



EUROPEAN COMMISSION

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SENSITIVE* : *COMP Operations*

Subject: State Aid SA.57496 (2021/N) – Italy – Broadband vouchers for SMEs

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, the Italian authorities notified the measure ‘*Broadband voucher for SMEs*’ (hereafter: the ‘Measure’) on 2 August 2021.
- (2) By letter dated 1 October 2021, the Commission services requested further information and clarifications from the Italian authorities, who replied on 22 October 2021.
- (3) The Italian authorities confirmed that the granting of the aid is conditional upon the authorisation of the Commission of the Measure. The implementing decree of the Measure will be adopted only after the adoption of this decision.
- (4) By letter submitted on 22 October 2021, Italy exceptionally agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have this decision adopted and notified in English.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the Measure

- (5) The Measure is a voucher scheme which aims to cover part of the cost of the procurement of new Next Generation Access (NGA) broadband services subscriptions with a download speed of at least 30 Mbps or to upgrade an existing NGA broadband service subscription (see recitals (23), (24) and (25)) by small and medium enterprises ('SMEs'), as defined by the Commission Recommendation 2003/361/EC¹. The Measure aims to boost SMEs' demand for NGA broadband services that are or will be offered by any eligible electronic communications services providers (see section 2.4.7).

2.2. Legal basis

- (6) The Measure is based on the resolution N. 71/2017 adopted by the Interministerial Committee on Economic Programming (CIPE), which assigned to the Ministry of Economic Development ('MiSe') approx. EUR 1.3 billion to be used to finance demand side measures for broadband services.
- (7) The present decision is an integral part of the legal basis. Pursuant to the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589, new aid measures must not be put into effect before the Commission has taken a decision authorising them.

2.3. Context of the Measure

- (8) Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and for social and territorial cohesion. It supports business efficiencies and growth, ensures that economies can remain competitive, and enables citizens and businesses to benefit from online services and offerings.
- (9) Italy explained that supporting demand for NGA broadband services for SMEs was necessary, even more in the context of the needs arising from the COVID-19 emergency. The Measure aims at ensuring that as many SMEs as possible could have access to effective Internet access connections, which in turn will allow them to access online services with optimal performance.
- (10) According to the Italian authorities, in Italy the demand for NGA broadband services by SMEs is relatively low (even if increasing). Approx. 43% of SMEs use basic broadband connections to internet (*i.e.* connections having a speed below 30 Mbps)², despite wide availability of NGA networks: approx. 73% of the real estate units in Italy are covered with NGA networks, 16% of which are able to provide download speed up to 1 Gbps³.

¹ Commission Recommendation No 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124 of 20.5.2003, p. 36.

² See Observatory of the Italian NRA-Autorità per le garanzie nelle comunicazioni (hereafter: 'AGCOM') n. 1/2021.

³ See maps.agcom.it. Such figures take into account both residential and non-residential real estate units.

- (11) The Measure is part of a comprehensive strategy that Italy has put in place to address the needs of broadband services for citizens and businesses. In particular:
- (a) In June 2016, Italy initiated the implementation of a State aid scheme to support the roll-out of networks capable to support download speeds above 30 Mbps for all households and businesses in those areas where no networks capable to support such speeds were available⁴;
 - (b) In May 2020, Italy launched a voucher scheme addressing low-income families facing difficulties in subscribing to broadband services⁵; and
 - (c) In January 2021, Italy launched a national plan to connect public schools with networks able to provide 1 Gbps symmetric speeds⁶.

2.4. Detailed description of the Measure

- (12) The Measure is a scheme providing direct grants to SMEs in the form of vouchers.

2.4.1. Beneficiaries

- (13) The beneficiaries of the Measure are SMEs that will acquire subscriptions to NGA broadband services capable of ensuring a step-change compared to their current subscribed connectivity as described in detail below (see recital (23)) as well as the electronic communications services providers that will offer subscriptions to the eligible NGA broadband services to the eligible SMEs. Italy estimates that the number of beneficiary SMEs will be approx. between 972,000 and 1.334 million SMEs.
- (14) Prior to the granting of a voucher, SMEs are required to declare that they do not exceed the limits for *de minimis* aid (laid down in Regulation (EC) 1407/2013), taking into account aid either already granted or received or applied for and approved, including the aid applied for within the framework of this Measure.
- (15) The Measure is open to all electronic communications services providers able to provide NGA broadband services as listed in recital (23).
- (16) The Measure will benefit all electronic communications services providers capable of offering the eligible NGA broadband services, irrespective of the fact that they offer the service using their own network or through wholesale access to the network of other operators (such as Open Fiber, TIM, etc.).

2.4.2. Granting authority and implementing body

- (17) The granting authority is the Ministry of Economic Development (hereafter: 'MiSe'). The MiSe will implement the Measure through the in-house company Infratel Italia S.p.A (hereafter: 'Infratel').

⁴ SA.41647 Italy – *Strategia Banda Ultra Larga*.

⁵ SA.57495 *Broadband vouchers for certain categories of families – Italy*.

⁶ SA.57497 *Broadband infrastructure roll-out to connect schools – IT*.

