



EUROPEAN COMMISSION

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Brussels, 22/09/2006

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION

WORKING LANGUAGE

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Subject: **N 222/2006 - Italy**
 Aid to bridge the digital divide in Sardinia

I. PROCEDURE

- (1) By letter dated 2 April 2006, registered on 4 April 2006, pursuant to Article 88 (3) of the EC Treaty, the Italian authorities notified the planned aid measure to the Commission. By letter of 17 May 2006, the Commission requested additional information on the proposed measure, which the Italian authorities provided by letter dated 8 June 2006. On 13 July 2006, a meeting between the Italian authorities and the Commission took place, following which the Italian authorities provided further information, which was sent by letter dated 28 July 2006. The Commission sent a further request of information on 4 August 2006, to which the Italian authorities responded by letter dated 11 September 2006 and by letters dated 13 and 25 October 2006.

II. CONTEXT

- (2) Broadband connectivity¹ is a key component for the development of knowledge-based global, national, regional and local economies and the development, adoption and usage of information and communication technologies. Broadband is of strategic importance because of its ability to

¹ Broadband services can be delivered using various combinations of communications network technologies ("platforms"). Technologies can feature either fixed or radio based transmission infrastructure, and they can substitute or complement each other according to the individual situation. Current mass-market broadband services have generally download speeds starting from 512Kbit/s/ - 1Mbit/s. For business users, much higher speeds are needed.

accelerate the contribution of these technologies to economic growth in all sectors, to enhance social development and to facilitate innovation.

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- (3) However, with regard to Italy, despite the fact that the digital communication market is rapidly growing, some regions are characterised by a concrete risk of “digital divide”, mainly due to lack of interest of operators in bringing broadband connectivity in those areas where the low density of population and industrial concentration does not allow exceeding the profit threshold.
- (4) According to the Italian authorities, this situation is very clear in the case of Sardinia, where the lack of availability of broadband increases the economic disadvantages of many areas of the island, especially inland, while access to modern technologies represents one of the key factors to overcome depopulation in these areas.
- (5) More precisely, from data available from Telecom Italia, which is the main source of data on broadband coverage in Sardinia, it appears that at the end of 2005, 26.5% of the Sardinian communes, but 79% of lines had access to ADSL. It means that ADSL is mostly available to the communes with the highest level of density. At the present time, 66.3% of the Sardinian population has access to ADSL.
- (6) In order to address this problem of digital divide, the Italian authorities have identified two types of situations that characterize the areas which still do not have access to broadband. They draw a distinction between communes that are served by local exchanges that are connected to optic fibre infrastructure and communes that are served by local exchanges with no optic fibre connections.
- (7) ADSL technology can provide broadband over the “last mile”. However, without the necessary optic fibre infrastructure, broadband connection between the local exchange and the backbone would not be possible. This optic fibre infrastructure is therefore an essential, but not sufficient condition for broadband to be provided: local exchanges must also be equipped with specific equipments in order to provide ADSL.
- (8) In the area covered by local exchanges that are already connected by optic fibres to the backbone, the Italian authorities have come to the conclusion that investments for the activation of ADSL services is, in the short and medium term, the most efficient intervention, given the standards and technology already in use, the short period of implementation and reduced costs involved. Therefore, for these areas, public intervention could be limited to the investments necessary for an upgrade of the local exchanges which would enable them to provide ADSL services. This public intervention is supposed to overcome the digital divide for up to 130 communes. This measure is the object of the present notification.

- (9) With respect to communes that are served by local exchanges with no optic fibre infrastructure, the Italian authorities are considering several types of intervention. One type of intervention would involve the connection of these local exchanges with optic fibre infrastructure. In some areas, the use of wireless technology is also considered. However, these measures are not the object of the present notification.

