



EUROPEAN COMMISSION

Brussels, 21.1.2021
C(2021) 262 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.57497 (2020/N) – Italy
Broadband infrastructure roll-out to connect schools-IT**

Excellency,

I am pleased to inform you that the European Commission has assessed the scheme concerning Broadband Infrastructure roll-out to connect schools and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union (TFEU).

1. PROCEDURE

- (1) Following pre-notification contacts, by letter of 23 December 2020, the Italian authorities notified to the Commission the scheme '*Broadband Infrastructure roll-out to connect schools*' ('the scheme'), pursuant to Article 108(3) TFEU.
- (2) By letter of 23 December 2020 the Italian authorities have provided a language waiver and exceptionally agreed to waive their rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified in English pursuant to Article 297 of the Treaty.

2. DESCRIPTION OF THE SCHEME–

2.1. Context

- (3) Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and to social and territorial cohesion. It

Onorevole Luigi Di Maio
Ministro degli Affari esteri e della Cooperazione Internazionale
P. le della Farnesina 1
I - 00194
Roma

supports business efficiencies and growth, ensures that economies can remain competitive, and enables citizens to enhance their skills and learning and to benefit from online services and offerings, including key public services.

- (4) Broadband connectivity has significant benefits in the education and training process both for students and educators, promoting the development of digital and transversal skills, facilitating interaction, providing wide resources for learning and making education more flexible and easy to access. Broadband services are as essential as any other educational resource. Internet usage can also significantly facilitate administrative procedures and communications. Web access, email and multimedia applications enable learning activities that are attractive to students and foster a collaborative learning environment.
- (5) Several schemes for broadband roll-out have been promoted in Italy in the recent years. Notably, as of June 2016 Italy has initiated the implementation of a State aid scheme to support the roll-out of networks able to support speeds above 30Mbps download for all households and businesses in areas where there were no networks which could support download speeds above 30 Mbps¹.
- (6) However, Italy considers that public schools need already now speeds of 1Gbps symmetric and will increasingly do so in the near future. Italy refers to the EU Gigabit Society Communication² and its findings regarding a growing need for very high capacity networks in the coming years. Italy considers that very high capacity networks providing very high symmetric speeds are and will become increasingly necessary for public schools, to enable schools to use various advanced e- learning applications.
- (7) The measure will be implemented in parallel with the national scheme "Banda Ultra Larga"³. Italy clarified there will be no overlap between the two State aid schemes, as the targeted public schools are located in areas outside of the intervention areas covered by any previous State aid scheme. Infratel Italia or, as relevant, the entity implementing a regional model (see recitals (19) to (25)) will maintain adequate separate accounting clearly identifying the different sources of financing and the projects for which those funds are used.
- (8) On 5 May 2020 the Italian authorities launched a national plan to connect all public schools in Italy with connectivity able to provide 1 Gbps symmetric speeds. The notified scheme is a part of that plan. The scheme focusses on ensuring by 2023 the roll-out of such networks to public schools in Italy not passed by current or planned networks able to provide speeds above 300Mbps download.
- (9) Italy explained that the execution of the plan has become a strategic priority in the context of the current COVID-19 pandemic, which has proved the relevance of

¹ JOCE C/258/2016 SA.41647 (2016/N) – Italy - Strategia Banda Ultralarga.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2016) 587 final *Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society*

³ JOCE C/258/2016 SA.41647 (2016/N) – Italy - Strategia Banda Ultralarga

broadband connectivity to ensure that citizens have the possibility to exercise essential, constitutionally guaranteed rights, such as the possibility of learning.

2.1. Objective of the scheme

- (10) Italy aims to support the roll-out of networks able to provide 1 Gbps symmetric⁴ broadband connectivity to about 12,000 public schools in Italy which are not passed, nor planned to be passed in the next three years, by networks able to provide more than 300Mbps download.
- (11) The Italian authorities indicated that in their view the above-mentioned level of performance is needed to enable the target schools to provide online educational services as well as to enable students and educators to use current and future digital services.
- (12) The new networks will consist of passive and active elements (including ducts, dark fibre, active equipment, etc.).
- (13) The notified scheme also foresees that once connected to the new network, the schools will benefit from connectivity services (i.e. access to Internet), assistance and maintenance services. The schools will also receive the necessary equipment (i.e. modems and routers) to connect to the network.

2.2. Legal basis

- (14) The scheme is based on the law-decree adopted on 7 August 2020 by the Ministry of Economic Development (MiSe) which in turn refers to resolution N.71/2017 adopted by the Inter-ministerial Committee on Economic Programming (CIPE).
- (15) The Italian authorities confirmed that a standstill clause will apply. Pursuant to Article 108(3) TFEU and to Article 3 of Council Regulation (EU) 2015/1589⁵, new aid schemes must not be put into effect before the Commission has taken a decision authorising it.
- (16) The present State aid decision is an integral part of the legal basis.

2.3. Granting authority

- (17) The granting authority is the Ministry of Economic Development - MiSe.

2.4. Intervention model

- (18) The MiSe will implement the scheme by means of a ‘national’ or ‘regional’ model.

2.4.1. National model

- (19) In the national model, Infratel Italia, an in-house provider controlled by the MiSe, will be entrusted with the implementation of the scheme.
- (20) Infratel Italia will select via competitive selection processes the companies that will deploy the passive infrastructure (see recitals (35) to (44)). Infratel Italia will

⁴ The Italian authorities clarified that in order to ensure that speeds close to 1 Gbps symmetric will be always provided even in case of network congestion, Italy deems it necessary to require an obligation to ensure a minimum speed of 100 Mbps symmetric.

⁵ 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.

operate the network at wholesale level. Depending on the technology which will be used in line with the technology neutrality principle (recital (45)), the passive infrastructure may include ducts, poles, cabinets and dark fibre.

- (21) Infratel Italia will also select via competitive selection processes the companies that will deploy the active layer of the network and maintain the network (both the passive and active layer) in order to provide services described in recital (13) to the public schools.
- (22) Infratel Italia may decide (i) to carry out competitive selection procedures to select the companies that will be entrusted with both the construction and the provision of services to schools and the maintenance of the networks; or (ii) to carry out competitive selection procedures separately to (a) select the companies that will deploy the passive networks and (b) the companies that will deploy the active layer, maintain the networks and provide services to the schools.

