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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA.63170 (2021/N) - RRF - Italy - Plan 1 Gbps

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 8 November 2021, the Italian authorities notified to the Commission the measure '*RRF - Italy - Plan 1 Gbps*' (hereafter: "Measure") pursuant to Article 108(3) TFEU.
- (2) On 3 December 2021, the Italian authorities supplemented the notification by including additional intervention areas in the scope of the Measure.
- (3) On 17, 21, 31 December 2021 and 3 and 5 January 2022, the Italian authorities provided additional information on the Measure.
- (4) By letter submitted on 21 December 2021, Italy exceptionally agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have this decision adopted and notified in English.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. CONTEXT

- (5) The NextGenerationEU² identifies as one of the key priorities of the Recovery and Resilience Facility³ the support to the digital transition, through connectivity measures aimed, *inter alia*, at addressing market failures with respect to the deployment of performing networks. The RRF Regulation requires that Member States devote at least 20% of the allocated funding to measures fostering the digital transition⁴.
- (6) Several schemes for broadband roll-out have been promoted in Italy in the recent years within the context of the “*Strategia Italiana per la Banda Ultra Larga*” of 3 March 2015 and of the “*Strategia Italiana per la Banda Ultra Larga - Verso la Gigabit Society*”¹ (hereafter: “Strategy”) approved by the Interministerial Committee for the Digital Transition on 25 May 2021⁵. In particular:
- (a) In June 2016, Italy initiated the implementation of a State aid scheme to support the roll-out of networks able to support speeds above 30 Mbps download in those areas where no network able to provide such speed was available or planned to be deployed⁶ (hereafter: “2016 Intervention”);
 - (b) In January 2021, Italy launched a national plan to connect public schools with networks able to provide 1 Gbps symmetric speeds⁷.
- (7) The schemes for broadband roll-out were complemented by take-up measures:
- (a) In 2020, Italy launched a broadband voucher scheme targeting low-income families⁸;
 - (b) In 2021, Italy launched a broadband voucher scheme targeting small and medium enterprises⁹.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic And Social Committee and the Committee of the Regions of 27 May 2020, ‘Europe’s moment: Repair and Prepare for the Next Generation’, COM(2020) 456 final.

³ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (hereafter: “RRF Regulation”) and Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis.

⁴ See Article 19 and Annex VII of the RRF Regulation.

⁵ The Strategy consists of four interventions (in addition to the Measure) aimed to finance: (i) 5G connectivity; (ii) broadband connection of schools; (iii) broadband connection of health premises; (iv) broadband connection of Italian smaller islands. Moreover, it finances the completion of the plan for the broadband connection of white areas of the Italian territory (see Decision of 30 June 2016, C(2016) 3931 final, case SA.41647 (2016/N) - *Italy - Strategia Banda Ultralarga*), as well as the take-up measures mentioned in recital (7). The Italian Recovery and Resilience Plan (hereafter: “RRP”) devotes approx. EUR 6.7 billion to the financing of the objectives of the Strategy.

⁶ See Decision of 30 June 2016, C(2016) 3931 final, case SA.41647 (2016/N) - *Italy - Strategia Banda Ultralarga*.

⁷ See Decision of 21 January 2021, C(2021) 262 final, case SA.57497 (2021/N) - *Italy - Broadband infrastructure roll-out to connect schools-IT*.

⁸ See Decision of 4 August 2020, C(2020) 5269 final, case SA.57495 (2020/N) - *Italy - Broadband vouchers for certain categories offamilies*.

⁹ See Decision of 15 December 2021, C(2021) 9549 final, case SA.57496 (2021/N) - *Italy -*

- (8) By virtue of the previous aid measures, as well as of private investments, in recent years Italy has made considerable progress in terms of connectivity, which is reflected in an improved availability of broadband networks. However, according to the Italian authorities, further progress is needed. In particular, Italy explained that, as of today, only approx. 55% of the households in Italy have access to broadband networks able to provide at least 100 Mbps download speed. The problem is even more acute for networks able to provide speeds up to 1 Gbps; less than 23% of households have access to such networks.
- (9) The Italian authorities envisage to support the deployment by 2026 of (wired or wireless) fixed broadband networks that will provide to end-users - under usual peak time conditions^{9 10} - connectivity of at least 1 Gbps download speed and 200 Mbps upload speed (hereafter: “Target Speeds”).
- (10) The Measure will address areas of the Italian territory where there are no present or credibly planned networks providing at least 300 Mbps download speed under usual peak time conditions (see recital (14)).
- (11) The Italian authorities explained that, in the intervention areas, private operators are not willing to invest to deploy new performant networks or to update the existing ones to reach at least 300 Mbps download speed under usual peak time conditions due to the high deployment costs which are not balanced by the forecasted revenues. According to the Italian authorities, in the absence of a public intervention, it is likely that this situation will continue in the medium to long term.
- (12) The Italian authorities consider that, in the intervention areas, there is no alternative to granting public funding in order to make networks available by 2026, in line with Italy’s objectives.
- (13) The Italian authorities expect significant benefits from the Measure. In particular, the Measure would ensure equal growth opportunities in the entire Italian territory through the availability of performant broadband networks, thereby increasing the economic competitiveness and attractiveness of the intervention areas¹¹. Moreover, according to the Italian authorities, the Measure should be able “*to innovate the country and to bring about deep structural changes along the lines of a new digital paradigm constituting a stimulus for the development of a modern digital economy*”¹².

3. DESCRIPTION OF THE MEASURE

3.1. Objective

- (14) The Measure aims to promote investments in the deployment of (wired or wireless) fixed access networks providing to end-users - under usual peak time conditions - connectivity of at least 1 Gbps download speed and 200 Mbps upload speed in those areas of the Italian territory (i) where the networks present and credibly planned by 2026 do not, and will not, provide at least 300 Mbps download speed under usual

Broadband vouchers for SMEs.

¹⁰ Speed under usual peak time conditions is understood as the speed that end-users are expected to achieve during the entire peak-hour period. This represents the real capacity of the network irrespective of the retail electronic communication access services offered to end-users.

¹¹ See RRP, p. 45 and p. 61.

¹² See RRP, p. 45.

peak time conditions, and (ii) where no interventions have taken place or are foreseen under the 2016 Intervention¹³.

- (15) In particular, the Measure will finance the deployment of broadband networks offering the Target Speeds (*i.e.* the access broadband network and, when necessary to ensure the achievement of the Target Speeds, the ancillary backhaul network). In the case of fixed wired networks, this includes also the optical distribution frame at the building where the end-users are located. For fixed wireless networks, this includes also the antenna on the building at end-users' premises, to be provided within four weeks from the end-users' request.
- (16) The Measure intends to ensure the deployment of networks granting the Target Speeds, and thus capable of delivering high-quality and reliable electronic communication services to end-users and of satisfying their current and evolving needs. Moreover, the Measure is intended to facilitate the development of a wide range of economic activities, by increasing connectivity and quality of services offered by the relevant stakeholders active in those economic sectors.

3.2. Legal basis

- (17) The Measure is based on the RRP¹⁴, which assigned approx. EUR 3.8 billion to the financing of the Measure in context of the Strategy.
- (18) The present State aid decision is an integral part of the legal basis.

3.3. Standstill obligation

- (19) The Italian authorities committed to comply with the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589¹⁵, according to which new aid measures must not be put into effect before the Commission has taken a decision authorising them.
- (20) In this regard, the Italian authorities explained that the call for tender provided that the successful tenderer was bound by the content of the present State aid decision and that Italy would adapt the tender to align to this decision, if necessary. Italy explained that, on this basis, each participant to the tender was aware that the granting of the aid was subject to the compatibility of the Measure with State aid rules.

3.4. Duration

- (21) Aid can be granted under the Measure until completion of the subsidised networks, in any case no later than 30 June 2026.

¹³ In this regard, see also Section 3.9.

¹⁴ Following a consultation process conducted in accordance with the national legal framework, on 29 April 2021 the Italian government has approved the RRP. On 30 April 2021, Italy submitted the RRP to the Commission, in accordance with Article 18(1) of the RRF Regulation. On 22 June 2021, the Commission adopted a positive assessment of the RRP and a consequent proposal for a decision to provide EUR 68.9 billion in grants and EUR 112.6 billion in loans to Italy. On 13 July 2021, the Council adopted the implementing decision on the approval of the assessment of the recovery and resilience plan for Italy.

¹⁵ Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union OJ L 248 of 24.9.2015, p. 9.

3.5. Budget and granting authority

- (22) The budget of the Measure amounts to approx. EUR 3.8 billion, funded by the Recovery and Resilience Facility.
- (23) The granting authority is the Ministry for Technological Innovation and Digital Transition (hereafter: “Ministry”). The Ministry will implement the Measure through the in-house company Infratel Italia S.p.A (hereafter: “Infratel”).

3.6. Aid intensity

- (24) The Measure will cover up to 70% of the investment costs needed to deploy the fixed broadband networks providing the Target Speeds.

3.7. Beneficiaries

- (25) The recipients of the aid will be the operators that are awarded the tenders for the deployment of the broadband networks providing the Target Speeds. Such undertakings will be able to expand their offers of electronic communication services in the intervention areas.

3.8. Technological neutrality

- (26) The Italian authorities explained that the Measure is technologically neutral. It does not require or exclude any specific technology, provided that the subsidised networks provide the Target Speeds. Bidders are entitled to propose the use or combination of any technology they deem most suitable to provide the Target Speeds and must give wholesale access to any access seekers irrespective of the technology of their choice.