III. DESCRIPTION OF THE MEASURE

- (10) The objective of this measure is to increase access to broadband in Sardinia.
- (11) *Legal basis:* The measure is based on the deliberations of the regional assembly of Sardinia N° 50/2 of 30.11.2004, 50/15 of 22.11.2005 and 62/65 of 27.12.2005.
- (12) *Target areas:* The measure is specifically targeted at the activation of broadband connection services in areas of Sardinia that are served by local exchanges fulfilling a certain number of characteristics:
- a) they do not provide ADSL connection yet,
 - b) they are not equipped with the necessary equipment and technology that is necessary to provide ADSL connection,
 - c) they are already equipped with the necessary infrastructure to ensure connection to the backbone,²
 - d) They should not be amongst the local exchanges for which ADSL activation has been foreseen in the operator's 2005 investment plan but postponed for one reason or another up until 2007,
 - e) They are not amongst the local exchanges which according to the investment plan of the operator, would have benefited from the ADSL activation in 2006, even without the aid.
- (13) *Technology:* The Italian authorities did specify the technology to be used in the invitation to tender since they required the upgrade of local exchanges with optic fibre infrastructure so that they can provide ADSL services. The Italian authorities provided a report concluding that the ADSL technology was the most appropriate technology to be used: since the intervention is focussed upon areas covered by local exchanges with optic fibre infrastructure, the ADSL technology maximises the use of existing technology. It is a mature and secure technology. In comparison with other broadband technologies, it minimises the rolling out period. Finally, given the amount of public resources available, an intervention aiming at upgrading local exchanges with optic fibre infrastructure to ADSL connectivity would maximise the area of coverage of broadband services.

² The technical specifications annexed to the tender included a list of the local exchanges connected to the network with optic fibre but not providing ADSL service yet.

The report also indicates that the other technologies are less convenient:

- a) As regards *wireless licensed technologies* (UMTS, HSDPA, HSUPA), their deployment will take much more time than ADSL, especially in areas of low density of population. Furthermore, the limited availability of spectrum will not allow a wide use of this technology for fixed access to broadband.³
 - b) As regards *wireless unlicensed technologies*, the report notes that this technology was initially planned to be used indoor and it is limited in terms of coverage (a few hundred meters). Therefore, the use of this technology in order to provide wide access to broadband services could only be done by building a large number of access points, at a necessarily high cost.
 - c) *Satellite based solutions* imply the use of a satellite dish by the final user, which has a very high cost and therefore is not suitable for mass use. The costs of provision of broadband services via satellite by the operators are also very high.
 - d) *Solutions based on existing infrastructure* were also rejected. Technologies using power lines or gas network are not mature enough, while the absence of a cable TV network (CaTV) meant that the solution Cable Modem was not available.
- (14) *Procurement and selection of the beneficiary*: As already explained, the Italian authorities used a public tender in December 2005 in order to select the beneficiary of the aid. In the absence of any expression of interest, the Italian authorities used the negotiated procedure, in accordance with Article 7 (2) a) of the Legislative Decree n° 157 of 1995. The Italian authorities invited the three telecommunication operators that are present in Sardinia to present their offers, that is:
- a) Telecom Italia S.p.a. (“Telecom Italia”). It has more than 600.000 lines, 477.400 of which have access to ADSL, and the largest network infrastructure, with 484 local exchanges, of which 300 are connected with optic fibre and 118 can provide ADSL services.
 - b) Tiscali S.p.a. (“Tiscali”), which is completing its ADSL network, using 53 local exchanges, of which only two are distinct from those of Telecom Italia
 - c) Wind, which only owns infrastructure in the largest towns, and whose network concerns areas that are already covered by Telecom Italia’s infrastructure.

