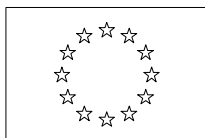


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EUROPEAN COMMISSION

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PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid N 596/2009 - Italy
Bridging the digital divide in Lombardia**

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure N 596/2009 and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) Treaty on the Functioning of the European Union (TFEU)¹.

II. PROCEDURE

- (2) After extensive pre-notification contacts, by letter registered on 3 October 2009, pursuant to Article 108 (3) of the TFEU, the Italian authorities notified the above mentioned measure to the Commission. Additional information was submitted by the Italian authorities on 16 December 2009.

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

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III. CONTEXT

- (3) Lombardia is a region situated in the North of Italy with a population of almost 10 million inhabitants and a vibrant economy. The vast majority of the population is concentrated in urban areas, while about 1.000.000 inhabitants reside in towns and villages in more remote areas of the region. Such areas are characterised by a lower population density (153,7 inhabitants per square Km, compared to the regional average of 400) and in particular by reduced business concentration: according to the data supplied by the Italian authorities, only 0,036 firms per square Km are present in those areas, as compared to the regional average of about 37.
- (4) Similarly to other regions in the European Union, state-of-the-art broadband services are available for citizens and businesses in more densely populated areas, whereas broadband infrastructure is inadequate or outright lacking in rural, mountainous and geographically disadvantaged areas. These areas are not commercially attractive for electronic communication operators and this leaves citizens and businesses in such areas without the possibility of adequate broadband access and services.
- (5) The Italian authorities state that the persisting lack of broadband availability in the remote areas of Lombardia is due to certain geographical characteristics of the region and to certain technological choices made in the past. In particular, the mountainous nature of parts of the territory, the presence of other geographical obstacles (such as the lakes) and the use of technical equipment not suitable for data traffic in the local exchanges of the existing infrastructure, all these elements have left some 707 towns and villages deprived of adequate broadband access.
- (6) Adopting the ITU definition of broadband², the Italian authorities used as benchmark 2Mbps speed. Accordingly, they identified the type of digital divide afflicting its territory on the basis of the (lack of) capabilities of the exchanges covering a certain area:
 - Exchanges not capable of providing xDSL services
 - Exchanges not connected with optical fibre to the transport network
 - Exchanges lacking the necessary equipment to provide xDSL services

In addition, the Italian authorities considered the following two criteria:

- Areas claimed as covered but in which some users cannot in fact obtain broadband activation
 - Areas in which broadband services on offer are too expensive
- (7) The market research and consultation with the existing operators clearly demonstrated that operators are not willing to provide affordable basic broadband services in these areas in

² Recommendation I.113 of the ITU Standardization Sector defines broadband as a “transmission capacity that is faster than primary rate Integrated Services Digital Network (ISDN) at 1.5 or 2.0 Megabits per second (Mbits)”.

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the near future on market terms. In 2005 the regional authorities entered into a Memorandum of Understanding with the 5 main operators³ active in the region and open to all other operators. Rounds of discussions led to the identification of the main features of the regional plan to bridge the digital divide afflicting the unprofitable areas of the region: intervention aimed at future-proof investments; neutrality with respect to the technologies and to the operators; open infrastructure for all telecommunications operators. On these bases, the total investment needed was estimated at about 200 million Euros⁴.

