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Subject: State aid SA.41647 (2016/N) – Italy - Strategia Banda Ultralarga

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the measure "Strategia Banda Ultralarga" (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).

II. PROCEDURE

- (2) Following extensive communication with the Italian Authorities, on 10 August 2015 the Commission received a pre-notification of the scheme.
- (3) By letter dated 19 October 2015 the Commission services requested further information and clarifications from the Italian Authorities which replied on 04 November 2015.
- (4) Following various updates of the pre-notification documents, informal discussions and coordination meetings in which the Italian authorities took the opportunity to explain the scope of the measure, the measure was notified to the Commission on 29 April 2016.

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III. CONTEXT

- (5) There is widespread consensus on the crucial impact on, and benefits to, economies and societies of ubiquitous broadband connectivity: it supports business efficiencies and growth, ensures that economies can remain competitive, and enables citizens to enhance their skills and learning and to benefit from online services and offerings, including key public services.
- (6) 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. One of its flagship initiatives, the Digital Agenda for Europe ('DAE')¹, acknowledges the socio-economic benefits of broadband, highlighting its importance for competitiveness, social inclusion and employment. The achievement of the Europe 2020 objective of smart, sustainable and inclusive growth depends also on the provision of widespread and affordable access to high speed internet infrastructure and services. Meeting the challenge of financing an affordable broadband infrastructure of good quality is a crucial factor for Europe to increase its competitiveness and innovation capacity, provide job opportunities for young people, prevent de-location of economic activity and attract inward investments. Therefore the DAE restates the objective of the EU 2020 Strategy with the following targets for broadband development in Europe: (i) to bring basic broadband to all Europeans by 2013 and by 2020, (ii) for all Europeans to have access to much higher internet speeds of above 30 Mbps and (iii) for 50% or more of European households to subscribe to internet connections above 100 Mbps.
- (7) Italy lags well behind other member states in the adoption of the DAE due to various reasons, amongst others the following:
 - i. demographic distribution: only 16% of the population lives in towns with more than 250,000 inhabitants while 50% lives in villages with less than 25,000 inhabitants hence increasing the cost per household of the roll out of the network;
 - ii. wide spread presence of archaeological sites:16% of towns with more than 250,000 inhabitants have numerous archaeological sites that increase the cost of deployment of broadband infrastructure;
 - iii. Lack of cable providers;
 - iv. Low level of digital skills of the population with respect to the EU average.

¹ 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*.

- (8) In line with the objectives of the DAE, on 3 March 2015 Italy issued two documents named "*Strategia italiana per la banda ultralarga*²" (hereafter: "the strategy") and "*Strategia italiana per la crescita digitale 2014-2020*³". In these documents Italy aims to allow 85% of households and all public buildings (in particular schools and hospitals) to have access to at least 100 Mbps and the remaining part of the population to at least 30 Mbps speed. In order to pursue these objectives Italy intends to address both "white NGA areas", which are market failure areas in which there is no NGA network available and there is no interest of private operators to deploy it in the near future, and areas which are qualified as "grey NGA" (one operator present) and "black NGA" (at least two operators present). In grey and black NGA areas Italy wants to support the deployment of at least 100 Mbps.
- (9) In 2015 Italy carried out a public consultation to collect information on private investment plans for the next three years in order to evaluate how the current situation will evolve in the future.
- (10) According to the result of the consultation, in 2018 26% of the households would not be able to connect to a network with speed above 30 Mbps.
- (11) In order to achieve the above mentioned objectives, and as part of the above mentioned national strategy, Italy designed a nationwide framework scheme, consisting of carefully targeted public sector interventions.
- (12) The notified plan, as assessed here, while it remains part of the broader above mentioned strategy, only refers to white NGA areas.

IV. DESCRIPTION OF THE MEASURE

- (13) **Objective:** Purpose of the measure is to promote the deployment of a passive access infrastructure enabling the development of NGA broadband networks in white NGA areas of Italy identified as indicated in recital (31). The areas which have been classified as "white" based on the public consultation carried out in 2015 have been further divided into two clusters: C and D. All households belonging to cluster D will be covered by connections able to provide at least 30 Mbps speed while, for cluster C, 70% of the households will have access to connections with at least 100 Mbps, and the remaining 30% to connections with at least 30Mbps. The above mentioned classification of the areas as "white" can be revised following future submissions of private investment plans⁴.
- (14) **Legal basis:** the notified measure is based on "*Strategia italiana per la banda ultralarga*" (the strategy) approved on 3 March 2015 by the Consiglio dei Ministri. The strategy describes how the Italian government wants to achieve the objectives of the DAE. On 6 August 2015 the CIPE⁵ issued decision N. 65/2015⁶ assigning the public funds to pursue

² http://www.governo.it/sites/governo.it/files/strategia_banda_ultralarga.pdf

³ http://www.governo.it/sites/governo.it/files/strategia_crescita_digitale.pdf

⁴ The government reviews the map of the intervention areas on a yearly base. In any case, at any time, if a private investment plan relating to areas not yet tendered out will be communicated to the government and will be considered to be viable, the government will review the intervention areas accordingly.

⁵ The CIPE is the Interministerial Committee on Economic Programming.

the strategy in the white NGA areas subject to the approval of the Commission. On 2 March 2016 the COBUL⁷ identified the direct intervention model as the way to implement the plan. The overall amount of public funds involved remains however the same assigned by the above mentioned decision of CIPE.

- (15) **Previous state aid decisions:** decision C(2012)9833 of 18/12/2012 S.A.34199 expired and cannot be further used to finance new projects. However, all the projects already launched will continue to be valid and the government will be allowed to continue to use public funds in such context.
- (16) **Duration:** The measure should enter into force after approval by the Commission and remain in force until 31 December 2022.
- (17) **Standstill obligation:** the Italian government will refrain from using the above mentioned funds without a positive decision of the Commission on the notified plan.
- (18) **Budget and financing instruments:** The overall estimated (maximum) budget of the measure is about EUR 4 billion, funded by the DCF - Development and Cohesion Fund - with about EUR 2.2 billion⁸ and about EUR 1.8 billion mainly from EU funds (ERDF and EAFRD). The exact amount will be updated on an annual base according to the investment planned by private operators and their actual degree of implementation.
- (19) The current foreseen amount, which takes into consideration the private investment plan communicated to the government, is EUR 2,986,593,546 of which EUR 1,567,847,202 funded by the DCF, EUR 477,723,675 funded by the EAFRD, EUR 709,987,692 funded by the ERDF and EUR 231,034,978 funded by National Operational Programme on Enterprise and Competitiveness 2014-2020. For what concern EU funds, the above mentioned amounts include the national co-financing.
- (20) **National framework scheme:** the notified plan is a framework scheme encompassing all the projects at regional and local level.
- (21) To facilitate financial and operational coordination as well as coherence of the public interventions, a framework agreement was signed between the central government and the regions⁹. With this agreement the central and local authorities commit to taking joint actions in order to ensure the deployment of ultra-broadband across the country in line with the strategy.
- (22) The framework agreement provides for the distribution of the resources allocated between the white areas of the participant regions and its centralized implementation.