Only Telecom Italia and Tiscali presented an offer. Telecom Italia’s offer proposed to upgrade [100-120] local exchanges in total ([10-20] autonomously, and [90-100] by using the aid to be granted by the Italian

³ Thus, in Italy, licences for the use of LMDS systems have been issued for the spectrum around 26 GHz. In these frequencies, wireless licensed systems are subject to significant limitations, such as the necessity of putting the base station and the terminals prominent, and the limited coverage that it can achieve.

authorities), which would have permitted the connection of [60000-70000] lines. Tiscali only offered to upgrade [30-50] local exchanges, which would have permitted the connection of [30000-40000] lines. Therefore, Telecom Italia's offer was retained as the best. Following negotiations between the Italian authorities and Telecom Italia, its offer was further improved: it agreed to upgrade [130-150] local exchanges in total, [10-20] autonomously and [120-140] thanks to the aid. This represents a connexion of a total of [60000-70000] lines.

According to the Italian authorities, although the local exchanges that are the object of the intervention and the optic fibre that connects them are owned by Telecom Italia, the other telecom operators ("OLOs") were in a position to take part in the tender and the negotiated procedure. Because of its status as operator with significant market power and of the national legislation applicable in the field of telecommunications, Telecom Italia is under an obligation to provide to other telecommunication operators the services and infrastructure that are necessary to replicate its own offer, in non-discriminatory conditions. Therefore, the OLOs have the possibility to acquire the housing and facility management services in Telecom Italia's exchanges in order to place their own ADSL connexion equipment (DSLAM). Furthermore, in order to ensure the connection of this equipment to their own backbone, the OLOs can avail themselves of Telecom Italia's wholesale services of broadband connection, or acquire the indefeasible rights of use (IRU) of a pair of optic fibres from the incumbent. Once the local exchange is connected, the OLOs can request the local loop unbundling for its own clients, or, in the alternative, the shared access, which gives it access to the frequency spectre used by ADSL technology on the line in question. The prices for the wholesale services provided by Telecom Italia are approved on a yearly basis by the Italian telecommunication operator, which guarantees that these prices are effectively based on the costs actually incurred by the operator. The Italian authorities underline that in Sardinia, various OLOs, such as Tiscali, Wind and Fastweb, have used these services in order to develop their own networks.

- (15) *Aid limited to market deficit:* According to the tender, the operator had to provide a financial plan indicating the investments costs, as well as the anticipated operating costs and revenues.⁴ This financial plan had to identify the amount of aid necessary for a break even to be reached within 36 months from the date of completion of the intervention.

The final offer presented by Telecom Italia indicated the following data:

- Capex: [7000000-8000000] €
- Opex: [3000000-4000000] €
- Receipts: [5000000-6000000] €

⁴ Investment costs could include design costs, civil works, adjustment of the cabling and supply systems, setting up of the site (distribution frame, security, shelter, access to the site, equipment for access and backhauling connectivity), installation and activation. Operating costs could include rent, energy costs, maintenance, and provision of services. Revenues were calculated on the basis of the anticipations of potential customers (consumers, business, wholesale...).

– Aid: 6.100.000 €

In the final offer, the Italian authorities agreed to consider a pay back time of 40 months.

