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(Ogłoszenia)

POSTĘPOWANIA ZWIĄZANE Z REALIZACJĄ POLITYKI KONKURENCJI

KOMISJA EUROPEJSKA

POMOC PAŃSTWA – CZECHY

Pomoc państwa SA.64153 (2022/C) (ex 2021/N) – Pomoc na transmisję równoległą telewizji naziemnej w standardzie DVB-T2/HEVC

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej

(Tekst mający znaczenie dla EOG)

(2022/C 282/03)

Pismem z dnia 3 czerwca 2022 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Czechy o swojej decyzji o wszczęciu postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej dotyczącego wyżej wspomnianego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat środka, w odniesieniu do którego Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i towarzyszącego mu pisma na następujący adres lub numer faksu:

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Otrzymane uwagi zostaną przekazane władzom Czech. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie klauzulą poufności ich tożsamości lub fragmentów zgłaszanych uwag.

TEKST STRESZCZENIA

Niniejsze formalne postępowanie wyjaśniające dotyczy zgłoszonego środka mającego na celu zrekomensowanie kosztów ponoszonych przez operatorów platform naziemnej telewizji cyfrowej (NTC) posiadających prawa do użytkowania częstotliwości w celu inwestowania w sieci DVB-T2/HEVC i prowadzących równoległe nadawanie w dwóch standardach. Komisja otrzymała w tym względzie dwie skargi: jedną od stowarzyszenia reprezentującego dostawców usług telewizyjnych drogą satelitarną oraz jedną od dostawcy usług telewizyjnych drogą satelitarną i internetową. Skarżący twierdzili, że plan Czech polegający na finansowym wspieraniu przejścia na DVB-T2/HEVC stanowi korzyść dla operatorów NTC, która grozi nadmiernym zakłóceniem konkurencji w zakresie sprzecznym ze wspólnym interesem.

Beneficjentami są czeski nadawca publiczny Česká televize oraz dwaj operatorzy prywatni: Digital Broadcasting i České Radiokomunikace. Budżet środka wynosi około 18 mln EUR (473 391 429 CZK). Koszty kwalifikowalne obejmują nakłady inwestycyjne i wydatki operacyjne związane z modernizacją infrastruktury ze standardu DVB-T/MPEG-2 do standardu DVB-T2/HEVC oraz z eksploatacją zmodernizowanych sieci równoległe z sieciami pierwotnymi. Równoległe nadawanie miało miejsce w okresie od 1 marca 2017 r. do 31 października 2020 r. (przy czym rzeczywista długość równoległego

nadawania była dla poszczególnych stacji określona przez ramy krajowe). Pomoc na nakłady inwestycyjne opiera się na średniej miesięcznej wartości amortyzacji każdej pozycji kosztów kwalifikowalnych pomnożonej przez liczbę miesięcy nadawania równoległego na stację i multipleks. Pomoc na wydatki operacyjne opiera się na średnich kosztach na miejsce nadawania w rozpatrywanym okresie równoległego nadawania. Środek będzie finansowany z konta radiotelekomunikacyjnego zarządzanego przez czeski urząd telekomunikacji. Środek nie obejmuje kosztów dostosowania urządzeń związanych z częstotliwością, które są przedmiotem decyzji Komisji SA.55742 z dnia 23 stycznia 2020 r. ⁽¹⁾, ani kosztów poniesionych w okresie od 19 marca do 30 czerwca 2020 r., które są objęte decyzją Komisji z dnia 13 lipca 2021 r. ⁽²⁾.

Władze czeskie potwierdziły, że w oczekiwaniu na ostateczną decyzję Komisji pomoc nie została jeszcze wypłacona.

Środek pomocy jest realizowany w związku z uwolnieniem pasma 700 MHz, jak przewidziano w decyzji Parlamentu Europejskiego i Rady (UE) 2017/899 ⁽³⁾ (decyzja z 2017 r.). Czechy wyjaśniły, że z uwagi na specyfikę krajową migracja usług telewizyjnej z pasma 700 MHz wymaga zmiany zagospodarowania częstotliwości i przeprojektowania sieci nadawczych, a także przejścia na bardziej efektywne standardy, takie jak DVB-T2/HEVC. W związku z tym zdaniem Czech operatorzy NTC powinni nadawać programy telewizji naziemnej jednocześnie w pierwotnych sieciach DVB-T/MPEG-2 oraz w zmodernizowanych sieciach DVB-T2/HEVC, aby umożliwić uczestnikom rynku wprowadzenie odpowiednich zmian, a użytkownikom końcowym dostosowanie swoich urządzeń odbiorczych.

Czechy uważają, że środek stanowi pomoc w rozumieniu art. 107 ust. 1 TFUE. Na obecnym etapie Komisja nie ma powodu, aby dojść do odmiennych wniosków w tej kwestii.

Czechy uważają, że środek jest zgodny z art. 107 ust. 3 lit. c) TFUE.

Po przeprowadzeniu wstępnego badania środka Komisja na obecnym etapie nie jest w stanie stwierdzić, czy środek jest zgodny z rynkiem wewnętrznym. W szczególności Komisja nie jest przekonana, czy środek wywołuje efekt zachęty. Z jednej strony proces migracji wymagał usprawnień technicznych, a operatorzy NTC zwrócili się o przedłużenie swoich praw użytkownika do 2030 r. Z drugiej strony wydaje się, że operatorzy NTC rozpoczęli inwestycję w równoległe nadawanie w standardzie DVB-T2/HEVC w marcu 2017 r., zanim Czechy ustaliły formalnie szczegóły procesu migracji lub środka pomocy. Ponadto Komisja nie jest przekonana, czy środek jest konieczny. Po pierwsze, nie można wykluczyć, że operatorzy platform sami ponieśliby koszty inwestycji w przejściowe sieci standardu DVB-T2/HEVC i koszty ich eksploatacji. Po drugie, nawet gdyby wykazano, że operatorzy nie podjęliby się realizacji projektu na własną rękę, Komisja nie jest przekonana, czy w odniesieniu do ewentualnej rekompensaty wszystkie koszty kwalifikowalne mogą zostać uznane za koszty bezpośrednie w rozumieniu decyzji z 2017 r. (art. 6). Ponadto Komisja nie jest przekonana, czy środek ten jest najbardziej odpowiedni do zapewnienia płynnej migracji gospodarstw domowych, ponieważ istnieją alternatywne metody osiągnięcia tego celu, takie jak certyfikacja odbiorników telewizyjnych, kampanie informacyjne, pomoc dla użytkowników końcowych, przyjęcie środków regulacyjnych lub rekompensata za wcześniejsze wycofanie praw użytkownika. Ponadto Komisja nie jest przekonana, czy środek jest proporcjonalny, tj. czy czas trwania jednoczesnego nadawania był ograniczony do niezbędnego minimum oraz czy obliczenie kwoty pomocy na podstawie miesięcznej amortyzacji zapewnia, że pomoc pozostanie ograniczona do niezbędnego minimum.

Zważywszy na swoje wątpliwości co do zgodności tej pomocy z rynkiem wewnętrznym Komisja podjęła decyzję o wszczęciu postępowania określonego w art. 108 ust. 2 TFUE w odniesieniu do przedmiotowego środka.

⁽¹⁾ Pomoc państwa SA.55742 (2019/N) – Republika Czeska, Pomoc na wymianę urządzeń nadawczych zależnych od częstotliwości w kontekście migracji z pasma 700 MHz, 23 stycznia 2020 r. (Dz.U. C 144 z 30.4.2020, s. 1).

⁽²⁾ Pomoc państwa SA.60062 (2021/N) – Czechy, COVID-19: Pomoc na nadzwyczajne koszty bezpośrednie ponoszone przez czeskich operatorów sieci telewizji naziemnej, 13 lipca 2021 r. (Dz.U. C 317 z 6.8.2021, s. 1).

⁽³⁾ Decyzja Parlamentu Europejskiego i Rady (UE) 2017/899 z dnia 17 maja 2017 r. w sprawie wykorzystywania zakresu częstotliwości 470–790 MHz w Unii (Dz.U. L 138 z 25.5.2017, s. 131).

PISMO**1. PROCEDURE**

- (1) The Commission received two complaints: one from respectively ČASO on 19 September 2016, and one from DIGI TV s.r.o. (now Telly) on 14 February 2018. ČASO is an association representing undertakings providing television services via satellite, and other related companies. DIGI TV s.r.o. is a provider of internet and satellite television services. They complained about the Czech plan to support financially terrestrial television platform operators in the transition from DVB-T/MPEG-2 to DVB-T2/HEVC. The Commission received complementary information in the subsequent years until May 2021.
- (2) On 2 December 2016, the Czech authorities pre-notified an aid measure aimed to support, as indicated by Czechia in the pre-notification form, the migration of the existing digital terrestrial television broadcasting platform to the second generation platform using DVB-T2/HEVC following the forced release of the 700 MHz band. The pre-notification included a description of several measures Czechia intended to adopt in the context of the release of the 700 MHz band. The pre-notification included two measures in the form of direct grants: (i) compensation of costs for the upgrade and retuning of digital terrestrial television networks and (ii) compensation of costs for the simultaneous operation of existing DVB-T networks and DVB-T2 transition networks. It also included two other measures: (i) extension of existing radio frequency allocations held by digital terrestrial television network operators and (ii) granting of development (compensation) of radio frequencies allocations.
- (3) Several written exchanges and meetings took place between the Czech authorities and the services of the Commission between 2017 and 2021. On 16 July 2021, the Czech authorities notified a measure entitled 'Simultaneous broadcast compensation related to the transition to DVB-T2 standard'. This measure aims at compensating operators of digital terrestrial broadcasting platforms for (i) investment costs in new equipment necessary for the construction and the operation of DVB-T2 ⁽¹⁾ networks combined with HEVC ⁽²⁾ standard and (ii) operating costs relating to the operation of the new DVB-T2/HEVC networks in parallel with the original DVB-T networks between 1 March 2017 to 18 March 2020 and 1 July to 31 October 2020 ⁽³⁾. The Commission requested additional information on 14 September 2021, 13 December 2021, 11 March 2022 and 29 April 2022. The Czech authorities replied on 14 October 2021, on 14 January 2022, on 7 April 2022 and on 6 May 2022.
- (4) Czechia agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 ⁽⁴⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE**2.1. Context of the measure**

- (5) The measure takes place in the context of the migration of terrestrial television services from the 700 MHz (694-790 MHz) band to the sub-700 MHz (470-694 MHz) band, as provided by Decision (EU) 2017/899 of the European Parliament and of the Council ⁽⁵⁾ (hereafter 'EPaC Decision') (recital (10)).

2.1.1. European Spectrum Policy

- (6) Radio spectrum is a scarce public resource that is essential for some sectors and services, including television broadcasting and wireless broadband services. The radio spectrum is divided into frequency bands with conventional names designated by the International Telecommunications Union (ITU). Some bands present technical characteristics that suit best certain types of services. Such frequency bands may therefore be allocated only for the provision of certain services. In certain circumstances, where demand for radio spectrum exceeds its availability, rights of use for frequencies may be limited by Member States, both in terms of number of users and duration.
- (7) When rights of use in certain bands are limited, each country may assign individual rights of use. However, since spectrum is a non-tangible good that does not know barriers, the use of a band by a particular service has to be coordinated at international level, in order to prevent cross-border interference.
- (8) Terrestrial television services could initially use the whole frequency band between 470 and 862 MHz. Those frequencies present technical characteristics that are also suitable for wireless broadband services. For this reason, terrestrial television services have progressively been required to liberate part of that spectrum and squeeze in a narrower spectrum bandwidth.

⁽¹⁾ DVB-T2 is the second generation of Digital Video Broadcasting — Terrestrial standard. DVB-T2 offers significant benefits compared to DVB-T, in particular a more efficient use of the spectrum.

⁽²⁾ HEVC stands for High Efficiency Video Coding and is one of the latest generation of video compression standards.

⁽³⁾ Actual length of parallel broadcasting for each transmitter is determined in the Technical Transition Plan.

⁽⁴⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).

⁽⁵⁾ Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union (OJ L 138, 25.5.2017, p. 131).

- (9) In 2012, the European Parliament and Council decided that the 800 MHz band (790-862 MHz) would be allocated to wireless broadband services as of January 2013⁽⁶⁾. As a consequence, terrestrial television services migrated to the lower band, namely the 470-790 MHz band. Also in 2012, the World Radiocommunication Conference decided that the 700 MHz band (694-790 MHz band) should be allocated as of 2015 to both broadcasting and wireless broadband services. The Radio Spectrum Policy Group recommended in its opinion of 19 February 2015⁽⁷⁾ that a coordinated approach be adopted across the Union to make the 700 MHz band available for effective use for wireless broadband electronic communications services by the end of 2020.
- (10) On the basis of a Commission's proposal in 2016⁽⁸⁾, the EPaC Decision adopted by the co-legislators in May 2017 provides that the 700 MHz band is to be allocated exclusively to wireless broadband services as of June 2020. This Decision recognises that the spectrum in the 700 MHz band is a valuable asset for the provision of wireless broadband services as it provides both additional capacity and universal coverage in particular for difficult coverage areas like rural, mountainous and insular areas as well as indoor uses.
- (11) As a result, terrestrial television services had to liberate the frequencies used in the 700 MHz band and move to the lower band, the sub-700 MHz band (470-694 MHz band). The EPaC Decision also provides that the sub-700 MHz is available for terrestrial television services until at least 2030⁽⁹⁾. Moreover, the EPaC Decision states that the scope of and mechanism for possible compensation of direct costs for completing the transition in spectrum use, in particular for end-users, should be analysed in accordance with the relevant national provisions and should be consistent with Article 107 TFEU⁽¹⁰⁾.

2.1.2. Spectrum policy in Czechia

- (12) Czechia approved the launching of digital television broadcasting in 2004. The transition from analogue to digital broadcasting took place between 2008 and 2012. In 2013, Czechia drafted a strategy called *Digitalni Cesko 2.0* which stated that the use of the DVB-T2 standard was the only possible way of developing terrestrial broadcasting⁽¹¹⁾, in particular for broadcasting more advanced formats as high-definition television (HDTV). It recognised that HDTV would be required to meet viewers' standard and that a more efficient use of spectrum, with the DVB-T2 standard, would be necessary. It also underlined the advance of other platforms, like satellite, and the importance of ensuring the availability of compatible television sets for end-users⁽¹²⁾.
- (13) On 20 July 2016, Czechia endorsed by Government Resolution⁽¹³⁾ the Strategy for the Development of Terrestrial Digital Television Broadcasting (the '2016 Strategy'). The 2016 Strategy lays out the Czech policy as regards the development of terrestrial television broadcasting and mentions the possibility for compensating costs relating to the release of the 700 MHz band. The 2016 Strategy recalls that digital terrestrial television is the only television platform that offers free television services in Czechia and that covers more than 60 % of the Czech households⁽¹⁴⁾. In particular, the Strategy:
- (a) Identifies the challenges that the digital terrestrial television platform will face, and in particular the risk of disappearance or substantial reduction of the use of the digital terrestrial television platform as a result of the release of the 700 MHz band.
 - (b) Identifies the future trends for the digital terrestrial television⁽¹⁵⁾.