⁶ Official Journal N.239, 14 October 2015. The Italian authorities have communicated that on 1 May 2016 CIPE decided to amend this decision. In line with the intervention scheme notified to the Commission, the amended decision identifies the direct intervention model as the one adopted by the Italian government to implement the plan. The amended decision confirms the availability of the same amount of funds.

⁷ See recital (52)

⁸ CIPE N. 65/2015.

⁹ "Accordo quadro per lo sviluppo della banda ultralarga sul territorio nazionale verso gli obiettivi EU2020 - Framework agreement for the development of ultra-broadband on the national territory toward the EU2020 objectives" 11 February 2016.

- (23) The framework agreement will be implemented by means of bilateral agreements (accordi di programma) signed with each region. The regions signing the above mentioned agreements assign to the Ministry of economic development the EU funds (ERDF and EAFRD) for the purposes of the implementation of all the projects funded under this aid scheme, throughout its in-house company, acting as contracting authority. With regards to the management of EU funds, the regional administrations report all expenses incurred and paid by the in-house company.
- (24) The Ministry of Economic Development's in-house company will act as the only contracting authority for all the projects implemented under this aid scheme. This way the government wants to pursue cost efficiency and implementation speed.
- (25) **Intervention model:** the measure will be implemented by means of a "direct intervention model". In each intervention area one or more concessionaires will be selected through one or two separate public tenders covering (a) the construction of a passive network, and/or (b) the maintenance, management and commercial exploitation of the network.
- (26) The infrastructure deployed will remain in public ownership and will be made available at wholesale level to all service providers on non-discriminatory terms and under the technical and economic conditions defined by the Italian National Regulatory Authority, AGCOM¹⁰.
- (27) The concessionaire can be required to provide active wholesale services under the conditions indicated in recital (46). This part of the network will become public property as well.
- (28) In case the company selected to build the network uses its own or a third party existing infrastructure, the relevant right of use will become an integral part of the new publicly owned network. By doing so the Italian authorities expect to reduce the total amount of aid involved.
- (29) **Aid intensity:** the measure will cover up to 100% of the cost of the construction of the passive network and, as described below, could also cover the costs for providing active services at a wholesale level.
- (30) **Beneficiaries:** the recipient of the aid will be the companies which will win the tenders for 1) the construction, and 2) the maintenance, the management and the commercial exploitation of the subsidised network. Indirect beneficiaries will be the companies utilising the new network to offer retail services to end-users.
- (31) **Target areas:** support will be granted in white NGA areas, where currently no NGA network is in place or being deployed in the near future (three years). In these areas only basic broadband services are available based on different wireless and fixed technologies. The most widespread wireline technology is ADSL with an average nominal download speed of 7 Mbps¹¹ and an average upload speed of less than 1 Mbps. ADSL is provided using the copper pair network of the incumbent, Telecom Italia. All other operators use wholesale active services (bitstream) provided by the incumbent. The new network, providing at least 30 Mbps, will therefore outperform the current one by at least three

¹⁰ In accordance with point 42 of the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01).

¹¹ 20 Mbps are available for a limited number of end-users close to the central office of the incumbent.

times. To identify the intervention area Italy carried out a mapping exercise and has conducted a public consultation in order to assess the existence of private investment plans for the next three years. In areas that, as a result of the public consultation, will be defined as only partially white NGA areas, the public intervention will be limited to the white part of the area. Where the State aid funded network may pass through grey spots, the aid beneficiary will not make any connections to end-users located in such grey spots. Passing through such grey spots is, as confirmed by the Italian authorities, necessary in order to avoid additional costs of construction.

- (32) **Access network:** as described in recital (13), the objective of the measure is the deployment of a next generation access network. However in some cases a suitable backhauling infrastructure may be lacking which may prevent the full exploitation of the newly built access infrastructure. In such cases, it may be necessary to build also the backhauling network. The Italian government is mapping the existing backhauling infrastructure in the intervention areas in order to evaluate the magnitude of the problem. Any future intervention in this regard will be separately notified to the Commission according to article 108 of the TFEU provided that the relevant conditions apply.
- (33) **Neutral interconnection points:** Once built, the access network needs to be interconnected with a backhaul network. In fact, connecting the newly built access network directly to the backhaul network of the incumbent in the majority of cases would be the cheapest solution. However, this would favour one operator to the detriment of others. For this reason, the subsidized network will be made available for interconnection with the backhaul networks of existing operators at neutral interconnection points. A neutral interconnection point is the physical location in which the access network of a (macro) area is terminated. By connecting their backhauling networks existing in the (macro) area to the neutral interconnection point, the operators are able to use the access network to reach end-users customers. The location of such interconnection points will be such that all operators (both fixed and mobile) existing in the area have an opportunity to reach the newly built infrastructure on an equal footing. An interconnection point will be made available for each (macro) area¹² covered by the newly built NGA network. The design of the network will require balancing the need to reuse as much as possible the existing infrastructure and the need to realize a network which will allow effective access to the maximum possible number of operators on a non-discriminatory basis¹³. This will be a case by case assessment which will take into considerations the numbers of different backhauling networks in the areas as well as their distance from the nearest available infrastructure.
- (34) **Tender procedure:** the construction, maintenance, management and commercial exploitation of the network will be assigned separately or jointly to one or more companies or consortia which will be selected by means of public, transparent and non-discriminatory selection procedures in conformity with European and national public procurement rules. The tender must include the selection criteria and their respective weight in the evaluation.

¹² For the purpose of identify the neutral interconnection points, the areas may be aggregated taking into consideration economic aspects.