- (16) *Aid intensity:* According to the specification of the tender, the total aid should not cover more than 40% of the investment. However, following the lack of offers, the Italian authorities dropped that requirement. In the final offer presented by Telecom Italia, the aid represents [60-80] % of the investments costs and [40-60] % of the total costs of the project.
- (17) *Infrastructure:* The local exchanges that are the object of the intervention and the optic fibre that connects them are already owned by Telecom Italia. Any equipment or infrastructure that will be subsidised under the notified aid measure in order to upgrade these local exchanges and allow them to provide ADSL services will be owned by Telecom Italia.
- (18) *Wholesale and retail offer:* According to point 6 of the technical specification annexed to the tender, Telecom Italia will have to provide ADSL services to final users based upon the national market's average standards. Telecom Italia will also have to provide an ADSL wholesale service on equal on non-discriminatory conditions that will enable all licensed operators that request it to replicate all Telecom Italia's retail offers. In particular, wholesale and retail prices will be aligned on national prices.
- (19) *Budget and funding instrument:* The total amount of the aid will be 6.1 million € Public funds will be paid to Telecom Italia in the form of a grant. 50% of this grant comes from the budget of the Region of Sardinia. The remaining 50% come from funds attributed to the Region of Sardinia by the State in application of the deliberation of the Inter-ministerial Committee for Economic Planning n° 17/2003.
- (20) *Duration of the measure:* The grant will be provided in tranches: 10% on the presentation of the final work plan by Telecom Italia, 80% in quarterly tranches, in proportion of the increase in the number of lines connected to ADSL, and the remaining 10% if the final inspection is positive. The Italian authorities initially requested that the plan, and therefore the complete disbursement of the aid, be completed within 18 months from the signing of the contract. Telecom Italia committed itself to complete the plan within 16 months.
- (21) *Monitoring:* According to Article 36 of the Tender Specifications, Telecom Italia will have to prepare specific accounts showing the costs and receipts deriving from the implementation of the project, so that the Italian authorities can verify whether the actual costs and receipts match the anticipation made in the financial plan. This monitoring will take place over a period of 36 months following the final testing of the infrastructure. In case this monitoring reveals a smaller "market failure" than initially expected, Telecom Italia will have to repay a proportional part of the grant. In case of a higher "market failure" than expected, it will not be able to claim further public funding.

- (22) *Existence of possible previous incompatible aid:* The authorities of the region of Sardinia indicated that Telecom Italia had received aid under the aid measure n° C 49/1998 Aid granted by Italy to promote employment (Articles 15 and 26 of Law n° 196/97). In its decision of 11 May 1999,⁵ the Commission concluded that individual aid granted on the basis of that scheme that did not fulfil the conditions laid down in Article 1(1) and Article 2(1) of the decision were incompatible and had to be reimbursed.
- (23) The regional authorities of Sardinia have not yet been able to obtain from the Italian central government the confirmation that the individual aid received by Telecom Italia under the scheme n° C 49/1998 fulfils these criteria and is compatible. However, they provided a commitment that, before granting the notified aid, they will provide a calculation, with evidence, showing that the aid provided to Telecom Italia under the scheme n° C 49/1998 is compatible or, if it is incompatible, how much incompatible aid Telecom Italia has received. In that case, the calculation will also establish how much interest on this amount is due according to the Commission decision on case n° C 49/1998. After the Commission has examined this calculation and informed the Italian authorities that it is correct, the Italian authorities committed themselves not to pay out the notified aid before the previous incompatible aid is paid back by Telecom Italia or put on a blocked account. Evidence of the repayment or of the payment on the blocked bank account will be provided to the Commission. The unblocking of the bank account will only be done in conformity with the EC State aid rules. .

IV. STATE AID ASSESSMENT OF THE MEASURE

- (24) According to the EC Treaty and consolidated case-law there is State aid within the meaning of Article 87(1) when:
- there is an intervention by the State or through State resources;
 - it confers an economic advantage on the recipient;
 - it distorts or threatens to distort competition;
 - the intervention is liable to affect trade between Member States.

State resources

- (25) The aid is provided by the Region of Sardinia and the Italian State, and therefore through State resources.

Economic advantage

- (26) *Telecom Italia:* Telecom Italia will receive a grant in order to update its local exchanges with optic fibre infrastructure so that they can provide ADSL services. This State intervention will therefore enable the operator to provide retail and wholesale services in the areas covered by these exchanges on

⁵ C (1999) 1364. OJEC L 42/2000, p. 1.

conditions not otherwise available on the market. It is very likely that this grant will allow Telecom Italia to offer such services at lower prices than it would have been able to offer had it had to bear all the costs itself and as a consequence, it will be able to attract more customers than under normal conditions.