⁽⁶⁾ Decision 243/2012/EU of the European Parliament and Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

⁽⁷⁾ EPaC Decision, recital (13).

⁽⁸⁾ Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union, 2.2.2016.

⁽⁹⁾ Article 4 of the EPaC Decision states that 'Member States shall ensure availability at least until 2030 of the 470-694 MHz frequency band for the terrestrial provision of broadcasting services (...)'.
⁽¹⁰⁾ Article 6 of the EPaC Decision states that 'Member States may, where appropriate and in accordance with Union law, ensure that adequate compensation for the direct cost, in particular for end-users, of the migration or reallocation of spectrum use is provided promptly and in a transparent manner in order to, inter alia, facilitate transition to more spectrum-efficient technologies'.

⁽¹¹⁾ Reference is made to that Strategy in *Market failure study of digital terrestrial broadcasting with forced release of the 700 MHz frequency band*, Arthur D. Little for the Czech Ministry of Industry and Trade, 2017, (the 'ADL Study'), p. 23 of the translated version submitted by Czechia on 14.10.2021.

⁽¹²⁾ *Digitalni Cesko 2.0, Cesta k digitalni ekonomice*, available here https://www.vlada.cz/assets/media-centrum/aktualne/Digitalni-Cesko-v-2-0_120320.pdf, p. 21.

⁽¹³⁾ Resolution of the Government of the Czech Republic n°648 of 20 July 2016.

⁽¹⁴⁾ *Strategy for the development of digital terrestrial television*, Executive Summary, unofficial translated version, p. 1.

⁽¹⁵⁾ The trends include the following: (i) linear broadcasting will remain the predominant television consumption, (ii) the quality of the image and sound and the upgrade of the transmission and compression technologies will keep improving and (iii) the terrestrial television services will converge with other technologies, in particular via internet. 2016 Strategy, p. 13 et seq. of the unofficial translated version of the Executive Summary.

(c) Identifies the following objectives pursued:

- No deterioration in the position of the different operators in the television broadcasting market as a result of the migration decided by the State ⁽¹⁶⁾ and minimisation of the negative interference on the market that would lead to the disappearance of digital terrestrial television ⁽¹⁷⁾;
- Ensuring the development of the digital terrestrial television platform, the long-term preservation of the sub-700 MHz band and the effective use of the available spectrum ⁽¹⁸⁾. That would be achieved with spectrum efficient transmission technologies (i.e. DVB-T2 transmission standard) and improvement of the image and sound quality ⁽¹⁹⁾;
- A socially acceptable migration process, since the release of the 700 MHz band requires the replacement of households' reception equipment ⁽²⁰⁾;
- Ensuring the existence of six nationwide DVB-T2 networks after the release of the 700 MHz band ⁽²¹⁾.

(d) Envisages concrete measures such as the adoption of legal acts establishing the procedure for the release of the 700 MHz band by terrestrial television services and securing financial support for the release of the 700 MHz band, including support for the transition to the DVB-T2 transmission standard and for parallel broadcasting. The Strategy acknowledges that the transition will require State support in compliance with State aid rules ⁽²²⁾. Moreover, the Strategy states that legislative modifications (to be included in the legislative amendment ⁽²³⁾) would be necessary to guarantee reimbursement of costs and financing of the switchover to DVB-T2 ⁽²⁴⁾. That includes reimbursement of costs planned to be incurred by network operators between 2016 and 2021 for the construction and operation of the transitional networks, refarming and migration to DVB-T2/HEVC standards. The Strategy includes a list of costs that network operators would incur ⁽²⁵⁾: (i) the costs of converting the DVB-T networks into DVB-T2 networks and adapting transmitters to the newly assigned frequencies ⁽²⁶⁾; (ii) the costs for the construction of transitional networks ⁽²⁷⁾; (iii) the costs for simultaneous broadcasting and switching costs of the DVB-T network ⁽²⁸⁾; (iv) other costs ⁽²⁹⁾. The Strategy estimates the total costs for switching to DVB-T2 at CZK 441-627 million ⁽³⁰⁾. The 2016 Strategy states that aid applications would have to be submitted by the network operator no later than six months from the date when the costs are incurred or within three months of the date of entry into force of the then future Digital Amendment. It further indicates that it is the Czech Telecommunication Office ('CTO') that would decide and set the level of reimbursement on the basis of justified costs ⁽³¹⁾.

(14) On 19 July 2017, Czechia adopted the Digital Amendment, stipulating that costs resulting from the release of the 700 MHz band would be reimbursed (recital(29)(c)). Those costs include:

(a) Costs effectively and efficiently incurred in the process of transition to the DVB-T2 standard to technically ensure the service of transmission of terrestrial television broadcasting using transitional networks; and

⁽¹⁶⁾ 2016 Strategy, Executive Summary, p. 3 of the unofficial translated version.

⁽¹⁷⁾ 2016 Strategy, Executive Summary, p. 7 of the unofficial translated version.

⁽¹⁸⁾ 2016 Strategy, Executive Summary, p. 12 of the unofficial translated version.

⁽¹⁹⁾ 2016 Strategy, Executive Summary, p. 14 of the unofficial translated version.

⁽²⁰⁾ 2016 Strategy, Executive Summary, p. 3, p. 15, p. 16 of the unofficial translated version.

⁽²¹⁾ 2016 Strategy, Executive Summary, p. 17 of the unofficial translated version.

⁽²²⁾ 2016 Strategy, Annex 1, p. 32 of the unofficial translated version.

⁽²³⁾ The Government Resolution n°648/2016 calls on the Government to prepare the legislative and other acts necessary for the implementation of the Strategy.

⁽²⁴⁾ 2016 Strategy, Annex 2, section E.

⁽²⁵⁾ 2016 Strategy, Annex 1, p. 53 and 54 of the unofficial translated version.

⁽²⁶⁾ The 2016 Strategy indicates that some basic costs relate to, for instance, new DVB-T2 headends, transmitters, etc. It further indicates that the types of costs could be specified later in the light of the specific configuration of the DVB-T2 networks, on the basis of the views and evidence provided by the DVB-T2 network operators, and that the list does not yet include other possible costs related to the modification of transmission stations.

⁽²⁷⁾ The 2016 Strategy indicates that the first estimate assumes the use of the existing infrastructure of the current transmission sites and does not include the investment costs related to the possible rental or purchase of land and buildings, with the construction readiness of the technology rooms. It clarifies that the investment cost estimate does not include the costs of operating, maintaining and systems service.

⁽²⁸⁾ The 2016 Strategy states that the costs depend substantially on the length of the simulcast (not determined at that point in time) and that they include only the depreciation of the incremental assets related to the construction of the transition networks.

⁽²⁹⁾ Costs that are considered to have been incurred in the past, but which, due to the reduction of investment horizons (recovery), will lead to their early depreciation.

⁽³⁰⁾ EUR 17-25 million (EUR 1 = CZK 25.634 on 3 March 2022 (https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html)).

⁽³¹⁾ 2016 Strategy, Annex 2, section E.

- (b) Costs associated with the change in allocation (of radio frequencies) ⁽³²⁾, as well as the costs incurred in the process of the transition process of elimination of harmful interferences with the terrestrial digital television broadcasting signal by networks providing mobile data connection services or elimination of interference with mobile data connection service networks by the terrestrial television broadcasting service.
- (15) The Digital Amendment clarifies that Section 27(5) ⁽³³⁾ and (6) ⁽³⁴⁾ of the Electronic Communications Act (ECA, no. 127/2005 Sb.) as amended by the Digital Amendment apply for the purposes of assessment of the request for reimbursement and payment of the reimbursement from the Radio-communication account.
- (16) According to Czechia, costs listed in the Digital Amendment were specified on the basis of an external study of May 2017 ⁽³⁵⁾, based on pricelist and up-to-date information on the construction of transition and final networks in terms of radio frequencies used ⁽³⁶⁾.
- (17) Furthermore, the Digital Amendment provided for a prolongation of the duration of the terrestrial television rights of use of frequencies until 31 December 2030 ⁽³⁷⁾. The Commission concluded that this prolongation did not constitute State aid within the meaning of Article 107(1) TFEU ⁽³⁸⁾.
- (18) On 29 August 2018, Czechia adopted the Technical Plan for the Transition of digital terrestrial television from DVB-T standard to DVB-T2 standard (the 'Technical Transition Plan') ⁽³⁹⁾. The Technical Transition Plan lays down the technical conditions, including the periods of parallel broadcasting per transmitter, per multiplex, for releasing the 700 MHz band by terrestrial television services (recital (29)(d)).
- (19) In parallel, Czechia and its neighbouring countries undertook coordination negotiations on the frequency channels distribution. The revised agreements were signed on 13 September 2017 with Germany and Poland, on 30 November 2017 with Slovakia, on 12 December 2017 with Hungary and on 28 December 2017 with Austria.

⁽³²⁾ This measure was approved by Commission Decision SA.55742 of 23 January 2020 (OJ C 144, 30.4.2020) (the 'Commission Decision of 23 January 2020').

⁽³³⁾ Section 27(5) regulates the process for assessing claims submitted by right holders for reimbursement of costs.

⁽³⁴⁾ Section 27(6) lists the types of costs for which reimbursement may be claimed. It concerns: a) the costs of technical adjustments to equipment in the event of changes to the allocated radio frequency or changes to its technical parameters; b) the depreciated cost of equipment used for the current method of using radio frequencies and decommissioned as a result of changes in the use of radio frequencies; c) the costs of dismantling and decommissioning of equipment for the current method of using radio frequencies; d) the costs of installation and commissioning equipment to replace the decommissioned equipment; and e) the costs of securing electronic communications services provided through the existing radio frequencies in a different manner, for the time needed to ensure the necessary technical measures to carry out the changes in the use of radio frequencies. Paragraph 7 of Article II of the Digital Amendment clarifies that costs incurred in the process of the transition process of elimination of harmful interferences with the terrestrial digital television broadcasting signal by networks providing mobile data connection services or elimination of interference with mobile data connection service networks by the terrestrial television broadcasting service shall be considered costs pursuant to Section 27(6) of ECA.

⁽³⁵⁾ *Study of digital terrestrial broadcasting market failure as a result of the forced release of the 700 MHz frequency band*, study conducted for the Ministry of Industry and Trade by Arthur D. Little s.r.o., 15 May 2017 ('ADL study').

⁽³⁶⁾ Section 4.5.1. of the ADL study. The study indicates that the costs were estimated by Arthur D. Little s.r.o. on the basis of supporting documents provided by the DTT operators. It lists the following costs categories: (i) one-off retuning of existing networks from T to DVB-T2 (main transmitters, transmitters and receivers for the secondary network), measurement of the coverage (measurement in terrain, before and after launching additional covering devices and retuning of existing networks), acquisition of clusters for gradual retuning; (ii) the net book value of DVB-T technologies that cannot be used for DVB-T2 networks by the time of termination of the existing broadcasting networks; (iii) dismantling of DVB-T technologies that cannot be used for DVB-T2 networks by the time of termination of existing broadcasting networks; (iv) costs related to replacing the technology in existing networks to meet DVB-T2 standards (modification of transmitters, headends, etc.), modification of the distribution to headends, adaptation of single frequency network; (v) costs related to ensuring the operation of transition networks up to the termination of broadcasting in DVB-T format, including individual technologies (transmitters, headends, additional coverage devices), strengthening of optical data flows, fees for frequencies and energy, supervising systems, etc.; (vi) transition costs for removing of interference to mobile networks by DVB-T2 transition networks up to the time of the release of the 700 MHz band for wireless broadband connection.

⁽³⁷⁾ The CTO announced the extension of the rights of use of radio-frequency of Digital Broadcasting (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovych-kmitoctu-pro-zajisteni-verejne-site-0>) and of Česká televize (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovych-kmitoctu-pro-zajisteni-verejne-site-2>) and of CRa (<https://www.ctu.cz/sdeleni-o-vydani-rozhodnuti-o-zmene-pridelu-radiovych-kmitoctu-pro-zajisteni-verejne-site-1>) on 21 November 2019.

⁽³⁸⁾ Commission Decision of 15 March 2021 C(2021)1601 final, SA.55805 (2020/FC) — Extension of DTT network operators' frequency licences — Czechia (OJ C 177, 7.5.2021, p. 1), under appeal.

⁽³⁹⁾ Government Decree No. 199/2018 Coll. of 29 August 2018, on the Technical plan for the transition of digital terrestrial television from DVB-T standard to DVB-T2 standard.

- (20) On 27 April 2020, Czechia informed the Commission that the release of the 700 MHz band would be postponed by approximately four months as a consequence of the COVID-19 pandemic. Government Decree No. 120/2020 Coll. of 19 March 2020 (recital (29)(e)) amended the Technical Transition Plan: the time limits for switching off DVB-T networks were temporarily suspended. Government Decree No. 268/2020 Coll. of 25 May 2020 (recital (29)(f)) amended once again the Technical Transition Plan: the initial end date of the switching off process (30 June 2020) was replaced by a new end date, 31 October 2020, and new end dates for switching off each transmitter that had to switch-off between 19 March and 30 June 2020 were set. Operators' additional extraordinary costs⁽⁴⁰⁾ resulting from the temporary suspension of the migration process were compensated by an aid measure declared compatible with the internal market by Decision C(2021) 5332 final of 13 July 2021⁽⁴¹⁾ (the 'Commission Decision of 13 July 2021').