2.4.2. Regional model.

- (23) The Italian authorities clarified that some Italian regions will implement the scheme directly or through their in-house providers.
- (24) The regions concerned and their in-house providers as the case may be will undertake an agreement with the MiSe and Infratel Italia committing to submit their intervention plan to the MiSe and Infratel Italia for approval.
- (25) The implementation carried out by the regions will have to comply with this scheme and with the objectives and guidelines set by the MiSe. The regions, or their in-house providers, as the case may be, will follow the same approach described in recitals (19) to (22).

2.5. Financial model

- (26) The new network will be fully financed by the MiSe. In case the regional model will be used, the MiSe will reimburse to the regions concerned the costs incurred in the deployment of the network and the provision of connectivity, assistance and maintenance services to the schools.
- (27) Irrespective of the fact that the scheme will be implemented through the national or regional model, the entire new networks will be fully owned by the MiSe and the Italian regions will have to report the costs incurred to Infratel Italia.
- (28) Infratel Italia, the regional public authorities and the in-house entities of regional authorities will ensure accounting separation between the funds used for the operation of the network and other funds at their disposal.

2.6. Budget

- (29) The overall budget of the scheme is about EUR 325 million of which about EUR 103 are allocated to the first phase of the implementation (see recitals (41) to (44)). About EUR 239 million will be allocated to the deployment of the networks and about EUR 86 million to the provision of connectivity, assistance and maintenance services to schools (see recital (13)).

2.7. Aid intensity

- (30) The Italian authorities clarified that the aid amount will cover 100% of the cost of implementation of the scheme.

2.8. Duration

- (31) The State aid scheme will enter into force after the approval by the Commission. The Italian authorities have confirmed that the granting of the aid is conditional on the decision of the Commission on the notified measure. Pursuant to Article 108(3) TFEU and to Article 3 of Council Regulation (EU) 2015/1589, new aid measures must not be put into effect before the Commission has taken a decision authorising it.
- (32) The deployment of the networks will be completed by December 2023.
- (33) Italy commits to carry out a new mapping and public consultation should the deployment of the networks exceed the above-mentioned time limit (see recitals (47) to (52)).
- (34) Following the deployment of the network, the companies selected to maintain it (see recitals (19) to (25)) and to provide the services (see recital (13)) to the schools, will do it for an initial period of 5 years.

2.9. Competitive selection process

- (35) The Italian authorities indicate that the any entrustment to a third party to build or operate the network as well as to provide services to schools under the scheme will be allocated by way of open, transparent and non-discriminatory competitive selection procedures, in line with the spirit and the principles of public procurement rules and respecting the principle of technology neutrality.
- (36) The competitive selection procedures will be organised by Infratel Italia if the national model will be used. In this case Infratel Italia will be the tendering authority.
- (37) In case of use of the regional model, the regions, or their respective in-house providers, will be the tendering authorities.
- (38) In compliance with paragraph 78 of the Broadband Guidelines⁶, the competitive selection procedures will ensure the selection of the most economically advantageous offers using objective evaluation criteria established in advance by the Italian authorities. Award criteria are, for instance (apart from the mandatory requirements such as being able to provide at least 1 Gbps symmetric speed): the quality and performance of the equipment provided (CPE), the provision of non-mandatory services (e.g. Wi-Fi), the provision of redundancy links for continuity reasons, etc. Among the evaluation criteria is included also any possible improvement of the timetable for connecting the schools.
- (39) The qualitative criteria have to be weighed against the requested aid amount. In order to minimise the amount of aid, at similar if not identical quality conditions, at the overall assessment of a bid, the bidder who requires the lowest State aid amount will receive most points.
- (40) Based on the outcome of the mapping exercise, Italy identified about 12,000 schools for which the deployment of new infrastructure is deemed necessary.

⁶ 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 (hereafter the "Broadband Guidelines").

- (41) Italy will initially (first phase) tender out the deployment of the networks to connect 4,423 schools of which about 3,800 by means of the national model (see recitals (19) to (22)) and about 600 by means of the regional model (see recitals 2.4.2 to (25)).
- (42) For the first phase and for the part of the scheme implemented using the national model (see recital (19) to (22)), Infratel Italia has already launched a tender procedure, in compliance with EU public procurement rules and the Italian public procurement code.⁷ The winning bidders will be the electronic communications operators that will be entrusted with the deployment of the infrastructures and the subsequent maintenance of the networks and provision of the services to the schools (see recital (13)). The awarded network operators will have to keep separate accounts in relation to the deployment of the infrastructure and the maintenance of the network and the provision of services to the schools.
- (43) The tender is divided into seven lots grouping together Italian regions⁸. No more than two lots can be awarded to the same bidder. The Italian authorities explained that the number and size of the lots were designed with the aim to foster competition on the market by allowing also for the participation of smaller operators while preserving an economy of scale. At the same time the mechanism which limits the number of lots that the same operator can win aims to promote plurality on the market.
- (44) For the part of the first phase of the scheme that will be implemented by means of the regional model, the implementation will be carried out according to the options described in recitals (23) to (25). In case the Italian regions will decide to entrust the same company with the deployment of the infrastructure and the subsequent maintenance of the network and provision of the services to the schools, this company will have to keep separate accounting in line with the corresponding condition for the national model (see recital (42)).

2.10. Technological neutrality

- (45) The Italian authorities recognise that a range of technologies exists to provide broadband services able to provide the quality described in recital (10) and their capabilities are constantly evolving. The scheme specifies the outcome that the Italian authorities consider necessary to achieve in favour of schools and identify certain qualitative criteria which must be met. The Italian authorities clarified that no specific technology or platform will be defined or favoured or excluded in the selection procedure.

2.11. Beneficiaries

- (46) The Italian authorities decided to implement the scheme by means of the direct investment model. The new network will be fully financed and owned by the MiSe. Depending on the intervention sub-model chosen (see recital 2.4), Infratel Italia, the regions or the regional in-house providers will select the companies that will deploy the network, provide the active equipment, maintain the network and provide the services to the schools.

⁷ Legislative Decree 50/2016 and subsequent amendments.