- (27) *Third party operators:* In the areas covered by this intervention, there is no ADSL infrastructure, and therefore no broadband wholesale offer at all, which prevents market entry of third parties such as services providers without their own infrastructure. Therefore third party providers of broadband services using wholesale access to the infrastructure that is the object of the intervention might also receive an economic advantage.
- (28) *End users:* The objective of the measure is to provide broadband services to residential users and businesses at conditions which are currently not available in the target areas. Whereas residential users are not subject to State aid rules, businesses in the targeted areas will benefit from service coverage beyond and prices below what would be provided on a purely commercial basis, like satellite connections.

Distortion of competition and selectivity

- (29) The State intervention alters the existing market conditions by allowing the provision of broadband services by Telecom Italia and, potentially, by other third party providers in the targeted areas. Residential users and undertakings are likely to subscribe to the services provided by these suppliers instead of more expensive market-based solutions such as satellite.
- (30) This intervention is also selective since it is directed at undertakings active only in certain regions or in certain markets for electronic communication services.

Effect on trade

- (31) Insofar as the intervention is liable to affect providers of electronic communications services and service providers 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.

Conclusion

- (32) In view of the above, the Commission considers that the notified measure grants an economic advantage to Telecom Italia, third party providers and final users that exercise an economic activity. The project is publicly funded, distorts competition and has an effect on trade between Member States. Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 87 (1) of the EC Treaty.

- (33) Having established that the project involves aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the measure can be found to be compatible with the common market.

V. COMPATIBILITY ASSESSMENT

- (34) The Commission notes that the project aims to ensure the availability of ADSL services in certain areas of Sardinia and, as such, does not fall under one of the existing frameworks and guidelines. It should be noted that the areas covered by the project are located within Art. 87 (3) (a) areas within the meaning of the Regional Aid Guidelines.⁶ However, while the aid may qualify as aid for initial investment within the meaning of those guidelines in so far as it benefits Telecom Italia, the same cannot be said in respect of its impact on the end users and resellers, for whom the benefit is not linked to any initial investment. Moreover, the principal aim of this measure is to provide broadband in a certain region, and not regional development as such.

- (35) The Commission therefore considers that the assessment of the compatibility of the measure with the common market needs to be based directly on Article 87(3)(c) of the EC Treaty⁷ which states that:

“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”

may be considered to be compatible with the common market.

- (36) In order to be compatible under article 87(3)(c) an aid must pursue an objective of common interest in a necessary and proportionate way. In particular, the measure shall be assessed with respect to the following questions:

- (1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
- (2) Is the aid well designed to deliver the objective of common interest, i.e. does the proposed aid address a market failure or other objective? In particular:
 - (a) Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?

⁶ OJ 1998 C 74, p.9.

⁷ This approach was also followed by the Commission in other cases, see for instance: State aid decisions for the UK: N126/04 “Broadband for SMEs in Lincolnshire” of 14.12.2004, N199/04 “Broadband business fund” of 16.11.2004, N307/04 “Broadband in Scotland – remote and rural areas” of 16.11.2004 (See: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/).

- (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

5.1. The support of broadband rollout is in line with the common interest

5.1.1 *Community policy*

- (37) As outlined in its Communication “i2010 – A European Information Society for growth and employment”⁸, the Commission actively supports the widespread availability of broadband services. There is clear evidence of the regional economic development benefits resulting from greater broadband deployment, including job creation and retention as well as improved health and education services. In order to achieve better broadband coverage and take-up, the Commission encourages Member States to put comprehensive national broadband strategies in place.⁹ The measure at hand forms an important part of the Sardinian broadband strategy. By improving broadband access for citizens and businesses in disadvantaged areas of Sardinia, the measure helps achieving greater cohesion and is therefore in line with the common interest.

5.1.2 *Cohesion objective and market failure considerations*

- (38) Lack of broadband coverage is due, among others, to the typical economic problems associated with network industries. Due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs, unit costs escalate dramatically as population densities drop.
- (39) In areas where demand is not very developed, private operators might find it difficult to find a source of funding for broadband infrastructure and equipment, which has a long life and amortisation period. As a consequence many areas of Sardinia do not have access to broadband services.
- (40) Hence, by providing financial support for the upgrade of local exchanges that are not presently equipped to provide ADSL services, and which are generally located in the inland and remote parts of Sardinia, the Italian authorities pursue genuine cohesion and economic development objectives. Public intervention can be justified to support broadband roll-out in these areas.