3.9. Overlap with other aid measures

- (27) The Measure will run in parallel to the 2016 Intervention.
- (28) The Italian authorities will ensure accounting separation clearly identifying the different sources of financing and the projects for which they are used.
- (29) To ensure that there will not be overcompensation or cross-subsidisation, the successful tenderer will ensure accounting separation between the funds received under the Measure and other funds at its disposal. Furthermore, if a beneficiary of the 2016 Intervention will be among the winners of the competitive selection procedure, the Italian authorities will check that no undue transfer takes place between the funds allocated to the Measure and the ones allocated to the 2016 Intervention.

3.10. Step change

- (30) According to the Italian authorities, the Measure ensures a step change, since it represents a significant improvement in comparison to the existing and credibly planned networks in the intervention areas. In particular, the new networks will more than triple the download speed of the networks currently available or credibly planned in the intervention areas.

3.11. Intervention model

- (31) The Measure will be implemented by means of a gap funding model (taking into account costs and revenues) relying on undertakings selected via a competitive

selection procedure to build and operate the supported networks. The grants will be a percentage of the overall amount of the investment needed to deploy and operate the networks. The costs related to investments needed to fulfil possible legal obligations, such as coverage obligations attached to rights to use spectrum of the successful tenderer (for example as regards fixed wireless access networks) are not eligible. The maximum aid intensity will be 70% of the investment costs. The subsidised networks will be fully owned by the aid recipients.

- (32) The Italian authorities consider that the gap funding model is the most appropriate intervention model in terms of being the least expensive to reach timely the objectives of the Measure. Italy clarified that this was because the Measure relied extensively on the extension and/or upgrade of privately funded networks. In this context, Italy is of the view that the gap funding model is best suited to incentivise undertakings to achieve the objectives of the Measure in the most efficient way in terms of both costs (*e.g.* by pursuing economy of scale) and timeline of deployment.

3.12. Competitive selection procedure

- (33) The successful tenderers will be selected through a single open, transparent and non-discriminatory competitive selection procedure. Italy considers that this will avoid duplicating costs deriving from multiple competitive selection procedures.
- (34) The call for tenders will be organised as follows:
- (a) It will comply with the relevant principles of EU¹⁶ and Italian public procurement rules¹⁷, as well as with the principle of technological neutrality (see recital (26));
 - (b) It will ensure equal and non-discriminatory treatment of the interested parties as well as effective competition among them. Furthermore, it will be designed in a way to foster the widest possible participation;
 - (c) It will be published on the official websites www.innovazione.gov.it and www.infratelitalia.it;
 - (d) The tender will be awarded on the basis of the most economically advantageous offer for each lot. The technical aspects of the offer will account for 70% of the score, while the economic aspects will account for 30%. In the assessment of the technical aspects of the offer, the following criteria will be taken into account:
 - The technical solution proposed by the bidders to deploy the networks;
 - The overall quality of the project organization and design (*e.g.* sizing of resources for designing the network, monitoring of the construction sites; the adoption of adequate recruitment and training plans for the specialised workforce needed to deploy the networks);
 - The quality of the services provided by the subsidised network (*e.g.*

¹⁶ See Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and the relevant EU case-law.

¹⁷ See the Italian Procurement Code (Legislative Decree No. 50/2016), the relevant Italian case law, and the relevant opinions of the Italian Competition Authority (hereafter: “ICA”).

- commitment to deploy networks that go beyond the requirements and provide speeds higher than the Target Speeds);
- The wholesale offer (e.g. commitment to go beyond the requirements concerning wholesale access products, conditions and service levels set by the NRA (see sections 3.13 and 3.14));
- (e) For the purpose of the tender, the Italian territory will be split into lots having regional or multi-regional dimension¹⁸. A cap will apply to the maximum number of lots that a bidder can win. The number and the size of the lots will be set on the basis of the following criteria, to favour the widest possible participation to the tender and the most efficient use of public resources:
- The structure of the Italian market for the provision of wholesale broadband services, which is highly concentrated and asymmetric¹⁹. On this market, two undertakings (TIM and Open Fiber) hold the highest market shares and four other undertakings (Fastweb, Wind3, Vodafone and Tiscali) have market shares of at least 2%;
 - The need to ensure an efficient use of public resources by achieving adequate economies of scale and density, and, more broadly, the widest efficiencies in the construction of the networks, as well as the minimisation of the administrative costs;
 - The number of addresses to be reached;
 - The planned duration of the Measure;
 - The orography of the intervention areas.
- (35) The call for tenders will include detailed milestones for carrying-out the activities needed to timely complete the subsidised networks. Penalties will be applicable in case the obligations related to the achievement of the milestones are infringed.

3.13. Role of the NRA

- (36) The Italian authorities involved the Autorità per le Garanzie nelle Comunicazioni (hereafter: “AGCOM”) since the early stages of the Measure, in particular, with regard to the mapping, wholesale access products and related pricing, and clawback mechanism.
- (37) By resolution No. 406/21/CONS of 16 December 2021, AGCOM adopted the “*Guidelines establishing the conditions for wholesale access to subsidised ultra-broadband networks*” (hereafter: “Resolution”), where it set the wholesale access prices and conditions that the aid beneficiaries must provide to the access seekers to the subsidised networks (see section 3.14)²⁰.

¹⁸ The Italian authorities could exceptionally provide sub-regional lots on the basis of the characteristics of certain regions (e.g. where the number of addresses in a specific region is high).

¹⁹ The Italian authorities explained that the undertakings will have the possibility of submitting bids in horizontal or vertical temporary groups of undertakings, in consortia or through other aggregations, in compliance with Article 48 of the Italian Procurement Code, competition rules and the aim of ensuring an efficient use of public resources.

²⁰ The Resolution was adopted following a public consultation launched by resolution

- (38) AGCOM will be also responsible to solve any disputes between access seekers and the subsidised networks operators regarding wholesale access.

3.14. Wholesale access to the subsidised networks

- (39) The Italian authorities indicate that aid beneficiaries must provide passive and active wholesale access to the subsidised networks to all service providers on non-discriminatory terms and under the technical and economic conditions, as described herein (the Resolution provides further details, subject to the conditions detailed below).
- (40) Passive wholesale access will be unlimited in time. The Italian authorities will impose an obligation on the successful tenderers to grant also active wholesale access for 10 years.
- (41) The aid beneficiaries must offer to access seekers at least the following wholesale access products:
- (a) Access to ducts and other elements of the physical infrastructure;
 - (b) Access to dark fiber;
 - (c) Unbundled access to the fiber;
 - (d) Full unbundled access to GPON and semi GPON;
 - (e) Colocation services at the beneficiary's point of presence (and related ancillary services);
 - (f) Access to backhauling ducts;
 - (g) Access to backhauling dark fiber;
 - (h) Access to fiber termination segment;
 - (i) FTTH/B VULA and bitstream services;
 - (j) FWA VULA and bitstream services²¹.
- (42) The Resolution sets also price caps for each of the wholesale access products to the subsidised networks. AGCOM set the wholesale price for each product on the basis of the regulated prices already approved for the markets concerned. Such caps are intended as maximum prices that the bidders cannot exceed but can lower in the tender (see recital (34)(d)). AGCOM will check the compliance with the price caps.
- (43) Finally, the Resolution defines the minimum service level agreements, which the bidder can commit to improve as part of its tender offer.
- (44) In any case, the subsidised networks will be adequately sized to allow any access seeker to obtain access under the terms and conditions set herein and based on the Resolution of AGCOM.

94/21/CONS of 23 September 2021. 14 stakeholders expressed their views in the context of the consultation.

²¹ Including the provision and installation of the antenna at the end-user's premises.

- (45) The same access conditions will apply on the entirety of the network including where existing infrastructure will be used. The access obligations must be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure.

3.15. Claw-back mechanism

- (46) Since the aid amount is estimated by the aid beneficiary on an *ex ante* basis so as to cover the expected funding gap over the lifespan of the investment, Italy will closely monitor the construction of the subsidised networks for the entire duration of the Measure and foresee a claw-back mechanism that will be described in the call for tenders. The claw-back mechanism will allow the Ministry to claw-back any amount exceeding a reasonable profit, in order to avoid over-compensation. The claw-back is designed to provide an incentive to operators to strive for efficiency gains.
- (47) The claw-back mechanism will operate as follows.
- (48) In the tender the bidders must submit a financial plan for the construction and operation of the subsidised networks. The financial plan must include: (i) the projected investments and the costs needed to deploy and maintain the networks²²; (ii) the profits expected over the reference period that will be defined in the call for tender in the range between 10 and 15 years²³; and (iii) the aid intensity resulting from the tender²⁴. The plan will be taken into account in awarding the tender and will be used to apply the claw-back mechanism.
- (49) Based on the above, the Italian authorities will claw-back:
- (a) The difference between the costs estimated by the aid beneficiary in the tender and the actual costs of deployment of the networks;
 - (b) The difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the subsidised networks.
- (50) In order to incentivise efficiency gains in the construction and operation of the subsidised networks, the mechanism will allow the beneficiary to keep reasonable profit and an additional maximum of 30 % of the reasonable profit²⁵. Italy will not claw-back any extra profit below that threshold. Any profit in excess of the 30 % threshold will be shared between the aid beneficiary and Italy, according to the actual aid intensity resulting from the tender (minimum 30 % for the aid beneficiary and maximum 70 % for Italy).
- (51) The Italian authorities will monitor on a one-year basis the existence of possible

²² The Italian authorities will check whether the costs estimated by the bidder to deploy the subsidised networks are comparable with the costs that an efficient operator would have incurred in deploying a comparable network.

²³ The reference period will be defined on the basis of the lifespan of the different elements constituting the subsidised networks.

²⁴ The granting authority will determine and indicate in the call for tender the WACC that the bidders are required to use in defining their financial plans.

