

Experts Summer Meeting

Cephalonia, 29 June 2013

Regional Development Policy and the Role of State Aid

Presentation's subject: State Aid Control – Recent experiences in the broadband sector: State financing of broadband networks in metropolitan and rural areas in Greece

Stathis Kakounis, LL.M. Eur. München (GR)

I. Introduction

The **Digital Agenda for Europe** (DAE, published on 18th December 2012), a flagship initiative of Europe 2020 strategy for a smart, sustainable and inclusive economy has established broadband targets for Europe.

DAE broadband targets are:

- basic broadband for all by 2013;
- Next Generation Networks (NGN) (30 Mbps or more) for all by 2020 (estimated investment cost 60 billion Euro);
- 50% at least of households having 100 Mbps subscriptions or higher by 2020 (estimated investment cost 270 billion Euro);.

The European Commission takes these actions to develop broadband:

- Works with Member States to design national broadband plans;
- Creates rules providing a good environment in which broadband investment can take place helping to complete Single Market in network communications.

Such investments **would have to come primarily from commercial operators**. However, due to the economic characteristics of the industry, private investment alone will not suffice to attain such ambitious coverage goals. Governments will have to step in with the smart (and pro-competitive) use of public funds to extend high-speed and very high speed, next-generation access network coverage to areas in which market operators are unlikely to invest on commercial terms.

However public funds have to be used cautiously in a sector such as electronic communications, which has already been fully liberalised, and in principle, they should be complementary to and not substitute for private investment. State intervention should as far as possible limit the risk of crowding out private investment and of altering commercial investment incentives and should not therefore distort competition.

The EU State aid rules on the granting of public funds are there to ensure that only pro-competitive interventions take place in this sector.

The European Commission's approach was primarily codified in the Broadband Guidelines of 2009 and therefore in the Broadband Guidelines of 2013. These are based on well-established Commission case practice, developed since 2003 to **correct market failure in the case of lack of basic broadband networks**. The Guidelines extrapolate the fundamental tenets and apply them to the new area of very high speed, fibre-based Next Generation Access (NGA) networks, in which market failure has the potential to be substantially more serious, due to the economic characteristics of NGA networks.

The **Guidelines** are an important pillar of the Digital Agenda and aim to **create legal certainty for public and private stakeholders by providing a clear and predictable framework on the role of State aid in this sector**. After the Guidelines were adopted, there was a noticeable improvement in the design of national/regional aid measures, as well as accelerated treatment of notifications submitted for Commission assessment under State aid rules.

Due to considerable differences in geographical topology, population density, telecommunication landscape, competitive conditions, constitutional systems and financial means, **national broadband strategies range across Member States**. On that basis different patterns of State intervention seem to emerge.

In all of these different patterns (Aid to roll-out access (last-mile) infrastructures, Aid to roll-out backhauls/regional network, Aid to passive infrastructure elements) the **Commission applies the Broadband Guidelines to assess the compatibility of projects with the internal market**.

The **general compatibility criteria are the following**:

a) detailed mapping and coverage analysis, b) the open tender process, c) the most economically advantageous offer, d) the technological neutrality, e) the use of existing infrastructure, f) the wholesale access, g) the price benchmarking and h) the claw-back mechanism.

II. State Aid Control - Recent experiences in the broadband sector in Greece: State financing of broadband networks in metropolitan and rural areas in Greece

1. Broadband infrastructure is a key element to accelerate short-term recovery as well as long-term sustainable growth in Greece, however due to the diverse technical, geographical and socioeconomic characteristics of different areas of the country, **a significant infrastructural gap as regards broadband networks exists between different areas of the country**.

2. Greece is at present still lagging behind in terms of broadband coverage and penetration as compared to the rest of Europe. The Greek authorities have already undertaken a number of initiatives to fill the "broadband gap", with both supply-side and demand-side initiatives. The first intervention assessed and approved by the

Commission **in case N201/2006**, aimed at funding **the provision of basic broadband access services** in underserved areas of Greece by commercial service providers. The project also aimed at stimulating the demand of **retail broadband** services by end users and at increasing the penetration rate by subsidising special categories of end users.

3. An additional scheme was notified by Greece and approved by Commission **in 2011 for the remote and isolated rural areas not covered by the previous measure**.

4. Additionally, in the context of the Operational Programme "Information Society" authorised under the third Community Support Framework 2000-2006, **the Greek authorities financed the rollout of 72 fibre optics Metropolitan Area Networks (MANs) for the main Greek cities, with the exclusion of Athens and Thessaloniki, divided into three geographical areas**. The aim of this project was to provide a suitable infrastructure to support the public sector needs for very high speed connections.

