection process for all the projects within its territory (see section 4.12). Within a set date after receiving funding, the county must inform Nkom about the projects in the county that will receive State aid, providing information on the location of the project, the number of households covered, financial scope and other relevant statistics of the project.

(32) The county will also submit a final report to Nkom after the completion of the projects, containing information on e.g. the addresses covered by the projects, the amount of State aid granted, including aid granted by the State, counties and municipalities, as well as the available offer of wholesale access. The report enables Nkom to control the use of State funds, including compliance with State aid rules, and to gain a general overview of what projects have been completed with State funds and how many end users have received new broadband offers.

(33) The project owner will be either the county or the relevant municipality.[25] The role and responsibility of the project owner are to sign contracts with winning bidders (i.e. the selected operator and aid beneficiary) and monitor that the contract terms are fulfilled. ESA's decision approving the measure will be a legally binding annex to the contracts entered into between the project owners and the selected operators. The project owner will not own the subsidised infrastructure, which will belong to the selected operator (i.e. the aid beneficiary).

(34) Nkom will play an active advisory role, giving e.g. advice related to the State aid rules and the terms and conditions for wholesale access, including wholesale prices. Where appropriate, and based on Nkom's knowledge and data on coverage, technology, construction costs etc., Nkom may put forward to the counties project proposals suitable for State aid.

(35) The Ministry will monitor the administration of the measure. As mentioned above, the Ministry will issue national guidelines setting out the conditions of the measure, which will be binding on the counties (see paragraph (29)). Moreover, when the

[24] "Fylkeskommune" in Norwegian.

[25] In case of a project spanning multiple municipalities, the project owner would either be the county authority or one of the involved municipalities acting on behalf of the other(s).

funds are allocated to the counties, each county will have to confirm in writing to the Ministry that it will comply with the national guidelines.

4.4 Beneficiaries

(36) The beneficiaries are the operators that win the tenders for the deployment of the aided networks. The selected operators build, own and operate the network.

(37) The Norwegian authorities have confirmed that the beneficiaries cannot be undertakings in difficulty[26] nor be subject to an outstanding recovery order following a previous ESA decision declaring aid to the beneficiary unlawful and incompatible with the functioning of the EEA Agreement.

4.5 Aid instrument, intensity, eligible costs, overlap with other schemes

(38) The eligible costs are all the investment costs directly related to and necessary for the construction of the subsidised networks, e.g. costs associated with planning, construction, permits and acquiring active and passive infrastructure. Operational costs may also be part of a project's funding, as determined through the competitive selection procedure. A project's total aid amount is determined through the competitive tendering process (see section 4.12). The maximum amount of public aid granted for a single project will not exceed EUR 10 million.

(39) Projects benefitting from aid under the measure may not receive aid from other aid measures.

4.6 Budget and duration

(40) The measure's total maximum budget is NOK 5 billion. This amounts to maximum NOK 1 billion annually and includes both funding from the State budget and possible funding from the local authorities.

(41) Within this maximum, the actual budget will depend on the annual fiscal budget decided by the Norwegian Parliament.

(42) The funds allocated through the national budget will be distributed between the counties based on an allocation key taking into account a set of indicators to be decided by the Ministry in cooperation with Nkom. Relevant indicators can be, but are not limited to, the current coverage situation,[27] the estimated cost for deploying networks in areas lacking coverage and political prioritisation based on social aspects and/or geography. The allocation key will be updated with the latest values each year. Local authorities may also decide to allocate additional funding under the measure, which will be part of the total maximum budget (see paragraph (40)).

(43) The aid intensity of the aided projects will depend on the result of the tenders but may not exceed 100% of eligible costs.

(44) The measure will be implemented as soon as possible after ESA's approval. The measure covers the period from the date of approval by ESA until 31 December 2030.

---

[26] See ESA Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015, p. 1), as amended. The consolidated version of the guidelines is available here for information purposes.

[27] Counties without areas eligible for State aid will not receive funding.

4.7 Intervention areas

4.7.1 Identification of projects

(45) The broadband projects are to be rolled out at a local level and will primarily cover the deployment of broadband access networks ("last mile") but may also include parts of backhaul and backbone networks if necessary for enabling the functioning of the deployed access networks.

(46) As regards fixed broadband, the counties will for each project select addresses that geographically would form a natural investment area based on factors like cost of deployment and expected end user need and demand. The counties should in general only choose addresses identified as eligible in the annual mapping exercise. However, other addresses may be included if, following a dialogue with Nkom, they are found to meet the criteria to be eligible.[28]

(47) As regards mobile networks, the counties may select project areas based on an assessment of public needs, within areas identified as eligible for State aid, in the annual mapping exercise carried out by Nkom, cf. section 4.8.

(48) The Norwegian authorities have underlined the importance of local knowledge in designing the projects to ensure a precise broadband rollout targeting the actual addresses containing businesses and households. By letting the counties select the addresses to be covered by a specific project, the risk of leaving out addresses that naturally should have been part of the project, or including addresses with deserted buildings, is reduced. This may in turn reduce the need for additional future State interventions.

(49) Moreover, according to the Norwegian authorities, performing the selection process at local/regional level makes it more likely that projects are designed so that local and regional operators have the possibility to compete with national operators in the tender process. Large projects are often outside the manageable scope of smaller operators, and smaller projects are also more likely to be closer to local and regional operators' existing networks. This increases the competition, reduces the aid amount, and may also foster development for operators established outside of the major cities.

4.7.2 Intervention areas for fixed broadband

(50) The Norwegian authorities have defined the following areas as intervention areas eligible for aid to fixed broadband networks under the measure:

a) areas with no existing or credibly planned networks providing a download speed of at least 100 Mbit/s (white areas);

b) areas with only one existing or credibly planned network providing a download speed of at least 100 Mbit/s, but below 500 Mbit/s, and with no other existing or credibly planned networks providing a download speed of at least 100 Mbit/s (grey areas);

[28] The list of eligible addresses published by Nkom excludes addresses with no households or active commercial businesses according to the national cadastre. If the information in the cadastre is proven wrong for an address, the address might be included in a project if it otherwise fulfils the requirements to be regarded eligible in accordance with the mapping and public consultation.

c) areas with at least two existing or credibly planned networks providing a download speed of at least 100 Mbit/s, but below 300 Mbit/s (black areas);

d) areas with at least two existing or credibly planned networks providing a download speed of at least 100 Mbit/s, but below 500 Mbit/s, and where at least one of the networks provides a download speed of at least 300 Mbit/s, only if, following a detailed analysis[29] to be conducted by Nkom during the mapping and public consultation, it is demonstrated that it is unlikely that the networks would evolve towards providing a download speed of at least 1 Gbit/s.

(51) Given Norway's target of ensuring gigabit access networks to all households and businesses in Norway by 2030, the Norwegian authorities consider that a market failure is present in the abovementioned areas, as the market does not and is not likely to provide end users in those areas with a download speed of at least 1 Gbit/s and an upload speed of at least 150 Mbit/s.

4.7.3 Intervention areas for mobile broadband

(52) The Norwegian authorities have defined the following areas as intervention areas eligible for aid to mobile access networks under the measure:

a) areas without mobile coverage, or only coverage by mobile networks providing 2G technology.

b) areas with existing or credibly planned coverage of 4G or 5G mobile networks, only if, following a detailed analysis conducted by Nkom and the relevant county,[30] it is demonstrated that it is unlikely that the networks will provide end users with sufficient quality of services to satisfy their evolving needs.[31]

(53) Given Norway's target of increased mobile coverage and access to high-speed mobile networks to all households and businesses, the Norwegian authorities consider that a market failure is present in the abovementioned areas.

(54) Norway has a generally high degree of digitalisation, which requires an increased standard of connectivity for participation in society (see section 3.3).[32] Participation is not possible in areas that currently lack mobile coverage. Beyond this baseline, several factors impact how suitable current or credibly planned mobile coverage is for end user needs. End users generally require a low latency and reliable connection, though the exact needs may vary depending on the relevant area. As noted, network speed is of particular interest, as modern services and applications involve a higher requirement for download and upload speeds to be utilised effectively by end users (see paragraph (24)). It is therefore a goal of this measure

[29] The analysis would take into account both technical capabilities of the existing network and the likelihood that other gigabit networks would be constructed based on commercial interest. The latter analysis would be based on distance to existing gigabit networks, end user density and geography.
[30] The analysis would assess the end user needs and compare it to relevant performance indicators of the existing/planned networks. Relevant indicators could be download/upload speed, latency and functionality provided by new network standards.
[31] The counties will analyse the end user needs. If the counties can demonstrate that the end user needs exceed the performance and/or functionality of the existing or credibly planned mobile networks within the next three years, the area may be eligible for State aid.
[32] Digital Economy and Society Index (DESI) 2022 | Shaping Europe's digital future.

to increase the area coverage of mobile networks, to increase the available speeds and introduce new services to end users.

