



EUROPEAN COMMISSION

Brussels, 08.10.2012  
C(2012)7092 final

**PUBLIC VERSION**  
**WORKING LANGUAGE**  
**This document is made available for  
information purposes only.**

**Subject: State aid SA.34031 (2011/N) – Italy**  
**Next generation broadband in Valle d'Aosta**

Sir,

**I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Next generation broadband in Valle d'Aosta*" (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)<sup>1</sup>.

---

<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.

S.E Giulio Terzi di Sant'Agata  
Ministero degli Affari Esteri  
Piazzale della Farnesina, 1  
00135 Roma

Commission européenne, B-1049 Bruxelles – Belgique  
Europese Commissie, B-1049 Brussel – België  
Telefono: 00-32-(0)2-299.11.11

## II. PROCEDURE

- (2) By letter registered on 7 December 2011, pursuant to Article 108 (3) TFEU, the Italian authorities notified the above mentioned measure to the Commission. By letters dated 6 February and 7 May 2012 the Commission requested further information, to which the Italian authorities responded in letters registered on 5 March and 11 June 2012, respectively. The Italian authorities also submitted additional information on 6 August 2012.

## III. CONTEXT

### III.1. Factual background

- (3) **Limitation of the existing networks:** In Italy advanced broadband services and the infrastructure required to support them are available for citizens and businesses in more densely populated areas, whereas broadband is inadequate or outright lacking in the areas which are not commercially attractive for electronic communication operators. This leaves citizens and business without the possibility of adequate broadband access and services.
- (4) According to the Italian authorities, this is precisely the case of the Region of Valle d'Aosta: the deployment of infrastructure that allows an adequate offer of broadband services is hindered by historical, economic and social factors in addition to the geographic characteristics of the territory. In particular, a) the Region is characterised by small towns where the population is diminishing; b) the economy is based on small enterprises that are mainly engaged in tourism and farming activities; c) there are significant economic differences between the towns located in the central valley and those located in lateral areas.
- (5) The aspects mentioned above hinder the viability of private investments in most disadvantaged areas. The scarce level of potential users makes the investments in upgrading the network in order to provide ultra-speed broadband services commercially uninteresting from a private investor perspective.

### III.2. Description of the measure

- (6) The measure is aimed at the whole territory of the Region of Valle d'Aosta which is characterised by sparsely populated areas and very low population density. This is due to the geographic characteristics of the Region, which is divided into a central valley where most of the population, businesses and economic activities are located. Several lateral valleys sparsely populated are more difficult to reach by advanced telecommunications infrastructure.
- (7) **Demand for new services:** Italy underlines that the basic broadband connections are not sufficient to provide the whole range of innovative services, which businesses and citizens require, such as teleworking possibilities, high definition television, e-health, e-government, education, etc.

- (8) Therefore, there is a demand for new services accessible thanks to ultra-broadband networks. Firstly, individual citizens throughout the territory will be able to access services improving their economic productivity and socio-cultural development. Secondly – leveraging on the specific features of the Valle d’Aosta Region’s territory and of the proposed project – the benefits of the ultra-broadband will extend to the tourists visiting the region who will be able to use their mobile internet access devices, both via mobile network operators and through the planned increase in the availability of Wi-Fi access points offering broadband connection to access in a simple and immediate manner all the public and private services available; this will also boost the attractiveness of the Valle d’Aosta Region as a tourist destination. Thirdly, the project will benefit both private businesses and the public authorities, which will improve the efficiency of service delivery and reach higher numbers of users with no increase in costs.
- (9) **Objective:** The measure is intended to address digital divide in the Region of Valle d’Aosta in a long-term view and in line with the framework of the Commission's Digital Agenda for Europe<sup>2</sup>. The intervention is aimed at deploying a fibre infrastructure in order to connect existing central offices (telephone switch) as well as the main radio towers for mobile connection. The final goal is to ensure a very high speed broadband network (NGN) coverage across the whole territory of the Region. This will allow operators to offer very high speed broadband services to citizens, public institutions and businesses.
- (10) The measure will support the development of a very high speed broadband network in the region of Valle d’Aosta characterised by difficult topography. The measure provides for (A) creation of a transport network able to cover the whole region’s territory - an optical fibre network in the lateral valleys connected to the backbone in the central valley. The measure (A) will be complemented by measure (B): a fibre connection extending both to the proximity of the base radio stations (BTS) of the mobile operators, in order to enable 4 G standards with wireless access, and to the proximity of existing fixed telephone cabinets, where this can be done considering the area in which the backbone is laid.<sup>3</sup>
- (11) Under the proposed model, the transport network infrastructure (A) will remain the property of the Region. Its installation and management will be entrusted through an open tendering procedure to a Manager which will lease it from the region. To simplify management and control mechanisms, and heighten the transparency of investment recovery mechanisms, subject to the appropriate feasibility checks the entire new infrastructure could be handed over to a special purpose vehicle company (SPV) wholly owned by the region, whose only business unit will be devoted to management of the infrastructure. On the basis of provisions to be set out in the Call for tenders and in the final