A. Metropolitan Area Networks (MAN)/Fibre To The Home (FTTH) Greece

In practice, optical **fibre networks were rolled out in 72 municipalities**, with a total length of optical fibre ducts of around **1.300 km** that **interconnect more than 3.500 public administration sites, education and health institutions** etc. These networks, consisting of trenches, ducts, cables, Points of Presence (PoPs) etc., run along important commercial routes and in many cases they reach the outdoor cabinet, in order to be close to potential end-users and operators' PoPs.

Subject to obtaining the prior approval from the Commission, the Greek authorities intend now to proceed with selecting the concessionaires who will (i) **operate the already built MANs to provide services to the public administration** and (ii) **build an FTTH network to provide NGA wholesale services to retail operators which will serve end-users with enhanced connectivity**.

I. Decision

European Commission
Brussels, 30.11.2012
C(2012) 8718 final

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

- The compatibility criteria set out in the Broadband Guidelines were met.
- The aid measure Metropolitan Area Networks (MAN)/Fibre To The Home (FTTH)" assessed as compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union .
- Obligation to inform the Commission of any plan to extend or amend the measure pursuant to Article 108(3) of the Treaty on the Functioning of the

European Union (moreover due to the forthcoming revision of the Broadband Guidelines (2013).

II. Description of the measure

1. Objective and design of the measure

- The measure aims at the deployment of an NGA network.
- The notified project is divided into two subprojects: the **self provisioning subproject** and the **wholesale subproject**.

a. Self-provisioning subproject:

- This network will not be used for commercial purposes, but aims at the provision of services to bodies forming the public administration and exercising public functions.
- Decision to rollout a new NGA network, which will use the fibre-based infrastructure and will be completed by the selected “concessionaires” who will be required to rollout the missing parts.

b. Wholesale subproject:

- Intention to make the infrastructure of the Metropolitan Area Networks available at wholesale level to private operators to remedy the insufficiency of existing and planned commercial infrastructures to provide adequate NGA services to end users.
- The selected concessionaires will expand the existing networks by deploying the passive infrastructure (ducts, fibre optic cables, manholes etc.) until the users’ premises (excluding the vertical connections), thus rendering the network capable of providing technology neutral FTTH services by passing by at least 150.000 households in all 3 zones in which the original MANs have been deployed.

2. Targeted areas:

- The proposed measure targets the deployment of NGA networks **in 72 cities**.
- The deployment of ultrafast broadband technologies in these areas faces two principal problems (i) connection points are geographically scattered, rendering the necessary investments in these areas much higher than in territories in dense metropolitan areas such as Athens and Thessaloniki and (ii) the inhabitants of these areas have, in general, lower income and thus, are unable or less willing to pay for the actual cost of the service.
- As a result broadband operators are not expected according to a detailed mapping and coverage analysis to invest in these areas as the return of investment is expected to be either too low or even negative.
- All the areas concerned are **black areas from the basic broadband point of view** (or grey areas with at least one ULL operator offering services, thus not exhibiting any market failure). **However from the NGA point of view, 68 cities out of 72 are "white areas" while in 4 of them a pilot project by the incumbent operator (OTE) has brought FTTC/VDSL.**

- The deployment of FTTC in 4 cities is insufficient for the needs of the population at large. In particular, they observe that according to OTE's announcements the speeds offered through VDSL network are insufficient to cover the users' future needs. The expected increase in demand for access speeds (even in the conservative scenario where demand for capacity is doubled every couple of years) indicates that capacity needs will exceed 50 Mbps by 2013.
- These needs will be fuelled by demand for new, innovative services by both the public administration and the private sector (such as remote work, tourism, remote healthcare, e-learning, e-government services). The need for access to these services is expected to be even higher in areas outside the metropolitan areas of Athens and Thessaloniki, due to long distances and the remoteness of services. Given that VDSL technology may provide speeds up to 100 Mbit/s but only under certain conditions (quality of copper, copper cable length) and that, if there is such a development by the incumbent provider, it will operate with limited coverage, it may be concluded that this technology is a short term solution and cannot meet the long term access capacity needs. In other words, any VDSL network development may only temporarily cover capacity needs, having a shelf life of 4-5 years, and only for the limited geographic area in which it will be developed. By contrast, **the proposed measure expands throughout a period of 25 years with a possibility of a further 5 years extension and aims to address and meet capacity needs even beyond 2015**, thus making it rational for the authorities to pursue technological advances through future-proof access technologies based on optical fibre networks which provide much greater advantages than any other technology that uses local loop or sub-loop copper wiring.