2.1.3. Description of the broadcasting market in Czechia

- (21) The Czech broadcasting market is currently served by four technologies: terrestrial, cable, satellite and Internet Protocol Television (IPTV). Beginning 2019, 58 % of the population watched television content via the terrestrial platform and 40 % of the households only relied on terrestrial television. Satellite television was used by around 25 % of the households. Cable television was used by 17 % of the households. IPTV was used by 8 % of the households. According to the Czech authorities, the digital switchover that occurred between 2008 and 2012 affected market shares of the different technologies on this market. During that period, terrestrial television has allegedly lost 13 % of its market share, satellite television gained 9 %, cable television lost 3 % and IPTV increased its share by 2 %⁽⁴²⁾.
- (22) There are currently two operators of digital terrestrial broadcasting networks in Czechia, which provide or are able to provide nationwide digital broadcasting services: Ceske Radiokomunikace (CRA — which operates on its own and via its subsidiary company Czech Digital Group — CDG)⁽⁴³⁾ and Digital Broadcasting (DB). CRA, CDG, DB and Česká televize⁽⁴⁴⁾ hold rights of use of spectrum frequencies for the transmission of nationwide terrestrial digital television broadcasting, originally in the sub-700 and the 700 MHz bands⁽⁴⁵⁾ and only in the sub-700 MHz band after the release of the 700 MHz band (the 'frequencies right holders'). The frequencies allow each of them to broadcast over a nationwide terrestrial television multiplex, transmitted over a network operated by one of the two operators mentioned above, CRA and DB. Right holders managed and are managing the following multiplexes:
- (a) Česká televize managed the original multiplex 1, the transitional multiplex 11 and manages now the final multiplex 21.
 - (b) Czech Radiokomunikace managed the original multiplex 2, the transitional multiplex 12 and manages now the final multiplex 22.
 - (c) Czech Digital Group managed the original multiplex 3 and manages now the final multiplex 23.
 - (d) Digital Broadcasting managed the original multiplex 4, the transitional multiplex 13 and manages now the final multiplex 24.
- (23) Frequencies rights holders are subject to coverage obligations varying from 95,1 % to 99,9 % of inhabitants⁽⁴⁶⁾.

2.2. Technical description of the migration process for which the measure is set up

- (24) Czechia explained that the migration process from the 700 MHz band took place as follows:
- (a) As from March 2017, three frequencies right holders gradually set up three networks based on DVB-T2/HEVC standards operating on temporarily available frequencies (the 'transitional networks'). The transitional networks distributed all available content in parallel to the distribution of that content over the four original DVB-T networks (the 'original networks'), during the transitional period (period during which transmitters used temporarily available frequencies).

⁽⁴⁰⁾ Those costs were the following: (i): the direct depreciation charges from CAPEX directly linked to the interruption and suspension of the switching off phase (transmitters, uninterruptible power supply, converters, GPS receivers antenna power supplies, installation and installation material, cooling system and its installation, distribution, measuring equipment, head end) and (ii) the direct operating costs directly linked to the interruption and suspension of the technical switching period (electric energy consumption, property rentals, transmission routes, equipment maintenance and/or repairs, uninterruptible power supply, adjusting the electrical connections by building owners, direct legal costs for adjusting the contracts due to the interruption of the migration process). See recital (19) of Commission Decision of 13 July 2021.

⁽⁴¹⁾ State Aid SA.60062 (2021/N) — Czechia, COVID-19: Aid for the extraordinary direct costs faced by Czech terrestrial television network operators (OJ C 317, 6.8.2021, p. 1).

⁽⁴²⁾ ADL Study as updated on 2 August 2019, p. 11 of the English version of the updated study provided by Czechia.

⁽⁴³⁾ CRA was part of Macquarie, a global financial group, from 2011 to May 2021 when Macquarie sold it to its current owner, another financial investor, Cordiant.

⁽⁴⁴⁾ Česká televize is the Czech public broadcaster in Czechia.

⁽⁴⁵⁾ Before their prolongation until 2030, the rights of use of frequencies were to expire on 11 May 2021 for CRA, on 4 March 2022 for Digital Broadcasting, on 30 May 2023 for Česká televize and on 10 January 2024 for CDG.

⁽⁴⁶⁾ The obligations are the followings: 99,9 % of inhabitants for Česká televize and CRA, 98,1 % for CDG and 95,1 % for DB.

- (b) As from November 2019, the original DVB-T networks were gradually switched-off. DVB-T2/HEVC networks operating on frequencies assigned for the provision of DTT after the end of the transitional period were launched (the 'final networks'). Final networks are partially built on transitional networks for which the measure is notified (recital (37)). The final deadline for completing the process was 31 October 2020 (recital (20)).
- (25) A fourth final DTT network with DVB-T2 (Mux23) has also been deployed. The costs incurred for launching that multiplex are not covered by the measure as no corresponding transitional network was constructed for this multiplex. Channels that were originally broadcast on the original Mux3 were broadcast over the transitional DVB-T2 Mux12 during the parallel broadcasting period.
- (26) The transitional networks, on which the final networks are partially built, operated with a transmission system integrating DVB-T2 (the second generation of Digital Video Broadcasting — Terrestrial standard) and HEVC (High Efficiency Video Coding) standards. The Czech authorities submitted that DVB-T2 offers significant benefits compared to DVB-T, in particular a more efficient use of the spectrum⁽⁴⁷⁾. HEVC is one of the latest generation of video compression standards⁽⁴⁸⁾. In practice, the use of HEVC enables a transmission system to carry more programs compressed in HEVC than if the same programs were compressed using an older standard. Apart from a better data rate, HEVC also allows higher image definition. The two standards (DVB-T2 and HEVC) are technically independent from each other.
- (27) The transitional networks have to a large extent broadcast the same content as the one aired on the original networks. However, some television programs that were previously broadcast in standard definition (SD) have been broadcast in high definition (HD) quality in the transitional networks⁽⁴⁹⁾. The total capacity of the original multiplexes 1, 2 and 4 was 64.6 Mbit/s⁽⁵⁰⁾, that of the three transitional multiplexes 11, 12 and 13 was 99.6 Mbit/s and that of the three final multiplexes 21, 22 and 24 is now 103.6 Mbit/s.

2.3. Detailed description of the measure

- (28) The measure aims at compensating operators of digital terrestrial broadcasting platforms for (i) the investment costs in new equipment necessary for the construction and the operation of DVB-T2 networks combined with HEVC standard and (ii) the operating costs relating to the operation of the new DVB-T2/HEVC networks in parallel with the original DVB-T networks from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020 (the actual length of parallel broadcasting for each transmitter is determined by the Technical Transition Plan).

2.3.1. Legal basis

- (29) The legal basis of the measure comprises the following texts:
- (a) Act N°127/2005 on electronic communications and amending certain related acts (the Electronic Communications Act, 'ECA').
- (b) Government Resolution N°648/2016 of 20 July 2016 on the Strategy for the Development of terrestrial digital television broadcasting.
- (c) The Digital Amendment N°252/2017 of 19 July 2017 (the 'Digital Amendment'), amending Act N°127/2005 on electronic communications and amending certain related acts (the ECA), as amended, and Act N°483/1991 Sb., on the Czech Television, as amended. Czechia indicates that Article I, paragraph 2 of the Digital Amendment constitutes a stand-still clause⁽⁵¹⁾.
- (d) The Technical Plan for Terrestrial Television in DVB-T2, prepared by the CTO together with the Ministry of Industry and Trade and approved by the Czech government on 29 August 2018 and issued as Government Decree N°199/2018 Coll. The Technical Transition Plan regulates the transition of terrestrial television broadcasting from the DVB-T standard to the DVB-T2 standard. Annexes 1 to 4 provide for the radio channels to be used per multiplex, per transmitter, (i) for ensuring simultaneous broadcasting (the transitional period⁽⁵²⁾) and (ii) after the transitional period, when the DVB-T transmitters switch-off.

⁽⁴⁷⁾ That means that with the same amount of spectrum, a larger number of programs can be broadcast or the same number of programs broadcast with a higher audio/video quality or coverage quality. For more details on the technical parameters of DVB-T2 systems, see notably EBU, Tech 3348, *Frequency and network planning aspects of DVB T2*, October 2014, p. 8.

⁽⁴⁸⁾ It is the successor of notably the MPEG-2 and MPEG-4 video compression standards. MPEG-2 and MPEG-4 allow a less efficient video compression rate. That means that the same video, transmitted in an equivalent transmission system, would take more space if it is compressed in MPEG-4 format compared to HEVC, and even more if it is compressed in MPEG-2 format.

⁽⁴⁹⁾ It is not clear if the television programs that are broadcast on the original DVB-T networks are the same and have the same quality as those broadcast on the transitional DVB-T2 networks. For instance, it seems that transitional network 13 included four programs broadcast in high-definition: JOJ Family HD, Prima Comedy Central HD, Polar HD, V1 HD, as compared to none on the original DVB-T network.

⁽⁵⁰⁾ The capacity used amounted to 61.6 Mbit/s.

⁽⁵¹⁾ Pursuant to the English version of the Digital Amendment provided by Czechia, the amendment states: 'Where proceedings are conducted before the Commission regarding state aid in relation to determination of the amount or payment of effectively and efficiently incurred costs, it shall be considered a request for preliminary ruling'.

⁽⁵²⁾ The length of that period is specific to each transmitter for each multiplex.

- (e) Government Decree N°120/2020 Coll. of 19 March 2020 amending the Government Decree N°199/2018 Coll. on the technical plan for the transition of the terrestrial digital television broadcasting from DVB-T standard to DVB-T2 standard. Pursuant to article I, the time limits for switching off DVB-T networks as regulated by Decree N°199/2018 were temporarily suspended.
- (f) Government Decree N°268/2020 Coll. of 25 May 2020 amending the Government Decree N°199/2018 Coll. on the technical plan for the transition of the terrestrial digital television broadcasting from DVB-T standard to DVB-T2 standard, as amended by the Government Decree No. 120/2020 Coll. Article I amends Decree N°199/2018 by replacing '30 June 2020' by '31 October 2020'.

2.3.2. Financing

- (30) The Radio-communication account administered by the CTO will finance the measure. The CTO is the national regulatory authority, hence a public institution which has among its tasks managing the assignment of rights of use of frequencies and the monitoring of other obligations imposed on electronic communications networks and services providers. The Radio-communication account, which is regulated by Section 27 of the ECA, is financed by fees paid by the holders of rights of use of frequencies. The amount of the fees is determined by the Government in a regulation. The use of the funds in this account is decided by the Czech authorities, which control it.

2.3.3. Decision-making procedure

- (31) In application of Section 27 of the ECA, the CTO is in charge of reviewing aid applications under the measure. The CTO is responsible for assessing the accuracy of incurred costs and for performing technical inspection of the equipment acquired with the aid granted.

2.3.4. Beneficiaries

- (32) The beneficiaries are three operators that held rights of use of frequencies for parallel broadcasting in the 470-790 MHz frequency band during the transition process. Those are Česká televize, CRa, and DB (also referred to as 'DTT operators'). The fourth entity, CDB, held a right to broadcast in the 470-790 MHz band but has not operated a transitional transmission network in DVB-T2. Content broadcast over its original DVB-T network was carried on the transitional network operated by CRa, transitional multiplex 12.

2.3.5. Eligible costs

- (33) The measure aims to compensate (i) capital expenditure related to the new equipment and devices acquired for the purposes of constructing and operating the three transitional networks, as detailed in recital (35), and (ii) the incremental direct operating costs of the three transitional DVB-T2/HEVC networks from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020, as detailed in recital (36). The measure does not cover costs for adapting the frequency-related equipment, which were subject to the Commission Decision of 23 January 2020, and the costs incurred between 19 March and 30 June 2020 as well as the extraordinary costs that are related to the postponement of the switch-off end date incurred between 1 July and 31 October 2020, which are covered by the Commission Decision of 13 July 2021. The measure does not cover costs incurred after the end of the transitional period (recital (29)(d), (ii)).
- (34) The amount of aid granted per transmitter for the costs listed in recital (36) and (36) depends on the duration of each transitional network's parallel broadcasting period (decided in the Technical Transitional Plan).
- (35) As concerns the eligible capital expenditure, the costs for the following items are eligible:
 - (a) transmitters, converters, antenna power supplies, related installation and installation material;
 - (b) multiplexors, data distribution networks, related installation and installation material;
 - (c) head end (including costs related to HEVC);
 - (d) cooling and its installation;
 - (e) measuring equipment;
 - (f) GPS receivers, uninterruptible power supply ⁽⁵³⁾.
- (36) As concerns eligible operating expenditure, the following costs are eligible:
 - (a) electrical energy;
 - (b) wages and salaries for equipment maintenance and/or repairs;
 - (c) transmission routes (in case they were rented), uninterruptible power supply (if rented), adjustment of electrical connections by building owner.

⁽⁵³⁾ Uninterruptible power supply (UPS) corresponds to a backup power supply based on battery systems. It is an electrical apparatus that provides emergency power when the input power source or mains power fails.

- (37) Czechia has explained that the items for which aid was granted for the purpose of the construction and operation of transitional networks would serve after the transitional period for the final networks as follows:
- (a) Part of the equipment would be used in the final networks. It concerns mainly transmitters and measurement equipment.
 - (b) Some equipment would be reused in the final networks to a limited extent, like combiners. It would be used to simplify the logistics and to organise the retuning of the final networks.
 - (c) Some equipment would remain installed, even if in principle it would not be needed in case no transitional period would have occurred. It concerns the transmitting antenna systems, cooling and power connections.
 - (d) Some equipment would remain unused, like GPS receivers. This is explained by the fact that SFNs topologies in transitional and final networks configurations are different (they do not need the same number of receivers).

2.3.6. *Form of the aid, total budget and aid intensity*

- (38) Aid will take the form of direct grants.
- (39) As regard capital expenditure (recital (35)), the aid amount is based on the average monthly depreciation value of each of the cost items that were acquired for the purposes of construction and operation of transitional networks multiplied by the number of months of depreciation per transmitter, per multiplex. Czechia explained that the accounting depreciation period is relevant for calculating the aid as it reflects the economic lifetime of the equipment. Czechia indicated that, according to the accounting records of operators⁽⁵⁴⁾, the lifespan and thus the duration of the depreciation varies between 3 and 10 years, depending on the costs item⁽⁵⁵⁾.
- (40) As regard operating expenditure (recital (36)), the aid amount is calculated on the basis of the average cost per transmitting site for the considered period of parallel broadcasting over the transitional networks.
- (41) The total budget of the aid is CZK 473 391 429 (approx. EUR 18 million⁽⁵⁶⁾).
- (42) The aid would represent 47 % of the total investment and operation costs for the three transitional networks. Czechia preliminarily estimated that the total costs would amount to CZK 1 007 476 444 (approx. EUR 39 million) (costs including overhead costs and WACC, the remaining depreciation after the simultaneous broadcasting is over and other joint costs, but excluding costs compensated under Commission Decisions of 23 January 2020 and of 13 July 2021).

2.3.7. *Cumulation*

- (43) According to the Czech authorities, the aid cannot be cumulated with any other aid. Czechia confirmed that the aid beneficiaries would not be able to apply for depreciation for fiscal purposes of assets that are subject to compensation under the measure.

