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Subject:        **N 245/2009 – Italy**  
                      **Mobile Telephony Bolzano**

## **I. PROCEDURE**

- (1) By letter registered on 23 April 2009, the Italian authorities notified to the Commission their project to fund the infrastructure supporting mobile telephony in uncovered mountainous areas of the Province of Bolzano ("the notified measure" hereafter), pursuant to Article 88 (3) of the EC Treaty. On 22 June 2009, the Commission sent a request for information. Replies were submitted by the Italian authorities on 2 July 2009. Based on the information submitted, the Commission has completed its assessment of the project.

## **II. CONTEXT**

- (2) The territory of the autonomous province of Bolzano is typically alpine: 85.9% is above 1 000 metres and has a strong touristic vocation. While the majority of the population of the province is served by mobile operators offering state of the art mobile services, there are still areas in which such operators have not found it profitable to invest in the necessary infrastructures to ensure total coverage. This is especially the case for peripheral mountainous areas which are not densely populated or in which urbanisation took place only recently (such as new commercial or industrial installations).

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- (3) Some of the uncovered areas are also of touristic interest and this makes mobile coverage all the more important for the safety of citizens and visitors using the ski installations or venturing into the hiking paths. However, despite the relative touristic attractiveness, the seasonality of the practice has not allowed generating the critical mass necessary to attract private investments.
- (4) At the same time, those areas also suffer from digital divide, not being able to benefit either of adequate broadband connection. In this respect, in order to offer widespread access to broadband technology in Alto Adige, the Commission has already approved two aid schemes with decision of 10 October 2007 in case N-437/2007<sup>1</sup> and of 2 July 2008 in case N-250/2008<sup>2</sup>.
- (5) The currently notified measure covers mobile connectivity (including mobile broadband connectivity) for a few additional communes which were not covered by the measures approved by the Commission. The financing of the notified measure results from a successful application for ERDF funding.

### III. SUMMARY DESCRIPTION OF THE MEASURE

- (6) *Objective:* The notified measure supports primarily regional development objectives and is aimed at increasing safety in certain sites of Alto Adige by ensuring availability of mobile coverage in unserved areas. The objectives are pursued through support to a procurement contract for the construction of antennas and other infrastructure which will be made available, on a non discriminatory basis, to all mobile operators for 10 years in order to provide coverage in 5 unserved areas of Alto Adige.
- (7) *Legal basis:* The measure is based on Provincial deliberations no. 646 of 7 march 2005, “Programma operativo per lo sviluppo della Società per l'Informazione in Alto Adige e-Südtirol 2004 - 2008 – Provincial Deliberation no. 3226/2007 implementing Commission's decision no. 3726/2007 approving the regional programme "Competitività regionale ed occupazione FESR 2007-2013" of Alto Adige; Prot. 39.1/11.02.19/133488-87 del 06.03.2009 approving the notified project; Provincial Laws 13 february 1975, n. 16, art.2, lett. o) “Istituzione della RAS Radiotelevisione” – Compiti; 33/1982 “Provvedimenti in materia di informatica nella Provincia di Bolzano”; 18 march 2002, n. 6, art.7, “Norme sulle Comunicazioni” – Infrastrutture comuni; Legislative decree 1° agosto 2003, n.259, “Codice delle comunicazioni elettroniche”;
- (8) *Target areas:* The project is aimed at 5 sites of Alto Adige (Klausberg, Silingia, Speikboden, Fundres and Valgiovo), in which the infrastructure shall ensure fulfilment of the coverage objectives set out by the Provincial authorities. In none of the areas concerned there is adequate mobile coverage and according to the consultation with existing operators carried out by the Italian authorities, nor is there any interest by mobile operators to invest to build the necessary infrastructure. In the concerned communes, there are no affordable broadband services available either. The local population amounts to a

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<sup>1</sup> JOCE C/308/2007

<sup>2</sup> JOCE C/289/2008

few hundred inhabitants, while the figures for tourism vary between about 14.000 (Fundres) and 118.000 (Valle Aurina) per year.<sup>3</sup>

