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**Subject: State aid n° N 201/2006 – Greece**  
**Broadband access development in underserved territories**

Sir,

## **I. PROCEDURE**

- (1) By letter dated 23 March 2006, and registered on the same day, the Greek authorities notified to the Commission, pursuant to Article 88(3) of the EC Treaty, a measure for the development of broadband access networks in the rural and peripheral areas of Greece (“the notified measure”). By letter of 27 April 2006, the Commission asked for complementary information concerning the notified measure.
- (2) The Greek authorities replied to the Commission’s request for further information by letter registered on 22 May 2006.

## **II. CONTEXT**

- (3) Broadband connectivity<sup>1</sup> is a key driver for the development of knowledge-based global, national, regional and local economies and the development, adoption and usage of information and communication technologies. Broadband is of strategic importance because of its ability to accelerate the contribution of these

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<sup>1</sup> Broadband services can be delivered using various combinations of communications network technologies (“platforms”). Technologies can feature either fixed or radio based transmission infrastructure, and they can substitute or complement each other according to the individual situation. Current mass-market broadband services in the EU-15 have generally download speeds starting from 512Kbit/s/ - 1Mbit/s. For business users, much higher speeds are generally needed.

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technologies to economic growth in all sectors, to enhance social development and to facilitate innovation.

- (4) Implementing the eEurope Action Plan 2005<sup>2</sup> and the i2010 initiative<sup>3</sup>, most Member States, including Greece, have put comprehensive national broadband strategies in place<sup>4</sup>. The notified measure aims at boosting investments in broadband infrastructure in order to enable access broadband providers to offer retail broadband services to end-users in rural and peripheral areas (“underserved territories”) of Greece broadband services at affordable prices.
- (5) The majority of the Greek territory is characterised by rural and mountainous regions and numerous islands with a very low population density. Hence, the implementation of broadband technologies in the rural and remote areas of Greece is facing two principal problems, namely the fact that (i) the connection points (households) are geographically scattered rendering the necessary initial investments in rural areas much higher than in territories with dense population (cities), and (ii) the inhabitants of rural areas have generally a lower income and thus, are less able to pay for the actual costs of the service. As a result, broadband providers are often not offering broadband services in such areas as the return on investment is either too low or even negative.
- (6) To date, broadband networks cover only 13% of the territory of Greece. More particularly, the penetration rate for retail broadband access remains still the lowest among the 15 EU Member States, and has grown in 2005 to around 1% from 0.24% in July 2004.<sup>5</sup> According to the Greek authorities, without state intervention, the current rate of penetration increase (compared to other countries) will not lead to a convergence with the EU average penetration rate in the foreseeable future. At present, the fixed-line incumbent OTE offers broadband services only in large cities and capitals of prefectures where economic activity is concentrated. The vast majority of existent broadband connections are located in Athens and Thessalonica, leaving many areas without any broadband coverage. The existing network infrastructure in rural Greece is essentially controlled by OTE as most alternative network providers focus their medium-term investment efforts on the metropolitan areas of Athens and Thessalonica as well as a few additional Greek cities.
- (7) Overall, investment in broadband infrastructure remains to date at very low levels as evidenced by the fact that only 3% of the current broadband penetration is based on local loop unbundling (i.e. <1‰ of the total population).
- (8) This market situation is detrimental to the development of a digital economy and all its associated benefits for the society at large and acts as a barrier to the deployment and widespread availability for all citizens of fast Internet and other important information society services provided not only by private operators but also by the State (i.e. e-Government, e-Health, e-Work, e-Education, etc.).

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2 COM(2002)263 final, “eEurope 2005: An information society for all”.

3 <http://europa.eu.int/i2010>.

4 Commission Communication COM(2004) 369 of 12.05.2004, “Connecting Europe at High Speed – National Broadband Strategies”

5 Commission Staff Working Document, Annex to the Communication to the Commission from the Commission to the Council, the European parliament, the European Economic and Social Committee and the Committee of the Regions, European electronic communications regulations and markets 2005 (11th REPORT) COM(2006)68 final, p. 122.