IV. DESCRIPTION OF THE MEASURE

- (8) **Objectives:** The notified measure aims to develop infrastructures of electronic communication networks offering broadband services in rural areas of the Italian region of Lombardia, which are currently not served by broadband networks of minimum 2 Mbps and where there are no plans for coverage in the near future.
- (9) On the one hand, the Italian authorities aim to improve broadband availability for the citizens and businesses in unserved areas of Lombardia, by rolling out a transport network as well as an access network throughout the geographically disadvantaged areas of the region. The Italian authorities are concerned that the residents of the isolated areas of Lombardia do not obtain the same level of telecommunications services available to those in the urban and central areas of the same region. The availability of broadband services is a key factor for the local communities to attract businesses, to keep their young population in the area, to provide e-Government services such as health care education and other public services. Broadband availability is therefore crucial to eliminate the digital divide, to preserve the integrity of the rural territories, to increase social cohesion and contribute to the economic growth of the region.
- (10) On the other hand, and in line with the Commission's approach,⁵ the Italian authorities are concerned that broadband services in currently uncovered areas should not be offered in a monopolistic fashion but that a competitive market should be established, especially when the use of public funds is envisaged.
- (11) **Legal basis:** Deliberation of the Regional Council of Lombardia no. 10707/2009 "Determinazioni in ordine alla diffusione di servizi a banda larga nelle aree in digital divide in fallimento di mercato in Lombardia"; Legislative Decree 1 August 2003 no. 259, "Codice delle comunicazioni elettroniche"; Legislative Decree 7 March 2005 no. 82, "Codice della pubblica amministrazione digitale"; deliberation CIPE n. 166 of 21

³ Telecom Italia, Fastweb, Alacom, Colt and Wind.

⁴ Protocollo d'Intesa tra Regione Lombardia e Alacom, Colt, Fastweb, Telecom Italia, Wind per lo sviluppo delle reti di connessione e dei servizi a banda larga.
http://www.ors.regione.lombardia.it/cm/pagina.jhtml;jsessionid=288DE7F2B9D091F69069F00B600B40C7.node1?param1_1=N11fc7ddecbe5abfa195

⁵ See the Communication of the Commission to the European Parliament, the Council, the Social and Economic Committee and the Committee of the Regions. Report on European electronic communications markets 2007.

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december 2007 “Attuazione del Quadro Strategico Nazionale (QSN) 2007-2013 Programmazione del Fondo per le Aree Sottoutilizzate”.

- (12) **Target areas:** The Italian authorities conducted a detailed mapping and coverage areas to identify the target areas where state intervention is necessary, in accordance with the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*⁶ (hereinafter: "Broadband Guidelines"). The measure aims at covering up to 99,4% of the population (and, in any event, minimum 90%) in 707 towns and villages, corresponding to areas where no broadband infrastructure is present or where it is not adequate (areas where the exchanges are located over 3 km from the users' premises⁷, areas where exchanges are equipped with MUX-UCR⁸ preventing provision of broadband services, areas where maximum speed offered on the market is of 612 kbps or where broadband services are not affordable⁹).
- (13) **Consultation with stakeholders:** The Italian authorities held a roundtable in 2005 with the 5 biggest operators active in the region¹⁰, concerning the availability of broadband services in the region, their plans for future rollout of infrastructure and the role for public funding. The roundtable culminated in a Memorandum of Understanding for the rollout of broadband infrastructure, open to all other telecommunication operators.
- (14) Besides, the Italian regional authorities stated to have been in close contact in the past four years with many more operators (wired, wireless, mobile, satellite and also equipment companies)¹¹, either on request by the companies or by the regional authorities' own initiative. Some civil society organisations¹² have also been consulted. The Italian regional authorities produced correspondence with operators of the sector (including wired, mobile and equipment manufacturers) concerning planning of meetings and discussions on the proposed project.
- (15) A public consultation has been also carried out on the website of the regional government¹³ to gather comments from citizens and telecommunication operators. On the basis of all the information collected, the Lombardia regional Government compiled the final list of targeted areas and fine-tuned the project and its characteristics. According to the Italian authorities, their mapping of unserved areas remained largely unchanged across the consulted operators.

⁶ OJ C 235 of 30.9.2009, p. 7.

⁷ Due to technological reasons, the available bandwidth via copper network using ADSL technology is significantly deteriorating as the distance between the exchange and the end users sites increase. Hence, although in some places copper line is available, it is not capable of sustaining broadband (ADSL) services, in the current situation if such distance is above 3 km.