- (9) *Budget and funding instrument:* Funds amounting to EUR 4.136.880 will be allocated to the construction of the mobile infrastructure from funds coming from the ERDF (34,73%), of the Autonomous Province of Bolzano (19,58%) and of the Italian central budget (45,69%).
- (10) *Beneficiaries:* The direct beneficiary of the measure will be the mobile operators gaining access to the antennas. Moreover, since such services will also be available to all users, including business customers, it cannot be excluded that certain undertakings can also benefit from the notified measure.
- (11) *Duration of the measure:* After the construction, the infrastructure will be made available to all mobile operators on a non discriminatory basis, for a period of ten years.
- (12) *Procurement:* The provincial funds will be tendered out in accordance to the existing European and national public procurement legislation. The tender will be organised and conducted by provincial company RAS (Radiotelevisione Azienda Speciale: Public broadcaster for the Autonomous Province of Bolzano as well as the Province's delegate for execution of broadcasting and telecommunication projects). After construction, the antennas and other infrastructure will be put at the disposal of all mobile operators which will in turn pay rental fees of 4.000€/year for Klausberg and 2.500€/year for the other sites.
- (13) *Compliance with state aid rules and non recovered unlawful aid:* The contract is subject to a Commission decision of compatibility with State aid rules. The Italian authorities have also provided a commitment to suspend the payment of the aid to companies that have not reimbursed or put on a blocked bank account any aid, including interests, which the Commission has decided to be unlawful and incompatible.<sup>4</sup>

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

- (14) 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.

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<sup>3</sup> Figures from 2006.

<sup>4</sup> Case C-355/95P, *Textilwerke Deggendorf GmbH (TWD) v. Commission* [1997] ECR I-2549, paragraphs 25-27.

### State resources

- (15) The funds are disbursed by the Autonomous Province of Bolzano. State resources are thus involved.

### Economic advantage

- (16) *Selected telecommunication operators*: All mobile operators will be allowed to benefit from the existence of the infrastructure and of the operating equipment without having to invest their own resources, except for the yearly rental fees. Operators will be able to establish their business in the currently unserved areas of the Alto Adige targeted by the measure on conditions not otherwise available on the market.
- (17) *Local Businesses*: Thanks to the newly established availability of the services, the target areas will also become more attractive as touristic destination, to the advantage of local businesses.

### Distortion of competition

- (18) The intervention of the State alters the existing market conditions by allowing the provision of telecommunication services by the mobile operators. It potentially alters also choices of consumers with regards to the broadband connectivity: a number of firms are likely to subscribe to the services provided by the selected suppliers to the detriment of more expensive market-based solutions (for instance satellite). Therefore, there is a distortion of competition.
- (19) The scheme is also selective in that it is addressed to undertakings active only in certain regions and/or in the provision of mobile services, to the exclusion of other electronic communications services. These selectivity elements also induce a potential distortion of competition.

### Effect on trade

- (20) Insofar as the intervention is liable to affect providers of electronic communications services 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.

### Conclusion

- (21) In view of the above, the Commission considers that the notified measure grants an economic advantage to the selected operator, third party operators and undertakings that exercise an economic activity. The project is publicly funded, distorts competition and has 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.

- (22) Having established that the project involves aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the measure can be found to be compatible with the common market.

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

- (23) The Commission notes that the project aims to ensure the availability and use of mobile telephony and high-speed broadband services in currently uncovered areas of Alto Adige 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.

- (24) 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 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.

- (25) 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 this regard, the Commission considers it appropriate to assess 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?
  - (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?

### **5.1. The support of mobile telephony coverage is in line with the common interest**

- (26) In past years mobile telephony experienced an unprecedented upswing. However, even after introduction of 3G services, this phase of growth and expansion seems to be over and mobile operators have started engaging in competition in existing markets, rather than attempt further expansion where it is less profitable.

