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Oggetto: State aid No N 526/2002 – Italy
*Aid measures in favour of cableway installations for the year 2002.
Autonomous Province of Trento*

Sir,

I. Procedure

1. By letter No 9346 of 23 July 2002 received on 29 July 2002, the Italian authorities notified under Article 88(3) of the EC Treaty the aid scheme provided for in Provincial Council Decision No 1354 of 14 June 2002 laying down measures to assist mountain lifts and ski runs in 2002.
2. By letter No D/55363/A of 24 September 2002 the Commission informed Italy that, following an initial appraisal, it required further information as the notification appeared to be incomplete. By letter of 31 October 2002, received on 5 November October 2002, the Italian authorities provided the information requested. The Commission then informed Italy that the two months for deciding on the measures in question would start on the day following receipt of the letter.

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II. Description of the measure

3. Decision No 1354 adopted by the Provincial Council on 14 June 2002 (hereinafter D.G.P. n. 1354/02) lays down the procedures for the application in 2002 of Provincial Law No 35 of 15 November 1998 on assistance for mountain lifts and ski runs and, in particular, the categories of recipients and the maximum amounts of aid to be granted in 2002.
4. The scheme provides for aid for small and medium-sized businesses, as defined in Commission Recommendation No 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises,¹ as well as microfirms operating mountain lifts and ski runs. The recipients must operate in the province of Trento. The scheme also provides for the possibility of granting financing to public bodies and non-profit making associations.
5. The applications for assistance must be submitted before carrying out the investment. Assistance is granted in the form of non-repayable grants, as follows:
 - for measures costing not more than €1 500 000, a capital contribution without additional interest;
 - for measures costing more than €1 500 000, contributions over a period of three to five years with an instalment interest rate of 3.25% equal to the reference rate fixed by the European Central Bank.
6. The aid may be granted for the following types of fixed investments:
 - (a) construction of new lifts, improvement and modernisation of existing lifts;
 - (b) additional work on mountain lifts, including improvements, modernisation or conversion;
 - (c) acquisition of equipment for the production of artificial snow, as well as the modernisation and improvement of existing installation;
 - (d) building of new ski runs and ancillary work, expansion and improvement of ski runs and construction of centres for cross-country skiing;
 - (e) acquisition of snow-compactors and artificial snow machines;
 - (f) acquisition of computer equipment and software and systems for issuing and checking tickets.
7. The aid granted will be equal to the gross grant equivalent, calculated as follows:

Investments referred to in paragraph 6(e) and (f) of this decision:

¹ OJ L 107, 30.4.1996.

- micro firms, public bodies and non-profit making associations: 35%;
- small firms: 35%;
- medium-sized firms: 32.5%;

Investments referred to in paragraph 6(a), (b), (c) and (d) of this decision:

- micro-firms, public bodies and non-profit making associations: 40%;
 - small firms: 40%;
 - medium-sized firms: 32.5%.
8. The Italian authorities define “micro” firms as those that employ fewer than ten persons on an annual basis, are independent and operate exclusively either in resorts where the lifts do not cover more than a total of three thousand metres or in resorts where the lifts carry not more than one thousand persons an hour on average.
 9. The bodies that cannot be characterised as micro, small or medium-sized enterprises, i.e. public bodies and non-profit making associations, will receive aid only for installations intended to meet general transport needs or for purely local use.
 10. A total budget of €5 million has been earmarked for the scheme (total commitments estimated for 2002), of which some €700 000 is for small and medium-sized firms. The number of beneficiaries is estimated at between 10 and 50.
 11. Aid granted under the scheme cannot be cumulated with other aid having the same purpose provided for by provincial, regional or national laws. This prohibition, laid down in Article 6(3) of provincial Law No 35/88, also covers contributions granted by municipal authorities and participating contributions, through municipalities, from other public bodies or bodies using public resources, on terms that are disadvantageous or different with regard to the private investor.
 12. The scheme will not be implemented until the Commission has decided to authorise it under Article 88(3) of the EC Treaty.

III. General considerations on cableways installations

Existence of State aid

13. The presence of State aid within the meaning of Article 87(1) of the EC Treaty is verified when certain undertakings are favoured by any form of support granted through State resources which distorts or threatens to distort competition and affects trade between Member States.
14. It is sometimes argued that certain cableway installations, being transport infrastructures, are not subject to State aid rules. This reasoning cannot be accepted without qualification. State financing of infrastructure open to all potential users in a non-discriminatory way and managed by the State does not normally fall under

Article 87(1) EC Treaty² as in this case no advantage is conferred to an undertaking in the sense of article 87(1), competing with other undertakings. Most transport infrastructure financing takes the form of this kind of investments, such as a toll-free public road.

