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Subject: State Aid SA.100557 (2022/N) – Italy - RRF - Italian 5G Plan

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 2 February 2022, the Italian authorities notified to the Commission the measure “*RRF – Italy – Italian 5G Plan*” (hereafter: “Measure”) pursuant to Article 108(3) TFEU.
- (2) The Italian authorities supplemented their notification with subsequent submissions on 11 February, 10 March and 5 April 2022.
- (3) By letter submitted on 10 March 2022, 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.

2. CONTEXT

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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- (4) The NextGenerationEU Communication² 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 performant networks. The RRF Regulation foresees that Member States devote at least 20% of the allocated funding to measures fostering the digital transition⁴.
- (5) In recent years, Italy promoted several schemes focused on the deployment of fixed broadband networks⁵ 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*” (hereafter: “Strategy”) approved by the Interministerial Committee for the Digital Transition on 25 May 2021⁶. The

² Communication from the Commission COM(2020) 456 final 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’.

³ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17) (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 (OJ L 433I, 22.12.2020, p. 23).

⁴ See Article 19(3)(f) and Annex VII of the RRF Regulation.

⁵ In particular: (i) 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 deployed (see Commission Decision of 30 June 2016, C(2016) 3931 final, case SA.41647 (2016/N) – *Italy – Strategia Banda Ultralarga*, OJ C 258, 15.7.2016, p. 4); (ii) in January 2021, Italy launched a national plan to connect public schools with networks able to provide 1 Gbps symmetric speeds (see Commission Decision of 21 January 2021, C(2021) 262 final, case SA.57497 (2021/N) – *Italy – Broadband infrastructure roll-out to connect schools-IT*, OJ C 60, 19.2.2021, p. 3); (iii) in January 2022, Italy launched a national plan for the deployment of fixed networks providing to end-users connectivity of at least 1 Gbps download speed and 200 Mbps upload speed in those areas of the Italian territory where no network able to provide at least 300 Mbps download speed was available or planned to be deployed (see Commission Decision of 27 January 2022, C(2022) 489 final, case SA.63170 (2021/N) – *RRF – Italy – Plan 1 Gbps*, OJ C 116, 11.3.2022, p. 3; hereafter: “1 Giga Plan”). The schemes for fixed broadband roll-out were complemented by take-up measures: (i) in 2020, Italy launched a broadband voucher scheme targeting low-income families (see Commission Decision of 4 August 2020, C(2020) 5269 final, case SA.57495 (2020/N) – *Italy – Broadband vouchers for certain categories of families*, OJ C 326, 2.10.2020, p. 9); (ii) in 2021, Italy launched a broadband voucher scheme targeting small and medium enterprises (see Commission Decision of 15 December 2021, C(2021) 9549 final, case SA.57496 (2021/N) – *Italy – Broadband vouchers for SMEs*, OJ C 33, 21.1.2022, p. 1).

⁶ The Strategy consists of four interventions (in addition to the Measure) aimed to finance: (i) 1 Giga Plan; (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.

Italian Recovery and Resilience Plan (hereafter: “RRP”) devotes approx. EUR 6.7 billion to the financing of the objectives of the Strategy⁷.

- (6) By virtue of previous schemes, as well as of private investment, Italy made considerable progress in terms of connectivity, which is reflected in an improved availability of high-quality networks. However, according to the Italian authorities, further progress is needed as regards the availability of, *inter alia*, mobile networks and services, in order to address end-users’ current and future needs, in line with Italy’s objectives, as set out in its RRP.

3. DESCRIPTION OF THE MEASURE

3.1. Objective

- (7) The Measure intends to ensure the deployment of mobile networks capable of delivering high-quality and reliable electronic communication services to end-users and of satisfying their current and evolving needs. Moreover, the Measure aims to address the mobile digital divide in Italy, to increase the competitiveness and attractiveness for living and investing in the areas identified as those where public intervention is needed and to stimulate economic growth through the development of a modern digital economy.
- (8) The Measure envisages to finance the following infrastructures and network elements (hereafter, collectively: “Infrastructures”):
- (a) The deployment of fibre-based backhaul networks to connect the existing base stations (hereafter: “BTSs”) that, according to the information collected in the mapping phase and confirmed in the public consultation, by 2026 will not have a fibre-based backhaul network (hereafter: “First Intervention”) (see recital (11));
- (b) The deployment of as many new BTSs (including their passive and active components, and the related fibre-based backhaul network) as they are needed to provide 5G mobile services reaching, under usual peak time conditions⁸, at least 150 Mbps download speed and 30 Mbps upload⁹ speed (hereafter: “Target Speeds”) in those areas of the Italian territory which, according to the information and investment plans collected in the mapping phase and confirmed in the public consultation, by 2026 will not

⁷ Following a consultation process conducted in accordance with the national legal framework, on 29 April 2021 the Italian government 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.

⁸ 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.

⁹ The Italian authorities set the threshold of 30 Mbps upload speed on the basis of the outcome of the public consultation, where most operators expressed the view that the threshold of 50 Mbps upload speed put out for public consultation was excessive for technical reasons (see recital (39)(b)).

be served by mobile networks offering download speeds above 30 Mbps under usual peak time conditions¹⁰ (hereafter: “Second Intervention”).

- (9) According to the Italian authorities, in the context of both mapping (section 3.8) and public consultation (section 3.9), private operators declared that they are not willing to invest to deploy the Infrastructures in the intervention areas due to high deployment costs which are not balanced by the forecasted revenues. According to the Italian authorities, in the absence of public intervention, it is likely that this situation will continue in the medium to long term. Therefore, the Italian authorities consider that, in the intervention areas, there is no alternative to granting public funding in order to make available – by 2026 – mobile networks and services capable of satisfying end-users’ current and evolving needs.
- (10) 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 mobile 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.
- (11) As concerns the First Intervention, the Italian authorities argued that it is needed to remove the bottleneck represented by insufficient backhaul and that, without this intervention, it would not be possible to fully exploit the 5G mobile services mentioned in recital (12), that require high performance in terms of capacity, speed, latency and reliability. The Italian authorities also explained that, based on available information:
- (a) At the current stage of technological development of backhaul technology solutions, fibre is the only technical solution that can support the provision of performant 5G services¹³, with sufficient scalability to meet the Italian end-users’ current and future mobile connectivity needs in terms of capacity, speed, latency and reliability¹⁴. Moreover, the Italian authorities consider that, at the current stage of technological development, fibre-based backhaul networks are the only backhaul networks able to support the most advanced centralised radio access network architecture, *i.e.* Centralized- (or Cloud-) Radio Access Network (C-RAN). This architecture provides multiple advantages, *e.g.* higher energy efficiency,

¹⁰ As clarified in recital (46)(i), the call for tenders provides an obligation on the aid beneficiaries to provide retail mobile services reaching the Target Speeds.

¹¹ See RRP, p. 45 and p. 61.

¹² See RRP, p. 45.

¹³ The Italian authorities explained that in this assessment they were supported by an expert opinion provided by the Polytechnic University of Milan in 2021 and 2022.

¹⁴ In this regard, the Italian authorities made also reference to BoR (20) 165; BEREC Guidelines on Very High Capacity Networks; 1 October 2020.

lower complexity of the hardware and software of the BTSs, optimisation of the network performance;

- (b) The replacement of all non-fibre-based backhaul networks currently connecting BTSs is necessary to ensure the provision of performant 5G services, since copper-based, satellite or microwave-links based backhaul networks cannot provide the same overall performance in terms of capacity, speed, latency and reliability. Due to their limited capacity and inherent technological specificities, such technological solutions are not suitable for backhaul networks that are required to support performant 5G mobile services, especially in the longer term, since they will likely not be scalable or upgradable in the future to cater for market developments and evolving end-users' mobile connectivity needs, as identified by the Italian authorities. In view of the objectives pursued by the Measure, the Italian authorities concluded that a backhaul network based on fibre technology is at the current stage of technological development the most appropriate solution.¹⁵
- (12) As concerns the Second Intervention, it is needed to ensure reaching the Target Speeds as they are necessary to effectively satisfy the current and future demand for 5G connectivity by end-users in relation to a number of applications and services (*e.g.* smart & connected vehicles, autonomous vehicles, collaborative robots, remote monitoring, enhanced experience, remote operations, surveillance & safety, services of telemedicine and connected ambulance)¹⁶.
- (13) The Italian authorities consider that the intervention threshold is appropriate, since 30 Mbps download speed under usual peak time condition is the minimum speed needed to effectively use a number of 5G applications and services (see recital (12)). In this assessment the Italian authorities were supported by an expert opinion¹⁷ and relied on the positions expressed by the Italian NRA – *Autorità per le Garanzie nelle Comunicazioni* (hereafter: “AGCOM”)¹⁸.
- (14) The Italian authorities further clarified that:
- (a) The Infrastructures will not be taken into account to meet any coverage obligations attached to the relevant rights of use of spectrum, thus the Measure does not replace but complements the investments already made or credibly planned by operators to develop performant 5G networks in

¹⁵ In this assessment the Italian authorities were supported by an expert opinion delivered by the Polytechnic University of Milan in 2021 and 2022.

¹⁶ In this assessment the Italian authorities were supported by the Polytechnic University of Milan (see, in particular, <https://www.osservatori.net/en/research/active-observatories/5g-beyond>), which has been based also on the expected connectivity needs in the medium/long term in Italy.

