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Subject: **State aid SA.38025 (2014/NN) – Italy**
 Prolongation of the National Broadband Plan Italy

Sir,

I. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the “*Prolongation of the National Broadband Plan Italy*”, and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) of the TFEU.

II. PROCEDURE

- (2) By decision of 24 May 2012 the Commission authorised a State aid scheme notified by Italy referred to as the "National broadband plan" (State aid case

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SA.33807 (2011/N) – Italy – National broadband plan; hereinafter the "2012 Decision")¹. In accordance with Article 108(3) TFEU, on 19 December 2013, with a subsequent modification of the notification on 7 February 2014, Italy notified its plans to amend the National broadband plan approved by the 2012 Decision. On 18 February 2014 the Commission requested additional information to which the Italian authorities replied by letter dated 17 March 2014, and on 16 May 2014, to which the Italian authorities replied on 4 June 2014. On 18 June 2014 an informal reminder was sent to the Italian authorities regarding a reply considered incomplete. The Italian authorities provided the missing information on 24 July 2014. On 24 September 2014, a third request for information was sent to the Italian authorities, who submitted a reply on 10 November 2014.

- (3) Under Article 2 of the Procedural Regulation² Member States shall in sufficient time notify any plans to grant new aid. The notification shall be complete, i.e. contain all necessary information in order to enable the Commission to take a decision. In this case, Italy notified the Commission on 19 December 2013 of the prolongation of a scheme which expired on 31 December 2013. Numerous requests for information were necessary in order for the Commission to have all the information necessary to decide on the case. Pending the Commission assessment, the scheme remained in force after its expiry (and therefore after the period for which it had been declared compatible by the 2012 Decision). However, the Italian authorities have indicated that, in practice, the scheme was not implemented after its expiry, waiting for the Commission authorization of the notified amended scheme.

III. CONTEXT

- (4) In its 2012 Decision the European Commission concluded that the Italian National Broadband Plan was compatible with Article 107(3)(c) TFEU, as it complied with the criteria set out in the *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks*³ applicable at the time (the "2009 Broadband Guidelines") . In line with the approved scheme public funding is granted only to non-built-up areas where it is not economically viable for commercial operators to build high-speed networks. After the adoption of the 2012 Decision, revised Broadband Guidelines⁴ (the "new Broadband Guidelines") have entered into force, which are now applicable for the assessment of the amended scheme.

¹ OJ C252 of 22.8.2012.

² Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83 of 27.3.1999, p. 1.

³ OJ C 235 of 30.9.2009, p. 7.

⁴ 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.

IV. DESCRIPTION OF THE MEASURE

- (5) **Objective:** The now notified modification consists of a prolongation of the duration of the National Broadband Plan for basic broadband. The reason for the proposed prolongation is, according to the Italian authorities, that it has been difficult, within the total financial ceiling for the measure (1 471 million EUR), to find the necessary resources to complete the Plan, which envisages funding from sources other than the State, such as the regions and the private sector. The notification of the amended scheme initially introduced by the Italian authorities only contained the prolongation of the duration. During the assessment of the amended measure, the Commission Services made clear to the Italian authorities the need to bring the amended scheme in line with the new Broadband Guidelines. This is particular relevant as regards transparency, competitive selection procedures, technological neutrality, step change, use of existing infrastructure, wholesale access and reporting. The Italian authorities have therefore complemented their notification with additional information and commitments in order to ensure that the scheme is in compliance with the relevant conditions set out in the new Broadband Guidelines. The Commission refers to the 2012 Decision for a description of the National Broadband Plan, which essentially envisages basic broadband of minimum 2 Mbit/s up to 20 Mbit/s to all of the Italian population.
- (6) **Duration:** Until 31 December 2017.
- (7) **Legal basis:** The legal basis of the measure as approved by the Commission on 24 May 2012 includes: Art. 1 Law 18 June 2009 n. 69 "Provisions for economic development, simplification, competitiveness and civil procedure" (OJ n.140 of 19/06/2009); Art. 7 Decree 14 March 2005, n.35 "Urgent provisions for the Action Plan for social, economic and territorial development" (OJ n.62 of 16/03/2005) converted in Law 14 May 2005, n.80 (OJ n.111 of 14/05/2005); Code of Electronic Communications Legislative Decree 7 March 2005 n. 82. The legal basis for the proposed prolongation is Article 14, point 1 of Legislative decree No 179/2012, as converted and amended by Law No 221/2012.
- (8) **Budget and financing instruments:** The proposed modification does not affect the overall budget amount of the aid scheme. Due to difficulties raising additional funding, as mentioned above, an amount of 482 million EUR remains unspent under the scheme, to be allocated during 2014-2017 as follows:

		prolongation			
	to 2013	2014	2015	2016	2017
Total	989	190	160	80	52
Public	927	133	112	56	36.4
Private	62	57	48	24	15.6

- (9) ***Transparency obligations - Public consultation, mapping and analysis of coverage:*** The Italian authorities have confirmed that a public consultation is held every year regarding all the white areas targeted by the public measures, in which operators have to declare what investments they plan in the next three years, and whether they are interested in providing the service if there is state aid: the maps of existing infrastructures set up with public backhauling are updated monthly. The results of the consultation have been published on the internet site of the Ministry of Economic Development before the launch of new tenders, especially those in which there is to be a grant to the operator (model B). The results of the consultation have been given for each area. Interested parties have 30 days to submit observations or draw attention to discrepancies. These observations have been taken into account in the final definition of areas targeted by the measures.
- (10) According to the Italian authorities, the mapping provided for in paragraph 62(a) of the 2012 Decision has been updated each year in the light of the public and private measures realised. Infratel Italia⁵ has updated the mapping of the ‘white’ areas in the country, and has conducted a preliminary study of the coverage of the territory by fixed-network and wireless telecommunications operators, in order to ensure that in the areas considered for inclusion in the programme there are no connectivity services already offered with a download speed of 2 Mbps or more, and that the scheme does not confer a selective economic advantage on particular firms and does not distort or threaten to distort competition. The most recent consultation exercise related to about 30200 municipal and sub-municipal areas currently qualifying for consideration as ‘white’ or ‘grey’ areas. These include areas that qualify for infrastructure measures financed under aid scheme No 646/2009 for the development of broadband networks in rural areas in Italy, approved by the Commission by decision C(2010) 2956 of 30 April 2010. The consultation currently takes place once a year, and takes account of the public and private measures implemented in the meantime under the present schemes or otherwise. The consultation requires telecommunications operators to provide detailed formal plans with regard to the development of network infrastructure in the white areas of the country over the next three years as well as establishing their interest in the National Broadband Plan. Operators that participate in the calls

⁵ ”Infratel S.p.A.”, fully owned by Ministry of Economic Development.

for tenders must submit an operational plan for the deployment of the service and must state which infrastructure is already in place and what the conditions for other operators to access it are. The progress of the national broadband plan for rural areas (646/2009) can be consulted on the website of the Ministry of Agriculture, Food and Forestry Policy, at <http://www.reterurale.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3401>