²⁵ Reasonable profit is intended as the rate of return on capital that would be required by a typical company, taking into account the level of risk specific to the broadband sector and the type of services provided. The required rate of return on capital is determined by the weighted average cost of capital (WACC).

extra-profits²⁶. The monitoring will: (i) start after the completion of the subsidised networks and before the marketing of both active and passive wholesale and retail electronic communication services; and (ii) will end after 10-15 years (see recital (48)).

- (52) In order to allow the Italian authorities to perform the checks, the aid beneficiary must ensure accounting separation between the costs and revenues related to the deployment and operation of the subsidized networks and any other funds at its disposal.

3.16. Mapping

- (53) The Italian authorities conducted a detailed mapping exercise, in order to identify the areas where there are no networks present or credibly planned by 2026 capable of providing at least 300 Mbps download speed under usual peak time conditions²⁷, either by deploying new networks or by upgrading the existing ones.
- (54) The mapping exercise concerned the entire Italian territory²⁸. It was conducted in two stages in the period 30 April-15 June 2021 and 13 October-15 November 2021, respectively²⁹. 54 operators³⁰ submitted substantiated information regarding their networks present or credibly planned to be deployed by 2026³¹. The mapping exercise was carried out at address level³².

²⁶ For each year the aid beneficiary will submit the final balance of costs and profits deriving from the subsidised networks.

²⁷ The mapping exercise has been carried-out on the basis of the *'BEREC Guidelines to assist NRAs on the consistent application of Geographical surveys of network deployments'* of 5 March 2020 as well as of the *'BEREC Guidelines on Very High Capacity Networks'* of 1 October 2020.

²⁸ Approx. 33 million addresses were considered for the exercise.

²⁹ In particular, the Italian authorities (i) published a notice on the official website; www.bandaultralarga.it as well as on Infratel's website (www.infratelitalia.it), and (ii) addressed requests for information to the electronic communications operators active in Italy.

³⁰ Argosid Network S.r.l.; Asdasd S.r.l.; Atomo Networks S.r.l.; Azienda Publiservizi Brunico; B.B.Bell S.p.A.; Bbanda S.r.l.; Blunova S.r.l.; Blunova Trapani S.r.l.; Briantel S.r.l.; Cedis; Clio S.r.l.; Connesi S.p.A.; Consorzio Elettrico di Possa di Fass Soc. Coop.; Convergenze S.p.A.; Delta Web S.p.A.; Dodonet S.r.l.; Eolo S.p.A.; Estracom S.p.A.; Fastweb S.p.A.; Fibercop S.p.A.; Fibraweb S.p.A.; FibreConnect S.p.A.; Fidoka S.r.l.; Fulmine in Mano S.r.l.; Infibra S.r.l.; Intranet AG S.p.A.; Insiel S.p.A.; Intercom S.r.l.; Interplanet S.r.l.; Intred S.p.A.; Isiline S.r.l.; Lenfiber S.p.A.; Linkem S.p.A.; Micro Servizi S.a.s. di Linguanti C. & C.; Mynet S.r.l.; Nemo S.r.l.; Net Global S.r.l.; Net-It S.r.l.; Open Fiber S.p.A.; Planetel S.r.l.; Polonavacchio S.p.A.; Retelit Digital Services S.p.A.; Sinet S.r.l.; Siportal S.r.l.; Sirius Technology S.r.l.; Spadahausen S.r.l. Unipersonale; Telecom Italia S.p.A.; Telweb S.r.l.; Terre Cablate Reti e Servizi Reti S.r.l.; Unidata S.p.A.; Vodafone Italia S.p.A.; Wi-Go S.r.l.; Wime S.r.l.; WT S.r.l.

³¹ In particular, the following information was provided at address level: (i) technology (e.g. copper, fiber, FWA and their respective specifications), (ii) maximum (download and upload) achievable speed, (iii) expected (download and upload) speed under usual peak time conditions, (iv) VHCN class, (v) year of deployment to cover each address, and (vi) number of addresses passed by the operator at the address (optional).

³² In particular, the Italian authorities have (i) published a notice on the official website www.bandaultralarga.it as well as on Infratel's website (www.infratelitalia.it), and (ii) addressed requests for information to the telecommunications operators active in Italy. The first mapping exercise included the whole Italian territory with the exclusion of the "White areas 2016" i.e. the areas within the initial scope of the 2016 Intervention, while the second concerns the "White areas 2016", to include where relevant the addresses not currently addressed by the

- (55) In order to avoid that a mere expression of interest to invest could delay the delivery of the electronic communication services with negative impact for endusers, the Italian authorities required formal commitments from the operators which submitted private investment plans as well as the submission of the relevant documents supporting the reliability of their declared investments. The operators provided their detailed investment plans³³, the relevant strategic or executive decisions to implement such plans, and the milestones of the projected investments.
- (56) Infratel will monitor the progress of the plans declared by the operators. In this regard, specific milestones will be agreed upon with the operators (and possibly formalised in specific agreements). The operators will be asked to report, at least every six months, on the progress of their investments. Should the operator fail (without valid reason) to achieve a milestone and should the Italian authorities consider that it is unlikely that the plan will materialize, Infratel may then extend the intervention also to the areas concerned, under the conditions of the present Measure. Moreover, should Infratel ascertain that the operators (a) provided (fraudulently or as a result of gross negligence) incorrect/misleading information, or (b) modified (without valid reason) their declared investment plans, Infratel will report the fact to the competent authorities. A notice about such conducts will be published on the official website www.infratelitalia.it.
- (57) Following an assessment of the information received in the mapping exercise, the Italian authorities requested additional information to certain operators (mainly Fixed Wireless Access - FWA - operators) concerning their investment plans and the technical characteristics of the networks that they intended to deploy³⁴.
- (58) With specific reference to the FWA coverage plans, the requests were aimed to identify the addresses that will be served by 2026 with connections of at least 300 Mbps download speed under usual peak time conditions within 4 weeks of an end-user's request³⁵. The operators responded that, due to the nature of their business model, a precise identification of the subset of addresses actually served requires the check over time of the actual requests for connectivity by end-users.
- (59) In the first stage of the mapping exercise, the analysis of the concerned FWA plans showed that approx. [...] addresses were declared passed with download speeds of at least 300 Mbps under usual peak time conditions only by [...] and that only a marginal share of these addresses could be actually served with such speeds. Therefore, the Italian authorities checked the feasibility of the technical-financial plan declared by [...]. On the basis of this analysis the Italian authorities concluded (and [...] agreed by amending its plan declared in the mapping exercise) that out of the approx. [...] addresses at stake [...]’s FWA network will be capable of covering

2016 Intervention.

³³ The investment plans contained the start and the end date of the roll-out, including the date of completion of each phase of the investment, the main elements proving the feasibility of the plan and a description of the architecture and structure of the projected networks.

³⁴ As mentioned (see recital (53)), the subsidised networks may be realised either by deploying new networks or by upgrading the existing ones. The possibility of upgrading existing networks has been considered during the public consultation, also assessing the technology of such networks and their capability to provide at least 300 Mbps download speed under usual peak time conditions.

³⁵ In the case of FWA networks, the served addresses are a subset of the potentially servable addresses (the so-called *passed* addresses), *i.e.* those falling within the radio coverage area of an FWA base station sized to provide specific electronic communication access services.

and effectively serving only a limited number of addresses within 4 weeks of the end-user's request, with a download speed of at least 300 Mbps under usual peak time conditions.

- (60) In the second stage of the mapping exercise, the analysis concerned about [...] addresses declared passed by [...] with a download speed of at least 300 Mbps under usual peak time conditions, and approximately [...] addresses declared passed with the same speed by [...]. Following an in-depth analysis, the Italian authorities concluded (and the concerned companies agreed by amending their plans declared in the mapping exercise) that the respective FWA networks will be able to effectively serve only a limited percentage of the analysed addresses, within 4 weeks of the user's request, with a download speed of at least 300 Mbps under usual peak time conditions.
- (61) Based on the overall information received and analysed, the Italian authorities excluded from the public intervention the addresses that will be reached by networks capable of providing at least 300 Mbps under usual peak time conditions by 2026. As a result, Italy identified about 7 million of addresses as eligible for public intervention.

3.17. Main public consultation

- (62) The Italian authorities carried out a public consultation which took place between 6 August and 15 September 2021. The public consultation invited stakeholders to express their views on the main features of the Measure as well as on the results of the mapping exercise, including the list of the intervention areas³⁶. 73 submissions were received and assessed³⁷. The submissions mainly concerned the following topics.
 - 3.17.1. *Threshold for intervention*
- (63) Most operators³⁸ shared the approach of the Italian authorities with regard to setting a threshold for interventions expressed in terms of download speed under usual peak time conditions at 300 Mbps to ensure that by 2026 a significant number of addresses will be reached by networks offering connection speeds that meet the needs of end-users.
- (64) Some respondents suggested raising the threshold to 1 Gbps, while other respondents expressed a preference for a 100 Mbps threshold, mainly arguing that 100 Mbps will be sufficient, even in the upcoming years, to meet customer needs, and that a higher threshold may distort competition by crowding out private investments.
- (65) The Italian authorities confirmed 300 Mbps download speed under usual peak time conditions as the threshold for the intervention. Italy is of the view that this threshold is needed to ensure the availability of networks that can meet the growing needs for

³⁶ The public consultation was published on the website www.innovazione.gov.it. The public consultation was preceded by a preliminary consultation of the electronic communications operators active in Italy (and their associations), in order to finalise a widely shared text of the plan to be put out for public consultation and thus to reduce the possible discussions following the public consultation and to speed-up the following notification to the Commission in compliance with the milestones provided for by the RRF.

³⁷ In particular, 26 electronic communication operators, 7 trade associations and 40 further entities (mainly local governments).

