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**Subject:**           **State aid n° SA.33807 (2011/N) – Italy**  
**National broadband plan Italy**

Sir,

**I.       SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*National broadband plan Italy*" 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)<sup>1</sup>.

**II.     PROCEDURE**

- (2) Following pre-notification discussions, on 21 October 2011, Italy notified to the Commission a measure aiming at deploying broadband infrastructure in the territory

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

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of Italy. Further documentation was submitted on 7 December 2011. A request for information was sent to the Italian authorities on 3 February 2012 to which the Italian authorities replied on 26 March. The Italian authorities have also taken the opportunity to explain the scope of the measure during a number of meetings and informal contacts with the case team.

### III. DESCRIPTION OF THE MEASURE

#### Factual background

- (3) The EU has set the broadband infrastructures deployment as a priority to create jobs, increase economic performance and to foster economic recovery. Very fast Internet is essential for the economy to grow strongly and to ensure citizens can access the content and services they want. In addition, in the light of the European 2020 Strategy, the Commission has highlighted the fundamental value of the information and communication technologies (ICT) to achieve the objective of a smart, sustainable and inclusive growth. Broadband connectivity is a key component for the development, adoption, and use of ICTs. In this respect, in the framework of its Digital Agenda for Europe<sup>2</sup> the Commission has outlined highly ambitious objectives for broadband development, with the aim of achieving internet speeds of 30 Mbps or above for all European citizens, with half European households subscribing to connections of 100Mbps or higher. These achievements require concrete actions at EU and national levels. Without strong public intervention there is a risk of a sub-optimal outcome, with fast broadband networks concentrated in a few high-density zones. The spill-over benefits created by such networks for the economy and society justify public policies incentivising the increase in broadband coverage with increasing speeds. In particular, the Digital Agenda for Europe provides that Member States should develop and make operational **national broadband plans** by 2012 that meet the **coverage and speed and take-up targets** defined in Europe 2020, using public financing in line with EU competition and state aid rules.
- (4) In line with the above policy, in order to coordinate the different interventions across the national territory for the roll-out of broadband infrastructures, the Italian Government decided to set up a National Broadband Plan. The Plan is aimed at allowing all the Italian population, nowadays excluded from the *network society*, to enjoy high speed broadband access. The Italian authorities pointed out that the Plan will set up a national framework in order to overcome non-harmonized interventions carried out at the regional and local levels and thus contribute to bridging the digital divide of areas not covered by adequate services. To this aim, Italy has adopted the Law 69/2009 entrusting the Ministry of Economic Development with the power to coordinate all the local interventions for broadband deployment. According to the Italian authorities, the Plan will make available for all citizens a powerful and reliable network and, in this regard, allow them to take advantage of the main digital applications that will develop in the next 3-5 years. The Italian authorities foresee a wide range of direct and indirect economic benefits deriving from the broadband and

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<sup>2</sup> OJ C 245 of 19.5.2010

ultra-broadband access availability to all the citizens. In particular, this will allow GDP growth, cost-savings for public administrations and enterprises and increased possibilities for all the population.

- (5) The notified measure is aimed at favouring growth, diversification and innovation in the areas currently not covered by broadband services and at reducing the physical and geographical exclusion of sparsely populated areas. In those areas the intervention is intended to fulfil the objectives of bridging the basic broadband digital divide by 2013 and consequently enhancing undertakings competitiveness as well as social and regional cohesion. The objectives will be achieved through infrastructure deployment and, as a complementary intervention tailored to the needs of very scarcely populated areas, by promoting different technologies (e.g. wireless and satellite technology). The Italian authorities pointed out that about 0,5% of the Italian population (amounting to about 300.000 persons) is expected to benefit from the measure. The current intervention involves mainly basic broadband technologies but in the view of the Italian authorities it will also set the basis for future NGA network rollout.
- (6) In Italy, the availability of broadband across its territory is not homogeneous. Adequate basic broadband connectivity is available nearly in 100% of the urban areas and in some cases with speeds up to 20 Mbps. Conversely, in rural and low-density areas, either there are no broadband networks or the current infrastructure is not sufficient to ensure an acceptable and uniform level of connectivity. This is due to the fact that in scarcely populated areas investments in infrastructure deployment are not profitable in the short-term. Besides, in some areas although broadband networks are present, due to certain technological choices made in the past decades, they require a significant upgrade to improve the Internet access capacities.
- (7) In non-covered areas, the population is excluded from the benefits of broadband connectivity, as a consequence of the failure to upgrade the "backhaul network" from the traditional copper wiring to optical fibre. Such market failure is due to the circumstance that, in scarcely populated areas where economies of scale are absent, network providers do not find it profitable to make investments in technological upgrades.
- (8) Broadband connectivity in Italy, as far as fixed lines are concerned, is essentially provided through the traditional copper network currently ensuring the telephone universal service coverage. This network, by using the xDSL transmission systems, is theoretically able to provide connectivity services up to 20 Mbit/s. However, these speeds presuppose an adequate backhaul network to support the access segments, which is not currently the case for a substantial part of the Italian territory. The Italian authorities estimate that the areas which are not adequately covered include about 40% of the local exchanges and approximately 10% of the overall population. Besides backhauling deficiencies, digital divide and limited broadband availability are caused by factors affecting also the access part of the network, in particular due to the length of certain lines of the traditional copper network and to the use of outdated equipment, suitable for voice transmission but not for data.