3. Budget and aid amount

Dual form of the State support: on the one hand, **the concession in use of the existing Metropolitan Areas Network infrastructure to be maintained and operated for 25 years** and, on the other hand, of **subsidies granted to the concessionaires, for a total amount of up to 75,000,000 Euros for further expansion of the networks to the end-user premises.**

- The selected concessionaires **are expected to cover the cost of expanding** the existing Metropolitan Areas Networks via 2 additional channels: (a) The revenues for the provision of connectivity services to the public administration (with a cap of **1,500 Euros per site**) and (b) **The revenues for the supply of wholesale services to private operators.**
- At the end of the concession period, **all the assets will be transferred back to the State without any additional payment.** The assets to be transferred shall include all parts of the network, i.e. both those already existing at the time of the concession's commencement and those that will be built by the concessionaire during the concession lifetime.
- **Presence of State Aid:** Since the network to be expanded will not only be used for self provisioning purposes but also for the provision of wholesale services to other operators, the envisaged transfer of State resources in order to finance the further expansion of the networks is deemed to constitute State aid. The aid intensity will depend on the outcome of the tender procedure, since

only the upper threshold of the direct financial aid is determined and one of the criteria, based on which the successful bidder will be chosen, will be the rebate he will offer as regards the amount of direct aid that he will require.

4. Tender process and award criteria

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

5. Technology

- The only NGA solution available requires **the use of optical fibre**.
- However, the measure is limited to the passive elements of the NGA network, therefore it will allow the operators to choose the NGA technological solution and architecture that they prefer.

6. Use of existing infrastructures

- The measure expressly foresees **the use of the existing MAN infrastructures**. Regarding the access network, the use of existing infrastructures is encouraged in order to avoid wasteful duplication of resources, however where the measure targets white NGA areas it is difficult to envisage such a situation for the access part of the network. The project also foresees the use of all available existing passive infrastructures, for instance

the use of ducts throughout the road networks, if any. The use of municipality owned infrastructure is also foreseen and municipalities have committed to provide space for outdoor cabinets installation in case of future network expansions.

7. Wholesale access and prices

- **The selected concessionaires are obliged to provide a wide range of wholesale access products, including both passive and active products.** Additionally, the concessionaires can also provide leased line services through optical fibre connections to electronic communication network and service providers.
- As regards the pricing principles of the mentioned wholesale access products, practices by the selected concessionaires such as excessive pricing or, by contrast, predatory pricing or price squeeze should be prevented. Taking into account the fundamental role that EETT will play in this respect, access wholesale prices will be based on the average regulated wholesale prices that prevail in other comparable, more competitive areas of the country or, in the absence of such regulated prices, on prices that the NRA will set based on benchmarking for the markets and services concerned. Where ex ante regulation is already in place, wholesale prices for access to a subsidised infrastructure should not be lower than the access price set by EETT for the same area. If the beneficiary is subject to sectoral regulation, the regulated prices will apply.

8. Monitoring

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

9. Claw-back mechanism

- **To ensure that the selected bidder is not overcompensated**, in case where demand for broadband in the target area grows beyond anticipated levels, or extra revenues would occur, a claw-back mechanism will be part of the contract. The provision of such a mechanism can ex post/retroactively minimise the amount of aid deemed initially to have been necessary.
- The mechanism will be controlled by the NRA and will bring about benefits to all the involved actors: (i) it prevents excessive returns for the beneficiary due to the aid received, (ii) at the same time it continues to provide an incentive for the beneficiary to reduce costs and (iii) it reduces the amount of the aid

necessary. The claw-back mechanism, to be effective, will be based on officially published financial results and internal cost audit system.

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

10. Legal basis

- Act 3389/2005 “Partnerships between the public and private sectors”
- Act 3614/2007 “National Strategic Reference Framework 2007-2013”;
- Common Ministerial Decision No2201 (FEK 638/B/13.5.2010) "Assignment of responsibilities of the Special Secretariat of OP ‘Rural Development’ to the Special Secretariat of OP ‘Digital Convergence’”.