¹³ In the case that the deployed network passes a node of an operator, access will be granted to the latter.

- (35) In case one operator wins the tender to provide all the above mentioned activities (construction, maintenance, management and commercial exploitation of the network), it will be required to have separate accounts for each activity.
- (36) The company selected to manage and commercially exploit the network will act as a concessionaire. The duration of the concession will be 20 years and could be renewed.
- (37) ***In-House***: alternatively the public authority might decide to manage the network through a fully owned entity under the conditions foreseen in footnote 96 of 2013 Broadband Guidelines. In this case the publicly owned entity will be obliged to provide the same wholesale services prescribed in recital (46) under the same conditions.
- (38) ***Number and dimension of lots***: the measure will address all the white NGA areas of the country aggregated in lots. The number and dimension of these lots will be decided taking into account both the need to favour the maximum possible participation to the tenders and the necessity to reach economies of scale and to comply with the agreements signed with the regions which contribute to financing the scheme notably with ERDF and EAFRD funds allocated at regional level.
- (39) ***Technological neutrality***: The tender will comply with the principle of technological neutrality. It will not specify a particular technology but set out qualitative criteria including household coverage and capability to support minimum download and upload speed in view of the characteristics of the project:
- a. For cluster C:
 - (i) 70% of the households should have access to networks able to provide at least 100 Mbps download speed and at least 50 Mbps upload speed;
 - (ii) 30% of the households should have access to networks able to provide at least 30 Mbps download speed and at least 15 Mbps upload speed
 - b. cluster D:
 - (iii) 100% of the households should have access to networks able to provide at least 30 Mbps download speed and 15 Mbps upload speed
- (40) ***Most economically advantageous offer***: the tender will be awarded on the basis of the most economically advantageous offer considering both the economic and qualitative criteria.
- (41) Awarding criteria for the construction of the passive infrastructure:
- a. economic criteria:
 - i. the overall cost of the network;
 - ii. the maintenance costs;
 - iii. the timing and overall duration of the roll-out of the network. This having direct impact both on costs and on the loss of revenues due to the delay of the commercial exploitation of the network;

b. qualitative criteria:

- i. household coverage;
- ii. capability to support download and upload speed (above the minimum speeds defined in recital (39)¹⁴);
- iii. latency (notably, suitability for real time applications);
- iv. reliability, scalability;
- v. reuse of existing infrastructure and use of solution reducing the impact on environment.

(42) Awarding criteria for the maintenance, management and commercial exploitation of the network:

a. economic criteria:

- i. economical financial plan, with particularly attention to the amount of concession fee and the wholesale price charged;

b. qualitative criteria:

- i. improvement of the Service Level Agreement - SLA¹⁵ proposed by the NRA;
- ii. proposal of a wider set of wholesale products in comparison to the one imposed by the NRA.

(43) The market in which the bidders operate will also be taken into account¹⁶. To spur competition and reduce the risk of a conflict of interest of the network operator, additional (different) points will be granted to:

- i. bidders who are not active at retail level (operators that are not vertically integrated) and which are not part of a group or holding to which a vertically integrated operator belong as well;
- ii. bidders which, while being vertically integrated, commit to constitute in a reasonable time frame a separated company.

Further differentiations within these two categories could be applied, as long as this is objectively justified.

(44) In line with the above, if a concessionaire has benefited from additional points according to recital (43), it cannot engage in providing retail services or become part of a group

¹⁴ Such minimum speeds have to be considered as the minimum requirements for the participation to the tender.

¹⁵ The Service Level Agreement – SLA – will be part of the standardized contract between the concessionaire and the access seeker and will regulate, among the others, service provisioning and assurance.

¹⁶ Article 80(b) of the 2013 Broadband Guidelines.

which includes a vertically integrated operator during the life of the concession. Should this happen, the concession agreement will be cancelled. Italy considers this to be important to ensure fair and non-discriminatory treatment of all potential access seekers ultimately favouring competition at retail level¹⁷.

- (45) If a vertically integrated operator will win the tender, it will be required to adopt *equivalence measures* as prescribed by the NRA to assure non-discriminatory treatment of third parties operators in comparison with its retail branch.
- (46) **Wholesale services:** the management and commercial exploitation of the network will be carried out by a concessionaire which will grant effective open access at wholesale level to the passive infrastructure (including but not limited to access to ducts, poles, dark fibre, street cabinets, and unbundled access to fibre) on equal and non-discriminatory terms. Access will be granted also to previously existing infrastructure used for the roll-out of the subsidised network. The concessionaire will also have the obligation to provide active services¹⁸ in case it will be required by at least one operator and this request, according to recital 80(a) of the 2013 Broadband Guidelines, is considered reasonable. The concessionaire will have to bear the cost of any additional infrastructure and equipment required to provide these services but can take already into account the cost associated to the possible demand for such services in its bid. For the avoidance of doubt, the concessionaire will not be entitled to claim funding for active equipment if this was not included in the original bid¹⁹.
- (47) The full range of wholesale services which the concessionaire will have to provide as well as their technical and qualitative criteria will be defined by AGCOM and will be at least the same mandated to an SMP operator²⁰ in the same area.
- (48) **Wholesale prices:** The pricing system will be defined by AGCOM. The maximum applicable price will be the regulated price imposed on the SMP operator. The measure also foresees the possibility to use a *pay-per-use* pricing model²¹ in order to incentivize the use of the subsidized infrastructure by reducing up-front investment which could represent an entry barrier.
- (49) **Role of the contracting authority:** as mentioned in recital (24), the Ministry of Economic Development - MISE, throughout an in-house entity, will act as the contracting authority for all the projects implemented under this aid scheme. The contracting authority performs checks on a regular base to ensure the conformity of the deployment phase with the project submitted, runs the final test and monitors the subsequent operating phase. In case of serious breaches of the obligations prescribed in the tender, it can revoke the concession.

¹⁷ On this topic the government consulted the national competition authority AGCM which on 10 March 2015 provided a positive opinion.

¹⁸ Providing active services concerns both providing the adequate technical infrastructure (e.g. active equipment) and the professional services related to the provisioning of the services.

¹⁹ Such infrastructure and equipment will be part of the publicly owned network irrespective of how the deployment of active equipment was financed (see recital (27))

²⁰ The SMP operator is the operator having Significant Market Power (SMP) in a specific market.

²¹ In a pay-per-use pricing model the use of the infrastructure is charged on the basis of the number of end-users actually using it.