¹⁷ In particular, the Polytechnic University of Milan (see, in particular, https://blog.osservatori.net/it_it/ambiti-applicativi-del-5g-e-requisiti-prestazionali-minimi).

¹⁸ In particular, see the resolutions No. 89/18/CONS of 26 February 2018, 231/18/CONS of 8 May 2018 and 557/16/CONS of 24 November 2016.

compliance with the coverage obligations attached to their respective rights of use of spectrum¹⁹ (see also recital (55)(i));

- (b) To identify market failure areas for each intervention, Italy determined, on the basis of a detailed mapping (see section 3.8) and public consultation (see section 3.9), whether there are networks, in place or credibly planned to be deployed in the relevant time horizon (*i.e.* by 2026), fulfilling the criteria described, respectively, in recitals (8)(a) and (8)(b).

(15) The Italian authorities explained that:

- (a) The First Intervention will cover up to 20 % of the overall BTSs deployed in the Italian territory;
- (b) The Second Intervention will address market failure areas which account for up to 1.6 % of the Italian population;
- (c) The above references to maximum levels of coverage are due to the fact that the budget available (see recital (27)) may not allow to subsidise the BTSs/areas covered by the First and the Second Intervention in their entirety, also taking into account the aid intensity that – according to the public consultation – is needed to implement the Measure (see recital (28)). Therefore, as explained in detail in section 3.11, each lot put up for tender for each line of intervention is composed of a minimum set of BTSs/areas which the beneficiary must connect/cover as well as of an additional set of BTSs/areas that the beneficiary may offer to connect/cover, thereby obtaining an extra-score²⁰;
- (d) As concerns the Second Intervention, only technically unavoidable overlaps with existing or credibly planned privately funded networks and only on a very limited scale are permitted²¹;
- (e) For both lines of intervention, the intervention areas include the three areas mentioned in the Strategy and in the RRP, *i.e.* extra-urban roads, TEN-T corridors and other areas of market failure identified in accordance with the results of the mapping phase, the public consultation and the tender procedure.

¹⁹ With particular regard to the First Intervention, the Italian authorities clarified that, prior to the intervention, the BTSs concerned already ensured a performance in line with the relevant coverage obligations. On this basis, the First Intervention will not contribute to cover the costs linked to the fulfilment of the coverage obligations.

²⁰ In this regard, the Italian authorities explained that at least a 90 % of the BTSs potentially addressed by the First Intervention shall be deployed by the aid beneficiaries.

²¹ An overlap is technically unavoidable if and only insofar as, in order to ensure the provision of the Target Speeds in the intervention areas, it is necessary to allow a fluent handover between cells and for the provision of the Target Speeds even at the periphery of cells within the intervention areas.

3.2. Legal basis and standstill obligation

- (16) The Measure is based on the RRP, which assigned approx. EUR 2 billion to the financing of the Measure in context of the Strategy.
- (17) The present State aid decision is an integral part of the legal basis.
- (18) The Italian authorities committed to comply with the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589²², according to which new aid measures must not be put into effect before the Commission has taken a decision authorising them.
- (19) In this regard, the Italian authorities explained that, while the calls for tenders were launched on 21 March 2022, the terms of the tenders clearly provide that Italy would adapt the tenders to align to this decision, as necessary. Italy explained that, on this basis, each participant to the tenders is aware that the granting of the aid is subject to the compatibility of the Measure with State aid rules. No aid will be granted before the notification of the Commission decision approving the Measure.

3.3. Granting authority

- (20) 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”)²³. In particular, the Ministry:
 - (a) Carried-out both the mapping (through Infratel) and the public consultation;
 - (b) Will decide the granting of the aid, once having checked the fulfilment of the conditions and requirements provided in the calls for tenders and the present State aid decision; and
 - (c) Will check that the aid will be used in compliance with the present State aid decision.

3.4. Beneficiaries

- (21) The aid beneficiaries will be the undertakings that will be awarded the tenders for the deployment of the Infrastructures respectively included in the First Intervention and in the Second Intervention.
- (22) The Italian authorities will suspend the award and/or the payment of any support under the Measure to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission decision (either as an individual aid or an

²² 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).

²³ On the nature of Infratel as in-house company, see Commission Decision of 21 January 2021, C(2021) 262 final, case SA.57497 (2021/N) – *Italy – Broadband infrastructure roll-out to connect schools-IT*, mentioned in footnote 5.

aid under an aid scheme being declared incompatible), until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

3.5. Role of the NRA

- (23) The Italian authorities have involved the AGCOM since the early stages of the Measure, in particular, with regard to the mapping, wholesale access products and related pricing, as well as claw-back mechanism.
- (24) By resolution No. 67/22/CONS of 3 March 2022, AGCOM adopted the “*Guidelines establishing the conditions for wholesale access to subsidised ultra-broadband networks – supplement for 5G networks*” (hereafter: “Resolution”). The Resolution sets the minimum wholesale access products, prices and conditions that the aid beneficiaries must apply to access seekers to the Infrastructures (see section 3.15).
- (25) AGCOM will be also responsible to solve any disputes between access seekers and the aid beneficiaries regarding wholesale access.

3.6. Duration, budget and aid intensity

- (26) Aid can be granted under the Measure until completion of the Infrastructures, in any case no later than 30 June 2026.
- (27) The budget of the Measure amounts to EUR 2.02 billion (approx. EUR 1 billion for each of the lines of intervention), funded by the RRP.
- (28) The Measure will cover up to 90 % of the eligible costs associated to the First Intervention and the Second Intervention, respectively. This is the maximum aid intensity that the participants to the tender can request. The ultimate aid amount will be eventually determined as a result of the tender and cannot in any case go beyond the 90 % of aid intensity. The Italian authorities deem the 90 % aid intensity appropriate considering²⁴:
 - (a) The orography of the intervention areas, which often entails difficulties in the deployment of the Infrastructures and, thus, requires high investments;
 - (b) The low profitability of the intervention areas due to the low population density (the majority of the intervention areas are located in rural and remote parts of the country) that is particularly relevant considering the high operational costs (e.g. maintenance and electricity) of mobile networks. According to the Italian authorities, in the medium term (10 years), the operating expenses (OPEX) for a mobile site are roughly equivalent to the capital expenditure (CAPEX) needed to build the mobile site (which is equivalent with the eligible costs in the Measure). This would imply that, in the medium term (10 years), a 90 % funding of CAPEX is equivalent to a financing of less than 50 % of the total costs of a mobile site;

²⁴ The Italian authorities stressed that this was confirmed by the operators in the public consultation.

- (c) The fragmentation of the intervention areas²⁵ that in most cases does not technically allow the aggregation of several areas within the coverage of a single BTS.
- (29) The eligible costs shall be:
- (a) As concerns the First Intervention, the costs for the deployment of the passive and active components of the fibre-based backhaul network;
 - (b) As concerns the Second Intervention, the costs for the deployment of the new BTSs (including both passive and active components of the BTSs and the necessary related fibre-based backhaul networks with their respective passive and active components).
- (30) The Italian authorities further explained that, in any case, costs related to the fulfilment of legal obligations (*e.g.*, investments needed to meet the coverage obligations attached to the rights of use of spectrum) cannot be covered by the Measure.

3.7. Overlap with other public support measures

- (31) All beneficiaries will ensure accounting separation between the funds received under the Measure and any other funds at their disposal, including funds stemming from other State aid measures. Furthermore, if a beneficiary under other State aid measures will be among the beneficiaries of the Measure, the Italian authorities will ensure that there is no cumulation for the same eligible costs and will also check that no undue transfer takes place between the funds allocated to the Measure and the ones allocated to other measures.

3.8. Mapping

- (32) The Italian authorities – through Infratel – conducted a detailed mapping exercise with regard to the entire Italian territory²⁶, in order to identify the areas for the First and the Second Intervention, respectively. The mapping exercise was conducted in the period from 10 June to 31 August 2021 through:
- (a) The publication of a notice on the official website www.bandaultralarga.italia.it as well as on Infratel's website (www.infratelitalia.it);
 - (b) Requests for information addressed to the mobile operators active in Italy.

²⁵ According to the Italian authorities, the intervention areas are scattered spots surrounded by areas covered by private investments. The fact that these areas are not contiguous increases the investment costs.

²⁶ The Italian authorities split the Italian territory in pixels having a dimension of 100 meters x 100 meters, for a total of approx. 30 million pixels.

- (33) Four mobile operators²⁷ submitted substantiated information regarding their networks present or credibly planned to be deployed by 2026 as well as the coverage obligations attached to their respective rights of use of spectrum²⁸.
- (34) 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 end-users, 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 plans²⁹, the relevant strategic or executive decisions to implement such plans and their relevant milestones.
- (35) Infratel will monitor the progress of the implementation of the plans declared by the operators. The Italian authorities will agree specific milestones with the operators (and possibly formalise them in specific agreements). The operators will have to report, at least every six months, on the progress of their investments. Should an operator fail (without valid reason) to achieve one of the milestones and should the Italian authorities consider that it is unlikely that the investment plan will materialize, Infratel may then extend the intervention also to the areas concerned, under the conditions of the Measure and following a new public consultation. Should Infratel consider 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.
- (36) The mapping exercise showed that:
- (a) Approx. 15 700 of the existing BTSs will not be connected with fibre by 2026³⁰;
 - (b) Approx. 1.6 % of the Italian population will not be covered by mobile networks at all or will be served only by mobile networks offering

²⁷ Iliad Italia S.p.A., TIM S.p.A., Vodafone Italia S.p.A. e Wind Tre S.p.A.