(55) The 2G technology is now considered far behind the digital development, and is generally insufficient in terms of speed, latency and capacity. The 2G network can also be unreliable in the context of emergency services.

(56) As regards areas with existing or credibly planned 4G or 5G networks, end users' evolving needs would be dependent on factors in the relevant area. Areas with a particular industry, high presence of businesses or a generally high number of users may have needs that go beyond the norm. The basic coverage as detailed above in paragraph (16) would typically be insufficient in areas with significant traffic.

4.8 Mapping and public consultation

(57) A detailed mapping of national fixed broadband coverage[33] will be carried out annually by Nkom, based on data collected from all broadband providers in Norway at address level on the basis of premises passed. A similar annual mapping process will be carried out for mobile networks on the basis of 100x100 meter grids.[34] Mapping for fixed and mobile networks will be performed in line with section 5.2.2.4.1 of ESA's Broadband Guidelines ("the Broadband Guidelines").[35]

(58) Following the mapping, Nkom will conduct a national public consultation to verify the mapping and receive information about credibly planned networks within the next three years. Nkom will invite interested parties to comment on the planned State intervention, its design and main characteristics and to submit substantiated information about existing and credibly planned networks to be deployed in the target areas within the relevant time horizon of three years. The public consultation will be published on Nkom's website and will last at least 30 days.

(59) The conditions for a private investment in networks to be regarded as credibly planned will be decided by Nkom and published during the mapping and public consultation. Nkom may further investigate the credibility of the plans and make an assessment regarding whether the areas should be included as eligible intervention areas. This investigation would include requesting evidence for the plans' credibility, such as detailed deployment plans with milestones. The assessment would be based on the criteria described in point 87 of the Broadband Guidelines, for which Nkom could request further documentation. Such assessments could be done both during and after the mapping and public consultation. An *ex post* assessment would normally be quite limited in scope and based on feedback from local municipalities and/or counties questioning the reported investment plans or coverage. An *ex post* assessment could lead to Nkom adjusting the list of eligible intervention areas.

(60) Based on the mapping and public consultation, Nkom will identify all eligible intervention areas for each county, for fixed and mobile access networks. A list of

[33] This mapping will be based on the download speed under peak-time conditions for all fixed networks.

[34] The methodology used to map the target area will be made publicly available.

[35] ESA Decision No 004/23/COL amending the substantive rules in the field of State aid by introducing new Guidelines on State aid for broadband networks (OJ L 214, 31.8.2023, p. 177 and EEA Supplement No 61, 31.8.2023, p. 1).

the identified intervention areas will be provided to the counties, which will use the list to initiate projects within one year from the end of the public consultation.

(61) If the deployment of the planned State-funded network (until its entry into operation) takes longer than three years (see paragraph (58)), a new mapping and public consultation are necessary. The public consultation will be carried out based on the results of the most recent mapping.

4.9 Technological neutrality

(62) The scheme will not favour or exclude any particular technology, neither in the selection of beneficiaries, nor in the provision of wholesale access. Any operator participating in the tender is free to propose the most appropriate and cost-effective technology solutions to meet the requirements set in the request for tenders.

(63) The county may however prioritise a certain level of performance, including the energy efficiency of the networks, before the tenders, and grant additional weight to the most suitable technological solution or mix of technology solutions based on objective, transparent and non-discriminatory criteria. The subsidised network must enable wholesale access under fair and non-discriminatory conditions to all access seekers irrespective of the technology used.

4.10 Use of existing infrastructure

(64) Existing infrastructure suitable for broadband deployment (e.g. ducts, trenches, masts, poles) should be used as far as possible, to contribute to reducing the cost of deployment of a new broadband network and limiting the impact on the environment. To that end, project owners under the measure are required to investigate the potential use of existing infrastructure in the target area. The Norwegian Broadband Development Act,[36] which implements the Broadband Cost Reduction Directive (BCRD)[37] into Norwegian legislation, obligates all network operators to provide Nkom with relevant information about existing infrastructure, and all information about such infrastructure in the target areas is made publicly available to interested parties through a Single Information Point ("SIP").[38]

(65) According to the Norwegian authorities, all network operators and public bodies that own or control physical infrastructure suitable for the provision of electronic communications networks are obliged, pursuant to the Norwegian Broadband Development Act, to accommodate any reasonable request for access to that physical infrastructure on reasonable and fair terms, including price. For network operators, this means an obligation to give access to physical infrastructure such as electronic communications networks, including associated facilities (e.g. towers), and infrastructure for electricity, gas, water and sewage, heating and transport services (including rail and road networks, ports and airports) that are suitable for the provision of electronic communications networks.

---

[36] The Norwegian Broadband Development Act ("Bredbåndsutbyggingsloven" in Norwegian), LOV-2020-05-07-40.

[37] Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, pp. 1–14, implemented into the EEA Agreement by Joint Committee Decision No 152/2018, OJ L 67, 25.2.2021, p. 45.

[38] Ekomportalen (https://ekomportalen.nkom.no) is the practical implementation of SIP as mandated by the Norwegian Broadband Development Act.

(66) In addition, network providers with significant market power ("SMP") according to Nkom's sector-specific regulation ("SMP regulation")[39] of the relevant markets for broadband access are subject to specific obligations concerning the sharing of infrastructure resources, in accordance with Nkom's market decisions from 2018.[40] According to these decisions, Telenor as a regulated SMP-provider is required to provide wholesale access to its systematically built fibre network,[41] including regulated products such as Local Loop Unbundling ("LLUB") fibre,[42] Virtual Unbundled Local Access ("VULA"),[43] and Optical Distribution Point ("ODP")[44] access, to ensure effective competition in broadband markets.[45]

4.11 Step change

4.11.1 Fixed broadband

(67) The aided fixed access network shall bring a significant improvement (step change) compared to networks existing or credibly planned to be deployed within three years. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the broadband network is undertaken, and the network brings significant new capabilities such as availability and capacity, speeds and competition compared to the existing or planned networks.

(68) The step change will be defined in line with the Broadband Guidelines, namely point 102(a) and (b)[46] for white and grey areas and point 108(a) to (c) for black areas. Regarding download speed, the step change requirements that the subsidised network must meet are the following:

---

[39] SMP regulation refers to Nkom's market regulation through decisions whose legal basis is the Norwegian Electronic Communications Act (Ekomloven), chapters 6 and 7. The two decisions that are relevant for the broadband market are (1) the "Decision on designation of a provider with significant market power and imposition of specific obligations in the market for wholesale local access provided at a fixed location (Market 3a)" of 20 December 2018; and (2) the "Decision on designation of a provider with significant market power and imposition of specific obligations in the market for wholesale central access provided at a fixed location (Market 3b)" of 20 December 2018.

[40] Ibid., see link: Market regulation - Nkom.

[41] A systematically built fibre network refers to a planned, structured, and large-scale fibre access network built by an operator to provide mass market broadband services as part of an operator's commercial infrastructure. It excludes niche and single-building installations.

[42] LLUB fibre means physical unbundling, where alternative providers receive physical access to the fibre local loop to offer their own broadband services over the incumbent operator's fibre network.

[43] VULA is a wholesale broadband solution where an alternative provider receives virtualised access to the incumbent operator's access network (e.g., fibre or VDSL (very high-speed digital subscriber line)) without needing physical access to each individual line. Instead, a dedicated, logical separation is delivered for each end customer, typically as a VLAN (virtual local area network)-based service.

[44] ODP is a point in a fibre network where optical fibres are terminated and distributed to multiple end user connections. It functions as a branching node in the access network, allowing fibre connections to be routed from the main network towards individual customer premises.

[45] These obligations also include price regulation of certain fibre-based wholesale products, where Nkom sets requirements for price structure and levels to prevent discriminatory pricing and margin squeeze.