- (9) To remedy this situation, the Greek authorities have decided to provide State funding, including funds allocated from the European Regional Development Fund, to undertakings (network operators) willing to invest in building broadband access infrastructure in rural and peripheral (underserved) areas of the country.

### III. DESCRIPTION OF THE MEASURE

- (10) *General objective:* , The Greek State will use structural funds as well as national financing to support the roll-out of broadband networks in rural and peripheral areas (“underserved territories”) of Greece to enable access broadband providers to offer retail broadband to end-users at affordable prices. In line with the objectives set out in community policies such as the *eEurope Action Plan 2005* and the Commission’s *i2010 initiative*, the measure aims at strengthening the territorial cohesion by preventing the creation of a broadband digital divide between communities and businesses that can get access to broadband services at a competitive market price and those that cannot.
- (11) *Legal basis:* The measure is based on a series of interrelated government initiatives for a comprehensive national broadband policy, including in particular the 2860/2000 Act (“*Management Monitoring and Control of the Community Support Framework for the implementation of State Aid Programs funded by CSF 2000-2006*”) and Article 35 of the 3016/2002 Act (“*Corporate Governance, payroll issues and other provisions*”) that concerns state aid projects funded by Operational Programs of CSF<sup>6</sup>.
- (12) *Scope of the measure:* The project has two main axes, one targeting the supply side (broadband access infrastructure) and another targeting the demand side (end-users). The first axis (supply-side) will fund the provision by service providers of broadband access services in underserved areas of Greece. The second axis (demand side) of the project funds specific demand stimulation activities as a complementary action to the broadband access service offering.

#### **The first axis: broadband access infrastructure**

- (13) *Service definition:* The notified measure under the first axis can be described as an «*end-to-end service project*» in the sense that the selected bidders will have the obligation to provide retail broadband internet access services to end-users.
- (14) In particular, residential users should be able to get broadband internet access with a data rate of *at least* 512kbps downstream/128kbps upstream, symmetrical or asymmetrical. Moreover, business users should be able to get broadband internet access with a data rate of *at least* 2048kbps downstream/768kbps upstream, symmetrical or asymmetrical. These being the minimum imposed speed requirements, successful bidders are expected to built future-proof infrastructure capable of offering in the future much higher speeds in tandem with a progressive increase in demand for more bandwidth-intensive applications such as “Video on Demand”, “IPTV”, etc.
- (15) The participating bidders will have to submit in their proposals a specific tariff plan for the services offered by stating their own upper price limits for the first 5 years of service provision. These price limits should not exceed the upper limits

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6 Gazette of the Government, 17 May 2005, p. 1717.

set in the tender process. In particular, offers to residential users and business users should not exceed 33 € and 54 € per month, respectively (excluding VAT), during the first year of service delivery. These upper limits are gradually reduced during the five years period, with a minimum rate of: 6% (2nd year), 7% (3rd year), 9% (4th year), and 10% (5th year)<sup>7</sup>.

- (16) *Areas covered*: All Greek regions are eligible for assistance under Article 87, paragraph 3 (a) of EC treaty<sup>8</sup>. Based on market research, the Greek authorities have identified the geographic areas which are lagging behind in terms of broadband deployment. At present the incumbent, OTE, offers its broadband services only in large cities and capitals of prefectures where economic activity is concentrated. As a result, most of the project's eligible areas are located in "white" areas which have no broadband coverage at all. The remaining eligible areas can be characterized as "grey" zones, since only the incumbent offers broadband access services, the rest of the alternative providers having recourse to the incumbent's "wholesale access service"<sup>9</sup>. Outside the Athens and Thessalonica metropolitan areas, no alternative operator is in possession of own broadband access infrastructure.
- (17) According to the Greek authorities, the eligible areas are generally characterized by structural deficiencies, market failures and require state support in favour of broadband. More particularly, the eligible areas exhibit significant deviations from a demographic point of view from the EU average since most of Greek territory is comprised of numerous insular and highland areas with a very low population density, in every type of area (urban, suburban, rural).
- (18) Areas where competitive offers are expected in the short or medium term have been excluded from the project's eligible areas. Likewise, the metropolitan areas of Athens and Thessalonica (where the majority of the Greek population is concentrated) are not eligible for funding.
- (19) *Wholesale offer*: The infrastructure financed will be built on an "open access" model. Thus, successful bidders will have to grant third parties wholesale access to the infrastructure during a five-year period<sup>10</sup> and on equal and non-discriminating conditions. Prices for wholesale services will be linked to the retail pricing policy of the two predefined bundles of services (residential and business) and correspond to a "retail minus" approach<sup>11</sup>. As the Greek authorities have confirmed to the Commission, should the incumbent operator OTE win any of the available lots, it will be subject to two sets of access obligations, those arising from the applicable regulatory framework for electronic communications and those imposed by the tender rules. If the later obligations are less strict than the former, the regulatory obligations will take precedence. More specific details