2.3.8. *Eligible period for the eligible costs and duration of the measure*

- (44) The measure aims to cover costs incurred from 1 March 2017 to 18 March 2020 and from 1 July 2020 to 31 October 2020, excluding costs that have been supported by the aid schemes approved by Commission Decisions of 23 January 2020 and of 13 July 2021. Czechia plans to pay out aid out only from the date of the notification of the Commission decision approving the measure until 31 December 2022.

2.3.9. *Transparency*

- (45) The Czech authorities committed to publish the text of the measure as well as the information related to the beneficiaries of any aid that exceeds EUR 500 000.

3. COMPLAINTS

- (46) In 2016 and 2018, the Commission registered two complaints from two entities providing television services on satellite and internet platforms or representing such providers (together 'the complainants').

⁽⁵⁴⁾ Czechia indicated that the lifespan in accounting records should reflect the reality, according to the Czech law (Act N°563/1991 Coll. on accounting).

⁽⁵⁵⁾ These durations are the following. Transmitters: 5 years. Converters: 5 years. Antenna power supplies: 5 years. Multiplexors: 3 to 5 years, depending on the element. Head-end: 5 years for coders and racks; 3 years for switches and servers. Cooling equipment: 10 years. Measuring equipment: 3 years. GPS receivers: 5 years. UPS: 10 years.

⁽⁵⁶⁾ EUR 1 = CZK 25.634 on 3 March 2022 (https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html).

- (47) ČASO's initial complaint intended to inform the Commission about an alleged illegal and incompatible aid in the form of support for the upgrade of the existing DVB-T broadcasting platforms to the DVB-T2 standard by involving a variety of State aid measures, as described in the 2016 Strategy. Those include support to DTT network operators for the upgrade to DVB-T2/HEVC and other costs supported by the State for DVB-T2 information campaign, project management services, etc. ⁽⁵⁷⁾ ČASO considered that the State support would grant a competitive advantage to the digital terrestrial television infrastructure operators (Cra and DB) and potentially an indirect one to television operators (broadcasters) using the terrestrial television platform if the benefit passed on to them via the DTT operators. More precisely, ČASO has complained, in its various submissions, about alleged State aid granted in the form of:
- (a) payments to DTT operators covering their costs for changing the radio frequency from 20 July 2016;
 - (b) payments to DTT operators covering their costs for the simulcast broadcasting of DVB-T2 transitional networks incurred from 20 July 2016;
 - (c) free of charge prolongation of the rights to use frequencies up until 2030 and grating of compensatory radio frequency allocations to the existing DTT operators;
 - (d) payments associated with the information campaign and certification of DVB-T2/HEVC compatible reception devices;
 - (e) compensation for sunk costs that the DTT network operators may be expected to ask the State to compensate, i.e. the costs of the construction and early amortization of the DVB-T networks resulting from the upgrade to DVB-T2.
- (48) Digi s.r.o./Telly complained about four State aid measures included in the Digital Amendment and two additional measures that were not included in the Digital Amendment. Altogether, those measures were the following:
- (a) the reimbursement of costs for the parallel operation of transitional networks, including the reimbursement of efficiently incurred costs, provided such costs were in fact incurred before the date of entry into force of the Digital Amendment, but no earlier than 20 July 2016 (article 2.3. of the Digital Amendment);
 - (b) the prolongation for free of the rights to use radio frequencies until 31 December 2030 (article 2.5. of the Digital Amendment);
 - (c) the reimbursement of costs for changing and realigning the networks, including the reimbursement of efficiently incurred costs, provided such costs are incurred and were incurred before the date of entry into force of the Digital Amendment, but no earlier than 20 July 2016 (article 2.6. of the Digital Amendment);
 - (d) the reimbursement of costs to eliminate the harmful interferences of the DTT platform operators by network providing mobile data connection and vice versa (article 2.7. of the Digital Amendment);
 - (e) granting of compensatory radio frequency allocations to existing DTT network operators;
 - (f) the reimbursement of costs for the information campaign related to the communication and promotion of the new DTT technology standard and the individual phases of the transition process.
- (49) The complainants considered that the measure at hand constitutes State aid within the meaning of Article 107 TFEU. They considered that the legal basis of the measure does not contain a provision that renders sufficiently clear the award of the aid subject to the Commission's approval.
- (50) The complainants considered that the measure would grant a discriminatory and unfair competitive advantage to DTT operators, which would receive State support for the upgrade of their platforms/networks while the complainants, as competitors, had to pay themselves the technology upgrade and the related parallel broadcasting ⁽⁵⁸⁾ and consequently, also suffered from an erosion of their customer base. They argued that, while the measure officially aims at supporting transitional networks, it actually compensates the rollout and operation of the final DVB-T2 networks, providing support only to that platform. They considered that the measure would create an environment where the DTT platform operators do not reasonably face competitive pressures on recoverability of their investments, which enables them to offer services at better conditions. The complainants notably rely on the market shares of different television platforms in Czechia (recital (21)) to argue that the measure risks further increasing this market imbalance (high penetration of DTT), in contradiction with the principle of technological neutrality.

⁽⁵⁷⁾ The complainant refers to the 2016 Strategy, p. 72, which also includes: equipping social facilities with appropriate television sets or set-top box, spectrum management costs, treatment of DTT interference by LTE.

⁽⁵⁸⁾ DIGI s.r.o./Telly indicated that it undertook a transition from DVB-S/MPEG-2 broadcasting format to DVB-S2/MPEG-4 in 2015 and 2016. It explained that one of the significant operating costs were linked to simulcast costs incurred as a result of parallel broadcasting in DVB-S and DVB-S2 standards from October 2015 until September 2016. Capital expenditure covered primarily purchases of new DVB-S2/MPEG-4 compatible customer premises equipment. A member of ČASO explained that it upgraded its broadcasting from DVB-S/MPEG-2 to DVB-S2/MPEG-4 between 2012-2016. It incurred transition costs, notably for satellite capacity for simulcasted content.

- (51) The comments of the complainants, submitted since 2016, can be summarised as follows.
- (52) First, they claimed that the release of the 700 MHz band did not require upgrading networks to DVB-T2, neither from a technical point of view nor on the basis of the EPaC Decision. They argued that no sufficient transparent and technical data had been provided in order to justify the upgrade to DVB-T2/HEVC. They put forward that if there were a real lack of available spectrum, the setting up of transitional networks, along the final DVB-T2 networks, would not have been possible. They hence estimated that there was a sufficient number of frequencies that could be used after the release of the 700 MHz band for at least four multiplexes⁽⁵⁹⁾. They however acknowledged that without upgrading to DVB-T2/HEVC the spectrum available for broadcasting of television programs would have decreased. They estimated that releasing the 700 MHz band without upgrading the networks would enable the broadcasting of 15-20 SD television channels, which is sufficient to cover the programs of the public broadcaster as well as those of the main commercial television broadcasters. They considered that the measure cannot be justified by a possible public interest goal that would have required the State to secure as many television channels possible available on the terrestrial television platforms.
- (53) Second, they argued that even if it were true that the DVB-T2 technology were needed for a proper exploitation of the sub-700 MHz, the measure would grant a competitive advantage since it increases the networks' data capacity without taking into account the benefits when designing the aid. Consequently, the DVB-T2 networks are capable of transmitting more television programs. They estimated that instead of 26 nationwide channels that are broadcast on the original DVB-T networks, the final DVB-T2 networks would allow the transmission of 88 nationwide programs. Furthermore, they argued that upgrading to DVB-T2/HEVC would enable platform operators and broadcasters to offer pay-TV services. They also claimed that already in the early 2010's, one of the DTT operators showed interest for DVB-T2, well before the political decision to release the 700 MHz band and the possibility to compensate for it⁽⁶⁰⁾. They claimed that DTT platform/network operators had the means to carry out the implementation of this standard with their own means, and hence there would be no market failure, as they have already incurred the costs.
- (54) Third, they considered that the upgrade to DVB-T2/HEVC would entail high costs not only for the DTT platform/network operators, but also for broadcasters (who may have to upgrade the format of their content⁽⁶¹⁾ or pay for more expensive transmission on DVB-T2 networks⁽⁶²⁾) and end-users (who have to upgrade their equipment). They argued that the Czech authorities should have assessed other options. For instance, the Czech authorities should have considered using the III television band (174-230 MHz), or postponing the release in order to limit the number of licences that would be affected by the early release of the 700 MHz band⁽⁶³⁾. They considered that the authorities could have explored the possibility to use other television platforms, such as satellite or internet. They also referred to other Member States that chose to partially upgrade the existing networks (in terms of number of multiplexes or of standard used), to reduce the number of multiplexes or to use terrestrial television only for large cities (the rest of the territory being covered by satellite, cable or IPTV platforms). The complainants considered that the measure could not be justified as being the only way to preserve the availability of free of charge television, for the benefit of end-users, because terrestrial television is not the only service that may provide access to free of charge television content. In fact, one of the complainants claimed it could provide free of charge television distribution over the internet⁽⁶⁴⁾. As a consequence, they considered that other medium than terrestrial television would also enable free access to television programs and that financial support to end-users would have been more appropriate.
- (55) Finally, they considered that should a transitional period be necessary, it would be only in regions affected by cross-border interferences or for end-users living in multi-households buildings, which needed to adjust their common reception equipment. Furthermore, they argued that there was no need for such a long transitional period. Viewers are more eager to change their equipment close to the switch-off deadline (as prices go down). They argued that there is no benefit for viewers to have access to simulcasted programs. In other countries, a short simulcast period was sufficient.

⁽⁵⁹⁾ They also refer to the intention of the Czech authorities to deploy two additional multiplexes. The complainants provided assumptions but did not provide a detailed overview of how the available frequencies could be used.

⁽⁶⁰⁾ CRA annual report, 2011, indicates: 'with new technologies such as DVB-T2 and DAB, our main objective in the coming years is to develop terrestrial television and radio broadcasting and to enable the introduction of new services such as high-resolution TV, pay-TV or digital radio', available at: <https://or.justice.cz/ias/ui/vypis-sl-detail?dokument=16841858&subjektid=32316&spis=87330>. Article Nabídka bezplatných TV se uzavírá, přijde placená televize ('The free offer of TV is over, now paid TV will come'), from [mediaguru.cz](https://www.mediaguru.cz), available at: <https://www.mediaguru.cz/clanky/2012/08/nabidka-bezplatnych-tv-se-uzavira-prijde-placena-televize/>

⁽⁶¹⁾ According to a press article, the switch from MPEG-2 to HEVC would entail a change in image resolution, which has an impact for the production and broadcasting of content, see here <https://www.parabola.cz/clanky/6577/jak-levna-je-draha-pozemni-tv/> (accessed on 16 May 2022).

⁽⁶²⁾ One of the complainants indicated that the TV channel TUTY TV had to switch-off because of the upgrade to DVB-T2 and the costs' increase. See for instance: <https://www.broadbandtvnews.com/2019/03/12/czech-kids-channel-closes/> (accessed on 4 March 2022).

⁽⁶³⁾ The complainants argued that, would the change of transmission standards (DVB-T2/HEVC) have been made after the expiration of the rights of use, right holders would not have been entitled to claim that their rights have been amended. If those rights would have expired, such changes would not have been necessary, and hence, there would not have been a right to compensation.

⁽⁶⁴⁾ Offer DIGI TV card.

4. POSITION OF THE CZECH AUTHORITIES ON THE MEASURE

- (56) The Czech authorities do not contest that the measure constitutes aid.
- (57) As regards its compatibility, they consider it fulfils the conditions of Article 107(3)(c) TFEU for the following reasons.
- (58) Czechia considers that the measure aims at reaching the objectives set by the Commission Communications of 6 May 2015 ('A Digital Single Market Strategy for Europe') and of 14 September ('Gigabit Communication'), as well as those of the EPaC Decision.
- (59) Czechia explains that, in preparing the implementation of the EPaC Decision, it was not considered possible to simply re-assign the spectrum (refarming) without dramatic negative impact on the availability of terrestrial television broadcasting for households, as well as negative consequences to existing commercial contracts between the DTT operators and broadcasters. It was hence necessary to combine refarming with transitioning to spectrally more efficient technologies (DVB-T2 and HEVC) and re-engineering of broadcasting networks.
- (60) Czechia considers that the DTT operators would have had no incentive to invest in DVB-T2/HEVC networks and to operate them because they have already borne significant costs for switching technologies between 2008 and 2012, during the switchover from analogue to digital and the release of the 800 MHz band. Allegedly, the DTT operators have not generated sufficient return on those investments and they would not be willing to incur the costs of releasing the 700 MHz band. In addition, Czechia considers that the DTT operators' market shares are declining and they may lack the incentive to continue providing terrestrial television services. That would conflict with the EPaC Decision, which expressed the interest in continuity of the provision of that service until 2030. According to Czechia, the migration plan for which compensation is planned ensured a smooth transition.

4.1. Necessity of the aid

- (61) First, Czechia considers that the aid is necessary.
- (62) **On parallel broadcasting:** Czechia argues in essence that a transitional and parallel terrestrial television broadcasting from 1 March 2017 to 31 October 2020 ⁽⁶⁵⁾ was necessary for the following reasons:
- (a) *Existence of a market failure:* Czechia claims that the same outcome could not have been achieved without the measure supporting parallel broadcasting, since the assignments and use of terrestrial frequencies are not subject to market forces, but are fully regulated. Furthermore, the Czech authorities consider that in any case, and even more absent the aid, DTT operators would have had no market incentive to release certain parts of the spectrum and move to another one. They argue that migrating from the spectrum band entails costs for DTT operators but does not offer new possibilities for their activities (positive externalities). Consequently, the Czech authorities consider that a market failure existed as market players would not have entered into the planned migration project by themselves, are not entitled to arrange such reassignments on their own initiative and would rather have blocked the initiative by initiating litigation procedures ⁽⁶⁶⁾.
- (b) *Stimulation of the retail market:* Czechia claims that it stimulated the retail television market by incentivising retailers to offer compatible television sets. According to Czechia, without the operation of transitional DVB-T2 networks, retailers would not have sold DVB-T2 compatible television sets, and viewers would not have bought them. Czechia indicates that the share of sales of certified TV receivers (DVB-T2/HEVC) in the total of TV sales increased from less than 15 % in 2015 to 50 % in 2016. In 2017, after the switch-on of the first transitional network, that share amounted to 85 %. In 2018, when the three transitional networks reached more than 90 % of the population, that share amounted to 98 %. Czechia concludes that, in 2019, more than 75 % of the TV receivers in Czech households were certified as compatible with DVB-T2/HEVC standards.
- (c) *Technical frequency migration from DVB-T networks to DVB-T2 networks:* Due to the limited availability of frequencies, assignment of the final frequencies required the establishment of an intermediary frequency plan, as agreed with neighbouring countries. Czechia explained that a direct exchange of the radio frequencies (from original to final networks) without a comprehensive reorganisation of the use of the radio spectrum was not possible in Czechia.