- (27) After more than 15 years of diffusion and mass use, mobile telephony is currently widespread across regions in Europe. Yet, certain areas of Alto Adige still lack coverage. Lack of mobile coverage is due, among others, to some of the typical economic problems associated with networks industries: due to economics of density, it is not profitable to invest in areas not readily accessible and where potential demand is low and dispersed. In mountainous and sparsely populated areas of Alto Adige where demand is low and coverage of cost is uncertain or delayed, private operators have so far found it difficult to fund mobile telephony infrastructure, which has a long life and amortisation period. This difficulty is very unlikely to disappear in the future, given that the mobile telephony is a mature market.
- (28) Lack of adequate mobile coverage creates also a risk for the safety of the users of such niche tourist resorts, devoted predominantly to “nomadic tourism” in the uncontaminated and non urbanised valleys targeted by the notified measure.
- (29) Hence, by providing financial support for the establishment of infrastructure to provide state of the art mobile telephony services, including broadband Internet connectivity, in such areas of Alto Adige at the level and price currently included in the nation-wide offer of the operators, the authorities pursue genuine cohesion and development objectives.

## **5.2. Well-designed aid**

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

- (30) For the reasons explained above, it is not commercially interesting for mobile operators to build antennas in the targeted areas. All operators have explicitly stated this fact to the Italian authorities. No regulatory or other instrument is at the disposal of the public authorities to remedy such situation, but a direct intervention to build the necessary infrastructure.
- (31) In view of the limited availability – if at all – of mobile coverage and broadband connectivity in mountainous and remote areas of Alto Adige, the Commission considers that the support provided by the notified measure is an appropriate instrument to achieve the set objectives.

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

- (32) The direct beneficiaries of the aid will be all mobile operators active in the Italian market. They will be required to provide services in the targeted areas at the state of the art level and at the same price available on the national market. Access to the infrastructure at a fee will allow the mobile telephony providers to operate efficiently by minimising estimated losses, leaving no room to inflate tariffs. Therefore, the aid should provide a direct and appropriate investment incentive.

### ***(c) Proportionality***

- (33) The Italian authorities have designed the measure in such a way as to minimise the amount of State aid involved and the potential distortions of competition arising from the measure. In this respect, the Commission notes, inter alia, the following positive elements in the design of the measure:
- (a) *Open tender*: the construction will be tendered out according to the criteria set in the national and European legislation on public procurement.
  - (b) *Non discrimination*: All mobile operators active in the Italian market will be allowed to place their equipment on the antennas so as to provide their telephony and broadband services.
  - (c) *Limitation of the effects on competition*: By enabling all mobile operators to offer their services in a competitive fashion, similarly to the profitable areas in other parts of the country, the notified measure avoids the creation of local monopolies which would have reduced the incentives for the operators to maintain and upgrade the equipments to stand the competitive pressure.
  - (d) *Limitation of tariff discretion*: The mobile operators will have to offer services at the same level of prices practiced in the rest of the country.

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

- (34) The Commission concludes that the notified measure will offset a genuine geographical and commercial handicap of the targeted areas of Alto Adige and is objectively justified to address the lack of availability of mobile and broadband services therein on a purely market-driven basis. The target group of the scheme includes local businesses and citizens as well as tourists, who will benefit from the availability of such services in both their day-to-day business activity and in the quality of life benefits that mobile telephony and broadband availability affords to citizens.
- (35) In view of the characteristics of the project, the overall impact on competition is deemed to be positive. On the effect on trade, due to the limited areas in which the aid will intervene, the Commission does not identify negative spill-over for other Member States.
- (36) On balance, the Commission concludes that the overall effect of the measure is positive. The measure is clearly in line with the objectives of Article 87 (3) (c) EC Treaty as it facilitates the development of certain economic activities (mobile telephony and broadband services) in certain remote and rural 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.

**VI. DECISION**

On the basis of the foregoing assessment, the Commission has decided that the notified aid measure is compatible with Article 87(3)(c) of the EC Treaty.

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

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Yours faithfully,

For the Commission

*Neelie KROES*

Member of the Commission