[46] According to points 102(b) and 108(c) of the Broadband Guidelines, State intervention must represent a significant new infrastructure investment bringing significant new capabilities to the market. In line with the Broadband Guidelines, footnote 74, this is for example the case when the new network significantly extends the fibre from the core of the network towards the edge of the network, for instance: (i) the deployment of fibre to the base stations to support the deployment of fixed wireless access networks; (ii) the deployment of fibre to the cabinets where the cabinets were not previously connected to a fibre network; (iii) the increase (deepening) of the fibre in cable networks.

a) In intervention areas with no existing or credibly planned networks providing a download speed of at least 100 Mbit/s (white areas), the aided network should at least triple the download speed compared to the existing networks and provide a download speed of at least 100 Mbit/s.

b) In intervention areas with only one existing or credibly planned network providing a download speed of at least 100 Mbit/s (grey areas), the aided network should at least triple the download speed compared to the existing network.

c) In intervention areas with at least two existing or credibly planned networks providing a download speed of at least 100 Mbit/s (black areas), the aided network should at least triple the download speed compared to the existing network and provide a download speed of at least 1 Gbit/s and an upload speed of at least 150 Mbit/s.

4.11.2 Mobile broadband

(69) The aided mobile access network must ensure a step change in terms of mobile services' availability, capacity, speeds and competition that may foster the adoption of new innovative services. Furthermore, the deployment of the State-funded network must represent a significant new investment in the area's mobile network infrastructure. Consequently, to be eligible for aid, the subsidised network must meet the following requirements:

a) In intervention areas with no mobile networks or only networks based on 2G (white areas) existing or credibly planned, the aided network should at least provide 4G or 5G services.

b) In intervention areas with existing or credibly planned 4G or 5G mobile networks (grey areas), a step change occurs if the new network provides at least a tripling of the download speed compared to the existing or credibly planned networks or provides new advanced features such as 5G standalone. 5G standalone networks generally have additional functional capabilities such as ultra-low latency, high reliability and the possibility to reserve part of the network for a particular use and guarantee a certain quality of service, allowing them to support new services.

(70) According to the Norwegian authorities, speed is the most apt descriptor of whether an area has achieved "significant new capabilities" as it is the increased speed that enables the network to serve new uses, such as video streaming, video calls and video games.

4.12 Competitive selection procedure

(71) The aid will be granted through open, transparent and non-discriminatory competitive selection procedures, in line with the principles of public procurement and respecting the principle of technological neutrality.

(72) The counties will conduct the competitive selection procedure for all the projects within their territory and publish the tenders on the national database for public procurement (Doffin).[47] Each tender will concern a specific geographical area determined by the county, comprising addresses or areas covered by the

[47] See Doffin.

intervention areas identified through the annual mapping exercise described in section 4.8.

(73) In principle, the bid that meets the requirements for the project as regards step change and geographical coverage for the lowest amount of State aid will be selected.

(74) However, the counties will be able to include additional objective and non-discriminatory criteria in the selection process, based on local conditions and political prioritisations. This could include the overall capacity of the network, the network speed, or the environmental impact of the project. As individual circumstances will vary, the counties will further be able to engage in competitive dialogue procedures with potential bidders, prior to the tenders, to achieve the most appropriate design of the intervention.

(75) To ensure that the most economically advantageous offer is selected, the requirements regarding step change and geographical coverage, as well as potential additional criteria and their relative weight in the selection procedure, must be determined in advance and clearly communicated to the participants of the tender.[48] The specific weight of additional criteria is to be determined by the counties, though with the requirement that the aid amount be a major factor with a minimum weight of over 50%.

(76) If there is only one bidder participating in the tender, an independent auditor will assess the winning bid (including cost calculations). The assessment will be based on a comparison with other comparable projects within the county and across counties. If the assessment concludes that the winning bid is disproportionally costly, there will be grounds to conduct a new tender.

(77) The competitive selection procedure must be launched within one year after the end of the public consultation. If a competitive selection procedure is not launched within that period, a new public consultation must be carried out before the launch of the competitive selection procedure.

4.13 Wholesale access

(78) The beneficiaries, which will be the owners of the subsidised networks, will be subject to an obligation to offer effective wholesale access under open, transparent, fair, and non-discriminatory conditions.

(79) Wholesale access is to be granted for at least ten years, and without time limitation for physical infrastructure including ducts or poles. Access based on virtual unbundling must be granted for a period of time equal to the lifespan of the infrastructure for which virtual unbundling is a substitute.

(80) The same access conditions shall apply to the entire subsidised network, including parts of the network where existing infrastructure has been used. The access obligation will be enforced irrespective of any change in ownership, management or operation of the subsidised network.

(81) New infrastructure must be large enough to meet access seekers' current and evolving demands, in line with point 135 of the Broadband Guidelines. For instance,

[48] In line with point 120 of the Broadband Guidelines.

and depending on the specificity of the network, where new ducts are built to host fibre, they should cater for at least three independent fibre cables each hosting several fibres and therefore able to serve several undertakings. Where existing infrastructure has capacity constraints and cannot provide access to at least three independent fibre cables, the operator of the State-funded network should make available at least 50 % of the capacity to access seekers. In order to render the wholesale access effective and to enable the access seeker to provide its services, wholesale access must also be granted to the unsubsidised parts of the network and parts that may not have been deployed by the beneficiary.

(82) Aid applicants are informed about the wholesale access requirements in the documents of the competitive selection process. This includes the terms, conditions and prices for the wholesale access. This information will be published in the national database for public procurement Doffin.no. This website is open to the general public without any restrictions. The project owner, i.e. either the county or municipality responsible for contracting with the winning bidder, will be obliged to reflect the wholesale access requirements in the contract with the winning bidder.

(83) Wholesale access should be granted as early as possible before starting to provide the relevant services. If the winning bidder intends to provide broadband services to end users at retail level, it will be required to grant wholesale access at least six months before the launch of those retail services. In practice, this could entail the beneficiary offering wholesale access during the construction period of the subsidised network, with the access being utilised when the network is put into operation.

4.14 Wholesale access products

4.14.1 Fixed access networks

(84) The subsidised network must provide at least bitstream access, access to dark fibre and access to infrastructure, including street cabinets, poles, masts, towers and ducts. In addition, the State-funded network must provide at least either physical unbundling or VULA. To be considered suitable as a wholesale access product, any VULA product must be approved in advance by Nkom.

(85) Nkom has conducted an assessment of the demand for physical unbundling together with the counties and the Ministry. According to Nkom's experience, physical unbundling is considered impractical and is not used in Norway. Telenor, as a regulated SMP-operator, primarily offers VULA access to its network. Telenor has also offered physical unbundling as part of the SMP regulation for the last 10 years but experienced zero demand for it. In the Norwegian broadband market, several operators are in the process of opening, or planning to open, their networks for wholesale access on commercial terms. A common marketplace for fibre infrastructure and standardised solutions for the purchase and sale of access based on VULA is currently under development by several operators. According to the Norwegian authorities, physical unbundling will increase the cost of the subsidised network (i.e. require more State aid), while it is highly unlikely to have a positive impact on competition in practice. Therefore, Nkom considers that VULA generally will be sufficient in the Norwegian market and will as a main rule not require physical unbundling. However, as part of the mapping and public consultation (see section 4.8), stakeholders will be invited to comment on the requirements for wholesale access products in the subsidised networks. If the consultation demonstrates a

demand for physical unbundling, it would indeed also be imposed in the relevant project areas.

4.14.2 Backhaul networks

(86) The subsidised network must ensure at least one active service and access to poles, masts, towers, ducts and dark fibre. If necessary to ensure that the capacity requirements for new infrastructure set out in paragraph (81) are met, the beneficiary may be required to deploy sufficient backhaul network capacity.

4.14.3 Mobile access networks

(87) The subsidised network must provide a reasonable set of wholesale access products to ensure effective access to the network, with regards to the characteristics of the market. At a minimum, subsidised networks will provide roaming and access to poles, masts, towers and ducts. If other products should appear necessary to ensure effective access to the network in any given project, these will also be required. Additionally, as soon as they become available, the subsidised network will have to provide the access products necessary to exploit the more advanced features of mobile networks, such as 5G and future generations of mobile networks. Nkom would assess the need for further wholesale access products annually and include recommended potential changes in the annual public consultation before conclusion on the assessment.

4.15 Wholesale access pricing

(88) Wholesale access prices will be regulated in Nkom's price guide, which contains regulated prices already set or approved by Nkom for the market and services concerned. Operators receiving State aid are required to comply with Nkom's price guide.

(89) The regulated prices in the price guide currently correspond to Telenor's regulated wholesale access prices. Nkom has actively regulated Telenor's wholesale prices and considers this a reasonable and non-discriminatory price level for access to broadband networks that have received public support. This price level is regulated and approved by Nkom through a margin check, where several factors are involved to ensure it is a competitive price point at any given time. Telenor's currently applicable wholesale prices and price structures for the various access products can be found on Telenor's wholesale portal. As a starting point, this will be the required wholesale price for any State-funded network.

