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**Subject: State aid N 626/2009 - Italy
NGA for industrial districts of Lucca**

Sir,

I. SUMMARY

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*NGA for industrial districts of Lucca*" (hereafter: "the measure") 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) By letter registered on 13 November 2009, pursuant to Article 108 (3) of the TFEU, the Italian authorities notified a measure to the Commission for supporting the deployment of

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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a fibre based network to provide high capacity communications services to the companies of the industrial districts in the province of Lucca in the Tuscany region.

- (3) The Commission requested additional information on the measure by letter dated 14 January 2010. The Italian authorities provided answers to the Commission's request for information by letter dated 10 February 2010. Further information and clarifications were submitted by letters dated 11 and 16 February 2010 and 5 March 2010.
- (4) Additional information was submitted by the Italian authorities on 22 and 26 April 2010 related to the communications and letters exchanged with the Italian Competition Authority (AGCM) and Regulatory Authority (AGCOM).

III. CONTEXT

III.1. The province of Lucca

- (5) Lucca is a province of the Tuscany region in Italy with a high number of small and medium enterprises (SME thereafter) and also micro enterprises located in the area (95,8% of the companies have less than 10 employees, 3,8% between 10 and 49 employees, 0,2% between 50 and 99 employees and only very few enterprises exceed 100 employees). Most businesses in the area belong to a few main business sectors, two of the most important being the quarry and paper manufacturing sectors, but also shoemaking and ship building.
- (6) The two sectors of quarry and paper manufacturing, in particular, are the main driving forces of growth and development of the Province of Lucca and constitute an important part of the overall regional economy. In both sectors, the existing companies form a complex system of distributed expertise throughout the whole production chain: from collection of raw material, to its transformation, to its deployment and application in multiple fields. Additionally, besides the core activities, a number of companies supply auxiliary services, such as provision of the required technology (machinery, electronic systems and IT applications), logistics, maintenance or training.
- (7) Similarly to other regions in the European Union, advanced broadband services and the infrastructures required to support them are available for citizens and businesses in more densely populated areas, whereas broadband infrastructure is inadequate or outright lacking in other areas which are not commercially attractive for electronic communication operators. This leaves citizens and businesses in such areas without the possibility of adequate broadband access and services.
- (8) According to the Italian authorities, this is precisely the case of the Province of Lucca: the persisting lack of broadband availability in some areas of the Province of Lucca is due to geographical, demographic and economical characteristics of the region, which deprive the enterprises in the areas of adequate broadband infrastructure and hence of adequate connectivity services. It has been observed that in the territory of the Province of Lucca, companies belonging to the same business sector tend to aggregate geographically in "industrial districts", to take advantage of synergies deriving from proximity, and thus making it is possible to identify specific areas in need of public support.
- (9) A previous measure "Broadband for rural Tuscany", aimed to reduce the digital divide in rural areas of Tuscany without broadband coverage by providing services with a

minimum download speed of 640 Kbit/s and upload speed of 128 Kbit/s, was notified to the Commission (N264/2006). The Commission's decision of 13/09/2006 authorised the measure as the state aid contained therein was considered compatible with Article 87(3)(c) of EC Treaty.² This measure reached at least 200.000 citizens and 15.000 enterprises, located in areas identified as “marginal”. However, this level of service is not sufficient to satisfy the needs of business users located in the industrial districts and to boost their competitiveness.

III.2. Support for innovation, research and development

- (10) Within the framework of policies aimed to support local enterprises and industrial sector, and in line with European policies and objectives, the Tuscany region implemented a set of financing instruments for supporting investments in innovation, research and development projects. One of the lines is to contribute to joint investments made by firms belonging to industrial districts, aimed at strengthening the sector by adopting new models for the integration of the supply chain or for commercialisation.
- (11) In relation to this last point, the development of adequate connectivity services is an essential prerequisite for the growth of local businesses, the success of their investments and ultimately for the competitiveness of the industrial districts of the Province of Lucca and of the entire Tuscany Region.
- (12) As a result, within the general strategy to expand Information and Communications Technologies (ICT) in the Tuscany Region and in particular with regards to SMEs, Tuscany's regional and Lucca's provincial authorities plan to support the deployment of a NGA network in some specific areas of Lucca's province, home to high number of small and medium companies, in particular those belonging to the most crucial industrial sectors for the regional competitiveness,.