15. In the case of cableway installations, however, operators have effective control over the access to their facilities and customers normally pay for the use of the installation. A cableway is typically servicing a single operator and cableway transport can, at least in principle, be an economically viable activity exercised for profit purposes by private operators.
16. Transport operators and any other commercial users of transport infrastructure fulfil the definition of an undertaking within the meaning of article 87(1). It is clear from the Court's jurisprudence that the central issue in this context is whether an economic activity is being carried out. The organisational form is less relevant. The Court of First Instance in its judgement "*Aéroports de Paris v Commission of the European Communities*"³ considered that the management and provision of facilities constitute an economic activity for the purposes of Article 87(1) of the Treaty. A private or public transport infrastructure manager, separate from the State administration, will meet the definition. From the point of view of existing or potential competitors any financial benefit provided to such undertakings may, in principle, distort competition.
17. Moreover, not all cableway installations are used for general mobility needs, but many are destined to a specific economic category of users, i.e. the consumers of a good of service, which is not transport in itself. This is the case of cableways that are mainly servicing skiers. Those installations are not providing a general transport service, but rather the services of a facility for the practice of a sport.

Distortion of competition and effect on trade between Member States

18. A basic requirement for presence of State aid in the meaning of Article 87(1) is that it should distort or threaten to distort competition and affect trade between Member States. In the case of cableway installations the presence of a distortion of competition and of an effect on trade between Member States has to be assessed with respect to their location, destination and dimension.
19. Cableway installations provide a service only at a certain location. The service cannot be rendered somewhere else. This circumstance, however, does not rule out an effect on trade between Member States. Indeed, there might be operators that are active internationally and State funding could afford advantages to the beneficiary or could discourage other, possibly foreign, operators from providing an alternative

² cf. Commission decision of 14.9.2000 in case N 208/2000, *SOIT* (NL). See also Commission's White paper on Fair Payment for infrastructure use: A phased approach to a common transport infrastructure charging framework in the EU, COM (1998) 466 final of 22.7.1998, Chapter 5, para. 43 and Commission's Communication COM (2001) 35 final of 13.2.2001, p. 11, *Reinforcing Quality in Sea Ports: A Key for European Transport*.

³ Case T-128/98 of 12 December 2000

service *in loco*.⁴ State funding may help attract users – e.g. skiers from the same or a different State – diverting them from other cableway destinations, including those in other Member States.

20. In assessing these elements, it is useful to draw a distinction between cableway installations supporting sport activities and cableways destined to satisfy the generic transport needs of the population.

Cableway installations supporting sport activities

21. Concerning cableways destined to sport activities, their number, price and quality have the ability of influencing the choice of customers that have cableways of other Member States as an alternative. Cableways affect all users in a similar way and can be readily compared across different resorts. Ski-passes form a significant share of the total costs of a winter holiday and are often included in package holidays sold by international operators. Funding of cableways in mountain-resorts has, therefore, an impact on the provision of services for winter sports, which is an international business with a high degree of intra-Community trade and is characterised by strong competition.
22. In addition, there are examples of companies that operate cableways in resorts of different Member States. State funding affords advantages that could be exploited in a market where there is cross-border competition also on the supply of the service.
23. It can be argued, however, that installations supporting sport activities in areas with a small number of facilities dedicated to the practice of winter sports and with limited tourism capability, tend to have a purely local use and are not capable of attracting users that have installations of other Member States as an alternative. In those cases there would not be any distortion of competition and effect on trade on the demand side. However, on the supply side, it would have to be assessed whether the beneficiaries only operated at local level and whether State support to this activity harmed or discouraged the supply *in loco* of installations by operators of other Member States. The latter circumstance would seem rather remote in cases where there is a limited number of local users, the service might not be economically viable and State funding might be the only way of supplying it.
24. Accordingly, State support to cableway installations destined to sport activities in tourism-resorts would normally distort competition and affect trade between Member States. It is accepted, however, that there might be cases of cableways with purely local use where State funding would not distort competition and affect trade between Member States and therefore not constitute State aid in the sense of Article 87(1).