²⁸ In particular, the following information was provided for each pixel: (i) technology (e.g. 4G, 5G); (ii) maximum (download and upload) achievable speed; (iii) expected (download and upload) speed under usual peak time conditions; (iv) latency; (v) VHCN class; (vi) year of deployment of the network; (vii) latitude and longitude of the BTS concerned; (viii) frequency of the BTS; (ix) quantity of spectrum used; (x) BTS already existing or planned; (xi) type of backhaul (fibre-based or not); (xii) existence of coverage obligation for the pixel concerned.

²⁹ The investment plans included: (i) start and end date of the deployment of the network, including the date of completion of each phase of the investment and the main elements proving the feasibility of the plan; (ii) a description of the architecture and structure of the projected networks (number and location of the sites, type of backhaul, etc.); (iii) sizing of radio sites in terms of average number of users per site and per antenna sector.

³⁰ The number of BTSs takes into account also the updated data provided by Telecom Italia S.p.A. and Open Fiber S.p.A. in the context of the public consultation.

download speeds below 30 Mbps under usual peak time conditions by 2026³¹.

3.9. Public consultation

- (37) The Italian authorities carried out a public consultation which took place from 15 November to 15 December 2021. Stakeholders were invited 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 areas³². 28 submissions were received and assessed³³. The following main observations were submitted by the stakeholders.

3.9.1. Observations on the First Intervention

- (38) All of the respondents shared the design of the First Intervention³⁴. The main topics covered by the submissions were the following:
- (a) **Intervention areas.** The respondents agreed on the results of the mapping exercise. Two respondents³⁵ suggested to allocate the aid to the relevant operators in proportion to the number of BTSs that they have connected with fibre (or credibly planned to have connected by 2026) through their own private investments. The Italian authorities explained that this suggestion cannot be followed, since the State aid must be allocated through an open, transparent and non-discriminatory competitive selection procedure in accordance with State aid rules. Two respondents³⁶ argued that the First Intervention should also cover the investments needed to increase the resilience of existing fibre-based backhaul networks. The Italian authorities rejected this suggestion, since such investments should be made in any case by operators under normal market terms, if they consider this investment necessary;

³¹ The map of the pixels at stake is available at the following link: <https://bandaultralarga.italia.it/documenti-e-dati/mappatura-reti-mobili-2021/>.

³² The public consultation was published on the website www.innovazione.gov.it.

³³ In particular, 22 electronic communication operators, 2 trade associations and 4 further entities (mainly local governments).

³⁴ [...] while endorsing the decision of the Italian government to support the investments in the backhaul network, pointed out that such intervention should have been part of “1 Giga Plan” (see footnote 5).

³⁵ [...]

³⁶ [...]

- (b) **Intervention model.** Some of the stakeholders supported the choice of the gap funding model³⁷, while some others expressed their preference for the adoption of different intervention models depending on the characteristics of the backhaul connections to be realised³⁸. In particular, two operators³⁹ suggested a combination of: (i) a gap funding model with an increasing aid intensity (over 70 %) depending on the difficulty to connect the BTSs; (ii) a concession model for the most disadvantaged BTSs where the gap funding model would not be sustainable but for which the operators declared an interest to operate the network in case of adoption of a concession model; and (iii) a direct investment model for the connection of remaining BTSs. Following a careful assessment of the observations, the Italian authorities decided to implement the First Intervention through a gap funding model for the reasons described in detail in section 3.10;
- (c) **Design of the First Intervention.** One respondent⁴⁰ suggested splitting the First Intervention into two distinct parts: (i) fibre connection from the site hosting the BTS to an aggregation point (identified by an independent third party) from which several BTSs located in the same area can be reached; and (ii) fibre connection from the aggregation point to the backbone. In the respondent's opinion, this approach would improve the efficiency of the aid. The Italian authorities stressed that bidders are free to define and propose in their offers the backhaul network topologies that they consider appropriate to fulfil the tender requirements. The Italian authorities did not consider appropriate to impose a specific design, as suggested by the respondent.

3.9.2. Observations on the Second Intervention

- (39) The operators largely shared the approach of the Italian authorities with regard to:
- (a) **Intervention threshold.** The lack of mobile networks ensuring 30 Mbps download speed under usual peak time conditions was considered appropriate to determine the intervention areas, in order to ensure the achievement of the Measure's objectives by 2026 (see section 3.1);
- (b) **Target download speed of 150 Mbps under usual peak time conditions:** for the same reasons mentioned in recital (12)⁴¹. Instead, for a number of technical and economic reasons, most operators⁴² considered excessive the

³⁷ [...]

³⁸ [...]

³⁹ [...]

⁴⁰ [...]

⁴¹ One operator [...] stated that 150 Mbps download speed under usual peak time conditions would be too high, at least nowadays, considering the lack of reliable forecasts on the number of customers and on the services to be provided through the new networks. The Italian authorities decided to confirm the target download speed on the basis of the same arguments mentioned in recital (12).

⁴² In particular, [...]

initial target upload speed of 50 Mbps set by the Italian authorities⁴³. Following a careful assessment of the observations, and taking into account the mentioned requests of the operators that replied to the consultation, the Italian authorities decided to set the target upload speed at 30 Mbps under usual peak time conditions (see recital (8)(b))⁴⁴;

- (c) ***Adoption of a gap funding model*** (see section 3.10)⁴⁵;
 - (d) ***Split of the intervention area in lots*** having regional or multi-regional dimension, in order to foster economies of scale and, thus, an efficient use of public resources (see recital (46)(g)). In this regard, some operators⁴⁶ expressed their preference for the provision of a cap to the lots that the same bidder could award, in order to foster competition at retail level and to incentivise the participation of small operators in the tender; others⁴⁷ did not share this view, considering that it would have a negative impact on the possibility to reach economies of scale. The Italian authorities decided not to provide any cap to the lots awardable to the same bidder for the reasons explained in recital (46)(g);
 - (e) ***Provision of wholesale access obligations to the Infrastructures***, under fair and non-discriminatory terms (see section 3.15)⁴⁸.
- (40) The majority of the respondents further stressed the importance of a high aid intensity, in order to make adequate new investments viable. The Italian authorities were of the view that the aid intensity of 90 % (see recital (28)) meets the need expressed by the market.
- (41) Finally, one stakeholder⁴⁹ argued that the call for tenders should allow for the participation of undertakings active exclusively in the provision of passive infrastructures (e.g. tower companies, who are not assignees of rights to use spectrum), at least if it could be proved the interest of mobile operators to install and activate the active components of the mobile network once the passive infrastructure is deployed. The Italian authorities confirmed that undertakings exclusively active in the provision of passive infrastructures can participate in consortia to bid in the competitive selection procedure, provided that the technical

⁴³ Only [...] endorsed the initial target of 50 Mbps upload speed under usual peak time conditions, but they did not substantiate their position.

⁴⁴ Also in this assessment the Italian authorities were supported by the Polytechnic University of Milan.

⁴⁵ Some operators also stressed that a distinct intervention should concern the pixels relating to railway and motorway/road tunnels, since the coverage of tunnels requires a specific mapping exercise. The Italian authorities explained that this suggestion is consistent with the design of the Second Intervention that does not include tunnels in the scope of intervention.

⁴⁶ In particular, [...]

⁴⁷ [...]

⁴⁸ Some respondents stressed that the prices applied should be cost-oriented.

⁴⁹ [...]

offer submitted by the consortium fulfils the requirements of the Second Intervention.

3.10. Intervention model

- (42) The Measure will be implemented by means of a gap funding model, through direct grants to the undertakings selected via a competitive selection procedure for each line of intervention. The grants will be a percentage of the overall amount of the eligible costs. The Infrastructures will be fully owned by the beneficiaries.
- (43) 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, since both lines of intervention rely extensively on the extension and/or upgrade of existing or credibly planned infrastructures. Against this background, the Italian authorities are 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 economies of scale) and timing.
- (44) In particular, the Italian authorities explained that:
- (a) As concerns the First Intervention, the appropriateness of the gap funding model is based on the fact that, according to the information collected in the mapping exercise, in most of the intervention areas there is a widespread presence of infrastructures that could be extended and/or upgraded with State aid for the purposes of the Measure, in the absence of any private investment plans to extend or upgrade such infrastructures. In this regard, the Italian authorities declared that the reuse of the existing infrastructures available in the intervention areas will be incentivised (see section 3.12);
 - (b) As concerns the Second Intervention, the gap funding model will incentivise operators to adopt efficient planning and management of the Infrastructures taking into account (even at radio-electric level) their existing or credibly planned networks, in order to reach the Target Speeds in the most efficient way.

3.11. Competitive selection procedure

- (45) For each line of intervention, the beneficiaries will be selected through separate (*i.e.* one per line of intervention) open, transparent and non-discriminatory competitive selection procedures. The Italian authorities consider that such design of the competitive selection procedure is appropriate since:
- (a) The organisation of multiple competitive selection procedures for each of the two interventions would unjustifiably increase the administrative costs and burdens on undertakings interested in participating in the tender and, thus, would increase the overall costs of the interventions;
 - (b) The organisation of a single competitive selection procedure per intervention would not restrict or unduly distort competition, since – as described in detail in recital (46) – the design of the call for tender aims to

foster the widest possible participation and the split of the intervention areas into lots incentivises the competition in the context of the tender.