IV. DESCRIPTION OF THE MEASURE

- (13) **Objectives:** The purpose of the project is to enable SMEs to get access to advanced ICT services in the industrial areas of the Province of Lucca, where adequate infrastructure for Next Generation Access does not exist. The Italian authorities aim to create equivalent economic and technical conditions to those available in areas where the infrastructure is already available. The final goal is to give end-users access to innovative services allowing business users of the Province to reap the benefits of the knowledge based society. The existing networks will not be technically sufficient to offer all of these services and satisfy the more sophisticated needs of business users of the industrial districts, even if the eventually planned upgrade of the networks is taken in account.
- (14) Although those companies are typically small or medium, their significant export activity and international relations require an intensive usage of telecommunication services and continuous exchange of technical data within and outside the country. Many of those activities would greatly benefit from the availability of an adequate broadband infrastructure, featuring symmetrical connectivity and able to support bandwidth-intensive

² JOCE C/296/2006.

applications such as exchange of big metafiles for technical projects, videoconferences, remote surveillance, multiple VoIP conversations, training and technical assistance on-line, etc.

- (15) The availability of a next generation infrastructure allowing provision of advanced communications services is a key factor to boost the competitiveness of the enterprises belonging to the Province of Lucca and consequently for the sustainable economic and social growth of the region.
- (16) **Legal basis:** The measure is based on Law n. 166/2002, art. 40 – Installations of ducts for telecommunications networks; Legislative decree no. 259/2003 – Code of electronic communications; Law n. 133/2008 art. 2 – Broadband; Tuscany's "*Bando unico Ricerca e Sviluppo 2008*", POR-CReO 2007-2013, PRSE 2007-2010 and "*Progetto Distretti ECeSDIT*".
- (17) **Mapping of target areas and consultation with the stakeholders:** The Italian authorities conducted a detailed analysis of market conditions in the Province of Lucca to identify the target areas where state intervention is necessary.
- (18) In particular, the analysis was focused on the industrial districts where companies located in the Province tend to aggregate, identifying in particular 17 municipalities. Such municipalities are located in areas that due to the orographic and demographic characteristics are less suitable for big private investments. The measure focuses on those areas where the lack of infrastructures prevents the provision of advanced NGA services for business users.
- (19) As a result of a market analysis, the Italian authorities concluded that:
 - The availability of long distance transport infrastructures in the Province of Lucca is very limited and with only marginal presence in those municipalities where the business districts are located.
 - In the 17 municipalities targeted by the measure, there are a number of local exchanges without fibre based backhaul infrastructures, thus preventing the possibility to provide advanced (NGA) connectivity services required by business users.
 - In 9 of 11 targeted municipalities UMTS/HSDPA broadband mobile networks are available, but they are not considered adequate for connectivity and communications services for business users³.
- (20) Initially, the provincial authorities hired a specialised consultant to conduct on the field consultation of all relevant stakeholders on the demand as well as on the supply side. Subsequently, all the documents pertaining to the planned measure (reports, market studies, proposed public intervention, tender documents etc.) have been made available on the website of the Province of Lucca for public consultation.⁴ Also the National

³ Due to the maximum available speeds for this type of connections and their shared nature, business users cannot expect premium services provided via mobile broadband at the current stage of technological development.

⁴ <http://www.provincia.lucca.it/sviluppoeconomico.asp>

Competition Authority (NCA) and the National Regulatory Authority (NRA) have been consulted on the project⁵. The Italian authorities reported that no operator manifested the intention to invest to connect the targeted areas within the next three years and no opposition to the project was voiced.