- (9) Leaving the non-covered areas in a situation of digital divide would deprive them of the potential advantages (in terms of economic, social and productivity process) deriving from the Information Society. In such areas, because of the lack of private incentives to invest, services quality, the opportunity to choose between basic and NGA broadband and market conditions are negatively affected.
- (10) To address the abovementioned market failure and bring adequate connectivity to the targeted areas, the notified measure envisages three different and sequential types of intervention.
- (11) First, the Italian authorities envisage the rollout of a state-of the art *backhaul network*, to which all (wired and wireless) telecommunications operators will be able to connect at equal and non-discriminatory conditions. Second, wherever the envisaged backhauling intervention is not sufficient because of deficiencies in the access segment, the Broadband National Plan foresees the direct funding of operators for the rollout of an adequate *last mile* infrastructure. Third and residually, for the very low-density areas facing a broadband connectivity deficit, where no infrastructural intervention would be economically viable, the National Plan provides for the direct funding of alternative terminal access devices.

#### Objectives of the measure

- (12) The notified measure aims at establishing a national Framework Plan to bring broadband connectivity in rural or low-density municipalities which are currently facing an infrastructure and connectivity deficit. The intention of the Italian authorities is to create a general scheme which will be followed by national and local authorities to achieve their broadband coverage objectives in a coherent manner which maximises the synergies and positive externalities of network planning on a nation-wide scale, as opposed to scattered and un-coordinated local initiatives.
- (13) The National Broadband Plan intends to achieve two different objectives. First, it addresses the existing digital divide by providing the whole Italian population speed access from 2 up to 20 Mbit/s. By the same token, the measure aims at putting the basis for future rollout of NGA networks. Ultimately, as a consequence of the improved broadband connectivity, citizens and companies will be able to take advantage of the opportunities of the "*network society*".

#### Target areas

- (14) In relation to the classification in white, grey and black areas set forth by the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>3</sup> (hereinafter: "Broadband Guidelines") the Italian authorities pointed out that the measure will target areas falling in the category of basic broadband "*white areas*" and in some limited cases also certain areas falling in the category of basic broadband "*grey areas*" according to the definition of the Guidelines. The Italian authorities conducted a **detailed mapping** and coverage

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<sup>3</sup> OJ C 235 of 30.9.2009, p. 7.

analysis to identify the target areas where state intervention is necessary. The public consultation was carried out on 6423 municipal and sub-municipal areas eligible to be classified as “white” and “grey areas” according to the definition of the Guidelines. In particular, the Italian authorities identified *white areas* as those municipal and sub-municipal areas in digital divide i.e. areas where no operators offer broadband connectivity with a minimum speed capacity of 2 Mbit/s. The authorities verified that in such areas broadband infrastructure is currently not available and there are no plans by private investors to rollout such an infrastructure in the next 3 years. As regards the identification of *grey areas* the Italian authorities defined them as those municipal and sub-municipal areas where either broadband coverage is not adequate in terms of extent and users reached, or broadband services are available only to business users. In such cases the overall market conditions are considered not adequate to ensure an effective competition and good quality broadband services. According to the information submitted by the Italian authorities, in certain areas there has been a reported suspension of new subscriptions due to saturation of the existing backhaul network.

#### The public consultation with the stakeholders

- (15) The final identification of the “white areas” eligible for public intervention was carried out through a **public consultation** involving electronic communications operators and other stakeholders. The consultation had the two-fold objective of verifying (i) the effective absence of the basic broadband infrastructure, and (ii) the intention of the operators to invest in broadband connectivity within the next 3 years. The Italian authorities aimed at obtaining information concerning the existence of infrastructures, the calendar of operators' investments and operators' potential interest in using the public backhaul infrastructure once it is rolled out, in the form of acquisition of IRUs (Indefeasible Rights of Use). The consultation resulted in a high number of participants: all the 7 mobile and fixed operators of national relevance as well as satellite operators and more than 50 regional and local telecommunications operators and Internet Service Providers. The Italian authorities made clear that the interventions carried out in the framework of the Broadband National Plan will be based on the information collected through the public consultation. The results of the public consultation caused a modification of the list of targeted areas: the amount of “white areas” was reduced from 81% to 57% of the total areas put in consultation and the rest was re-classified as “grey areas” (about 25%) and “black areas” (about 18%). The results of the mapping exercise as modified after the consultation determined the final pattern of the network to be funded. The Broadband Plan and the public consultation are also accessible on the website of the Ministry of Economic Development<sup>4</sup>.