---

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

<sup>3</sup> The Italian authorities explained that "cabinets" are telephone exchanges managed by host operators who, outside of the main axis of the Valley, are for historical or market failure reasons very often located in places made available by the local authority, at the premises of the municipality, or in other public venues such as schools, libraries, public service offices, and in many cases they are located on the digging paths defined for the Measure. In the specific case of the VDA Broadbusiness network, given the small average size of the municipalities in question, the street cabinet in most cases coincides with Telecom Italia’s current local municipal telephone exchange. Therefore, this infrastructure may be similar to a kind of FTTN - Fibre to the Node.

Management Contract, this business unit would be leased to the successful tenderer, i.e. the Manager.

- (12) The contractor will be required to provide, within the deadlines set out in the Call for tenders: (i) an indefeasible right of use (IRU) on pairs of optical fibres or, alternatively, provision of backhaul services in wholesale mode to all the qualified operators requesting them, on conditions set out in the Call for tenders and designed to encourage joint investment by the operators themselves in ultra-broadband access equipment. (ii) A specified number of ultra-broadband access points in standard Wi-Fi technology located on the sites of the public administration and for its benefit. Residents or tourists in or near such sites will be able to use the connectivity services after authentication and for a very limited amount of time and volume of data traffic.
- (13) The operating model will enable the contractor to provide optical fibre backhaul service in wholesale mode, thanks to which customer operators will in turn be able to provide to the downstream (end customer) market ultra-broadband connectivity with local coverage, creating the conditions for effective delivery of the service.
- (14) Furthermore, the operating model envisaged will enable both the contractor and the telecommunications operators requesting its services to market IRU on the excess optical fibre pairs, i.e. those not necessary for the wholesale service. This will enable the contractor to offer a compulsory maintenance service of the infrastructure covered by the IRU to final operators, which it would not otherwise be able to provide. On their part, operators deciding to use the remaining fibre pairs via IRU will benefit from the long-term availability of ultra-high capacity last generation transmission infrastructure at fixed and highly competitive costs, thanks to the reuse of existing infrastructure and to high economies of scope and scale with respect to already planned public works.
- (15) Those operators opting for IRU on fibre pairs will also enjoy especially favourable economic terms and conditions if they submit and implement an investment programme for the installation of transmission systems able to provide ultra-broadband access to their customers, who will therefore be the final beneficiaries of the project. In the case of operators that also operate mobile networks, this investment will benefit not only the residents but also tourists and will boost the overall competitiveness of the whole region's economy.
- (16) The Call for tenders will require the selected Manager, acting directly or via a partner telecom operator, to include in the offer of services based on the new infrastructure the availability, within the specified time limits and for the remaining duration of the contract, of a specific number of ultra-broadband Wi-Fi access points at the main premises of the region's municipalities and other authorities, appropriately identified and located.
- (17) As for the measure (B), the infrastructure built will remain the property of the region. The Measure does not provide for financing of physical connections with the radio base stations and with the telecommunications equipment

inside the cabinets, but only provision of passive infrastructure. An individual operator managing the radio base station or the cabinet may then connect at its own expense to the passive infrastructure to obtain wholesale connectivity services.

