



EUROPEAN COMMISSION

Brussels, 30.11.2012  
C(2012) 8718 final

**Subject: State aid SA.33641 (2011/N) - Greece**  
**Metropolitan Area Networks (MAN)/Fibre To The Home (FTTH) Greece**

Sir,

**I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "Metropolitan Area Networks (MAN)/Fibre To The Home (FTTH)" 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).

**II. PROCEDURE**

- (2) Following intense pre-notification contacts and meetings, the Greek authorities notified on 26 September 2011 the abovementioned measure to the Commission, pursuant to Article 108 (3) of the TFEU. The Commission sent a request for further information on 24 November 2011, to which the Greek authorities replied on 21 and 30 January 2012. Further information as submitted by the Greek authorities on 29 June and 12 October 2012. The Greek authorities accepted to receive the present decision in English language.

**III. CONTEXT**

- (3) Greece is undertaking enormous efforts and numerous initiatives to improve its economic situation. Use of public funds for infrastructure development as well as the exploitation (and the eventual privatisation) of existing infrastructures are considered important pillars for Greek recovery. Broadband infrastructure is a key element to accelerate short-term recovery as well as long-term sustainable growth in Greece, however due to the diverse technical, geographical and socioeconomic characteristics

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of different areas of the country, a significant infrastructural gap as regards broadband networks exists between different areas of the country.

- (4) Greece is at present still lagging behind in terms of broadband coverage and penetration as compared to the rest of Europe. The Greek authorities have already undertaken a number of initiatives to fill the "broadband gap", with both supply-side and demand-side initiatives. The first intervention, assessed and approved by the Commission in case N201/2006<sup>1</sup>, aimed at funding the provision of basic broadband access services in underserved areas of Greece by commercial service providers. The project also aimed at stimulating the demand of retail broadband services by end-users and at increasing the penetration rate by subsidising special categories of end-users. An additional scheme was notified by Greece and approved by Commission in 2011<sup>2</sup> for the remote and isolated rural areas not covered by the previous measure.
- (5) Additionally, in the context of the Operational Programme "Information Society" authorised under the third Community Support Framework 2000-2006<sup>3</sup>, the Greek authorities financed the rollout of 72 fibre optics Metropolitan Area Networks (MANs) for the main Greek cities, with the exclusion of Athens and Thessaloniki, divided into three geographical areas. The aim of this project was to provide a suitable infrastructure to support the public sector needs for very high speed connections.
- (6) In practice, optical fibre networks were rolled out in 72 municipalities, with a total length of optical fibre ducts of around 1.300 km that interconnect more than 3500 public administration sites, education and health institutions etc. These networks, consisting of trenches, ducts, cables, Points of Presence (PoPs) etc., run along important commercial routes and in many cases they reach the outdoor cabinet, in order to be close to potential end-users and operators' PoPs.
- (7) Subject to obtaining the prior approval from the Commission, the Greek authorities intend now to proceed with selecting the concessionaires who will (i) operate the already built MANs to provide services to the public administration<sup>4</sup> and (ii) build an FTTH network to provide NGA wholesale services to retail operators which will serve end-users with enhanced connectivity. The currently notified measure concerns this intervention, which, in the view of the Greek authorities, will complete the project mentioned in the paragraphs above, will contribute to the recovery from the economic crisis and to achieving the goals set in the Digital Agenda for Europe<sup>5</sup>.
- (8) To show their commitment to the achievement of the objectives of the Digital Agenda, the Greek authorities have devised also other administrative measures aiming at the simplification of civil works necessary to the deployment of NGA infrastructures. In particular, a ministerial decision has eliminated the need for all electronic communications operators wishing to deploy their fibre networks (thus, not only the selected concessionaires) to pay upfront all the fees to obtain the

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<sup>1</sup> Commission Decision of 04.07.2006, case N201/2006 – Broadband access development in underserved territories of Greece.

<sup>2</sup> Commission Decision of 10/11/2011, SA.32866 – Broadband development in Greek rural areas.

<sup>3</sup> Decision E(2000)3405 of 28/11/2000

<sup>4</sup> See paragraphs (11) and (12) of the present decision.

<sup>5</sup> Communication of the Commission of 26.8.2010 COM(2010) 245 final/2 A Digital Agenda for Europe.

necessary rights of way. The national regulator EETT will determine on the basis of a cost-orientation model a fair compensation for the concerned municipalities.