⁸ Exchanges equipped with multiplexers MUX UCR were designed to provide voice services but are not able to sustain adequate broadband.

⁹ According to the Italian authorities, satellite broadband services currently offered on the market cannot be considered affordable.

¹⁰ Telecom Italia, Fastweb, Albacom, Colt and Wind.

¹¹ For example: Vodafone, Ibox, Convecr, Linkem, Infratel, Selex Communication, Prysmian, Sirti, Alcatel-Lucent, Motorola, Telespazio, MCM, Cisco etc.

¹² Associazione ADD, Anti Digital Divide, Comitato Regionale per le COMunicazioni (Corecom).

¹³ http://www.ors.regione.lombardia.it/cm/pagina.jhtml?param1_1=N11fc7d78ce36233c9ee

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- (16) Roundtables have been held also with the governments of the provincial subdivisions of Lombardia. Moreover, the national competition authority (AGCM) and the national regulatory authority for the electronic communication sector (AGCOM) have both been informed of the details of the planned measure.
- (17) **Project design:** The scheme aims at funding both a transport and an access broadband network in areas currently not served by telecommunication operators. The new infrastructure will have to serve at least 90% of the population in the targeted areas and will have to comply with the following requirements:
- Continuity, redundancy, totality of users served
 - Resilience to adverse weather conditions and to interference with nearby networks
 - Capable to provide e-Government and e-health services,
 - Regardless of any nominal higher speeds, guaranteed minimum speed:
1 Mbps/256 Kbps for residential users;
1,5 Mbps/512 Kbps for business users
- Availability: > 98%.
- (18) The operator receiving the aid is obliged to provide services to all users requesting a subscription and will not be allowed to discontinue the service before [a certain minimum period of time has elapsed, even if the number of subscribers proves to be lower than the estimates.
- (19) The aid can cover the cost from: civil engineering works, other constructions connected to the infrastructure rollout, equipment costs, software and hardware purchases, other technical costs (subject to a maximum of 12%). End user equipment will not be eligible. The authorities confirmed to the Commission that this provision is to be understood that end-users should not receive financial support directly from the granting authority. Aid shall only be given to the operator selected via the open tender procedure on the basis of a gap funding between the operator's expected costs and revenues. This can include the costs of installation and equipment.
- (20) The property of the subsidised infrastructure remains to the operator receiving the aid. Property rights cannot be transferred to third parties before 3 years after the end of the monitoring period have elapsed.
- (21) **Access obligations:** The recipient of the aid will have an obligation to provide all forms of wholesale and retail access to the subsidised infrastructure on an open, non-discriminatory basis to other electronic communication operators wishing to connect to it for a period of at least 7 years, in line with the provisions of the Broadband Guidelines. Access obligations include also access to ducts, which should be of a size which respects the international technical specifications and is suitable to host multiple fibres. Access obligation to the ducts will not be limited in time.
- (22) Irrespective of any finding of significant market power, the terms and conditions for third parties' access to the infrastructure (including the price) will follow the model for access

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obligations established in the relevant national legislation¹⁴ and in subsequent NRA implementing deliberations. The contractual clauses containing the details of the negotiated access shall be communicated to the monitoring authority. In addition, the aid beneficiary is also obliged to regularly supply the up-to-date map of ducts and antennas placed in execution of the project.