- (18) **Legal basis:** The legal basis for the proposed measures includes Legislative Decree No 259 of 1 August 2003: "Electronic Communications Code"; Legislative Decree No 82 of 7 March 2005: "Digital Administration Code" and the ad hoc Regional Council Decision No 2738 of 8 October 2010.
- (19) **Beneficiaries:** The direct beneficiary of the measure will be, in the case of the measure (A), an electronic communications operator offering very high speed broadband services selected through a competitive tender process. In the case of measure (B) the direct beneficiaries will be the telecommunications services operators who will be able to provide internet services to the end-users thanks to the public financing of the infrastructure. Indirect beneficiaries of both measures will be electronic communications operators utilising the new network through the wholesale access products for offering retail services to consumers.
- (20) **Areas eligible for support and consultation with existing operators** The measure will ensure an offer of very high speed broadband services across the whole territory of the Region of Valle d'Aosta and will cover areas where there are not available very high speed internet connections and where operators are not interested to invest in this type of networks on commercial terms in the near future.
- (21) **Mapping:** The Regional authorities conducted a detailed survey on the existing basic broadband infrastructures and services and to verify the geographical coverage of NGA networks and the operators' future investment plans. They also conducted a public consultation<sup>4</sup> to verify the results of the mapping and to obtain information on the plans of the private operators.
- (22) The results of the mapping have shown that in the whole area of Valle d'Aosta only basic broadband services are provided and there are no investment plans to deploy NGA infrastructure and provide NGA services by the private operators in the next three years.<sup>5</sup>
- (23) The measure excludes from its scope areas qualified as "black for basic broadband services", according to the map created by the Region. Concerning the deployment of fibre in the vicinity of the cabinets, in order to ensure that only cabinets located in white and grey basic broadband areas will be concerned by the Measure, the Region will in addition publish a notice on its website specifying which cabinets are considered to be located in "black basic broadband area". The interested parties will be asked to send a statement with details of the cabinets in question and to enclose the documentation regarding any modifications carried out or upgrading planned for the cabinets in the next three years, by means of verifiable company plans. If the reports received will not show relevant changes to the cabinets under assessment, the Region will

---

<sup>4</sup> [http://www.regione.vda.it/innovazione/consultazionecoperturanga/copertura\\_nga/default\\_i.asp](http://www.regione.vda.it/innovazione/consultazionecoperturanga/copertura_nga/default_i.asp)

<sup>5</sup> Two companies submitted replies to the public consultation – one national telecommunications operator and one local provider of internet access services.

consequently rule out cabinets located in basic broadband service areas deemed "black" according to the criteria set out in the Broadband Guidelines from the call for constructing and managing the VDA BroadBusiness project.

- (24) **Budget and funding instruments:** The total public aid amounts to EUR 26.1 million financed directly by the Region who provides the access to the European funds through the European Regional Development Fund (ERDF).
- (25) **Aid Intensity:** The infrastructure deployment is fully covered by State intervention, whereas, as regards the investments for the completion of the network, the state aid intensity will not exceed 40% of the costs borne by the operator for network activation.
- (26) **Duration of the measure:** The measure will be put in place after the approval by the Commission. The duration of the measure depends on the time needed to overcome the market failure conditions. Therefore, once the market conditions are overcome, the Region intends to favour full or partial privatisation of ownership of this asset. The completion of the infrastructure is expected not later than 31 December 2015.
- (27) **Procurement and award criteria:** The measure provides for a Call for tenders for the construction and operation of an optical fibre network infrastructure covering all the fixed exchanges and the main mobile network base radio stations located in the region's territory. The Region of Valle d'Aosta shall initiate an open tender that will lead to selection of an operator who will be in charge of the construction of the NGA network in line with the principles of the EU Public Procurement Directives<sup>6</sup> and according to the principles of openness, competition, transparency and non-discrimination. The contract will be awarded to the applicant implementing the network project in the economically most advantageous manner in order to enable the market to establish the most appropriate public intervention.
- (28) **Technology neutrality:** The Italian authorities envisage the rollout of a backhaul network in optical fibre, as to date, fibre is the only technological solution available to provide ultra-high speed broadband and all technologies will be available to connect to the fibre backhubs. Such design of the transport network (A) allows a long period of use before becoming obsolete and enables provision of NGA services to the end-users. Moreover, the optical fibre infrastructure potentially supports unlimited capacity and, in this respect, will allow an open access at equitable market conditions to all the fixed and mobile operators.
- (29) As for the measure (B), the notified project will provide for the possibility of laying fibre both to the benefit of mobile operators and of fixed network operators, while the connection to the subsidised network will be done by the operators themselves, at their own cost and responsibility.
- (30) **Use of existing infrastructure:** The Italian authorities assessed the possible use of existing infrastructure, in particular access to ducts, which could