- (21) **Project design:** The aim of the scheme is to provide broadband coverage to areas where no NGA networks are currently available and where operators are not interested in investing in this type of networks on commercial terms in the near future (within the next 3 years), in accordance with the Broadband Guidelines. The new network should be a packet switched network able to support applications requiring Quality of Service (QoS) guarantees and services targeted to business users. After the call for expression of interest, and on the basis of the offer received, the final features of the network will be such as to allow a provision of connectivity services of up to 100 Mbps with 20 Mbps minimum guaranteed bandwidth.
- (22) The minimum objectives of the measure were defined as coverage of 6 municipalities, and services provision up to 100 companies. Nevertheless, the aim of the scheme is to extend the availability of NGA services and high capacity connectivity to as many local businesses as possible. The final offer concerns 12 municipalities covered and 976 companies reached.
- (23) The scheme is divided in 3 parts:
- i) The bulk of the aid will go to the selected operator to proceed to all civil works necessary to build the ducts, which will remain in the ownership of the Province. The selected operator will then rollout its own network occupying maximum 1/3 of the new infrastructure, to serve the needs of enterprises located in the identified business parks of the Province of Lucca. The remaining capacity will be at the disposal of all electronic communication operators seeking access to it.
 - ii) The selected operator will receive a contribution of maximum 400.000 € for the purchase of active and passive equipment.
 - iii) A one-off contribution of maximum 3.000 € per company will be granted to the local businesses, to promote the demand of advanced services and support the connection fee when the service is activated. This contribution can be used to purchase any type of connectivity services from a provider of choice.
- (24) **Technology:** The scheme defines the service requirements suitable for business users, as well as the expected coverage. While no specific technology is established in advance as to the type of network capable to support the required level of service, the requirement of symmetrical access with very high speed limits the types of technologies that are able to deliver such results.
- (25) **Use of existing infrastructures:** The Italian authorities wish to avoid wasteful duplication of infrastructure. Therefore the scheme limits the deployment of the public passive infrastructure only in those areas where there is no available infrastructure suitable for connecting the equipment necessary to provide the services to the business users. In any case, the Italian authorities encourage the use of already existing (non

⁵ More details on the opinions of the two authorities below in paragraph (30) and following.

telecommunications) infrastructure, wherever possible and in particular impose the use of those owned by the Province itself, including roads, sewage infrastructure etc.

- (26) **Tender procedure:** To select the operator which will be entrusted with rollout of the network and provision of services to the business parks, the Italian authorities ran a tender procedure, starting with a call for interest, in full compliance with the principles of openness and transparency of EU and national public procurement rules. The selection criteria detailed in the call for interest included: coverage beyond the minimum requested, level of services offered, amount of public contribution in relation to the private investment. Only one operator showed interest in the Province's proposal and negotiations of the contract continued on a bilateral basis within the framework of the terms established in the call for interest. The main contractual conditions have been submitted to the attention of the Commission and the Italian competition and regulatory authorities, as described in more detail in paragraph (29) and following.
- (27) **Beneficiaries:** The direct beneficiary of the aid scheme will be an electronic communication operator who will provide advanced services to the business customers residing in currently unserved or not adequately served areas. Other operators could also benefit from the scheme by gaining direct access to the subsidised public passive infrastructure or by using the subsidised network through the wholesale services offered by the selected operator. Finally, businesses located in the industrial sectors in the Province of Lucca will benefit from the services offered on the new infrastructure.
- (28) **Budget and aid intensity:** The aid takes the form of grants. The overall aid amount is EUR 6,5 million, coming partly from the Provincial budget⁶ and partly from the Regional budget⁷. From the total budget, up to EUR 6,1 million will be used to deploy the public passive infrastructure and up to EUR 0,4 million will be granted to the selected operator to support investment in passive and active equipment to provide advanced services to business users. The maximum aid intensity is up to 80% of the operator's total costs. Aid to the business users will be funded with a special budgetary instrument of the Province of Lucca amounting to a maximum of EUR 0,6 million.
- (29) **Wholesale access:** The ownership of the subsidised passive infrastructure remains to the public authority and only 1/3 of the passive infrastructure will be given in use for free to the selected operator, thus allowing it to deploy its own infrastructure. The remaining capacity of the public passive infrastructure will be available for free to any other electronic communication operator seeking access to it on the basis of fair and non discriminatory conditions without time limitation. Additionally, the selected operator is required to provide wholesale access to the subsidised infrastructures to other electronic communication operators at the prices and conditions already approved by the Italian NRA for similar services. As to the final retail (active) access, the selected operator will apply wholesale access prices according to the criteria approved by the NRA. The Provincial authorities, with the NRA agreement, will amend the contractual clause concerning access prices, as soon as the Italian NRA adopts nationwide criteria. In any

⁶ Subject to budgetary availability, an additional EUR 0,8 may become available and be devoted to this project.

⁷ The budgetary source is the "Bando unico Ricerca e Sviluppo 2008" of the Tuscany Region, devoted to boost the competitiveness of local enterprises, with a total endowment of EUR 32 million.

event, the AGCOM has competence to solve any conflicts on pricing and access conditions between the selected operator and the access seekers, should they arise.