2.4.3. Budget

- (18) The overall budget of the Measure is approx. EUR 610 million.
- (19) The budget is allocated to the Italian regions as indicated in the following table:

REGIONS	Available funds EUR
Abruzzo	28 950 693
Aosta Valley	1 276 609
Apulia	86 627 081
Basilicata	23 023 642
Calabria	44 486 616
Campania	110 560 117
Emilia Romagna	13 957 002
Friuli Venezia Giulia	5 080 410
Lazio	16 086 783
Liguria	6 552 955
Lombardy	21 305 700
Marche	6 182 359
Molise	14 210 611
Piedmont	15 479 926
Sardinia	52 945 679
Sicily	121 299 349
Tuscany	16 064 425
Umbria	5 464 817
Veneto	14 566 065
Province of Bolzano	3 608 832
Province of Trento	2 185 933
TOTAL	609 915 605

2.4.4. Duration

- (20) The Measure will enter into force following the notification of the Commission's approval and will have a duration of one year from this date (*i.e.* no voucher can be activated beyond this date). The Italian authorities may consider at a later stage an extension of this duration, subject to the availability of funds and subject to approval under the State aid rules.

2.4.5. Eligible services, form and value of the vouchers

- (21) Depending on the requirements mentioned in recital (23), the vouchers have a fixed amount of EUR 300, EUR 500 or EUR 2,000 and will cover part of the monthly connection fees and the normal activation fees⁷ for the subscription to NGA broadband services.
- (22) As described in recitals (25)(b) and (25)(c), an additional contribution of EUR 500 can be granted to cover extraordinary set-up costs of the broadband connection

⁷ Normal activation fees do not include any additional or exceptional cost and, in any case, cannot exceed the average activation fee in Italy for the service concerned.

needed to achieve the speed requirements. The extraordinary set-up costs are those linked to non-standard civil engineering activities and must be duly justified.

- (23) The vouchers can be used to subscribe to a new NGA broadband service or to upgrade an existing subscription to NGA broadband services in accordance with table 1.

Table 1 Eligibility for vouchers based on the current and future connection speeds available at the SME's premises

Current download speed (CS)	New download speed (NS)							
	NS < 30 Mbps	30 Mbps ≤ NS < 50 Mbps	50 Mbps ≤ NS < 100 Mbps	100 Mbps ≤ NS < 150 Mbps	150 Mbps ≤ NS < 200 Mbps	200 Mbps ≤ NS < 300 Mbps	300 Mbps ≤ NS ≤ 1 Gbps	NS > 1 Gbps
No connection or CS < 30 Mbps	No	Only if a faster connection is not available	Only if a faster connection is not available	Only if a faster connection is not available	Only if a faster connection is not available	Only if a faster connection is not available	Yes	Yes
30 Mbps ≤ CS ≤ 300 Mbps	No	No	No	No	No	No	Yes	Yes
300 Mbps ≤ CS ≤ 1 Gbps	No	No	No	No	No	No	No	Yes

- (24) The value of the vouchers will be determined on the basis of the average price of the subscription, taking into account the download speed and minimum guaranteed bandwidth of the new connection, regardless of the technology actually used. A summary of the conditions to obtain each type of voucher is summarized in table 2.

- (25) The Italian authorities have indicated that the criteria for determining the amount of the voucher in each case are the following:

- (a) Voucher of EUR 300: for an 18-month subscription ensuring a download speed between 30 Mbps and 300 Mbps; the voucher may be granted in case of a new subscription to NGA broadband services (*i.e.* if the SME concerned does not have any NGA subscription) or to upgrade an existing subscription to NGA broadband services in compliance with the conditions described in table 1. The amount of the voucher can be increased up to EUR 800 only for subscriptions offering 1 Gbps download speed, in order to cover possible extraordinary set-up costs of the line. About 30% of the budget of the Measure is allocated to the financing of this type of vouchers;
- (b) Vouchers of EUR 500: for an 18-month subscription ensuring a download speed between 300 Mbps and 1 Gbps and a guaranteed minimum bandwidth of at least 30 Mbps; the voucher may be granted either in case of a new subscription to an NGA broadband service or to upgrade an existing subscription to NGA broadband services in compliance with the conditions described in table 1. The amount of the voucher can be increased up to EUR

1,000 only for subscriptions offering 1 Gbps download speed, in order to cover possible extraordinary set-up costs of the line. About 60% of the budget of the Measure will be allocated to the financing of this type of vouchers;

- (c) Voucher of EUR 2 000: for an 24-month subscription ensuring a download speed higher than 1 Gbps and a guaranteed minimum bandwidth of at least 100 Mbps; the voucher may be granted either in case of a new subscription to an NGA broadband service or to upgrade an existing subscription to NGA broadband services in compliance with the conditions described in table 1. The amount of the voucher can be increased up to EUR 2,500 in order to cover possible extraordinary set-up costs of the line. About 10% of the budget of the Measure will be allocated to the financing of this type of vouchers.

Table 2 Types of vouchers

New download speed (NS)	Minimum guaranteed bandwidth ⁸	Voucher	Contribution to possible set-up costs of the line ⁹	Duration of the subscription	Allocation of the budget ¹⁰
30 Mbps ≤ NS < 300 Mbps	N.A.	EUR 300	Not eligible	18 months	20%
300 Mbps ≤ NS ≤ 1 Gbps	N.A.	EUR 300	Up to EUR 500 only for connections offering 1 Gbps download speed	18 months	20%
300 Mbps ≤ NS ≤ 1 Gbps	30 Mbps	EUR 500			50%
NS > 1 Gbps	100 Mbps	EUR 2 000	Up to EUR 500	24 months	10%

- (26) The Italian authorities clarified that the value of the vouchers has been determined taking into account the average price of broadband services available on the

⁸ The Italian authorities clarified that, in order to ensure that the speed targets will be always provided even in case of network congestion, it is necessary to require an obligation to ensure a guaranteed minimum bandwidth equal to at least the values mentioned in the table.