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7 Absolute values of upper limits may be updated at the time of the tender publication.

8 In these areas "the economic situation is extremely unfavourable in relation to the Community as a whole" (98/C 74/06 §3.5).

9 According to the Greek authorities, a wholesale access service does not guarantee a desired level of quality, that is value-added services such as Voice over IP or Video on Demand services cannot be easily deployed.

10 Wholesale services include (at least) broadband access from customer premises up to a predefined spot inside the zone (e.g. main Point of Presence).

11 Since wholesale services include only a part of the total retail service (for instance backhauling and international internet connectivity are not included), the percentage of the wholesale service "participation" in the total bundle must be defined in advance (in terms of the total retail price). Then, a minimum "discount" will be applied, ensuring reasonable profit margins for the retail operators using the wholesale access provision.

regarding “open access” requirements and the wholesale pricing policies will be provided in the tender document, following consultation with the Greek Regulatory Authority (EETT).

- (20) *Technology and infrastructure*: The measure is technologically neutral. Thus, operators can have recourse to fixed, wireless or any other technologies (xDSL, FWA, satellite)<sup>12</sup> or a combination thereof for the purposes of deploying their networks. It is also left to the selected bidders to choose how to deploy their networks and offer the corresponding services (leasing or building infrastructure).
- (21) *Beneficiaries*: The beneficiaries and direct recipients of the aid will be the successful service providers investing in access broadband infrastructure as well as end users (companies and residential users).
- (22) *Budget, aid instrument and aid intensity*: The maximum available budget for the first axis of the project is €160.000.000 and is allocated per geographical zone (7 lots, *see below*). Based on the outcome of the tender, the state funding may be lower. Aid is given in the form of grants based on the actually incurred expenses of each project funded. At least 50% of the total investment costs will have to be covered by private expenditure with at least 25% of total investment costs being contributed as own capital directly by the recipient of the aid (not borrowed capital/debt funding).
- (23) *Eligible costs*: The aid given will cover expenses for the cost incurred by the procurement, development and installation of new infrastructure such as fiber networks, wireless networks, collocation facilities, local access systems, etc. Infrastructure leasing (leased lines connecting the remote municipalities to the capital city of the respective prefecture) and space leasing for collocation are also considered eligible expenses. Finally, the aid will also cover the costs of local loop unbundling with the exception of pure wholesale services (i.e., wholesale ADSL services provided by another operator)<sup>13</sup>. For each project selected, the expenses attributed to investment (capital expenditure) should be more than 60% of the total expenses that are eligible for funding.
- (24) *Tender process*: The grants will be allocated following an open tender process based on the principle of equal treatment of all bidders<sup>14</sup>. The project tender will concern 7 geographical zones (lots) with one winning contractor for each lot. Every tender participant may submit proposals for no more than 3 different lots. In case the tender process does not yield a winning contractor for one or more lots, then the winning contractor for these lots may be determined through a second round (direct negotiations). All companies that have participated in the first round (for any lot) may participate in the second round. In case there are more than one eligible bidder in a lot, final selection of the winning contractor will be made through a comparative assessment.

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12 There is currently no cable TV infrastructure in Greece.