- (30) **Consultation with the NCA and NRA:** The Italian National Competition Authority AGCM, and the National Regulatory Authority (NRA) for the electronic communications sector AGCOM, have both been informed of the details of the planned measure and commented on it.
- (31) The AGCM gave a globally favourable opinion on the measure, highlighting in particular the positive impact on competition of the open access available on the passive infrastructure (ducts) and of the wholesale access obligations imposed on the selected operator. The AGCM underlined that a cost-oriented methodology for access prices seems the most adequate to achieve efficient pricing and welcomes the commitment to modify the current arrangements on the basis of the forthcoming regulation by the competent NRA.
- (32) The AGCOM noted that the regulation of NGA is still being defined at national and European level and that therefore its analysis is ad hoc and circumscribed to the specific case of the Province of Lucca project. The NRA valued positively the access conditions imposed on the new infrastructure and accepted them in the case at hand, until the sectoral regulation comes to be delineated and to which the selected operator will have to conform in the future.
- (33) **Duration of the measure:** The measure is envisaged to have duration between 48 months and 8 years starting from the conclusion of the contract between the selected operator and the Provincial authorities, subject to approval of the Commission under the EU State aid rules.
- (34) **Monitoring and Clawback mechanism:** The Provincial authorities are in charge of monitoring the exact implementation of the scheme, with periodic reporting obligations by the selected operator. In particular, quarterly reports about the progress of the operations and the number of connected users shall be sent to the granting authority until the year 2015. Additionally and for the same period of time, once a year a report on revenues and costs shall also be submitted. On the basis of such annual reports, and in order to ensure that no excessive amount of aid is granted, a clawback mechanism is foreseen. For a level of profit higher than 10% of the value of the network and equipment, the operator is obliged to give back to the provincial authority a share of such profits in proportion to the aid intensity or to reinvest it to expand the network in other “white NGA areas” initially not covered by the present measure and subject to the same conditions contained in the present authorisation.

V. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (35) According to Article 107 (1) 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 for a measure to qualify 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 trade between Member States.

State resources

- (36) The notified measure is financed by resources of the Region of Tuscany and the Province of Lucca. Hence State resources are involved.

Economic advantage

- (37) *Selected operators*: The selected operator will receive financial support which will enable it to provide broadband services at conditions not otherwise available on the market. The aid will allow the operator to offer end-to-end services *prima facie* at lower prices than if it had had to bear all costs themselves and thus attract more customers than under normal market conditions. The selected operator will also acquire ownership of certain tangible and intangible assets with State funds (e.g. equipment, customer relations) even after the lifetime of the projects. In view of the above, it is clear that an economic advantage will be granted to the selected operator.
- (38) *Third party providers*: Third party providers of broadband services will be able to use the enhanced access under non discriminatory terms due to the open access provisions and they will therefore also indirectly benefit from the State resources, as they will be customers of the selected electronic communication operators.
- (39) *End users*: The measure aims at improving the provision of existing broadband services to business users. Undertakings in the targeted business districts will therefore ultimately benefit from the provision of the new and improved services.

Distortion of competition

- (40) The intervention of the State alters existing market conditions by allowing the provision of enhanced broadband services by the selected telecommunication operator and, potentially, third party providers.
- (41) The scheme is also selective in that it is addressed to undertakings active only in certain regions or in certain markets for electronic communications services. These selectivity elements also induce a potential distortion of competition⁸.
- (42) Therefore, the fact that an improved broadband service becomes available has the effect of distorting competition.

Effect on trade

⁸ Judgement C-143/99, *Adria Wien Pipeline*, Slg. 2001, I-8365.

- (43) Insofar as the intervention is liable to affect providers of electronic communications services from other Member States, the measure has an effect on trade. The markets for electronic communications services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. Moreover, the measure has the potential to distort competition between business users located in Italy and those located elsewhere in the European Union.

Conclusion

- (44) The Commission therefore concludes that the notified aid measure constitutes State aid within the meaning of Article 107 (1) TFEU as moreover confirmed by the notifying Member State during the notification contacts. Having established that the project involves aid within the meaning of Article 107(1) TFEU to the selected service providers, third party providers and undertakings, it is necessary to consider whether the measure can be found to be compatible with the internal market.