- (46) The two calls for tenders concerning, respectively, the First Intervention and the Second Intervention are organised as follows:
- (a) They comply with the relevant principles of EU⁵⁰ and Italian public procurement rules, as well as with the principle of technological neutrality (see section 3.13);
 - (b) They ensure equal and non-discriminatory treatment of the interested parties as well as effective competition among them. Furthermore, they are designed in a way to foster the widest possible participation (*e.g.* provision of lots, possibility to participate in consortia, etc.);
 - (c) They have been published on the official websites www.innovazione.gov.it and www.infratelitalia.it;
 - (d) They include for each lot and for each line of intervention a minimum set of BTSs/areas which the beneficiary must connect/cover, as well as an additional set of BTSs/areas that the beneficiary may commit to connect/cover. Additional points are granted to the bidders in proportion to the number of optional BTSs/areas that they commit to connect/cover;
 - (e) The calls will be awarded on the basis of the most economically advantageous offer per lot. The qualitative criteria will account for 80 % of the score, while the economic aspects will account for 20 %. In the assessment of the qualitative criteria of the bid, the following criteria will be taken into account:
 - The technical solution proposed by the bidders to deploy the Infrastructures. In particular, the technical plan submitted must specify the characteristics and dimensioning of the network and, with particular reference to the Second Intervention, must provide the mobile radio coverage analysis indicating the radio frequencies used to ensure that the Target Speeds are provided;
 - The overall quality of the project organization and design (*e.g.* sizing of resources for designing the network and monitoring of the construction sites; adoption of adequate recruitment and training plans for specialised workforce needed to carry-out the activities);
 - The wholesale offer (*e.g.* offers going beyond the requirements concerning wholesale access products, conditions and service levels set (see section 3.15));

⁵⁰ 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 (OJ L 94, 28.3.2014, p. 65), and the relevant EU case-law.

- (f) They include detailed milestones for the activities needed to timely complete both interventions. The Italian authorities explained that they will apply penalties in case of failure to meet milestones without proper justification;
- (g) For each of the two tenders, the Italian territory was split into lots having regional or multi-regional dimension. According to the Italian authorities, the provision of lots favours the widest possible participation in the tender (including of small operators) and the most efficient use of public resources (since it incentivises the widest possible reuse of infrastructures). Based on the structure of the economic sector concerned, in particular the provision of mobile communications services, the Italian authorities are of the view that there is no need to provide a cap to the lots awardable to the same operator. The mobile sector in Italy is characterised by the presence of four major MNOs⁵¹, that compete with regard to price and quality of services provided and are active both at the wholesale and retail level. Each of these operators (together with Fastweb S.p.A.) holds rights of use of spectrum for the provision of 5G services. In this market context, the Italian authorities considered that the provision of a cap to the lots awardable to the same operators is not only inappropriate, but also ineffective, since it would negatively affect the possibility to reach economies of scale and density (and, thus, efficiency in the use of public resources) that bidders could take into account in their offers;
- (h) Number and size of the lots are set on the basis of the following criteria:
- The need to ensure efficient use of public resources by achieving adequate economies of scale and density, and, more broadly, the widest efficiencies in the deployment of the Infrastructures, as well as the minimisation of the administrative costs;
 - The results of the mapping exercise, in order to identify lots that are comparable in terms of both territorial extension and resident population, not unduly fragmented and designed in such a way as to stimulate the widest participation in the tender, even by small operators;
- (i) The terms of the calls impose on the successful bidders of both lines of intervention an obligation to grant wholesale access to the Infrastructures (see section 3.15). Moreover, the successful bidders of the Second Intervention are obliged to provide retail mobile services reaching the Target Speeds in the respective intervention areas.

⁵¹ Telecom Italia S.p.A., Vodafone Italia S.p.A., WindTre S.p.A. and Iliad Italia S.p.A. According to the AGCOM, Telecom Italia S.p.A., Vodafone Italia S.p.A. and WindTre S.p.A. have similar market shares (28.8 %, 28.5 % and 24.8 %, respectively), while Iliad Italia S.p.A. has a market share equal to 7.7 % (see Communication Markets Monitoring System No. 4/2021 published by the AGCOM). It is worth noting that also Fastweb S.p.A. has acquired rights of use of spectrum for the provision of 5G services and has obtained the authorisation as MNO; [...] It shall also be taken into account that a number of MVNOs exercise a strong competitive pressure on MNOs.

3.12. Use of existing infrastructure

- (47) The Italian authorities fostered the reuse of existing infrastructures to reduce the cost of the Measure. In particular, the calls for tenders encourage the interested undertakings to take into account – for the planning and implementation of the intervention and, thus, for the purposes of the assessment of the technical solution proposed in the bid (see recital (46)(e)) – the use of existing infrastructures.
- (48) 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 the deployment of the Infrastructures are listed. Through SINFI, the bidders will have access to the information on existing infrastructure at a point in time which would allow them to take into account such information in their bid.

3.13. Technological neutrality

- (49) The Italian authorities explained that the beneficiaries will be selected on the basis of objective criteria in line with the principle of technological neutrality.
- (50) As concerns the First Intervention, while the Italian authorities have chosen to rely on fibre-based solutions, the Italian authorities explained they have also assessed⁵² the capabilities of technical solutions other than fibre to determine whether and to what extent they may ensure the provision of 5G services in line with the objectives of the Measure. Based on the information collected also in the public consultation, the Italian authorities explained that, at the current stage of technological development, fibre-based backhaul networks are the only technological solution for backhaul that can ensure the offer of 5G services characterised by low latency, high reliability and high capacity necessary to address the Italian end-users' current and future needs in terms of mobile connectivity, as identified by Italy and in line with the objectives of the Measure.
- (51) As concerns the Second Intervention, the Italian authorities confirmed that the competitive selection process will not favour or exclude any technology or combination of technological solutions provided that they will provide the Target Speeds.
- (52) Under both the First and the Second Intervention, the Italian authorities committed to ensure that bidders will offer effective wholesale access to any access seekers who request it and irrespective of the technology chosen by the latter, on open, transparent, fair and non-discriminatory terms (see section 3.15). Several alternative platforms/technologies will be able to utilise the new networks via wholesale access in order to offer their own services to end-users.

⁵² The Italian authorities explained that in this assessment they were supported by an expert opinion provided by the Polytechnic University of Milan.

3.14. Step change

- (53) According to the Italian authorities, the Measure ensures a step change, since it provides a significant improvement in comparison to the existing and credibly planned mobile networks in the intervention areas. In particular, the Italian authorities explained that:
- (a) As an effect of the First Intervention, the BTSs in the intervention areas which are not and are not planned to be connected with fibre-based backhaul networks, will be connected with a fibre-based backhaul network. Italy explained that in their view this constitutes an adequate step-change as, at the current stage of technological development, a fibre-based backhaul network is best placed to address the objectives of the Measure and will ensure a substantial step-change of capacity and overall performances, including reliability and latency which are essential for current and future 5G services;
 - (b) As an effect of the Second Intervention, in the intervention areas the download speed will more than quintuple the speeds provided by the existing or credibly planned mobile networks. Italy explained that the new networks will significantly improve latency and reliability compared to the existing and credibly planned mobile networks. Finally, according to the Italian authorities, most of the 5G related services and applications, which cannot be provided in the intervention areas based on existing and credibly planned mobile networks, will be available to end-users once the new networks will be available to provide the Target Speeds.

3.15. Wholesale access to the Infrastructures

- (54) The Italian authorities explained that aid beneficiaries must provide passive and active wholesale access to the Infrastructures to all service providers⁵³ on open, transparent, fair and non-discriminatory basis and at least under the minimum conditions further detailed in the calls for tenders and the Resolution, as explained in this decision. In any case, the bidders are encouraged to provide improved wholesale access conditions as part of their bid in the competitive selection procedure (see recital (46)(e)).
- (55) The minimum mandatory conditions for the provision of the wholesale access are the following:
- (a) Passive wholesale access to the Infrastructures will be unlimited in time⁵⁴, while active wholesale access to the Infrastructures shall be granted for at least 10 years;
 - (b) Beneficiaries have to design the Infrastructures in order to provide for sufficient capacity. The Italian authorities specified that masts and towers shall be able to cater for at least three MNOs (including the beneficiary)⁵⁵;

⁵³ Access to the newly deployed backhaul infrastructure will be granted to mobile operators, fixed operators and fixed wireless access operators.

⁵⁴ For the whole lifespan of the networks concerned.