Cableway installations meeting general transport needs

25. Cableways that are mainly destined to satisfy the generic transport needs of people would normally not influence the choice of users that might have destinations of other Member States as an alternative. However, State support could benefit an

⁴ An alternative service might also be provided via other means than cableways.

operator active internationally or negatively affect the actual or potential supply *in loco* of an alternative transport means by an operator from another Member State. It may be that in some cases the beneficiary is only active locally and an alternative transport activity would not be economically or technically viable: in those circumstances the measure would not distort competition and affect trade between Member States. In other cases, the transport activity – by cableway or other means – is technically or economically viable and capable of attracting commercial operators, which carry out an economic activity in the meaning of Article 87(1) of the Treaty. In view of the progressive liberalisation of the transport sector, the possibility of this transport being provided by operators of other Member States is not to be discarded. In those latter cases the measures would distort or threaten to distort competition and affect trade between Member States and therefore constitute State aid in the sense of Article 87(1).

Conclusions

26. To summarise, an installation supporting an activity capable of attracting non-local users will generally be considered as having an effect on trade between Member States. This however, might not be the case for sport-related installations in areas with few facilities and limited tourism capability. Concerning installations mainly catering for the general mobility needs of the population, they would only have an effect on trade between Member States if there were cross-border competition in the supply of the transport service.

Criteria for distinction

27. In drawing a distinction between these types of installations the following elements, among others, would typically be taken into account:
 - the location of the installation (e.g. within cities or connecting inhabited centres);
 - its operating time (e.g. seasonal vs. all-year; during daylight or longer);
 - the circumstance that use is predominantly made by the local population (number of daily as opposed to weekly passes);
 - the total number and capacity of installations with respect to the number of resident users;
 - the presence of other tourism-related facilities in the area.
28. An aid scheme addressed to a specific type of installations or granting benefits which vary according to different types of installations should set out objective criteria on the basis of which the category(ies) of beneficiaries is(are) established.

Compatibility of aid to cableways installations

29. Whenever cableways installations are beneficiaries⁵ of State resources, which distort or threaten to distort competition and affect trade between Member States, the funding would come under the State aid rules of the EC Treaty. The aid has to be notified in line with Article 88(3) of the Treaty and the Procedural Regulation.⁶ Also, the general rules on compatibility apply.
30. This is also true for installations that are established or managed by public entities, in which case the general principle that funding by the State has to be provided according to the Market Economy Investor Principle (MEIP) continues to apply. In other words, public funds in excess of or at better conditions than those that a private investor would provide in the same circumstances constitute a State aid, which has to be notified according to Article 88(3). This would concern all forms of economic intervention, including capital injections, loans and guaranties.
31. Once established the presence of State aid, it must be examined whether one of the exemption clauses contained in Article 87(2) and 87(3) of the Treaty applies in order to find the aid in question compatible with the common market. These considerations are without prejudice to the application of the *de minimis* rule as explained in the related Commission Regulation.⁷
32. As regards the funding of transport infrastructure, a specific State aid approach is needed in transport because of the requirements for State interventions to ensure transport services which meet social and environmental concerns. The Treaty, in its Article 73, provides an exemption meeting these concerns.
33. Finally, under Article 86(2) of the Treaty, the application of competition rules, in case of undertakings entrusted with the operation of services of general economic interest, might be excluded, in so far as it would obstruct the performance of the particular tasks assigned to them.

Article 87

34. While the conditions for application of the exemption clauses provided for in Article 87(2)(b) (“*aid to make good the damage caused by natural disasters or exceptional occurrences*”) and (c) (“*aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany*”) have to be necessarily assessed on individual cases, the derogation of Article 87(2)(a) (“*aid having a social character, granted to individual consumers*”) does not appear relevant in case of aid to cableway operators.
35. The application of Article 87(3)(d) (“*aid to promote culture and heritage conservation*”) of the Treaty to the case of cableways would, in normal

⁵ Naturally, if cableways are beneficiaries of a measure of general nature this would not qualify as State aid for lack of selectivity.

⁶ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83 of 27.3.1999, p.1.

⁷ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ L 10 of 13.1.2001, p.30.

circumstances, be excluded, while the relevance of Article 87(3)(a) (“*aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment*”) and Article 87(3)(b) (“*aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State*”) needs to be assessed on a case by case basis. This assessment would not deviate from the normal rules that are established for all economic activities.