- (23) ***Use of existing infrastructures:*** The Italian authorities wish to avoid wasteful duplication of infrastructures. Therefore the notified measure contains specifications as to the use of existing infrastructures (including motorways etc.) wherever possible.
- (24) ***Technology:*** The measure does not discriminate between operators or technological platforms. However, for the transport network, one conclusion after the public consultation process was that optical fibre would be the most appropriate solution. However, the Italian authorities consider that a proposal combining a mix of technologies for the access network (wired, wireless and satellite) may be particularly desirable to achieve coverage beyond the 90% minimum and would be perfectly eligible for the tender.
- (25) ***Pricing:*** The objective of the Italian authorities is to provide *retail* broadband services in the targeted areas at a price similar to urban areas, hence tariffs have been determined by taking into account the average retail price paid by end-users in urban areas that do not benefit from State funding. The one time activation fees should not be higher than 50€ for residential users and 80€ for business users;¹⁵ monthly fees should not go above 25€ for residential users and 35€ for businesses for services up to 7 Mbps. Monthly rental fees for end user equipment should not be higher than 3 €. Other tariffs (such as those for advanced services) are left to the network operator to determine. Such tariffs will be fixed for six years starting from the date in which the contract with the region is entered into.
- (26) ***Beneficiaries:*** The direct beneficiary of the aid will be the electronic communication operator who will provide access to residential and business customers residing in the targeted areas. Indirect beneficiaries include third operators gaining access to the subsidised infrastructure as well as businesses located in the targeted areas of Lombardia benefitting from the services offered on the new infrastructures.
- (27) ***Budget and financing instruments:*** The aid takes the form of a grant. The overall aid amount is € 41 million: 20M € from the Regional Operational Plan¹⁶, 21 M € from FAS, “Fondi Aree Sottoutilizzate”¹⁷
- (28) ***Aid intensity:*** The maximum aid intensity is of 70% of the eligible costs indicated in paragraph (19). No cumulation is possible with other State aid.
- (29) ***Duration of the measure:*** Works should be completed and the network should be operational within 24 months.

¹⁴ Legislative Decree 1 August 2003 no. 259 “Codice delle comunicazioni elettroniche”.

¹⁵ Activation costs up to 150€ or 160€ for, respectively, residential and business users will be allowed only in case of need to rollout/ replace a new line in case a wired technology is selected.

¹⁶ POR Lombardia 2007-2013

¹⁷ This is a State fund to finance regional development projects.

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- (30) **Procurement:** The Italian authorities will award the aid to the winner of a tender procedure, complying with the EU and national public procurement rules. The details of the tender as well as the documentation needed and the weighing criteria are detailed in the call for tender, which will be published in the Official Bulletin of the region Lombardia. To select the most economically advantageous bids, the call for tender contains a table indicating the criteria for the selection and the number of points awarded to each criterion. The criteria include, in particular: quality of the project (level of service and coverage in excess of the minimum requirements, latency, network architecture, network security), helpdesk availability, customer services, level of public funding requested, quality of the Advisor¹⁸, timing for the start of retail service provisions, accessibility for disadvantaged users (elderly, disabled people etc.).
- (31) **Monitoring:** The network operator will be subject to technical and administrative monitoring by an evaluation committee established by the regional government. Moreover, it will have to report every 6 months concerning the execution and implementation of the project, as well as with regard to the costs of the subsidised activity, to ensure that no excess aid is granted. To allow such monitoring, the beneficiary of the aid will be subject to accounting separation for the activities done on the subsidised network, in order to highlight clearly the costs and the revenues deriving from exploitation of the subsidised infrastructure.
- (32) The monitoring activity will be performed by a special Advisor, proposed by the network operator during the tender and approved by the regional government. Monitoring by the Advisor will start on the date when the contract is entered into between the region and the beneficiary and will last until four years after the subsidised network is put in operation and services are activated.
- (33) **Clawback mechanism:** In line with the provisions of the Broadband Guidelines, a clawback mechanism is also foreseen for the same period mentioned in the previous paragraph. In particular, at the end of the reporting period, the excess profit will be clawed back in proportion to the aid intensity¹⁹ if the revenues of the operator will be higher than the amount calculated with the formula: $R_{max} = (C \times WACC) + Amm + Cop$ ²⁰ where R_{max} is the revenue ceiling and:
- C = Capital invested by the private operator;
WACC = remuneration rate corresponding to the average costs of the resources used²¹;
Amm. = amortisation of the private capital;
Cop = Operating Cost to perform the activity.
- (34) At the beginning of the project, the beneficiary will present an economic and financial plan indicating the operating costs of the investment; the direct private investment in

¹⁸ The Advisor will be in charge of monitoring, see paragraphs (31) and (32).