⁹ Such costs shall be justified by the electronic communications services provider concerned and checked by Infratel.

¹⁰ The allocation of the budget among the three categories of vouchers has been made taking into account the current level of connectivity and subscriptions of the different types of micro, small and medium-sized enterprises. In any event, under certain circumstances, the Interministerial Committee for the Digital Transition, in agreement with the Regions, may revise the allocations at stake and will inform the Commission of any revision.

market¹¹. On average the vouchers will cover approx. 40% of the price of the subscription¹².

(27) Further eligibility conditions for granting the voucher are the following:

- (a) The voucher is used for a subscription that ensures a substantial increase in the connection speed of the beneficiary (see table 1). This is to avoid that the voucher could be used by SMEs only to change provider or the contract holder¹³;
- (b) If more than one NGA network providing less than 1 Gbps is available at the premises of the SME concerned, the voucher can only be used to subscribe to the connection with the highest possible speed¹⁴. If the SME concerned already has a connection providing at least 1 Gbps, the SME can only use the voucher to increase the guaranteed bandwidth (see table 2) or to obtain such a bandwidth if it is not already guaranteed¹⁵. In all cases, the Italian authorities will take into account not only the connections already available at the SME's premises at the time the voucher is requested, but also *ad hoc* connections that a provider commits to realise and activate within 90 days to connect the SME concerned;
- (c) Each SME (identified by means of Tax Code or VAT number) may receive only one voucher (also in case of multi-site companies);
- (d) The voucher will be paid by the public authorities on a monthly basis directly to the electronic communications services provider chosen by the SMEs to provide the service. The value of the voucher will be deducted by the provider from the SMEs invoice. If the beneficiary SMEs change provider before the expiry of the duration of the subscription (*i.e.* 18 or 24 months, depending on the type of voucher, as per table 2), the amount of the voucher which has not been used will be transferred to the new

¹¹ In particular, according to the Italian authorities, the average monthly fee is equal to approx. EUR 35 for connections without minimum guaranteed bandwidth; to approx. EUR 82 for connections with minimum guaranteed bandwidth of at least 30 Mbps; to approx. EUR 140 for connections with minimum guaranteed bandwidth of at least 100 Mbps. The average set-up cost of the line is equal to approx. EUR 200 for connections with minimum guaranteed bandwidth of at least 30 Mbps and to approx. EUR 240 for connections with minimum guaranteed bandwidth of at least 100 Mbps.

¹² Italy clarified that the calculation of the average price of the services in Italy is based on publicly available information, *i.e.* electronic communications services providers' websites.

¹³ In order to ensure the fulfillment of the requirement at stake, each SME eligible to benefit from the voucher shall send to the new provider of their choice a '*service level certificate*' issued by their current provider, which shows the current level of connectivity (*i.e.* at the time of the request). The new provider shall consult the AGCOM Broadband Map (*i.e.* <https://maps.agcom.it>), in order to verify that the new connection fulfills the eligibility criteria described in table 1. The fulfilment of these conditions will be verified by Infratel.

¹⁴ For example, if two NGA networks are available, one able to provide download speed above 300 Mbps, the other one able to provide download speed below 100 Mbps, the voucher can only be used to subscribe to the first one.

¹⁵ This is because a connection providing 1 Gbps is able to support various performance in terms of bandwidth, whereas the Italian authorities require a minimum guaranteed bandwidth to ensure that SMEs can benefit from the speed targets even in case of network congestion.

subscription, provided that the new subscription will provide at least the same download speed;

- (e) After the expiry of the minimum duration of the subscription for which the voucher was used, the subscription should be deemed automatically renewed unless the concerned SMEs will decide to terminate the contract. 30 days before the expiration date, the current electronic communications services provider will have to inform the concerned SME of the above condition.

2.4.6. *Technological neutrality*

- (28) The voucher will be technologically neutral. SMEs will be able to use the voucher to procure available NGA broadband services in compliance with the above-mentioned conditions irrespective of the technology used by the provider.

2.4.7. *Implementing procedure*

- (29) Infratel will carry out all the administrative and procedural tasks linked to the management of the Measure. In particular, Infratel will:
 - (a) Develop and manage the dedicated on-line platform for the implementation of the Measure (hereafter: 'Platform'). All electronic communications services providers capable of providing the eligible NGA broadband services will have the possibility to request to be included in the Platform (see recital (30)) and the SMEs will have the possibility to consult the list of the providers able to provide the eligible services (see recital (46));
 - (b) Check the fulfilment of the eligibility criteria by electronic communications services providers and SMEs;
 - (c) Manage the payment of the vouchers.
- (30) The main procedural steps of the implementing procedure are the following:
 - (a) The interested provider shall apply for being enlisted in the Platform as eligible provider (accompanying the application with the relevant documents);
 - (b) Infratel checks if the provider fulfils the eligibility criteria and informs the latter whether its application has been accepted¹⁶;
 - (c) Eligible SMEs submit requests for vouchers directly to the provider of their choice via any available sales channels (*e.g.*, websites, shops, etc.);
 - (d) The provider verifies the availability of vouchers on the Platform;
 - (e) In case of availability, the provider collects all the information needed to activate the voucher, concludes the contract with the SME and sends the relevant information to Infratel through the Platform;

¹⁶ Italy clarified that, as of 10 July 2021, 168 electronic communications services providers were already included as eligible electronic communications services providers in the Platform.