(90) Should Telenor cease to be regulated, e.g. due to market developments, Nkom may instead base the pricing guide on either comparable market prices,[49] prices of other regulated operators,[50] or prices resulting from Nkom's long-run incremental cost ("LRIC") model.[51] According to the Norwegian authorities, at present, it is unclear how the relevant markets will develop, and therefore difficult to predict which solution will be the most apt for ensuring a fair and non-discriminatory price point, to encourage competition within the market. Nkom will closely monitor the market developments and will regulate the wholesale prices through the price guide.

---

[49] This would be done by analysing wholesale prices in the market and using these as benchmarks for the price guide.

[50] Other operators may stay or become regulated, based on their specific circumstances.

[51] An LRIC model to perform a cost-based analysis on market operators is under development. When this is in place, it may also be used by Nkom to set reasonable regulated prices.

(91) Information about the wholesale access terms, conditions and pricing will be included in the public consultation on the annual mapping, and in the public tenders. Nkom will be consulted by the counties in relation to questions regarding wholesale access products and the terms and conditions for wholesale access, including wholesale access pricing, and in the event of disputes between the access seeker and the operator of the subsidised infrastructure. Nkom will also, upon request by counties, access seekers or operators, provide general guidance to clarify regulatory requirements, facilitate mediation between the parties involved, or adopt a formal decision if necessary to resolve the issue.

4.16 Extension of the network into adjacent areas

(92) The aid beneficiary, or access seekers connecting to the subsidised network, may extend their networks into adjacent areas outside the target area of the State aid, if done purely on commercial terms.

(93) Access seekers may carry out such extensions on the basis of the wholesale access. If the access seeker is not linked to the aid beneficiary, there is no limitation for such extensions into adjacent areas. An access seeker is deemed not to be linked to the aid beneficiary if it is not part of the same group and does not have participation in their respective undertakings.

(94) Extensions by the aid beneficiary will be allowed subject to the following cumulative safeguards:

a) when carrying out the public consultation, it is indicated that private extensions are permitted at a later stage, and meaningful information regarding the potential coverage of such extensions is provided;

b) extensions into adjacent areas may only be carried out 2 years after the subsidised network enters into operation, if there is at least one network in the adjacent area providing speeds comparable to those of the subsidised network.

(95) Nkom will conduct the assessment of adjacent areas as part of the annual mapping and public consultation in cooperation with the counties. If the results of the public consultation show evidence of risks of other significant distortions of competition, extensions by the aid beneficiary must be prohibited and reported to the relevant county authorities. Information about prohibited areas would be part of the competitive selection process and included in the contracts with the aid beneficiaries.

4.17 Accounting separation

(96) To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the counties must ensure that the beneficiaries have separate accounts for the costs for the deployment and the operation of the State-funded network, as well as the revenues from the exploitation of the network, and other funds at their disposal. This requirement will be included in the competitive selection process, and the project owner, i.e. the county or municipality, will be obliged to reflect this requirement in the contract with the winning bidder.

4.18 Transparency, reporting and monitoring

(97) All relevant information concerning the aid scheme and the individual aid awards associated with the measure will be made publicly available on Nkom's website and on the respective counties' websites. The information will be available for at least 10 years from the date on which the aid was granted. The information will be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The general public will be allowed to access the website without any restrictions.

(98) Individual aid awards of EUR 100 000 or more will be published in the Norwegian State aid register.[52] This registration will take place no later than 6 months from the date of award of the aid.

(99) The Norwegian authorities have confirmed that they will submit annual reports to ESA in respect of the measure, in line with the Broadband Guidelines.[53] In addition, the Norwegian authorities have confirmed that they will report every two years key information on the measure to ESA, consistent with the Broadband Guidelines.[54]

5 Presence of State aid

5.1 Introduction

(100) Article 61(1) of the EEA Agreement reads as follows: "Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States 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 Contracting Parties, be incompatible with the functioning of this Agreement."

(101) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

5.2 Presence of State resources and imputability

(102) Imputability of a measure to the State and the granting of an advantage through State resources are two separate and cumulative conditions for the existence of State aid, which are, however, often assessed together as they both relate to the public origin of the measure in question.[55] A measure is by definition imputable to the State if the advantage is granted by a public authority, even if the latter enjoys legal autonomy from other public authorities.[56] As to the requirement that State resources be involved, those include all resources of the public sector, including those of intra-State entities.[57] In the case at hand, the measure is imputable to the State since it has as its legal basis binding guidelines issued by the Ministry based on which the counties will grant the aid (see sections 4.2 and 4.3). Additionally, the

---

[52] Støtteregisteret, available here.
[53] See point 207 of the Broadband Guidelines.
[54] See point 208 of the Broadband Guidelines.
[55] ESA's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement ('NoA') (OJ L 342, 21.12.2017, p. 35 and EEA Supplement No 82, 21.12.2017, p. 1), paragraph 38.
[56] NoA, paragraph 39.
[57] NoA, paragraph 48 and the case law cited.

measure will be financed (i) by the national State budget, and (ii) by local authorities (see section 4.6). Therefore, State resources are directly involved.

5.3 Conferring an advantage on an undertaking

(103) The measure must confer on an undertaking an advantage that relieves it of charges that are normally borne from its budget.

(104) The concept of an undertaking encompasses every entity engaged in an economic activity.[58] Any activity consisting in offering goods and services on a given market is an economic activity.[59]

(105) The measure will allow economic operators (i.e. the winners of the public tenders) to deploy new broadband networks. Those economic operators will manage and commercially exploit the new infrastructure by offering wholesale services to other third-party electronic communications operators and/or provide retail broadband services through the subsidised network. The provision of broadband services (both wholesale and retail services) is considered to be an economic service, since these are provided against remuneration and also offered by private telecom operators. The aid will, therefore, be granted to undertakings within the meaning of Article 61(1) of the EEA Agreement.

(106) Secondly, the aid measure must confer on the beneficiaries an economic advantage, which it would not have obtained under normal market conditions.[60]

(107) In the present case, the winners of the local public tenders will receive a direct grant to (partially) cover the investment costs related to the rollout of new network infrastructure. Co-financing of such investments amounts to an economic advantage, since their cost should normally have been covered by the private operator's own budgets. The aid will allow the selected operator to roll out new broadband networks on conditions not otherwise available on the market. In addition, the financial support might enable the successful bidder to conduct its future commercial activities in respect of the network under conditions which would not otherwise have existed in the absence of the measure.

5.4 Selectivity

(108) To fall within the scope of Article 61(1) of the EEA Agreement, the measure must be selective in that it favours "certain undertakings or the production of certain goods". Therefore, not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.[61]

(109) Public funding from the measure will only be granted to specific beneficiaries which are active only in certain segments of the overall electronic communications services market, i.e. the successful tenderer of each of the local projects. The measure is therefore selective.

---

[58] NoA, paragraph 7.
[59] NoA, paragraph 12.
[60] NoA, paragraph 66.
[61] NoA, paragraph 117.

5.5 Effect on trade and distortion of competition

(110) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.[62]

(111) It is established case law that a measure distorts or threatens to distort competition in a way that affects trade between Contracting Parties if it strengthens the competitive position of the recipient compared with other undertakings[63] and if the recipient is active in a sector in which trade between Contracting Parties takes place.[64]

(112) The measure has the potential to distort competition. Public involvement in deploying infrastructure to provide electronic communications services strengthens the position of the selected supplier in relation to its competitors. In particular, State support to roll out new broadband networks might reduce profitability and crowd out investment by alternative market players that might be willing to invest in the targeted area or parts of it in the middle to long term. In fact, due to the State aid granted to a competitor, existing operators might reduce capacity or potential operators may decide not to enter the market. Distortions of competition are likely to occur if the beneficiary of the aid is an SMP operator, since its market position will be reinforced.

(113) The State intervention has also a potential effect on trade since the markets for electronic communications services (including the wholesale and the retail broadband markets) are open to trade and competition between operators and service providers across the EEA.

5.6 Conclusion

(114) In view of the assessment set out in the above paragraphs (100)-(113), ESA finds that the measure fulfils all the conditions in Article 61(1) of the EEA Agreement. It therefore constitutes State aid within the meaning of this provision.

6 Aid scheme

(115) Pursuant to Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"), an aid scheme shall mean, inter alia, any act on the basis of which, without further implementing measure being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner.