¹⁹ [The Region can also request to the operator to use the excess profits to expand the network to still unserved areas or to further improve the quality of the services provided.

²⁰ The Italian authorities stated that their choice is inspired by the principles of “revenue cap regulation”, used to regulate natural or legal monopolies by agencies such as Ofgem, Ofcom and Ofwat. See also Mark A. Jamison, “Price Cap and Revenue Cap Regulation”, University of Florida, Encyclopedia of Energy Engineering and Technology. Oct. 2005

²¹ It will amount to 10%.

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infrastructure; a fair profit, the revenues foreseen for the relevant period of time; the forecasted take up rate. Furthermore, in line with the existing regulatory framework for electronic communication and its national implementation, after the start of the operations the NRA will exercise its supervisory powers over the telecommunications operators.

V. STATE AID ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (35) According to Article 107 (1) of the TFEU, “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (36) The current measure will be financed by state resources, namely from resources of the Italian government. It will provide selective economic advantage to the electronic communication operators selected via the tender procedure and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidised network. Moreover, the measure has the potential to distort competition by enabling local undertakings to subscribe to the services offered via the subsidised network instead of more expensive market-based solutions. Finally, insofar as the intervention is liable to affect providers of electronic communications services from other Member States and distorts competition between end users located in Italy and elsewhere in Europe, the measure has an effect on trade. The markets for electronic communication services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States.
- (37) Therefore, as laid down in paragraphs 10-16 of the Broadband Guidelines, the Commission considers that the scheme constitutes State aid within the meaning of Article 107 (1) of the TFEU.

VI. COMPATIBILITY ASSESSMENT

- (38) The Broadband Guidelines contain a detailed interpretation of Article 107 (3) (c) of the TFEU in this area of State aid law. As regards the applicable substantive provisions, the Commission has analysed the measure in the light of the criteria developed, in particular, in paragraphs 31-51 of the Broadband Guidelines.

The balancing test and its application to aid for broadband network deployment

- (39) As described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the internal market, the Commission balances the positive impact of the aid measure in reaching an objective of common

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interest against its potential negative side effects, such as distortions of trade and competition.

- (40) The Broadband Guidelines foresee in paragraphs (34) to (36) that the compatibility of an aid measure should be assessed according to the following balancing test.
- a. Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
 - b. Is the aid well designed to deliver the objective of common interest? In particular:
 1. Is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?
 2. Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 3. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?
- (41) The individual steps of the balancing test in the field of broadband are set out in detail in Sections 2.3.2 and 2.3.3 of the Broadband Guidelines.

Objective of the measure

- (42) The scheme is in line with the European Union's policy to bring broadband to all Europeans²². Broadband connectivity is of strategic importance because of its ability to accelerate the contribution of information and communication technologies (ICT) to growth and innovation in all sectors of the economy and to social and regional cohesion. The Commission encourages Member States to put comprehensive national broadband strategies in place²³ and to mobilise all relevant policy instruments to bridge the "broadband gap"²⁴ By improving broadband access for citizens and businesses in areas of Italy where these services are not satisfactorily available, the measure helps achieving greater cohesion and is therefore in line with the common interest.
- (43) In addition, in the context of the financial and economic crisis affecting severely the European economies, it was further recognised by the Commission²⁵ that broadband investments can be considered as "*smart investments*" that are able to provide short term (employment) benefits and long term (economic) advantages for the EU economies.

²² As outlined, *inter alia*, in the Commission Communication *i2010 – A European Information Society for growth and employment*, COM (2005) 229 of 1 June 2005.