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<sup>4</sup> See here for the Plan [http://www.sviluppoeconomico.gov.it/index.php?option=com\\_content&view=article&viewType=0&id=2019457&idarea1=1699&idarea2=0&idarea3=0&idarea4=0&andor=AND&sectionid=0&andorcat=AND&partebassaType=0&idareaCalendario1=0&MvediT=1&showMenu=1&showCat=1&showArchiveNewsBotton=0&idmenu=2511&directionidUser=0](http://www.sviluppoeconomico.gov.it/index.php?option=com_content&view=article&viewType=0&id=2019457&idarea1=1699&idarea2=0&idarea3=0&idarea4=0&andor=AND&sectionid=0&andorcat=AND&partebassaType=0&idareaCalendario1=0&MvediT=1&showMenu=1&showCat=1&showArchiveNewsBotton=0&idmenu=2511&directionidUser=0) and here for the public consultation

### Legal Basis

- (16) The legal basis for the measure includes: Art. 1 Law 18 June 2009 n. 69 "Provisions for economic development, simplification, competitiveness and civil procedure" (OJ n.140 of 19/06/2009); Art. 7 Decree 14 March 2005, n.35 "Urgent provisions for the Action Plan for social, economic and territorial development (OJ n.62 of 16/03/2005) converted in Law 14 May 2005, n.80 (OJ n.111 of 14/05/2005); Code of Electronic Communications Legislative Decree 7 March 2005 n. 82.

### Design of the project

- (17) Upon completion of the mapping exercise and on the basis of its results, the Italian authorities envisage three types of initiatives. The first solution (*Technical Solution A*) entails the deployment under public ownership of backhaul infrastructures in non-covered areas, which will be subsequently made available to all the fixed and mobile broadband services providers at market conditions. The second solution (*Technical Solution B*) will directly fund investment projects by telecommunications operators aimed at providing broadband services in areas suffering from digital divide, through access segment deployment (*last mile*). The third solution (*Technical Solution C*) will support directly the end-users' (i.e. public administrations, business users, and households) purchase of specific terminal equipment in very rural areas where infrastructural investments are either not profitable or not achievable within the 31 December of 2015, due to the particular geographic conditions and/or to the very scarce population density.

### Technical solution A

- (18) In the first place, the Italian authorities envisage the rollout of a backhaul network in areas where there is no adequate infrastructure in place. The infrastructure will remain in public ownership and will be open for access by private operators, allowing them to provide connectivity services of at least 2 Mbit/s in areas currently unserved. A backhaul in optical fibre allows a long period of use before becoming obsolete (at least 20 years) and thus provides a reliable technology platform for the future construction of next generation access networks (NGA). Moreover, the optical infrastructure potentially support unlimited capacity and, in this respect, will allow an open access at equitable market conditions to all the fixed and mobile operators offering broadband services to end-users.
- (19) The project is articulated in two different phases: the first one is aimed at rolling out the open infrastructure for which **public tenders** will be conducted. The second one concerns the **infrastructure management**. The competent Ministry<sup>5</sup>, through a fully-owned entity, "Infratel S.p.A" (hereinafter "Infratel") will carry out the whole

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[http://www.sviluppoeconomico.gov.it/index.php?option=com\\_content&view=article&idmenu=2517&idarea1=1699&idarea2=0&idarea3=0&idarea4=0&andor=AND&sectionid=0&andorcat=AND&partebassaType=0&idareaCalendario1=0&MvediT=1&showMenu=1&showCat=1&showArchiveNewsBotton=0&directionidUser=0&id=2019461&viewType=0](http://www.sviluppoeconomico.gov.it/index.php?option=com_content&view=article&idmenu=2517&idarea1=1699&idarea2=0&idarea3=0&idarea4=0&andor=AND&sectionid=0&andorcat=AND&partebassaType=0&idareaCalendario1=0&MvediT=1&showMenu=1&showCat=1&showArchiveNewsBotton=0&directionidUser=0&id=2019461&viewType=0)

<sup>5</sup> The Ministry of Economic Development.

project. *Infratel* has been established in 2003 and its tasks concern the implementation of the Broadband Plan, under the Ministry's direction and on its behalf.