- (f) Infratel verifies whether the request is eligible for the voucher and, if so, pays the voucher on a monthly basis to the provider retaining 5% of the amount as a guarantee for the fulfilment of the provider's obligations. This latter amount is paid to the provider upon expiry of the minimum duration of the subscription (*i.e.* at the end of the 18- or 24-month subscription, depending on the type of voucher).
- (31) The MiSe, in cooperation with Infratel and AGCOM, will perform checks on the fulfilment of the eligibility criteria by both SMEs and electronic communications services providers. Should the MiSe conclude that the eligibility criteria are not fulfilled, the SME or the electronic communications services provider responsible for the infringement of the eligibility criteria will have to return the amount of the voucher already granted (save further fines as provided for by the relevant national law).

2.5. Mapping

- (32) All areas of Italy where there are existing networks able to provide the eligible NGA broadband services will be eligible for the purposes of the Measure. The Italian authorities will set up an information system that will perform all necessary checks and authorizations (see section 2.4.7).
- (33) The Italian authorities carry out on a regular basis a mapping exercise to assess the availability of broadband networks. According to the Italian authorities, at the end of 2020, approx. 73% of the real estate units were covered with NGA networks, 16% of which were covered by networks able to provide download speed up to 1 Gbps¹⁷.

2.6. Public consultation

- (34) Italy carried out a public consultation on the Measure, which took place between 31 July and 7 September 2020 and was published on the national website of the Italian government for the public consultations. The public consultation invited any potentially interested provider or stakeholder to provide comments. 23 responses were received and assessed¹⁸. The submissions mainly concerned the following six topics.
- (35) *Establishment of an ad hoc technical discussion table.* The electronic communications services providers (and their trade associations) asked for the establishment of an *ad hoc* technical discussion table with MiSe, Infratel and AGCOM, aimed at finding solutions on the issues raised in context of the public consultation (see, for example, the technical issues mentioned in recitals (36)-(40)). The Italian authorities accepted the request. In the period September-

¹⁷ The Italian authorities have provided the Commission with the data concerning the coverage of the different networks able to support the eligible NGA broadband services (including FTTH, FWA, FTTC) currently deployed and commercialised in Italy. The Italian authorities also clarified that in view of the possibility to build ad-hoc connections, the percentage of premises that could benefit from connections providing more than 1 Gbps could be higher than 16%.

¹⁸ In particular, the following stakeholders provided comments on the Measure: AIIP, AIRES, Assoprovider, Blunova/Nova Quadri, Colt, Confagricoltura, Eolo, Fastweb, Free Modem Alliance, Hal Service, Iliad, Irideos, Linkem, MediaWorld, Open Fiber, OpenSky, Retelit/RDS, Sky, Tiscali, TIM, Unione Nazionale Consumatori, Vodafone and WindTre.

December 2020 weekly meetings of the *ad hoc* technical discussion table took place, during which certain refinements of the Measure have been adopted.

- (36) *Responsibility for verifying the fulfilment of the eligibility criteria.* The electronic communications services providers requested to clarify that they are not responsible for any misleading information provided by the SMEs with regard to (i) the requirements for obtaining the voucher, (ii) the declaration that the SME has not already received any broadband connectivity voucher or State aid exceeding *de minimis* levels (see recital (14)), and (iii) the fulfilment of the requirement of the step-change in the connection speed. The Italian authorities clarified that, according to the implementing procedure, the electronic communications services providers are not required to verify the declarations made by the potential beneficiary SMEs, since such checks are carried out by Infratel in cooperation with the competent authorities. Should Infratel and the competent authorities conclude, further to a monitoring check, after a voucher was issued (see recital (31)) that, despite their initial assessment, a potential beneficiary SMEs does not meet the eligibility criteria, the provider concerned will nevertheless obtain the payment of the voucher for the months in which the beneficiary SME used their services. The Italian authorities will only recover the corresponding amount from the concerned SME which unduly benefited from the voucher.
- (37) *Migration and portability of vouchers.* Some electronic communications services providers requested that, in the event of migration (*i.e.* change to a new electronic communications services providers during the minimum duration of the subscription for which the voucher was used), the new provider (recipient of the voucher) should reimburse the previous provider (donator of the voucher) the costs incurred in the period during which the service was provided to the beneficiary SME, if the SME decided to migrate to another provider before the expiry of the minimum duration of the subscription (*i.e.* 18 or 24 months, depending on the type of voucher). The Italian authorities accepted the request.
- (38) *Identification of the connection with the highest available speed at the SME's premises.* Some electronic communications services providers expressed concerns about the reliability of the AGCOM mapping website with regard to the identification of the connection with the highest speed available at the SME's premises. In order to address this issue, the Italian authorities indicated that AGCOM had further improved the mapping website to ensure that accurate information on all electronic communications services providers and the speeds available on the Italian territory is available¹⁹.
- (39) *Criteria for differentiating the amount of the vouchers.* Some electronic communications services providers requested that the Measure identifies the criteria for determining the value of the voucher applicable in each individual case in an objective manner. According to the Italian authorities, the criteria (see recitals (23) and (25)) clarify in an objective manner the requirements for granting each type of voucher, in relation to the speed connection available at the SME's premises.
- (40) *Freedom of choice of the modem.* Responding to the requests of certain electronic communications services providers, the Italian authorities clarified that the

¹⁹ See also recital (28)b on the possibility to connect SMEs with a dedicated connection.

principle of freedom of choice of the modem by the end user, already enshrined in the AGCOM Decision No. 348/18/CONS, would be applied also in the context of the Measure.