- (9) The Greek authorities consider ultra-fast internet access as an infrastructure essential to increase the long-term competitiveness of the economy and as one of the basic prerequisites to return to sustainable growth and prosperity.

#### **IV. DESCRIPTION OF THE MEASURE**

##### **Objective and design of the measure**

- (10) The notified project is divided into two subprojects: the self provisioning subproject and the wholesale subproject.
- (11) For the self-provisioning subproject, the Greek authorities will procure on the private market connectivity services for all the public administration sites of the 72 municipalities including government departments and agencies, health care institutions, education bodies, etc. In the views of the Greek authorities, the existing infrastructures and services offered by commercial operators do not ensure that NGA-type of services will be available in the near future to satisfy the evolving, growing needs of the public administration. Even in areas where the incumbent plans to build its own FTTC/VDSL network, the provided bandwidth will not satisfy the needs of the public administration. Moreover, no other private operator besides the incumbent can provide nation-wide end-user services, since they lack the appropriate infrastructure.
- (12) On the basis of the above considerations, the Greek authorities decided to rollout a new NGA network, which will use the fibre-based infrastructure mentioned above in paragraph (5) and (6) and will be completed by the selected “concessionaires” who will be required to rollout the missing parts. This network will not be used for commercial purposes, but aims at the provision of services to bodies forming the public administration and exercising public functions, in line with previous Commission's decisions, notably Xarxa Oberta<sup>6</sup>. The Greek authorities, thus, consider this as not falling within the notion of State aid of article 107 of the TFEU.
- (13) For the wholesale subproject, the Greek authorities intend to make the infrastructure of the Metropolitan Area Networks available at wholesale level to private operators to remedy the insufficiency of existing and planned commercial infrastructures to provide adequate NGA services to end users. This initiative will reduce the digital divide existing in the targeted areas and will ensure that all potential end-users will be able to choose the operator of electronic communications and/or technology platform for broadband access that they deem most appropriate for their needs by providing a NGA network that is able to support high-bandwidth, high reliability and affordable connectivity services.
- (14) The selected concessionaires will expand the existing networks by deploying the passive infrastructure (ducts, fibre optic cables, manholes etc.) until the users’

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<sup>6</sup> State aid N 407/2009 – Spain, Optical fibre Catalonia (Xarxa Oberta).

premises (excluding the vertical connections), thus rendering the network capable of providing technology neutral FTTH services by passing by at least 150.000 households in all 3 zones in which the original MANs have been deployed.

### **Targeted areas**

- (15) The proposed measure targets the deployment of NGA networks in 72 cities, in order to avoid that Greece suffers a new digital divide in the next generation access and loses more valuable time, compared to the rest of Europe. The deployment of ultra-fast broadband technologies in these areas faces two principal problems (i) connection points are geographically scattered, rendering the necessary investments in these areas much higher than in territories in dense metropolitan areas such as Athens and Thessaloniki and (ii) the inhabitants of these areas have, in general, lower income and thus, are unable or less willing to pay for the actual cost of the service. As a result broadband operators are not expected to invest in these areas as the return of investment is expected to be either too low or even negative.
- (16) The Greek authorities conducted a detailed mapping and coverage analysis, which took into account existing infrastructures as well as operators' plans for the next three years. The Greek authorities also validated their conclusions by carrying out a public consultation<sup>7</sup>. All stakeholders were consulted by the Greek authorities in a three-phase consultation, first on the principles of the project, then on the mapping and thirdly on the operators' plans for the next three years. The Greek National Regulatory Authority EETT has also been closely involved in the development of the project and collaborated towards formulating the final proposed plan.
- (17) The conclusions reached by the Greek authorities are that all the areas concerned are black areas from the basic broadband point of view (or grey areas with at least one ULL operator offering services, thus not exhibiting any market failure). However from the NGA point of view, 68 cities out of 72 are "white areas" while in 4 of them a pilot project by the incumbent operator (OTE) has brought FTTC/VDSL. No other initiative exists or is credibly being planned to develop next generation networks. The Greek authorities consider that statements by OTE in response to the public consultation concerning its future investments were not supported by a credible commitment nor by a substantiated investment plan and therefore were not taken into account. Other public announcements by the incumbent were analysed by the Greek authorities but no indication of a schedule or timeframe for intervention in the next three years were found.
- (18) Furthermore, in the view of the Greek authorities, the deployment of FTTC in 4 cities is insufficient for the needs of the population at large. In particular, they observe that according to OTE's announcements the speeds offered through VDSL network are insufficient to cover the users' future needs. The expected increase in demand for access speeds (even in the conservative scenario where demand for capacity is doubled every couple of years) indicates that capacity needs will exceed 50 Mbps by 2013.