³⁸ In particular: [...]

connectivity related to the use of advanced electronic communication services, including linear 4K/8K video streaming, virtual and augmented reality, immersive collaboration, smart working and distance learning, cloud computing, online gaming, advanced home automation, telemedicine, egovernment services, etc. According to the Italian authorities, such services require high connectivity levels, also considering that in the same household there may be more end-users using a combination of these services at the same time.

3.17.2. *Intervention model*

- (66) The vast majority of the stakeholders supported the choice of the gap funding model³⁹. One stakeholder ([...]) added that the call for tenders should oblige the successful bidders to use any existing infrastructures in particular the existing primary networks (*i.e.* the networks connecting the central office with the street cabinets), in order to avoid overbuilding existing networks and, thus, an inefficient use of public funds.
- (67) The Italian authorities explained that in their view the Measure is already adequate to foster the use of the existing infrastructures⁴⁰. The Italian authorities were of the view that:
- (a) A general obligation to use the existing infrastructure would go beyond the relevant provisions of the European and national legislation and regulation⁴¹;
 - (b) A general obligation to use the existing primary networks could negatively affect the overall efficiency of the Measure in terms of quality, costs and time, by limiting the choice among various solutions that bidders are best placed to make, in the interest of providing a bid that meets the award criteria while at the same time minimising the aid amount (see also recital (34)(d) regarding the selection of the most economically advantageous offer). The Italian authorities considers that the bidders should have the freedom to decide whether and to what extent to use existing networks based on their own case-by-case assessment and design of a network in the light of the specific situation of the area concerned;
 - (c) The ambitious milestones and final deadline (2026) to deploy and complete the networks provide sufficient incentives to use to the maximum extent

³⁹ One stakeholder ([...]) while supporting the adoption of this model, asked to consider also the concessionaire model in specific areas already largely covered by the subsidised network it is completing in the context 2016 Intervention. Other stakeholders ([...]) suggested to take into account a mix between direct public intervention and gap funding model. Another stakeholder ([...]) expressed a preference for the concessionaire model.

⁴⁰ See, in particular, the 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, and the Legislative Decree 33/2016, which transposed the same directive. Furthermore, the successful bidders may check the existing infrastructures on the national database called SINFI (*Sistema Informativo Nazionale Federato delle Infrastrutture*).

⁴¹ 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 only establishes the conditions for and under which access to existing physical infrastructure can be provided, for the benefit of all operators deploying networks including those supported by public funds.

possible any existing networks, where appropriate and insofar as technically and legally possible.

- (68) Therefore, according to the Italian authorities, the use of the existing infrastructures is fostered by the Measure. Detailed information on the existing infrastructures is available to stakeholders (see footnote 40), who can use the existing infrastructures in order to reduce the amount of public funding, including by relying on regulated wholesale access infrastructures.

3.17.3. *Number of lots and caps*

- (69) Most of the operators stressed that the call for tenders should provide for lots with regional or multi-regional dimension, in order to foster economies of scale and, thus, an efficient use of public resources⁴². Some operators expressed their preference for the provision of a cap to the lots that the same bidder could award⁴³, while others did not share this view⁴⁴.
- (70) The Italian authorities decided to split the intervention areas into lots and to provide for a cap to the number of lots awardable to the same bidder (see recital (34)(e)). The Italian authorities explained that this should ensure the widest possible participation and competition among all interested parties, regardless of their size and of the technology used, as well as the cost-effectiveness and efficiency of the bids, while limiting procedural burdens in the tender and the implementation of the Measure. The cap is mainly intended to safeguard infrastructure competition in the intervention areas.

3.17.4. *Monitoring of the private investment plans declared by the operators*

- (71) Some stakeholders stressed that the implementation of the investment plans declared by the operators should be properly monitored, in order to avoid any attempts to delay or prevent public intervention. In this regard, the respondents shared the approach of the Italian government (a) to check every six months the status of the implementation of the private investment plans⁴⁵, and (b) to provide for penalties in case of unjustified non-compliance with the timely implementation of the plans.
- (72) The respondents also pointed out that reasonable adjustments of the declared private investment plans should be allowed to cater for: (a) technical issues that may arise in the construction phase, (b) technological and market developments that may occur during the five year time horizon of the Measure as business plans typically cover up to three years. In order to minimise the impact of such possibility, the respondents were of the view that the mapping exercise should be repeated periodically (every year or every 6 months).
- (73) Some respondents ([...]) pointed out that the monitoring of the private investment plans should be carried out by AGCOM as it has a comprehensive database of the existing Internet access networks, which could be used for collecting the relevant information on the implementation of the declared plans and for checking their progresses. As a consequence, AGCOM would be best placed to carry-out the monitoring activities as effectively as possible.

⁴² 3 operators ([...]) expressed a preference for smaller lots.

⁴³ In particular, [...]

⁴⁴ In particular, [...]

⁴⁵ According to certain respondents, the updates should be checked every three months.

- (74) The Italian authorities considered that the reliability of the private investment plans is already demonstrated by the documents provided by the operators in the context of the mapping exercise (see also recitals (55)).

3.17.5. *Commitments concerning the subsidised investment plans*

- (75) Most respondents shared the approach of the Italian government as to the need to include in the call for tenders mechanisms to ensure the compliance with the plans submitted during the tender. In particular, respondents were of the view that the call for tender should contain (a) detailed milestones concerning the construction of the subsidised networks, (b) periodic (on quarterly, four-monthly or six-monthly basis) checks of the progress in the deployment of the networks, and (c) the application of penalties in case of unjustified delays in meeting the deployment milestones.
- (76) The Italian government decided to take-up the comments and therefore to include in the call for tenders:
- (a) Six-months milestones (that will be consistent with the milestones and targets provided for by the RRP);
 - (b) An obligation on the aid beneficiary to report on progress in the deployment of the networks on a six-months basis;
 - (c) Penalties for non-compliance with milestones. In particular, in case of unjustified failure to meet a milestone, Infratel will impose a penalty in proportion to the percentage of deployment unfulfilled (save the possibility for the beneficiary to recoup the penalty if the delay is later caught up). Moreover, at any time, Infratel may revoke the award of the tender in case of serious breach of the deployment plans.

3.17.6. *Wholesale access to the subsidised networks*

- (77) All respondents stressed the need to provide the widest possible range of wholesale access products, including full physical unbundling, to allow: (a) all access seekers to have access to the subsidised networks under fair and non-discriminatory terms and conditions, and (b) aid beneficiaries to maximise their return on investments by fostering the widest possible use of the subsidised networks.
- (78) As described in section 3.13, the subsidised networks must provide wholesale access under fair and non-discriminatory conditions to all access seekers.

3.18. Additional public consultation

- (79) On 24 November 2021, the Italian authorities launched a further specific public consultation⁴⁶ using the same approach described in section 3.16. The public consultation concerned the extension of the Measure to include additional addresses located in remote areas of the Italian territory and not addressed by the 2016 Intervention nor covered (by 2026) by private networks able to provide at least 300 Mbps under usual peak time conditions⁴⁷. All stakeholders were invited to comment on the revised number of addresses to be included in the scope of the Measure.

⁴⁶ The public consultation was published on the website www.innovazione.gov.it.

⁴⁷ The addresses at stake were identified in the second stage of the mapping exercise (see recital (60)).

- (80) The public consultation lasted until 24 December 2021. 8 responses were received and assessed⁴⁸. The operators widely endorsed the decision to include these additional addresses in the scope of the Measure⁴⁹.
- (81) The Italian authorities decided to include the addresses at stake in the Measure.

3.19. Opinion of the Italian Competition Authority

- (82) On 30 November 2021, the ICA issued an opinion on the Measure pursuant to Article 22 of Law No 287/1990, by which it endorsed the Measure. In particular, the ICA pointed out the following:
- (a) ICA considers the 300 Mbps threshold for intervention is appropriate to attain the objectives of the Strategy, also considering the characteristics of the Italian market;
 - (b) ICA considers appropriate the awarding of the tender based on the most economically advantageous offer. The ICA invited the Ministry to verify the possibility to grant a higher score to the bidders that: (i) commit to provide more than 1 Gbps download speed; (ii) adopt technical solutions capable of supporting immediately a connection that will provide 2.5 Gbps download speed; (iii) ensure the same service levels as the traffic increases. The Italian authorities decided to reflect into the Measure the first suggestion of the ICA (see recital (34)(d)). Moreover, the third suggestion has been *de facto* taken up with the provision that the Target Speeds will be granted under usual peak time conditions;
 - (c) The Ministry should assess whether the development plans of FWA networks submitted by the operators allow to actually reach the objectives of the Measure. As mentioned in recitals (58)-(60), the Italian authorities carried-out the assessment suggested by the ICA;
 - (d) Size and number of lots as well as the cap to the number of lots awardable to the same bidder should be defined with a view to ensure the widest possible participation in the tender and the competition among bidders. The Italian authorities are of the view that the criteria applied to define the lots and the cap (see recital (34)(e)) address ICA's suggestions;
 - (e) In ICA's view, even though wholesale access requirements are defined (based on the Resolution), the tender procedure should grant an additional score to the operators proposing further improvements of the wholesale access products and conditions (*e.g.* additional products and/or lower access price). As mentioned in recital (34)(d), Italy has taken into account ICA's suggestions;
 - (f) In ICA's view, the monitoring of the timely delivery of the subsidised networks and of the networks deployed through private investments, as well as the provision of specific remedies in case of failure to comply with the

⁴⁸ In particular, TIM S.p.A., Fibercop S.p.A., Open Fiber S.p.A., Linkem S.p.A., Irideos S.p.A., Wind3 S.p.A., Iliad Italia S.p.A., Retelit S.p.A.