- (50) **Role of AGCOM:** The wholesale services mentioned in recital (46) will be provided according to technical, economic and qualitative guidelines provided by AGCOM²² which will also monitor that the subsidized network will be made available to all access seekers on a non-discriminatory basis and has jurisdiction to settle any possible dispute with operators²³. Italy has notified to the European Commission the adoption on 15 February 2016 of the legislative decree N.33/2016²⁴ to comply with Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks. AGCOM has been designated as the national dispute settlement body for any dispute related to access to any physical infrastructures requested by an electronic communications network provider. AGCOM develops and maintains a database²⁵ of all the public and private internet access networks. This database is interconnected with the SINFI (see recital (53)). AGCOM will also check the actual quality of service (including the speed) provided by the concessionaire. It will monitor the adoption rate at retail level in order to support the government to identify suitable demand side measures to favour the subscription to (ultra)broadband connections. AGCOM also plays a consultative role for the government in assessing the tender documents to ensure compliancy with the telecommunication regulation.
- (51) **Role of AGCM²⁶:** to avoid any possible anticompetitive behaviour by potential bidders, the government may submit the tenders to AGCM in order to receive its preliminary opinion²⁷. Should any of the bids submitted raise doubts as to its legality, it will be also submitted to the AGCM for evaluation.
- (52) **Coordination bodies and mechanisms:** a steering committee for ultra-broadband, COBUL, has been established on 9 November 2015 at the Presidency of the Council under the supervision of the Government to identify priorities and coordinate all activities and stakeholders involved.
- (53) **Centralised database of infrastructure:** recognising the importance of a centralised database of available infrastructure, as highlighted in recital 78(a) of the 2013 Broadband Guidelines²⁸ and also taking into account the EU cost reduction directive²⁹, Italy will create the SINFI³⁰ – "*Sistema Informativo Nazionale Federato delle Infrastrutture*"³¹. The first release of the SINFI is expected in the second half of 2016. The SINFI will contain all relevant information regarding existing infrastructures (not limited to telecommunication infrastructure) to favour reuse of already available infrastructure therefore reducing the overall cost of broadband roll-out. SINFI will be interconnected with the database of

²² At this regard on 16 October 2015 AGCOM launched a public consultation (575/5/CONS).

²³ Implementing measure of directive 2014/61/EU.

²⁴ OJ N. 57 9 March 2016.

²⁵ Art 5-bis of law decree n.145 23 Dec. 2013.

²⁶ National Competition Authority.

²⁷ Art.22 Law 287/1990.

²⁸ EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01).

²⁹ Directive 2014/61/EU of 15 May 2014 on measure to reduce the cost of deploying high-speed electronic communication network.

³⁰ Law decree n.33, 15 February 2016 and previously Law N.164, November 2014.

³¹ National Federated Database of Infrastructure.

internet access infrastructure maintained by AGCOM, thereby implementing the so called "once only" principle³² approach³³. The SINFI will be continuously updated with information on the deployment of the subsidized infrastructure thereby ensuring transparency and favouring optimal exploitation of the network. All the network operators will have access to SINFI and will be obliged to provide information to maintain the data base up to date.

- (54) ***Use of existing infrastructure:*** [re]use of existing infrastructure shall be incentivised and bidders will be explicitly requested to use existing infrastructure to the largest extent possible. The availability of SINFI will facilitate the use of existing infrastructure to the largest extent possible. Potential bidders will be required to provide to other bidders well in advance all relevant information not yet available in SINFI about any existing infrastructure they intend to use in their proposals in order to allow the latter to include such infrastructure in their bid. This information will be made available through the contracting authority to all the bidders at least 60 calendar days before the call for procurement.
- (55) ***Detailed mapping and coverage analysis, consultation with stakeholders:*** Only white NGA areas are eligible for intervention. For this reason, the Italian authorities examine the characteristics of currently available broadband networks. To this end they carry out, on a yearly basis, public consultations involving all relevant stakeholders. A *preliminary public consultation* on the Framework Programme was conducted between 20 November and 20 December 2014. The strategy was made available on the website of *Agenzia per l'Italia Digitale* (AGID)³⁴ and stakeholders were invited to comment it in view of the definition of the planned measure. During the public consultation the ministry received comments from 30 operators including the incumbent. In particular all the above mentioned operators provided information about their private investment plans for the target areas. In 2015 a new consultation was carried out to collect information on the availability of broadband telecommunication infrastructure and on the private investment plans for the following three years. To this end the whole Italian territory was divided into 94.645 areas³⁵ which were separately assessed. The consultation was transparent and received wide publicity. All information regarding the consultation was both available on a dedicated website of Infratel³⁶ and communicated by letter to all the telecommunication operators included in the ROC – the Italian national registry of telecommunication operators. The 2015 consultation followed a two-phase approach. The first phase was launched on 8 May 2015. The result findings of this first phase, notably the white areas identified and to be addressed by the Italian authorities, were published on 19 October 2015 on the websites of Infratel³⁷ and the MISE - Ministry of Economic Development³⁸. The second phase started on 19th October 2015 and aimed at collecting comments on both the strategy and the intervention areas. In line with recital 78(b) of the 2013 Broadband Guidelines, operators were given the

³² As described in COM(2015), 192 final, 6 May 2015.

³³ COM/2015/0192 final - A Digital Single Market Strategy for Europe.

³⁴ <http://www.agid.gov.it/notizie/2014/12/04/crescita-digitale-banda-ultralarga-consultazione-pubblica/>

³⁵ Corresponding to the areas in which Italy is divided by ISTAT – the national institute for statistics.

³⁶ www.consultazioneinfratel.it

³⁷ <http://www.infratelitalia.it/news/esito-consultazione-pubblica-banda-ultralarga/>

³⁸ www.sviluppoeconomico.gov.it

opportunity to confirm or modify their previous declaration concerning their investment plans in the intervention areas. During the second phase of the consultation, which ended on 7 December 2015, only one operator submitted additional information, declaring its intention to increase the investment plans previously communicated. The intervention area affected was modified accordingly. No further comments about the plan were received.