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<sup>7</sup> Initial consultation is available at [http://www.infosoc.gr/infosoc/elGR/grafeiotypou/news/opis\\_news/consultations/diakhyrksh\\_man\\_22-12-2010.htm](http://www.infosoc.gr/infosoc/elGR/grafeiotypou/news/opis_news/consultations/diakhyrksh_man_22-12-2010.htm) while at [http://www.infosoc.gr/infosoc/elGR/grafeiotypou/news/opis\\_news/paratash\\_man\\_20-01-2011.htm](http://www.infosoc.gr/infosoc/elGR/grafeiotypou/news/opis_news/paratash_man_20-01-2011.htm) for its extension.

These needs will be fuelled by demand for new, innovative services by both the public administration and the private sector (such as remote work, tourism, remote healthcare, e-learning, e-government services). The need for access to these services is expected to be even higher in areas outside the metropolitan areas of Athens and Thessaloniki, due to long distances and the remoteness of services. Given that VDSL technology may provide speeds up to 100 Mbit/s but only under certain conditions (quality of copper, copper cable length) and that, if there is such a development by the incumbent provider, it will operate with limited coverage, it may be concluded that this technology is a short term solution and cannot meet the long term access capacity needs. In other words, any VDSL network development may only temporarily cover capacity needs, having a shelf life of 4-5 years, and only for the limited geographic area in which it will be developed. By contrast, the proposed measure expands throughout a period of 25 years and aims to address and meet capacity needs even beyond 2015, thus making it rational for the authorities to pursue technological advances through future-proof access technologies based on optical fibre networks which provide much greater advantages than any other technology that uses local loop or sub-loop copper wiring.

### **Budget and aid amount**

- (19) In the notified measure, State support takes a dual form: on the one hand, the concession in use of the existing Metropolitan Areas Network infrastructure to be maintained and operated for 25 years and, on the other hand, of subsidies granted to the concessionaires, for a total amount of up to 75,000,000 Euros for further expansion of the networks to the end-user premises. The selected concessionaires are expected to cover the cost of expanding the existing Metropolitan Areas Networks via 2 additional channels<sup>8</sup>:
  - (a) The revenues for the provision of connectivity services to the public administration (with a cap of 1,500 Euros per site) and
  - (b) The revenues for the supply of wholesale services to private operators.
- (20) At the end of the concession period, all the assets will be transferred back to the State without any additional payment. The assets to be transferred shall include all parts of the network, i.e. both those already existing at the time of the concession's commencement and those that will be built by the concessionaire during the concession lifetime.
- (21) The Greek Government considers the building of the network for self provision services as falling outside the scope of State Aid rules. Nevertheless, since the network to be expanded will not only be used for self provisioning purposes but also for the provision of wholesale services to other operators, the envisaged transfer of State resources in order to finance the further expansion of the networks is deemed to constitute State aid. The aid intensity will depend on the outcome of the tender procedure, since only the upper threshold of the direct financial aid is determined and

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<sup>8</sup> A similar methodology was followed in the abovementioned Xarxa Oberta project.

one of the criteria, based on which the successful bidder will be chosen, will be the rebate he will offer as regards the amount of direct aid that he will require.