- (20) *Infratel* will be in charge both of the infrastructure deployment and of its management on behalf of the Ministry, in the sense that it will be in charge of the maintenance of the passive infrastructure and of the granting of IRUs at non discriminatory conditions to the telecommunications operators seeking access to it. To cover its operating costs, the Ministry will every year grant an amount corresponding to the costs necessary to carry out its activities, as stated in a detailed account report. The Ministry of Economic Development will approve in advance the costs to deploy and manage the network. The income flowing from the allocation of infrastructure rights of use (IRU) will be transferred back to the parent Ministry. The Italian authorities stress that *Infratel* has no financial and managerial independence and, in this respect, the Ministry of Economic Development is directly responsible of the company governance. Moreover, *Infratel* will not receive any sort of compensation for its activity, will not be active at retail level and will not be able to generate any profits. It will act as a *longa manus* of the public authority pursuing public interest goals and according to the Italian authorities cannot be considered as a telecommunication operator.
- (21) *Infratel* will be in charge of the infrastructure deployment (ducts and optical fibre) necessary to provide broadband services in the targeted areas. In particular, *Infratel* will procure and supervise a contractor to carry out civil works and lay three-tube ducts: one of the tubes will be equipped with 48 optical fibres, the other two tubes will be equipped with subsections open for use by any operator to lay their own fibres. In more sparsely populated areas, the works may include the realisation of poles. *Infratel* will subsequently assign infrastructure rights of use (IRUs) to interested operators at fair and non-discriminatory conditions. It is for the private operators to choose the active equipment of their choice and the technological solution to provide broadband connectivity to end-users.
- (22) The eligible forms of intervention under *Technical Solution A* are: rollout of backhaul infrastructures (fixed, wireless or combined); civil engineering works such as ducts or other network elements, if possible using **existing infrastructures** (including railways, electric or rural water works roads) so as to avoid unnecessary and wasteful duplication of infrastructures; other passive infrastructure interventions concerning dark fibre or poles; acquisition of the rights of use of existing infrastructure (ducts, in particular) to lay dark fibre.
- (23) The Italian authorities remark that the infrastructure will be **technologically neutral** as it envisages the possibility that all telecommunication operators, regardless of the technology employed, will have access and use the infrastructure and the network access facilities<sup>6</sup>.

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<sup>6</sup> All electronic communication operators can benefit of the rollout of a backhaul infrastructure, which can be used to collect data traffic, while delivery to the end-user can be done with the preferred technology.

- (24) For the allocation of the infrastructure deployment works and to obtain the right of use (IRUs) on existing infrastructures, *Infratel* is required to launch a number of **open tender procedures** carried out in accordance with the principles laid down in the Legislative Decree n. 163 of 12 April 2006 and the European Public Procurement Legislation.
- (25) As regards the allocation of the infrastructure deployment the tenders will concern the amount of lots allocated, the working plan and the construction of the passive broadband network. In this case, the most economically advantageous offer will be selected in accordance to the applicable Public Procurement legislation.
- (26) Once the infrastructure is deployed, an **effective wholesale access** to it will be granted to the third party operators which are interested in offering broadband services. The ducts used for the deployment of the network will be made available to other operators interested in posing their own infrastructure. Inside the ducts, the optical fibres will be accessible by third parties.
- (27) *Infratel* will be in charge of carrying out the granting of the licenses, the management of the licenses and all the administrative and ancillary operations. The infrastructure will be made available to all the interested operators, which will be obliged to pay an **annual fee** established in accordance with **equal and non-discriminatory criteria**. In the absence of a regulated price for access to the passive backhaul infrastructure, fees will be calculated on market **benchmarking** criteria, in particular on the average wholesale prices that prevail on the national market. The Italian authorities commit to perform annual market analysis in order to determine the minimum and maximum fees to impose for the use of infrastructures, depending on the type of area concerned. The National Regulatory Authority AGCOM, consulted on the pricing system foreseen in the Plan, considered that the prices which will be charged by *Infratel* on the passive infrastructure are in line with the regulated ones and therefore able to achieve the result of an effective wholesale access.
- (28) In summary, the Italian project envisages the construction of a network whose ownership will remain with the central administration financing the project; that existing infrastructures will be used for the installation of cables and other equipment; that any solution adopted will be technologically neutral; that tender procedures will be employed to adjudicate the necessary works and the subsequent use of the infrastructures; that all subsidised infrastructures will be accessible to third parties at equitable, reasonable and non discriminatory conditions and that a claw-back mechanism will be in place to ensure that the selected bidders will not be over-compensated. As provided in the National Broadband Plan, the Ministry of Economic Development will be in charge of the implementation of the project through its company *Infratel* and will retain the ownership of the infrastructure. Any change to this situation<sup>7</sup> will be duly notified to the Commission as amendment to the scheme and, if necessary, a new authorisation will be requested.