⁴⁹ Only one respondent ([...]) suggested to lighten the obligations imposed on the successful tenderer in such areas (*e.g.*, removing the obligation to provide end-to-end passive wholesale electronic communication access services), considering that the addresses are located in remote areas.

commitments made by the operators in this regard (*e.g.* penalties) are needed to ensure an effective competition on the markets. As mentioned in recital (76), specific penalties will apply in case of infringements of the subsidised investment plans.

3.20. Transparency and reporting

- (83) The Italian authorities will ensure that the granting of aid under the Measure will be subject to the publicity rules provided for in Article 34(2) of the RRF Regulation.
- (84) The Italian authorities will also ensure, for the entire duration of the Measure, that all transparency requirements are met at each phase of the implementation. The relevant information about the subsidised networks will be published on the website www.infratelitalia.it that will allow both operators and end-user to have easy access to all relevant acts and information regarding the Measure and its implementation.
- (85) The Italian authorities will publish the following information:
- (a) Full text of the approved Measure and related acts of implementation;
 - (b) Date of granting of the aid;
 - (c) Name of the aid beneficiaries;
 - (d) Aid amounts and aid intensities;
 - (e) Technology used;
 - (f) Addresses reached by the subsidised networks⁵⁰.
- (86) This information must remain published for at least ten years and be available for the general public without restrictions.
- (87) Infratel as well as the beneficiaries are obliged to provide entitled third parties with comprehensive and non-discriminatory access to information on the subsidised networks (including but not limited to ducts, dark fibre, electricity connections, foundations, access routes, masts, towers, manholes, antennas).
- (88) Infratel and the beneficiaries will also publish detailed information concerning wholesale access conditions and prices.
- (89) The Italian authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain the following key data concerning the Measure:
- (a) Name of the aid beneficiaries;
 - (b) Total cost (or estimated total cost) for the deployment of the networks;
 - (c) Aid amount awarded and aid expenditure, as well as aid intensity;
 - (d) Sources of public financing;
 - (e) Coverage rates prior to, and after, the State intervention (in absolute and in

⁵⁰ Information will be updated every 6 months.

- percentage terms);
 - (f) Date when the infrastructure was put in use;
 - (g) Technology deployed on the publicly funded infrastructure;
 - (h) Minimum and average (up- and download) speeds of electronic communication services provided;
 - (i) Wholesale access products offered, including conditions for access and prices;
 - (j) Wholesale access products requested, number of access and take-up rates.
- (90) The Italian authorities also committed to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.

3.21. Monitoring

- (91) Italy will carry out an ongoing monitoring of the Measure, including the tendering process, the deployment and operation of the network, and the fulfilment of all requirements under the Measure. Italy will maintain detailed records regarding the Measure. Such records will include all information necessary to establish that all the compatibility conditions of the Measure are fulfilled. Italy will maintain those records for 10 years from the date of award of the aid and will send them to the Commission upon request.

3.22. *Ex post* evaluation plan

- (92) Aid schemes with large aid budgets (*i.e.* annual budget above EUR 150 million), containing novel characteristics or when significant market, technology or regulatory changes are foreseen 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 scheme 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 Union⁵¹.
- (93) The Measure, whose budget is about EUR 3.8 billion, fulfils the criteria of being an aid scheme with a large budget, hence it requires an *ex post* evaluation.
- (94) The Italian authorities notified, together with the Measure, an evaluation plan, taking into account the best practices recalled in the Commission Staff Working Document on a Common methodology for State aid evaluation. The main elements of the evaluation plan are described below.
- (95) The evaluation plan describes the objectives of the Measure and comprises evaluation questions that, through both quantitative and qualitative analysis, address the direct effects of the Measure, its proportionality and appropriateness, as well as a number of indirect effects, including potential distortive effects on competition.
- (96) As regards direct effects, the plan checks the capability of the Measure to increasing the coverage of the Italian territory with networks providing the Target Speed and

⁵¹ See Commission Staff Working Document, *Common methodology for State aid evaluation*, SWD (2014) 179 final.

the take-up of related services by end-users. As regards indirect effects, the plan assesses the impact of the Measure on competition.

- (97) Proportionality and appropriateness of the Measure are assessed by checking whether the objectives of the Measure were achievable with a lower aid intensity.
- (98) The evaluation plan describes the result indicators that will be used to assess the degree of achievement of the Measure's objectives, and which are matched with the evaluation questions, as well as the methodology applied to identify the impact of the Measure.
- (99) The Italian authorities confirmed that the final evaluation report will be published on the official website of the Italian government.
- (100) A first report will be submitted to the Commission within two years after the approval of the Measure and will focus on the analysis of the compatibility of the calls for tender with the relevant principles of EU law as well as with the Measure as notified. Moreover, this first report will contain a first assessment of the impact of the Measure, based on the data that will be available at that time.
- (101) The final evaluation report will be submitted four years after the start of the implementation of the Measure. It will focus on the assessment of the direct and indirect impacts of the Measure in the medium term.
- (102) The Italian authorities committed to continue the evaluation beyond the duration of the Measure and to submit in 2027 an additional evaluation report, which will take into account all the effects of the Measure (which will come to an end in 2026).

4. ASSESSMENT OF THE MEASURE

4.1. Existence of the aid

- (103) According to Article 107(1) TFEU, '*[s]ave as otherwise provided in the Treaties, 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*'
- (104) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an undertaking, (ii) the measure has to be granted through State resources and be imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

4.1.1. Undertaking

- (105) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.⁵²
- (106) The beneficiaries of the aid are the undertakings that are awarded the tenders for the deployment and operation of the broadband networks providing the Target Speeds.

⁵² Judgment of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

They will be able to use the subsidised networks to expand the electronic communication services in the intervention areas.

- (107) The deployment and operation of broadband networks as well as the provision of both wholesale and retail electronic communication services constitute economic activities within the meaning of Article 107(1) TFEU.
- (108) Hence, the aid beneficiaries are undertakings within the meaning of Article 107(1) TFEU.

4.1.2. *State resources and imputability*

- (109) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.⁵³
- (110) As described in recitals (17) and (22), the Measure is entirely financed with the RRF funds assigned to Italy. RRF funds assigned to a Member State constitute State resources as they are subject to the Member State's control. The financing is allocated to the aid beneficiaries under the control of the Ministry (through Infratel) in its quality of granting authority.
- (111) Hence, State resources are involved and the Measure is imputable to the State.

4.1.3. *Economic advantage*

- (112) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention^{53 54}.
- (113) Beneficiaries will receive grants amounting to EUR 3.8 billion for the deployment of the networks providing the Target Speeds. This will enable the aid beneficiaries to provide electronic communication services) in the intervention areas on conditions that would otherwise not be available under normal market conditions. Therefore, the Measure confers an advantage to the aid beneficiaries by expanding the range of their networks and electronic communication services at a lower cost than that they would normally have to bear under normal market conditions as compared to companies investing only based on private funds under the same technical, commercial and legal conditions in the liberalised market without public financial supports.
- (114) Hence, the Measure grants an economic advantage to the aid beneficiaries, which they would not have had under normal market conditions.

4.1.4. *Selectivity*

- (115) To fall within the scope of Article 107(1) TFEU, a State measure must favour '*certain undertakings or the production of certain goods*'.
- (116) The Measure is aimed at the beneficiaries identified in recital (106). The Measure thus targets undertakings that are active in one industrial sector (the electronic

⁵³ Judgement of 16 May 2002, France v Commission, C-482/99, ECLI:EU:C:2002:294.

⁵⁴ Judgment of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

communications sector), and only in certain segments of the overall electronic communications sector (deployment and operation of fixed networks), to the exclusion of other electronic communications services and other economic activities.⁵⁵ The Measure excludes, in principle, electronic communications networks and services providers that cannot meet the requirements of the Measure.

- (117) The deployment and operation of broadband networks is a liberalised economic activity usually conducted by commercial operators on the basis of private investments in the market. Economic activities in this sector normally do not receive subsidies. The deployment and operation of broadband networks in the intervention areas is not justified by the nature of the liberalised market and the regulatory framework. In any event, the features of this legal framework cannot provide any justification for granting subsidies.
- (118) The Measure is moreover territorially selective as it is set up with the aim of deploying and operating the networks only in the intervention areas of the Italian territory.
- (119) Hence, the Measure is selective.

4.1.5. *Effect on trade and competition*

- (120) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case-law of Union courts, the concept of '*effect on trade between Member States*' is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that '*In particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid*'⁵⁶.
- (121) The Measure concerns the deployment and operation of broadband networks to be used for the provision of electronic communications services in the interventions areas in Italy. When looking at the communications sector in Italy, it must be concluded that there is significant private financing of the deployment of performant broadband networks all over the country.
- (122) The electronic communications sector is subject to significant intra-EU and international trade and competition, also by virtue of the process of liberalisation at the level of the Union. By favouring certain operators and service providers, the Measure alters the existing market conditions and is liable to distort competition and affect trade between Member States. The Measure will determine the availability of networks which would not be provided under normal market conditions. State support may deter other operators from setting up or developing their own networks under commercial conditions and may also encourage local undertakings to take advantage of electronic communication services offered through the subsidised networks rather than other market solutions.
- (123) Hence, the Measure is capable of distorting competition and has an effect on trade between Member States.

⁵⁵ Judgment of 15 June 2006, *Air Liquide Industries Belgium*, Joined Cases C-393/04 and C-41/05, ECLI:EU:C:2006:403, paragraph 31.

4.1.6. Conclusion on the existence of aid

(124) In view of the above, the Commission concludes that the Measure constitutes State aid within the meaning of Article 107(1) of the TFEU.⁵⁶

4.2. Compatibility

(125) According to Article 107(3)(c) TFEU, “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 internal market. The compatibility of State aids for the roll-out of broadband networks is normally assessed under the 2013 EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (“BBGL”)⁵⁷.