VI. ASSESSMENT OF THE MEASURE: COMPATIBILITY

- (45) The Commission has assessed the compatibility of the scheme according to Article 107 (3) (c) TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*⁹. The Broadband Guidelines contain a detailed interpretation of Article 107 (3) (c) TFEU in this area of State aid law. As regards the applicable substantive provisions, the Commission has essentially analysed the measure in the light of the criteria developed in particular in paragraphs 31-79 of the Broadband Guidelines.

VI.1. The balancing test and its application to aid for the broadband network deployment

- (46) As described in paragraphs 34 and 35 of the Broadband Guidelines, in order to assess whether a measure is compatible under article 107 (3)(c), the Commission balances positive and negative effects of the aid according to the criteria set out in the Guidelines. In applying the balancing test, the Commission will assess the following questions:
- (1) 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)?
 - (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate instrument?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

⁹ OJ C 235 of 30.9.2009, p. 7.

VI.2. Objective of the measure

The aid is in line with the policy of the Union

- (47) The current measure targets "*white NGA areas*"¹⁰, where no NGA broadband coverage is currently available and where there are no plans by private investors to roll out such infrastructure in the near future. Hence the objective of the measure is in line with Section 3.1 of the Broadband Guidelines: by extending NGA broadband coverage to areas where private operators have no commercial interest to invest, the Italian authorities pursue genuine cohesion and economic development objectives.

Aid is the appropriate instrument

- (48) As set out in paragraphs 47 and 48 of the Broadband Guidelines, in the situation currently under assessment, the Italian authorities have devised a comprehensive scheme including support measures related to demand, including raising demand awareness through surveys and other campaigns, as well as via the direct grant of a financial contribution directly to the end-users for the purchase of broadband connectivity described in paragraph (23) number (iii). Paragraph 49 of the Broadband Guidelines highlights the complementary nature of such demand stimulation measures to the State funds for the rollout of broadband infrastructure. However, it is clear that this is not going to solve the problems of the lack of supply of high speed broadband. In order to ensure the supply of high-speed broadband services to all citizens, the Provincial Government of Lucca sees no alternative but to grant public aid to the construction of NGA networks for the benefit of the industrial districts.
- (49) The Commission can agree that without further public intervention, avoiding the emergence of a new "*digital divide*" between different areas of the country seems not possible, which could lead to the economic exclusion of the local undertakings. Hence in the current situation, State aid is an appropriate instrument to achieve the set objectives.

The aid provides the right incentives to operators

- (50) 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 without any State aid. According to the results of the public consultation and market research referred to above in paragraph (17) and following, in the targeted areas no NGA network investment would take place without public funding, hence the aid produces a change in the investment decisions of the operators. Therefore, the aid shall provide a direct and appropriate investment incentive for the selected operators.

¹⁰ See section 3.3 of the Broadband Guidelines.

VI.3. Design of the measure and the need to limit distortions of competition

- (51) The Italian authorities have designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. As set out in paragraphs 51, 73 and 79 of the Broadband Guidelines, in assessing the proportional character of the notified measures in "white NGA areas" a number of conditions has to be met in order to minimise the State aid involved and the potential distortions of competition:
- (a) *Market research and consultation:* As set out in detail in paragraph (17) and following, the Italian authorities have undertaken to carry out an analysis of the existing broadband infrastructure in order to clearly identify the areas where State intervention is necessary. Moreover, a detailed survey has been conducted to identify the needs of business users in the Province. The relevant stakeholders have been consulted and the competition and regulatory authorities' opinion have been gathered. This way, the Italian authorities will ensure that public funds are used only in areas where there are no plausible private investment plans to build commercially based high-speed networks within the next three years.
 - (b) *Open tender process:* The Italian authorities ran a selection procedure in line with the principles of openness, competition and transparency of the national and EU procurement rules, to select the undertaking for the construction and the management of the network. Details of the procedure and its outcome are described above in paragraph (26). This procedure has the effect of maximising the effect of the aid provided while minimising any potential advantage granted for the selected operator.
 - (c) *Most economically advantageous offer:* The Italian authorities designed the selection tender procedure so as to select the most economically advantageous offer among those presented by the operators. The awarding authority specified in advance the relative weighting which it would give to each of the qualitative criteria chosen and mentioned that, at similar quality conditions, the bidder with the lowest amount of aid would receive more priority points within the overall assessment of its bid. However only one operator proposed an offer, therefore negotiations continued on a bilateral basis, with the relevant contractual conditions submitted for approval to the Commission, the AGCM and the AGCOM. In absence of alternative offers, this process ensures that distortion of competition are minimised.
 - (d) *Technological neutrality:* The design of the measure under assessment 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 retail broadband services to end users. Due to the objectives of the measure to serve business users and the specific requirements of level of service and speed, the types of technologies that are able to deliver such results are limited, given the current stage of technological development. However, the choice of the technical requirements and therefore the consequent limitation appear justified on the basis of the public policy objectives that the measure is expected to fulfil, namely to serve the documented needs of business users.