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<sup>7</sup> For example decisions of total or partial privatisation of the public infrastructure.



Technical solution B

- (29) The second solution is intended to select and fund investment projects by commercial operators aimed at providing broadband services in areas affected by digital divide, through improving the transmission capacity of the access network segment. The envisaged adaptations will be carried out in connection and complementarity with the implementation of the *Technical solution A*.
- (30) The Italian authorities confirmed that the **mapping of existing infrastructure and coverage analysis** carried out thorough the whole national territory by the Ministry of Economic Development and updated every 6 months, will be taken into account in order to implement the project. In particular, the project addresses the issue of bridging digital divide in the areas identified by the **public consultation** as basic broadband "*white areas*" and "*grey areas*" eligible for public intervention.
- (31) The Italian authorities state that the aid will be awarded on the basis of **open, non-discriminatory tender procedures** which may envisage a structure by different lots and different beneficiaries. Since there may be different calls for tender at local and national level, each of them shall follow the Framework Scheme established by the Ministry of Economic Development as part of the present National Broadband Plan. The Framework Scheme will provide for the general conditions concerning the specific aid projects planned by the central and local authorities. The granting authorities shall request the prior opinion of the Ministry of Economic Development on the broadband projects falling into this framework Plan, to ensure that all the interventions will be carried out in accordance with the Framework. The contracts will be awarded following the criterion of the **most economically advantageous offer**.
- (32) The planned measure will be **technological neutral**, as the tender procedures do not favour any particular technology or network platform *ex ante*. Any wire-based, wireless and mobile telecom operators may be selected and subsequently funded for the deployment of the access infrastructure.
- (33) The roll-out of the measure also envisages the **use of existing infrastructure**, wherever possible. The beneficiaries will be required to supply updated information on the infrastructures (ducts and poles) rolled out within the present Framework Plan in order to constitute and keep up-to-date a national database of existing infrastructures.
- (34) The selected operators will retain the ownership of the electronic equipment purchased to provide access service to end-users. Moreover, the operators will be obliged to retain the ownership of the network for a minimum period of time of 7 years after the end of the monitoring period. The operators not complying with this provision will be required to give back the aid received.
- (35) The Italian authorities wish to strengthen choice and competition in the areas concerned by the measure. In this respect, the recipients of the aid will have for 7 years an **obligation to provide effective wholesale access** to the subsidised infrastructure to other electronic communication operators interested in using it at the

regulated prices – regardless of any finding of SMP on the beneficiary – or at those corresponding to the ones prevailing in more competitive areas of the country. Access to ducts being particularly important, the obligation to provide access will not be limited in time<sup>8</sup>.

### Technical solution C

- (36) The Italian authorities envisage also a complementary solution, alternative to the terrestrial infrastructures, for the ultra-marginal areas in which rollout of a wired solution is economically unfeasible even with state aid. In particular, in areas where morphologic conditions make it impractical to devise infrastructure deployment, a financial contribution will be made available directly to households, which will then be able to select the most convenient offer (*e.g.* decoders, modems, dishes, *etc.*). In practice, after the mapping has been finalised and the path of the network identified for Technical Solutions A and B, for the areas remaining still uncovered, user access will be subsidised directly. The Italian authorities remark that the solution will be **technologically neutral** as all type of terminal purchases can be subsidised, regardless of the transmission platforms and it will be implemented only after Solution A and B will be finalised.
- (37) Generally the aid will be granted directly to the end users. However, for those cases where the number of interested users is higher, the regional administration may instead decide to launch a tender to select a provider of broadband access to the end users. The tender will envisage a minimum number of users to be served and the successful bidder will be the one requesting the lowest amount of public funds to provide end-user equipment and connectivity services. The funds will be granted on the basis of the periodic reports provided by the selected provider to the regional administration.

### Other characteristics of the measure

- (38) The total **budget** for the framework measure amounts to EUR 1,471 billion consisting of national funds, Community funds and private investments. Not all funds are currently available but the measure is aimed at establishing a national framework which will cover and coordinate all available public and private funds. For the measures falling into previous Commission's authorisations, the respective conditions will apply<sup>9</sup> and no cumulation will be possible. The estimate is that that EUR 700 million will be used to fund the backhaul/*middle mile* infrastructure roll-out (*Technical solution A*) and EUR 771 million will be used to subsidised the *access/end-user connectivity* infrastructure deployment (*Technical solutions B* and *C*).
- (39) The **intensity** of the aid is up to 100% of the total admissible costs, for the *Technical solution A*, and to 70% of the costs of *last mile* adaptations, for *Technical solution B*.