13 The Greek authorities informed the Commission that eligible expenses related to local loop unbundling confirmed are those related to prices for services provided by the incumbent operator (OTE) in its Reference Offer for Unbundled Access to the Local Loop as approved by the Greek National Regulatory Authority (EETT).

14 Including the publication of the tender in the OJ of the EU and the setting up of a multilingual portal to assist companies from other Member States.

- (25) *Assessment criteria:* All proposals will be assessed on the basis of three detailed and analytical evaluation criteria which address the corresponding three fundamental goals of the project, that is (i) the ability to cover a significant part of Greece (area and population coverage for each lot), (ii) the overall level of the proposed investments (access ports to be installed in each areas)<sup>15</sup>, and (iii) the competitive pricing of the retail services to be offered.
- (26) In particular, as far as coverage is concerned, and in order to mitigate the dominant position of the incumbent in areas where OTE already provides broadband services, bidders will be able to base their coverage proposals either on the development of new infrastructure (“eligible expenses”) or on the (combined) use of a wholesale service. Although network deployment based on existing access products does not constitute an “eligible expense”, overall proposed coverage will be taken into consideration for the purposes of the evaluation process so as not to favour the incumbent, OTE.
- (27) *Duration of the measure:* Aid will be granted for projects implemented from the date of the tender awards until 31 December 2008.
- (28) *Monitoring:* The project’s implementation and monitoring authority is the Information Society S.A, a state-owned organisation set up to implement the Operational Program “Information Society” under the CSF. The implementation authority will ensure (i) the project’s progress according to mutually agreed plans with the selected bidders and (ii) compliance with well-defined qualitative and quantitative specifications. It will also perform technical and financial audits and disburse payments after the completion of the necessary audits.

## **Second axis: demand-stimulating activities**

- (29) *Main objectives and project characteristics.* The main objective of the second axis of the project is to stimulate demand of retail broadband services to increase the penetration rate by funding services provided to special categories of end users. For the Greek authorities, given the current broadband take-up, demand stimulation is considered as an essential and complementary action to the successful implementation of the infrastructure projects under the first axis.
- (30) The service providers selected under axis 1 will not receive any financial aid concerning the second axis. Funding is provided to end-users, who will pay for services at a preferential (lower) price. In addition, demand stimulation focuses on special groups of end-users that represent a very small percentage of the potential market. For the Greek authorities, it is crucial for the financial viability of the successful bidders to attract from the outset a critical mass of initial customers (early adopters). Eligible areas suffer from a very low PC & internet usage penetration rate. Accordingly, funding of demand stimulation activities is a necessary complementary action to mitigate the risk of investing in an “immature” region/area.
- (31) *Beneficiaries of the aid.* For every geographical zone, the funding will be reserved for (a) residential users and Small & Medium Size Enterprises (SMEs) located inside the eligible areas (Gross Grant Equivalent = 50%), and (b) socially

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15 The term access ports refers to any fixed/permanent connection that may be activated whenever an end-user requests a broadband line. These “ports” are available through the infrastructure that is developed, operated and managed by the winning contractors.

and/or financially non-privileged groups such as multi-children families, unemployed, impaired persons, etc. (Gross Grant Equivalent = 75%). The Greek authorities have informed the Commission that aid under the second axis, including aid provided to SMEs will comply with the applicable “de minimis” rule of Regulation No 69/2001<sup>16</sup>.

- (32) *Eligible costs* The possible options of service/product offerings, as well as the respective maximum eligible expenses for funding, are shown in the following table:

Service product item of bundle	Upper ceiling for eligible expenses per item and per beneficiary
Terminal equipment	100 €for wired connection 300 €for wireless connection
Access equipment	600 €for a PC 300 €for a setop box
Training services	300 €for 10 hours
Fee for broadband access (basic service)	600 €

- (33) In any event, the total eligible expense per beneficiary will not exceed 1.000€<sup>17</sup>.

- (34) *Budget*: The budget for this action is €50.000.000 and is allocated among the different geographical zones (about €7 million for each lot).