- (e) *Use of existing infrastructures*: To avoid unnecessary and wasteful duplication of resources, the scheme limits the deployment of the public passive infrastructure only in those areas where there is no available infrastructure. In any event, the Italian authorities encourage the use of existing (non telecommunications) infrastructure wherever possible, in particular those in the ownership of the Province of Lucca, as explained in paragraph (25). Moreover, the Provincial authorities committed to coordinate civil works among all entities wishing to undertake them, in line with paragraph 55 of the Broadband Guidelines.
 - (f) *Wholesale access*: The selected operator will offer wholesale services and access to the subsidised network to other operators for at least a period of 7 years. Access obligation, as detailed in paragraph (29) above, include unlimited and free access to the publicly owned ducts as well as access to the passive and active elements of the network in the property of the operator, in an open, transparent and non-discriminatory manner. These access obligations will be supervised by AGCOM.
 - (g) *Price benchmarking*: Access to the publicly owned ducts will be granted for free to operators other than the selected one, as described in paragraph (29). For the other elements of the network, the reference offer for access prices approved by the NRA will apply. For the wholesale offer of services, the tariff proposed by the operator has been accepted by the NRA, subject to monitoring and amendments, following enactment of the national regulation for the services in question.
 - (h) *Monitoring and 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. By ensuring that any extra profit generated through the operation of the networks will be clawed back, 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.
- (52) To the extent the measure aims to support the deployment of an NGA network in "white NGA areas", where one basic broadband network may already exist (traditional "grey area") further conditions shall be met as laid down in paragraph 73 of the Broadband Guidelines. In this respect, the Italian authorities proved that
- (i) the broadband services provided over the existing networks are not sufficient to satisfy the continuously growing needs of citizens and business users in the area in question and commercial operators do not have sufficient commercial incentives to upgrade the existing networks as described in paragraph (19);
 - (j) there are no less distortive means (including *ex ante* regulation) to reach the stated goals.
- (53) Concerning the conditions laid down in paragraph 79 of the Broadband Guidelines, the Italian authorities proved the following:
- (k) *Effective wholesale access*: under the current scheme the access obligations imposed on the chosen operator include access to both passive and active infrastructure, as detailed in paragraph (29) without prejudice to any similar regulatory obligations that may be

imposed by the NRA in the specific market concerned in order to foster effective competition.

- (l) In the case at hand, AGCOM (the NRA) and ACGM have been consulted in setting the conditions for wholesale network access. AGCOM will supervise the compliance of the selected operator with the wholesale access obligations. The Commission shares the view of the mentioned authorities that the access conditions are acceptable for the time being in the case at hand, due to the scope of the measure, the need to encourage rapid NGA deployment in an area where no private operator would invest and given the still ongoing delineation of the national and EU regulatory approach to NGA networks. The Commission also shares the view of the NCA and the NRA that a pricing for the wholesale offer based on a cost-oriented methodology is more effective than others to foster competition in the retail market. Proportionality will be further ensured by two additional factors: (i) once the NRA has approved on the national level the access conditions for NGA networks, these will replace – if different – the ones currently entered into between the operator and the Lucca provincial authorities; (ii) the NRA will supervise compliance with the agreed access conditions and will be competent to solve possible disputes between the selected operator and access seekers.
- (m) The NGA network architecture that will benefit from State aid will support effective and full unbundling and satisfy all different types of network access that operators may seek (including but not limited to access to ducts, fibre and bitstream).

VI.4. Conclusion

- (54) 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 the internal market, according to Article 107(3)(c) TFEU. In view of the duration of the scheme, the Commission would like to draw the Italian authorities' attention to future revisions of the Guidelines, which might make appropriate measures to the scheme necessary.

VII. DECISION

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*NGA for industrial districts of Lucca*" is compatible with Article 107(3)(c) TFEU.

The Italian authorities are reminded that, pursuant to Article 108(3) TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

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,

For the Commission

Joaquín ALMUNIA
Vice-President