36. Under Article 87(3)(c), State aid may be found compatible with the common market if it facilitates “*the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”. On past occasions it had been considered that those requirements for exemptions were met, in view of the lesser mobility of skiers. It is now considered that the provision of services for winter sports has reached such a level of economic development and cross-border competition, that departure from the set of rules established for the generality of economic activities, would no longer be justified; see however the considerations developed in paragraphs 44 to 49 below.
37. Aid to cableways might – depending on the particular case – be found compatible under the rules governing e.g. regional investment aid, or aid to SMEs or restructuring aid to restore the viability of a company.⁸ It cannot, however, be generally considered not to “*adversely affect trading conditions to an extent contrary to the common interest*”, since it would have the effect of improving the competitiveness of the beneficiaries in a sector where international competition is strong.

Article 73

38. In contrast to Article 87(3)(c) EC Treaty, the notion of co-ordination in Article 73 of the EC Treaty involves more than facilitating the development of an industry, it involves some form of planning by the State. In a liberalised market, co-ordination may be achieved by the market itself as the free interplay of market forces is not hampered by market failures. Accordingly, the concept of aid meeting the needs of co-ordination of transport refers to the need for the Government intervention arising in the absence of competitive markets or in the presence of market failures.
39. According to the Commission’s praxis, three requirements must be fulfilled, so that the aid meets the needs of co-ordination of transport within the meaning of Article 73 of the EC Treaty⁹:

⁸ Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, OJ L 10 of 13.1.2001, p.33.

Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999.

Guidelines on national regional aid, OJ C 74 of 10.3.1998, p. 9.

⁹ See COM (2000) 5 final of 26.7.2000 *Commission proposal for a regulation of the European Parliament and the Council concerning the granting of aid for the co-ordination of transport by rail, road and inland waterway.*

- The State contribution towards total financing of the project is necessary to enable the realisation of the project or activity in the interest of the Community;
- Access to the aid is granted on non-discriminatory terms;
- The aid does not give rise to a distortion of competition to an extent contrary to the common interest.

Article 86(2)

40. While the financing of transport cableways, when constituting State aid, would normally be assessed under Article 73, it can be questioned whether the derogation provided for by Article 86(2) can apply to installations of other nature.
41. In general, cableway installations that support a sport activity do not provide a service of general economic interest and their financing cannot be justified under Article 86(2) EC. They do not satisfy general and basic needs of the population, but aim at making profits from winter sports. The actual price level of user fees shows that this service is not a basic good.
42. Certainly, it is in principle the competence of the Member States to define which services they consider to be of general economic interest. However, the notion of services of general economic interest cannot be extended to services that are of a purely commercial character and do not respond to the general and basic needs of the population for services that are regarded as an essential part of nowadays life.
43. These considerations are not invalidated by the fact that the construction and operation of cableway installations be subject to a concession, which obliges the company to actually operate the installation and to transport everybody at the current rates. It is quite usual for a number of professions and activities to be subject to a special permission and to certain requirements. In this respect the situation for cableway operators does not differ decisively from the one of companies in other sectors and does not entail that it should be assessed under Article 86(2).

Transitional period

44. The Commission considers that State aid to cableways could play an important role in assisting an equilibrated economic development of the territory. As regards in particular the mountain regions, State aid has allowed in the past the development of one of the few possible local economic activities in these areas, with beneficial impact on employment and ultimately on the presence on and care of the land.
45. However, the provision of services for winter sports has become subject to increasing cross-border competition. The growing competition is changing the nature of the problems and increases the distortion caused by the presence of aid to the cableway sector. The coming to maturity of this sector implies a greater risk of outbidding between different areas of the Community. For these reasons it is estimated that in the future the Commission's policy in the sector needs to be more clearly defined, strictly interpreted and uniformly applied.
46. The Commission recognises that enterprises in the sector have largely benefited in the past from several forms of economic support from the national, regional and

local authorities. Some of these were considered compatible aid under Article 87(3)(c). A change in policy setting stricter limits to compatibility would probably entail a modification in the relative price of the various services offered for winter sports, with prices for the use of cableway installation possibly increased to compensate the reduction in subsidies. This adaptation cannot be too abrupt and some gradualness in the application of the standard rules is necessary.