2.7. Market assessment

- (41) To limit the risk that the Measure may unduly distort competition, Italy carried out a market assessment to identify the eligible electronic communications services providers active in different areas and assess the impact of the functioning of the Measure in particular with regard to the eligibility criteria for benefiting from the vouchers based on the current and future connection speeds available at the SME's premises (see recital (23)).
- (42) On the basis of the market assessment, the Italian authorities consider that the Measure would not confer a disproportionate advantage to certain electronic communications services providers to the detriment of others. The Measure would benefit all electronic communications services providers capable of offering eligible connection speeds (see recital (23)), irrespective of the fact that they offer the service using their own network or through access to the network of other operators (such as Open Fiber, TIM, etc.).
- (43) The Italian authorities also assessed whether the requirement of using the voucher only to subscribe to the connection with the highest available speed at the SME's premises would not confer an undue advantage to any operator, in particular to the incumbent TIM, to the detriment of challenging electronic communications services providers.
- (44) The Italian authorities clarified that in their view the Measure would not favour the Italian incumbent (TIM). The voucher can only be used to subscribe to the connection with the highest possible speed, therefore mainly (even though not exclusively, considering the technological neutrality of the Measure) to FTTH connections. In the retail market for FTTH access, TIM is the fourth player with a limited share (approx. 15.6%); Fastweb (30.1%), Vodafone (24.3%) and Wind Tre (21.8%) have higher market shares²⁰.
- (45) Moreover, the Italian authorities emphasises that the Italian retail market is traditionally characterised by the presence of many electronic communications services providers that actively compete with each other. As the voucher is a fixed amount, the electronic communications services providers will continue to have an incentive to compete on the economic terms of their respective offers. Finally, all major operators in Italy, including TIM, have wholesale access obligations, pursuant to the regulatory framework, which allows access seekers to provide similar services with those provided by the network operator.

2.8. Transparency

- (46) The Italian authorities committed to comply with applicable transparency requirements. In particular, the information concerning the Measure will be published on the websites of both MiSe and Infratel and will be updated for the entire duration of the Measure. All electronic communications services providers enlisted in the Platform will be included in an online registry accessible to the

²⁰ See AGCOM Observatory n. 1/2021.

public. The Italian authorities further submit that the public consultation has strengthened the transparency of the Measure.

2.9. Reporting

- (47) The Italian authorities commit to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589²¹ and to maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or a different period as may be fixed in the request.

2.10. Monitoring

- (48) The Italian authorities committed to closely monitor the implementation of the Measure during its entire duration. As clarified in recital (31), the granting Authority in cooperation with Infratel will regularly monitor and review the project's sound implementation by performing checks on the fulfilment of the eligibility criteria by both SMEs and electronic communications services providers.

2.11. Cumulation

- (49) The Italian authorities confirmed that no other State aid measure would cover the same costs eligible under the Measure. Irrespective of which public authority is granting aid in Italy, the Italian authorities will ensure that the total aid granted is accounted for, and compatible with, State aid rules.

2.12. Incentive effect

- (50) As described in recital (9), the Italian authorities indicated that State support was needed to incentivise the take-up by SMEs of eligible NGA broadband services, in particular to address the needs arising from the COVID-19 emergency (e.g. teleworking and use of online services). According to the Italian authorities, without any State interventions, the take-up by SMEs of eligible NGA broadband services would remain more limited and would take a longer time.

2.13. Evaluation plan

- (51) Aid schemes with large aid budgets (i.e. annual budget above EUR 150 million), containing novel characteristics or when significant market, technology or regulatory changes are foreseen may require an evaluation in order to verify (i) whether the assumptions and conditions which led to the compatibility decision have been realised; (ii) the effectiveness of the aid scheme in light of its predefined objectives; (iii) its impact on markets and competition and that no undue distortive effects arise under the duration of the aid scheme that is contrary to the interests of the Union²².

²¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

²² See Commission Staff Working Document, *Common methodology for State aid evaluation*, SWD (2014) 179 final.

- (52) The Measure, whose budget is equal to approx. EUR 610 million, fulfils the criteria of being an aid scheme with a large budget, hence it should be subject to an evaluation.
- (53) However, taking into account the short duration of the Measure (one year starting from the Commission's approval), the Italian authorities consider that a proper evaluation plan could not be completed in due course²³. Furthermore, the Italian authorities clarified that to carry-out an evaluation plan for a measure with such a short duration would have resulted in an excessive and disproportionate burden.
- (54) Italy commits to prepare and submit an evaluation plan, should it decide to modify or extend the duration of the Measure in the future (see recital (20)).
- (55) In any case, after 4 months from the start date of the implementation of the Measure, the MiSe will send to the Commission a report describing the impact of the Measure on the market.
- (56) The report will include information on: (a) levels of connectivity for which vouchers have been used and related step-changes; (b) the number of SMEs and of electronic communications services providers benefitting from vouchers, broken down by size of voucher, including take-up rates and price evolution; (c) possible decisions to reshape the allocation of funds on the basis of the different levels of connectivity.