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<sup>8</sup> Similarly to the State aid scheme N596/2009- Bridging the digital divide in Lombardia

<sup>9</sup> As regards the FEASR funds those measure have been already positively assessed by the Commission in its Decision on the State Aid N646/2009 – National Broadband plan for rural areas in Italy.

In relation to *Technical solution C* the intensity of the aid is up to 100% of the costs of the terminal equipment purchases.

- (40) **Beneficiaries.** With respect to the *Technical solution A*, the direct beneficiaries of the aid will be the end-users of the areas concerned, while the indirect beneficiaries will be the telecom operators which will take advantage of the backhaul network rollout in areas where they found not profitable to invest in the realisation of a proprietary backhaul network. In relation to *Technical solution B*, direct beneficiaries of the aid will be the telecom operators which will receive funding for the *last mile* access networks deployment with less investment than they should have faced otherwise. The indirect beneficiaries in both cases will be third operators gaining access to the subsidised infrastructure as well as firms and businesses located in the targeted areas which will indirectly benefit from the possibility of purchasing broadband access at lower costs than those entailed by existing market solutions. In relation to *Technical solution C*, the measure will benefit final users (public administrations, undertakings or households) which will be financed for the purchase of terminal equipment. Indirect beneficiaries of the aid granted under *Technical solution C* will be operators which will sell additional subscriptions to end-users and, possibly, providers of the terminal equipment.
- (41) As regards the **claw-back** and the **monitoring mechanisms**, the Italian authorities introduced in the draft tender documents submitted to the Commission detailed clauses to guarantee their functioning, substantially reproducing those already applicable in previous schemes<sup>10</sup>.

#### IV. STATE AID ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (42) 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 common 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.
- (43) The current measure will be financed by state resources, namely from resources of the Italian government (Ministry for Economic Development), of the Italian regions or by European funds on which the Italian authorities have control.
- (44) It will provide selective economic advantage to the electronic communication operators selected via the tender procedures and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidised network.

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<sup>10</sup> For example State aid scheme N596/2009- Bridging the digital divide in Lombardia.

- (45) The measure has the potential to distort competition. Financial support or support in kind distorts competition in so far as it strengthens the position of an undertaking compared with other undertakings<sup>11</sup>. Due to the State aid granted to a competitor, existing operators might reduce capacity or potential operators might decide not to enter into a new market or a geographic area. Distortions of competition are likely to be enhanced if the beneficiary of the aid has market power. Where the aid recipient is already dominant on a market, the aid measure may reinforce this dominance by further weakening the competitive constraint that competitors can exert.
- (46) Finally, the State intervention has an effect on trade since the markets for electronic communications services (wholesale and the retail broadband markets) are open to competition between operators and service providers<sup>12</sup>
- (47) 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. The Italian authorities have respected the stand-still obligation under Art 108 (3) TFEU.

## V. COMPATIBILITY ASSESSMENT

- (48) The Commission has assessed the compatibility of the scheme according to Article 107 (3) (c) of the TFEU and in the light of the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*<sup>13</sup> (hereinafter the "Broadband Guidelines").
- (49) The Broadband Guidelines clarify how the Commission applies Article 107 (3) (c) of the TFEU with regard to this kind of broadband infrastructure projects. As regards the applicable substantive provisions, the Commission has essentially analysed the measure in the light of the criteria developed in particular in paragraphs 31-51 of the Broadband Guidelines.

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

- (50) As described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition.
- (51) In applying this balancing test, the Commission will assess the following questions:
- 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)?

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<sup>11</sup> Case C-310/99, Italian Republic v Commission [2002] ECR-I-02289, paragraph 65.

<sup>12</sup> See Commission Decision in Case N237/2008 — Germany, *Broadband support in Niedersachsen*.

<sup>13</sup> *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 235, 30.9.2009, p.7.

- 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?

(52) 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 referred Broadband Guidelines.

### **Objective of the measure**

#### *The aid is in line with the Community policy*

- (53) The scheme is in line with the European Union's policy to bring broadband to all Europeans. The Europe 2020 strategy recognised the importance of broadband deployment to promote social inclusion and competitiveness in the EU. In order to reap all these benefits in its flagship initiative "A Digital Agenda for Europe"<sup>14</sup>, the Commission has acknowledged that not only shall universal coverage be ensured to all citizens by 2013 but also that, by 2020, (i) all Europeans should have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households should subscribe to internet connections above 100 Mbps.
- (54) The proper use of public funds in line with State aid rules could lead to wider coverage, increased competition, more investments and better end-user prices<sup>15</sup>.
- (55) Availability of adequate broadband services is also crucial for economic growth. Broadband infrastructures are 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. Moreover, a well targeted state intervention to support broadband infrastructure contributes to abating 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.
- (56) The current measure intends to subsidize the deployment of network infrastructures, such as backhaul-*middle mile* and *last-mile* access networks, or the purchases of

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<sup>14</sup> OJ C 245 of 19.5.2010.