47. Accordingly, the Commission identifies a transition period of five years – from 1 January 2002 to 31 December 2006 – during which higher aid intensities would temporarily be accepted for State aid to the sector of cableway installations. The analysis of aid granted before the described period will be carried out on a case by case basis without reference to thresholds for compatibility fixed *a priori*.
48. During the transition period, the Commission will assess aid projects in the sector of cableway installations by referring to the normal set of rules as clarified, *inter alia*, in the Commission Regulation on State aid to small and medium-sized enterprises, in the Guidelines on State aid for rescuing and restructuring firms in difficulty and in the Guidelines on national regional aid.¹⁰ However, it will accept a temporary increase in the aid intensity otherwise justified under the existing legislation and guidelines, that is quantified as below:
 - 25 additional percentage points for aid granted in the year 2002;
 - 20 additional percentage points for aid granted in the year 2003;
 - 15 additional percentage points for aid granted in the year 2004;
 - 10 additional percentage points for aid granted in the year 2005;
 - 5 additional percentage points for aid granted in the year 2006.¹¹

From 2007 onwards, aid not eligible for any of the derogations provided for by the Treaty and the various existing exemption regulations and frameworks will be declared incompatible, while the analysis described in paragraphs 13 – 28 continues to apply, in particular the provisions of paragraph 23.

49. On the basis of the information available to the Commission, the indicated figures, chosen as temporary top-up on aid ceilings, as well as the length of five years of the transition period, seem to balance the needs of, on the one hand, allowing sufficient time for different areas to benefit from the temporary rules and for beneficiaries to adjust to the new approach, while, on the other hand, bringing the treatment of this activity in line with those of other sectors within reasonable time.

¹⁰ See footnote 8.

¹¹ Aid that is disbursed in instalments to the beneficiary will be assessed as a whole with reference to the intensity that can be accepted at the time of granting. In case of schemes that grant aid at different points in time, the reference is the aid intensity at the time of granting. That is to say, if the same aid scheme grants aid in 2003 and in 2004, the accepted aid intensity, other things being equal, would be 5 percentage points lower for the aid granted in 2004.

Related activities

50. When the cableway infrastructure under consideration is mainly servicing skiers, its activity can be described as providing the service of the basic installation for the practice of skiing. It is not unusual that the undertaking concerned also offers other directly related services, which are equally indispensable for the skiing activity, such as the care of the ski-runs or the supply of artificial snow. Accordingly, the investment eligible for aid under the conditions described above can also include, for example, the purchase of snow-cannons or maintenance vehicles as well as the initial costs to arrange the ski-run. However, investment that is not functional to providing the service of the basic installation – such as, e.g., investment in for-rent skiing equipment or in facilities for ski-schools – cannot be eligible for aid under the above conditions.

IV. Assessment of measures introduced by D.G.P. n. 1354/02

51. The measures are funded through the Province's budget, i.e. through State resources. They represent an economic advantage for the beneficiary, relieving it from part of the expenditure linked to the investment needed for its activity

52. On the issue of the distortion of competition and effect on trade between Member States, it is considered that State support to cableway installations in tourism-resorts, which are capable of attracting users that have foreign destinations as an alternative, distorts competition and affects trade between Member States

53. Similarly, cableway installations catering for the general mobility needs of the population are considered to be present in a sector where cross-border trade is present, where alternative transport means could be provided by commercial operators of other Member States. Moreover, the Italian authorities have not indicated among the beneficiaries of aid installations that do not have an alternative that is technically or economically viable. Accordingly, State funding to cableways belonging to the category of transport installations is also considered to distort competition and affect trade between Member States.

54. With regard to aid for micro firms, the Italian authorities consider that their activities do not affect trade between Member States in view of the location, use and size of the installation. To that end they limit the concept of micro firm to small businesses that employ fewer than 10 persons on an annual basis, are autonomous and operate solely in skiing areas of medium to low density tourism and a catchment area that is not international.

55. In order to define the tourist appeal of a ski resort, two parameters are used: the average number of persons carried every hour and the distance covered by the lifts. Thus lifts for purely local use are defined as those which operate exclusively either in resorts where the lifts do not cover more than a total of three thousand metres or in resorts where the lifts carry not more than one thousand persons an hour.

56. Businesses that are not micro, nor small or medium-sized, i.e. public bodies and non-profit making associations, will qualify for funding only for installations:

- designed to satisfy local transport requirements. Such installations must not be used for tourism or sports;

- intended for purely local use. Such installations must be located in areas meeting the criteria set out in paragraph 55 of this Decision.
57. The Commission agrees with the Italian authorities' analysis concerning the lack of impact on trade between Member States as regards installations in areas defined in paragraph 55 of this Decision. It therefore concludes that public financing of such installations does not affect intra Community trade and does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.
58. Following the above considerations, the Commission assesses the compatibility of the planned aid to small and medium enterprises for installations for the practice of winter sports in tourism resorts, as well as planned aid to small and medium enterprises, public bodies and non-profit making associations operating installations destined to satisfy the generic transport needs of the population.