(116) ESA notes that the legal basis of the measure is set out in acts which do not require further implementing measures for the granting of the aid, since the counties as aid granting authorities will apply the national guidelines referred to in section 4.2 above and, in doing so, will not have discretion which would allow them to influence the amount of the aid, its characteristics or the conditions under which that aid is granted.[65] Moreover, the beneficiaries are defined in a general and abstract manner

[62] NoA, paragraph 185.
[63] NoA, paragraph 187.
[64] NoA, paragraph 190.
[65] See judgment of 14 May 2025, *Telly* v *Commission*, Joined Cases T-362/21 and T-363/21, EU:T:2025:493, paragraphs 120-121.

as the operators that win the tenders for the deployment of the aided networks (see section 4.4 above). The aid is therefore granted on the basis of an aid scheme.

7 Lawfulness of the aid

(117) Pursuant to Article 1(3) of Part I of Protocol 3: "The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. … The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision."

(118) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

8 Compatibility of the aid

8.1 Introduction

(119) In derogation from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Agreement. The Norwegian authorities invoke Article 61(3)(c) of the EEA Agreement as the basis for the assessment of the compatibility of the aid measure.

(120) Article 61(3)(c) of the EEA Agreement provides that ESA may declare 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". Therefore, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.[66]

(121) Under the first condition, ESA examines how the aid facilitates the development of certain economic activities or areas. Under the second condition, ESA weighs up the positive effects of the aid for the development of said activities or areas and the negative effects of the aid in terms of distortions of competition and adverse effects on trade.

(122) ESA has assessed the measure in the light of the Broadband Guidelines, which contain a detailed interpretation of Article 61(3)(c) of the EEA Agreement as it applies to aid measures consisting of the deployment of broadband networks.

(123) Consequently, in its compatibility assessment, ESA has examined the following two aspects:[67]

(a) Under the first condition, ESA has examined whether the aid is intended to facilitate the development of certain economic activities, and in particular:

- the economic activity facilitated by the aid;
- the incentive effect of the aid, namely the potential of the aid to change the behaviour of the undertakings concerned in such a way that they carry out

[66] Judgment of 22 September 2020, *Austria* v *Commission* (*Hinkley Point C*), C-594/18 P, EU:C:2020:742, paragraphs 18–20.
[67] Broadband Guidelines, point 31.

an additional activity, which they would not have carried out without the aid or would have carried out in a restricted or different manner or location; and

- the existence of a breach of any relevant EEA law in relation to the measure at stake.

(b) Under the second condition, ESA has weighted the positive effects of the planned aid and the negative effects that the aid may have, in terms of distortions of competition and adverse effects on trade caused by the aid, and has therefore assessed:

- the positive effects of the aid; whether the aid is needed and targeted to address 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 an equity or cohesion concern;

- whether the aid is an appropriate policy instrument to meet its objective; whether the aid is proportionate and limited to the minimum necessary to induce the additional investment or activity in the area concerned;

- whether the aid is transparent, namely whether the EEA States, stakeholders, the public and ESA have easy access to information on the aid awarded; and

- the negative effects of the aid on competition and trade between Contracting Parties.

(c) As a final step, ESA has balanced the identified negative effects of the aid on competition and trade with its positive effects on the supported economic activities.[68]

8.2 Facilitation of development of certain economic activities or areas

8.2.1 Economic activities or areas supported

(124) Under Article 61(3)(c) of the EEA Agreement, in order to be considered compatible with the functioning of the EEA Agreement, the measure must contribute to the development of certain economic activities or areas.

(125) ESA finds that the measure will facilitate the deployment of ultra-fast and gigabit networks, in line with the Norwegian digitalisation strategy's objectives (see sections 3.3, 4.1 and 4.7).

(126) The measure will also facilitate increased mobile coverage in line with the target in the Norwegian digitalisation strategy regarding mobile coverage that high-speed mobile coverage should be available for everyone, not only where they live but also where they work and travel. The deployment of subsidised mobile access networks will take place exclusively in areas where there is no existing or credibly planned mobile network providing the capabilities required to meet end users' current and evolving needs, as defined in section 4.7.3, and identified through the annual mapping exercise (see section 4.8).

[68] Broadband Guidelines, point 32.

(127) The measure will contribute to the development of the broadband sector, by financially supporting the rollout of fixed and mobile access networks in the target areas (see sections 4.3, 4.5 and 4.7). Furthermore, the measure will increase the availability for the public, businesses and public administration in the target areas of electronic communications services capable of addressing their needs (as described in paragraph (19)) that cannot be effectively addressed by networks providing lower download speeds or capabilities, thus facilitating the development of economic activities relying on broadband services, which would not have occurred in the intervention areas in the absence of the aid. Therefore, ESA considers that the measure is a facilitator of the abovementioned economic activities.[69]

8.2.2 Incentive effect

(128) State aid is only compatible with the functioning of the EEA Agreement if it has an incentive effect and so effectively facilitates the development of certain economic activities. To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertakings concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner.

(129) ESA finds that the measure has an incentive effect, since it supports the deployment of fixed ultra-fast access networks, and high-speed mobile access networks, in areas where operators have not invested or do not intend to invest in networks meeting end users' needs within the relevant time horizon (see section 4.7). ESA notes that Nkom will carry out annual mapping exercises and public consultations (see section 4.8), in accordance with sections 5.2.2.4.1 and 5.2.2.4.2 of the Broadband Guidelines (see section 8.3.3.2 below), to ensure that the measure only targets those areas that meet the relevant eligibility criteria.

(130) In view of the above, ESA considers that, without the measure, the supported projects would not have materialised, and consequently, the development of the economic activities/areas mentioned in paragraph (127) would not have taken place. Therefore, the aid measure has an incentive effect.

8.2.3 Compliance with relevant EEA law

(131) If a State aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure), or the activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.[70]

(132) ESA has no indications that the measure, the conditions attached to it, or the activity it finances entail a violation of relevant EEA law.[71]

---

[69] In this regard, see Broadband Guidelines, points 35-36.

[70] Judgments of 19 September 2000, *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraph 78; 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 94–116; 22 September 2020, *Austria* v *Commission* (*Hinkley Point C*), C-594/18 P, EU:C:2020:742, paragraph 44; 14 October 2010, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50–51.

[71] In this regard, see Broadband Guidelines, point 41.

8.3 Whether the aid adversely affects trading conditions to an extent contrary to the common interest

8.3.1 Markets affected by the aid

(133) The measure affects the broadband market, e.g. deployers, owners and operators of fixed and mobile access networks, and electronic communication operators utilising such networks for offering retail services to end-users (see sections 4.4 and 5.3).

8.3.2 Positive effects of the aid

(134) The Broadband Guidelines recognise that EEA EFTA States may decide to design State interventions aimed at ensuring a wide availability of performant networks, as a way of improving access to an essential means of communication and participation in society, thereby improving social and territorial cohesion.[72] According to the Norwegian authorities, new services and applications based on fibre and 5G mobile technology are rapidly being established. The Norwegian authorities consider that they provide the basis for new ways of solving tasks and increased value creation and productivity, and that it is important that these services are made available throughout the country, also in sparsely populated areas, not only for citizens to participate in the society but also for the development of businesses and for the public sector to maximise the benefits of digitalisation (see paragraph (21)).

(135) ESA considers that the measure will bring about a material improvement in the availability of very high-quality broadband connections at both the wholesale and the retail level in the intervention areas to the benefit of the public generally, businesses and public administrations.

(136) Due to the step change requirements (see section 4.11), the subsidised networks will provide a significantly improved performance as compared to existing or planned networks in the target areas. The measure aims to incentivise the rollout of broadband in areas with insufficient commercial basis for investments, improving the overall broadband coverage in Norway. The measure will thus contribute to providing access to ultra-fast and gigabit networks to all households and socio-economic drivers, and high-speed mobile coverage, in particular in sparsely populated areas, bringing significant new capabilities to the market, helping to overcome limits and restrictions in providing innovative services which businesses and citizens require (see paragraphs (27) and (28)).

(137) Therefore, ESA finds that the measure has positive effects in the intervention areas.[73]

8.3.3 Limited negative effects of the aid

8.3.3.1 Introduction

(138) Article 61(3)(c) of the EEA Agreement requires an assessment of any negative effects on competition and trade. The aid must not adversely affect trading conditions to an extent contrary to the common interest.

---

[72] Broadband Guidelines, point 43.

[73] In this regard, see Broadband Guidelines, points 42-43.