### **Tender process and award criteria**

- (22) The concessionaires will be selected by means of an open tender procedure, in order to allow the market to propose the most adequate solution for covering the targeted areas and thus ensuring that the State aid provided is the minimum necessary. The tender will be conducted according to the general principles and obligations on publicity, transparency and equal treatment, as provided for in the national and European public procurement legislation.
- (23) Following the practice of the previous aid schemes notified and approved by the Greek authorities, also in the present measure, to ensure a more competitive outcome, candidates are required to participate in only one bidding scheme (also as members of a consortium) and each concessionaire might be awarded up to one geographic zone. However, if the interest expressed by the candidate concessionaires is low or there is no competition, then the granting authority may either re-issue the tender for this zone or may award the zone to the concessionaire who has expressed his interest for this zone, notwithstanding that the same concessionaire might have won another zone.
- (24) As an additional pro-competitive safeguard, the winning concessionaires will have to establish a new, autonomous legal vehicle to maintain, operate, manage and expand the existing Metropolitan Areas Networks. If the winning bidder is also active in the wholesale and/or the retail market, it is required to ensure the legal, functional and accounting separation of the two businesses in order to avoid any concern of possible anticompetitive behaviour.
- (25) The tender documents will specify that the most economically advantageous offer will be selected. The main award criteria will be (a) the amount of State Aid requested (with a cap of 75,000,000 Euros) (b) the range of the planned investment on the network (more specifically the number of buildings to be passed over and above the initial number of 150,000) and (c) the least cost for providing services per public site (with a cap of 1,500 Euros annually). The first criterion will get a relative weight of 60% while the other two 20% and 20% respectively.

### **Technology**

- (26) As explained above, the measure aims at the deployment of an NGA network. At present, the only NGA solution available requires the use of optical fibre. However, the measure is limited to the passive elements of the NGA network, therefore it will allow the operators to choose the NGA technological solution and architecture that they prefer.

### **Use of existing infrastructures**

- (27) The measure expressly foresees the use of the existing MAN infrastructures as far as the city rings/backhaul are concerned. Regarding the access network, the use of existing infrastructures is encouraged in order to avoid wasteful duplication of resources, however where the measure targets white NGA areas it is difficult to

envisage such a situation for the access part of the network. The project also foresees the use of all available existing passive infrastructures, for instance the use of ducts throughout the road networks, if any. The use of municipality owned infrastructure is also foreseen and municipalities have committed to provide space for outdoor cabinets installation in case of future network expansions.

### **Wholesale access and prices**

- (28) The selected concessionaires are obliged to provide a wide range of wholesale access products, including both passive and active products. The passive products include: long term provision of IRUs, short term lease of dark fibre, long term provision of micro pipe with installed fibre optic cable, access to ducts, collocation. The active products include: Wholesale Broadband access (WBA) products from the handholds up to the PoP of the concessionaire per city, provision of e-lines (point to point capacity), multiple point capacity provision. Additionally, the concessionaires can also provide leased line services through optical fibre connections to electronic communication network and service providers. Unbundling of the local loop is also included among the access products.
- (29) As regards the pricing principles of the mentioned wholesale access products, practices by the selected concessionaires such as excessive pricing or, by contrast, predatory pricing or price squeeze should be prevented. Taking into account the fundamental role that EETT will play in this respect, access wholesale prices will be based on the average regulated wholesale prices that prevail in other comparable, more competitive areas of the country or, in the absence of such regulated prices, on prices that the NRA will set based on benchmarking for the markets and services concerned. Where ex ante regulation is already in place, wholesale prices for access to a subsidised infrastructure should not be lower than the access price set by EETT for the same area. If the beneficiary is subject to sectoral regulation, the regulated prices will apply.

### **Monitoring**

- (30) The Managing Authority of the Operation Plan “Digital Convergence 2007 – 2013” (granting authority) will undertake the monitoring of the measure’s implementation in close cooperation with the Greek NRA (EETT). The granting authority will undertake the main role of monitoring the fulfilment of contractual obligations and audit and will be in charge of the overall project and contract management. EETT will take up specific activities, mostly connected to its regulatory role in ensuring fair market conditions. Every year an audit will be conducted on the beneficiaries’ cost model and the wholesale price calculation (except if the NRA defines a larger period of time). An external auditor will be selected to carry out this activity under the supervision of EETT.

### **Claw-back mechanism**

- (31) To ensure that the selected bidder is not overcompensated, in case where demand for broadband in the target area grows beyond anticipated levels, or extra revenues would occur, a claw-back mechanism will be part of the contract. The provision of such a

mechanism can ex post/retroactively minimise the amount of aid deemed initially to have been necessary. The mechanism will be controlled by the NRA and will bring about benefits to all the involved actors: (i) it prevents excessive returns for the beneficiary due to the aid received, (ii) at the same time it continues to provide an incentive for the beneficiary to reduce costs and (iii) it reduces the amount of the aid necessary. The claw-back mechanism, to be effective, will be based on officially published financial results and internal cost audit system.