- (c) Should the beneficiary be also active on the retail market, the beneficiary is required to publish the information relating to its wholesale offer at least 6 months before the launch of its own retail services in the relevant area;
- (d) Beneficiaries will also have to ensure wholesale access to all existing infrastructure used to deploy the Infrastructures;
- (e) The wholesale access obligations shall be enforceable irrespective of any change in ownership, management or operation of the Infrastructures;
- (f) As concerns the First Intervention, the aid beneficiaries must offer to access seekers at least an active access service as well as access to passive infrastructures (*e.g.* poles, masts, ducts⁵⁶) and to dark fibre;
- (g) As concerns the Second Intervention, the aid beneficiaries must offer access to passive infrastructure (as under the First Intervention). The aid beneficiaries must also offer dark fibre, as well as wholesale active products suitable for the transmission of mobile traffic between the BTS and the core network of the access seekers. The aid beneficiaries will also be under an obligation to conclude localised roaming agreements.
- (h) In addition, under the Second Intervention, the aid beneficiaries must offer additional wholesale products that provide RAN's resource sharing using active RAN sharing functionalities – such as Multi-Operator-Access-Network (MORAN) or Multi-Operator Core Network (MOCN) – or multi-tenancy techniques, such as network slicing⁵⁷, if they become available as standardised wholesale access products in Italy. In any case, if the beneficiary makes available one of these additional wholesale products to access seekers in the intervention area, the beneficiary will have to meet any request for a similar product from other access seekers under transparent and non-discriminatory conditions approved by AGCOM. In

⁵⁵ In this regard, the Italian authorities clarified that an obligation to deploy network infrastructures (*e.g.* masts) sized to host the active equipment of all five MNOs active in Italy would be disproportionate, since it would significantly increase the deployment costs in the intervention areas without bringing substantial benefits to the market in terms of services and competition. This is also due to the fact that the electromagnetic limits in force in Italy restrict the number of antennas that can be installed on the same BTS and, thus, *de facto* such limits technically prevent that all mobile operators might activate radio equipment on the same site. This aspect was also highlighted by the operators during the public consultation carried out by AGCOM with a view to adopt the Resolution (see Annex B to the Resolution). Accordingly, AGCOM concluded (see §§ V15 and V16 of Annex B to the Resolution) that the successful bidder must ensure that each site will be able to host at least three MNOs, including the beneficiary, within the limits of what is technically possible under current legislation. The Italian authorities further explained that access to masts and towers will be granted on a “first come-first served” basis.

⁵⁶ The Italian authorities clarified that, for both lines of interventions, the beneficiaries must size the elements of the Infrastructures so as to ensure space in the ducts to an appropriate number of access seekers.

⁵⁷ In the public consultation, some operators stressed the technical complexity of the provision of advanced active wholesale access services like MORAN and MOCN. Following a careful assessment of the observations submitted by the operators in this regard, the Italian authorities decided to adopt the gradual approach described in recital (57)(h) with regard to new products such as MORAN, MOCN and network slicing.

the event of a disagreement during the commercial negotiation on technical and commercial terms and conditions of such product, each party will be able to call on AGCOM, who will act as the dispute settlement body, in order to avoid unjustified refusals to deal or the imposition of unreasonable conditions. The dispute will be solved applying *mutatis mutandis* the rules transposing Article 26 of Directive (EU) 2018/1972⁵⁸;

- (i) The Italian authorities will ensure that wholesale access under the Measure shall not be granted or used to meet legal obligations, such as any coverage obligations attached to the relevant rights of use of spectrum. The Infrastructures will not be taken into account to meet any coverage obligations attached to the relevant spectrum rights of use. The call for tenders expressly provides that the aid beneficiaries shall commit in writing that they will not report the deployment of the Infrastructures to fulfil the coverage obligations;
 - (j) The bids must contain all the conditions for the provision of the wholesale access, including the prices. The granting authority will clearly define the wholesale access conditions and ensure that the wholesale access obligations and related conditions will be outlined in a transparent manner in the procurement documents and clearly mentioned in future contracts.
- (56) The Resolution sets also price caps for each of the wholesale access products on the basis of the regulated prices already approved. The caps are intended as maximum prices that the bidders cannot exceed but can lower in the tender offer. AGCOM will check the compliance with the price caps upon request of the granting authority.
- (57) The Resolution defines the minimum service level agreements, which the bidders may commit to improve as part of their bids.
- (58) The Italian authorities will continuously consult AGCOM on the terms and conditions for access, including on prices, and AGCOM shall be competent to solve the disputes related to the application of the Measure.

3.16. Claw-back mechanism

- (59) 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 deployment of the Infrastructures for the entire duration of the Measure. The Italian authorities have designed a claw-back mechanism. 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 strive for efficiency gains. The claw-back mechanism will operate as follows.

⁵⁸ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ L 321, 17.12.2018.

- (60) For both tenders, the bidders must submit a financial plan, which will be taken into account in awarding the tender and will be used to apply the claw-back mechanism⁵⁹. The financial plan⁶⁰ must include:
- (a) The projected investments and the operating costs needed to deploy and maintain the Infrastructures⁶¹;
 - (b) The profits expected over the reference period as defined in the call for tender⁶²; and
 - (c) The aid intensity required as determined by the aid beneficiary on an *ex ante* basis so as to cover the expected funding gap.
- (61) 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 Infrastructures;
 - (b) The difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the Infrastructures.
- (62) In order to incentivise efficiency gains in the deployment of the Infrastructures, the mechanism will allow the beneficiary to keep a reasonable profit and an additional maximum of 30 % of the reasonable profit⁶³. 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 10 % for the aid beneficiary and maximum 90 % for Italy).
- (63) The Italian authorities will monitor on a yearly basis the existence of possible extra-profits⁶⁴. The monitoring will: (i) start after the completion of the Infrastructures and before the marketing of passive wholesale access services and both wholesale and retail electronic communication services; and (ii) will end, as

⁵⁹ The claw-back mechanism has been also positively assessed by the AGCOM in the Resolution.

⁶⁰ The granting authority has determined and indicated in the call for tender the WACC that the bidders are required to use in defining their financial plans.

⁶¹ 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.

⁶² The reference period is defined on the basis of the lifespan of the different elements constituting the Infrastructures.

⁶³ 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).

⁶⁴ For each year the aid beneficiary will submit the final balance of costs and profits deriving from the Infrastructures.

concerns the First Intervention, after 15 years, and, as concerns the Second Intervention, after 10 years.

- (64) 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 of the Infrastructures and any other funds at its disposal.

3.17. *Ex post* evaluation plan

- (65) 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.
- (66) 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.
- (67) As regards direct effects, the plan checks the capability of the Measure to increase the coverage of the Italian territory with mobile networks providing the Target Speeds and the take-up of related services by end-users. As regards indirect effects, the plan assesses the impact of the Measure on competition.
- (68) Proportionality and appropriateness of the Measure are assessed by checking whether the objectives of the Measure were achievable with a lower aid intensity.
- (69) 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.
- (70) The Italian authorities confirmed that the final evaluation report will be published on the official website of the Italian government.
- (71) An interim 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 report will contain a first assessment of the impact of the Measure, based on the data that will be available at that time.
- (72) The final evaluation report for the period 2022-2026 will be submitted to the Commission by 31 March 2026. It will focus on the assessment of the direct and indirect impacts of the Measure in the medium term.
- (73) The Italian authorities have committed to continue the evaluation beyond the duration of the Measure and to submit in 2027 an additional evaluation report, which will assess the overall effectiveness of the Measure (which will come to an end in 2026).

3.18. Transparency and reporting

- (74) The Italian authorities will ensure that:
- (a) The granting of aid under the Measure will be subject to the publicity rules provided for in Article 34(2) of the RRF Regulation;
 - (b) For the entire duration of the Measure, all transparency requirements are met at each phase of its implementation. The relevant information about the Infrastructures will be published on the website www.infratelitalia.it. On this website both operators and end-users will have easy access to all relevant acts and information regarding the Measure and its implementation.
- (75) The Italian authorities will publish the following information⁶⁵:
- (a) Full text of the approved Measure;
 - (b) Aid beneficiaries' name and identifier;
 - (c) Type of aid beneficiary (SME, large enterprise);
 - (d) Region in which the beneficiary is located;
 - (e) Main sector of activity of each beneficiary at NACE group level;
 - (f) Aid element expressed in full in EUR or, where different from the aid element, the nominal aid amount, expressed in full in EUR;
 - (g) Aid instrument;
 - (h) Identity of the granting authority;
 - (i) Reference of the Measure, as stated in the present State aid decision.
- (76) This information must remain published for at least ten years and be available for the general public without restrictions.
- (77) Infratel as well as the beneficiaries will:
- (a) Provide entitled third parties with comprehensive and non-discriminatory access to information on the Infrastructures;
 - (b) Publish detailed information concerning wholesale access conditions and prices.
- (78) The Italian authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain, besides the information already made public pursuant to recital (77), the following key data concerning the Measure:

⁶⁵ Information will be updated every 6 months.

- (a) Total cost (or estimated total cost) for the deployment of the Infrastructures;
 - (b) Aid amount awarded and aid expenditure, as well as aid intensity;
 - (c) Sources of public financing;
 - (d) Coverage rates prior to, and after, the Measure (both in absolute and in percentage terms);
 - (e) Date when the Infrastructures were put in use;
 - (f) Technology deployed;
 - (g) Minimum and average (up- and download) speeds of the electronic communication services provided;
 - (h) Wholesale access products offered, including conditions for access and prices/pricing methodology;
 - (i) Number of access seekers and service providers using wholesale access;
 - (j) Number of areas covered by the Infrastructures;
 - (k) Take-up rates.
- (79) The Italian authorities also committed to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.

3.19. Monitoring

- (80) Italy will carry out an ongoing monitoring of the Measure, including the tendering process, the deployment of the Infrastructures, and the fulfilment of all requirements under the Measure and this decision, for the entire duration of 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 individual support under the Measure and will send them to the Commission upon request within a period of 20 working days or such longer period as may be fixed in the request.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of the aid

- (81) 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”.
- (82) 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

- (83) 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 financed⁶⁶.
- (84) The deployment and operation of both backhaul networks and BTSs with a view to provide performant 5G mobile services on a commercial basis constitute economic activities within the meaning of Article 107(1) TFEU⁶⁷.
- (85) The aid beneficiaries engage in activities consisting in offering goods and services on the electronic communications market, including the deployment and operation of backhaul networks and/or of mobile networks for providing mobile communications services.
- (86) Hence, the aid beneficiaries are undertakings within the meaning of Article 107(1) TFEU.