5.2. Well-designed aid

⁸ COM(2005)229 final, 1 June 2005.

⁹ Commission Communication COM(2004) 369 of 12.05.2004, “Connecting Europe at High Speed – National Broadband Strategies”.

5.2.1 *Is aid the appropriate instrument?*

- (41) On the supply side, tariff and access regulation imposed by the telecommunication regulator is another instrument of state intervention. Indeed, regulation has led to the availability of a number of (broadband) wholesale products and prices have been decreasing over the past years. However, while regulation is a necessary but not sufficient instrument to enable the supply of broadband in rural and remote areas, it does not appear to be a solution in areas where, as in the present case, the infrastructure of the incumbent itself, Telecom Italia, cannot provide ADSL connectivity.
- (42) Demand-side measures in favour of broadband (such as vouchers or tax breaks) could be another instrument. However, these measures do not solve the illustrated problems on the supply side.
- (43) On balance, in view of the situation of broadband infrastructure in Sardinia, the Commission concludes that a grant towards the costs of upgrading local exchanges already connected with optic fibre is an appropriate instrument to achieve the set objectives.

5.2.2 *Is the aid providing the right incentives to operators?*

- (44) The Italian authorities were aiming at upgrading about 120-130 exchanges. In its final offer, Telecom Italia agreed to upgrade [130-150] exchanges, [10-20] autonomously and [120-140] thanks to the aid. Furthermore, the local exchanges that will benefit from the aid are defined as those which Telecom Italia would not have upgraded without the aid.¹⁰ Therefore, the grant has been the right incentive to upgrade the local exchanges that needed it.

5.2.3 *Proportionality*

- (45) The Italian authorities have designed the measure in such a way as to maximise the effects of the State aid involved and minimise potential distortions of competition arising from the measure. In this respect, the Commission notes, inter alia, the following positive elements in the overall design of the measure:
 - (a) *Open tender and negotiated procedure:* the Italian authorities used an open tender in order to select the telecommunication operator that would upgrade the targeted exchanges. The Commission notes that no offer was submitted, but that the negotiated procedure that followed allowed the main operators established in Sardinia, i.e. Telecom Italia, Wind and Tiscali, to submit their offers. Telecom Italia and Tiscali did. Telecom Italia's offer was the best, and was substantially improved, which enabled the Italian authorities to increase the number of local exchanges that Telecom Italia agreed to upgrade for the same amount of aid. Therefore, the use of this procedure has enabled the Italian authorities to maximise the effect of the aid.

¹⁰ See definition of eligible local exchanges at par. 12 of the present decision.

- (b) *Minimizing effects on existing infrastructure providers and operators:* The Italian authorities underlined that the operator is invited to use existing infrastructure, whether its owned or leased one. Furthermore, the intervention is precisely focussed on local exchanges which are already connected with optic fibre, which means that this intervention will have a minimal impact on existing infrastructure.
- (c) *Limited aid amount:* Telecom Italia will have to contribute [20-30] % of the investment costs of the project and [40-50] % of its total costs. It is also to be noted that the targeted exchanges do not include those that Telecom Italia would have upgraded even in the absence of any State intervention.
- (d) *Technology neutrality:* Although the measure is not technologically neutral, the Italian authorities have explained in the above mentioned report the reasons why the ADSL technology was chosen as the most appropriate technology to be used for the project in question. Given the topography of the region, the absence of cable networks and the need to maximise the benefits of the aid, the Commission considers, in view of these specific circumstances, the ADSL technology appears to be the appropriate technology delivering the objectives of the project in question.
- (e) *Wholesale access:* The Italian authorities confirmed that Telecom Italia will also have to provide an ADSL wholesale service that will enable to replicate all its retail offers, on equal on non-discriminatory conditions, to all licensed operators that request.
- (f) *Minimisation of price distortion:* The Italian authorities confirmed that both wholesale and retail prices will be aligned on national price lists, as set by the national regulator, which will minimise price distortion.
- (g) *Monitoring and clawback mechanism:* The Italian authorities have also confirmed that they will verify whether the actual costs and receipts match the anticipation made in the financial plan and that in case this monitoring reveals a higher level of profit than initially expected, Telecom Italia will have to repay a proportional part of the grant.