- (56) Based on the above Italy considers to have fully complied with the requirement to carry out a public consultation as prescribed by the Broadband Guidelines 2013. Nevertheless, in order to inform all the potential stakeholders about the latest evolution of the plan, Italy carried out in May 2016³⁹ another public consultation inviting all the stakeholders for comments. In particular, this public consultation clarified the intention to use the "direct intervention model" as the only financing model (see recital (25)). Nine stakeholders, including fixed and wireless telecommunication operators, vendors and associations, provided comments. All the respondents to the public consultation consider the measure at stake to be positive and provided comments and suggestions which the government considered. Two operators have been critical about the required speed of the new network. More specifically they consider the required upload speed to be disproportionate in comparison to the current market request and somehow conditioning the technology to be used. On this point the government explained that such requirements match the strategy of the government to deploy a network able to support advanced, real time, interactive services. On reuse of existing infrastructure, all the operators considered positively the intention of the government to favour it as far as possible also with the use of SINFI. However, they highlight that information should be made available well in advance in order to take it into consideration in the bids. The Italian authorities took this into account and prescribe that information on existing infrastructure will be provided at least 60 days before the tender deadline. The respondents also provided comments on the obligation to provide active services. Some stakeholders expressed a positive view on such obligation while others considered it damaging competition. The other comments submitted concerns the use of the "direct intervention model", the tender criteria and "the neutral interconnection points". These points are already properly addressed in the current notification.
- (57) Where an operator has declared its intention to invest in the target areas in the coming three years, in line with the Broadband Guidelines, such an area will be considered "grey". To avoid that a mere declaration of interest to invest without follow-up will stop the public intervention to the detriment of end consumers, the Italian government will require the operator to provide documentation proving the reliability of such commitments. The operator shall provide the investment plans, relevant strategic or executive decisions of the undertaking, and the schedule of the main implementation phases. The actual feasibility of the submitted plans will be subject to evaluation by the contracting authority possibly also in conjunction with independent external evaluators. The government may also require the private operator to enter into a contract agreement with commitments (pre-defined project milestones). In case the private investor fails to prove the achievement of any of the

³⁹ The public consultation was launched on 3 May 2016 and published on the website of Infratel Italia Spa <http://www.infratelitalia.it/news/addendum-alla-consultazione-pubblica-ai-sensi-dei-paragrafi-64-e-78-degli-orientamenti-dellunione-europea-per-lapplicazione-delle-norme-in-materia-di-aiuti-di-stato-in-relazione-allo-sviluppo-ra/> A link to this website was also added to the website of the Ministry for economic development www.sviluppoeconomico.gov.it

previously agreed milestones the government will have the possibility to intervene in this area⁴⁰.

- (58) **Monitoring and claw back mechanism:** As described in recitals ((49)(50)(51)) the implementation of the projects will be monitored at various levels and with different competences by the granting authority, AGCOM and AGCM in line with recital 78(i) of the 2013 Broadband Guidelines.
- (59) The tenders will include claw back clauses for the recovery of extra profit. In particular the claw back mechanism will envisage that after seven years the concessionaire will repay a part of the contribution if the actual profit exceeds a level equal to the reasonable profit defined by the NRA. This will take into account the fact that investments for the construction of the network are entirely subsidized by the government. If the actual profit will exceed this reasonable profit by more than 30%, 50% of the extra profit will be returned to the government. Thereby the state aid amount will be reduced, while, at the same time, incentivizing efficiency. Detailed claw back information will be made available for each project through a specific web site.
- (60) **Transparency:** Italy commits to comply with the transparency requirement as laid down in recital 78(j) of 2013 Broadband Guidelines (as amended by Communication C(2014) 3349/2). To this purpose Italy is setting-up a website which will also allow access to the SINFI.
- (61) **Reporting obligation:** the Italian government will provide every two years to the Commission a report with the key information on the application of the measure. This information will comprise the date when the network will be put into use, the wholesale products offered, the number of access seekers and service providers using the network, the number of houses passed and the take-up rates.

V. EVALUATION

- (62) The 2013 Broadband Guidelines (point 53) state that certain aid schemes may require an "...evaluation in order to verify (i) whether the assumptions and conditions which led to the compatibility decision have been realised; (ii) the effectiveness of the aid measure in light of its predefined objectives; (iii) its impact on markets and competition and that no undue distortive effects arise under the duration of the aid scheme that is contrary to the interests of the Union. Given its objectives and in order not to put disproportionate burden on Member States and on smaller aid projects, this only applies for national aid schemes and aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The evaluation shall be carried out by an expert independent from the State aid granting authority on the basis of a common methodology and shall be made public. The evaluation shall be submitted to the

⁴⁰ To this end, on April 12 2016, Italy required to all operators which during the consultation phase communicated the intention to undertake private investments to provide, among the others, the following additional information:

- a. business plans and documentation proving the availability of adequate level of funds;
- b. addresses covered by the planned future investments;
- c. investment timing.

Commission in due time to allow for the assessment of the possible prolongation of the aid measure and in any case upon expiry of the scheme. The precise scope and modalities of the evaluation shall be defined in the approval decision of the aid measure. Any subsequent aid measure with a similar objective shall take into account the results of that evaluation."

- (63) The present scheme fulfils the criteria of being a national aid scheme with a large budget; therefore it will be subject to an evaluation. Italy, in light of this provision, and taking into account the best practices recalled in the Commission Staff Working Document on Common methodology for State aid evaluation⁴¹, has notified a detailed evaluation plan for the measure. A summary of the main elements of the evaluation plan are described below.
- (64) The evaluation questions address the outputs and the effectiveness of the measure in target areas, the incentive effect of the aid, the demand-side effects as well as a selection of indirect impacts and effects on competition. Furthermore, the evaluation questions address the proportionality of the aid, the use of existing network infrastructures and the appropriateness of the measure.
- (65) The questions addressing outputs and effectiveness of the measure will investigate the level of NGA coverage and of broadband line quality in the target areas compared to areas that do not receive any aid (or compared to areas that have received aid, but with different variation of the intervention model). In order to answer these questions, a selection of result indicators will be used such as NGA coverage, optical fibre granted in IRU⁴², access to broadband, access to an NGA network, speed and take-up rate.
- (66) The incentive effect of the aid will be evaluated by assessing whether the aid has changed the behaviour of the beneficiaries and their investment patterns in the target areas. This effect will be investigated notably by looking at the beneficiaries' investment plans, for example investigating the difference between the costs foreseen in the budget and the final ones. Moreover, the evaluation will assess whether the effects on beneficiaries are differentiated according to, for example, the dimension of the firms, the tender procedure chosen and the characteristics of the target area⁴³.
- (67) Demand-side effects will also be evaluated by comparing, for example, the type of services that customers will subscribe in the target areas with those that customers subscribe in comparable areas.
- (68) As concerns indirect impacts, it is widely acknowledged that NGA networks can have an impact on the social and economic system as a whole. These effects will be evaluated by looking, for example, at the impact of the measure on GDP, employment rate, access to online public services⁴⁴, as well as on the use of technologies with a low environmental impact.