4.1.2. State resources and imputability

- (87) 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 it⁶⁸.
- (88) As described in recitals (16) and (27), 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.
- (89) Hence, State resources are involved and the Measure is imputable to the State.

4.1.3. Economic advantage

- (90) 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 intervention⁶⁹.

⁶⁶ Judgment of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

⁶⁷ Judgment of 24 March 2011, *Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission*, T-455/08, ECLI:EU:T:2011:117, paragraphs 90 and ff.

⁶⁸ Judgement of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294.

⁶⁹ Judgment of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

- (91) Beneficiaries will receive grants amounting to approx. EUR 2 billion for the deployment of the Infrastructures in the intervention areas. 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 coverage of their networks and/or 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.
- (92) 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*

- (93) To fall within the scope of Article 107(1) TFEU, a State measure must favour “*certain undertakings or the production of certain goods*”.
- (94) The Measure is aimed at the beneficiaries identified in recital (84) and, thus, targets undertakings that are active in one industrial sector (electronic communications sector) and only in certain segments of the overall electronic communications sector (deployment of backhaul networks and BTSs with a view to provide mobile communications services), to the exclusion of other undertakings active in other segments of the overall electronic communications market or in civil engineering works and infrastructure operation that cannot meet the requirements set out in the Measure⁷⁰.
- (95) As concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the deployment of the Infrastructures 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 of the Infrastructures in the target 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.
- (96) In the context of this particular legal regime, the Measure has the effect of conferring an advantage on the beneficiaries over other undertakings active in other segments of the overall electronic communications market or in civil engineering works and infrastructure operation, which are, in the light of this legal regime, in a comparable factual and legal situation.
- (97) Hence, the Measure is selective.

⁷⁰ 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.

4.1.5. *Effect on trade and competition*

- (98) 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*”⁷¹.
- (99) The Measure concerns the deployment of the Infrastructures to be used for the provision of mobile communications services in the intervention 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 infrastructures used to provide mobile communications services all over the country. The Measure will ensure the availability of networks that 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 communications services offered through the Infrastructures rather than other market solutions.
- (100) 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. The deployment of the Infrastructures, as well as the granting of wholesale access to them, could also be delivered by an undertaking from another Member State having cross-border activities. 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.
- (101) Hence, the Measure is capable of distorting competition and has an effect on trade between Member States.

4.1.6. *Conclusion on the existence of aid*

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

4.2. **Compatibility**

- (103) The Commission has to assess whether the aid is compatible with the internal market.
- (104) 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.

⁷¹ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

- (105) Given the specificity of mobile networks (as opposed to the fixed networks which do not allow for the provision of voice and data services “*on the move*”), the Measure is not assessed under the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (hereafter: “Broadband Guidelines”)⁷². In addition, in 2021, the Broadband Guidelines were subject to an evaluation process assessing whether they were still fit for their main purpose of facilitating the development of economic activities consisting in broadband network 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 Broadband Guidelines 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, including with respect to recent developments as concerns mobile connectivity. 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 for mobile connectivity (existence of a market failure) and to the performance that the new mobile networks must achieve (step change)⁷³.
- (106) Therefore, the Commission shall assess the compatibility of the Measure pursuant to Article 107(3)(c) TFEU and in analogue application of the Broadband Guidelines, where appropriate, taking into account, where justified, adjustments needed to reflect technological and market developments, based on the information provided by the Italian authorities⁷⁴.
- (107) 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

⁷² Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1).

⁷³ 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 of revised broadband guidelines (hereafter: “Draft 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 aid in the broadband sector. The main proposed revisions concern: (i) alignment of the intervention threshold for aid for fixed broadband 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 of mobile networks.

⁷⁴ See Commission Decision of 15 December 2021, C(2021) 9551 final, case SA.64394 (2021/N) – *RRF – Spain-National aid scheme for passive infrastructure for mobile networks* (OJ C 90, 25.2.2022, p. 6) See also Commission Decision 16 December 2018, C(2018) 7540 final, case 48324 (2018/N) – *Germany Mobilfunk Bayern* (OJ, C 462, 21.12.2018, p. 3).

not adversely affect trading conditions to an extent contrary to the common interest (second condition)⁷⁵.

- (108) 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.
- (109) 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.
- (110) 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*

- (111) ***Economic activities facilitated by the Measure.*** The Measure subsidises the deployment of backhaul network and BTSs, with a view to support the provision of performant 5G mobile services (see section 3.1). As described in recital (9) and

⁷⁵ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

proved by both the mapping exercise (see section 3.8) and the public consultation (see section 3.9), the Measure will finance the deployment of infrastructures that would not be deployed by private operators in the absence of the State support. The Measure aims to facilitate the provision of mobile services capable of addressing connectivity needs of citizens, businesses and public administrations in the intervention areas⁷⁶, *i.e.* in areas where mobile connectivity was either not present or only ensured at a level that would not adequately fulfil the needs of end-users. The Measure aims at overcoming market failures, which jeopardise the ability of citizens, businesses and public administrations in the intervention areas to have access to mobile communications services capable of addressing their needs, as identified by the Italian authorities (see recital (12)). It increases the economic competitiveness of intervention areas, ensures equal growth opportunities in the entire Italian territory and provides a stimulus for the development of a modern digital economy in Italy. The Commission acknowledges that by supporting the deployment of the Infrastructures in the intervention areas and by imposing the obligation on beneficiaries to ensure wholesale access as well as the provision of mobile services to end users at the Target Speeds, the Italian authorities contribute to the development of this economic activity.

(112) ***Incentive effect.*** To ensure an incentive effect, the Italian authorities carried out a mapping exercise and a public consultation to seek the views of electronic communications network operators, other interested stakeholders and the wider public in general on the design of the Measure, the intervention areas and relevant private investment plans (see sections 3.8 and 3.9). In that context, the operators communicated their plans, in particular the existing BTSs that by 2026 will be fibre-connected as well as the new BTSs that they intend to deploy by 2026 (including the related type of backhaul connection, where fibre- or non-fibre-based)⁷⁷. The Measure concerns only the BTSs that – by 2026 – will not have a fibre-based backhaul network (First Intervention) and the areas of the Italian territory where no mobile networks offering download speeds of at least 30 Mbps under usual peak time conditions will be present by 2026 (Second Intervention). The Measure will not finance the costs related to investments needed to meet coverage obligations attached to their respective rights of use of spectrum (see recitals (14)(a) and (55)(i)). On this basis, the Measure demonstrates an incentive effect to further develop the provision of performant mobile services to the benefit of consumers, businesses and public administration in the intervention areas. The Measure will change the behaviour of potential beneficiaries in such a way that they carry out activities, which they would not carry out without the Measure or would carry out in a restricted or different manner or not in the intervention areas described in recital (9).

(113) ***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

⁷⁶ The connectivity needs have been identified and assessed by the Italian authorities with the support of an expert, *i.e.* the Polytechnic University of Milan (see recital (12)).

⁷⁷ See, in particular, footnote 33.

compatible with the internal market⁷⁸. 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.

4.2.2. *Second condition*

4.2.2.1. Positive effects of the aid

- (114) The Italian authorities will award aid for the deployment of performant mobile networks in the areas of the Italian territory where – based on the results of the mapping and the public consultation (see sections 3.8 and 3.9) – BTSs are not covered by fibre-based backhaul networks (First Intervention) and/or there are networks offering download speeds below 30 Mbps under usual peak time conditions (Second Intervention) and where there are no private investment plans for the roll-out of such performant mobile networks by 2026 (see section 3.1).
- (115) The Measure brings about a material improvement in the availability of high-quality mobile communications services, which form a part of the fundamental needs of a modern society.
- (116) At the same time, considering that the vast majority of the intervention areas are in rural and remote parts of the country, the Measure is expected to contribute to correct social or regional inequalities and reduce the digital divide between rural and urban areas in Italy. In addition, the Measure will ensure take-up by the end-users in the interventions areas of a number of applications and services (*e.g.* smart & connected vehicles, autonomous vehicles, collaborative robots, remote monitoring, enhanced experience, remote operations, surveillance & safety, services of telemedicine and connected ambulance), which will improve the digital transition and the further development of activities in related economic sectors.
- (117) Furthermore, the Commission considers that the rules and conditions for wholesale access under the Measure (see section 3.15) will have positive effects on competition at the retail level, since all mobile operators will have the right to access to the Infrastructures and to propose their retail offers on the market offering end-users enhanced services and performances that they would have not been able to provide absent the aid.
- (118) 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

⁷⁸ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 44.

territory ambitious connectivity objectives, aiming at 5G coverage for all populated areas by 2030⁷⁹.

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

4.2.2.2. Necessity for State intervention

(120) 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.

(121) 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, for instance, when certain investments are not being undertaken even though the economic benefit for society exceeds their cost. In such cases, the granting of State aid may produce positive effects and overall efficiency can be improved by adjusting the economic incentives for stakeholders.