<sup>15</sup> See for instance: *L'intervention des collectivités territoriales dans le secteur des communications électroniques*. Arcep report, 2009.

transmission platforms, in areas in which there is no suitable infrastructure and where end-users cannot enjoy adequate broadband services. By imposing wholesale access obligation on the subsidised operators and, therefore, granting access to the subsidised networks to third parties, the measure aims at creating additional competition in the targeted areas. Moreover, the measure will enable interested operators in the future to provide broadband services through NGA networks in the underserved areas, in line with the objective of the Digital Agenda.

- (57) The notified measure addresses a market failure in areas where difficult geographic conditions and/or low density of the population make it unviable for private operators to invest in the realisation of a backhaul network or in the improvement of the current *last-mile* access network. Accordingly, the measure has the potential to lower barriers to entry in more difficult geographical markets, will foster competition and contribute to bringing advanced broadband services to the citizens and businesses of Italy.
- (58) Hence the objectives of the measure is in line with paragraphs 37-40 of the Broadband Guidelines, by extending broadband coverage to such underserved or not-covered areas, the Italian authorities pursue genuine cohesion and economic development objectives.

*Aid is the appropriate instrument*

- (59) As set out in paragraphs 47 and 48 of the Broadband Guidelines, in the situation currently under assessment, despite efforts undertaken by the Italian authorities through alternative instruments, private investments have taken place in the targeted areas only to a limited extent. In particular, due to the economics of networks, the problem of the lack of supply of high-speed broadband networks cannot be solved solely by measures involving demand stimulation or regulatory interventions. As regards regulation, despite its crucial role in ensuring competition and supply in the market for electronic communications, evidence shows that, in the targeted areas, regulation has not fully been able to ensure effective competition and has not led to sufficient investments to bridge the digital divide. Regulation, indeed, is a necessary but not sufficient instrument for the development of broadband services as alternative providers need to combine the use of wholesale products from the incumbent with own network investments which may not be profitable in areas where demand is low.
- (60) Without further public intervention, reducing the "*digital divide*" between the urban areas on the one hand, and the not-covered or not adequately covered low-density populated areas, on the other hand, seems not possible, which could lead to the economic and social exclusion of the local citizens and 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*

- (61) 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 (14) and (15), in the targeted areas no investment would take place without public funding, hence the aid produces a change

in the investment decisions of the operators. The measure aims at creating an infrastructure essential for the provision of a wide array of advanced services. Its result, therefore, will be to attract to targeted areas, such as low-density or scarcely populated areas, additional investments by undertakings active in a number of heterogeneous industries and stimulate them to offer high value added services exploiting the broadband infrastructure. Therefore, the aid provides a direct and appropriate investment incentive for the selected operators.

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

(62) The Italian authorities have designed the measure in such a way as to minimise the State aid involved and potential distortion of competition arising from the measure. As set out in paragraph 51 of the Broadband Guidelines, in assessing the proportional character of the notified measures a number of necessary conditions has to be met in order to minimise the State aid involved and the potential distortions of competition:

(a) *Detailed mapping and coverage analysis, consultation with stakeholders:* As set out in detail in paragraph (14) and (15), the Italian authorities have carried out an analysis of the existing broadband infrastructures in order to clearly identify the areas where state intervention is necessary. By consulting all existing national operators and updating the target areas accordingly, and by consulting with the relevant stakeholders in an open and transparent manner, the Italian authorities ensure that public funds are used only in areas 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:* for *Technical Solution A*, the Italian authorities will select the undertakings for the construction the network through open, transparent and competitive tender procedures organised in different lots in full compliance with national and EU public procurement rules. The organisation of the tenders and the subsequent operation of the network as explained above in paragraph (20) and (21) will be conducted by *Infratel* on behalf of the Ministry. The Commission agrees with the Italian authorities that this situation represents a different scenario than the one referred to by paragraph 51 b) of the Guidelines<sup>16</sup> and that such system does not disproportionately distort competition but, to the contrary, ensures a pro-competitive use of the subsidised infrastructure thanks to the multiple safeguards inherent to the system itself. In particular, through the obligation for the *Infratel* to grant upstream wholesale access (in the form of IRUs) at fair, transparent and non-discriminatory conditions to the infrastructure, this system eliminates at the root one of the potential risks for competition deriving from private management of the network by operators, i.e. the incentive to exclude or degrade competitors on the same infrastructure. This character is enhanced by the fact that *Infratel* (hence the Ministry for Economic Development) simply organises and manages the grant of IRUs concerning the passive infrastructure, without engaging in any profit making operation of the