5.3. Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

- (46) The Commission can conclude that the notified aid measure will offset a geographical and commercial handicap and is objectively justified to address the lack of availability of retail broadband services due to the insufficient density of potential subscribers to make delivering of broadband services economically viable on a purely market-driven basis.
- (47) In view of the characteristics of the project and of the safeguards applied by the Italian authorities, the overall impact on competition is deemed to be positive. On the effect on trade, the Commission does not identify negative spillovers for other Member States. On the contrary, the availability of an open wholesale infrastructure facilitates market entry for operators from other Member States on the Sardinian market for electronic communications.

- (48) On balance – and in view of the peculiarities of the particular market situation in the target areas – the Commission concludes that the overall effect of the measure is deemed to be positive. The intervention is designed in a way that does not distort competition or affect trading conditions to an extent contrary to the common interest.
- (49) Finally, the Commission notes that, if it appears that the aid previously received by Telecom Italia under the aid scheme n° 49/1998 is incompatible, the notified aid measure will not be granted until the previous one is recovered or put on a blocked bank account. As a result, the problem of the potential cumulative effect of the unrecovered incompatible aid with the notified aid, in application of the Deggendorf jurisprudence,¹¹ does not arise.

Conclusion

- (50) In the light of the above, the Commission has come to the conclusion that the aid involved in the notified measure is compatible with Article 87(3)(c) of the EC Treaty.

VI. DECISION

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid to bridge the digital divide in Sardinia, is compatible with Article 87(3)(c) of the EC Treaty.

The Commission reminds the Italian authorities that any modification of the notified measure has to be submitted to the Commission.

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://europa.eu.int/comm/secretariat_general/sgb/state_aids/.

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de Spa 3
B-1049 Brussels
Fax No: +32 2 2961242

Yours faithfully,

For the Commission

¹¹ Case C-355/95P, *Textilwerke Deggendorf GmbH (TWD) v. Commission* [1997] ECR I-2549, paragraphs 25-27.

Neelie KROES

Member of the Commissi

NOTICE FOR PUBLICATION IN THE OJ EEA SUPPLEMENT
(decisions not to raise any objections where the formal investigation procedure is not initiated)

Subject: N222/2006, Aid to bridge the digital divide in Sardinia

The Commission has decided not to raise any objections to this measure on the ground that the aid is compatible with the EC Treaty

(for details, see OJ C.....,, p.).

Factsheet for publication in the OJ, C series

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty Cases where the Commission raises no objections

Text with EEA relevance

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| Date of adoption of the decision | |
| Reference number of the aid | N222/06 |
| Member State | Italy |
| Region | Sardegna |
| Title (and/or name of the beneficiary) | Piano d'azione per il superamento del digital divide nella Sardegna - Telecom Italia |
| Legal basis | Deliberazione della Giunta Regionale nn 50/2 del 30/11/2004, 54/15 del 22/11/2005 e 62/65 del 27/12/2005 |
| Type of measure | Individual aid |
| Objective | Sectoral development |
| Form of aid | Direct grant |
| Budget | Annual budget: -; Overall budget: EUR 6,1 million |
| Intensity | 55% |
| Duration (period) | - |
| Economic sectors | Post and telecommunications |
| Name and address of the granting authority | Regione autonoma della Sardegna |
| Other information | |

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/index.htm