⁸ Lot 1: Liguria and Piemonte; lot 2: Lombardia; lot 3: Lazio and Sardegna; lot 4: Campania and Basilicata; lot 5: Calabria and Sicilia; lot 6: Toscana and Veneto; lot 7: Marche, Abruzzo, Molise and Puglia

2.12. Mapping

- (47) The scheme targets schools in certain grey NGA – Next Generation Access - areas where only one network able to provide at least 30 Mbps download speed is present or planned in the next three years.
- (48) The target network will be able to provide 1 Gbps symmetric speeds. The new network will not be deployed in areas in which a network able to provide to schools speeds above 300Mbps download is already available or planned to be deployed in the next three years. This will therefore also ensure compliance with the minimum requirement that the target infrastructure always doubles the download and upload speeds of the networks existing or planned in the next three years. Italy aims to ensure that public schools will thus be able to use various advanced e-learning applications and respond to fast growing connectivity needs.
- (49) Italy carried out a mapping exercise to identify existing and planned infrastructure through a questionnaire requesting information on the existing and planned networks which was sent to all operators and published on the central website of the MiSe⁹ and of Infratel Italia¹⁰ on 24 June 2020.
- (50) The mapping exercise was carried out at address level, on the basis of premises passed (not connected). 44 operators reported information on speed and technologies (i.e. Fibre, VDSL, FWA) available and planned in the next three years for 35 million addresses.
- (51) In order to verify whether private investors had credible and concrete plans to roll out infrastructure within the next three years, the Italian authorities requested the private investors to undertake commitments on their planned investments and to submit documents referring to strategic and executive decisions of the companies. Furthermore, those companies had to submit declarations signed by their legal representatives stating the accuracy and veracity of their plans.
- (52) For the first phase and the part of the scheme implemented using the national model (see recital (19) to (22)), the mapping and public consultation exercise is complete (see also recital 55 and following below). Going forward, Italy commits to carry out every year a mapping and public consultation exercise to verify if the schools for which the tender to deploy the infrastructure has not yet been carried out are already passed or planned to be passed by an infrastructure able to provide above 300 Mbps download speed. Should this be the case, these schools will not be targeted by the public intervention.

2.13. Public consultation

- (53) The results of the mapping exercise were verified in an open public consultation, based on a description of the scheme and the target areas, published on the central website of the MiSe and of Infratel Italia. The public consultation took place between 5 August 2020 and 15 September 2020. The public consultation enabled any potentially interested operator or stakeholder to announce existing or planned infrastructure or to provide comments on the scheme. Sixteen responses were received and assessed. Italy clarified that the submissions concerned four main topics: (i) the tender and its division in lots; (ii) the technologies able to fulfil the

⁹ www.bandaultralarga.it

¹⁰ www.infratelitalia.it

required quality criteria for schools; (iii) the ownership of the network and (iv) the schools targeted by the public intervention.

- (54) *The tender and its division in lots:* Italy received various comments on the structure of the tender for the initial phase of the scheme. Some operators suggested avoiding jointly tendering out the deployment of the network and the provision of the service to the schools. Other operators provided comments on the geographical extension of the lots proposing to use to the Italian provinces as aggregation level, other operators suggested aggregating the lots on the basis of the colour of the areas in which the schools are located (white, grey or black NGA areas). Other operators suggested introducing a limitation in the maximum number of lots that can be awarded to the same operator.
- (55) The Italian authorities assessed all the submissions and took them into account agreeing to modify the tender to the extent the modifications favoured the widest possible participation of operators in the tender procedure as well as the effectiveness of the selection procedure and the subsequent management and monitoring of the execution of the scheme. In particular, the Italian authorities decided to tender out seven lots of which only two will be able to be awarded to the same operator. The number of the lots has been identified balancing the need to foster the participation of operator in the tender with the need to have an adequate level of economy of scale. For what concerns the request to separate the construction of the network from the provision of services to the schools, the Italian authorities have clarified that in their bids operators will have to clearly identify the activities and related costs associated to the deployment of the network and to the provision of the services to the schools. Furthermore, it is possible to participate in the tender by means of ‘temporary grouping of enterprises’ set-up by companies offering different type of activities (i.e. the construction of the network and the provision of services).
- (56) *The technologies able to fulfil the required quality criteria for schools:* some operators suggested to consider only fibre optic networks as able to provide adequate services to the schools. On the contrary, other operators have drawn attention to the need to comply with the technology neutrality principle.
- (57) The Italian authorities have designed the tender in a way that will not discriminate or favour any specific technology that will be able to provide the objective qualitative criteria for the target network (e.g. 1 Gbps symmetric speed).
- (58) *The ownership of the network:* one participant in the public consultation argued that the new infrastructure should remain in the property of the operators deploying it for the time necessary to remunerate the intervention carried out. In their view, this would be necessary because in deploying the new infrastructure, operators may also use their own existing infrastructure.
- (59) In this regard, Italy considered that the choice to maintain the new network in public ownership is aimed at guaranteeing the fulfilment of the public interest for which it was created through state resources also after the initial 5 years period of provision of services to the schools expires. In this regard, in order to ensure the efficient management of the entire network, including any possible existing infrastructure, the winning bidder will have to transfer to Infratel Italia the right of use for ten years of any existing passive infrastructure involved in the deployment of the new network (see recital (15)).
- (60) *The schools targeted by the public intervention:* various operators have indicated that the mapping was not accurate; allegedly, in their opinion some schools are or

would be in the near future served by suitable private infrastructures. Italy clarified that in many cases these comments were generic and not substantiated (i.e. without clearly indicating the schools to which reference was made). However, in all cases in which the participants to the public consultation have requested within the deadline substantiated changes to the outcome of the mapping, the Italian authorities modified the mapping to avoid any risk of crowding out private investments.

2.14. Step change

- (61) The Italian authorities consider that the scheme ensures a ‘step change’ within the meaning of paragraph 51 of the Broadband Guidelines. The scheme only targets schools where the current or planned infrastructure does not support download speed above 300 Mbps. The new network will deliver significant new capabilities in terms of broadband service availability, capacity and speed compared to other existing or planned networks. Step change as a result of the public intervention will always be verified by the Italian authorities compared to current and planned infrastructure. Thus, the measure requires that the new network must be able to provide 1 Gbps symmetric to schools, whereas interventions will only be made areas where there are no current or planned infrastructures able to support download speeds above 300 Mbps.

2.15. Use of existing infrastructure

- (62) In line with paragraph 78 (f) of the Broadband Guidelines, the Italian authorities clarified that they will encourage the reuse of existing infrastructure. All bidders will have the possibility to verify the existence of suitable available infrastructure by having access to the cadastre of national infrastructure as provided for by the decrees of the MiSe dated 11 May 2016 and 2 September 2019. Should the winning bidders include existing infrastructure in their bids for which they have acquired the right of use, the duration of this right of use will have to be at least 10 years. Upon expiration of the 5 years contract for the provision of services to the schools, this right of use of the existing infrastructure will be transferred to the MiSe.