#### IV. ASSESSMENT OF THE MEASURE: PRESENCE OF AID

- (35) As stated above, the direct beneficiaries under axis 2 of the notified measure will be (i) end-users and SMEs and (ii) certain socially or otherwise disadvantaged categories of the population. Given that residential users are not undertakings within the meaning of Article 87 (1), that in any event the eligible expenses for each beneficiary will not exceed 1.000€, and that as far as SMEs are concerned, the funding will neither exceed the *de minimis* rule of Regulation No 69/2001<sup>18</sup>, the second axis of the notified measure does not constitute aid within the meaning of Article 87 (1) of the Treaty. Accordingly, only the first axis of the notified measure is assessed below under Article 87 (1) of the EC Treaty.

##### *First axis: support for broadband access networks*

<sup>16</sup> Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid, OJ L 10, 13.01.2001, p.30.

<sup>17</sup> Consequently, the total amount of funding (expenses incurred x % of funding) per beneficiary should not be more than 500€(50%) in the case of residential users and SMEs (1st category of beneficiaries), and 750€ (75%) in the case of socially and/ or financially non-privileged groups (2nd category of beneficiaries). In the case of businesses, the funding of access equipment is not applicable.

<sup>18</sup> Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid, OJ L 10, 13.01.2001, p.30. According to Article 2 of the Regulation, it can be established that aid not exceeding a ceiling of EUR 100 000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

(36) According to the EC Treaty and consolidated case-law there is State aid within the meaning of Article 87(1) when:

- there is an intervention by the State or through State resources;
- it confers an economic advantage on the recipient;
- it distorts or threatens to distort competition;
- the intervention is liable to affect trade between Member States.

#### State resources

(37) The measure is partly financed with European structural funds, which qualify as state resources once they come under the control of a Member State, and partly by state funds of the Greek government. Hence, state resources are involved.

#### Economic advantage

(38) *Eligible network operators*: The successful bidders will receive financial support which will enable them to enter the market and provide broadband access services on conditions not otherwise available on the market. Due to the aid, eligible operators will be able to offer end-to-end services *prima facie* at lower prices and thus attract more customers than under normal conditions.

(39) *Third party providers*: In most areas covered by the notified measure, there is no broadband infrastructure and therefore no broadband wholesale offer at all, preventing market entry of third parties such as service providers without own infrastructure. Therefore, third party providers of broadband services using wholesale connectivity built under the measure might also benefit from the State resources as (wholesale) customers of the eligible service providers.

(40) *End users*: The ultimate objective of the measure is to provide affordable broadband services to residential and business users at conditions which are currently not available in the target areas. Whereas residential users are not subject to State aid rules, businesses in the targeted geography will benefit from service coverage beyond and prices below what would be provided on a purely commercial basis.

#### Distortion of competition

(41) The intervention of the State alters the existing market conditions by allowing the provision of broadband services by the selected service providers and, potentially, third party providers. It cannot be excluded that a number of operators might have decided to enter the market by having recourse to more expensive market-based solutions (such as satellite or leased line offerings). Therefore, the fact that a new broadband service becomes available at a lower price than existing, albeit expensive, solutions has the effect of distorting competition.

(42) In addition, while the Greek authorities have decided to intervene precisely in view of the lack of private initiatives in the concerned areas, it cannot be excluded that market initiatives could become viable in some areas in the medium term. By securing funding from the State, the chosen service providers will be capable of establishing in certain geographic areas their business and developing



their customer base, enjoying a first mover advantage over their prospective competitors.

- (43) The scheme is also selective in that it is addressed to undertakings active only in certain markets for electronic communications services (wholesale and retail broadband services). These selectivity elements also induce a potential distortion of competition<sup>19</sup>.

#### Effect on trade

- (44) Insofar as the intervention is liable to affect providers of electronic communications services and service providers from other Member States, the measure has an effect on trade. The markets for electronic communications services are open to competition between operators and service providers, which generally engage in activities that are subject to trade between Member States. There may also be an effect on trade between the businesses using the broadband services enabled by the measure and their competitors in other Member States, although the importance of that effect will probably be low.