- (11) **Implementation of the measure:** The situation as regards coverage is described in more detail in the 2012 Decision (in particular recitals 18-37), and summed up here for the purpose of comprehension of this decision: In **Model A**, which provides for the creation of optical backhaul infrastructures; the technology offered to end-users by the operators that buy the fibre can be of different kinds (ADSL, HSDPA, LTE, wireless in general): In terms of areas with access to the fixed network, the public optical backhaul network has reached 1 700 areas, and a further 1 240 are being added under contracts which have already been awarded, and are thus not concerned by the prolongation. **Model B**, which consists of grants to private operators for the deployment of networks and the provision of services: There are over 12 000 areas, in 3 103 municipalities, targeted by the model B grant arrangements; new model B measures to be taken in the period of the prolongation would target 8 719 of these areas, in 2 159 municipalities. A **Model C**, with the purpose of financing access terminals in white areas, consists of providing financial support for the purchase of user terminals to connect to broadband networks in white areas only, i.e. in areas where measures A and B have been unable to deliver the expected "step change".
- (12) As regards the grey areas, the current broadband service there is very poor, in that there are services with maximum capacity of 2 Mbit/s but there is no guarantee of any significant bandwidth where there is simultaneous access and the service is offered only in some parts of the grey area. Furthermore, in these areas the service is offered either only to residential users or in other disjointed areas only to business users. Therefore, in order to ensure a significant 'step change' that the new services require for the future evolution of NGA networks, given that there is no optical backhaul, the plan provides for the establishment of an optical link-up through the model A provided for in the aid scheme that is to be prolonged.
- (13) In order to ensure that a step change in line with the new Broadband Guidelines has been achieved, the Commission has further inquired about the implementation of Model B, particularly for grey areas. The Italian authorities have undertaken to require that any winning bid following tendering procedures regarding projects in grey areas guarantees the provision of speeds of at least 30 Mbit/s, whereas the original scheme aimed at providing the Italian population speed access from 2 up to 20 Mbit/s⁶.
- (14) The increase in the requirements and the 'premium' criterion laid down in the invitation to tender will oblige the operator receiving the aid to establish a major infrastructure investment plan using different technological solutions. Similar solutions have been used in neighbouring black areas outside the scheme examined in this decision, where there are competing broadband networks almost

⁶ Recital 13 of the 2012 Decision.

equivalent to NGA networks. The investment plan has to be contained in the technical and financial tender to be annexed to the request to participate in the invitation to tender. That plan is to be verified and evaluated by the tender committee before the contract is finally awarded. Once the contract is being performed, Infratel shall check carefully whether the level of service required in the invitation to tender matches the actual availability to the population served.

- (15) The invitation to tender prepared by Infratel also provides for further requirements in terms of level of service availability, covering maintenance time, technical assistance, quality of the network (in terms of latency) to guarantee the usability of the available bandwidth, and availability (reduced downtime).
- (16) ***Competitive selection process and most economically advantageous offer:*** The procedure applied is that described in recitals 24 and 25 of the 2012 Decision; for the allocation of the infrastructure deployment works and to obtain the right of use (IRUs) on existing infrastructures, *Infratel* is required to launch a number of **open tender procedures** carried out in accordance with the principles laid down in the Legislative Decree n. 163 of 12 April 2006 and the European Public Procurement Legislation. As regards the allocation of the infrastructure deployment the tenders will concern the amount of lots allocated, the working plan and the construction of the passive broadband network. In this case, the most economically advantageous offer will be selected in accordance to the applicable Public Procurement legislation. The conditions for participation, including requirements to give access to existing infrastructure, are clearly specified in the tender documents and publicly available on www.gareinfratetel.it. Infratel further undertakes to publish on its website www.infratelitalia.it the full list of conditions, in particular those regarding wholesale access prices and access to existing infrastructure.
- (17) ***Technological neutrality:*** The Act on Broadband Construction Aid is technology-neutral, which is also specifically mentioned in the Government proposal related to the Act (176/2009). Thus, the granting of aid is not conditional on the choice of a specific technical solution; aid can be granted to a broadband network based on any technical implementation. Pursuant to section 6 of the Act, the application procedure for state aid shall be non-discriminatory which means, among other things, that the application criteria shall be technology-neutral. As regards the access products offered for the parts of the infrastructure receiving financing, the technologies offered to end-users consumers are of different kinds (ADSL, HSDPA, LTE, WiMax) as well as satellite systems.
- (18) ***Use of existing infrastructure:*** According to the Italian authorities, the use of existing underground infrastructure has allowed substantial savings to be made (up to 40 % of the cost of new infrastructure).
- (19) ***Wholesale access:*** According to the Italian authorities, the invitation to tender for the investment project includes the following statement: *'The obligation to offer wholesale services runs for seven years from the date of entry into operation, while the obligation on the recipient to provide wholesale access to ducts or poles constructed for purposes of the project receiving a public grant described in this invitation to tender runs for their entire lifetime. The times and methods of access must be in accordance with the requirements of the national regulatory authority*

AGCOM. According to the Italian authorities, it is the national regulatory authority that set and regulated the tariffs and conditions for access to public infrastructure laid down in the National Broadband Plan.