(122) In the present case, the necessity for State intervention is supported by the following considerations:

- (a) The Italian authorities have demonstrated – with the support of an expert opinion – that there is an unaddressed (current and future) demand for 5G connectivity by end-users in relation to a number of applications and services (e.g. smart & connected vehicles, autonomous vehicles, collaborative robots, remote monitoring, enhanced experience, remote operations, surveillance & safety, services of telemedicine and connected ambulance) (see recital (12)). The Measure will contribute to achieving Italy’s objectives regarding nationwide deployment of performant mobile networks by 2026. The Commission acknowledges that this is necessary in order to be prepared for the continued strong increase in global data usage in private and professional contexts as well as the ever-increasing performance of devices. Therefore, the intervention threshold and the Target Speeds are justified with a view to comparably weak performances of mobile connectivity in the intervention areas in Italy and current and future challenges posed by digitalisation and mobile connectivity, especially in rural and remote areas targeted by the Measure. These thresholds and targets adequately take account of the longevity of networks needed to guarantee an adequate return on investments as well as of Italy’s objectives of ensuring equal opportunities for all citizens in terms of their ability to fully participate in the possibilities of digitalisation;

⁷⁹ 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). 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) and 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).

- (b) The Italian authorities have demonstrated that the Infrastructures would not be deployed in the intervention areas without support under the Measure. The cost of deploying the Infrastructures in the intervention areas is significantly higher than the cost of connecting urban and densely populated areas, because the target areas are often located in topographically difficult and remote parts of Italy (see recital (28)). Moreover, the achievable revenue is more limited in the intervention areas than elsewhere in Italy due to low population density;
- (c) The Italian authorities carried out a detailed mapping exercise aimed at identifying the BTSs that by 2026 will not have a fibre-based backhaul network, as well as the areas of the Italian territory that by 2026 will not be served by mobile networks offering download speeds above 30 Mbps under usual peak time conditions (see section 3.8). The methodology applied for the mapping exercise was adequate and consistent with good practices at EU level. In particular, the Italian authorities requested the stakeholders to submit substantiated information regarding their networks present or credibly planned to be deployed by 2026. 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 private investment plans adequately substantiated and credible. In particular, as described in recital (34), 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 (see recital (35));
- (d) The Italian authorities carried out a public consultation, thereby allowing interested parties to comment on the Measure (see section 3.9). In particular, Italy published on the official websites the main features of the Measure and the results of the mapping exercise, including the list of the intervention areas identified, inviting interested parties to comment. The public consultation was carried out with the same level of granularity as the mapping exercise. In order to finalise the identification of the intervention areas, 28 submissions were received and assessed;
- (e) The methodology and the results of both the mapping exercise and the public consultation ensure that only areas where there is no actual interest of the market players to undertake private investments are targeted under the Measure, thereby limiting risks of crowding-out private investments and distorting competition. This is proved by the fact that:
- Operators have formally identified the relevant infrastructures they intend to deploy with private investments; these do not include the Infrastructures, that the private operators do not intend to deploy in the absence of public intervention due to the high deployment costs which are not balanced by the forecasted revenues (see also recital (9));

- The Infrastructures will not be taken into account to meet any coverage obligations attached to the relevant rights of use of spectrum (see recitals (14)(a) and (55)(i));
 - No objection to the identification of the intervention areas was raised;
 - Both the intervention threshold and the Target Speeds were discussed in the public consultations and were largely endorsed (see recitals (39)(a) and (39)(b)).
- (f) AGCOM supported the Italian authorities since the early stages of the Measure, in particular with regard to the mapping, the definition of the wholesale access products, and the set-up of the claw-back mechanism (see recital (23));
- (g) As concerns the First Intervention, the need of a fibre-based backhaul network has been duly demonstrated by the Italian authorities – with the support of an expert opinion – on the basis of a throughout assessment of the current stage of technological development of backhaul technology solutions (see recital (11));
- (h) As concerns the Second Intervention, the appropriateness of the intervention threshold, *i.e.* 30 Mbps download speed under usual peak time condition, has been duly demonstrated by the Italian authorities – with the support of an expert opinion and of the AGCOM – on the basis of an overall assessment of the performance of the mobile networks needed to effectively use a number of 5G applications and services (see recital (12)).
- (123) 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

- (124) The State aid measure proposed must be an appropriate policy instrument to address the problem of absence of market delivery due to market failure.
- (125) In order to be appropriate, the subsidised mobile networks must provide significantly enhanced characteristics in comparison to existing networks. Thus, State funded mobile networks should be able to ensure a step-change. A step-change can be demonstrated if, as the result of the public intervention, the new mobile network:
- (a) Represents a significant new investment in the electronic communications network, and
 - (b) Brings significant new capabilities to the market in terms of service availability, capacity, speeds and competition.
- (126) The step-change is assessed by comparing the characteristics of the current mobile network(s) and the characteristics of the new mobile network. Credibly planned networks are not taken into account for the assessment of the step-change

unless they would, on their own, provide similar performance to that of the planned State funded network within the relevant time horizon. Based on the information provided by the Italian authorities, the Measure ensures a step-change, since:

- (a) As a consequence of the First Intervention, the BTSs in the intervention areas which are not and are not planned to be connected with fibre-based backhaul networks, will be connected with a fibre-based backhaul network (see recital (53)(a)).
- (b) As a consequence of the Second Intervention, in the intervention areas the download speed will more than quintuple the speeds provided by the existing or credibly planned mobile networks.

(127) Moreover, the Italian authorities explained that the new networks will improve latency and reliability compared to the existing and credibly planned mobile networks.

(128) Hence, the Measure allows for a step change.

(129) State aid is not the only policy instrument available to Member States to boost investment in the deployment of mobile networks. Member States can use alternative instruments, such as mobile coverage obligations attached to rights to use spectrum and demand-side measures. As described in recital (14)(a), compliance with the coverage obligations will not be able to ensure a proper development of this economic activity within the intervention areas. Furthermore, demand-side measures are not appropriate means to develop the economic activity of deploying mobile networks. In fact, the required mobile network for the provision of performant 5G mobile services in the intervention areas does not yet exist and its construction would not be economically viable for private investors.

(130) 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

- (131) 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.
- (132) **Mapping and public consultation.** The Italian authorities identified the intervention areas on the basis of a detailed mapping exercise (see section 3.8)⁸⁰. The mapping exercise was carried out on the basis of a geographical grid of “pixel” (*i.e.* an area having a dimension of 100x100 metres), representative of the Italian territory (for a total of approx. 30 million “pixels”). Operators were asked to provide information on their coverage plans up to 2026 – also taking into account the coverage obligations attached to their respective rights of use of spectrum – by filling in for each pixel a number of fields relating to the coverage attributes. The main characteristics of the Measure and the identification of the intervention areas have been made public in the public consultation (see section 3.9). The final intervention areas were identified on the basis of the public consultation, taking into account comments received and, in particular, the fact that the operators declared their intention to not invest in those areas to deploy the Infrastructures due to the high deployment costs which are not balanced by the forecasted revenues (see recital (9)). Thus, all intervention areas have been communicated to the public in an open and transparent manner following their identification in the mapping exercise and in the public consultation. This ensures proper publicity of the Measure and its design, to identify clearly the geographic areas that will be covered by the Measure, thereby ensuring that the Measure covers only areas where the intervention is necessary.
- (133) **Competitive selection procedure.** As a rule, in order to ensure that aid is proportionate and limited to the minimum amount necessary, an open, transparent and non-discriminatory competitive selection procedure should be organised 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 3.11), the Measure complies with these requirements. In particular:
- (a) For both lines of intervention, the successful tenderers are selected through an open and non-discriminatory competitive selection procedure, in line with EU and national public procurement rules, in order to ensure the efficient use of public resources. The calls for tenders ensure equal treatment of the interested parties, regardless of their legal status, as well as effective competition among them;

⁸⁰ Mapping was carried out through the publication, on 10 June 2021, of a notice on the institutional websites www.bandaultralarga.it and www.infratelitalia.it as well as by means of requests for information addressed, also on 10 June 2021, to each of the mobile operators active in Italy.

- (b) For both lines of intervention, the call for tenders is 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; this will allow the participation even of small operators in the tender;
 - (c) The aid beneficiaries must provide passive and active wholesale access to the Infrastructures in accordance with the (minimum) conditions laid down by AGCOM (see section 3.15). Moreover, the beneficiaries of the Second Intervention will be obliged to provide retail mobile services reaching the Target Speeds (see recital (46)(i));
 - (d) Temporary groupings of horizontal or vertical undertakings, consortia or other groupings may participate in tendering procedures, in accordance with Article 48 of the Italian Public Procurement Code and the principles imposed by EU Public Procurement rules;
 - (e) The Italian authorities gave due publicity to the calls for tender (see recital (46)(c));
 - (f) The award criteria are defined in advance and are based on objective, transparent and non-discriminatory factors (see recital (46)(e)).
- (134) ***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.
- (135) Based on the information provided by the Italian authorities (see recital (49)), the Measure is technologically neutral. In particular:
- (a) As concerns the First Intervention, the decision of the Italian authorities to rely on fibre-based solutions was duly reasoned. In particular, the Italian authorities demonstrated – also with the support of an expert opinion⁸¹ – that, at the current stage of technological development, fibre-based backhaul networks are the only technological solution for backhaul that can ensure the offer of 5G services having the characteristics necessary to address the Italian end-users’ current and future needs, as identified by Italy and in line with the objectives of the Measure. Moreover, the Italian authorities explained that the stakeholders did not object on the decision to rely on fibre-based solutions in the context of the public consultation;
 - (b) As concerns the Second Intervention, the call for tender does not require or exclude any specific technology, provided that the subsidised networks will provide the Target Speeds;

⁸¹ In particular, the Polytechnic University of Milan.