2.16. Wholesale access and wholesale price

- (63) As explained in recital (27), once completed the new network will be fully owned by the MiSe which will entrust Infratel Italia to act as wholesale-only operator ensuring full open access to the infrastructure under non-discriminatory conditions to interested access seekers based on prices and specifications that will be defined by AGCOM, the Italian NRA - National Regulatory Authority - in line with the Broadband Guidelines. The wholesale operator will not offer any retail services. Wholesale access will include but not be limited to: access to ducts, poles, dark fiber, street cabinets, including full and effective unbundled access. Effective wholesale access to the new passive infrastructure (such as ducts, poles, dark fibre) will not be limited in time. The same access conditions will apply on the entirety of the network including on the part of it where existing infrastructure will be used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised infrastructure. As explained in recital (65), the Italian NRA will be in charge of settling any dispute which may arise in connection with access obligations.

- (64) The Italian authorities have not yet defined a complete mechanism for setting wholesale access prices for all wholesale access products. The Italian authorities committed to ensure that the following requirements will be observed at all times: wholesale access prices will be based on the pricing principles set by the NRA or on benchmarks. For the benchmarks, the average published wholesale prices that prevail in other comparable, more competitive areas of Italy or the Union will be taken into account, or, if no such published prices are available, prices already set or approved by the NRA for the markets and services concerned. If there are no published or regulated prices available for certain wholesale access products to benchmark against, the pricing will follow the principles of cost orientation, pursuant to the methodology established in accordance with the sectorial regulatory framework. The Italian authorities have confirmed that they will seek advice from the NRA with regard to the pricing mechanism. The NRA will be also in charge of settling any dispute about the correct application of the price methodology (see recital (65)). In particular, on this basis and after the first 5 years contract for the provision of services to schools, any operator will have the possibility to use the new infrastructure to provide services to the schools.
- (65) The Italian authorities have indicated that, in compliance with recital 42 of the Broadband Guidelines, they will consult the Italian NRA with regard to determining the wholesale access prices and/or price setting rules for access products and in settling disputes in connection with access conditions and prices of the subsidised networks.

2.17. Monitoring

- (66) Infratel Italia has been entrusted by the MiSe to monitor the execution of the project and report to MiSe. The NRA will be in charge of settling any dispute in connection to the wholesale access obligations and the pricing (see recital (65)). In case of the use of the regional model, Infratel Italia will approve the plans submitted by the regions and monitor their execution. Infratel Italia will also assess the reports submitted by the regions to the MiSe reporting on the cost actually incurred. In case of use of the national model, Infratel Italia will be in charge of monitoring (i) the overall management and quality of the services provided to the schools; (ii) the proper implementation of the network maintenance plans. The monitoring will provide to the Italian authorities detailed insight into the development, operations, use of the broadband network, and proof of fulfilment of all obligations under the present decision.
- (67) A claw-back mechanism is not necessary in case of publicly-owned, wholesale only infrastructures managed by a public authority / in-house company with the sole purpose to grant fair and non-discriminatory access to all operators. Therefore, Italy does not intend to apply a claw-back mechanism to Infratel Italia or to the in-house entities of the regional authorities. Furthermore, Italy does not consider necessary to implement a claw-back mechanism with regard to the selected operators who will provide services to the schools. Italy considers sufficient safeguards are set in place ex-ante, as the price for providing this service will be decided upfront as a result of the tender procedure and the number of schools to serve is also decided upfront.

2.18. Transparency

- (68) The Italian authorities commit to comply with the transparency requirements as laid down in paragraph 78(j) of the Broadband Guidelines (as amended by Commission Communication C(2014) 198/0237). The Italian authorities ensure that all stakeholders and interested parties are fully informed and kept up to date about all aspects of the scheme through its dedicated central website.¹¹ The Italian authorities will publish at least the following information: the full text of the approved aid scheme and its implementing provisions or a link to these, the identity of the granting authority, the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). This information will be published on the relevant Commission website¹² and on a national website. The Italian authorities will ensure that this information will be published after the decision to grant the aid has been taken, will be kept for at least 10 years and will be available to the general public without restrictions.

2.19. Reporting obligation

- (69) The Italian authorities will provide to the Commission every two years starting from the date when the network is put into use and for the duration of the aid scheme, a report with the key information on the application of the State aid scheme. This information will comprise as a minimum the information made public in line with transparency obligations as described above in section 2.18, the date when the network is put into use, the number of schools connected; information regarding any disputes regarding the project, if any, as well as how such disputes were resolved. Furthermore, the Italian authorities will submit annually to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589¹³. The Italian authorities will maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met. The Italian authorities commit to provide such documents to the Commission on a written request within a period of 20 working days or a different period as may be set in the request.

2.20. Consultation with the Italian NRA (AGCOM)

- (70) The Italian authorities indicate they have consulted with AGCOM in the broader context of the Italian strategy for developing ultra-broadband in Italy. The Italian authorities has confirmed that AGCOM is aware of the various aspects of the scheme including mapping and has not raised any objection.

2.21. Evaluation plan

- (71) The Broadband Guidelines (paragraph 53) clarify that certain aid schemes may require an ‘...evaluation in order to verify (i) whether the assumptions and

¹¹ <https://bandaultralarga.italia.it>

¹² <https://webgate.ec.europa.eu/competition/transparency/public/search/home>

¹³ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

conditions which led to the compatibility decision have been realised; (ii) the effectiveness of the aid scheme in light of its predefined objectives; (iii) its impact on markets and competition and that no undue distortive effects arise under the duration of the aid scheme that is contrary to the interests of the Union. Given its objectives and in order not to put a disproportionate burden on Member States and on smaller aid projects, this only applies for aid schemes with large aid budgets (i.e. annual budget above EUR 150 million), containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The present scheme does not fulfil the criteria of being a aid scheme with a large budget (i.e. the annual budget is about EUR 109 million) (see recital (29) and (32)), hence it is not subject to an evaluation.

- (72) However, the Italian authorities commit to carry out an evaluation of the scheme to assess the effectiveness of the State aid intervention as well as its impacts and effects on competition.
- (73) The evaluation plan will be discussed with the Commission at the latest six months after the beginning of the implementation of the scheme and will take into account the best practices recalled in the Commission Staff Working Document on Common methodology for State aid evaluation.¹⁴ The evaluation report will be submitted to the Commission in due time, at the latest by 31 December 2023.