- (32) The revenues of the selected concessionaires are expected to cover the costs of operating the network, maintenance, upgrading, personnel costs, possible losses from previous years, taxes and a profit margin. The exact calculation of the claw-back mechanism will be determined in the tender documents in cooperation with the NRA.

### **Legal basis**

- (33) The relevant legal bases for this measure are the following legislative acts: Act 3389/2005 “Partnerships between the public and private sectors; Act 3614/2007 “National Strategic Reference Framework 2007-2013”. Common Ministerial Decision No 2201 (FEK 638/B/13.5.2010) "Assignment of responsibilities of the Special Secretariat of OP ‘Rural Development’ to the Special Secretariat of OP ‘Digital Convergence’"

### **Beneficiaries**

- (34) The direct beneficiaries of the aid will be the concessionaires managing the MANs, rolling out the FTTH infrastructure and subsequently managing the subsidised network at wholesale level. The support received by the Greek authorities will enable the successful bidder(s) to conduct this commercial activity on conditions which would not otherwise be available on the market. Besides the direct recipient of the aid, third party operators receiving wholesale access to the subsidised infrastructure are indirectly advantaged. Ultimately, indirect advantages will accrue to the businesses and individual users who will be provided ultra high speed network services based on the existing MAN infrastructure and the fibre optic network that will be built by the concessionaires. They will benefit from having access to broadband services not available otherwise in these areas.

## **V. PRESENCE OF AID**

- (35) According to Article 107 (1) of the Treaty on the Functioning of the European Union ("TFEU"), *“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”*. The measure at hand constitutes aid in the sense of Article 107 (1) TFEU, according to which support by a Member State to undertakings qualifies as State aid if it meets the cumulative conditions that 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be



selective and distort or threaten to distort competition, and 4) the measure has to affect intra-Community trade.

- (36) The design of the current measure is such that State resources have been used to build the MANs which are put at the disposal of the concessionaire. Furthermore, the Greek authorities will pay a fee for the provision of services to the public administration, which cannot be excluded to cover (at least partly) the costs for the rollout of the FTTH segment of the new network. Therefore, State resources are involved in the measure. As far as the wholesale subproject is concerned, the intervention will also provide a selective economic advantage to the electronic communication operators and infrastructure investors selected via the competitive procedure and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidised network. Therefore, the support from the State resources creates advantages for a selected number of beneficiaries belonging to a specific sector in a specific area of the European Union.
- (37) Moreover, the measure has the potential to distort competition, because due to the State aid granted to a competitor, existing operators might reduce capacity or potential operators might decide not to enter into a new market or a geographic area. Since the beneficiaries are active in deploying and operating broadband networks, a market which is, at least potentially, subject to trade between Member States, the Greek measure is also likely to affect trade between Member States.

## **VI. COMPATIBILITY ASSESSMENT**

- (38) The Commission has assessed the compatibility of the scheme according to Article 107 (3) (c) TFEU and in the light of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks<sup>9</sup> (hereinafter the "Broadband Guidelines").

### **The balancing test and its application to aid for broadband network deployment**

- (39) In application of State aid rules and, in particular as described in points 34 and 35 of the Broadband Guidelines, in assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition.
- (40) In applying this balancing test, the Commission will assess the following questions:
- a. Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
  - b. Is the aid well designed to deliver the objective of common interest? In particular:

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<sup>9</sup> *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*, OJ C 235, 30.9.2009, p.7.

1. Is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?
  2. Is there an incentive effect, i.e. does the aid change the behaviour of firms?
  3. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

## **Objective of the measure**

### *The aid is in line with the Community policy*

- (41) This project is fully in line with both the Digital strategy of Greece and the EU objectives as highlighted in the EU2020 strategy and the Digital Agenda, which has the “*aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more European households subscribing to internet connections above 100 Mbps*”. The project will contribute to avoid the digital divide in services which require very high speed broadband connection, between areas such as Athens and Thessaloniki that may benefit from competition in fibre optic networks market and the targeted areas in which there are no plans by the telecommunications operators to invest in future-proof fibre optic networks.
- (42) The Greek measure constitutes a step ahead in achieving the ambitious objectives set in the Digital Agenda for Europe. By extending NGA coverage to such unserved areas, Greece pursues genuine cohesion and economic development objectives.