⁽⁶⁵⁾ The measure does not include compensation for the period from 19 March to 30 June 2020.

⁽⁶⁶⁾ The ADL study submitted by Czechia identifies the following market failures: (i) imperfect competition (the release of the 700 MHz band would be detrimental to the DTT operators, and the end-viewers, and would give a major advantage to alternative platforms); (ii) externalities (the release of the 700 MHz band leads to additional costs to DTT operators and end-viewers but no benefit); (iii) public good (the release of the 700 MHz band restricts spectrum, which is a public good and which is used for dissemination of terrestrial broadcasting).

- (63) **On investment in DVB-T2/HEVC:** The Czech authorities claim that switching to DVB-T2 was necessary to free up the 700 MHz band and to ensure the same coverage of DTT broadcasting. They explain that the radio frequencies rearrangement required the operation of new and larger single frequency networks (SFNs) ⁽⁶⁷⁾. Czechia explains that SFNs operated with DVB-T transmission standard can generally only serve small areas, not larger than 67 km. On the contrary, SFNs operated with DVB-T2 transmission standard can serve larger areas and a single SFN can reach a distance of 134 km. Therefore, in order to cover the whole country without interference, DVB-T SFNs need a higher number of frequency channels than the DVB-T2 SFNs.
- (64) According to Czechia, if the large SFNs had been operated with DVB-T transmission standard after the release of the 700 MHz band, there would have been interference and loss of coverage. Czechia presented the possible consequences in terms of coverage, for the four final networks, as follows:

Muxes	Channel	Hypothetical coverage of population (in % and absolute terms) with DVB-T signal transmission standard, using the new frequencies assigned after the release of the 700 MHz band		Actual coverage of population (in % and absolute number) with DVB-T2 signal transmission standard	
		%	absolute number	%	absolute number
Mux21	26	81,1 %	8 475 713	96,1 %	10 042 030
	33	31,0 %	3 234 342	31,0 %	3 242 554
	39	16,9 %	1 768 183	17,2 %	1 794 157
Mux22	22	13,9 %	1 452 605	13,9 %	1 452 610
	27	9,1 %	948 331	9,1 %	952 637
	28	56,4 %	5 890 954	68,8 %	7 182 703
	34	16,9 %	1 767 481	19,1 %	1 994 184
	38	28,3 %	2 952 537	30,4 %	3 175 954
	40	54,5 %	5 694 434	54,8 %	5 723 517
Mux23 (*)	22	11,4 %	1 189 882	23,8 %	2 488 847
	23	30,8 %	3 220 972	30,9 %	3 233 155
	31	67,6 %	7 058 279	76,1 %	7 951 140
	33	24,1 %	2 513 195	26,4 %	2 754 230
	34	16,5 %	1 726 509	16,5 %	1 726 533
	35	10,6 %	1 110 412	10,7 %	1 113 791
Mux24	21	16,3 %	1 703 935	16,3 %	1 707 082
	30	6,5 %	684 055	6,9 %	716 730
	42	35,7 %	3 729 667	35,9 %	3 747 999
	43	21,5 %	2 247 229	21,6 %	2 258 990
	44	33,2 %	3 465 931	34,7 %	3 621 210

⁽⁶⁷⁾ SFNs are networks that transmit over a single frequency in a given area. The bigger the SFNs, the bigger the area covered with fewer frequencies.

Muxes	Channel	Hypothetical coverage of population (in % and absolute terms) with DVB-T signal transmission standard, using the new frequencies assigned after the release of the 700 MHz band		Actual coverage of population (in % and absolute number) with DVB-T2 signal transmission standard	
	45	34,8 %	3 635 861	35,6 %	3 721 340
	46	11,6 %	1 211 360	11,7 %	1 218 918

(*) This network has been entirely financed by the terrestrial television platform operator operating it. No cost items related to this network are included in the measure.

- (65) As a counterfactual scenario, Czechia argues that releasing the 700 MHz band without following the proposed migration plan would have resulted in the disappearance of the terrestrial television broadcasting and a dramatic intervention in competition in the market of television broadcasting in favour of alternative platforms. Allegedly, not investing in DVB-T2 networks would have required a higher number of frequencies used per multiplexes, and only three networks would have had a nationwide coverage.
- (66) In addition, Czechia considers investing in DVB-T2/HEVC standards necessary for the following reasons:
- It aimed at complying with the recommendation of the EPaC Decision, in particular those stated in recital 20, and other studies commissioned by the Commission⁽⁶⁸⁾. Czechia argues that the EPaC Decision reduced the expected return on investment period of the funds invested by terrestrial television network operators in the period of 2010-2012. This is because the investment considered necessary by Czechia for releasing the 700 MHz band significantly reduces the expected return on investment period of the funds invested previously by the DTT network operators.
 - It allowed future development of programs, both in quality and in number, which would increase the transmission capacity demand for broadcasting. Not upgrading to DVB-T2 would have prevented offering high-definition television programs and the continuation of regional broadcasting. Czechia explained also that the national experimental broadcasting undertaken in 2012-2015 showed a significantly higher spectral efficiency of DVB-T2/HEVC based solutions compared to DVB-T2/MPEG-4 solutions.
 - It protected the end-users' investment in a new television equipment. Since HEVC was the most recent compression standard, it had a longer planned lifetime before being replaced by another technology. This makes it different from older compression technologies, e.g. MPEG-4. Czechia explained that if MPEG-4 compression technology had been chosen, end-users might have been incentivised to buy an equipment that would be outdated shortly after (Czechia estimated 2021/2024). Czechia grounded its arguments in favour of equipping the network with HEVC *inter alia* on the share of sales of DVB-T2/HEVC television sets, which increased as from 2016 (recital (62)(b)). It allowed Czech end-users to have access to neighbouring countries' programs that are broadcast in DVB-T2/HEVC standards, since they had to replace their own equipment compatible with DVB-T2. It also allowed end-users to benefit from a wider market of DVB-T2/HEVC compatible TV sets.
 - Czechia argues that the obligation to release the 700 MHz band only concerns terrestrial television and is hence not technologically neutral.
 - DVB-T2/HEVC is the only combination enabling the inclusion of all current television programs in the three transitional networks⁽⁶⁹⁾.

4.2. Appropriateness of the aid

- (67) Czechia considers the measure to be the most appropriate instrument to obtain the aid beneficiaries' agreement to release the 700 MHz band, which required substantial re-engineering of broadcasting networks, with the use of large SFNs, extensive re-assignments of the frequencies and use of a new transmission standard (recitals (63)-(64)). According to Czechia, the migration plan for which compensation is envisaged by the measure, and hence the measure itself, are an appropriate instrument for a smooth release of the 700 MHz band, for the following reasons.

⁽⁶⁸⁾ The Czech authorities refer to the study entitled *Economic and Social Impact of Repurposing the 700 MHz band for Wireless Broadband Services in the EU* (EC Final Report, 2016), p. 6 which states: 'Our analysis of the current frequency assignments for television services in the UHF band has shown that, without extensive negotiations between neighbouring countries (which are beginning to take place), it is not possible to replicate the existing services, coverage and quality without the use of the 700 MHz band. The only way to continue to provide the services is to migrate to newer, more efficient broadcast technologies or video compression standards (such as DVB-T2 and MPEG-4 or HEVC)'. Czechia also mentions the Lamy Report (pp. 15, 25), the RSPG15-595 Final (2015) Report and the Impact Assessment Accompanying the document SJ-032 Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union.

⁽⁶⁹⁾ Videos are less compressed with MPEG4-.

- (a) *Adaptation of households' equipment*: The migration plan for which compensation is envisaged by the measure ensured sufficient time to households to adapt to the transition to DVB-T2/HEVC broadcasting, which required purchasing new television reception equipment, adjusting antenna systems and tuning new reception facilities ⁽⁷⁰⁾. According to Czechia, this aimed at ensuring that the forced migration from the 700 MHz band did not modify the market conditions for terrestrial television broadcasting providers. The Czech authorities indicate that the parallel broadcasting, in addition to other non-State subsidised measures such as the certification of receiver equipment, stimulated the natural replacement of television sets without burdening the national budget. According to the Czech authorities, subsidising the replacement of households' reception equipment, in line with the Commission's decisional practice ⁽⁷¹⁾, would have been much more expensive. Direct subsidies to households for the purchase of reception equipment would have represented a burden of approx. EUR 83 million ⁽⁷²⁾. Czechia explains that limiting the aid to social aid would have represented EUR 37 million ⁽⁷³⁾. In addition, Czechia indicates that those figures do not take into account the price households would have to pay in case they subscribe to another platform for television services available on pay-tv platforms.
- (b) *Construction and control of the networks*: The migration plan for which compensation is envisaged by the measure ensured sufficient time to test and control the construction and operation of the new network, configured with new and larger SFNs (recitals (63)-(64)), aiming at an uninterrupted broadcasting and reception of terrestrial television services. Verification aimed at eliminating configuration problems such as SFN echo or interference, coverage of local areas with peculiar geographical characteristics. Ultimately, it ensured that there was sufficient time to replace or modify the antenna systems and to switch off the original networks.
- (c) *Uninterrupted provision of broadcasting terrestrial television services*: Without the migration plan for which compensation is envisaged by the measure, terrestrial television services would have risked to be interrupted, which would be detrimental to the social life in Czechia, including as regards its media, cultural and political aspects. Czechia stresses in addition the importance of terrestrial television broadcasting in times of crisis such as the COVID-19 pandemic. During that time, the Czech authorities have broadcast special programs to children and seniors as well as governmental messages. In addition, interruption of broadcasting terrestrial television services would be contrary to the terms of the contracts between network operators and TV broadcasters. A decrease of users of terrestrial television would result in a decrease in the revenues of broadcasters from advertising, which would have had a negative impact on the overall broadcasting market.
- (d) *In line with the EPaC Decision*: The measure is in line with Article 6 on costs compensation and recitals 20 ⁽⁷⁴⁾ and 21 ⁽⁷⁵⁾.
- (68) Considering the reasons listed above (recital (67)(a)-(67)(c)), Czechia justifies the length of the parallel broadcasting as follows:
- (a) From March 2017 to June 2018, parallel broadcasting enabled the construction and verification of the operation of the transitional DVB-T2 networks, as well as stimulation of the retail market.
- (b) From July 2018 to October 2019, parallel broadcasting enabled households to adapt their equipment.
- (c) From November 2019 to October 2020, parallel broadcasting ensured that television broadcasting was uninterrupted during the switch-off phase of DVB-T networks.

⁽⁷⁰⁾ Czechia explained that the offer of DVB-T2/HEVC equipment began to appear around 2015 and that the deployment and operation of the transitional DVB-T2 networks, in March 2017, clearly indicated to viewers that DVB-T2/HEVC would be the future DTT platform.

⁽⁷¹⁾ See for instance Commission Decision of 5 April 2016, C(2016) 1973 final, SA.42680 (2015/N) — France, Régime d'aides visant à l'instauration d'un dispositif d'accompagnement temporaire de certains foyers perdant la réception de la télévision par voie hertzienne terrestre lors des opérations de libération de la bande 700 MHz au profit des services mobiles (OJ C 142, 22.04.2016). See also Commission Decision of 12 April 2019, SA.51079 (2018/N) — Spain, Audiovisual broadcasting reception aid for multi-households buildings (OJ C 19, 7.6.2019). See also Commission Decision of 10 September 2019, C(2019) 6334 final, SA.53376 (2019/N) — Italy, Liberation of the 700 MHz band — Reception aid to low-income households (OJ C 354, 18.10.2019).

⁽⁷²⁾ In case of subsidies to 50 % of the Czech households (paying the public broadcasting concession fee, so which would need a set-top box according to Czechia) and a voucher of EUR 50.

⁽⁷³⁾ Czechia estimates the households needing social assistance to be 22 % of the households paying the concession fee.

⁽⁷⁴⁾ 'Where Member States intend to maintain DTT, the national roadmaps should consider the option of facilitating upgrades of broadcasting equipment to more spectrum-efficient technologies, such as advanced video formats (e.g. HEVC) or signal transmission technologies (e.g. DVB-T2).'

⁽⁷⁵⁾ 'The scope of and mechanism for possible compensation for completing the transition in spectrum use, in particular for end users, should be analysed in accordance with the relevant national provisions [...] in order, for example, to facilitate the transition to more spectrum-efficient technologies.'

4.3. Proportionality of the aid

- (69) Czechia considers that the measure is proportionate as it is limited to the costs, properly and duly documented, incurred by the terrestrial television platform operators for setting up and running the transitional DVB-T2/HEVC networks, in accordance with the Technical Transition Plan. The Czech authorities indicate that the costs for running networks do not vary depending on the standard used. In other words, running DVB-T or DVB-T2 networks, and using MPEG-2/MPEG-4 or HEVC standards cost the same. According to the Czech authorities, this ensures that the measure does not result in costs savings, on the investment costs, on the part of the beneficiaries, which they could pass on to their clients through lower prices, or which would make DTT transmission financially more attractive than other transmission technologies.
- (70) Czechia recognises that the transition could technically take place within a limited period of transitional DVB-T2 broadcasting, between 3 to 4 months. Czechia however considers that a period of three and a half years of parallel broadcasting is proportionate to the objectives pursued, namely primarily granting households sufficient time for adapting their television reception devices.
- (71) The Czech authorities have not identified any possible negative effects. They argue that no other entity is subject to the same constraints resulting from the implementation of the EPaC Decision (i.e., the release of the 700 MHz band). The measure treats equally all firms that are affected by the release of the 700 MHz band.
- (72) The Czech authorities indicate that at the time of discussing and designing the measure, no comments were formulated by any of the alternative market operators.

5. PRELIMINARY ASSESSMENT OF THE MEASURE

- (73) The present decision assesses compatibility of the measure as notified by the Czech authorities with Article 107(3)(c) TFEU. The assessment does not cover other measures mentioned in the formal complaints submitted to the Commission (recitals (46)(47) and (48)). The following measures mentioned in the formal complaints are thus excluded from the scope of this decision:
- (a) Prolongation of rights of use held by DTT operators up until 2030 (recitals (47)(c)-(48)(b)). This measure is covered by Commission Decision SA.55805 of 15 March 2021.
 - (b) Support to DTT operators for costs related to the change of radio frequency (recitals (47)(a)-(48)(c)). This measure is covered by Commission Decision of 23 January 2020.
 - (c) Support for information campaign and certifications of compatible reception devices (recitals (47)(d)-(48)(f)), awards of compensatory rights of use of frequencies to existing DTT operators ((47)(c)-(48)(e)), costs reimbursement to eliminate the signal interference (recital (48)(d)) and compensation for sunk costs (recital (47)(e)). Those measures are not part of the notified measure and are not covered by the present decision.