#### Conclusion

- (45) In view of the above, the Commission considers that the notified measure grants an economic advantage to the selected network providers, third party operators and final users that exercise an economic activity. The measure is publicly funded, distorts competition and has - at least as far as the selected network providers and third party access seekers are concerned - an effect on trade between Member States. Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 87 (1) of the EC Treaty.
- (46) Having established that the measure involves aid within the meaning of Article 87(1) of the EC Treaty to the selected network providers and third party providers using the open access provision (and possibly to businesses), it is necessary to consider whether the measure can be found to be compatible with the common market.

### **V. ASSESSMENT OF THE MEASURE: COMPATIBILITY**

- (47) The Commission notes that the measure aims to ensure the widespread availability and use of high-speed broadband services in currently underserved areas with no prospect for coverage on commercial terms in the near and medium term and, as such, does not fall under one of the existing frameworks and guidelines. The areas covered by the measure are located within areas eligible under the European Regional Development Fund, as well as Article 87 (3) (a) assisted areas within the meaning of the Regional Aid Guidelines. However, while the aid to be granted under the scheme may in some cases qualify as aid for initial investment within the meaning of those guidelines in so far as it benefits the broadband providers, the same cannot be said in respect of its impact on the third party operators and end users, for whom the benefit is not linked to any initial investment.

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<sup>19</sup> Case, C-143/99, *Adria Wien Pipeline*, (ECR) 2001, I-8365.

(48) The Commission therefore considers that the assessment of the compatibility of the measure with the common market needs to be based directly on Article 87(3)(c) of the EC Treaty<sup>20</sup> 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”*

may be considered to be compatible with the common market.

(49) In order to be compatible under Article 87(3)(c), an aid must pursue an objective of common interest in a necessary and proportionate way. In particular, the measure shall be assessed with respect to the following questions:

- (1) 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)?
- (2) Is the aid well designed to deliver the objective of common interest? In particular:
  - (a) Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?
  - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
  - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

## **1. The support of broadband rollout is in line with the common interest**

### ***Community policy***

(50) As outlined in its Communication “i2010 – A European Information Society for growth and employment”<sup>21</sup> and the eEurope Action Plan 2005<sup>22</sup>, the Commission actively supports the widespread availability of broadband services. There is clear evidence for the regional economic development benefits resulting from greater broadband deployment, including job creation and retention as well as improved health and education services<sup>23</sup>. In order to achieve better broadband coverage and take-up, the Commission encourages Member States to put comprehensive national broadband strategies in place.<sup>24</sup> The measure at hand

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20 This approach was also followed by the Commission in other cases, see for instance: State aid decisions for the UK: N126/04 “Broadband for SMEs in Lincolnshire” of 14.12.2004, N199/04 “Broadband business fund” of 16.11.2004, N307/04 “Broadband in Scotland – remote and rural areas” of 16.11.2004 (See: [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)).

21 COM(2005)229 final, 1 June 2005.

22 COM(2002)263 final, “eEurope 2005: An information society for all”.

23 For an overview, see: Lehr, Osorio, Gillet and Sirbu (2005): “Measuring Broadband’s Economic Impact”, and Orazem, Peter, University of Kansas Business School (2005), “The Impact of High-Speed Internet Access on Local Economic Growth”.

24 Commission Communication COM(2004) 369 of 12.05.2004, “Connecting Europe at High Speed – National Broadband Strategies”.

forms an important part of the Greek Broadband Strategy. By securing or improving broadband access for citizens and businesses in underserved regions of Greece, the measure helps achieving greater cohesion and is therefore in line with the common interest.