---

<sup>6</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. OJ L 134, 30.4.2004, p. 114–240.

significantly reduce the investment costs. Where possible, optical fibre will be laid on the infrastructure of CVA, the regional company managing plant for the production and transport of energy from renewable sources, whose network is currently being expanded.<sup>7</sup> Moreover, where possible the existing cable ducts owned by the telecommunication operators will be used and if at the time of the launch of the Call for tenders the region has entered into specific agreements with the owners of existing cable ducts, tenderers can take this into account in preparing their offers. Furthermore, any potential initiatives for the use of existing cable ducts or civil infrastructure will be carried out by the successful bidder under its responsibility, via *ad hoc* agreements, the nature and extent of the reuse of existing infrastructure will be an important parameter for the technical assessment of the tender. In order to ensure that telecommunications operators will not be favoured during the tender procedure, the call for tenders will expressly state that in case of use of existing ducts owned by the contractors, access to eventual third parties will also be guaranteed.

- (31) **Wholesale access:** The subsidised infrastructures will be opened for third party operators, including both passive and active infrastructure elements, which will satisfy all different types of network access that operators may seek, including access to ducts, dark fibre and bitstream. Full and effective unbundling of the network will also be ensured. The wholesale service to be provided will include the optical fibre backhaul service for the fixed network exchanges and for the base radio stations of the mobile network. In the case of BTS, different operators owning mobile radio licences can obtain wholesale access to the fibre connections. As for the cabinets, independent operators will be able to provide services by connecting to the public infrastructure at their own costs, or use the infrastructure built near the cabinet to connect it to their BTS in the vicinity of the cabinet in order to provide ultra-wideband services with LTE technology, also using femtocells or ultra-wideband WiFi using an FTTC-Fibre router, or for independently extending fibre coverage to end users with FTTH GPON or Point to Point architectures. This is without prejudice of the regulatory obligations regarding access to the *bitstream* services and unbundling. All new ducting installed will be sufficiently large to host multiple operators. The selected operator will have to offer wholesale services to all the operators at market prices as well as on fair, reasonable and non-discriminatory conditions during the entire duration of the contract and for a minimum of 10 years.
- (32) **Wholesale price benchmarking:** The National Regulatory Authority (NRA) will ensure that the wholesale access pricing in the subsidized network is reasonable, and the pricing criteria will be updated in line with any future requirements issued by the NRA. The selected operator has an obligation to prove that the price charged for a wholesale access or service is reasonable and non – discriminatory. In practice, the reasonable price of a wholesale access

---

<sup>7</sup> CVA has rolled out a project which through the use of existing and new infrastructure will create a computer network connecting most of the hydropower stations and management facilities. After approval of the blueprint for the NGN network in July 2009, the regional government signed an agreement with CVA for the joint laying of optical fibre cables. Under this agreement CVA, when laying its network, will also put in place additional infrastructure for use by the VDA BroadBusiness project.

product or service should not exceed a cost – oriented price. The NRA and the granting authority will monitor and approve the pricing of broadband services.

- (33) **Monitoring and claw – back mechanism:** The authorities of the Region of Valle d'Aosta will ensure the monitoring of the implementation of the measure. An company fully-owned by the Region INVA spa will be created and delegated to carry out the planned strategy, check and monitor the activities of the various network services providers and innovate and develop the network in line with the strategic objectives and the technological developments of the telecom sector. Correct management of the infrastructure will be monitored by a Joint Oversight Committee, established in accordance with the provisions of the tender specifications. The Committee will comprise representatives of the selected operator and of the Region of Valle d'Aosta which shall appoint the chair and have the majority of the seats. The Joint Committee shall monitor fulfilment of contractual obligations and sustained compliance with the service levels offered by the Manager in the tender. These checks may also include random inspections and on-site checks.
- (34) A reverse payment mechanism will be included in the contract with the appointed supplier to address over-compensation if demand grows beyond anticipated levels. On an annual basis operators will have to send a summary report on all overall revenue and costs items related to the operating contract, in order to monitor the financial trend. Based on these annual reports, there is a recovery mechanism for cases in which operating activities give rise to a gross operating margin (EBITDA, which is total revenue less operating expenses, excluding depreciation, financial charges and taxes) of over 30% the operator must reimburse the excess margins<sup>8</sup>, to the Region in cash, on the basis of procedures to be approved by the Joint Committee.