⁴¹ Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

⁴² Indefeasible rights of use.

⁴³ The investment per premise covered by a NGA network along with other relevant indicators will be used to answer questions that address the incentive effects on beneficiaries.

⁴⁴ Measured, for example, through eGovernment and eHealth performances.

- (69) The evaluation will also consider the indirect impacts on the relevant retail operators that will use the subsidised network, by investigating whether it pushed their investments in target areas⁴⁵.
- (70) Concerning the effects of the measure on competition, the evaluation will assess changes in some parameters of competition in the target areas, for example by considering the technology and network architecture that will be used, market shares of the retail operators and whether operators will set up new agreements⁴⁶. In addition, the evaluation will consider the number of operators in target areas in order to assess whether the aid has hampered the entry of additional operators in the market.
- (71) Proportionality of the aid will be evaluated by considering investment plans in order to compare the numbers of customers and premises reached by the aided infrastructure with those initially foreseen. The proportionality of the aid will also be evaluated by taking into account coverage, technology type, potential demand, use of existing infrastructures, as well as the level of risk sharing between the private operators and the State.
- (72) Furthermore, the evaluation will assess the effects of the claw back mechanism, by considering for example deployment costs and by conducting a benchmark analysis with comparable measures. Evidence of these effects will not be available at the time of the delivery of the final evaluation report for the entire intervention area. However, Italy will inform the Commission about the results of this analysis by 30 June 2022 for the lots tendered in 2016 and 2017 and by 2025 at the latest for the remaining lots.
- (73) The evaluation will furthermore measure to which extent the use of existing infrastructure has contributed, as expected, to the efficiency of the measure.
- (74) Appropriateness of the measure will be evaluated – considering possible variations in the intervention model within Italy or compared to intervention models in similar schemes implemented by other EU Member States – by conducting a benchmark analysis that estimates the investment per premise covered, by assessing the impact on the market share of the retail operators and the number of firms operating in target areas. Moreover, the evaluation will address the efficiency (looking at the costs) and effectiveness (looking for example at the connection speed and the take-up rate) of this scheme's intervention model. In addition, the evaluation will investigate whether the trade-off between costs and benefits of the use of "neutral interconnection points" has turned out to be as beneficial as expected (see recital (33)).
- (75) Italy has committed that the evaluation will be conducted with appropriate methods allowing to the largest possible extent to identify the causal impact of the scheme, undistorted by other variables that may have had an effect on the observed outcome. To the extent possible, 'control groups' of areas not receiving aid under this measure will be identified in order to estimate the causal impact of the aid. While the appropriate 'control groups' shall be selected in details only subsequently (see recital 79), Italy has indicated that the selection will take into account *inter alia* relevant areas' structural, competitive,

⁴⁵ The pay-back-time (PBT), the internal rate of return (IRR), the net present value (NPV) are examples of indicators that will be used. Moreover, the models that firms use to assess the profitability of investments by participating at public tenders will be compared with models used to assess private investments.

⁴⁶ Such as mergers and joint ventures.

technological and socio-demographic characteristics, including population and SMEs' density, and average broadband speed.

- (76) Italy has confirmed that a combination of existing data sources and additional data collection will be used for conducting the evaluation. In particular, Infratel Italia will provide data for example on target areas, implementation process, selection of beneficiaries; SINFI will provide data on existing infrastructures and AGCOM will provide data on pricing and broadband services delivered. Other data sources will include telecommunication operators, ISTAT and local administrations, notably to access data gathered in order to comply with transparency obligations related to the use of EU funds.
- (77) Invitations to tender will require beneficiaries (either for the construction and operation separately or jointly) to provide data related to investment plans, optical fibre granted in IRU, retail operators that intend to use the aided infrastructure, the technology that will be used, eventual agreements with other firms, wholesale services characteristics, use of existing infrastructures. Moreover, the operators managing the aided infrastructure will be required to include in the wholesale supply contracts clauses for the data collection on NGA coverage; take-up rate; broadband access; technology; pricing, type and quality of services offered to final customers, and relevant information from investment plans (in particular information on the net present value (NPV)).
- (78) The evaluation may also require additional and targeted data collection, including new surveys, *ad hoc* studies aimed at obtaining further information related to, for example, previous investment plans, state of progress of the projects, models used to assess the investments' profitability as well as services delivered to final customers and other operators.
- (79) The body conducting the evaluation will be selected by way of a public, competitive and non-discriminatory tender procedure to be launched by June 2017. Independence from the granting authority, specific skills and experience on evaluation will be required. Italy commits to inform the Commission during the implementation of the evaluation plan. In particular, the Commission will be informed before the invitation to tender and subsequently, notably for comments on the detailed definition of the evaluation methods and the identification of appropriate control group(s) in line with the commitments described in this decision.
- (80) A first report focused on the analysis of the invitations to tender and their compatibility with the 2013 Broadband Guidelines will be submitted to the Commission at the latest by two years from the adoption of the present decision. An interim evaluation report will be submitted to the Commission at the latest by four years from the adoption of the present decision. The interim evaluation report will be focused on the assessment of the direct and indirect impacts of the measure. The final evaluation report will be submitted to the Commission by 30 June 2022 at the latest⁴⁷.
- (81) Italy has confirmed that the evaluation plan, within three months from the adoption of this decision, and the final evaluation report, within three months from the transmission to the

⁴⁷ In addition, Italy intends to conduct an ex post report to be prepared by 2036.

Commission, will be published on the relevant website⁴⁸. During the evaluation, stakeholders including local authorities will be consulted.

- (82) Italy has committed to take into account the evaluation results for the development of any future broadband interventions, with the aim of increasing the future measures' effectiveness and reducing any negative effects on competition.