### ***Cohesion objective and market failure considerations***

- (51) Lack of broadband coverage is due, among others, to some of the typical economic problems associated with networks industries. Due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs, unit costs escalate dramatically as population densities drop. It has been estimated that, in general, approximately 65-70% of the costs associated with the deployment of broadband in the access network is related to civil infrastructure<sup>25</sup>. In addition, although equipment costs have fallen as volumes increase, they remain a significant cost and a major barrier to roll-out. In areas where demand is not very developed and coverage of cost is uncertain, private operators might find it difficult to find a source of funding for broadband infrastructure, which has a long life and amortisation period.
- (52) As a result, rural and remote areas are often deprived of broadband services since the supply of these services is not economically viable without public support.
- (53) It should be recalled that Greece has currently the lowest broadband penetration in the EU-15. Although this could be explained by the commercial strategies of market players, this situation is also partly due to the particular topology and geography of the Greek territory (hundreds of dispersed island communities and rural areas). In addition, as stated in the notification, the rural areas of Greece are considerably less populated than the average EU regions. Hence, by providing financial support for the establishment of broadband access infrastructure in underserved regions of Greece, the authorities pursue genuine cohesion and economic development objectives.

## **2. Well-designed aid**

### ***(a) Aid is the appropriate instrument***

- (54) The proposed State funding is part of an integrated set of measures under the Greek national broadband strategy and is combined with other projects that are being implemented through the Operational Program “*Information Society*” under the CSF.<sup>26</sup> More particularly, municipal Metropolitan Broadband Networks (MANs) are being built in less developed regions of Greece which may establish in the future a critical mass of a resilient broadband infrastructure which at a later stage is expected to also be accessible on equal and non-discriminatory terms to service providers. The existence of those MANs and the implementation of other complementary measures taken by the Greek government as part of its wider “*Information Society*” policy are expected to have in the near future an overall

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<sup>25</sup> Broadband Stakeholders Group “Broadband in Rural Areas”, 2003.

<sup>26</sup> See, 3rd Community Support Framework 2000-2006 for Greece, June 2001, at [http://en.infosoc.gr/content/downloads/InfoOPISen\\_June.pdf](http://en.infosoc.gr/content/downloads/InfoOPISen_June.pdf). The Operational Program for the Information Society s aims to implement the essential features of the White Paper of the Greek government entitled « Greece in the Information Society » of February 1999.

positive effect and increase competition in the local broadband access market.<sup>27</sup> Moreover, the complementary demand stimulation projects financed under the second axis should ensure an adequate equilibrium between supply of and demand for broadband services in remote and underserved areas of the country.

(55) Although, as regards the supply side, it could be argued that tariff and access regulation imposed by the Greek regulator might be another instrument of state intervention, the fact remains that *ex ante* regulation, although necessary, is not a sufficient instrument to enable the supply of broadband services in rural and remote regions. In particular, *ex ante regulation* presupposes the very existence of broadband access infrastructure, the absence of which is at the heart of the notified measure. Likewise, where such infrastructure exists, alternative providers need to combine the use of (regulated) wholesale products from the incumbent (full or shared local loop unbundling) with own network investments which may not be profitable in areas where demand is low.

(56) On balance, in view of the absence or very limited availability of broadband in rural and remote areas of Greece, the Commission considers that the development of broadband infrastructure by means of State co-financing is an appropriate instrument to achieve the set objectives.

***(b) The aid provides the right incentives to operators***

(57) The State co-financing provides a significant and direct investment incentive for the operators benefiting from the measure to roll out broadband access infrastructure. According to the Greek authorities, network operators have already expressed a high degree of interest to submit projects under the notified measure.

***(c) Proportionality***

(58) The Greek authorities have designed the measure in a way which minimises the State aid involved and the potential distortions of competition arising from the scheme. In this respect, the Commission notes, *inter alia*, the following positive elements in the design of the notified measure:

*(a) State funding is provided on the basis of an open tender:* The tender is based on the national public procurement rules which in turn are based on the requirements of openness, transparency and non-discrimination. Consequently, any operator which fulfils the requirements of the tender may participate. The tender, seeking the economically most advantageous proposal, will be designed to minimise the cost of investment and the associated public funding, whilst still ensuring an appropriate level of service.