#### **IV. ASSESSMENT OF THE MEASURE: PRESENCE OF THE 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.

---

<sup>8</sup> All margins achieved in excess of the maximum indicated EBITDA rate must be relegated, according to the following summary equation:  $Return\ margin = Actual\ EBITDA - Max\ EBITD$ ; where  $Max\ EBITDA = 30\%$  and where  $EBITDA$  is the gross operating margin (Earning Before Interests, Taxes, Depreciations and Amortizations), defined as follows:  $Actual\ EBITDA = 1 - [(CV + CF)/RT]$ .  $VC$  = Variable operating costs;  $FC$  = Fixed operating costs;  $TR$  = Total revenue. Entries for depreciation, financial expenses and taxes are excluded from the fixed and variable costs.



#### **IV.1. State resources**

- (36) The notified measure is financed by resources of the Region of Valle d' Aosta and possibly by EU funds, which qualify as state resources once they come under the control of a Member State<sup>9</sup>. Hence State resources are involved.

#### **IV.2. Economic advantage**

- (37) *Selected operator:* Through the tender process, the selected operator will receive financial support which will enable it to enter the market and provide very high speed broadband services on conditions not otherwise available on the market. The selected operator will also acquire intangible assets with State funds (e.g. customer relations) even after the lifetime of the project. 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 very high speed 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 operator.

#### **IV.3. Selectivity**

- (39) State measures supporting the deployment of broadband networks are selective in nature in that they target broadband investors and third party operators which are active only in certain segments of the overall electronic communications services market. The measure is furthermore limited to one particular region in Italy.

#### **IV.4. Distortion of competition**

- (40) According to case law of the Court of Justice of the European Union<sup>10</sup>, financial support or support in kind distorts competition in so far as it strengthens the position of an undertaking compared with other undertakings. 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. The intervention of the State alters the existing market conditions by allowing the provision of improved broadband services by the selected electronic communication operator and, potentially, third party providers. Furthermore, the measure will alter the conditions of competition between end users who are likely to subscribe to the very high speed broadband services in the targeted areas and end users elsewhere in Italy and the EU. Therefore, the fact that an improved broadband service becomes available has the effect of distorting competition.

---

<sup>9</sup> See for instance Commission decision in case N157/2006 South Yorkshire Digital Region Broadband Project, - United Kingdom. JOCE C/80/2007.

<sup>10</sup> See for instance Case C-310/99, Italian Republic v Commission [2002] ECR-I-02289, paragraph 65.

#### **IV.5. Effect on Trade**

- (41) 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 end users located in Italy (specifically in the region of Valle d'Aosta) and elsewhere in the European Union.

#### **IV.6. Conclusion**

- (42) Having established that the project involves aid within the meaning of 107 (1) TFEU, it is necessary to consider whether the measure can be found to be compatible with the internal market.

### **V. ASSESSMENT OF THE MEASURE: COMPATIBILITY**

- (43) 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*<sup>11</sup>. 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.

#### **V.1. The balancing test and its application to aid for the broadband network deployment**

- (44) 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<sup>12</sup>:
- (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?

---

<sup>11</sup> For reference, see paragraph 31 of the Broadband Guidelines.

<sup>12</sup> See paragraph 35 of the Broadband Guidelines.

- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

## V.2. Objective of the measure

*The aid is in line with the policy of the Union*

- (45) **The Digital Agenda for Europe:** The aid is oriented towards the goals set up by the European policy in the telecommunications sector, which recognises that broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and to social and territorial cohesion. The Europe 2020 Strategy (EU2020) underlines the importance of broadband deployment as part of the EU's growth strategy for the coming decade and sets ambitious targets for broadband development. The achievement of EU2020 objective of a smart, sustainable and inclusive growth depends also on the provision of widespread and affordable access to high speed internet infrastructure and services. One of its flagship initiatives, the Digital Agenda for Europe (DAE)<sup>13</sup> acknowledges the socio-economic benefits of broadband, highlighting its importance for competitiveness, social inclusion and employment. Meeting the challenge of financing a good quality and affordable broadband infrastructure is a crucial factor for Europe to increase its competitiveness and innovation, provide job opportunities for young people, prevent de-location of economic activity and attract inward investments. Therefore the DAE restates the objective of the EU2020 that sets the following targets for broadband development in Europe: to (i) bring basic broadband to all Europeans by 2013 and by 2020, (ii) all Europeans have access to much higher internet speeds of above 30 Mbps and (iii) 50% or more of European households subscribe to internet connections above 100 Mbps.
- (46) The current measure aims at encouraging to extend NGA coverage in "*white NGA area*", where no NGA broadband is currently available and there are no plans by private investors to roll out such infrastructure in the near future. Concerning the WiFi access points at the premises of the public administration, they constitute a service to the benefit of the public authority, hence not subject to the present authorisation. The possible spill-overs due to their accessibility by residents and tourists on or near the public administration sites are negligible thanks to the authentication process and limited connectivity time and volumes. 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*

- (47) Due to the difficult topography of the region, and in the light of the results of the consultation that show that the private operators have no plans or intentions to invest because of low demand and lack of economies of scale and scope, the Italian government sees no alternative but to grant public aid to the

---

<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the Social Committee and the Committee of the Regions, COM (2010) 245 final *A Digital Agenda for Europe*.

construction of NGA networks in the whole territory of the Region of Valle d' Aosta in order to ensure the supply of high speed broadband services to all citizens.

- (48) The Commission can agree that without further public intervention, avoiding the emergence of a new "digital divide" between rural and urban areas 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*

- (49) Regarding the incentive effect of the measure, the Broadband Guidelines set out in paragraph 50 that it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. The market analysis and the public consultation ensure that in the targeted areas no comparable investment would take place without public funding in the near future of three years, hence the aid produces a change in the investment decisions of the operators. Its result, therefore, will be to attract to targeted low-density and sparsely populated areas, additional investments by undertakings active in a number of 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.

### **V.3. Design of the measure and the need to limit distortions of competition**

- (50) 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 necessary conditions has to be met in order to minimise the State aid involved and the potential distortions of competition:

*a) Detailed mapping and consultation:* 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 existing operators and updating the targeted areas accordingly and by consulting the NRA, the authorities will ensure that public funds are used in the whole region that is considered "white NGA area". As for the access network, the Italian authorities will in addition ensure that the public funds will be used only in areas that qualify as "white or grey basic broadband areas".

*b) Open tender process:* The Italian authorities will select the undertakings for the construction and the management of the transport network in an open, non-discriminatory and competitive tender procedure. This procedure has the effect of maximising the effect of the aid provided while minimizing any potential advantage granted for the selected operator.

*c) Most economically advantageous offer:* Within the context of an open tender procedure, the Italian authorities will select the most economically

advantageous offers among those presented by the operators. Under the terms of the competitive tender process, the bidder with the lowest amount of aid requested will receive more points within the overall assessment of the bid. In line with footnote 55 of the Broadband Guidelines, for the purposes of determining the most economically advantageous offer, the awarding authority specified in advance the relative weighting which it gave to each of the (qualitative) criteria chosen as described in paragraph (27).

*d) Technological neutrality:* As explained above in paragraphs (28) and (29), the design of the network requires a certain level of service and speed. At the moment, the types of technologies able to deliver such results are limited, given the current state of technological development. Therefore, the choice of the optical fibre appears justified on the basis of the objectives that the measure is supposed to fulfil. Moreover, all telecommunication operators, regardless of the technology employed, will be allowed to connect to fibre backhauls. Therefore, the measure will enable several alternative platforms (such as fixed, wireless and mobile solutions) to use the publicly funded infrastructure.

*e) Use of existing infrastructures:* To avoid unnecessary and wasteful duplication of resources, the Italian authorities encourage the use of existing infrastructure. In this way the bidders are encouraged to have recourse to any available existing infrastructure in the area so as to avoid unnecessary and wasteful duplication of resources and to lower the aid amount necessary. The amount of State aid will be reduced by additional administrative measures, including the coordination of civil works as explained in paragraph (30).