(126) However, in 2021, the BBGL were subject to an evaluation assessing whether they were still fit for their main purpose of facilitating the development of economic activities consisting in broadband deployment and related broadband network services, while not adversely affecting trading conditions to an extent contrary to the common interest. The evaluation showed that the BBGL work well, are broadly fit for purpose and have made an important contribution to the deployment of broadband networks. At the same time, the evaluation showed that some targeted adjustments of the existing rules are necessary to reflect the latest market and technological developments and fast evolving connectivity needs. Such aspects are particularly relevant for the assessment of the conditions under which Member States may grant support *inter alia* with respect to the need for public intervention (existence of a market failure) and to the performance that the networks must achieve (step change)⁵⁸.

(127) Against this background, the Commission has assessed the Measure on the basis of the BBGL, taking into account, where justified, adjustments needed to reflect technological and market developments and fast evolving connectivity needs in

⁵⁶ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

⁵⁷ Communication from the Commission - EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, 2013/C 25/01, in OJ C 25, 26.1.2013, pp. 1 -26.

⁵⁸ See Commission Staff Working Document - Evaluation of the State Aid rules for broadband infrastructure deployment (SWD(2021) 195 final). On 19 November 2021, the Commission published for consultation a draft revised broadband guidelines, which relies largely on the results, evidence and data collected in the context of the evaluation in combination with the Commission’s market experience stemming from its case practice (see https://ec.europa.eu/competition-policy/public-consultations/2021-broadband_en). The proposed revision aims to ensure that the market and technological developments are appropriately taken into account in the assessment of State aids in the broadband sector. The main proposed revisions concern: (i) alignment of the intervention threshold for aid for fixed networks with current and expected technological and market developments; (ii) aid in the form of demand-side measures supporting the take-up of fixed and mobile networks; (iii) guidance regarding an operator’s use of its own resources to connect to the publicly-funded infrastructure to provide services outside the area for which the aid was granted; (iv) adjustment of wholesale access obligations to reflect technological progress; (v) clarifications and further guidance on mapping, public consultation, selection procedure, wholesale access pricing, claw-back mechanism; (vi) aid for the deployment for the deployment of mobile networks.

Italy, based on the information provided by the Italian authorities.

- (128) Thus, in order to be declared compatible, the aid must contribute to the development of certain economic activities or areas (first condition) and it must not adversely affect trading conditions to an extent contrary to the common interest (second condition)⁵⁹.
- (129) Under the first condition, the Commission assesses:
- (a) The economic activity facilitated by the Measure;
 - (b) The incentive effect of the Measure, in that it changes the behaviour of the undertakings concerned in such a way that they carry out an additional activity which they would not carry out without the Measure or would carry out in a restricted or different manner or location;
 - (c) The existence of a breach of any provision of Union law in relation to the Measure.
- (130) Under the second condition, the Commission weighs up the positive effects of the Measure for the development of the activities that the aid is intended to support and the negative effects that the aid may have on the internal market, in terms of distortions of competition and adverse effects on trade caused by the aid. In this regard, the Commission assesses:
- (a) The positive effects of the aid;
 - (b) Whether the aid is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing important inequalities;
 - (c) Whether the aid is an appropriate policy instrument to meet its objective;
 - (d) Whether the aid is proportionate and limited to the minimum necessary to attain its objective and stimulates additional investment or activity in the area concerned;
 - (e) Whether the aid is transparent. To measure and minimise the impact on the internal market, Member States, stakeholders, the general public and the Commission must have easy access to information on the aid awarded;
 - (f) The negative effects of the aid on competition and trade between Member States.
- (131) As a final step, the Commission balances the identified negative effects on the internal market of the Measure with the positive effects of the planned aid on the supported economic activities.

4.2.1. *First condition: facilitation of the development of an economic activity*

- (132) ***Economic activities facilitated by the Measure.*** The Measure concerns the deployment and operation of fixed networks providing the Target Speeds, which would result in an increased high-quality offer in the interventions areas. Therefore,

⁵⁹ Judgment of 22 September 2020, Austria v Commission (Hinkley Point C), C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

the Measure is primarily intended to facilitate the deployment and operation of fixed broadband networks and, as a consequence, to increase the offer of connectivity and access to performant electronic communications services for citizens, businesses and public administration. As described in recitals (11)-(12), the networks will be deployed in areas in which the private operators would have not invested otherwise. The Measure aims at overcoming market failures which jeopardize the ability for citizens, businesses and public administration in the intervention areas to have access to electronic communications services capable of addressing their needs, thereby increasing the economic competitiveness of the intervention areas.

(133) ***Incentive effect.*** The Measure has an incentive effect, since it facilitates the development of fixed networks providing the Target Speeds to meet end-users' needs in the intervention areas. To ensure an incentive effect, the Italian authorities carried out a mapping exercise and public consultations (see sections 3.16, 3.17 and 3.18). The operators communicated their existing and planned networks as well as their respective technical features, including their respective connection speeds. The Measure concerns only the areas of the Italian territory where the existent broadband networks and/or the broadband networks planned by 2026 are not, and/or will not be, able to provide at least 300 Mbps download speed under usual peak time conditions. Further, the Measure will not finance the costs related to investments needed to meet possible coverage obligations on the successful tenderer. On this basis, the Measure demonstrates an incentive effect to further develop this economic activity in a manner that promotes access to performant fixed electronic communication access services by citizens and businesses in the intervention areas.

(134) ***Compliance with other provisions of Union law.*** If a State aid measure, the conditions attached to it (including its financing method when that method forms an integral part of the aid measure) or the activity it finances entail a violation of a provision or general principles of Union law, the aid cannot be declared compatible with the internal market. The Commission is not aware of any possible breach of Union law that would prevent the Measure from being declared compatible with the internal market. More in general, there are no elements suggesting that the Measure or the activity financed entails a violation of relevant provisions of Union law.

4.2.2. *Second condition: absence of undue restriction of trading conditions to an extent contrary to the common interest*

(135) When designing the measure, the Italian Authorities ensured that the intervention will be limited to market failures areas only and that the State aid: (a) has positive effects, (b) is necessary, (c) is appropriate as a policy instrument, (d) is proportionate and (e) is transparent.

4.2.2.1. Positive effects of the aid

(136) The Measure brings about a material improvement in the availability of high- quality connections at both the wholesale and the retail level in the intervention areas to the benefit of citizens, businesses and public sector. It contributes to correct social or regional inequalities by promoting the availability of performant broadband networks in areas of the Italian territory reached by connections offering less than 300 Mbps download speed under usual peak time conditions that the Italian authorities consider insufficient to meet end-users' current and/or future needs. A wide availability of performant networks is an essential means of communication and participation in society and improves social and territorial cohesion. The Measure will also contribute to the achievement of objectives of Union digital

policy, and more specifically, to reduce the digital divide across Italy. This can be seen against a wider ambition of the Union to achieve throughout the territory ambitious connectivity objectives.⁶⁰ The European Electronic Communication Code also identifies the general objective of promoting connectivity as well as access to, and take-up of, very high capacity networks by all citizens and businesses of the Union⁶¹.

(137) Hence, the Measure has positive effects in the intervention areas.

4.2.2.2. Necessity for State intervention

(138) The State intervention may be deemed necessary where it can bring about a material improvement that the market alone does not deliver. Indeed, State aid measures can, under certain conditions, correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness.

(139) A market failure exists if markets, left to their own devices, without public intervention fail to deliver an efficient outcome for society. This may arise, *inter alia*, when certain investments are not being undertaken even though the economic benefit for society exceeds their cost.

(140) As anticipated in recitals (125)-(127), in assessing the existence of the necessity for State intervention, the Commission has taken into account the technological and market developments as well as the connectivity needs in Italy, as presented by the Italian authorities (see recital (65)). The necessity for State intervention in the intervention areas is supported by the following considerations:

(a) Italy explained that the threshold for intervention is appropriate to ensure the availability of networks that can meet the growing needs for connectivity related to the use of advanced electronic communication access services, including linear 4K/8K video streaming, virtual and augmented reality, immersive collaboration, smart working and distance learning, cloud computing, online gaming, advanced home automation, telemedicine, e-government services, etc. (see recital (65));

(b) The Italian authorities carried out a detailed mapping exercise aimed at identifying the coverage level of the entire Italian territory (with the only exclusion of the areas that are within the remit of the 2016 Intervention), with specific focus on the availability by 2026 of networks able to provide at least 300 Mbps download speed under usual peak time conditions (see section 3.16). The methodology applied for the mapping exercise was

⁶⁰ See, in particular, the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee the Committee of Regions of 9 March 2021, ‘2030 Digital Compass: the European way for the Digital Decade’ (COM/2021/118 final). In this regard, see also the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee the Committee of Regions of 19 February 2020, ‘Shaping Europe's digital future’ (COM/2020/67 final), according to which, as the decade progresses, households will increasingly need 1 Gbps speed. Finally, see the Proposal for a Decision of the European Parliament and of the Council establishing the 2030 Policy Programme ‘Path to the Digital Decade’, COM(2021) 574 final, 2021/0293 (COD), which underlines that “By 2030, networks with gigabit speeds should become available at accessible conditions for all those who need or wish such capacity”.