- (20) **Reporting:** The Italian authorities will report the key information on aid projects every two years in accordance with Paragraph 78 of the Guidelines. The Ministry of Economic Development, through its in-house company Infratel Italia, provides the Commission with the key information regarding the scheme for purposes of paragraph 78(a) of the Guidelines. A database as referred to in Paragraph 78 of the Guidelines will be set up by December 2014. The information required by Paragraph 78 j) of the Guidelines will be published on the website of Infratel Italia.

V. COMPATIBILITY ASSESSMENT

- (21) As described in recital 47 of the 2012 Decision, the approved aid scheme constitutes State aid in the meaning of Article 107(1) TFEU.
- (22) The now notified modification to the approved scheme concerns a prolongation of the duration of the scheme with no impact on the overall budgetary amount. Moreover, Italy committed to introduce some modifications described above in the implementation of the scheme, in order to comply with the additional requirements provided for in the new Broadband Guidelines.
- (23) The Commission has assessed the compatibility of the original scheme according to Article 107(3)(c) of the TFEU and in the light of the 2009 Broadband Guidelines. Upon publication on 26 January 2013 in the Official Journal, the new Broadband Guidelines entered into force. Following the notification of a modification to the scheme, the Commission shall assess whether the approved scheme, as modified, complies with the new Broadband Guidelines.
- (24) The assessment focuses on those elements of the scheme for which the criteria of the former guidelines have been changed in substance. The Commission reassessed the balancing test with regard to in particular the transparency obligations, the requirement to ensure a "step change" and the additional requirements introduced by the revised guidelines regarding the obligation to provide wholesale access. For the rest, the Commission can refer to the compatibility assessment already carried out in the 2012 Decision.
- (25) With the balancing test, the Commission compares in particular 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.
- (26) In this respect, paragraph 51 of the new Broadband Guidelines clarifies that the subsidised network should ensure a "step change" by which the selected bidder makes significant new investments and the new infrastructure adds significantly new broadband capacity, availability and competition on the market. The approved scheme constitutes such a step change in that it brings basic broadband, capable of offering at least a 2 Mbps/s service, to white areas, where no operator has declared an intention to invest within the next three years, and where

broadband service is absent (256 kbps to 640 kbps) or is not sufficient to meet the needs of the resident population.

- (27) As pointed out in recital 11, for the grey areas covered by the National Broadband Plan, the Plan provides for the establishment of an optical link-up through its Model A, as well as a minimum mandatory bandwidth to users (within its Model B) which has now been increased to 30 Mbps. As follows from recital 11, the measure consists of bringing fibre closer to households, which is a first, significant step towards an NGA network and a true improvement of the network. New technological solutions can now be connected to the network, which will impact on speed, but also the variety of technological solutions can foster competition and potentially create more services at more competitive prices. The problem of the pre-existing network is that speed could go down with many simultaneous users, whereas where fibre is added in the network, this allows for higher speeds .
- (28) The scheme is also in line with the more detailed criteria established in paragraph 78 of the new Broadband Guidelines, such as transparency, competitive selection procedures, technological neutrality, use of existing infrastructure, wholesale access and reporting for the design of the aid for broadband roll-out. As described in detail in recitals 62 to 65 of the 2012 Decision and recitals 8 and 9 of this decision, the Italian authorities have designed the measure in such a way as to minimise the State aid involved and potential distortions of competition arising from the measure. The issue of design of the aid concerns the necessity of the aid. It furthermore concerns its proportionality in terms of mapping, the tender process, technological neutrality, the use of existing infrastructure, wholesale access with full and effective unbundling and full open access to the subsidised network on equal and non-discriminatory terms, price benchmarking, and monitoring provisions.
- (29) Since the reusability of existing infrastructure is one of the main determinants for the cost of broadband roll-out, Member States should encourage bidders to have recourse to any available existing infrastructure so as to avoid unnecessary and wasteful duplication of resources and to reduce the amount of public funding. Any operator which owns or controls infrastructure (irrespective of whether it is actually used) in the target area and which wishes to participate in the tender, should fulfil the following conditions: (i) to inform the aid granting authority and the NRA about that infrastructure during the public consultation; (ii) to provide all relevant information to other bidders at a point in time which would allow the latter to include such infrastructure in their bid. Member States should setup a national database on the availability of existing infrastructures that could be reused for broadband roll-out. In the current scheme, any operator which owns or controls infrastructure in the target area and participates in the tender shall inform the NRA about the infrastructure during the public consultation and provide relevant information to other bidders. The Italian authorities have confirmed that a national database on existing infrastructures will be set up by the end of year 2014.
- (30) As far as pricing is concerned, the wholesale access price should be calculated and set out in accordance with the principles contained in paragraph 78 g) of the new Broadband guidelines, be based on the pricing principles set out by the NRA, and