### *Aid is the appropriate instrument*

- (43) The goal of the Greek authorities cannot be achieved by alternative means (such as regulatory measures concerning unbundling and third party access), since no private investments have taken place in the targeted areas or will take place during the next three years.
- (44) Without further public intervention, no progress could be expected in the reduction of the digital divide. Member States are invited to address public funding to non-served areas. Hence, State aid is an appropriate instrument to achieve the set objectives, pursuant to paragraphs 47 and 48 of the Broadband Guidelines.

### *The aid provides the right incentives to operators*

- (45) As set out in paragraph 50 of the Broadband Guidelines, regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid. According to the results of the public consultation and market research conducted by the Greek authorities in the targeted areas no investment

would take place without public funding, hence the aid will trigger a change in the investment decisions of the operators.

- (46) The notified measure is considered as a complement and stimulation of commercial investment, since the wholesale access provided by the concessionaires may encourage private operators to invest in areas where investment would have otherwise been unprofitable for private operators. By providing the above wholesale access services to electronic communications operators wishing to use them, the State aims to encourage private investment in NGA networks by the operators so as to accelerate the supply of NGA services to SMEs and citizens. Therefore, the aid should provide a real investment incentive for operators.

### **Design of the measure and the need to limit distortions of competition**

- (47) As set out in paragraph 51, 78 and 79 of the Broadband Guidelines, in assessing the proportional character of the notified measures in "white" NGA areas, a number of conditions has to be met in order to minimise the State aid involved and the potential distortions of competition:

- (a) *Detailed mapping and coverage analysis, consultation with stakeholders:* as described above in paragraph (16) and following, the Greek authorities have undertaken a thorough analysis of the existing broadband infrastructures in order to clearly identify the areas where state intervention is necessary. The Greek authorities further consulted existing operators and updated the target areas accordingly. The results of the public consultation were reflected in amendments to the measure and to the tender documents whenever appropriate. Also the Greek NRA (EETT) was always involved in the design and discussion of the project. This way, the scheme guarantees transparency towards all stakeholders and ensures that public funds are used only in areas where it is necessary, thus limiting the risk of crowding out private investments and of distortion of competition to the minimum possible.
- (b) *Open tender process:* with the process described above in paragraphs (22) and following, the Greek authorities will select the undertakings for the construction and the maintenance of the network in an open tender procedure ensuring transparency, and equal and non-discriminatory treatment, with the objective to minimise the aid necessary for the measure. The award criteria have been predefined as described in the mentioned paragraphs above in line with the provisions of the Broadband Guidelines.
- (c) *Most economically advantageous offers:* within the context of the open tender, the Greek authorities will select the most economically advantageous offers. The bidders which request the lowest amount of aid for otherwise comparable quality and quantity will be chosen.
- (d) *Technology neutrality:* While the choice of the Greek authorities to rollout an NGA network requires the use of optical fibre, in line with paragraph 53 of the Broadband Guidelines, the design of the measure is done in a way that does not favour any particular technology or network platform on the subsidised network,

leaving it to commercial operators to come up with the most appropriate technological solutions to provide broadband services to end users.

- (e) *Use of existing infrastructures:* it is in the nature of the measure that existing infrastructure of the MANs shall be reused as a basis to achieve the objectives of the Greek authorities. Additionally, as explained above in paragraph (27), the Greek authorities will ensure during the tender procedure that existing civil infrastructures are considered by the bidders in the design of their offers and that municipalities facilitate the rollout of the new parts of the network.
- (f) *Open wholesale access:* the operator of the new network will be obliged to provide for the whole duration of the contract effective wholesale access to all interested parties in an open, transparent and non-discriminatory manner. Furthermore, to ensure that the winner does not cross-subsidise its other commercial activities, legal and functional separation of wholesale and retail activities are required.
- (g) *Price benchmarking:* In order to ensure effective wholesale access and to minimise potential distortion of competition, wholesale prices on the subsidised network will be based on the existing regulated prices or on the average wholesale price prevailing in more competitive areas of Greece or of the EU and will be monitored by the National Regulatory Authority. The objective is to have an offer of retail access prices similar to those charged in non-subsidised areas.
- (h) *Claw-back mechanism to avoid over-compensation:* the project will be examined on a regular basis and the monitoring mechanisms implemented will ensure that if the beneficiary fails to comply with the rules, the granting authorities will be in the position to recover the aid granted. Furthermore, to avoid overcompensation, the contract with the successful bidder will contain a claw back mechanism as described in paragraph (31) above.