5.1. Existence of aid within the meaning of Article 107(1) TFEU

- (74) The Commission has examined whether the measure in question can be qualified as State aid within the meaning of Article 107(1) TFEU, which provides that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (75) In order to qualify a measure as aid within the meaning of Article 107(1) TFEU, the following cumulative conditions must be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

5.1.1. State resources and imputability

- (76) The eligible costs will be compensated from the Radio-communication account (recital (30)). The Radio-communication account's resources stem from a portion of the fees paid for the right to use the spectrum frequencies. The measure is financed by public resources and is imputable to the State for the following reasons:
- (a) The fees paid by the right holders are charged by the national authorities.
 - (b) The share of the fees that must contribute to the account is decided by the national authorities.
 - (c) The CTO opens and administers the Radio-communication account. The CTO must yearly report on the administration of the account.
 - (d) The costs and revenues resulting from the deposit of the account are attached to the State budget.
 - (e) The measure is provided in the legislative and administrative measures provided in recital (29).
 - (f) CTO administers the measure by reviewing the aid applications and checking the accuracy of the eligible costs.

(77) Consequently, the Commission preliminary concludes that the measure is imputable to the State and financed through State resources.

5.1.2. *Economic advantage*

(78) An advantage within the meaning of Article 107(1) TFEU is any economic benefit, which a beneficiary would not have received under normal market conditions, in the absence of State intervention ⁽⁷⁶⁾. The advantage may take the form of a positive financial support but also any measure that mitigates the charges, which are normally included in the budget of an undertaking ⁽⁷⁷⁾. Among the charges that are normally included in the budget of an undertaking are costs of undertakings arising from regulatory measures inherent in the exercise of a regulated economic activity ⁽⁷⁸⁾.

(79) In the present case, the aid is granted to operators carrying out broadcasting transmission services, which constitute an economic activity ⁽⁷⁹⁾, and mitigates charges which are normally included in the budget of an undertaking, for the following reasons. The measure intends to compensate costs that arose from regulatory measures, namely the Digital Amendment and the Technical Transition Plan (recital (29)). Obligations arising from the Digital Amendment and the Technical Transition Plan are inherent to the DTT operators' economic activity. Section 19 of the ECA provides for the possibility for the CTO to amend the authorisations to use radio frequencies if needed for Czechia to comply with Union law. In the case at hand, the objective of the Digital Amendment and the Technical Transition Plan was for Czechia to comply with the obligations provided in the EPaC Decision. Furthermore, the possibility of being obliged to free the assigned spectrum or to undergo a modification of the conditions to the rights of use frequencies assigned and of the transmission and compression standards, in the context of international coordination, before expiry of the right, is not an occurrence that could have been unknown to the right holders, considering precedents and preliminary international discussions (recital (9)). Thus, the costs subject of the measure are inherent in the exercise of the broadcasting services activity of the DTT operators.

(80) In line with previous cases ⁽⁸⁰⁾, the Commission considers that the measure relieves DTT operators from regulatory costs that should be inherent to their business costs while other operators have to bear typical regulatory costs by themselves. In the absence of the measure, the DTT operators would have been obliged to bear all the costs considered to be linked to the migration to the sub-700 MHz band, including to ensure the parallel broadcasting in DVB-T2/HEVC. Moreover, the measure enabled DTT operators to provide terrestrial television transmission services without interruption.

(81) Furthermore, following completion of the migration process for which the measure has been set up, DTT operators now use enhanced terrestrial television networks which have more capacity and are capable of providing enhanced television services (recitals (25)(26)-(27)).

(82) The Commission preliminary concludes that the measure confers an economic advantage within the meaning of Article 107(1) of the Treaty to DTT operators.

(83) One of the complainants mentions potential aid to broadcasters (recital (47)). At the same time and also according to a complainant, it seems rather that the implementation of the DVB-T2/HEVC switch-over entailed high costs for broadcasters (recital (54)). This suggests that broadcasters did not receive any advantage from the measure. In that context, the Commission preliminary concludes that the measure does not seem to confer a direct or indirect economic advantage to the broadcasters using terrestrial television platform.

5.1.3. *Selectivity*

(84) In accordance with Article 107(1) TFEU, to be considered State aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods.

(85) The measure intends to compensate the DTT operators which held rights of use in the 700 MHz band (recital (32)). Beneficiaries of the measure are undertakings in the sector of broadcasting transmission services in which other undertakings also operate, such as satellite, cable or IPTV (recital (21)) ⁽⁸¹⁾.

⁽⁷⁶⁾ Judgment of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

⁽⁷⁷⁾ Judgment of 26 April 2018, *Cellnex Telecom SA and Telecom Castilla-La Mancha SA v Commission*, C-91/17 and C-92/17 P, ECLI:EU:C:2018:284, paragraph 111.

⁽⁷⁸⁾ Judgment of 30 June 2016, *Belgium v Commission*, C-270/15 P, ECLI:EU:C:2016:489, paragraphs 35-36.

⁽⁷⁹⁾ Judgment of 1 July 2010, *M6 and TF1 v Commission*, T-568/08 and T-573/08, ECLI:EU:T:2010:272, paragraph 123.

⁽⁸⁰⁾ Decision C(2018)8356 final of 12.12.2018, SA.47258 (2017/N) — Germany, Spectrum migration of DTT platforms resulting from the liberation of the 700 MHz band ('Commission Decision SA.47258'), https://ec.europa.eu/competition/state_aid/cases/271860/271860_2038548_133_2.pdf; Decision of 2.8.2019, SA.51080 (2018/N) — Spain, Audio-visual broadcasting transmission aid for audio-visual service providers ('Commission Decision SA.51080'), https://ec.europa.eu/competition/state_aid/cases1/201934/279519_2089801_104_2.pdf

⁽⁸¹⁾ *Ex multis*, judgment of 30 June 2016, *Belgium v. Commission*, C-270/15 P, ECLI:EU:C:2016:489, paragraph 50.

- (86) The measure at hand allowed DTT operators to fulfil the obligations imposed on them by law, meaning to undertake simultaneous broadcasting in upgraded transmission and compression standards for liberating the 700 MHz band. In the absence of the measure, DTT operators would also have been obliged, due to the entry into force of the EPaC Decision, to fulfil the obligation of migrating from the 700 MHz band and therefore to bear all the costs considered to be linked to the migration. Moreover, the measure enabled DTT operators to carry on their terrestrial television transmission activities with continuity.
- (87) Although it appears that the economic operators that are directly affected by the obligation to liberate the 700 MHz band from terrestrial broadcasting services are the DTT operators, also other economic operators offering broadcasting transmission services with other technologies are subject to comparable regulatory constraints. Satellite operators for example are also subject to obligations for the use of spectrum which derive in regulatory costs that these providers have to bear and their rights of use may be also subject to amendments.
- (88) In addition, the measure aims at compensating investment made in three transitional networks that have been partly re-used in three out of four final networks (recitals (25) and (37)). One DTT operator that held rights of use of frequencies from the 700 MHz band has thus not benefited from any State aid for the construction of the final network it operates.
- (89) Accordingly, the Commission preliminary concludes that the measure is selective.

5.1.4. *Distortion of competition and effect on intra-Union trade*

- (90) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. In this regard, the General Court has stated that 'where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid' ⁽⁸²⁾.
- (91) As explained above, the measure applies to DTT operators. Those operators compete with other alternative providers (satellite, cable, IPTV) for the provision of television services and they are active at international level (footnote 43).
- (92) Therefore, the measure may result in distortions of competition among DTT operators and would have the potential to distort competition in the internal market and to have an effect on intra-Union trade.

5.1.5. *Conclusion on the existence of aid*

- (93) In light of the above, the Commission is of the preliminary view that the measure fulfils the criteria laid down in Article 107(1) TFEU and constitutes State aid within the meaning of that Article. The Czech authorities do not contest that conclusion (recital (56)).

5.2. **Lawfulness of the aid**

- (94) Czechia states that the aid has not yet been put into effect as the legal provisions establishing the right for compensation refer to a State aid procedure before the Commission (recital(29)(c)). The Czech authorities consider they have complied with the obligation stemming from Article 108(3) TFEU.
- (95) The Commission notes that the measure is based on the ECA, Section 27, as modified by the Digital Amendment. The Digital Amendment inserts a new sentence in paragraph 5 of Section 27, which refers to State aid procedures before the Commission ⁽⁸³⁾. Governmental Resolution of 20 July 2016 endorsing the 2016 Strategy (recital (13)) adopted prior to the Digital Amendment (19 July 2017), mandated the Czech authorities to *inter alia* prepare the necessary legislative changes for implementing the 2016 Strategy. It further specified that the Government should provide compensation once the Commission has assessed its compatibility with the internal market ⁽⁸⁴⁾. However, the Commission also notes that the Digital Amendment stipulates that right holders are entitled to receive aid in the process of migration to the DVB-T2 standard, including parallel broadcasting ⁽⁸⁵⁾.

⁽⁸²⁾ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

⁽⁸³⁾ Pursuant to the translated version of the Digital Amendment provided by the Czech authorities, it states: 'Where proceedings are conducted before the Commission regarding state aid in relation to determination of the amount or payment of effectively and efficiently incurred costs, it shall be considered a request for preliminary ruling'.

⁽⁸⁴⁾ Paragraph II, 1. c) of the Resolution of the Government of Czech Republic n°648 of 20 July 2016.

⁽⁸⁵⁾ Article II, paragraph 6 states: 'a holder of radio frequency allocation for nationwide networks in the DVB-T standard is entitled for reimbursement of costs effectively and efficiently incurred in the process of transition to the DVB-T2 standard to technically ensure the service of transmission of terrestrial television broadcasting using transitional networks, and costs associated with the change in allocation under subpar. 5'. Following paragraph 7 states: 'Transitional network operators under subpar. 3 and holders of allocations of radio frequencies under subpar. 5 are entitled to the reimbursement of costs effectively and efficiently incurred in the process of the transition process of elimination of interference with the terrestrial digital television broadcasting signal by networks providing mobile data connection services or elimination of interference with mobile data connection service networks by the terrestrial television broadcasting service.'

- (96) The Digital Amendment indicates ⁽⁸⁶⁾ that costs incurred in the process of migrating to DVB-T2/HEVC as defined in paragraphs 6 and 7 of the same text shall be compensated if those costs were incurred and expended by the date of termination of broadcasting in networks in the DVB-T standard. It adds that claims for reimbursement should be made within six months from the date they are incurred, otherwise the right ceases to exist. Costs incurred for the process of migrating to DVB-T2/HEVC, including parallel broadcasting, may be compensated if incurred before the entry into effect of the Digital Amendment but not earlier than 20 July 2016 ⁽⁸⁷⁾.
- (97) According to the case law, aid must be considered to be granted at the time that the right to receive it is conferred on the beneficiary under the applicable national rules ⁽⁸⁸⁾. The actual transfer of the resources in question is not decisive.
- (98) The Commission notes that the legal basis (the Digital Amendment) and the Government Resolution of 2016 refer to State aid proceedings, and that the Czech authorities have confirmed that no aid will be paid out before the approval of the measure by the Commission. This might however not ensure compliance with Article 108(3) TFEU in the case at hand.
- (99) On the one hand, according to the complainants (recital (49)), the amendment made to the Digital Amendment establishes only a possibility for the Czech authorities and not an obligation to suspend the award of the aid until completion of the notification procedure. According to them, the amendment introduced by the Digital Amendment to the ECA, Section 27(5), likely aimed at aligning the ECA with the Code of Administrative Procedure ⁽⁸⁹⁾, which allows an administrative authority to suspend any proceeding for determining the amount or reimbursement of costs being held before it. Allegedly, the objective of Section 27(5) amendment was to qualify the State aid procedure before the Commission as a preliminary ruling proceeding, which may constitute a ground on the basis of which the public authority may decide to suspend proceedings held before it. However, the public authorities seem to have discretion in this regard. Furthermore, the aid beneficiaries already filed their aid applications to CTO, which were approved, after the audit of the eligible costs.
- (100) On the other hand, the Commission notes that, while the ECA read in conjunction with the Digital Amendment identifies the aid beneficiaries and the overall eligible projects ⁽⁹⁰⁾, it does not detail elements of the aid such as the eligible costs, the maximum aid amount or the aid intensity, as included in the present decision. Those have been agreed on by the granting authority and the aid applicants in the course of the aid application.
- (101) In conclusion, the Commission is not at this stage in a position to draw a conclusion on the compliance of the measure with Article 108(3) TFEU.

5.3. Compatibility of the aid

- (102) Insofar as the measure constitutes State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed. The grounds on which a State aid measure can or must be declared compatible with the internal market are listed in Articles 106(2), 107(2), and 107(3) of the Treaty.
- (103) The Czech authorities claim that the measure is compatible with Article 107(3)(c) TFEU.
- (104) Article 107(3)(c) TFEU states that ‘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’ may be considered compatible with the internal market.
- (105) Therefore, in order to be declared compatible with the internal market under Article 107(3)(c) TFEU, 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 ⁽⁹¹⁾.

⁽⁸⁶⁾ Article II, paragraph 8.

⁽⁸⁷⁾ Czechia indicated that no costs have been incurred before 1 March 2017.

⁽⁸⁸⁾ Judgment of 19 December 2019, *Arriva Italia and Others*, C-385/18, ECLI:EU:C:2019:1121, paragraph 36.

⁽⁸⁹⁾ Act N°500/2004 Sb.

⁽⁹⁰⁾ The Commission notes that no other text forming part of the legal basis cited in recital (29) provides details on the Measure, such as specific eligible costs, specific aid amount, method for calculating the aid, etc.

⁽⁹¹⁾ Judgment of 22 September 2020, *Austria v Commission*, ECLI:EU:C:2020:742, paragraph 19.

5.3.1. Facilitation of the development of an economic activity

5.3.1.1. Economic activity facilitated by the measure

- (106) To be compatible with Article 107(3)(c) TFEU, the aid must facilitate the development of certain economic activities. The measure supported the upgrade of networks operated by the DTT operators allowing them to offer better services. It enabled DTT operators to offer more programmes and to increase the video quality from SD to HD for a certain number of programmes⁽⁹²⁾, and possibly to include pay-tv offers⁽⁹³⁾. Further, it helped maintaining and accustoming viewership to new terrestrial television standard (DVB-T2/HEVC), ensuring the audience is ready for the upgraded offers.
- (107) The Commission preliminary considers that the measure helped DTT operators to develop their economic activity in the sector of transmission of terrestrial television services and hence fulfils the first criterion.