²³ Commission Communication COM(2004) 369 of 12.05.2004, "Connecting Europe at High Speed – National Broadband Strategies".

²⁴ See Commission Communication on *Bridging the broadband gap*, COM (2006) 129 of 20.03.2006.

²⁵ Brussels European Council, 19/20 March 2009 Presidency Conclusions.

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Hence by accelerating broadband deployment, the current measure is also in line with the European interest to support fast recovery of the European economies.²⁶

Market failure and cohesion considerations, paragraphs (37) to (42) of the Guidelines

- (44) As stated in paragraph (39) of the Broadband Guidelines, State aid in the broadband sector may remedy a market failure, i.e. a situation in which private investment is less than what is optimal from the viewpoint of society as a whole. In the same way, State aid might be used also as a tool to achieve equity objectives, i.e. to improve access to an essential means of communication, thereby improving social and territorial cohesion.
- (45) Because of high fixed costs of investment, unit costs increase strongly as population densities drop. Remoteness, such as larger distances from existing telecommunication infrastructures also significantly increase the investment costs necessary to roll out adequate broadband networks. As a result, broadband networks tend to profitably cover only part of the population.
- (46) Availability of adequate broadband services would be beneficial from a wider economic perspective, e.g. due to the positive spill-over effects on the local economies (such as increased economic activity, job creation and retention). The availability of such services would also improve access to an essential means of communication services to all actors in society, thereby improving social and regional cohesion.
- (47) A well targeted state intervention to support broadband infrastructure contributes to abating the 'digital divide' afflicting those areas in which where affordable and competitive broadband services are not on offer, thus achieving greater cohesion in line with the common interest.
- (48) The current measure targets "*white areas*"²⁷, where adequate broadband is currently not available and where there are no plans by private investors to roll out such infrastructure in the near future. According to the proposed measures, State aid will only be granted to cover areas which have no adequate broadband connections of minimum 2 Mbps download speed. According to the Italian authorities, many of the inadequate broadband connections are located in remote areas where no investor is prepared to invest. As the notified measures aim at overcoming these difficulties, the Commission finds that the objective of the measure is in line with paragraphs 37-40 of the Broadband Guidelines and the Italian authorities pursue genuine cohesion and economic development objectives.

Aid is the appropriate instrument

- (49) In the situation currently under assessment, no private investments have taken place in the targeted areas as the operators would not be able to recoup their investments. The current legal and regulatory framework does not provide for any means to oblige operators to make this investment. According to the Italian authorities, regulation is unlikely to lead to

²⁶ Communication from the Commission to the European Council: *A European Economic Recovery Plan*, Brussels, 26.11.2008.

²⁷ See paragraphs 41 and 42 of the Broadband Guidelines.

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sufficient investments for the provision of broadband services in these un-served areas, where profitability of investments is low.

- (50) Without further public intervention, reducing the "*digital divide*" between rural and urban areas does not seem possible, which could lead to the economic and social exclusion of the local citizens and undertakings. Hence in the current situation, as set out in paragraphs 47 and 48 of the Broadband Guidelines, State aid is an appropriate instrument to achieve the set objectives

The aid provides the right incentives to operators

- (51) As set out in paragraph 50 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. According to the results of the public consultation and market research referred to above in paragraphs (13) to (16), in the targeted areas no investment would take place without public funding, hence the aid is expected to produce a change in the investment decisions of the operators. Moreover, as explained in paragraph (30), the recipients of the aid will be selected by public tender. The bidders will submit investment plans indicating the amount of aid that they consider to be necessary to carry out the investment, given the anticipated investment and operating costs and revenues. Therefore, the aid should provide a direct and appropriate investment incentive for the selected operators.