The conditions listed in paragraph 51 of the Broadband Guidelines are therefore fulfilled.

- (48) Since the notified measure concerns deployment of an NGA network, also the conditions contained in paragraphs 75, 77, 78 and 79 of the Broadband Guidelines have to be fulfilled.
- (49) Almost all the concerned areas, except one, are white NGA areas which are black from the perspective of basic broadband (or grey but with presence of ULL operators excluding the existence of a market failure). Therefore in line with paragraph 77 and 78 of the Broadband Guidelines, the Greek authorities demonstrated that, despite the competitive situation in the basic broadband markets, it is highly unlikely that the market will by itself develop the right incentives to upgrade to NGA networks.
- (50) In particular, according to a study conducted by the regulator EETT, alternative operators have neither the size nor the necessary capital to engage in the kind of big investments needed to rollout NGA networks. Their current economic situation is characterized by a loss, high duties and high dependence of their turnover from their obligations, mainly due to their recent investments in own and partially state-aid projects. This situation constitutes in the assessment of the Greek authorities, an insurmountable obstacle to independent major investments in NGA by each one of

them. The incumbent OTE seems to be less affected by these problems, but nevertheless not in a financial position to undertake such an endeavour on a large scale. Moreover, there is a lack of competitive supply of specific wholesale services necessary for the provision of high capacity broadband services and not enough competitive pressure to develop the supply of retail enhanced broadband services. Thus, the Greek authorities concluded that there remains a market failure regarding NGA services even in those areas in which basic broadband did develop.

(51) The Greek authorities wish the measure to cover also the 4 municipalities in which there already exists one commercial operator able to provide enhanced services on its network with the FTTC/VDSL technology. For the other areas for which certain operators have made announcements regarding a possible upgrade to FTTC/VDSL, such statements were considered by the Greek authorities as not substantiated by a credible commitment as required by paragraph 68 of the Broadband Guidelines and were, thus, not taken into account.

(52) For such areas, in accordance to paragraph 75 of the Broadband Guidelines, the Greek authorities have shown that even if such areas were to be qualified as grey NGA, there would still be a justification for State intervention on the basis of the following considerations:

(a) The overall market conditions are not adequate to ensure the provision of NGA services. On the basis of the information submitted by the Greek authorities, the public announcements made by the incumbent show that advanced broadband services may be offered with speeds of up to 30 or 50 Mbps. Besides the fact that such offer does not exist yet after three years from having announced them<sup>10</sup>, the Greek authorities have estimated a demand for higher speeds and enhanced performance coming from both the local enterprises (teleworking, videoconferences, VPN, videosurveillance etc.) and the public sector, with demand for services requiring up to 100 Mbit/s symmetric – or even higher. Additionally, the Greek authorities remark that relying only on the announced VDSL services for these areas (currently not yet offered) will exclude the population living there from the possibility to enjoy the higher speeds indicated in the Digital Agenda and will jeopardise the achievement of the target of having 50% of the households subscribing to 100Mbit/s and above<sup>11</sup>. As already highlighted above, the financial conditions of the electronic communications operators and the current state of the economy do not create a scenario suitable for long-term investments such as those needed for NGA – nor to exert competitive pressure on the incumbent operator to upgrade its network further. As regards the level of prices, the Greek authorities have submitted that there are no published prices for retail VDSL services, but only for Ethernet access lines. For speeds of 100 Mbit/s and above, these prices are very high and not affordable for citizens and

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<sup>10</sup> The Greek authorities observe that after three years from the start of the network development, consumers are not yet offered retail services.

<sup>11</sup> The Greek authorities remark that OTE has provided some general statements of being in the process of "testing" advanced technologies, without any specific commitment nor timeframe to reassure the public authorities that the areas in question will be served with at least 100 Mbit/s by 2020.

enterprises in the areas, which further supports their quest for a new state of the art future-proof NGA network.