2.14. Opinion of the Italian Competition Authority

- (57) On 1 September 2020, the Italian Competition Authority (hereafter: 'ICA') issued an opinion on a previous version of the Measure pursuant to Article 22 of Law No 287/1990. On a general note, the ICA agreed that the measures supporting the demand for NGA broadband services are a tool to promote effective competition at both the wholesale and retail level.
- (58) With specific regard to the Measure, the ICA suggested the following main adjustments:
 - (a) Adoption of rules aimed at (a) ensuring the right of the beneficiary to change provider for free also during the period of the minimum duration of the subscription, and (b) prohibiting any form of contractual lock-in;
 - (b) Amendments of the eligibility criteria concerning the connection speed. In particular, according to the ICA, the voucher should be granted only for subscriptions with connection speed of at least 100 Mbps and the requirement of the connection with the highest available speed at the SME's premises should be removed²⁴.

²³ Should the Italian authorities decide to extend the duration of the Measure, the MiSe will conduct the evaluation pursuant to the *Staff working document on common methodology for State aid evaluation* of 28 May 2014, SWD (2014) 179 final.

²⁴ In the ICA's view, such criterion could benefit electronic communications services providers owing the relevant infrastructures as opposed to other electronic communications services providers capable of offering a connection speed of at least 100 Mbps even without having their own infrastructure. Moreover, the information requirements imposed on the beneficiaries with regard to the pre-existing

- (59) As described above (recital (37)), the Italian authorities have followed the first proposal.
- (60) As regards the second proposal, the Italian authorities pointed out that, following an in-depth analysis of the potential beneficiaries of the Measure, the minimum connection speed of 30 Mbps appear to be more appropriate to ensure the achievement of the objectives of the Measure while preserving competition on the markets concerned²⁵.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of the aid

- (61) According to Article 107(1) 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 internal market’*.
- (62) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an undertaking, (ii) the measure has to be granted through State resources and be imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

3.1.1. Undertaking

- (63) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.²⁶
- (64) The final beneficiaries of the Measure are SMEs that will use the vouchers to procure the eligible services. SMEs engage in economic activities and thus are undertakings.
- (65) Eligible electronic communications services providers will also benefit from the Measure, as they will be able to offer their services to a large number of users. The Measure may result in expanding the customer base of the eligible electronic

level of connectivity would be excessive and capable of discouraging the beneficiaries from using the voucher, jeopardising its effectiveness.

²⁵ In particular, the Italian authorities note that: (i) NGA networks having a connection speed of at least 100 Mbps are not available across the entire Italian territory and, thus, the ceiling of at least 30 Mbps would be needed to widen as much as possible the number of potential beneficiaries of the Measure; (ii) the budget of the Measure and, consequently, the number of potential beneficiaries is high; therefore, each provider would be in the position to actively compete for the acquisition of the beneficiaries; (iii) the information requirements concerning the pre-existing level of connectivity are neither excessive nor capable of discouraging the beneficiaries from using the voucher, since such information would be easily available through the AGCOM mapping website.

²⁶ Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI:EU:C:2006:8, § 107.

communications services providers and in increasing the sale/take-up of services provided. Electronic communications services providers are undertakings.

3.1.2. *State resources and imputability*

- (66) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.²⁷ As described in recital (19), the Measure is financed from the budget of Italy. The financing is allocated to the beneficiaries under the control of the MiSe (i.e. the Granting authority). MiSe will perform checks on the fulfilment of the eligibility criteria by both SMEs and electronic communications services providers (see recital (31)).
- (67) Hence, State resources are involved and the Measure is imputable to the State.

3.1.3. *Economic advantage*

- (68) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention²⁸.
- (69) The Measure confers an economic advantage to the eligible SMEs and to the electronic communications services providers of eligible NGA broadband services, under conditions that would not be available under normal market conditions (see Section 3.1.1). The Measure reduces the costs for the eligible SMEs, by lowering their costs for the subscription to NGA broadband services. Also, the Measure confers an advantage to eligible electronic communications services providers, by allowing them to strengthen their market position and offer services to a larger number of customers.

3.1.4. *Selectivity*

- (70) To fall within the scope of Article 107(1) TFEU, a State measure must favour ‘*certain undertakings or the production of certain goods*’.
- (71) In the case at hand, the Measure is selective because:
- (a) Final beneficiaries are limited to the eligible SMEs, as defined by the Commission Recommendation 2003/361/EC, namely the SMEs that fulfil the eligibility conditions of the Measure;
 - (b) As concerns electronic communications services providers, it confers an advantage to undertakings that are active only in the electronic communications sector and who offer NGA broadband services of a certain quality.

²⁷ Case C-482/99 *France v Commission* (hereafter: ‘*Stardust Marine*’) ECLI:EU:C:2002:294.

²⁸ Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, § 41.

- (72) The provision of electronic communication services is a liberalised economic activity usually conducted by commercial operators on market terms, within the regulatory framework, without State support.
- (73) It follows that the Measure confers a selective economic advantage to the eligible SMEs and to the electronic communications services providers able to provide the eligible services to the SMEs.