8.3.3.2 Necessity for State intervention

(139) State aid must be targeted towards situations where it can bring about a material improvement that the market alone cannot deliver. A State intervention may be necessary if markets, without public intervention, would fail to deliver an effective outcome for society. This may arise, for instance, when certain investments are not carried out by private operators even though the benefit for society outweighs their cost.[74]

(140) In the present case, ESA finds that the necessity for State intervention is supported by the following considerations:

a) The measure targets areas where the market is not expected to provide, on a commercial basis, the necessary download speeds to satisfy end customers' needs. The criteria for the designation of intervention areas under the measure are in line with the Broadband Guidelines:

- As regards fixed broadband, the designation of intervention areas under the measure is in line with points 53-56 and 58-59 of the Broadband Guidelines, according to which, at the current stage of market development and given indicated end users' needs, a market failure may be present in certain areas with specific characteristics which indicate that the market does not and is not likely to provide end users with a download speed of at least 1 Gbit/s and an upload speed of at least 150 Mbit/s (see section 4.7.2).

- As regards mobile networks, the designation of intervention areas is in line with points 60 and 64 of the Broadband Guidelines, according to which a market failure is present in areas where there is no network, in place or credibly planned to be deployed within the relevant time horizon, which can address end users' needs, or, in areas with network(s) providing 4G or 5G coverage, if those networks do not and are not likely to provide end users with sufficient quality of services to satisfy their evolving needs (see section 4.7.3).

- Investments in backhaul networks will only be eligible for aid in so far as it is necessary for the functioning of the access network deployed in the same project (see paragraph (45)). In such a case, the Broadband Guidelines (point 75) do not require a separate mapping and public consultation regarding backhaul networks. Therefore, compliance with the criteria on the existence of a market failure for backhaul networks (points 67-69 of the Broadband Guidelines) follows from the existence of a market failure for fixed access networks and mobile access networks (see the two preceding indents).

- The target areas identified by the measure are therefore limited to only those where, pursuant to the Broadband Guidelines, a market failure is present.

[74] See Broadband Guidelines, points 44-45.

b) The target areas of the measure will be identified by way of a detailed mapping exercise, carried out annually by Nkom, based on data collection from all broadband providers in Norway (see section 4.8). In particular:

- The performances will be expressed at least in terms of download speeds and, where relevant, upload speeds that are or will be available to end users under peak-time conditions, and any bottleneck that could prevent achievement of those performances will be duly taken into account, in line with point 73(a) of the Broadband Guidelines (see paragraph (57) and footnote 33).

- For fixed access networks, the mapping will be carried out at address level on the basis of premises passed, and for mobile access networks, the mapping will be carried out on the basis of 100x100 meter grids, in line with point 73(b) of the Broadband Guidelines (see paragraph (57)).

- As investments in backhaul networks are only covered by the measure to the extent that they are part of a network deployment which includes, at the same time, the deployment of an access network and of the necessary backhaul network to enable the functioning of the access network (see paragraphs (45) and (140)a)), a separate mapping of backhaul networks will not take place, in line with point 75 of the Broadband Guidelines.

- The methodology and the underlying technical criteria used to map the Norwegian territory will be made publicly available, in line with point 76 of the Broadband Guidelines (see paragraph (57)).

c) Nkom will carry out a public consultation to verify the mapping and to receive information about credibly planned networks. This will allow interested parties to: (i) comment on the design and main characteristics of the planned intervention and the list of target areas identified through the mapping; and (ii) submit substantiated information on the existing networks or networks credibly planned to be deployed in the target areas within the relevant time horizon, in line with points 78-79 of the Broadband Guidelines (see paragraph (58)). The conditions for a private investment to be regarded as credibly planned will be published during the mapping exercise. Nkom may request documentation to verify the credibility of an investment plan (see paragraph (59)).[75]

d) The public consultation will be published on Nkom's website and will last at least 30 days, in line with points 78 and 82 of the Broadband Guidelines. The public consultation will be based on the most recent mapping, in line with point 81 of the Broadband Guidelines (see paragraph (61)). Based on the mapping and public consultation, Nkom will identify all eligible intervention areas for each county. A list of the identified intervention areas will be provided to the counties, as a basis for initiating projects (see paragraph (60)). In line with point 82 of the Broadband Guidelines, a new public consultation will be necessary if the competitive selection procedure is not

[75] Nkom will carry out a new mapping and public consultation relying on that new mapping if the deployment of the aided network does not take place within three years, in line with points 80 and 81 of the Broadband Guidelines (see paragraph (61)).

launched within one year from the end of the public consultation (see paragraph (77)).

(141) Accordingly, ESA finds that the measure is designed to address a market failure in the intervention areas and, therefore, there is necessity for State intervention.[76]

8.3.3.3 Appropriateness of the aid

(142) EEA EFTA States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 61(1) EEA can only be justified by the appropriateness of a particular instrument to contribute to the development of the targeted economic activities or areas.

(143) ESA normally considers that a measure is an appropriate instrument where the EEA EFTA State can demonstrate that alternative policy options would not be equally suitable to contribute to the development of economic activities or areas and where it can demonstrate that alternative, less distortive, aid instruments would not deliver equally efficient outcomes.

(144) In order to be appropriate to address the identified market failure and to achieve the objectives of the planned aid, the subsidised networks must provide enhanced performance in comparison to existing or planned networks.[77] Thus, State-funded fixed and mobile networks should be able to ensure a step change. A step change can be triggered if, as the result of the public intervention, the new network:

a) represents a significant new investment in broadband networks, and

b) brings significant new capabilities to the market in terms of availability, capacity, speeds and competition of broadband services.[78]

(145) ESA finds that the measure ensures significant new investments, in line with point 97 of the Broadband Guidelines, since it will finance the deployment of fixed ultra-fast access networks, or mobile access networks, in those areas of Norway that, in the relevant time horizon, will not be covered by networks providing download speeds (or functional capabilities) capable of meeting current and developing end-users' needs in terms of connectivity, as explained in section 4.7.

(146) Moreover, ESA finds that, in line with point 97 of the Broadband Guidelines, the measure will bring significant new capabilities to the market by expanding the availability in terms of speeds (and related services), since the subsidised networks will provide connectivity of a significantly higher performance than existing or planned networks in the intervention areas (see section 4.11). More specifically, in the case of fixed access networks, the subsidised network must meet the following requirements, in line with section 5.2.3.1 of the Broadband Guidelines:

a) In intervention areas with no existing or credibly planned networks providing a download speed of at least 100 Mbit/s (white areas), the aided network should at least triple the download speed compared to the existing networks, and provide a minimum download speed of 100 Mbit/s, and represent a

[76] In this regard, see Broadband Guidelines, section 5.2.2.
[77] See Broadband Guidelines, points 95 and 97-98.
[78] See Broadband Guidelines, point 97.

significant new infrastructure investment bringing significant new capabilities to the market, in line with section 5.2.3.1.1 of the Broadband Guidelines (see paragraphs (68) and (68)(a)).

b) In intervention areas with only one existing or credibly planned network providing download speed of at least 100 Mbit/s (grey areas), the aided network should at least triple the download speed compared to the existing network, and represent a significant new infrastructure investment bringing significant new capabilities to the market, in line with section 5.2.3.1.1 of the Broadband Guidelines (see paragraphs (68) and (68)(b)).

c) In intervention areas with at least two existing or credibly planned networks providing a download speed of at least 100 Mbit/s (black areas), the aided network should at least triple the download speed compared to the existing networks, and provide a minimum download speed of 1 Gbit/s, and a minimum upload speed of 150 Mbit/s, and represent a significant new infrastructure investment bringing significant new capabilities to the market, in line with section 5.2.3.1.3 of the Broadband Guidelines (see paragraphs (68) and (68)(c)).

(147) In the case of mobile access networks, the subsidised network must meet the following requirements, in line with section 5.2.3.2 of the Broadband Guidelines:

a) In intervention areas with no mobile networks or only networks based on 2G technology, the aided network should at least provide 4G or 5G services (see paragraph (69)a)).

b) In intervention areas with existing or credibly planned 4G or 5G mobile networks, the aided network must either triple the download speed as compared to the existing or credibly planned networks, or provide new advanced features like 5G standalone (see paragraph (69)b)).

(148) Hence, ESA finds that the measure will lead to a significant and non-temporary technological advancement in comparison to existing networks.

(149) State aid is not the only policy instrument available to Member States to boost investment in the deployment of broadband networks. Member States can use alternative instruments, such as administrative and regulatory measures.[79] However, in the Norwegian authorities' view, such alternative instruments are not appropriate means in this case. According to the Norwegian authorities, the SMP regulation has contributed to more competition both on the service and infrastructure level, which in turn has led to a faster broadband rollout in some areas. However, the SMP regulation has not, and will not in the future, lead to the rollout of broadband infrastructure in areas considered by the operators to be non-profitable, such as the target areas of the measure. ESA agrees with the submission of the Norwegian authorities, because State aid is what incentivises broadband infrastructure rollout in non-profitable areas, while SMP regulation aims to preserve competition in the telecommunication market.