- (b) In the cities where the MANs are already in place, leased line and backhaul connection services are mainly provided by OTE, which holds significant market power and is thus obliged to offer access. However, any operator that would like to offer NGA-type services could only marginally and conditionally do it over the existing mainly copper access network. An operator would either build new optical networks towards or even up to end-user premises or lease capacity. The first option is, in most cases, economically unfeasible. The second is rather expensive for a residential user or even conditionally available. In conclusion, the development of NGA services competition on the existing FTTC network is highly unlikely to emerge. In particular, for speeds of above 50 Mbps, in spite of the existing regulatory measures (such as duct access obligation, conditional dark fibre access, etc.), it is not expected to have NGA services in the targeted areas, because there is no fibre up to the end-user premises which could allow provision of long-term future-proof NGA services.
- (c) According to a study conducted by a consultant for the Greek authorities, the deployment of a FTTB-FTTH<sup>12</sup> network in Greece is impractical because of the geographical characteristic of the country and the low population density and socio-economic characteristics of many of its regions. Additionally, analysing the state of competition in Greece, no deployment of FTTB-FTTH networks is expected in the short term. The Greek market is still characterized by strong asymmetries in infrastructure, despite the positive trend shown in the last couple of years. Despite recent developments, alternative providers are still small and with a limited market share. Therefore, even in the unlikely scenario of market concentration, these providers will continue to focus on Unbundled Local Loop (ULL) access rather than to developing a comprehensive network of FTTx, as they do not have the necessary financial resources and the market share for this investment to be viable.
- (d) Moreover, reliance on FTTC technology alone, in the view of the Greek authorities will lead to a decline of the ladder of investment which is at the basis of the EU regulatory framework for electronic communications: alternative providers will be obliged to resort again to active wholesale NGA products in order to be able to provide competitive broadband services, whereas for basic broadband they had already moved "up" to becoming ULL operators. Such a development would also crowd out their existing investments in local loop unbundling. Finally, extensive deployment and use of VDSL technology at the sub-loop level will increase the likelihood of further technical problems and a consequent reduction in the quality of basic broadband access services currently provided.

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<sup>12</sup> Fibre To The Building – Fibre To The Home

- (e) Despite the regulatory obligations imposed to OTE, so far neither duct access nor dark fibre has been used. In the view of the Greek authorities this is due to a combination of factors, which all together determine a failure not solvable by regulation alone: duct access presupposes that the alternative provider proceeds to additional investment in terms of cabinet and equipment, which would be too costly, as explained above; the footprint of dark fibre at the access level is negligible. Moreover, lack of an up-to-date mapping of the ducts or any information on which ducts can be accessed further complicates the process. Lastly, the Greek authorities pointed out that in the past, in several occasions, the implementation of the access obligations by the incumbent was delayed to the point that led the NRA to impose fines. All these factors contribute to short-circuit the good functioning of regulation and justify a more interventionist approach.
- (53) As regards the conditions of paragraph 79 of the Guidelines:
- (a) the design of the measure includes the obligation to provide access to a wide range of active and passive products as explained above in paragraph (28), without prejudice to the regulatory obligations which may be imposed by the NRA under sectoral regulation;
  - (b) the NRA has not only been consulted but has actively participated and will be closely monitoring the implementation of the project.

## **Conclusion**

- (54) The Commission concludes that the compatibility criteria set out in the Broadband Guidelines are met, hence the aid involved in the notified measure is compatible with Article 107(3)(c) TFEU.

## **VII. DECISION**

- (55) The Commission has accordingly decided to consider the aid measure "Metropolitan Area Networks (MAN)/Fibre To The Home (FTTH) Greece" to be compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union and not to raise objections to it.
- (56) Greece is reminded that, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union, it is obliged to inform the Commission of any plan to extend or amend the measure. Moreover, due to the forthcoming revision of the Broadband Guidelines, the Greek authorities are reminded that they should amend the measure, where necessary in order to bring it into line with the new provisions.
- (57) 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>.

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

European Commission  
Directorate-General for Competition  
State Aid Greffe  
Rue Joseph II 70 / Jozef II straat 70  
B-1049 Brussels

Fax No: +32 2 29 61242

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-President