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

- (83) 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 support measure to be qualified as State aid, it has to be granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.
- (84) As described in recital (18), the measure is financed by the Italian government using national and European funds, which are allocated to the beneficiaries under the control of the authorities with an element of discretion. Hence, State resources are involved and the measure is imputable to the State.
- (85) The scheme results in a selective economic advantage both for the companies which will be selected in the tendering procedures to build, maintain and operate the network (as concessionaire) and for third parties who gain wholesale access to the subsidised network and can consequently offer their services on conditions not otherwise available on the market (see recital (30)).
- (86) Finally, the measure is liable to distort competition. At network operator level, state support may deter other operators in the region from setting up or developing their own networks under commercial conditions. The state support may also encourage local undertakings to take advantage of services offered in the subsidised network rather than more expensive market solutions. In so far as the intervention is (at least potentially) 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. Therefore this support is also likely to affect trade between Member States.
- (87) The Commission therefore concludes that the notified aid measure constitutes state aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the notifying Member State in the notification.

⁴⁸ <http://www.infratelitalia.it/>

VII. COMPATIBILITY ASSESSMENT

- (88) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) of the TFEU and in the light of the *EU guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*⁴⁹ (the "2013 Broadband Guidelines") which contain a detailed interpretation of Article 107(3)(c) of the TFEU for this kind of state aid.
- (89) When assessing whether an aid measure can be deemed compatible with the internal market, the Commission conducts a two steps assessment.
- (90) First, every aid measure has to comply with the below necessary conditions:
- i. The aid must contribute to the achievement of objectives of common interest
 - ii. Absence of market delivery due to market failures or important inequalities
 - iii. The aid must be appropriate as a policy instrument
 - iv. The aid must have an incentive effect
 - v. The aid is limited to the minimum necessary
 - vi. Negative effects must be limited
 - vii. The aid measure must be transparent
- (91) Second, if all the above mentioned conditions are fulfilled, 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.

The aid contributes to the achievement of objectives of common interest

- (92) In its Europe 2020 strategy⁵⁰ the Commission defined the Flagship Initiative "A Digital Agenda for Europe (DAE)", which has the "aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra-fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps". In pursuing this aim, "at EU level, the Commission will work /.../to facilitate the use of the EU's structural funds in pursuit of this agenda", and "at national level, Member States will need /.../ to draw up operational high speed internet strategies, and target public funding, including structural funds, on areas not fully served by private investments." Key Action 8 of the

⁴⁹ OJ C 25, 26.1.2013, p.1.

⁵⁰ *EUROPE 2020 - A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020, 3.3.2010, page 12.

Digital Agenda calls Member States "*to use public financing in line with EU competition and State aid rules*" in order to meet the coverage, speed and take-up targets.

- (93) A well targeted State intervention in the broadband field contributes to bridge the '*digital divide*' that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not. By promoting the development of NGA networks which will provide about 60% of the households in the intervention areas with at least 30 Mbps and the remaining 40% of the households with at least 100 Mbps, the measure will contribute greatly to achieve the objectives of the Digital Agenda and therefore to an objective of common interest.

Absence of market delivery due to market failures or important inequalities

- (94) The notified measure addresses a market failure as it targets the so called "NGA white" areas in the sense of paragraph 75 of the 2013 Broadband Guidelines (see recitals (13) and (31)), where very high speed broadband is currently not available and where there are no plans by private investors to roll out such infrastructure in the near future.

The aid is appropriate as policy instrument

- (95) When broadband coverage is considered insufficient, state intervention may be necessary. However it should be assessed whether state aid is an appropriate policy instrument to address the problem or whether there are alternative, better-placed instruments. Alternative instruments, such as demand side measures could consist of grants or tax incentives to end users. However, in the situation currently under assessment, the efforts from alternative instruments, including *ex ante* regulation do not solve the problems related to the lack of supply (non-existence of infrastructure) of high speed networks in the targeted areas and would fail to deliver the wider economic benefits of a widespread next generation access network. The Italian authorities see no alternative but to grant public aid to the deployment of NGA broadband networks in the targeted areas.
- (96) The Commission also recognizes that without further public intervention, it would seem impossible to prevent the emergence of a new "*digital divide*" between urban and more rural areas, 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.

Existence of an incentive effect

- (97) As set out in paragraph 45 of the 2013 Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not be undertaken within the same timeframe without any State aid. The scheme ensures that aid can only be provided if it is established that in the targeted areas no comparable investment would take place without public funding within three years (see recitals (31) and (55)). Hence the investment would not be made within the same timeframe without the aid, which thus produces a change in the investment decisions of the operators.

Aid limited to the minimum necessary

(98) Italy has designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. In this respect, the Commission notes the following positive elements in the design of the measure (paragraph 78 of the 2013 Broadband Guidelines):

- (a) *Detailed mapping and coverage analysis, public consultation with stakeholders:* as described in recital (55), the granting authority organises on a regular base public consultations to better delineate the target areas and the kind and size of public intervention needed. Operators must communicate, in frames of the consultations, existing broadband infrastructures and investment plans for the coming three years. This manner it will be ensured that public funds will be used only in "NGA white" areas and only if no interest for commercial NGA deployment is present. This way no overlapping infrastructures are created therefore limiting the possibility of crowding out private investments and distorting competition to a minimum.
- (b) *Competitive selection process:* as described in recital (34), the tender will be awarded by way of a public, transparent and non-discriminatory selection procedure in full compliance with Italian and European public procurement rules. Alternatively the maintenance, management and commercial exploitation of the network, might be assigned directly to *in-house* companies (see recital (37)). As described in recital (51) the AGCM might be consulted⁵¹ to avoid and prevent any possible anticompetitive behaviour or in case one of the offers submitted raises any legal concern.
- (c) *Most economically advantageous offer:* as described in recital (40), the tender will be awarded on the base of the most economically advantageous offer considering both the price and predefined technical and qualitative criteria.
- (d) *Technology neutrality:* The tender will comply with the technological neutrality principle as stated in paragraph 78(e) of the 2013 Broadband Guidelines. The tender will be awarded to the bidder who, based on objective awarding criteria, will submit the most suitable technical solution (see recitals (39), (41), (42), (43)).
- (e) *Use of existing infrastructure:* as explained in recitals (53) and (54), the Italian authorities will encourage bidders to have recourse to existing infrastructure by publishing any known available infrastructure in the SINFI or, in case SINFI will not yet available at the date of the tender, the infrastructure that every bidder intend to use in its proposal will be made available well in advance as described in recital (54). Unnecessary and wasteful duplication of resources should in this way be avoided and the funding should thus be minimised.
- (f) *Wholesale access:* the selected operator must ensure full and effective unbundling and provide full open access to the subsidised network (including but not limited to access to ducts, dark fiber, street cabinets, and bitstream and unbundled access to fiber) on equal and non-discriminatory terms for the entire duration of the concession (see

⁵¹ Art. 22 law 287/1990

recital (46)). Furthermore, full access, without limitation in time, is always to be guaranteed to any new passive infrastructure elements and to existing infrastructure elements with the limitation described in recital (31).