*(b) Wholesale access:* Given that the notified measure only provides aid in areas where broadband infrastructure is not yet available or only the incumbent,

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<sup>27</sup> According to the reply of the Greek authorities, in a first phase, those MANs will interlink only public institutions in each municipality (schools, hospitals, public administration) and in a later phase they would be open to all service providers for the provision of broadband access and digital services to end-users. Although, bidders for axis 1 will not be able to use the above MAN infrastructure in order to deploy and expand their own local access networks (since the former will not be available at the time of the tender), they could still take them into account on the basis of a long term, sustainable, overall business plan for areas other than those of Athens and Thessalonica,

OTE, is present, most beneficiaries will be deemed to have a privileged position as regards the provision of wholesale broadband services in the specific areas concerned once the infrastructure is in place and the provision of services starts. Although not necessarily having significant market power within the meaning of Article 7 of the Framework Directive<sup>28</sup>, such operators will still be required to provide wholesale access to third parties for a period of 5 years. The latter is an important and pro-competitive element since bidders who may fail to win any of the 7 lots could still benefit from the said wholesale access obligation in order to offer broadband services at affordable prices to customers in the areas in question. Moreover, the involvement of the NRA in the setting of the access pricing (retail minus) constitutes a further safeguard as to the effectiveness of the access regime imposed on the selected bidders.

- (c) *Technological neutrality*: The measure is technologically neutral, i.e., it does not favour a priori any given technology. Successful bidders may decide to deploy fixed or wireless technologies or any combination thereof.
- (d) *Limited aid amounts*: The eligible operators are expected to contribute a sizeable amount of the total investment costs. Public financing is limited to a maximum of 50% of the total costs of each project. Although an operator may choose to rely on existing wholesale products to cover a specific area, such expenses are not eligible costs. Although infrastructure leasing (that is rental of unbundled local loops and leased lines) constitute “eligible expenses”, overall, the aid intensity mechanism is designed in a such a way as to ensure that successful bidders contribute at least 60% of the capital investment costs (excluding infrastructure leasing). Moreover 25% of total investment costs should represent own (not borrowed) capital. Therefore the notified measure leads to substantial infrastructure investment by the selected operators in the targeted areas.
- (e) *Combination of supply and demand-side measures*: The Commission notes that the measure combines supply and demand-side measures to encourage service take-up and sustainability of the provision of broadband services also after the end of the state funding.
- (f) *Duration*: Whilst the measure aims at ensuring sustainable solutions, the funding will be provided only for a limited duration that is for projects implemented until 31.12.2008.
- (g) *Monitoring*: Comprehensive mechanisms are put in place to ensure the ex-post monitoring of the broadband investments and the fulfilment of the tender requirements by the successful bidders.

### **3. The distortions of competition and the effect on trade are limited, so that the overall impact of the measure is positive**

(59) The Commission concludes that the notified measure will offset a geographical and commercial handicap and is objectively justified to address the lack of

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<sup>28</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

availability of broadband services due to the insufficient density of potential and actual subscribers to make delivering broadband services economically viable on a purely market-driven basis. The ultimate objective is to enable both businesses and citizens in remote and rural areas to avail themselves of affordable broadband services.

(60) In view of the characteristics of the measure, and given the specific characteristics of the Greek broadband access market, the overall impact on competition is deemed to be positive. On the effect on trade, the Commission does not identify negative spill-overs for other Member States.

(61) The Commission therefore considers that the overall effect of the measure to support investments in broadband infrastructure to enable the provision of broadband services in underserved regions of Greece is deemed to be positive. The measure is also clearly in line with the objectives of Article 87 (3) (c) EC Treaty as it facilitates the development of certain economic activities (retail and, indirectly, wholesale broadband services) in certain economic areas. The intervention is designed in a way that does not distort competition or affect trading conditions to an extent contrary to the common interest.

## **Conclusion**

(62) In the light of the above, the Commission has come to the conclusion that the aid involved in the notified measure is compatible with Article 87(3)(c) of the EC Treaty.

## **VI. DECISION**

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure entitled “Broadband access in underserved territories of Greece” is compatible with Article 87(3)(c) of the EC Treaty.

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State Aid Greffe  
Rue de Spa 3  
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Yours faithfully,

For the Commission

*Neelie KROES*

Member of the Commission