3.1.5. *Distortion of competition and impact on trade*

- (74) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case-law of Union courts, the concept of ‘*effect on trade between Member States*’ is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that ‘*[i] n particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid*’²⁹.
- (75) The Measure applies to the telecommunications sector, which is subject to intra-EU and international competition. As the Measure gives an economic advantage to eligible SMEs and eligible electronic communications services providers, it strengthens the competitive position of its beneficiaries and may distort competition.
- (76) Beneficiaries (both SMEs and electronic communications services providers) are active in sectors in which intra-Union trade exists. In particular, the electronic communications sector has been the object of a significant process of liberalisation at the level of the Union.
- (77) It must therefore be considered that the Measure is capable of distorting competition and has an effect on trade between Member States.

3.1.6. *Conclusion on the existence of aid*

- (78) In view of the above, the Commission considers that, as the Measure is imputable to the State, involves State resources, provides a selective advantage to certain beneficiaries, distorts or threatens to distort competition in the internal market and affects trade between Member States, the Measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Lawfulness of the Measure

- (79) By notifying the Measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.3. Compatibility of the Measure

- (80) The Commission assesses the compatibility of the Measure pursuant to Article 107(3)(c) TFEU, according to which: ‘*aid to facilitate the development of certain*

²⁹ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, recital 41.

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 internal market. Thus, in order to be declared compatible, first, the aid must be intended to facilitate the development of an economic activity (or area) and, second, it must not adversely affect trading conditions to an extent contrary to the common interest³⁰.

3.3.1. Contribution to the development of an economic activity

- (81) The Italian authorities have submitted that the Measure facilitates the development of the economic activity of both the eligible SMEs and the electronic communications services providers.
- (82) In particular, the SMEs, which constitute an essential part of the Italian economic system, will have an incentive to subscribe to eligible NGA broadband services. They will benefit from online services and offerings and, at the same time, will be able to provide high quality online services, thereby developing their activities through the use of effective connections with optimal performance, even more necessary in the context of the COVID-19 emergency.
- (83) On the other hand, electronic communications services providers will have the opportunity to increase sales of eligible NGA broadband services.
- (84) As described in section 2.12, the Measure will have an incentive effect: the voucher will only cover a part of the monthly fee (and of the set-up costs of the line, where justified) and the Measure will incentivise the take-up by SMEs of eligible NGA broadband services. Without the Measure the take-up by SMEs of eligible NGA broadband services would remain more limited and would take a longer time. The Measure will also have an incentive effect on the electronic communications services providers that will have an incentive to adjust their marketing strategy in order to acquire as clients the SMEs benefiting from the vouchers.
- (85) There are no elements which suggest that the Measure or the activity financed entails a violation of relevant provisions of Union law.
- (86) Based on the above, the Commission considers that Measure may effectively facilitate the development of a range of economic activities by supporting the take-up of eligible NGA broadband services.

3.3.2. Absence of undue restriction of trading conditions to an extent contrary to the common interest

- (87) The Measure will have positive effects in that it will facilitate access of SMEs to eligible NGA broadband services which are necessary in the modern society and the digital economy. This will enable SMEs to reap the benefits of performant digital connectivity, by improving access to an essential means of communication and participation in society and economy, thereby improving social and territorial cohesion. The Measure will provide support to address insufficient take-up by SMEs, taking into consideration the results of the public consultation (see section 2.6). The Measure will also contribute to the achievement of objectives of Union digital policy, in particular the objective of promoting connectivity and access to,

³⁰ Judgment of 22 September 2020, Case C-594/18 P, Austria v Commission (Hinkley Point C), ECLI:EU:C:2020:742, para. 19.

and take-up of very high capacity networks by all citizens and businesses of the Union.

- (88) As described in recital (10), the Measure is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself. Based on the data provided by the Italian authorities, in Italy the demand for NGA broadband services by SMEs is relatively low (even if increasing), despite a large availability of NGA networks. The current take-up level is a strong indicator that without the Measure, SMEs are unlikely to change their behaviour and purchase eligible NGA broadband services.
- (89) The Measure is an appropriate means to pursue the objective of encouraging the take-up of more performing services and speeds thereby changing end-users preferences. The Measure, by lowering the cost of subscribing to eligible NGA broadband services in Italy is expected to play an important role in increasing the take-up of such services.
- (90) The aid is proportionate and limited to the minimum necessary to attain its objective. In light of the market assessment described in Section 2.7, the Measure is not expected to distort competition in the economic sectors concerned. The Italian authorities have demonstrated that the design of the Measure will prevent conferring a disproportionate advantage on one or more specific electronic communications services providers to the detriment of others, also in the light of the wholesale access obligations provided by the relevant national regulation and of the business model of Open Fiber (*i.e.* wholesale-only operator).
- (91) The Measure is technologically neutral (see section 2.4.6). SMEs are free to choose the provider capable of providing the eligible services, irrespective of the technology used for providing the services. The Italian authorities have duly identified objective criteria for determining the value of the voucher applicable to each individual case. The Italian authorities will ensure that all technologies capable of providing the eligible speeds are eligible. The objectives of the Measures are defined in reference to speed capabilities without a priori discriminating or excluding any technological solutions that can support eligible NGA broadband services. Therefore, the Measure is technologically neutral and ensures equal treatment of eligible electronic communications services providers.
- (92) Moreover, the voucher will only cover a part of the monthly fee (and of the set-up costs of the line). Certain electronic communications services providers submitted that the voucher could distort competition in favour of the electronic communications services providers capable of offering fastest connections, since the beneficiary could be pushed to subscribe to such connections only with a view to use the voucher (and not because it has a real interest in higher connection speed). In this regard the Italian authorities have carried out a detailed market assessment and public consultation (see section 2.7) with a view to identify any possible undue distortive effect of the Measure on the market concerned including regarding the existing wholesale regulatory obligations pursuant to the regulatory framework. On this basis, it can be concluded that any such effect, if present, is limited and justified by the objective of fostering the adoption of highest-quality connections able to address SMEs needs as described in recital (9) taking into account the pace of evolution of technologies and digital services.