[79] See Broadband Guidelines, point 96.

(150) Therefore, ESA considers that the measure is an appropriate policy instrument for developing the economic activity in the intervention areas.

(151) Furthermore, ESA finds that the selected State aid instrument, that is grants, is the most appropriate instrument to achieve the measure's objective. That is because the investments aiming to ensure a uniform high-quality fixed and mobile broadband coverage would be loss-making otherwise. As such, State aid instruments providing liquidity or risk capital, such as subsidised loans or equity injections, respectively, would not be as suitable as grants for covering such losses.

8.3.3.4 Proportionality of the Measure

(152) State aid is proportionate if the aid amount per beneficiary is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.

(153) Member States must demonstrate that the aid is proportionate to the problem tackled, which entails showing that the same change in behaviour (resulting from the incentive effect of the aid) would not be obtained with less aid and fewer distortions. Aid is considered proportionate if the amount is limited to the minimum necessary and the potential distortions of competition are minimised.[80]

(154) In the present case, ESA finds that the proportionality of the measure is supported by the following considerations:

a) Competitive selection procedure:

- The aid will be granted on the basis of open, transparent and non-discriminatory competitive selection procedures, conducted by the counties, in line with the principles of public procurement, in accordance with point 117 of the Broadband Guidelines (see section 4.12).

- County-level competitive selection procedures encourage possible participation, compared to national tenders. That is because of two reasons. First, splitting projects at the county level reduces their size and makes them more attractive to local operators with existing, adjacent networks. By contrast, pooling projects at the national level would raise barriers to the participation of small, local operators, thereby reducing the competitiveness of tender procedures. Second, projects may be split further into smaller projects, based on *inter alia* local knowledge of the county authorities (see paragraphs (48)-(49)). Such an additional split of the projects would be more difficult for national authorities, which may lack sufficiently precise information.

- The tender will be awarded on the basis of the most advantageous offer. For this purpose, the county will establish, in advance, objective, transparent and non-discriminatory qualitative award criteria, in line with points 120-122 of the Broadband Guidelines. In any case, the aid amount will carry a major weight among the selection criteria, at least more than 50% (see paragraphs (73)-(75)).

[80] See Broadband Guidelines, point 115.

- The call for tenders will be published on Doffin, the national database for public procurement (see paragraph (72)).

- In cases where there is only one bidder, an independent auditor will conduct an assessment of the winning bid (including cost calculations) to ensure that the aid is proportionate, in line with point 118 of the Broadband Guidelines (see paragraph (76)). If this assessment reveals aid in excess of the minimum necessary, project owners will carry out a new tender. To raise interest in participating in such new tender, the project owner may alter the project scope.

b) Technological neutrality:

- State intervention must not favour or exclude any particular technology, both in the selection of beneficiaries and in the provision of wholesale access. As different technological solutions exist, the tender must not favour or exclude any particular technology or network platform. Bidders should be entitled to propose the provision of the required electronic communication access services using or combining whatever technology they deem most suitable. This is without prejudice to the possibility for EEA EFTA States to determine the relevant performance of the electronic communication access services. A State-funded network must enable access under fair and non-discriminatory conditions to all access seekers irrespective of the technology used.[81]

- The measure is technologically neutral, in line with point 125 of the Broadband Guidelines. It does not favour or exclude any particular technology, neither in the selection of beneficiaries, nor in the provision of wholesale access to the subsidised networks. Hence, bidders are free to propose the technological solution they deem most suitable, in view of the criteria set out in the requests for tenders (see paragraph (62)). The counties may nevertheless determine the required performance, including the energy efficiency of the networks, before the tender, and grant priority points to the most suitable technological solutions based on objective, transparent and non-discriminatory criteria (see paragraph (63)). Moreover, the subsidised networks must enable wholesale access under fair and non-discriminatory conditions to all access seekers irrespective of the technology used (see paragraphs (63) and (78)).

c) Use of existing infrastructure:

To reduce the cost of deployment of a new broadband network, EEA EFTA States should encourage the use of any available existing infrastructure.[82] The measure encourages the use of the existing infrastructure by the aid beneficiaries, in line with points 126-128 of the Broadband Guidelines, since (see section 4.10):

[81] See Broadband Guidelines, point 125.
[82] See Broadband Guidelines, points 126-128.

- The SIP[83] managed by Nkom includes information on existing infrastructure suitable for the provision of electronic communications networks, in line with the Norwegian Broadband Development Act.

- Network operators that have such suitable infrastructures at their disposal are obliged, pursuant to the Norwegian Broadband Development Act, to provide detailed information on them, in order to allow their inclusion in the SIP.

- All relevant information about the existing infrastructure in the target area will be made publicly available to interested parties through the use of the SIP.

d) Wholesale access:

The subsidised networks will provide effective wholesale access under fair and non-discriminatory conditions to operators who request it, enabling third-party operators to compete with the selected bidder and, therefore, to develop competition in the target areas, avoiding the creation of local monopolies (see paragraph (78)).[84] In particular:

- The subsidised networks will ensure a wide range of wholesale access products and services. As regards fixed broadband, the network will at least ensure bitstream access, access to infrastructure, including dark fibre, street cabinets, poles, masts, towers and ducts. In addition, the subsidised network must provide at least either physical unbundling or VULA. To be considered suitable as a wholesale access product, any VULA product must be approved in advance by Nkom (see paragraph (84)).[85] As explained in paragraph (85), the Norwegian authorities will as a main rule allow the provision of VULA instead of physical unbundling, even if the aided network is deployed in a grey or black intervention area. However, if the public consultation demonstrates a demand for physical unbundling, it would be imposed in the relevant project areas. In view of the characteristics of the Norwegian broadband market, in particular the non-existent use of and absence of demand for physical unbundling in Norway, ESA considers that requiring VULA as a main rule instead of physical unbundling appears justified, and is in line with point 143 of the Broadband Guidelines, especially taking into account that physical unbundling will be imposed if the public consultation demonstrates that there is a demand. As regards mobile networks, the subsidised network will provide a reasonable set of wholesale access products, at least roaming, and access to poles, masts, towers and ducts, and as soon as available, the access products necessary to exploit the more advanced features of mobile networks, such as 5G and future generations of mobile networks (see paragraph (87)).[86]

---

[83] Ekomportalen is the practical implementation of SIP as mandated by the Norwegian Broadband Development Act (see paragraph (64)).
[84] See Broadband Guidelines, points 129 and 130.
[85] See Broadband Guidelines, points 140-141.
[86] See Broadband Guidelines, point 144.

- Wholesale access shall be granted for at least ten years. Wholesale access to physical infrastructure, including ducts and poles, shall not be limited in time. Access based on VULA will be granted for a period equal to the lifespan of the infrastructure for which VULA is a substitute (see paragraph (79)).[87]

- Wholesale access should be granted as early as possible before starting to provide the relevant services. Where the aid beneficiary intends to provide broadband services to end users at retail level, it will have to provide wholesale access at least 6 months before the launch of its retail services (see paragraph (83)).[88]

- The aid beneficiary may be required to reserve capacity of existing infrastructure for access seekers and/or to deploy sufficient new infrastructure, if this is necessary to grant effective wholesale access to access seekers (see paragraph (81)).[89]

- New infrastructure must be large enough to meet access seekers' current and evolving demands. For instance, where new ducts are built to host fibre, they should cater for at least three independent fibre cables, each hosting several fibres. Where existing infrastructure has capacity constraints and cannot provide access to at least three independent fibre cables, the operator of the State-funded network should make available at least 50% of the capacity to access seekers.[90] Wholesale access shall also be granted to parts of the network that have not been subsidised or that may not have been deployed by the aid beneficiary[91] (see paragraph (81)).

- Wholesale access prices will be set according to the price guide developed by Nkom which contains regulated prices already set or approved by Nkom for the market and services concerned (see paragraph (88)). Nkom will be consulted in relation to questions regarding wholesale access products and the terms and conditions for wholesale access, including wholesale access pricing, and in the event of dispute between the access seeker and the operator of the subsidised infrastructure (see paragraph (91)).[92]

- The terms, conditions and prices for wholesale access will be indicated in the tender documents and published on Doffin.no, which is accessible to the general public without any restrictions (see paragraphs (82) and (91)).[93]

[87] See Broadband Guidelines, points 133-135.
[88] See Broadband Guidelines, point 129.
[89] See Broadband Guidelines, point 130.
[90] See Broadband Guidelines, point 135.
[91] See Broadband Guidelines, point 132.
[92] See Broadband Guidelines, points 136, 151 and 152.
[93] See Broadband Guidelines, point 131.