*f) Wholesale access:* The selected operator will have to offer other operators access to the active and passive network elements or to the capacity of the network in an open, transparent and non-discriminatory manner. The wholesale service to be provided will include the optical fibre backhaul service both for the fixed network exchanges and for the base radio stations of the mobile network. Access obligations must be guaranteed for the duration of the management contract, i.e. for 10 years. In order to clearly identify the applicable access conditions, reference will have to be made to the standard conditions applied in other Italian regions where the stated services are already offered or with reference to any conditions established or approved by the NRA. The wholesale access, in particular with the additional safeguard that the wholesale service provider will not provide retail services (unless separation of accounting systems for both activities is implemented), will enable third party operators to compete with differentiated broadband services to the consumers, thereby strengthening choice and competition in the areas concerned by the measure while at the same time avoiding the creation of regional service monopolies. In the case of laying fibre to the vicinity of the cabinets, the sub-loop unbundling will be guaranteed so that any operator requesting the access at this level could have it.

*g) Benchmarking pricing exercise:* In order to ensure effective wholesale access and to minimise potential distortion of competition, access wholesale prices will be based on the average published (regulated) wholesale prices that prevail in other comparable, more competitive areas of the country and the EU. Wholesale prices on the subsidized network will be monitored and

approved by the granting authority (as specified in paragraph (32)) together with NRA with the objective to keep these at a reasonable and non-discriminatory level.

*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 any extra profit generated through the operation of the networks will be clawed back, as explained in paragraph (33). By ensuring that any extra profit generated through the operation of the networks will be clawed back<sup>14</sup>, 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<sup>15</sup>.

(51) The measure aims to support the deployment of an NGA network in "white NGA areas", where however basic broadband services may already be provided. As far as "black basic broadband areas" (more than one broadband network providers are present) are concerned, parts of the territory of Valle d'Aosta that qualify as such are excluded from the scheme. As for the "basic broadband grey areas", further conditions shall be met as laid down in paragraph 73 of the Broadband Guidelines. In this respect, the Italian authorities proved that:

(a) 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 the consultation exercise has shown that commercial operators have absolutely no plans or intentions to invest and do not have sufficient commercial incentives to upgrade the existing networks;

(b) due to the geographic characteristics of the territory<sup>16</sup>, the current coverage of traditional broadband makes it entirely impossible to provide mobile ultra – broadband services supporting the local economy, which is one of the project's main goals for the benefit of the business users, tourists and residents;

(c) there are no less distortive means (including *ex ante* regulation) to reach the above –mentioned goals.

(52) Concerning the conditions laid down in paragraph (79) of the Broadband Guidelines, the Italian authorities proved that the following conditions are met:

(a) Effective wholesale access: Under the measure the access obligations imposed on the selected operator include access to both passive and active infrastructure for at least 10 years without prejudice to any regulatory obligations that may be imposed by the NRA.

---

<sup>14</sup> The claw –back clause is applied to all cases except the case when an operator receives aid through this measure under EUR 1 million. Such a threshold was also accepted in the Commission decision N388/2009 High-speed broadband pilot projects in Finland. The cumulative effect of the aid is taken into account so that if an operator receives smaller amounts of aid through several projects of the measure, the claw back will be applied to all of these projects if the cumulative sum of the aid is over EUR 1 million.

<sup>15</sup> See paragraph 51 (h) of the Broadband Guidelines.

<sup>16</sup> See paragraph (4).

(b) Consultation of the NRA: In the case at hand the NRA has been consulted in setting conditions for the wholesale network access and will be supervising the compliance of the selected operator with the wholesale access obligations.

(c) Effective and full unbundling: The type of NGA network architecture that will benefit from State aid will support effective and full unbundling – including sub-loop unbundling where appropriate - and satisfy all different types of network access that operators may seek (particularly access to ducts, fibre and bitstream).

#### **V.4. Conclusion**

(53) 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) TFEU.

### **VI. DECISION**

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure "Next generation broadband in Valle d'Aosta" is compatible with Article 107(3)(c) TFEU.

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/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
Rue Joseph II 70 / Jozef II straat 70  
B-1049 Brussels

Fax No: +32 2 29 61242

Yours faithfully,

For the Commission

*Joaquín ALMUNIA*  
Vice-President