should take into account the aid received by the network operator. For the benchmark, the average published wholesale prices that prevail in other comparable, more competitive areas of the country or the Union shall be taken or, in the absence of such published prices, 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 should follow the principles of cost orientation pursuant to the methodology established in accordance with the sectorial regulatory framework. A detailed description of the aid project should be sent to the NRA at least 2 months prior to the notification to allow the NRA to have a reasonable period of time to provide its opinion. The Italian authorities have confirmed that the aid granting authority will collaborate closely with the NRA and seek the NRA's advice in setting the wholesale access prices and conditions. The benchmarking criteria will be clearly indicated in the tender documents.

- (31) As stipulated in paragraph 80 of the new Broadband Guidelines, it will also be ensured that for a period of at least seven years the selected network operator will offer effective and full and unbundled access to the subsidised passive network and satisfy all different types of network access that operators may seek.
- (32) The Commission notes in particular that Italy assured that the newly introduced requirements concerning the access to the network set out in paragraph 80 of the Broadband Guidelines is fulfilled in that the right of access to ducts or poles will not be limited in time.
- (33) The aid will also fulfil the new element of transparency required now by paragraph 78 j) of the new Broadband Guidelines. In fact, the Italian authorities will publish on a central website the full text of the approved aid scheme and its implementing provisions, name of the aid beneficiary, aid amount, aid intensity and used technology. Such information shall be kept for at least 10 years and be available for the general public without restrictions.
- (34) In addition, in compliance with paragraph 78 k) of the new Guidelines, the Italian authorities will report, every two years, key information on the aid projects to the Commission.
- (35) In view of the characteristics of the scheme and of the safeguards applied, the overall impact on competition remains positive for essentially the same reasons explained in the 2012 Decision. Indeed, the design of the scheme allows several network operators to use the subsidized infrastructure and to compete. The subsidized infrastructure significantly increases broadband service availability and capacity. The public intervention does not crowd out comparable private investments, as the subsidized network must provide significantly better broadband quality and availability than existing operators are able to provide. The increase in network capacity is expected to stimulate market entry by service providers and the provision of a larger variety of services. On the effect on trade, there does not appear to be any significant negative spill-over for other Member States.
- (36) The Commission concludes therefore that the approved aid scheme offsets a geographical and commercial handicap and is objectively justified to address the lack of availability of high speed broadband services in the targeted areas.

- (37) The Commission concludes that the prolonged, approved aid scheme meets the compatibility criteria set out in the new Broadband Guidelines and is designed in a way that does not distort competition or adversely affect trading conditions to an extent contrary to the common interest and is thus considered compatible with the internal market pursuant to Article 107(3)(c) TFEU.

VI. DECISION

The Commission regrets that Italy put the aid in question into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, not to raise objections to the prolongation of the aid measure on the grounds that it continues to be compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

The Commission reminds Italy of the requirement to submit to it annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to amend/extend this measure.

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 by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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Yours faithfully,
For the Commission

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