5.3.1.2. Incentive effect

- (108) In order to be compatible with the internal market, the planned aid must have an incentive effect. To that end, it must be demonstrated that, in the absence of the planned aid, the investment intended to implement the project at issue would not take place. If, on the other hand, it appears that that investment would take place even without the planned aid, the conclusion must be that the aid serves merely to improve the financial situation of the recipient undertaking, without, however, meeting the requirement in Article 107(3)(c) TFEU that it is necessary for the development of certain activities⁽⁹⁴⁾.
- (109) The Commission has acknowledged in past cases that terrestrial television services providers holding rights of use of frequencies may have no commercial incentive to liberate a certain part of the spectrum and move to another part of it for the benefit of mobile network providers. In those cases, the Commission acknowledged that the measures aimed at finding an agreement with the right holders, which were under no obligation to give up their rights⁽⁹⁵⁾, for a smooth and timely liberation of the 700 MHz band⁽⁹⁶⁾. Importantly, it further recognised that migration from one band to another did not provide any technical improvement that could incentivise them to complete the transition on their own⁽⁹⁷⁾.
- (110) The measure takes place in the context of migration from one frequency band to another, for the benefit of mobile operators. At the time of designing the measure, the DTT operators held rights of use of frequencies that were valid several years after the deadline for liberating the 700 MHz band in June 2020 (recital (22)). The Commission recognises that right holders were right to expect using their licences under the conditions agreed at the time of award beyond June 2020. In principle, they would have had no interest in accepting the amendment of the conditions in which terrestrial television services are broadcast during the period in which the rights of use were valid. However, the Commission notes that the Digital Amendment also included the right for DTT operators to apply for the extension of their rights of use of frequencies beyond their initial duration, until 2030. Hence, these providers could rely on their right to provide services until 2030, which offered a different timeline in terms of predictability of any investment planned.
- (111) In addition, contrary to the case practice mentioned in recital (109), the migration process planned by the Czech authorities for the purpose of the measure (recital (24)) requires technical improvement in the form of an investment in the updated standards DVB-T2 and HEVC (recital (26)). The investment in DVB-T2/HEVC standards increased data capacity overall available for terrestrial television services (recital (26)). Furthermore, the 2016 Strategy announced the Czech authorities' ambition to deploy two additional multiplexes after completion of the migration process (recital (13)(c)). Considering those improvements and possible developments (in capacity and quality), the Commission must verify whether the measure truly incentivised operators to incur the eligible costs, or whether the operators would have had an interest to undertake the investment in any case.
- (112) The 2016 Strategy announced the Czech authorities' intention to schedule release of the 700 MHz band and upgrade to DVB-T2/HEVC standards and to compensate for the migration costs (recital (13)). The Digital Amendment of July 2017, which is based on the 2016 Strategy and the ADL Study, established the entitlement for the operators to be compensated for the costs incurred in relation to the process of transition to the DVB-T2/HEVC standards, covering investment and operating costs (recitals (35)-(36)). It is only the Technical Transition Plan of 29 August 2018 that established the technical conditions of the migration process and in particular, the periods during which each transmitter had to provide parallel broadcasting. According to the Plan itself, parallel broadcasting started in March

⁽⁹²⁾ The transition to DVB-T2 resulted in an increase of the number of broadcasted television channels and of the quality of TV channels to HD.", in BNE is pleased to announce that its Czech member České Radiokomunikace (CRA) has now completed the transition from DVB-T to DVB-T2 and released the 700 MHz band, 13 November 2020, accessible on <https://broadcast-networks.eu/transition-to-dvb-t2-completed-in-the-czech-republic/> (accessed on 4 February 2022).

⁽⁹³⁾ M7 Group to launch Czech pay-DTT, <https://www.broadbandtvnews.com/2020/08/31/m7-group-to-launch-czech-pay-dtt/> (accessed on 8 March 2022).

⁽⁹⁴⁾ Judgment of 12 September 2019, *Achemos Grupè and Achema v Commission*, T-417/16, ECLI:EU:T:2019:597, paragraph 84.

⁽⁹⁵⁾ Commission Decision SA.51080, recital 85; Commission Decision SA.47258, paragraph (36), and Commission Decision of 23 January 2020, recital 78.

⁽⁹⁶⁾ Commission Decision SA.51080, recital 87.

⁽⁹⁷⁾ Commission Decision SA.47258, recital 80; and Commission Decision of 23 January 2020, recital 79.

2017, 15 months before the adoption of the Plan and even before the adoption of the Digital Amendment of July 2017. Further, the switch-off of the original DVB-T transmitters took place in October 2020, before the Commission final decision on the measure. The Commission acknowledges that the operators have now already incurred all costs for the migration.

- (113) Nevertheless, it is doubtful that it is the measure that incentivised operators to start investing and operating parallel broadcasting as from 1 March 2017 (recital (44)), until 29 August 2018. Indeed, before August 2018, there seem to be no regulatory texts that established the technical conditions under which operators had to undertake parallel broadcasting. The 2016 Strategy does not seem to have given sufficient guidance to DTT operators on key parameters of the scope of the compensation as well as on how the operators should proceed to release the 700 MHz band, in particular since the Strategy calls on the Government to prepare the regulatory acts, including the coordination of frequencies⁽⁹⁸⁾, necessary for the implementation of the objectives of the Strategy (recital (13)(d)). Furthermore, starting the migration process in March 2017 precedes the final international agreements concluded by Czechia with its neighbouring countries on the final frequency distribution (recital (19)). Moreover, right holders were entitled to apply for an extension of their rights of use of frequencies until 2030. Hence, it seems that terrestrial television platform operators decided on their own to incur the eligible costs, without any incentive stemming from the public authorities.
- (114) Consequently, considering that the migration process entailed technical improvements and that the DTT operators seem to have started the investment in parallel broadcasting in DVB-T2/HEVC, in March 2017, before the existence of a public technical plan or knowing the details of the measure, the Commission has doubts about the existence of the incentive effect of the measure.

5.3.1.3. Compliance with other provisions of EU law

- (115) If a State aid measure, the conditions attached to it (including its financing method when that method forms an integral part of the aid measure) or the activity it finances entail a violation of a provision or general principles of Union law, the aid cannot be declared compatible with the internal market⁽⁹⁹⁾.
- (116) The Commission has not identified any elements of the measure that would infringe any provisions or principles of Union law.

5.3.2. The aid must not unduly affect trading conditions to an extent contrary to the common interest

- (117) In order to conclude that the measure does not unduly affect trading conditions to an extent contrary to the common interest, the Commission must examine the positive effects of the measure and whether any negative effects of the measure are minimised, namely that the measure is necessary, appropriate and proportionate.

5.3.2.1. Positive effects of the aid

- (118) The measure has enabled the DTT operators to develop their economic activities (recital (106)) and thus brought positive effects to the aid beneficiaries. In addition, within the Union, it is commonly acknowledged that a well-functioning media landscape and media pluralism are useful for functioning democracies as well as Member States' economies. Media in general, including television services, plays an important role in social cohesion by ensuring a wide coverage of the population, especially in rural areas.
- (119) The measure aims at guaranteeing the availability of terrestrial television services across the country. It ensures that Czech terrestrial television content remains available for consumers in order to preserve the diversity of information sources and contributes to cultural and political debates of the country, in particular in times of crises (recital (67)(c)). By ensuring continuity of terrestrial television services and enabling additional programs to be broadcast over terrestrial television platforms, the measure contributes to a strengthening of media pluralism and ensures the central role of the media in a modern democratic society.
- (120) The Commission is of the preliminary view that the measure has positive effects.

5.3.2.2. Necessity of the measure

- (121) State aid should be targeted towards situations where aid can bring about a material improvement that the market alone cannot deliver. The Czech authorities argue that the measure is necessary as it aims at remedying a market failure.

⁽⁹⁸⁾ Article II, 2. Of the Government Resolution n°648/2016.

⁽⁹⁹⁾ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 44.

5.3.2.2.1. Existence of a market failure

- (122) The Commission has recognised in previous cases ⁽¹⁰⁰⁾ that access to and use of spectrum frequencies are regulated by the national authorities. It is the authorities that decide, in accordance with the Union and national regulatory framework, under which conditions the rights of use of frequencies are assigned, including technical requirements such as the transmission standard that must be used. Hence, it is true that market players might be unwilling voluntarily to agree on a common timetable for (coordination problem), or lack considering the positive effects of (positive externalities), freeing the frequencies and modifying the network configurations, including the transmission standard. This is because they should normally have planned to carry out their activity when receiving the right of use of frequencies, for the duration for which those rights were granted, and in light of the conditions under which the rights of use were assigned (footnote 45).
- (123) The Commission acknowledges that the decision to release the 700 MHz band by June 2020 is a regulatory measure, coordinated at Union level, therefore not in the hands of the market. DTT operators are not the negotiating parties in the international coordination discussions for the use of frequencies. Therefore, they would probably not have coordinated among themselves in view of releasing the 700 MHz band, which means returning some frequencies, with regard neither to the schedule (from March 2017 to October 2020, before the end of validity of their licences) nor the technical characteristics of the networks (extensive SFNs, etc.).
- (124) However, DTT operators might still have incurred the costs (**invest in DVB-T2/HEVC networks and operate parallel broadcasting**) in the absence of the measure for the reasons stated hereafter. Indeed, the fact that transition to DVB-T2/HEVC was either supported by policy objectives or made necessary in light of regulatory goals does not automatically mean that market operators would not also have an own interest in transitioning to more spectrum efficient standards.
- (a) First, the benefits of DVB-T2 and HEVC standards have been identified by the Czech authorities (recitals (12) and (66)(b)) and by the terrestrial television industry several years before the obligation to release the 700 MHz band and the related changes of the networks technical parameters. It has been demonstrated that one of the beneficiaries, CRA, started DVB-T2 testing already back in 2012 ⁽¹⁰¹⁾ and has declared that DVB-T2 would enable them to develop their activities (footnote 60). The Czech authorities concluded already in 2013 that it would be necessary to upgrade to DVB-T2 transmission standard in order to offer content of better quality. The operators' interest in DVB-T2 can also be deduced by the fact that one DVB-T2 final network has been entirely financed by the DTT operator as it did not undertake parallel broadcasting for which compensation was to be granted (recital (25)). The Commission notes that DTT operators are now enjoying the benefits generated by the transition to DVB-T2 ⁽¹⁰²⁾.
- (b) Second, competitors of terrestrial television services such as satellite services providers, which have borne the same type of costs for upgrading their services to improved standards (recital (50)), have been identified by the Czech authorities as being in advance from a technological viewpoint (recital (12)).
- (c) Third, it is in the interest of the transmission television services providers to continue to provide services during the transition to a better technology, as did the complainants, in order to maintain their customers (recital (53)) Maintaining television services during the transition phase ensures that customers receive uninterrupted terrestrial broadcasting transmission services and do not change to alternative television platforms.
- (d) Fourth, besides the improvement of capacity and quality DVB-T2 and HEVC offer, investing in updated transmission and compression standards might be in any case necessary would the beneficiaries like to develop their services and keep their advantageous position on the market (recital (21)). The original occupation of the digital terrestrial television networks was close to full capacity (recital (27)), meaning that any development in terms of services (improved quantity and quality of the content) would not have been possible without an upgrade of technologies. In that context, the transitional broadcasting in updated DVB-T2/HEVC transmission and compression standards would have had to be paid by the DTT operators.

⁽¹⁰⁰⁾ Commission Decisions on the German and the Spanish aid measures.

⁽¹⁰¹⁾ Czechia explained that CRA aimed only at testing the impact of the DVB-T2 technology on the transmission and reception equipment's performance.

⁽¹⁰²⁾ 'The transition to DVB-T2 resulted in an increase of the number of broadcasted television channels and of picture quality of TV channels to HD.', in BNE is pleased to announce that its Czech member České Radiokomunikace (CRA) has now completed the transition from DVB-T to DVB-T2 and released the 700 MHz band, 13 November 2020, accessible on <https://broadcast-networks.eu/transition-to-dvb-t2-completed-in-the-czech-republic/> (accessed on 4 February 2022). <https://www.televizezadarmo.cz/>, stating 'In the new DVB-T2 broadcast, all the programs you were used to with the previous DVB-T digital television are available. Some of them broadcast in higher image quality. For example, Czech Television broadcasts all six of its programs in DVB-T2 in Full HD quality. The new broadcasting networks also have room for other programs, which will gradually appear in them from the beginning of 2020. Among the already known projects are, for example, the new news station CNN Prima News or regional TV Info.' (accessed on 4 February 2022).

- (e) Fifth, Czechia has announced that the final objective is to deploy six nationwide DVB-T2 networks (recital (13)(c)). The Commission understands that the release of the 700 MHz band and the technical investments will result in new market opportunities for the current terrestrial television network operators. Thus, DTT operators might have had an interest in ensuring the networks are spectrum efficient so to allow the deployment of new networks and consequently of new business opportunities.
- (125) In light of the aforementioned consideration, the Commission has doubts that the measure aims at remedying a market failure.
- 5.3.2.2.2. Necessity to finance the eligible costs
- (126) In the event the measure would aim to remedy a genuine market failure (recital (125)), the Commission cannot conclude on whether the measure as designed is necessary to reach the objective of a seamless release of the 700 MHz band from terrestrial television services. While the EPaC Decision refers to direct costs, the Commission doubts whether the eligible costs identified by Czechia may qualify as direct costs within the EPaC Decision.
- (127) The Commission has assessed other national aid schemes put in place in the context of the release of the 700 MHz band⁽¹⁰³⁾. Those schemes expressly excluded support given for the upgrade of technologies or for parallel broadcasting, though the national technical plans might have encouraged the upgrade and/or parallel broadcasting. Hence, regulatory requirements imposed on frequencies rights holders to modify the transmission standard and to run parallel broadcasting do not automatically give rise to compensation.
- (128) As a preliminary remark, the Commission doubts that it was necessary to set-up transitional networks for the purpose of releasing the 700 MHz band before the deployment of the final networks. It seeks comments on the necessity, for technical reasons or others, to first set-up three transitional networks using transitional frequencies before launching final networks.
- (129) As regards eligible costs **for investing in DVB-T2/HEVC networks**, the Commission seeks comments on the necessity to provide compensation for the costs items identified by the Czech authorities (recital (35)) and in particular:
- (a) Compensation for DVB-T2 related equipment. Czechia has indicated that the final networks, which are built on the transitional networks, would have suffered from interference if functioning with DVB-T. Interference would however have been cancelled with the use of DVB-T2. The Commission considers that the evidence brought forward (recital (64)) does not sufficiently justify the need for the multiplexes to function with DVB-T2. In particular, coverage of multiplex 24 seems very little improved with the use of DVB-T2 compared to a hypothetical use of DVB-T. The Commission seeks comments on the overall necessity to compensate for investment into DVB-T2 related equipment for transitional multiplexes 11, 12 and 13, which infrastructure is used by the final multiplexes 21, 22 and 24.
- (b) Compensation relating to the investment in HEVC related equipment. Czechia has not provided sufficient evidence demonstrating that the final networks, which are built on the transitional networks, need to function with HEVC for the purposes of releasing the 700 MHz band. On the contrary, the Commission notes that the investment is rather linked to the future development of the market than to respond to a technical constraint (recital (66)(c)). The Commission seeks comments on the necessity to compensate for investment in HEVC compression standard for releasing the 700 MHz band.
- (c) Compensation for costs items other than DVB-T2 and HEVC related equipment (recitals (129)(a)-(b)). The Commission seeks comments on the necessity to compensate for the other costs items identified by Czechia in relation to the release of the 700 MHz band (recital (35)). The Commission aims to verify that those costs have not already been subject to compensation on the basis of another aid scheme, such as the one approved by Commission Decision of 21 January 2020⁽¹⁰⁴⁾ and Commission Decision of 13 July 2021⁽¹⁰⁵⁾.
- (130) As concerns the costs incurred for the operation of **parallel broadcasting**, the Commission notes that it might be a necessary step in case of transition from one technology to another, as also experienced by the complainants (see recital (50)). The Commission is however not in a position to conclude on the necessity to compensate for parallel broadcasting costs considering (i) the lack of sufficient evidence in that respect, which would not overlap with compensating for the investment in DVB-T2/HEVC standards, and (ii) the outstanding doubts about the necessity of compensating for the investment in DVB-T2/HEVC related equipment.
- (131) In light of the above, the Commission doubts that the measure is necessary to remedy an identified market failure and, would a genuine market failure exist, that the measure compensates only costs that are strictly necessary for reaching the objective of the Czech measure, namely ensuring a smooth release of the 700 MHz band.