11. Beneficiaries

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

III. Presence of Aid

- According to **Article 107 (1)** of the Treaty on the Functioning of the European Union ("TFEU"), *“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”*.
- The measure at hand constitutes aid in the sense of Article 107 (1) TFEU, according to which support by a Member State to undertakings qualifies as State aid if it meets the cumulative conditions that **1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, and 4) the measure has to affect intra-Community trade.**
- The design of the current measure is such that State resources have been used to build the MANs which are put at the disposal of the concessionaire.

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

IV. Compatibility Assessment

- The Commission has assessed the compatibility of the scheme according to **Article 107 (3) (c) TFEU** and in the light of the **Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks** (hereinafter the "Broadband Guidelines 2013").

1. The balancing test and its application to aid for broadband network deployment

- The Commission **balances the positive impact of the aid measure in reaching an objective of common interest** against its potential negative side effects, such as distortions of trade and competition.
- In applying this balancing test, the Commission will assess the following questions:
 - a. Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
 - b. Is the aid well designed to deliver the objective of common interest? In particular:
 - i. Is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?
 - ii. Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - iii. Is the aid measure proportional, i.e. could the same change in behavior be obtained with less aid?
 - c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

2. Objective of the measure

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

This project is fully in line with both the Digital strategy of Greece and the EU objectives as highlighted in the EU2020 strategy and the Digital Agenda, which has the “*aim to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more European households subscribing to internet connections above 100 Mbps*”.

The project will contribute to avoid the digital divide in services which require very high speed broadband connection, between areas such as Athens and Thessaloniki that may benefit from competition in fibre optic networks market and the targeted areas in which there are no plans by the telecommunications operators to invest in future-proof fibre optic networks.

The Greek measure constitutes a step ahead in achieving the ambitious objectives set in the Digital Agenda for Europe. By extending NGA coverage to such unserved areas, Greece pursues genuine cohesion and economic development objectives.

- *Aid is the appropriate instrument*

Goals cannot be achieved by alternative means, since no private investments have taken place in the targeted areas or will take place during the next three years.

- *The aid provides the right incentives to operators*

According to the market research in the targeted areas no investment would take place without public funding, hence the aid will trigger a change in the investment decisions of the operators.

3. Design of the measure and the need to limit distortions of competition

In assessing the proportional character of the notified measures in "white" NGA areas, a number of conditions have to be met in order to minimize the State aid involved and the potential distortions of competition:

(a) Detailed mapping and coverage analysis, consultation with stakeholders:

A thorough analysis of the existing broadband infrastructures in order to clearly identify the areas where state intervention.

(b) Open tender process:

In order to select the undertakings for the construction and the maintenance of the network in an open tender procedure ensuring transparency, and equal and non-discriminatory treatment, with the objective to minimise the aid necessary for the measure.

(c) Most economically advantageous offers:

The authorities will select the most economically advantageous offers. The bidders which request the lowest amount of aid for otherwise comparable quality and quantity will be chosen.

(d) Technology neutrality:

To rollout an NGA network requires the use of optical fibre, thus the design of the measure is done in a way that does not favour any particular technology or network platform on the subsidised network, leaving it to commercial operators to come up with the most appropriate technological solutions to provide broadband services to end users.

(e) Use of existing infrastructures:

It is in the nature of the measure that existing infrastructure of the MANs shall be reused as a basis to achieve the objectives of the Greek authorities.

(f) Open wholesale access:

The operator of the new network will be obliged to provide for the whole duration of the contract effective wholesale access to all interested parties in an open, transparent and non-discriminatory manner. Furthermore, to ensure that the winner does not cross-subsidise its other commercial activities, legal and functional separation of wholesale and retail activities are required.

(g) Price benchmarking:

In order to ensure effective wholesale access and to minimise potential distortion of competition, wholesale prices on the subsidized network will be based on the existing regulated prices or on the average wholesale price prevailing in more competitive areas of Greece or of the EU and will be monitored by the National Regulatory Authority. The objective is to have an offer of retail access prices similar to those charged in non-subsidised areas.

(h) Claw-back mechanism to avoid over-compensation:

The project will be examined on a regular basis and the monitoring mechanisms implemented will ensure that if the beneficiary fails to comply with the rules, the granting authorities will be in the position to recover the aid granted. Furthermore, to avoid overcompensation, the contract with the successful bidder will contain a claw back mechanism.

4. Necessity of the measure

- Almost all the concerned areas, except one, are white NGA areas which are black from the perspective of basic broadband (or grey but with presence of ULL operators excluding the existence of a market failure). Therefore the Greek authorities demonstrated that, despite the competitive situation in the basic broadband markets, it is highly unlikely that the market will by itself develop the right incentives to upgrade to NGA networks.