3. ASSESSMENT OF THE SCHEME

3.1. Presence of aid

- (74) 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’. It follows that in order for a scheme to be qualified as State aid, it has to be granted by a Member State or through State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States.
- (75) **State resources:** The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.¹⁵ As described in recital (26), the scheme is financed by the Italian authorities (i.e. the MiSe) using funds which are allocated to the beneficiaries under the control of the authorities. Hence, State resources are involved and the scheme is imputable to the State.
- (76) **Selective economic advantage:** To fall within the scope of Article 107(1) TFEU, a State scheme must grant an advantage to “certain undertakings or the production of certain goods”. An advantage, within the meaning of Article 107(1) TFEU, is

¹⁴ Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

¹⁵ Case C-482/99 *France v Commission* (hereafter: “*Stardust Marine*”) ECLI:EU:C:2002:294.

any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention¹⁶.

- (77) In geographic areas where no equivalent commercial investment exist or is envisaged in the near future, the intervention of the public authorities cannot be perceived as being carried out on market terms.
- (78) Within the meaning of Article 107(1) TFEU, undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.¹⁷ In line with the functional character of the notion of "economic activity" in Article 107(1) TFEU, it is irrelevant whether the recipient of the funds is an entity with a separate legal status or an integrated part of the State administration.¹⁸ The public operation of a broadband network is an economic activity in the meaning of Article 107(1) TFEU (including the planning, the construction and the operation of the network). The scheme is aimed at the beneficiaries (see recital (46)) to build and maintain the networks to provide schools with adequate broadband access to the benefit of students, educators and staff.
- (79) The measure confers an economic advantage to Infratel Italia or, respectively, the regions or the in-house entities of the regions operating the network at wholesale level. Further, the measure will enable third party electronic communications operators to provide retail broadband services to schools by utilising the new, public-owned broadband infrastructure, under conditions that would not be available under normal market conditions without State support.
- (80) The scheme thus targets only certain undertakings that are active in the construction of electronic communication networks and service providers in one industry sector (electronic communications) and only in certain segments of the overall electronic communications sector (deployment and operation of communication networks capable of providing certain speeds), to the exclusion of other electronic communications networks and service providers (such as internet service providers or network providers offering NGA technologies allowing for speeds below 1Gbps symmetric) and other economic activities.¹⁹ It does not concern general infrastructure (e.g. general civil engineering works) which would be open on a non-discriminatory basis to all potential users, but is limited to electronic communication operators.
- (81) The scheme is moreover territorially selective. The scheme is set up with the aim of rolling out broadband infrastructures only in geographic areas where no equivalent commercial investment exist or is envisaged in the near future. As

¹⁶ Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

¹⁷ Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

¹⁸ Case C 118/85, judgment of 16 June 1987, *Commission of the European Communities v Italian Republic*, European Court Reports 1987 -02599, paragraph 13 (ECLI identifier: ECLI:EU:C:1987:283); and Joined Cases T-443/08, T-455/08, judgment of 24 March 2011, *Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission*, paragraphs 88 and 89 (ECLI identifier: ECLI:EU:T:2011:117).

¹⁹ See also Judgment of the Court of 15 June 2006 *Joined Cases C-393/04 and C-41/05 Air Liquide Industries Belgium* [2006] ECR I-5293, recital 31.

concerns the identification of the particular legal framework against which selectivity can be assessed, it is noted that the construction and operation of electronic communications networks is a liberalised economic activity usually conducted by commercial operators on the basis of private investments in the market. In such a framework, economic activities normally do not receive subsidies. The granting of aid as under the notified scheme to selected individual operators for the deployment of very high capacity networks reduces the costs of these beneficiaries as compared to operators investing into broadband networks and services merely on the basis of private funds. The broadband network operators which rely purely on private funds and do not receive this aid are in a comparable factual and legal situation as the beneficiary since they operate in Italy under the same technical, commercial and legal conditions in the field of broadband networks and services. The granting of State support for the deployment and operation of passive infrastructure in undercovered 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 the granting of subsidies.

- (82) The scheme is therefore selective.
- (83) ***Distortion of competition and effect on trade:*** The markets for electronic communications services are open to competition between operators and service providers, which generally engage in activities that are subject to competition and trade between Member States. By favouring the beneficiaries, the notified State aid scheme is therefore liable to distort competition. The scheme will create the availability of broadband infrastructure, which would not be provided under normal market conditions in the relevant period. State support may deter operators from setting up or developing their own networks under commercial conditions. Therefore, the intervention of the State in the present scheme will alter existing market conditions. Insofar as the intervention is (at least potentially) liable to affect providers of electronic communications services from other Member States, the scheme has an effect on trade. Therefore, the fact that an improved broadband service becomes available can distort competition and affect trade between Member States.
- (84) In view of the foregoing, the Commission therefore concludes that the notified scheme constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the Italian authorities in the notification. It has then to be assessed whether the scheme can be found to be compatible with the internal market.

3.2. Legality of the scheme

- (85) As explained in recital (15), the Italian authorities have confirmed that the granting of the aid is conditional upon the decision of the Commission on the notified scheme, pursuant to Article 108(3) TFEU and to Article 3 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, according to which new aid schemes must not be put into effect before the Commission has taken a decision authorising it.

3.3. Compatibility assessment

- (86) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) of the TFEU, which states that: *‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’* shall be considered to be compatible with the internal market. In its assessment, the Commission has taken into account the Broadband Guidelines, which contain a detailed interpretation of Article 107(3)(c) of the TFEU as it applies to that area of State aid law.
- (87) The Commission has therefore first examined whether the aid is intended to facilitate the development of certain economic activities. Second, the Commission weighted the positive effects of the planned aid 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 whether the aid remedies market failures or important inequalities, is appropriate as a policy instrument, and is necessary as well as proportionate.

3.3.1. *Contribution to the development of an economic activity*

- (88) The Italian authorities have submitted that the notified aid measure supports the development of the economic activity consisting in the building and maintenance of electronic communications networks for the provision of very high capacity fixed communication services to public schools. To this end, the beneficiary operators will be incentivised to deploy and operate the passive infrastructure at wholesale level and provide services to the public schools which would have otherwise not benefitted from suitable connectivity (i.e. by ensuring that the new network will support speeds of at least 1Gbps symmetric in areas where there is only one network present or planned that can support speeds above 30 Mbps download but that network cannot support speeds above 300Mbps download).
- (89) Therefore, the Commission acknowledges that by providing financial support for the construction of the infrastructure, its operation and the provision of services to public schools in the targeted undercovered areas, the Italian authorities contribute to the development of economic activity in a manner that promotes connectivity and access to high-performance services by public schools in Italy.