- (c) Under both the First and the Second Intervention, wholesale access will be offered on open, transparent, fair and non-discriminatory terms in line with the principle of technological neutrality. Several alternative platforms/technologies will be able to utilise the new networks via wholesale access to offer their own services to end-users.
- (136) ***Use of existing infrastructure.*** In order to limit the aid amount to the minimum necessary, Member States should incentivise the use of existing infrastructure. 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 section 3.12), the Commission considers that there are sufficient incentives for the use of the existing infrastructure by the aid beneficiaries. In particular, the call for tenders expressly encourages the bidders to take into account the use of existing infrastructures in the planning and implementation of the intervention. In order to facilitate the use of the existing infrastructures, comprehensive information on the latter has been made available to all potential bidders through the set-up of a national database called SINFI (*Sistema Informativo Nazionale Federato delle Infrastrutture*), where all existing infrastructures that could be re-used are listed. This information has been made available to bidders at a point in time to allow the taking into account of such infrastructures in their bids.
- (137) ***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, providing customers at the retail level with more and better services and prices (see recital (114)). The provision of effective wholesale access amplifies the positive effects of aid measures and contributes to limiting the aid to the minimum necessary. An increased choice of wholesale access products is set to increase the beneficiaries' revenues, thus likely increasing the profitability and thereby decreasing the amount of aid needed to close the funding gap. Based on the information provided by the Italian authorities (see section 3.10), the Measure complies with these requirements. In particular:
- (a) The aid beneficiaries must provide the list of passive and active wholesale access to the Infrastructures to all service providers on open, transparent, fair and non-discriminatory basis, in accordance with the minimum conditions (access products, conditions and pricing) described in the Resolution (see recital (54)). In any case, the bidders are encouraged to provide additional wholesale access products as part of their bid in the competitive selection procedure (see recital (46)(e));
 - (b) Passive wholesale access will be granted unlimited in time, while active access will be granted for 10 years;
 - (c) The aid beneficiaries have to design the Infrastructures in order to ensure sufficient capacity. In particular, the Italian authorities specified that the ducts must be able to host an appropriate number of access seekers⁸² and

⁸² See footnote 56.

the masts and the towers shall be able to cater for at least three mobile operators in Italy (see recital (55)(b)). The Italian authorities have duly demonstrated – also making reference to the conclusions reached by AGCOM – that the limitation to “*at least three mobile operators*” is reasonable in the case at hand: indeed, an obligation to deploy network infrastructures (e.g. masts) sized to host the active equipment of all five MNOs active in Italy would significantly increase the deployment costs against low expected revenues and that the electromagnetic limits in force in Italy restrict the number of antennas that can be installed on the same BTS;

- (d) Beneficiaries must also offer wholesale access under the same access conditions to all existing and privately funded infrastructure used to deploy the Infrastructures. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the Infrastructures;
 - (e) Effective and comprehensive wholesale access will be available for all access seekers irrespective of the technology of their choice as described in section 3.15;
 - (f) As described in recital (56), the prices for wholesale access are based on price caps for each of the wholesale access products on the basis of the regulated prices already approved. The caps are intended as maximum prices that the bidders cannot exceed but can lower in the tender offer. AGCOM will check the compliance with the price caps upon request of the granting authority. AGCOM will be competent to solve disputes between the beneficiaries and access seekers.
- (138) **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. 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.
- (139) Based on the information provided by the Italian authorities (see section 3.16), the Measure contains an adequate claw-back mechanism. In particular:
- (a) Italy will closely monitor the deployment of the Infrastructures for the entire duration of the Measure and apply the claw-back mechanism;

- (b) The claw-back mechanism will be applied on the basis of the figures of the financial plan for the deployment of the Infrastructures submitted by the successful bidders in the tender. The financial plan must include:
 - The operating costs needed to deploy and maintain the Infrastructures;
 - The profits expected over the reference period, and
 - The aid intensity required;
 - (c) Based on the above, 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 Infrastructures; and/or
 - The difference between the profits estimated by the aid beneficiary in the tender and the actual profits deriving from the operation of the Infrastructures;
 - (d) 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 of this threshold will be shared between the aid beneficiary and Italy, according to the actual aid intensity resulting from the tender (minimum 10 % for the aid beneficiary and maximum 90 % for Italy);
 - (e) The Italian authorities will monitor on an yearly 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 of the Infrastructures and any other funds at its disposal.
- (140) **Accounting separation.** To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, all beneficiaries must ensure accounting separation between the funds used for the First Intervention and the Second Intervention, respectively, and other funds at their disposal (including funds stemming from other State aid measures). Furthermore, if a beneficiary under other State aid measures will be among the beneficiaries of the Measure, the Italian authorities will check that there will be no undue transfer between the funds allocated to the First Intervention and the Second Intervention and the funds allocated to other measures.
- (141) **Conclusion on proportionality:** In light of the considerations in recitals (131)-(140), the Commission considers that the State aid involved and the potential distortions of competition are limited to the minimum necessary under the Measure.

4.2.2.5. Transparency of the Measure

- (142) **Transparency, reporting and monitoring.** As described in section 3.18, the Italian authorities committed to comply with the publicity rules provided for in Article 34(2) of the RRF Regulation. Moreover, for the entire duration of the Measure, all the relevant information about the Infrastructures will be published on the official website www.infratelitalia.it, where both operators and end-users will have easy and unrestricted access to all relevant acts and information regarding the Measure and its implementation. In particular, the Italian authorities will publish the information listed in recital (75) after the approval of the Measure and for the following 10 years.
- (143) The Italian authorities will report to the Commission about the application and the progress of the Measure every two years. The report will contain, besides the information listed in recital (75), the additional key data mentioned in recital (78).
- (144) The Italian authorities also committed to submit to the Commission the annual reports required under Article 26 of Council Regulation (EU) 2015/1589.
- (145) 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 within a period of 20 working days or such longer period as may be fixed in the request.
- (146) **Ex post evaluation plan.** The Measure represents a very large aid scheme, with an overall annual budget of approx. EUR 2 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 as an integral part of it.
- (147) The objective of the evaluation plan is to demonstrate, by means of both quantitative and qualitative analyses, the direct effects of the aid measure, its proportionality and appropriateness; as well as a number of indirect effects including potential distortive effects on competition.
- (148) 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 section 3.17)⁸³. 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

⁸³ As regards direct effects, the evaluation plan must check whether the measure is suitable for increase Italy's ultra-broadband coverage and the degree of sustainability of infrastructure development over time (network scalability, possibility of further extensions if necessary). As regards indirect effects, it will be necessary to measure the impact of the aid on the level of competition. The proportionality and appropriateness of the measure is assessed by verifying that the same objectives cannot be achieved with a lower aid intensity.

evaluation plan explains the main methods that will be used in order to identify the impacts of the Measure⁸⁴;

- (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 in accordance with the criteria laid down in the evaluation plan;
 - (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, a final evaluation report by 31 March 2026 and an additional evaluation report in 2027 is appropriate.
- (149) The Commission notes that Italy shall communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions.
- (150) Moreover, the Commission notes that the Measure 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

- (151) Aid for the deployment of mobile 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.
- (152) 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 Infrastructures rather than other market solutions.

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

- (153) 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.
- (154) 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:

⁸⁴ The plan indicates that it is based on the best practices referred to in the Commission's *Staff working document on common methodology for state aid evaluation*.

- (a) The Italian authorities proved that the Measure contributes to the development of the supported economic activities, in particular mobile connectivity, compared with what would have happened in the absence of the aid in the intervention areas. The Measure has various positive effects for end-users but also for competition in the intervention areas (see also section 4.2.2.1). Indeed, the Measure will ensure a wide availability of mobile networks 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 provide better choice for consumers, higher quality and innovation and 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 (114));
- (b) The Measure addresses a market failure (see section 4.2.2.2) in that the deployment of the Infrastructures would not be made in the intervention areas without the Measure. It also represents a step change (see section 3.14);
- (c) The Measure is also proportional (see section 4.2.2.4). Its design ensures that the aid is limited to the minimum necessary and that its negative effects on competition and on trade in the markets for the deployment of mobile networks, for the granting of wholesale access to the mobile networks and for the provision of mobile services at the retail level to end users are limited;
- (d) 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 fibre-based backhaul networks to connect the BTSs (First Intervention) and/or to deploy the BTSs that are needed to provide 5G mobile services reaching, under usual peak time conditions, the Target Speeds (Second Intervention);
- (e) Potentially affected private operators have been publicly consulted before the start of the implementation of the Measure on its design, its legal bases, its intervention areas and their planned investments into mobile networks in these intervention areas by 2026 and their comments have been taken into account in the final design of the Measure;
- (f) The design of the Measure ensures no overlap with legal obligations such as coverage obligations related to rights of use of spectrum (see recital (14)(a));
- (g) The overall aid intensity is limited to the minimum necessary (see recital (28));
- (h) Any financial support under the Measure will be awarded through a competitive selection procedure in line with the EU and national public procurement rules and the Measure is technologically neutral (see section 3.11);

- (i) By ensuring effective wholesale access to the Infrastructures to interested parties, the Measure aims at incentivising competition in the intervention areas (see section 3.15);
 - (j) The Measure features an adequate claw-back mechanism (see section 3.16);
 - (k) The Measure ensures transparency and monitoring and reporting obligations will be complied with (see sections 3.18 and 3.19);
 - (l) As described in section 3.17, 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.
- (155) 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 of performant mobile 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