B. Broadband development in Greek rural areas

I. Rural Areas in Greece

- Geographical features of Greece: Significant number of remote and dispersed mountainous or insular departments economically disadvantaged and sparsely populated.
- Represent only 7,56% the total Greek population, with about 50% of the residents over 55 years of age.
- Represent about 45% of the Greek territory in terms of geographical coverage.
- Significant infrastructural gap in broadband networks.
- Objective of Greek authorities to close this infrastructural gap between white rural areas and the grey/black areas in Greece and achieve sufficient broadband coverage and connectivity services, foster competition and investments by commercial operators as they don't have sufficient incentives to upgrade or expand the existing networks and achieve the goals set in the Digital Agenda for Europe (Communication of Commission of 26.8.2010 COM(2010) 245 final/ 2 A Digital Agenda for Europe).
- The objective of the plan is the construction of broadband access infrastructure in remote rural areas of the country lacking adequate access and the exploitation of the new infrastructure for a period of 10 years. The plan will be supported by EUR 200 million of public investment. The project is already approved by the European Commission within the state-aid framework.

II. Decision

European Commission

Brussels, 10.11.2011

C(2011) 8122 final

**Subject: State aid SA.32866 (2011/N) - Greece
Broadband development in Greek rural areas**

- The compatibility criteria set out in the Broadband Guidelines are met
- The aid measure "Broadband development in Greek rural areas" compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union
- Obligation to inform the Commission of any plan to extend or amend the measure pursuant to Article 108(3) of the Treaty on the Functioning of the European Union.

III. Description of the measure

1. Objective and design of the measure

- Severe **market failure** affects the most remote areas of the country

- A **mere financial contribution** to the commercial operators would not be sufficient to give enough incentives to the infrastructure rollout
- Achieve **Digital Agenda 2020 goals** by promoting infrastructure penetration targets of 20% in the short-term and up to 35% in the medium-term and provision of a basis for a gradual increase to 30Mbps for each prospective customer.
- Intension to develop and operate a public broadband network infrastructure which will be open to all network operators requesting access.
- **Public ownership** of the infrastructure
- Construction, management and operation of the network will be awarded to a winning contractor **through an open tender process**. Offer of **wholesale services** (not only retail broadband services).
- **End users** will be served by third party telecom operators or internet service providers, who will gain access to the new network at a fee which will be set and monitored by the Greek National Regulatory Authority EETT.
- **Network:** will comprise both backhauling elements (connection to the regional concentration points) and access segments and will include both passive and active elements in order to ensure that final users are in condition to obtain the desired service.
- **At the access level**, bidding operators **can propose** the technological solution of their choice which is able to achieve the requirements of the Greek authorities (fibre technology for the biggest rural settlement (i.e. those with more than 400 inhabitants).
- **Two types of services:** "Class A" services of 30 Mbit/s for at least 45% of the targeted population, including all residential departments with more than 400 inhabitants and "Class B" services of 8 Mbit/s for the other rural areas as an intermediate step) and
- Achieve coverage **of at least 75%** of the population of the rural areas and **at least 50%** of the areas (including the totality of the settlement having more than 400 inhabitants). The competing bidders are encouraged to cover as many areas and population as possible, exceeding the above set thresholds.

2. Legal basis:

- Act 3389/2005 “Partnerships between the public and private sectors”
- Act 3614/2007 “National Strategic Reference Framework 2007-2013”;
- Common Ministerial Decision No2201 (FEK 638/B/13.5.2010).

3. Duration of the measure:

- From 2012 to 2015 for the rollout of the infrastructure.
- Contract for management and operation of the network 10 years duration (then new awarding procedure).

4. Detailed mapping and coverage analysis:

- Target on the traditional broadband “white” rural areas (those areas eligible for funding according to the 3rd Axis of the Greek “Operational Program for Agricultural Development”). Rural, mountainous or insular, remote, and

economically disadvantage where no broadband services are available and where operators have no incentives to provide such services on commercial terms.

5. Budget and funding instruments:

- **Public funding** for the rollout of the network. Because of the seriousness of the **market failure**, the new infrastructure will be 100% financed by public funds.
- **Sources of public funding:** Rural Development Program of Greece 2007-2013 (EARFD), the Operational Program “Digital Convergence” (ERDF), and other national funds, to cover specific non-eligible expenses of the above European funds.
- Maximum amount of public funding (all sources included) may come up to € 250.000.000.
- The contract will be awarded through an **open tender procedure**, hence the final public contribution is expected to be lower.