3.3.2. *Weighting the positive effects of the aid with any the negative effects in terms of distortions of competition and adverse effects on trade*

3.3.2.1. Positive effects of the aid

- (90) The scheme aims to promote the deployment, the operation and maintenance of a very high capacity network and the provision of services to public schools in areas where there is currently only one network that can support speeds above 30 Mbps download but that network cannot support speeds above 300Mbps download to public schools present or planned within the next three years. The scheme will facilitate access to high-performance fixed services for public schools, which forms a part of the fundamental needs of a modern society. It will ensure such access for about 12,000 public schools in Italy (recitals (10) and (40)). Broadband connectivity has significant benefits in the education and training process both for students and educators, promoting the development of

digital and transversal skills, facilitating interaction, providing wide resources for learning and making education more flexible and easy to access. Broadband services are as essential as any other educational resource. Internet usage can also significantly facilitate administrative procedures and communications. Web access, email and multimedia applications enables learning activities that are attractive to students and fosters a collaborative learning environment.

- (91) Italy considers that very high capacity networks providing very high symmetric speeds are and will become necessary for public schools, to enable schools to use various advanced e- learning applications to the benefit of students, educators and staff. Italy considers that public schools need already now speeds of 1Gbps symmetric and will increasingly do so in the near future, to ensure under the best conditions the use of e-learning capabilities to the benefit of students and educators. For this, it is essential to ensure the availability of very high capacity networks enabling widespread use of e-learning and other services and applications, bridging the digital divide between well served and underserved public schools in Italy. Italy refers to the EU Gigabit Society Communication²⁰ and its findings regarding a growing need for very high capacity networks in the coming years, especially in view of the recent experience derived from the COVID-19 outbreak.
- (92) The Gigabit Society Communication also identifies, among others, the strategic objective of providing by 2025 across the EU at least 1 Gigabit symmetric (download and upload) connectivity for all main socio-economic drivers including schools, promoting the widespread use of products, services and applications in the Digital Single Market.
- (93) In light of the above, the public intervention supporting the deployment of the network has positive effects and would be beneficial for the target public schools, including students, educators and staff.

3.3.2.2. Limited negative effects: the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest

- (94) Article 107(3)(c) requires the assessment of any negative effects on competition and on trade in the relevant product markets, that is, in this case, the construction and operation of a very high capacity network to provide high-performance fixed services to public schools.
- (95) The Italian authorities designed the measure with a view to ensuring that the negative effects of the measure are limited, by limiting the public intervention to market failures areas only, and ensuring that the State aid is appropriate as a policy instrument, and is necessary and proportionate.

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2016) 587 final *Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society*.

(a) Absence of market delivery due to market failures or important inequalities

- (96) According to paragraph 37 of the Broadband Guidelines, “a market failure exists if markets, left to their own devices, 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 the costs. In such cases, the granting of State aid may produce positive effects and overall efficiency can be improved by adjusting the economic incentives for firms. In the broadband sector, one form of market failure is related to positive externalities. Such externalities arise where market players do not internalise the whole benefit of their actions.”
- (97) The target infrastructure is intended to remedy a market failure by reducing the digital divide between well served and underserved public schools, and provide the effective, reliable and secure broadband infrastructure necessary for future provision of e-learning, supporting the growth and sustainable development of rural and remote communities. In parallel to the notified scheme, Italy is pursuing a wider plan for providing 35,000 other public schools in Italy with 1 Gbps symmetric speeds by procuring connectivity service on the market where an adequate infrastructure is available.
- (98) Existing and future applications of the Gigabit society rely on powerful fixed networks being available on a balanced geographical basis. New forms of economic activity and ways of working require fixed services increasingly of a high performance quality. Italy considers that the target networks are necessary in order to respond to fast growing connectivity needs of public schools and students where there are no or insufficient high speed networks in place or planned in the next three years under normal market conditions. The availability of such highly performant very high capacity broadband networks to public schools paves the way for the provision of on-line educational services which are likely to benefit more students and educators than the immediate investors in the deployment of the networks. The market outcome on its own would generate insufficient private investment in broadband networks of the desired capacity and performance.
- (99) Italy has conducted a detailed mapping and public consultation exercise in order to request the market's view on the planned measure and enquire about current and planned investment by stakeholders under market conditions within the next three years. The notified State aid scheme addresses a market failure as it targets only grey NGA areas in the sense of paragraph 75 of the Broadband Guidelines where there is only one NGA network present or planned that can support speeds above 30 Mbps download but that network cannot support reliable download speeds above 300 Mbps download. Areas with networks current or planned able to provide speeds above 300Mbps download to the targeted public schools will be excluded from the scheme. This has been confirmed by the results of mapping and public consultation exercises as described above in sections 2.12 and 2.13.
- (100) It can therefore be concluded that the notified scheme contributes to address a market failure in areas of Italy where private operators have not invested and are not willing to invest on a commercial basis in the near future to provide fixed services of the desired performance to public schools.

(b) Appropriateness of State aid as a policy instrument and the design of the measure

- (101) When broadband coverage is considered insufficient, various policy instruments may be considered to address this. It should be assessed whether State aid as considered under the scheme is an appropriate policy instrument to address the problem or whether there are alternative, better-placed instruments. In the situation currently under assessment, efforts based on alternative instruments, including *ex ante* regulation, cannot solve the problems related to the lack of supply of adequate broadband networks providing the desired level of speed to the benefit of the target public schools. Compliance with *ex-ante* regulation will not provide the desired level of coverage ensuring proper services to the target public schools. The passive infrastructure for the provision of fixed services to the target public schools does not yet exist and its construction is not planned by operators acting on market terms. The Italian authorities see no alternative but to use public funds to deploy the broadband networks to connect the target public schools and to provide them with services (see recital (13)). The implementation of the notified State aid scheme will guarantee network roll-out meeting the needs of the targeted public schools, making it possible to achieve the objective of ensuring adequate network coverage cost-effectively, efficiently and within the planned time scale.
- (102) The Commission agrees that without further public intervention, reducing the ‘*digital divide*’ between schools that are already served by adequate broadband networks (e.g. in more densely populated areas of Italy) and public schools that are not reached by such networks would not seem possible. This could prevent students and staff from benefitting from on-line educational services and could lead to economic and social exclusion of local students. Hence, in the current situation, the notified scheme is an appropriate policy instrument to achieve the set objectives.

(c) Existence of an incentive effect

- (103) As set out in paragraph 45 of the Broadband Guidelines, regarding the incentive effect the notified State aid scheme, it needs to be examined whether the broadband network investment concerned would not be undertaken within the same timeframe without any State aid.
- (104) The scheme ensures that aid can only be provided if it is established that in the intervention areas no comparable investment is present or would take place without public funding within the next three years. This is confirmed according to the results of the mapping exercise and public consultations carried out by the Italian authorities as described in sections 2.12 and 2.13. It follows from this that a comparable investment would not be made within the same timeframe without the aid therefore, the Commission is satisfied that the state aid scheme will provide an appropriate investment incentive.