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<sup>16</sup> A similar conclusion was reached in case SA. 31316 (N330/2010) – France – Programme national «Très Haut Débit » - Volet B, for the French *Régie* system.

network and without providing any retail services.. The infrastructure will remain in public ownership to guarantee the maintenance of the pro-competitive safeguards. No modifications (or privatization plans) are envisaged at the moment, but should any change to this situation arise, it will be duly notified to the Commission as amendment to the scheme and, if the case, a new authorisation will be requested. As regards, *Technical Solutions B and C*, as explained above in paragraphs (31) and (37), the aid will be awarded following the open tender process, in order to maximise the effect of the aid while minimising any potential advantage granted to the selected operators.

- (c) *Most economically advantageous offers*: within the context of an open tender procedure, the Italian authorities will select the most economically advantageous offers among those presented by the operators. Pursuant to the Broadband Guidelines, the awarding authorities specify in advance in the calls for tender the relative weighing of the qualitative criteria chosen.
- (d) *Technology neutrality*: The current measure will enable several alternative platforms (such as wireline, wireless, mobile solutions) to utilise the publicly funded backhaul infrastructure and will be open to all technologies able to provide adequate broadband connectivity at the access segment. Therefore, it 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*: as stated when assessing the different technical solutions envisaged by the measure(19), the Italian authorities encourage expressly the use of existing infrastructure. As regards the network deployment the Italian authorities will ensure that, during the tender procedures, existing civil infrastructures are considered by the bidders in the design of their offers. Moreover, coordination with other civil works shall be taken into account by the tenderers in order to limit the use of public funds. In addition, as mentioned above in paragraph (33), to facilitate future investment, a national database of existing infrastructure has been established and obligations are imposed on commercial operators to report to the central authorities the construction of new infrastructures.
- (f) *Open wholesale access*: on all the infrastructures rolled-out with the help of state funding, the selected operators will provide open wholesale access to all interested parties in an open, transparent, non-discriminatory manner. As regards the backhaul-*middle mile* network, wholesale access will be provided to all operators requesting it, by means of concession of rights of use (IRU). On the other hand, the operators selected for the *last-mile* access network deployment will have an obligation to provide all forms of wholesale and retail access to the subsidised infrastructure for a period of at least 7 years. These access obligations will be supervised by the granting authorities as well as the National Regulatory Authority. The obligation to provide access to the ducts will be unlimited in time, as explained above in paragraph (35).
- (g) *Price benchmarking*: In order to ensure effective wholesale access and to minimise potential distortion of competition, wholesale prices on the subsidized backhaul network will be calculated on the average prices that prevail on the



national market for the use of infrastructures. The Italian NRA has confirmed that this pricing system reflects the regulated prices for comparable infrastructure in the non-subsidised areas of the country. As regards the access network, wholesale prices will be based on prices already set or approved by the National Regulatory Authority for the markets and services concerned with the objective to offer similar retail access prices to those charged in non-subsidised areas. Price benchmarking is an important safeguard to ensure that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets.

(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. Furthermore, by foreseeing that extra profits that may be generated through the operation of the subsidised networks will be clawed back in proportion to the aid intensity, 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.

- (63) As regards the areas falling within the definition of grey areas, the Italian authorities have shown, in line with paragraph 46 of the Broadband Guidelines, that (i) no affordable or adequate services are offered to satisfy the needs of citizens or business users and that (ii) there are no less distortive measures available (including *ex ante* regulation) to reach the same goal.
- (64) In particular, the Italian authorities selected only those areas in which market conditions are not adequate, in particular due to the type of services offered to end-users (residential and business users) and the conditions attached thereto. Accordingly, the grey areas targeted are only those in which no optical backhauling is available, only wireless transmission is currently possible, thereby limiting the capacity at the disposal of the end users and in certain cases the "visibility" of the radio signals is insufficient. In such a situation, *ex ante* regulation cannot help to overcome the problems by imposing access obligations or other forms of remedies. Additionally, the entry barriers for this kind of markets discourage potential entry of new electronic communication operators. By contrast, the Italian authorities will not intervene in the areas in which optical backhaul nodes are present and therefore no capacity/availability problems have been reported.
- (65) 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.

## **Conclusion**

- (66) 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.

## VI. DECISION

- (67) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "*National broadband plan Italy*" is compatible with Article 107(3)(c) of the TFEU.
- (68) 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.
- (69) 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](http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm).
- (70) Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) or, alternatively, by registered letter or fax to:

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Yours faithfully,

For the Commission

Joaquin ALMUNIA  
Vice-President