6. Tender process and award criteria:

- Division of the targeted areas **in three lots** of equal weight in terms of population size, geographical characteristics and estimated costs.
- Only one tender process for the three lots but each of them shall be awarded to a different bidder in order to increase the level of competition in the rural areas and to provide a back-up scenario in case one of the winning contractors would fail or withdraw.
- The offers to be selected will be the **most economically advantageous** ones. The winning bidder should create a **special purpose company** to rollout the subsidised infrastructure.
- **Eligibility of the bidders:** Criteria: economic characteristics, their technical expertise and quality assurance standards
- The award criteria include **total geographical coverage** (with a minimum of 50% of the residential departments), coverage of the biggest settlements with more than 400 inhabitants, population coverage (with a minimum of 75%), quality of the services, the financial characteristics of the offer.

7. Technology of the network and the:

- Chosen by the bidders.
- Mandatory for the **backhaul part of the network (residential departments with 400 or more inhabitants) the use of fibre optic technology** (Digital Agenda and Commission's practice).

8. Use of existing infrastructures:

- Is encouraged in order to avoid wasteful duplication of resources. More likely for the backhauling part of the network.
- Purchase and long-term lease of existing infrastructure are encouraged.

9. Wholesale access

- The winning contractor will offer wholesale network access at fair, transparent and non discriminatory conditions to third party service providers at different levels, including passive infrastructure (ducts, dark fibre, antenna towers etc), co-location, leased lines to deploy a separate access network, bitstream access.
- Access should be guaranteed for at least three operators and the obligations will remain in place for the whole 10 years operational period.

10. Price benchmarking:

- Wholesale access prices will be based on the average regulated wholesale prices that prevail in other comparable, more competitive areas of the country, or in the absence of such regulated prices, on prices that the Greek NRA (EETT) will set.

11. Monitoring:

- The Managing Authority of the Operation Plan “Digital Convergence 2007 – 2013” (granting authority) will undertake the monitoring of the measure’s implementation in close cooperation with the Managing Authority for O.P. “Rural Development 2007 – 2013” and the Greek NRA (EETT). During the 10 year operational period, the granting authority will undertake the main role of monitoring the fulfilment of contractual obligations and audit and will be in charge of the overall project and contract management. EETT will take up specific activities, mostly connected to its regulatory role in ensuring fair market conditions.

12. Clawback mechanism as part of the contract:

- To ensure that the selected bidder is not overcompensated, in case where demand for broadband in the target area grows beyond anticipated levels, or extra revenues would occur.
- A claw-back mechanism can ex post/retroactively minimise the amount of aid deemed initially to have been necessary.
- The mechanism foreseen by the Greek authorities provides that if profits surpass the level of a fair profit margin (identified at 15%) then 40% of the exceeding part may remain at the contractor’s disposal, increasing its total profit levels, while 60% of the exceeding part will form a special taxable reserve which can be used during the next year for specific broadband development initiatives, such as: extending network’s coverage in white areas under the same conditions highlighted in the present decision, upgrading service level, speed and capacity, stimulating demand of local communities.

13. Beneficiaries:

- The direct beneficiaries of the aid will be electronic communications operators rolling out the broadband infrastructure and subsequently managing the subsidised network at wholesale level.

- Indirect beneficiaries include third party electronic communication operators that will be able to offer their services via wholesale access to the subsidized network, third-party access seekers and businesses (mostly SMEs) in the targeted areas which will ultimately benefit from the improved broadband services and coverage in comparison with what would be provided on a purely commercial basis.

III. Presence of Aid

- The measure at hand constitutes aid in the sense of Article 107 (1) TFEU, according to which support by a Member State to undertakings qualifies as State aid if it meets the cumulative conditions that **1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, and 4) the measure has to affect intra-Community trade.**
 - The construction of the network will be directly financed by the Greek authorities.
 - It will provide a selective economic advantage to the electronic communication operators and infrastructure investors selected via the tender procedure and also for third party electronic communication operators that will be able to offer their services via wholesale access to the subsidized network (services offered via the subsidized network instead of more expensive market-based solutions).
 - The support from the State resources creates advantages for a selected number of beneficiaries belonging to a specific sector in a specific area of the European Union and has the potential to distort competition.
 - Since the beneficiaries are active in deploying and operating broadband networks, a market which is, at least potentially, subject to trade between Member States, the Greek measure is also likely to affect trade between Member States.

IV. Compatibility Assessment

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