⁶¹ See Article 3 (2) (a) and (d) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

adequate and consistent with good practices at EU level. In particular, in order to properly identify the coverage level of the Italian territory, the Italian authorities requested the network operators to submit substantiated information regarding their networks present or credibly planned to be deployed by 2026. Since Italy commits to ensure by 2026 the full deployment of the subsidised networks, it was necessary to verify private investment plans for the same time period. In this regard, it is also noted that the public consultation clearly identified the five-year time horizon for the deployment of the subsidised networks and required stakeholders to provide their respective investment plans for the same time period. 54 operators provided information on their current and planned networks. In order to reduce the risk that public intervention could be prevented to the detriment of citizens and businesses on the basis of non-credible private investment plans that do not ultimately materialise, the Italian authorities took into account only the private investment plans adequately substantiated and credible. In particular, as described in recitals (55)-(56), the Italian authorities required formal commitments from the operators that submitted private investment plans as well as the submission of the relevant documents supporting the reliability of their declared investments. The continued compliance with the private investment plans (e.g. milestones) will be verified by Infratel. A specific sanctioning regime in case of unjustified failure of milestones, provision of incorrect/misleading information on the investment plans, and/or unjustified modification of the declared investment plans will be in place;

- (c) The Italian authorities carried out two public consultations, which lasted 40 days and 30 days, respectively, thereby granting interested parties enough time to comment on the Measure (see sections 3.17 and 3.18). Italy published on the official websites the main characteristics of the Measure and the list of the intervention areas identified in the mapping exercise, inviting interested parties to comment. The public consultations were carried out with the same level of granularity as the mapping exercise. In order to finalise the identification of the intervention areas, 73 submissions in the first public consultation and 8 submissions in the second public consultation were received and assessed;
- (d) AGCOM supported the authorities in both the mapping exercise and the assessment of the results of the public consultations.

(141) Based on the mapping exercise and the public consultations, by 2026 in the interventions areas the private investors will not have in place networks able to provide at least 300 Mbps download speed under usual peak time conditions and, thus, capable of addressing end-users' current and/or future needs (see recitals (65) and (140)(a))⁶². According to the Italian authorities, no objections to the identification of the intervention areas were raised in the public consultations. Moreover, both the threshold for intervention and the Target Speeds were discussed in the public consultations and were largely endorsed by the stakeholders (see, in particular, recital (63)-(65)). This will ensure that only areas where there is no

⁶² In other terms, in the intervention areas there might be one (or more) networks already providing 100 Mbps. However, according to the investment plans declared by the operators, none of the existing or planned networks within the intervention area within 2026 will be upgraded to provide the Target Speeds.

interest for private investments are targeted under the Measure. This will limit risks of crowding-out private investments and distorting competition. The Measure aims to promote investments in the deployment of (wired and/or wireless) networks providing to end-users (under usual peak time conditions) connectivity of at least 1 Gbps download speed and 200 Mbps upload speed in those areas of the Italian territory where the present and credibly planned networks by 2026 do not, and will not provide at least 300 Mbps download speed under usual peak time conditions, and where no interventions have taken place or are foreseen under the 2016 Intervention.

- (142) Hence, the Measure contributes to address a market failure in the intervention areas and, thus, there is necessity for State intervention, resulting in a positive development of the economic activity at issue.

4.2.2.3. Appropriateness of the Measure as a policy instrument

- (143) In order to be appropriate, the subsidised fixed network must provide significantly enhanced characteristics in comparison to existing networks. Thus, State funded fixed networks should be able to ensure a step-change. A step-change can be demonstrated if, as the result of the public intervention:

- (a) The new fixed network represents a significant new investment in broadband network, and
- (b) The subsidised network brings significant new capabilities to the market in terms of broadband service availability, capacity, speeds and competition.

- (144) As described in recital (30), based on the technological and market developments as well as on the connectivity needs in Italy, as presented by the Italian authorities, the Measure ensures a step change, since it represents a significant improvement in comparison to the existing and credibly planned networks in the intervention areas. In particular, the new networks will more than triple the download speed of the networks currently available or credibly planned in the intervention areas and will provide at least 1 Gbps download speed (see recital (14)).

- (145) As a consequence, the public intervention will bring significant new investments in the networks and significant new capabilities to the market by expanding the availability of performant networks. This will lead to a significant, sustainable, pro-competitive and non-temporary technological advancement without creating disproportionate disincentives to private investments (considering the lack of interest of private parties to invest in the deployment of similar networks in the intervention areas).

- (146) State aid is not the only policy instrument available to Member States to boost investment in the deployment of broadband networks. Member States can use alternative instruments, such as demand-side measures. However, demand-side measures are not appropriate means in this case, considering the lack of interest of private parties to invest in the deployment of performant networks due to the low profitability connected to such investments (as evidenced by the mapping exercise and the public consultations).

- (147) Hence, the Measure is an appropriate policy instrument for developing the economic activity in the intervention areas.

4.2.2.4. Proportionality of the Measure

- (148) Member States must demonstrate that the aid is proportionate to the problem tackled, essentially showing that the same change in behaviour (as per the incentive effect) would not be obtained with less aid and less distortions. Aid is considered proportionate if its amount is limited to the minimum necessary and the potential distortions of competition are minimised. In this respect, the following elements in the design of the Measure are of relevance.
- (149) **Mapping and public consultation.** The Italian Authorities identified the intervention areas on the basis of a detailed mapping exercise (see section 3.16). The main characteristics of the Measure and the identification of the intervention areas have been made public in two public consultations (see sections 3.17 and 3.18). The final intervention areas were identified on the basis of the public consultations, taking into account comments received and, in particular, the fact that the operators declared their intention to not invest in those areas to deploy new performant networks or to update the existing ones due to the high deployment costs which are not balanced by the forecasted revenues (see recital (11)). This ensures that the Measure covers only areas where the intervention is necessary.
- (150) **Competitive selection procedure.** Aid is deemed proportionate and limited to the minimum amount necessary if it is granted through an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement and capable of attracting a sufficient number of participants. Moreover, the Member State must ensure that the most economically advantageous solution is selected. For this purpose, the Member State must establish objective, transparent and non-discriminatory qualitative award criteria and specify the relative weighing of each criteria in advance. Based on the information provided by the Italian authorities (see section 3.12), the Measure complies with these requirements. In particular:
- (a) The successful tenderers will be selected through an open and non-discriminatory competitive selection procedure. The call for tenders will ensure equal treatment of the interested parties, regardless of their legal status, as well as effective competition among them;
 - (b) The call for tenders will be designed in a way to foster wide participation, in particular through the split of the Italian territory into lots having regional or multi-regional dimension and the provision of a cap of lots awardable to same bidder;
 - (c) The call for tenders will comply with the relevant principles of EU and Italian public procurement rules;
 - (d) The call for tenders will be published on the official websites;
 - (e) The tender will be awarded on the basis of the most economically advantageous solution. The technical offer will count for 70% of the score, while the economic offer will count for the remaining 30%. In the assessment of the technical offer, the objective, transparent and non-discriminatory qualitative award criteria will include:
 - Technical solution proposed by the bidder to deploy the networks;

- Overall quality of the project organization and design (*e.g.* sizing of resources for designing the network, monitoring of the construction sites);
- Adoption of adequate recruitment and training plans for the specialised workforce needed to deploy the networks;
- Commitment to deploy networks that provide higher speeds than the Target Speeds;
- Offer of (i) additional wholesale electronic communication services, (ii) better access conditions, and (iii) better service levels, compared to those set by the NRA.

The relative weighing of each criteria will be defined in advance in the call for tenders.

- (151) ***Technological neutrality.*** Public intervention must not favour or exclude any particular technology, both in the selection of beneficiaries and in the provision of wholesale access. As different technological solutions exist, the tender must not favour or exclude any particular technology or network platform. Bidders should be entitled to propose the provision of the required electronic communication access services using or combining whatever technology they deem most suitable. This is without prejudice to the possibility for the Member States to determine the desired performance. Based on the information provided by the Italian authorities (see recital (26)), the Measure is technologically neutral. It does not require or exclude any specific technology, provided that the subsidised networks will provide the Target Speeds. Bidders are entitled to propose the use or combination of any technology they deem most suitable to provide the Target Speeds. Also, wholesale access will be offered on open and non-discriminatory terms in line with the principle of technological neutrality. Several alternative platforms will be able to use the new network to offer their own electronic communication services to end users.
- (152) ***Use of existing infrastructure.*** In order to limit the aid amount to the minimum necessary, Member States should incentivise the use of existing infrastructure. In this regard, the Member State must: (a) set up a national database on the availability of existing infrastructures that could be re-used for broadband rollout; (b) include in the competitive selection procedure's documents all information on available existing infrastructure, identified on the basis of the national database, as supplemented or updated based on the mapping and public consultation exercise. Moreover, the Member State should encourage operators participating in a competitive selection procedure to have recourse to any available existing infrastructure. Based on the explanations provided by Italy (see recitals (67) and (68)), the Commission considers that there are sufficient incentives for the use of the existing infrastructure by the aid beneficiaries. The information on the existing infrastructure is available for all potential bidders: the Italian authorities set-up a national database called SINFI (*Sistema Informativo Nazionale Federato delle Infrastrutture*), where all existing infrastructures that could be re-used for broadband roll-out are listed (see footnote 40); this information will be available to bidders at a point in time which would allow the latter to include such infrastructure in their bid.
- (153) ***Wholesale access.*** The subsidised networks must offer effective wholesale access

under fair and non-discriminatory condition to all operators who request it, since wholesale access enables third party operators to compete with the selected bidder and, thus, to develop competition in the intervention areas in the longer term. The type of wholesale access obligations imposed on a subsidised network should be aligned with the portfolio of access obligations laid down under the sectoral regulation. However, aid beneficiaries should provide a wider range of wholesale access products than those imposed by NRAs on the operators who have significant market power since the aid beneficiary is using not just its own resources but taxpayers' money. Based on the information provided by the Italian authorities (see section 3.14), the Measure complies with these requirements. In particular:

- (a) The subsidised networks will ensure a wide range of wholesale access products and services, including bitstream, VULA, access to ducts and dark fiber, etc.;
 - (b) Passive wholesale access will be granted unlimited in time, while active access will be granted for 10 years;
 - (c) AGCOM defined wholesale access products, conditions and pricing. In particular, AGCOM set the wholesale access price for each access product on the basis of the regulated prices already approved for the markets and electronic communication access services concerned. The wholesale access products, the terms and conditions and the prices will be published in the tender documents that will be made available on the official websites.
 - (d) The same access conditions will apply on the entirety of the network including where existing infrastructure will be used. The access obligations must be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure.
- (154) **Claw-back.** To limit risks of overcompensation and distortions of competition, it is important that Member States closely monitor the implementation of a measure during its entire duration and foresee a claw-back mechanism making it possible to properly take into account information that the aid beneficiary did not factor in the original business plan when applying for State aid. Factors which may have an impact on the profitability of the project and which may be difficult, or even impossible, to establish ex-ante with adequate accuracy are, for example: (i) the actual deployment costs of the network; (ii) the actual revenues from the core services; (iii) the actual take-up; and (iv) the actual revenues from “non-core” services. To be effective the claw-back mechanism should cover at least the duration of the project if the aid amount of the project is above EUR 5 million, and should set out its rules transparently and clearly ex-ante (including in the documentation for the competitive selection procedure). The claw-back mechanism should be designed in a way to take into account and balance two objectives: (i) it should allow the Member State to recuperate amounts that exceed a reasonable profit; (ii) it should not endanger the incentives for operators to participate in a tender and to strive for cost efficiencies when rolling out the network. To achieve a suitable balance of the two objectives, Member States should introduce incentive criteria related to gains in productive efficiency. The incentive amount should be set to a maximum of 30 % of the reasonable profit. Member States should not claw-back any extra profit below that threshold (that is to say, the reasonable profit increased by the incentive amount). Any profit in excess of the 30 % threshold should be shared between the aid beneficiary and the Member State, on the basis of the aid

intensity resulting from the outcome of the competitive selection procedure.

(155) Based on the information provided by the Italian authorities (see section 3.15), the Measure contains an adequate claw-back mechanism. In particular:

- (a) Italy will closely monitor the construction of the subsidised networks for the entire duration of the Measure and foresee a claw-back mechanism that will be described in the call for tenders. The claw-back mechanism will allow the Ministry to claw-back differences between costs estimated and costs incurred as well as any amount exceeding a reasonable profit by more than 30%, in order to avoid over-compensation. The claw-back is designed to provide an incentive to operators to strive for efficiency gains;
- (b) The claw-back mechanism will be applied on the basis of the figures of the financial plan for the construction and operation of the subsidised networks submitted by the successful bidders. Indeed, the financial plan must indicate the deployment costs of the networks, the revenues from the core services and the aid intensity resulting from the tender;
- (c) The Italian authorities will claw-back:
 - The difference between the costs estimated by the aid beneficiary in the tender and the actual costs of deployment of the networks;
 - The difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the subsidised networks;
- (d) In order to incentivise efficiency gains in the construction and operation of the subsidised networks, the mechanism will allow the beneficiary to withhold a maximum of 30 % of the reasonable profit. Italy will not claw-back any extra profit below that threshold. Any profit in excess this threshold will be shared between the aid beneficiary and Italy, according to the actual aid intensity resulting from the tender (minimum 30 % for the aid beneficiary and maximum 70 % for Italy);
- (e) The Italian authorities will monitor on one-year basis the existence of possible extra-profits;
- (f) In order to allow the Italian authorities to perform the checks, the aid beneficiary must ensure accounting separation between the costs and revenues related to the deployment and operation of the subsidized networks and any other funds at its disposal.

(156) **Accounting separation.** To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary must ensure accounting separation between the funds used for the construction and the operation of the network and other funds at its disposal. As described in recital (29), in order to avoid overcompensation or cross-subsidisation, the successful tenderer will be required to ensure accounting separation between the funds used for the construction and the operation of the networks at stake and other funds at its disposal. Furthermore, if the beneficiary of the 2016 Intervention will be among the winners of the competitive selection procedure, the Italian authorities will check that there will be no undue transfer between the funds allocated to the

Measure and the ones allocated to the 2016 Intervention.

4.2.2.5. Transparency of the Measure

- (157) **Transparency, reporting and monitoring.** As described in section 3.20, all the relevant information about the subsidised networks will be published on the official websites that will allow both operators and end-user to have easy access to all relevant acts and information regarding the Measure and its implementation. The information will remain published for at least ten years and will be available for the general public without restrictions. The Ministry and the beneficiaries will also publish detailed information concerning wholesale access conditions and prices.
- (158) The Italian authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain the following key data concerning the Measure:
- (a) Name of the aid beneficiaries;
 - (b) Total cost (or estimated total cost) of the project;
 - (c) Aid amount awarded and aid expenditure, as well as aid intensity;
 - (d) Sources of public financing;
 - (e) Coverage rates prior to, and after, the State intervention (in absolute and in percentage terms);
 - (f) Date when the infrastructure was put in use;
 - (g) Technology deployed on the publicly funded infrastructure;
 - (h) Minimum and average (up- and download) speeds of electronic communication access services provided;
 - (i) Wholesale access products offered, including conditions for access and prices;
 - (j) Wholesale access products requested, number of access and take-up rates.
- (159) The Italian authorities also committed to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.
- (160) Italy will also maintain detailed records of the Measure for 10 years from the date of award of the aid and will provide them to the Commission upon request.
- (161) **Ex post evaluation plan.** The Measure represents a very large aid scheme, with an average annual budget of approx. € 3.8 billion. The Commission can require that aid schemes with large budgets undergo an *ex-post* evaluation. In this context, the Commission required the submission of an evaluation plan, which the Italian authorities submitted in the context of the notification. The Commission considers that the notified evaluation plan contains all the necessary elements: the objectives of the Measure to be evaluated, including the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation and the proposed timing of the evaluation including the date of submission of the final evaluation report (see recitals (92)-(102)). The Commission notes that:

- (a) The scope of the evaluation is defined in an appropriate way. It comprises a list of evaluation questions with matched result indicators. Moreover, the evaluation plan explains the main methods that will be used in order to identify the impacts of the Measure;
 - (b) The Italian authorities committed, in accordance with the Commission requirements, that the evaluation be conducted according to the notified evaluation plan by an independent evaluation body;
 - (c) The proposed modalities for the publication of the evaluation results are adequate to ensure transparency;
 - (d) The commitment made by Italy to submit to the Commission an interim report within two years after the approval of the Measure, the final evaluation report four years after the start of the implementation of the Measure and an additional evaluation report in 2027 is appropriate.
- (162) The Commission notes the commitment made by Italy to communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions.
- (163) The Commission notes that the scheme must be suspended if the final evaluation report were not submitted in good time and sufficient quality.

4.2.2.6. Negative effects on competition and trade

- (164) Aid for the deployment of fixed networks may have negative effects in terms of market distortions and impact on trade between Member States. The Commission has carefully assessed the significance of the distortion of competition and effect on trade of the Measure in terms of effects on competitors.
- (165) In this regard, it cannot be excluded that private operators may see the profitability of their prior investment decreasing because of the aid, or that they may decide to reduce their own future investment, withdraw from the market altogether or decide not to enter into a new market or a geographic area. The public support may also encourage local service providers to have recourse to the subsidised networks rather than other market solutions. Additionally, even though the Measure is not specifically targeted at beneficiaries likely to be already dominant on the market, it is not excluded that the public support may strengthen the position of operators already dominant on the market and may affect the overall competition on the market concerned as the Measure could weaken the competitive constraints that competitors can exert.

4.2.2.7. Weighing the positive effects of the aid against the negative effects on competition and trade

- (166) A carefully designed State aid scheme should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (167) Based on the information provided by the Italian authorities, the Commission is of the view that the positive effects of the Measure outweigh its negative effects for the following reasons:
- (a) The Italian authorities proved that the Measure will have positive effects on

the supported economic activities (in particular, fixed broadband connectivity) compared with what would have happened without the aid in the intervention areas. Indeed, the Measure will ensure a wide availability of networks providing the Target Speeds, and thus capable of delivering high-quality and reliable electronic communication services to end-users and of satisfying their current and evolving needs at conditions that would not be available under normal market conditions. It will thereby help reduce inequalities and digital divide in the intervention areas. Moreover, the Measure is in line with the connectivity objectives set at the EU level (see recital (136));

- (b) The Italian authorities proved that the negative effects are limited to the minimum necessary. The Measure is designed to limit crowding out private investment and its effects are confined to areas of the Italian territory where private investors do not intend to invest to deploy networks capable of granting at least 300 Mbps download speed (see also sections 4.2.2.2, 4.2.2.3 and 4.2.2.4);
 - (c) By ensuring wholesale access to the subsidised networks to all interested parties, the Measure aims at incentivising competition in the intervention areas;
 - (d) As described in section 3.22, Italy submitted an adequate *ex post* evaluation plan. The plan will allow the Commission to verify:
 - Whether the assumptions and conditions which led to this decision have been realised;
 - The effectiveness of the Measure in light of its predefined objectives;
 - The impact of the Measure on markets and competition; and
 - That no undue distortive effects arise throughout the duration of the Measure that is contrary to the interests of the Union.
- (168) In light of the above, the positive impact of the Measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade. On balance, the Measure is in line with the objectives of Article 107 (3) (c) TFEU as it facilitates the deployment and operation of fixed networks. Moreover, such aid does not adversely affect competition to an extent contrary to the common interest. The overall impact on competition is deemed to be positive. The negative effects on competition, if any, would be very limited.

5. 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) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
<mailto:Stateaidgreffe@ec.europa.eu>

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