Cableways installations destined to sport activity in tourism resorts

59. The measures introduced with D.G.P. n. 1354/02 do not fall within the cases foreseen in Article 87(2), nor do they comply with the conditions laid down in Article 87(3)(b), 87(3)(d) or 87(3)(e). Moreover, the measures are directed at undertakings active in the province of Trento and are not eligible for regional aid pursuant to Article 87(3)(a) and (c).
60. As for compatibility under Article 87(3)(c) in relation to the development of certain economic activities, the conditions for applying the *Community guidelines on State aid for rescuing and restructuring firms in difficulty*¹² are not present. The aid was not notified individually to the Commission and no restructuring plan was submitted to it. The installations that benefit from the aid are not necessarily in difficulties nor is the aid intended to restore the firms' long-term viability. The guidelines require that measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors, which is not foreseen by D.G.P. n. 1354/02.
61. The Italian authorities, however, point out that all beneficiaries in this category are small enterprises entitled to receive aid up to the intensity accepted under the Commission Regulation on aid to small and medium-sized enterprises.¹³ This amounts to a gross aid intensity of, respectively, 15% and 7.5% for investment in tangible and intangible assets as defined by Article 2 (c) and (d) of the Regulation.
62. When adding to the 15% and 7.5% figures so determined the temporary increase in the aid intensity as explained in §48 – equal to 25 percentage points in the year 2002 – the accepted gross aid intensity aid would be, respectively, 40% and 32.5%, which is the maximum theoretical intensity of aid granted by D.G.P. n. 1354/02.
63. The Commission also notes that aid granted under the present scheme cannot be cumulated with other aid granted for the same purpose by the public authorities. This prohibition, provided for in Article 6(3) of Law No 35/88, covers all forms of

¹² OJ C 288 of 9.10.1999.

¹³ See footnote 8.

financial assistance, including capital contributions, loans, guarantees and all other financing not granted in accordance with the principle of the private investor operating under normal market economy conditions.

64. The Commission therefore concludes that aid planned for 2002, in the framework of D.G.P. n. 1354/02, to small and medium enterprises operating cableways supporting a sport activity in tourism resorts is compatible under State aid rules of the Treaty.¹⁴

Cableway installations with general transport purposes

65. It is admitted that the funding of a transport installation which – for economic or technical reason – has no viable alternative would not distort competition and therefore not constitute aid in the sense of Article 87(1). However, no such case was pointed out to the Commission.
66. In any event, in the case of cableway installations that are mainly destined to satisfy the generic transport needs of the population, the Commission considers that there may be need for State intervention, since markets forces are unlikely to provide on a pure commercial basis the necessary investments. Therefore, aid to the sector has to be assessed under Article 73 of the Treaty.
67. The amount of aid – a grant equivalent before taxes of 40% of the investment – represents an amount, which would seem both necessary and proportionate to enable the realisation of the project. It may be added that similar aid intensities are normally considered acceptable in the field of transport.¹⁵
68. Moreover, the development of activities shifting traffic from road to other modes is deemed to be in the interest of the Community. It is also in the common interest – where installations are placed in mountain regions – the circumstance that they facilitate the presence on and care of the land. Finally, it is considered that aid to these installations does not give rise to a distortion of competition to an extent contrary to the common interest.
69. The Commission therefore concludes that the conditions for exemption ex Article 73 are met and that aid granted in the framework of D.G.P. n. 1354/02 to operators of cableways catering for the general mobility needs of the resident population is compatible under State aid rules of the Treaty.¹⁶

¹⁴ This decision is without prejudice to the application of other relevant Community legislation. In particular, the Commission reminds the Italian authorities of their obligations deriving from Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons, OJ L 106 of 3.5.2000, p. 21.

¹⁵ Commission decision of 31.1.2001, N 597/2000, NL- *Régime de subventions des raccordements industriels particuliers aux voix navigables*; Commission decision of 14.9.2001, N 208/2000, NL- *SOIT*; Commission decision of 15.11.2000, N 755/1999, IT-*Bozen*.

¹⁶ See footnote 14.

V. Decision

70. The Commission has accordingly decided to consider the aid to be compatible with the EC Treaty.

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://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate H
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Yours faithfully,
For the Commission

Mario Monti
Member of the Commission