- (93) Considering that the SMEs should pay, on average, the majority (approx. 60%) of the subscription costs, the Commission is of the view that the Measure is designed in a way that excludes the risk at stake.
- (94) As described in section 2.4.7, Infratel will set-up an online registry of all eligible electronic communications services providers to ensure the openness, transparency and non-discriminatory nature of the Measure (see also section 2.8). SMEs will have the possibility to consult the registry, in order to obtain information about all electronic communications services providers able to provide the eligible services. Moreover, all eligible electronic communications services providers will have the possibility to request to be enlisted in the Platform on the basis of objective criteria.
- (95) As described in recital (32) all areas of Italy where NGA broadband services are available will be eligible for the purposes of the Measure. Moreover, the Italian authorities carry out on a regular basis a mapping exercise to assess the availability of broadband networks (see recital (33)).
- (96) As described in Section 2.6, the Italian authorities have conducted a public consultation on the Measure, allowing interested parties to comment on the main characteristics of the Measure, thus ensuring a high degree of transparency. The Italian authorities have accepted most of the comments and suggestions received in the context of the public consultation and of the following *ad hoc* technical discussion table. Moreover, the Italian authorities have also taken into account the opinion of the ICA (see section 2.14), in order to further refine the Measure. The public consultation carried out demonstrated the general support of SMEs and of electronic communications services providers for the Measure (see section 2.6).
- (97) The Measure is limited in time to a reasonable period, *i.e.* one year from the implementation of the Measure (save previous exhaustion of the budget). An extension of this deadline may be considered subject to the availability of funds and subject to approval of the Commission, under State aid rules (see recital (20)). In this case an ex-post evaluation plan will be submitted (see recital (54)).
- (98) The Measure complies with the requirements on monitoring, reporting and transparency. As concerns monitoring, MiSe, Infratel and AGCOM are entrusted with the task of closely monitoring the implementation of the Measure, in order to avoid any abuse by SMEs and/or electronic communications services providers (see recital (48)). In particular, Infratel will be in charge of conducting preliminary checks on the fulfilment of the eligibility criteria by electronic communications services providers and SMEs, as well as of managing the payment of the vouchers. The MiSe, in cooperation with Infratel and AGCOM, will perform in-depth checks on the actual fulfilment of eligibility criteria by SMEs and electronic communications services providers.
- (99) Furthermore, after 4 months from the start date of implementation of the Measure, the Italian authorities will send the Commission a report describing the impact of the Measure on the market (see recitals (55) and (56)).
- (100) The Measure also ensure sufficient transparency. As described in section 2.8, the Italian authorities committed to comply with applicable transparency requirements. The information concerning the Measure will be published on the websites of both MiSe and Infratel and will be updated for the entire duration of the Measure. All

electronic communications services providers enlisted in the Platform will be included in an online registry accessible to the public.

- (101) As concerns reporting, described in Section 2.9, the Italian authorities commit to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589³¹ and to maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or a different period as may be fixed in the request.

3.4. Weighing the positive effects of the aid against the negative effects on competition and trade

- (102) A carefully designed State aid scheme should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (103) The Italian authorities have demonstrated that the Measure will provide positive effects on the supported economic activities compared with what would have happened without the aid. In particular, the Measure will facilitate access of SMEs to eligible NGA broadband services which are necessary in the modern society and the digital economy. Therefore, the Measure will enable SMEs to reap the benefits of performant digital connectivity, by improving access to an essential means of communication and participation in society and economy, thereby improving social and territorial cohesion. The Measure will provide support to address insufficient take-up by SMEs. The Measure will also contribute to the achievement of objectives of Union digital policy, in particular the objective of promoting connectivity and access to, and take-up of very high capacity networks by all citizens and businesses of the Union.
- (104) The Italian authorities have demonstrated that the negative effects are limited to the minimum necessary. The Italian authorities have designed the Measure in such a way as to minimise the potential distortion of competition arising from it. As proved by both the market assessment and the public consultation, the Measure is designed to avoid that specific electronic communications services providers might disproportionality benefit from its implementation. Furthermore, based on the wholesale access obligations in place, every electronic communications services providers will be in the position to offer the eligible services.
- (105) The overall impact of the Measure on competition is deemed to be positive. The negative effects on competition, if any, would be very limited.
- (106) In light of the above, the positive impact of the Measure outweighs any potential negative effects on competition and trade. On balance, the Measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of an economic activity. Moreover, the Measure does not adversely affect competition to an extent contrary to the common interest.

³¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

4. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