(d) Proportionality - Aid limited to the minimum necessary

- (105) The Italian authorities have designed the scheme in such a way as to minimise the State aid involved and potential distortions of competition arising from the public intervention. In this respect, the Commission notes the following elements in the design of the State aid scheme, which are necessary to the design of a scheme that is in line with the Broadband Guidelines (paragraph 78):

- (a) *Detailed mapping and public consultation exercise*: as described in sections 2.12 and 2.13, the Italian authorities have demonstrated that they have conducted a thorough analysis, identifying the coverage on the basis of premises passed, of the existing broadband infrastructures as well as investment plans for the next three years in order to identify the public schools for which the public intervention is necessary. The result of the mapping exercise was verified in a public consultation involving all stakeholders and published on a central website, ensuring a high degree of transparency. The public consultation was carried out from 5 August 2020 to 15 September 2020. Furthermore, Italy commits to carry out every year a mapping and public consultation exercise to verify if schools for which the tender to deploy the infrastructure has not yet been carried out are already passed or planned to be passed by an infrastructure able to provide above 300 Mbps download speed. Should this be the case, these schools will not be targeted by the public intervention. On this basis Italy confirmed that only public schools not passed by a networks able to provide adequate speed (i.e. at least 300 Mbps download) will be targeted. In order to avoid that operators claiming to have investment plans in relation to the public consultation actually ensure that these are carried out in time, the aid granting authority may require certain commitments from these operators to ensure that significant progress in terms of coverage will be made within the three-year period. It may further request those operators to enter into a corresponding contract which outlines the deployment commitments, including a number of “milestones” which would have to be achieved during the three-year period and reporting on the progress made. If a milestone is not achieved, the granting authority may go ahead with a tender covering also that area (point 65 of the Broadband Guidelines). Consequently, public funds will be used only where it is necessary because there is no adequate infrastructure in place or planned to allow the schools to benefit from adequate on-line services. This will help ensure no overlapping infrastructures are created and will serve to avoid risks of crowding out private investments and distorting competition vis-à-vis other operators. The Commission therefore considers that the State aid scheme fulfils the conditions regarding mapping and public consultation in line with points 78 (a) and (b) of the Broadband Guidelines.
- (b) *Competitive selection process*: as described in section 2.9, in line with footnote 96 to paragraph 78(c) of the Broadband Guidelines, the Italian authorities have chosen to implement this scheme via a direct investment model where the public authorities deploy and manage the network directly or through an in-house entity. The scheme shall cover only the predefined target schools and shall not expand to other regions. The in-house company Infratel Italia, or as relevant the implementing Italian regions or their respective regional in-house providers shall limit their activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition at the retail level. Infratel Italia, or as relevant the implementing Italian regions or their respective regional in-house providers shall ensure accounting separation between the funds used for the operation of the network and other funds at their disposal. Infratel Italia, or the implementing Italian regions or their respective regional in-house providers will select via an open, transparent and non-discriminatory competitive selection procedure, in line with the spirit and the principles of public procurement rules and respecting the principle of technology neutrality, the companies that will build the passive infrastructure and the companies that will deploy the active layer, will

maintain the network and will provide services to the schools. The winning bidders will be selected on the base of the most economically advantageous offer, based on pre-established and weighted technical and qualitative criteria, weighted against the required aid amount, in line with paragraph 78(d) of the Broadband Guidelines. The Commission therefore considers that the State aid scheme fulfils the conditions regarding open, transparent and non-discriminatory competitive selection process ensures and regarding the selection of the most economically advantageous offer, in line with points 78 (c) and (d) of the Broadband Guidelines.

- (c) *Technology neutrality*: The Commission recognises the trend in growing needs for internet connectivity for all sectors of the European economy, whereas expanding individual usage aggregates into quickly growing demand for very high capacity broadband infrastructures that can underpin the Digital Single Market. The Commission, when considering the growing capacity needs in terms of network infrastructures, underlines the need to take into account how new devices enable the development of new applications and affect customer bandwidth requirements (e.g. larger screens and higher resolution). In addition, a single connection/subscription in this case serves simultaneously multiple users, in particular for organisations like schools, further increasing the need to ensure speed and quality of experience. The Italian authorities are in line with the Commission's expectations in terms of speeds required by 2025 by socio-economic drivers such as schools. The selection process complies with the technological neutrality principle as stated in paragraph 78(e) of the Broadband Guidelines. The bidders will be selected based on objective awarding criteria having submitted the most suitable solution to achieve the objectives of the scheme (see section 2.9). The tenders will specify the objective performance levels that must be achieved for the target public schools, but will not favour or exclude the use of any particular technology or network platform. The fact that the target speeds set by Italy at present seem to speak mostly for fibre infrastructures (FTTB, FTTH) does not infringe the principle of technical neutrality. Potential alternative existing technologies may be proposed by the bidders and even completely new solutions which might evolve can participate as long as they meet the target speeds. Further, the principle of technological neutrality has to be seen in the light of the targets to be achieved. As set out above, the targets were defined on the basis of estimated need of bandwidth required for the achievement of the digital transformation of public schools and corresponds to the targets set by the Gigabit Communication, and thus can be considered as being in line with common interest. Under the principle of technological neutrality, Member States only have to ensure that all technologies capable of reaching the targeted speeds may participate. The Commission therefore considers that the State aid scheme fulfils the compatibility condition regarding the principle of technology neutrality.
- (d) *Step change*: A step change can be demonstrated if, as the result of the public intervention: (i) significant new investments in the broadband network are undertaken by the beneficiaries (i.e. investments that must include civil works and installation of new passive elements) and (ii) the subsidised infrastructure brings significant new capabilities to the market in terms of broadband service availability, capacity, speeds and/or competition. The scheme does not foresee the grant of aid for marginal investments related merely to the upgrade of active components of the network, which, as indicated in paragraph 51 and

footnote 64 of the Broadband Guidelines, do not normally ensure a ‘step change’ and are therefore not eligible for State aid. As described in section 2.14, the Italian authorities will make State aid available to support a ‘step change’ compared to existing as well as concretely planned network roll-outs. The interventions will only be made in grey NGA areas in which there is only one NGA network present or planned that can support speeds above 30 Mbps download but that network cannot provide at least 300 Mbps download, while the new network will be able to provide 1 Gbps symmetric speed. Therefore, in meeting these speed requirements, all projects will meet the step change requirements as set out in the Broadband Guidelines.