- (g) *Wholesale access pricing*: wholesale access price should be based on the average wholesale prices which prevail in other, more competitive, parts of the country for the same or comparable access services or on the price set or approved by the NRA for the same or comparable access services. In this case AGCOM will define the pricing and the terms and conditions applicable to the wholesale access products (see recitals (48) and (50)).
- (h) *Monitoring and clawback mechanism*: compliance with the awarding criteria of all the milestones of the project is checked on a regular base by the granting authority which will also run the final test and will monitor the subsequent operational phase (see recital (49)). AGCOM will also play an important role ensuring that the subsidized network will be made available to all the access seekers and monitoring the subscription rate and the effective speed provided to end-users (see recital (50)).
- (i) *Reporting*: as described in recital (61) Italy will provide to the Commission information on the application of the measure every two years.

The aid has limited negative effects

- (99) Given the design of the measure and its compliance with the conditions of point 78 of the Broadband Guidelines (see recital (98) above), it is unlikely to have a crowding out effect of private investments.
- (100) In particular, the aid is confined to "white NGA areas", where no operator is willing to invest in NGA infrastructure without State aid in the next three years. Also, where a broadband network already exists, the measure requires that a "step change" is achieved; the public intervention must result in significantly better broadband capacity and thus service availability and the selected bidder must carry out significant new investments in the existing broadband networks (see recital (31)). These conditions also ensure that the public intervention does not crowd out comparable private investments.
- (101) Furthermore, the beneficiaries are to be selected by public tender and full open access is to be granted to the subsidized infrastructure (see recitals (48), (46)).
- (102) Therefore, negative effects of the measure, if any, are expected to be limited.

Transparency

- (103) As explained in recitals (60) the measure ensures that stakeholders should have easy access to all relevant acts and pertinent information about the aid awarded thereunder. Italy commits to comply with the transparency requirement as laid down in recital 78(j) of 2013 Broadband Guidelines (as amended by Communication C(2014) 3349/2). In particular, Italy shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:

- i. the full text of the approved aid scheme and its implementing provisions, or a link to it,
- ii. the identity of the granting authority/(ies),
- iii. the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).

(104) Such a requirement can be waived with respect to individual aid awards below EUR 500 000.

(105) The information will be published within 6 months from the granting act and the information will be kept for at least 10 years and will be available to the general public without restrictions.

(106) As stipulated by point 53 of the 2013 Broadband Guidelines, a scheme with these characteristics, i.e. a national framework scheme with a large budget may be subject to ex post evaluation. Therefore, by the end of this measure, an ex post evaluation will be carried out that includes verifying if the set objectives were achieved, if initial assumptions were realised, and assessing the overall effectiveness of the State aid measure in light of its general and specific objectives and the measure's impact on competition. The timeline of the evaluation, the evaluation questions, methodology and the data gathering requirements are to be set out upfront, in an evaluation plan prepared according to the Commission guidance as described in recitals (62) to (82). Results will feed into the design of the follow up scheme.

Compatibility assessment of the evaluation plan

(107) As referred to in recital (62) the Commission can require that aid schemes with large budgets be subject to an evaluation. As this is the case for the present aid scheme, the Italian authorities notified an Evaluation Plan. As described in recital (80), the evaluation report will follow a three steps approach:

- i. a first evaluation report two years after the adoption of the present decision;
- ii. an interim evaluation report at the latest four years after the adoption of the present;
- iii. the final evaluation report will be submitted to the Commission by 30 June 2022 at the latest;

(108) Only for what concerns the claw back mechanism, in case not all the necessary information will be available at the time of the delivery of the final evaluation report, they could be submitted at a later stage, but in any case not later than by 2025. The Commission considers that, as described in section V of this decision, the notified Evaluation Plan contains the minimum elements necessary: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the

evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation.

- (109) The Commission notes that the scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched indicators for each and methodologies to address the questions. Data sources are individually defined for each question.
- (110) The Commission also acknowledges the commitments made by the Italian authorities to conduct the evaluation according to the Evaluation Plan described in the present decision by an independent evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.
- (111) Finally, the Commission notes the commitment made by Italy to submit the final evaluation report at the latest in June 2022.

Overall balancing: the positive effects of the aid measure are expected to outweigh its potential negative effects

- (112) The Commission concludes that the notified measure will offset a geographical social, economic and commercial handicap and is objectively justified to address the lack of availability of high speed broadband services in the targeted areas.
- (113) By favouring a wholesale only model Italy is encouraging non-discriminatory treatment of all access seekers favouring competition at retail level.
- (114) The Commission notes that Italy has paid particular attention to fostering competition among the operators benefiting from the subsidized networks. The decision to design the network in a way that creates, where reasonable, neutral interconnection points (see recital (33)) even if this may increase the overall cost to the government of building the networks, is expected to create a level playing field for competition ultimately favouring business and consumer end-users.
- (115) The development of a centralized data base of existing infrastructure, the SINFI, will likely reduce the overall cost of development of new infrastructure by allowing an efficient re-use of the ones already deployed.
- (116) In view of the characteristics of the project and of the safeguards applied, the Commission considers, based on the information available, that the overall impact on competition is likely to be positive. The provision of NGA services by creating a high quality and capacity infrastructure has a pro-competitive impact, as it allows several network operators to use the subsidized infrastructure and compete on services to the end users.
- (117) The increase in network capacity is expected to stimulate market entry by service providers and the provision of a larger variety of services. Access of competing operators is ensured by requiring open access to the subsidised network on equal and non-discriminatory terms. The risk of crowding out private investments and the negative effects of the measure are expected to be limited. The measure does not entail any negative effects on trade, there

does not appear to be any significant negative spill-over for other Member States. Accordingly, the measure is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest and is in line with the objectives of Article 107(3)(c) TFEU.

VIII. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union

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 English on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Directorate-General Competition
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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