⁽¹⁰³⁾ Commission Decisions on the German and the Spanish aid measures.

⁽¹⁰⁴⁾ Recital (29) states: The Measure aims at compensating costs of the technical components as well as the related work, as follows: (a) Combiners; (b) Filters; (c) Antenna systems; (d) Works related to adjustment, installation, setting and measurement.

⁽¹⁰⁵⁾ Recital (19) states: The aid amount is calculated on the basis of the following costs, incurred between 19 March 2020 and 30 June 2020: (a) The direct depreciation charges from CAPEX directly linked to the interruption and suspension of the switching off phase. (b) The direct operating costs directly linked to the interruption and suspension of the technical switching period.

5.3.2.3. Appropriateness of the measure

- (132) An aid measure would not be considered compatible with the internal market if it is not appropriate, that is to say if the same outcome is achievable through other, less distortive policies or aid instruments.
- (133) The Commission has doubts as to whether extensive information or certification campaigns would not have been sufficient for households to be informed about the need to change equipment instead of **parallel broadcasting**. This is in particular relevant since in Czechia discussions concerning the opportunity to upgrade networks to DVB-T2 started at least in 2013, therefore it has been in the public domain for a considerable period of time (recital (12)).
- (134) Certification of television reception devices started in 2016 in Czechia. The fact that sales of compatible equipment has increased since 2016, when the certification stickers were stuck on the equipment, and the estimation of the share of households equipped with compatible television equipment, does not seem sufficient, if at all relevant, to show the appropriateness of the measure. Quite the contrary, it rather suggests that the initiative might have been sufficient to ensure that households have access to the migrated television service by 2020.
- (135) Information campaigns aim at informing and preparing households about change of the broadcasting transmission systems. Such an information campaign in Czechia might have been efficient considering that the decision to start transitioning to DVB-T2/HEVC standards was taken by the public authorities in July 2017 through the adoption of the Digital Amendment, three years before the final switch-off (June 2020 postponed to October 2020). Furthermore, the Commission doubts that parallel broadcasting starting from 1 March 2017 is considered to be the most appropriate tool to ensure seamless release of the 700 MHz band for households when the information campaign was actually launched two years later, in October 2019⁽¹⁰⁶⁾. This seems even contradicting the claimed intention of the Czech authorities to allow households to adapt their television reception between July 2018 and October 2019 (recital (68)(b)).
- (136) The Commission also doubts that compensating costs **for investing in DVB-T2/HEVC networks** incurred by the DTT operators instead of costs borne by households through financial vouchers for instance is the most appropriate instrument. Czechia has indicated that direct aid to end-users would be more expensive (recital (67)(a)). However, direct aid to end-users is usually less distortive. In addition, it usually targets users that genuinely need to change equipment and should in principle be technologically neutral. The case law recalls that a system of undistorted competition, such as that provided for by the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators⁽¹⁰⁷⁾. The measure takes place in the context of the EPaC Decision that affects terrestrial television that must vacate the 700 MHz band. At the same time, the EPaC Decision provides for the availability of the sub-700 MHz band for terrestrial television services until 2030. It is thus the operation of terrestrial television services that is affected by the obligation to release the 700 MHz band and no other competing technology⁽¹⁰⁸⁾. However, the fact that only terrestrial television is affected by the EPaC Decision does not preclude the aid measure aiming at correcting market failures or being necessary from having features guaranteeing that its negative effects (section 5.3.2.6) are limited, in light of the objective it aims to achieve. Financial support targeting end-users would presumably have also ensured a seamless release of the 700 MHz band from the viewers' perspective (who are mentioned in the EPaC Decision) while preserving terrestrial television broadcasting. The Commission seeks views on the preference given to a measure designed to benefit only the DTT operators rather than to a measure designed to support end-users in a neutral manner.
- (137) Furthermore, considering the possible interest of terrestrial television operators to undertake the costs subject to compensation (recital (124)), a regulatory obligation to change transmission standards might have been sufficient and hence the most appropriate instrument to reach the same objective. The Commission notes that the EPaC Decision enables Member States to delay up to two years the release of the 700 MHz band for reasons pertaining for instance to the need to ensure, and the complexity of ensuring, the technical migration of a large amount of the population to advanced broadcasting standards, or to the financial costs of transition exceeding the expected revenue generated by award procedures⁽¹⁰⁹⁾. This might have enabled Czechia to modify the technical characteristics of the rights of use of frequencies for terrestrial broadcasting at the end of validity of the rights of use. This regulatory intervention would hence have not disturbed the activities, during the validity of the rights of use, of right holders, which rights of use were to expire before June 2022⁽¹¹⁰⁾. The Commission notes that this would have concerned the two private beneficiaries that were required to construct and operate transitional networks and would have excluded the public broadcaster Česká televize⁽¹¹¹⁾ and the private operator CDG⁽¹¹²⁾, which is the only operator that was not required to construct and operate a transitional network. In addition, the Commission considers that compensating rights holders for the early withdrawal of their rights and reassigning rights of use of frequencies for broadcasting services broadcast with DVB-T2/HEVC standards might have been a more appropriate, less restrictive mean of addressing the objective of the measure.

⁽¹⁰⁶⁾ <https://www.mediaguru.cz/clanky/2019/09/stat-zahajil-kampan-k-prechodu-na-vysilani-dvb-t2/> (accessed on 4 February 2022).

⁽¹⁰⁷⁾ Judgment of 26 November 2015, *Basque Country and Itelazpi v Commission*, T-462/13, ECLI:EU:T:2015:902, paragraph 77 and case-law cited.

⁽¹⁰⁸⁾ As also stated in Commission Decision SA.47258, recital (96) and in Commission Decision of 23 January 2020, recital (92).

⁽¹⁰⁹⁾ Annex of the EPaC Decision.

⁽¹¹⁰⁾ This would concern CRa (right of use ended on 11 May 2021) and Digital Broadcasting (right of use ended on 4 March 2022).

⁽¹¹¹⁾ Its right of use should have ended on 30 May 2023.

⁽¹¹²⁾ Its right of use should have ended on 10 January 2024.

- (138) Considering the issues raised above, the Commission has doubts that the measure is appropriate and that there was no other valid alternative means that would have further minimised the measure's negative effects.

5.3.2.4. Proportionality of the measure

- (139) The measure must be proportionate to reach the objectives it aims to achieve. Aid is considered proportionate if its amount is limited to the minimum necessary for the aided activity to take place and the potential distortions of competition are minimised.
- (140) The Commission doubts that the aid is limited to the strictly minimum necessary, for the reasons stated hereafter.
- (141) The length of the operation of the **parallel broadcasting** period exceeds what is normally understood as a transitional broadcasting period (3-4 months) necessary for undertaking the technical change of the equipment. Czechia argues that the duration was decided on the basis of households and companies' needs (recitals (68) and (70)). However, the Commission notes that data regarding the increase of sales of compatible receiving equipment (recital (62)(b)) seems irrelevant for demonstrating the proportionality of a lengthy transitional broadcasting period. Moreover, the Commission notes that the interim report of July 2010 published by the Czech Regulator states the six months simulcast period was considered unnecessarily long and counterproductive to the implementation of the digital switchover⁽¹¹³⁾. It seems rather that the length aims at accustoming end-users to a new television offer (high-definition programs seem to have been broadcast during the transition phase, footnote 49). Since it is not demonstrated that a lengthy transitional period is necessary, and that such a lengthy period (up to three and a half years) seems primarily beneficial to the DTT operators, it is not possible to conclude that the related compensation is limited to the strictly necessary.
- (142) The Commission also doubts that the measure is limited to compensating costs that have not already been compensated by existing measures (recital (33)) and seeks therefore comments and evidence thereof.
- (143) Moreover, the relevance of the parameters for calculating the aid amount for compensating the costs for investing in DVB-T2/HEVC networks have not been justified. The Czech authorities have not brought forward any evidence showing that basing the aid on the tangible assets' monthly depreciation ensures that the aid, which aims at guaranteeing a seamless release of the 700 MHz band, is kept to the minimum. The Commission is not in a position to conclude on whether and for what reasons using the monthly depreciation is the best tool to calculate the amount of compensation to be granted to the DTT operators. The Commission notes that the Measure does not make a distinction between equipment that remains in the final networks and those that do not. In addition, the aid amount has not been outweighed against the commercial benefit the aid recipients will get or have already gotten, since the migration process is completed. Investment in DVB-T2/HEVC gives real market possibilities to the aid beneficiaries as it increases the transmission capacity and quality. Since investment in DVB-T2/HEVC is undertaken on the transitional networks on the basis of which the final networks are built, DTT operators will benefit from the State supported equipment for at least 12 years (2018-2030⁽¹¹⁴⁾). The measure consisting in particular in the parallel transmission will have the effect of ensuring that end-users are fully capable of receiving the new content. As noticed from online news (recital (124)(a)), it has eased the launch of new terrestrial television programs in the final networks. The fact that the cost of the newest equipment is similar to the cost of the older equipment (recital (69)) does not mean that the aid recipient will not benefit from a bigger advantage with the new equipment. The Czech authorities have not demonstrated that the proposed compensation methodology does not lead to overcompensation in light of the funding need of the aid recipients. It may be that the requirement to release the 700 MHz band has accelerated the adoption of DVB-T2 technology. In that scenario, and provided the aid would fulfil the other compatibility conditions, aid would be proportional if it were to cover the incremental impact (in terms of profitability) of such faster adoption compared to the counterfactual scenario of slower adoption.
- (144) In all cases, the Commission notes that the aid amount does not take account of the time when the transition to DVB-T2/HEVC takes place under the rights of use. Replacing equipment four years ahead of the end of validity of the licences does not constitute the same disruption of activity as replacing it seven years in advance (footnote 45). Moreover, the Commission notes that the measure does not factor in the extension of the rights of use of frequencies until 2030, decided in 2017.
- (145) In light of the above, the Commission has doubts that the aid amount is limited to the minimum necessary to achieve its objectives.

5.3.2.5. Transparency

- (146) The Czech authorities have committed to publish the text of the measure as well as the information related to the beneficiaries of any aid that exceeds EUR 500 000. Therefore, the measure complies with the transparency requirements.

⁽¹¹³⁾ Available here: https://www.ctu.cz/cs/download/digitalni_vysilani/prubezna_zprava_tpp_06-2010.pdf

⁽¹¹⁴⁾ According to Czechia, all transitional transmitters have been launched by June 2018. Pursuant to the Digital Amendment, the rights of use were extended until 2030.

5.3.2.6. Negative effects of the measure

- (147) With a view to undertake the balancing exercise (Section 5.3.2.7), the Commission must identify the negative effects of the aid measure.
- (148) The measure helped terrestrial television services to remain competitive on the market while reducing their costs for investment in updated equipment. Operators providing television transmission services on alternative platforms allegedly have invested in the transition to DVB-S2/MPEG4 (capital and operating costs) with private resources (recital (50)). The aid seems hence to finance costs that DTT operators should normally have paid, would they have aimed to keep their market position and not be side-lined by competitors providing advanced services.
- (149) *In fine*, the measure has helped aid beneficiaries to migrate their services to another frequency band but has moreover provided them with an upgraded network capable of providing additional services and of better quality. This goes beyond maintaining DTT operators' *status quo ante* the release of the 700 MHz band⁽¹¹⁵⁾.

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

- (150) A carefully designed State aid measure should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (151) The Commission notes the intention of the Czech authorities to ensure a smooth release of the 700 MHz band by terrestrial television services with limited impact on the viewers. It also notes the positive effects of the aid in terms of development of an economic activity, in the form of enhanced terrestrial television services. However, the Commission further notes that the measure entails negative effects, in the form of public financing to the benefit of one category of providers, terrestrial television providers, for the technical improvement of their infrastructure, leading to an overall improvement of their services and business case. At the same time, the Commission notes that Czechia has not sufficiently demonstrated that the measures taken to minimise the negative effects are sufficient to ensure that the positive effects outweigh the negative ones.

5.3.3. Conclusions on the balancing test

- (152) In light of the above, the Commission is not in a position to conclude on the fact that the negative effects on competition and trade are limited, and that they are outweighed by the positive effects of the aid. It is the Member State granting the aid that bears the burden of proving that State aid granted by it is compatible with the internal market⁽¹¹⁶⁾. The Commission invites Czechia to provide its views and evidence on a possible compatibility of the measure.

6. CONCLUSION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Czechia to submit its comments and to provide all such information as may help to assess the Measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Czechia that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Czechia that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

⁽¹¹⁵⁾ Commission Decision SA.47258, recital (94).

⁽¹¹⁶⁾ Judgment of 12 September 2007, T-68/03 *Olympiaki Aeroporia Ypiresies v Commission* ECLI:EU:T:2007:253 paragraph 34.