- (e) *Use of existing infrastructure:* as explained in section 2.15, the Italian authorities have encouraged bidders to have recourse to existing infrastructure by setting-up a registry of infrastructure. The register enables bidders to develop their own plans avoiding unnecessary and wasteful duplication of resources, thereby minimising the public funding. Any operator that owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the tender, will (i) inform the aid granting authority and the NRA about that infrastructure during the public consultation and (ii) provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid. On this basis, the Commission considers that the scheme meets the requirements and recommendations set out in paragraph 78(f) of the Broadband Guidelines.
- (f) *Wholesale access and prices:* The Italian authorities will ensure full open access to the infrastructure on equal and non-discriminatory terms, respecting the principle of technological neutrality, in line with the requirements of paragraphs 78(g) and 80 of the Broadband Guidelines (see section 2.16). The same access conditions will apply on the entirety of the network including on the part of it where existing infrastructure will be used. In case the selected bidders will acquire the right of use of existing infrastructure to deploy the new network, the duration of the right of use will have to be at least 10 years. Access obligations will apply irrespective of any change in the ownership or maintenance of the network, including with respect to the company which will be selected to provide services to the schools. The access price and conditions will be set by the NRA, in line with the requirements of the Broadband Guidelines (see section 2.16). The Commission therefore considers that the wholesale access conditions are in line with paragraphs 78(g), 78(h) and 80 of the Broadband Guidelines²¹.
- (g) *Monitoring:* As described in section 2.17, the Italian authorities have entrusted Infratel Italia with the task of closely monitoring the implementation of the scheme in accordance with paragraph 78(i) of the Broadband Guidelines. In case the scheme will be implemented using the regional model, Infratel Italia will be in charge of approving the plans submitted by the regions and monitor their executions.
- (h) *Clawback mechanism:* The scheme is fully financed with public money and once deployed the network will remain in publicly ownership. The services to the schools will be provided by service providers selected through a

²¹ This decision only addresses the aid to ensure the connection of the target public schools, as notified by Italy.

competitive selection procedure and payed by the MiSe. On this basis, the Commission can agree that there is no need to implement a clawback mechanism.

- (i) *Reporting*: as described in section 2.19, the Italian authorities will provide to the Commission information on the application of the State aid scheme every two years, starting from the date when the network is put into use and for the duration of the aid scheme, all relevant information on the scheme to the European Commission, as provided for in paragraph 78(k) of the Broadband Guidelines. The Italian authorities also committed to submit to the Commission also annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589 and maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or a different period as may be fixed in the request.
- (j) *Transparency*: As explained in section 2.18, the aid will be awarded in a transparent manner, through an open competitive selection process, and it will be ensured that the public authorities, economic operators, the interested public and the Commission have easy access to all relevant acts and pertinent information about the aid. In line with paragraph 78(j) of the Broadband Guidelines (as amended by Communication C(2014) 3349/2), all relevant information regarding the scheme and aid granted will be published on a dedicated central online website.²² The information will be published within 6 months from the granting act (i.e. the contracts with the winning bidders) and the information will be kept for at least 10 years and will be available to the general public without restrictions. As a result, the Commission is satisfied that the aid will be awarded in a transparent manner. In particular, the Italian authorities shall ensure the publication of the following information on the dedicated website:
- i. the objectives of the scheme, the full text of the approved aid scheme and its implementing provisions, or a link to it,
 - ii. the identity of the granting authority/(ies), the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).
- (k) *Evaluation plan*: As explained in recital (71), the Commission can require that aid schemes with large budgets be subject to an evaluation. The Commission considers that, for the reasons described in section 2.21, the notified scheme does not fulfil the criteria requiring the submission of an evaluation plan. Notwithstanding the above, the Commission notes that the Italian authorities committed to carry out an evaluation of the scheme. The evaluation plan will be discussed with the Commission 6 months after the beginning of the implementation of the scheme. The evaluation report will be submitted to the Commission in due time, at the latest by 31 December 2023.

²² <https://bandaultralarga.italia.it>

(e) Conclusion on limited negative effects

- (106) Given the design of the scheme and its compliance with the conditions of the Broadband Guidelines, the scheme is unlikely to lead to a crowding out effect on private investments.
- (107) In particular, the aid aims to ensure the coverage of public schools in grey NGA areas, where no operator is willing to invest in infrastructure able to provide at least 300 Mbps download speed without State aid within the next three years. As described above, the Italian authorities confirmed that in line with the paragraph 51 of the Broadband Guidelines the planned network will ensure a ‘step change’, in that the new infrastructure will bring significant new capabilities to the market (see section 2.14). More specifically, the present scheme supports the deployment of infrastructure supporting at least 1 Gbps symmetric speed. The design of the scheme guarantees equal and non-discriminatory wholesale access to telecommunications operators that may thus offer competitive services to the target public schools. The companies that will deploy and operate the network will be selected through open competitive selection procedures, as described in section 2.9. These conditions contribute to ensure that the public intervention does not crowd out comparable private investments.
- (108) Therefore the Commission concludes that the negative effects of the scheme on the electronic communications market, if any, are expected to be limited. Thereby, the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest.

3.3.2.3. Weighting the positive effects of the aid with any negative effects in terms of distortions of competition and adverse effects on trade

- (109) 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.
- (110) As shown in section 3.3.2.1, the notified scheme will offset a geographical and social handicap and is objectively justified to address the lack of availability of adequate broadband infrastructure to the targeted public schools. The scheme will help reduce inequalities and bridge the ‘digital divide’ by providing access to adequate broadband services where they are currently unavailable, making possible a significant new investment in areas where private operators are not planning any comparable investments within the time horizon for the deployment of the new subsidized infrastructure. The scheme thus addresses a market failure in the targeted areas.
- (111) Also, as shown above, in section 3.3.2.1, the Italian authorities have designed the scheme in such a way as to minimise the risk of crowding out private investments and the potential distortion of competition arising from the public intervention. Indeed, the scheme concerns only the coverage of public schools for which access to adequate broadband networks is not provided by the market and where without the public intervention the investment would not take place, which was verified by the mapping exercise and the public consultation.
- (112) In view of the characteristics of the project, the Commission considers, based on the information available, that the overall impact on competition is expected to be

positive. The risk of crowding out private investments and the negative effects of the scheme are expected to be limited and there does not appear to be any significant negative spill-over for other Member States. Therefore, the positive impact of the aid measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade.

- (113) Accordingly, the scheme is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest. On balance, the measure is in line with Article 107(3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in 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
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