- The same access conditions will apply on the entirety of the network, including where existing infrastructure will be used (see paragraph (80)).[94]

- The access obligations will be enforced regardless of any change in ownership, management or operation of the subsidised networks (see paragraph (80)).[95]

e) Claw-back:

The total amount of aid granted to a single project under the measure may not exceed EUR 10 million (see paragraph (38)). Therefore, no claw-back mechanism is included in the scheme.[96]

f) Extensions into adjacent areas:

By use of their own resources, beneficiaries and access seekers will be allowed to extend their networks into adjacent areas outside the target areas, provided it has been indicated in the public consultation that such extensions are permitted. However, if the adjacent area is served by at least one network providing speeds comparable to those of the subsidised network, such extension may only be carried out 2 years after the subsidised network enters into operation (see section 4.16).[97] Furthermore, extensions will be prohibited if the results of the public consultation show evidence of risks of other significant distortions of competition, in line with point 139 of the Broadband Guidelines (see paragraph (95)).

g) Accounting separation:

To ensure that aid remains proportionate and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary will be required to ensure accounting separation, for the costs for the deployment and operation of the aided network, as well as the revenues from the exploitation of the network, and other funds at its disposal (see paragraph (96)).[98]

8.3.3.5 Negative effects on competition and trade

(155) Aid for the deployment of fixed and mobile networks may have negative effects in terms of market distortions and impact on trade between Contracting Parties. ESA has assessed the significance of the distortion of competition and the effect on trade of the measure in terms of effects on competitors and possible crowding out of private investments, in accordance with points 168 and 169 of the Broadband Guidelines.

(156) The Norwegian authorities contend that, as Norway has reached a high percentage of gigabit coverage, the remaining areas which would be eligible for aid under the measure have shown to be clearly unprofitable for operators to develop gigabit

[94] See Broadband Guidelines, point 137.
[95] See Broadband Guidelines, point 137.
[96] See Broadband Guidelines, point 155.
[97] See Broadband Guidelines, point 138. Accordingly, both situations described in point 138(b)(i) and (ii) of the Broadband Guidelines are covered.
[98] See Broadband Guidelines, point 160.

coverage on market terms. According to the Norwegian authorities, it therefore appears less likely that State aid would crowd out private investments, especially considering that the aid would be granted through a competitive selection procedure, and the aided networks would include wholesale access.

(157) According to the Norwegian authorities, operators currently providing services in areas covered by the measure could nevertheless experience competition from State-funded projects, such as those currently operating in white, grey and potentially black areas. Local service providers may be incentivised to utilise the faster State-funded service. This would demonstrate the demand for faster services, which are not sufficiently profitable on market terms. However, the operators who experience this competition would themselves be able to participate in the competitive selection procedure.

(158) Regarding the potential of further strengthening already dominant market operators, ESA notes that the competitive selection process is a neutral method of determining which operators receive State aid, which does not in itself prioritise more dominant market operators. According to the Norwegian authorities, dominant market operators have, under the current broadband support scheme, not appeared to participate in State-funded projects at a greater rate than their market share, neither in terms of number of supported projects nor in terms of amount of State aid provided. According to the Norwegian authorities, there is no reason to believe that this would change, as the conditions regarding which operators are granted State aid are not significantly altered. In any case, the State aid beneficiary will be subject to access and pricing obligations, which mitigates potential competition distortions.

(159) Overall, ESA agrees with the Norwegian authorities on the limited risk of negative effects on competition and trade. That is because the aid is targeted to areas with unsatisfactory coverage that are identified through a mapping and public consultation (see paragraph (140)). Furthermore, competition distortions are mitigated by the granting of the aid through open, transparent, and non-discriminatory tender procedures (see paragraph (154)a)). Finally, the wholesale access and pricing conditions will ensure that the benefits of the aided infrastructure extend to other players than the owner (see paragraph (154)d)).

8.3.3.6 Conclusion on limited negative effects

(160) In light of the above arguments, ESA concludes that any negative effects of the aid on competition and on trade are limited.

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

(161) For the aid to be compatible with the functioning of the EEA Agreement, the limited negative effects of the aid measure in terms of distortion of competition and adverse impact on trade between Contracting Parties must be outweighed by positive effects, in terms of contribution to the facilitation of the development of economic activities or areas. It must be verified that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

(162) ESA will balance the positive effects of the planned aid on the supported economic activities with the actual and potential negative effects on competition and trading

conditions. For State aid to be compatible with the functioning of the EEA Agreement, the positive effects must outweigh its negative effects.[99]

(163) Based on the information provided by the Norwegian authorities, ESA is of the view that the positive effects of the measure outweigh its negative effects for the following reasons, in accordance with points 170-173 of the Broadband Guidelines:

a) The measure will have positive effects on the supported economic activities. Indeed, the measure will contribute to the improvement of the overall broadband and mobile coverage in Norway by making a significant new investment and providing access to ultra-fast and gigabit networks to households and socio-economic drivers and high-speed mobile coverage, in particular in sparsely populated areas in which private operators are not planning any investments in the near future. That investment will bring significant new capabilities to the market in terms of broadband and mobile service availability and capacity, speeds and competition. The measure will help overcome limits and restrictions in providing innovative services, which businesses and citizens require (see paragraph (136)).

b) The measure is necessary as it addresses a market failure in the target areas, identified in terms of availability of fixed and mobile access networks (see paragraph (140)).

c) The measure is also appropriate to address the identified market failure and to achieve the objectives of the measure, inter alia by ensuring a step change (see section 8.3.3.3).

d) The measure is proportionate, as the Norwegian authorities will conduct a detailed mapping exercise and a public consultation to identify the intervention areas, the aid will be awarded on the basis of a competitive selection procedure, the measure is technologically neutral, and fair and non-discriminatory wholesale access obligations as well as accounting separation are in place (see section 8.3.3.4).

e) The negative effects are limited to the minimum necessary. In fact, the measure is designed to limit crowding out private investment, since its effects are confined to areas of the Norwegian territory where private operators have not invested, and do not intend to invest during the relevant time horizon, in the deployment of performant networks (see paragraphs (136) and (140)).

f) By ensuring wholesale access to the subsidised networks to all interested operators, the measure aims at incentivising competition in the intervention areas (see paragraph (154)d)).

(164) In light of the above, ESA concludes that the positive effects of the measure outweigh possible distortions of competition and adverse impact on trade. On balance, the measure is in line with the objectives of Article 61(3)(c) of the EEA Agreement as it facilitates the deployment of fixed ultra-fast and gigabit access networks and high-speed mobile access networks, in line with the conditions set out in the Broadband Guidelines. Moreover, such aid does not affect competition to an extent contrary to the common interest. The overall impact on competition is

[99] See Broadband Guidelines, point 170.

seen to be positive. The potential negative effects on competition, if any, would be limited. Therefore, the aid does not unduly affect trading conditions to an extent contrary to the common interest.

8.4 Transparency, reporting and monitoring

(165) As described in section 4.18, the Norwegian authorities:

a) will make publicly available, on Nkom's website and on the respective counties' websites, all the relevant information concerning the aid scheme and the individual aid awards. The information will be available for at least 10 years from the date on which the aid was granted. The information will be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, supplied and published on the internet, for instance in CSV or XML format (see paragraph (97)).[100] Individual aid awards of EUR 100 000 or more will be published in the Norwegian State aid register, within 6 months from the date of award of the aid, in line with point 203 of the Broadband Guidelines (see paragraph (98)).[101]

b) will submit an annual report to ESA in respect of the measure (see paragraph (99)).[102]

c) will submit a report to ESA, every two years, with key information on the measure (see paragraph (99)).[103]

(166) Therefore, the measure fulfils the transparency requirement.

9 Conclusion

(167) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), it has no objections to the implementation of the measure.

(168) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

[100] See Broadband Guidelines, points 202-205.
[101] See Broadband Guidelines, points 202-203.
[102] See Broadband Guidelines point 207.
[103] See Broadband Guidelines, point 208.

For the EFTA Surveillance Authority, acting under Delegation Decision No 068/17/COL,

Yours faithfully,

Arne Røksund
President
Responsible College Member

Melpo-Menie Joséphidès
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.