Design of the measure and the need to limit distortions of competition

- (52) As set out in paragraph 51 of the Broadband Guidelines, in assessing the proportional character of the notified measures in "white" areas a number of necessary conditions has to be met in order to minimise the State aid involved and the potential distortions of competition. In this respect, the Commission notes, *inter alia*, the following positive elements in the design of the measure:
- (a) *Detailed mapping and coverage analysis, consultation with stakeholders:* the Italian authorities have undertaken an analysis of the existing broadband infrastructures in order to identify clearly the areas where state intervention is necessary. By consulting existing operators and updating the targeted areas accordingly and by consulting with the relevant stakeholders as described in paragraphs (13) to (16) above, in an open and transparent manner, the Italian authorities ensure that public funds are used only in "white areas", i.e. areas where infrastructure is lacking or inadequate and where there are no plans by private operators to invest in the near future. This way, the Italian authorities ensure that aid is given only where it is necessary and limit the possibility of crowding out private investments and distortion of competition to the minimum possible
- (b) *Open tender process* the Italian authorities will select the beneficiaries of the aid in full compliance with national and EU public procurement rules. Open tender procedures are considered to be effective means to minimise the aid necessary for the measure.

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- (c) *Most economically advantageous offer*: within the context of an open tender, the Italian authorities will select the most economically advantageous offers among those presented by the operators according to the criteria detailed in paragraph (30) above. The call for tender specifies the relative weighing which the awarding authorities will grant to each of the qualitative criteria chosen
 - (d) *Technology neutrality*: The notified measure does not favour any particular technology or network platform leaving it to commercial operators to come up with the most appropriate technological solutions to provide broadband services to end users.
 - (e) *Use of existing infrastructures*: The Italian authorities encourage expressly the use of existing infrastructures, as mentioned in paragraph (23) above.
 - (f) *Open wholesale access*: on all the infrastructures rolled out with the help of state funding, the network operator will provide effective access to all interested parties in an open, transparent and non-discriminatory manner. Such provision has been interpreted by the Italian authorities in the widest possible sense, including access to both active and passive infrastructure, in order to ensure that State aid truly fosters competition in the targeted areas. Moreover, the Italian authorities inserted an especially pro-competitive condition, by mandating that the newly built ducts shall be of a size suitable to host multiple fibres and access obligations to those shall be unlimited in time.
 - (g) *Price benchmarking*: the tender documents specify that access prices on the subsidised network will be determined in accordance with the existing sectoral regulation, irrespective of any finding of market power on the part of the aid recipient
 - (h) *Claw-back mechanism to avoid over-compensation*: the project will be examined on a regular basis and the monitoring mechanisms implemented will ensure that if the beneficiary fails to comply with the rules, the granting authorities will be in the position to recover the aid granted. Moreover, the Italian authorities will claw back [a share (proportional to the aid intensity) of the extra profit that may be generated through the operation of the subsidised network or ask that it be used by the aid beneficiary to further extend coverage, according to the mechanism described in paragraph (33) above. This way, the Italian authorities ensure that the recipient of the aid will not benefit from overcompensation and will minimise *ex post* and retroactively the amount of aid deemed initially to have been necessary.
- (53) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of broadband services in rural areas. The measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of certain economic activities (broadband services) in certain remote and rural areas.
- (54) In view of the characteristics of the project and of the safeguards applied by the Italian authorities as described above, the overall impact on competition is deemed to be positive. Any distortion of competition is limited, as the investment is carried out in areas where no comparable infrastructure exists yet and where market research does not indicate that private investment will enter in the foreseeable future.

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Conclusion

- (55) The Commission concludes that the compatibility criteria set out in the Broadband Guidelines are met, hence the aid involved in the notified measure is compatible with Article 107(3)(c) of the TFEU.

VII. DECISION

- (56) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*Bridging the digital divide in Lombardia*" is compatible with Article 107(3)(c) of the TFEU.
- (57) The Italian authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.
- (58) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:
http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm.
- (59) Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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Yours faithfully,

Neelie KROES
Member of the Commission