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Subject: State aid No C20/2010 (ex N 536/2008 and NN 32/2010) - Italy - Calabria Region - SO.G.A.S. - Società per la gestione dell'aeroporto dello Stretto.

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU)¹.

1. PROCEDURE

- (1) By electronic notification dated 27 October 2008, the Italian authorities notified the Commission of the Calabria Region's intention to grant an aid aiming at covering financial losses of SO.G.A.S. S.p.A. - Società per la Gestione dell'Aeroporto dello Stretto (hereinafter, "SO.G.A.S."), the company managing the Reggio Calabria airport. The notification has been registered under case number N 536/2008.
- (2) However, as the Commission had doubts that the state support has in fact been put in place before the Commission could take a position on its compatibility with the internal market, and as the Commission in the course of the preliminary

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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examination has become aware of other support measures in favour of the same beneficiary, which appear to constitute State aid that has already been granted, the measure has been registered as an un-notified aid with number NN 32/2010.

- (3) By letters of 27 November 2008 and 23 February 2009, the Commission requested further information with regard to the notified measure. The Italian authorities replied on 9 January 2009 and 26 March 2009. Additional information was requested by the Commission on 19 May 2009. A reminder was sent to the Italian authorities on 18 September 2009. The Italian authorities provided the information requested on 9 October 2009. On 28 October 2009, the Commission informed the Italian authorities that additional information was still required. To date the Commission has not received any formal reply to its last request.

2. DESCRIPTION OF THE MEASURE

2.1 The Reggio Calabria airport

- (4) Reggio Calabria airport is one of the three airports in the Calabria Region, located at the extreme south of the Italian peninsula.
- (5) The traffic at the airport was less than 600 000 passengers and 350 tons of cargo in 2007 and 2008. It is therefore included in category D “small regional airports” as pursuant to the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports² (hereinafter *the 2005 Guidelines*).

2.2 Beneficiary

- (6) The beneficiary of the measures is the operator of Reggio Calabria airport, SO.G.A.S.
- (7) SO.G.A.S. is a limited liability company incorporated under Italian law in March 1981. Its equity capital is wholly owned by public bodies. According to the Italian authorities, since the beginning of 2009, its shareholders are: Reggio Calabria Province (69 % c.ca), Reggio Calabria Municipality (23,7 % c.ca) and Calabria Region (6,7 % c.ca) and Reggio Calabria Chamber of Commerce (0,44% c.ca).
- (8) On July 2007, the partial privatisation of SO.G.A.S. was initiated. According to the information given by the Italian authorities, the procedure should have been concluded during 2009.
- (9) The Italian authorities have confirmed that SO.G.A.S. is not entrusted with any public service obligation.

2.3. Detailed description of the measures

- (10) The measure notified by Calabria Region consists in the Region's contribution amounting to EUR 1 824 964 to cover losses incurred by SO.G.A.S. in 2004 and 2005.

² OJ C312, 9.12.2005 (points 53 to 63).

- (11) According to the information provided by the Italian authorities, in June 2005 and 2006, the shareholders decided to subsidize (*versamento a fondo perduto*) the losses incurred by the company (EUR 1 392 900 and EUR 2 257 028 respectively) in the two previous years by means of grants proportionate to their shareholdings in the company at the time of the decision. At the time Calabria Region owned 50% of the capital, while the rest of the shares were held by Reggio Calabria Municipality, Reggio Calabria Province, Messina Province, Messina Municipality, Reggio Calabria Chamber of Commerce and Messina Chamber of Commerce.
- (12) According to the information available to the Commission, Reggio Calabria Province, Messina Municipality, Reggio Calabria Municipality and Messina Chamber of Commerce have already granted the corresponding contributions to SO.G.A.S.
- (13) In December 2007, after further losses amounting to EUR 6 018 982 for 2006, SO.G.A.S. shareholders decided to convert the reserves of the company into equity capital, and to subsequently reduce the equity capital in order to cover the remaining losses. The resulting equity capital was below the legal threshold required by Italian law to airport operators. Therefore, SO.G.A.S. shareholders approved a capital injection of EUR 2 742 919 in order to restore the equity capital so as requested by Italian law.
- (14) The capital injection was pursued through the conversion of bonds already subscribed by some of SO.G.A.S. shareholders, amounting to EUR 2 742 919. Calabria Region was not amongst the shareholders which held those convertible bonds. As a result, Calabria Region shareholding in the company decreased from 50% to 6.74%.
- (15) Subsequently, as detailed in paragraph (7) above, at the end of 2008 the shareholders of SO.G.A.S. were: Reggio Calabria Province (69%), Reggio Calabria Municipality (23.7%), Calabria Region (6.7%) and Reggio Calabria Chamber of Commerce (0.44%).
- (16) The Italian authorities have repeatedly assured the Commission that Calabria region would not implement the measure in absence of a decision of the Commission which ascertains its compatibility with the internal market. However, SO.G.A.S. has sought legal action in front of the regional court against the Region's decision not to grant the contribution prior a decision from the Commission. The regional court ruled in its favour and the Region's appeal has been dismissed in May 2009.
- (17) Whilst acknowledging the Commission's competence to decide on the compatibility with the internal market of aid measures, the Court however considered that it falls under the competences of the national Courts to decide whether a support measure constitutes state aid. The Court therefore considered that in this case the public financing should not be qualified as State aid insofar as the measure is not liable to affect competition or trade between Member States. In addition, the Court considered that the market economy investor principle is complied with in the case at stake insofar as, irrespective of the losses incurred in 2004 and 2005, prospects of profitability on the long term existed.
- (18) A further appeal has been subsequently lodged by the Region on the ground that the measure constituted state aid and should not therefore be implemented prior to the Commission having adopted an authorising decision.

- (19) In December 2009 the regional authorities informed the Commission that the last appeal has been rejected and that no further procedural steps could be taken to oppose granting of the public contribution to SO.G.A.S. At this stage the Commission has not been informed whether the measure has in fact already been implemented.

1.1. Granting authority

- (20) As regards the notified measure, Calabria region is the granting authority. However, as explained above, it appears that the other public shareholders, i.e. Reggio Calabria Province, Messina Municipality, Reggio Calabria Municipality and Messina Chamber of Commerce have also granted public funds to SO.G.A.S. by means of the pro-quota contributions aiming to cover the losses incurred in 2004 and 2005, as well as by subscribing convertible bonds and subsequently converting these bonds into capital in December 2007.

1.2. Budget

- (21) The overall budget of the notified measure is EUR 1 824 964. In addition, as explained above, the remaining losses amounting to EUR 1 824 964 have been covered by the other public shareholders.
- (22) A EUR 2 742 919 capital injection has been subsequently implemented.

1.3. Form of the aid

- (23) The public financing for the airport operator is granted as a direct grant.

3. ASSESMENT OF THE MEASURE

3.1 Legal basis of assessment

- (24) Pursuant to 107(1) of the 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 provision of certain goods, in so far as it affects trade between Member States, shall be incompatible with the internal market save as otherwise provided by the TFEU.
- (25) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, all the abovementioned conditions need to be fulfilled. Namely, the financial support:
- (a) is granted by the State or through State resources,
 - (b) favours certain undertakings or the production of certain goods,
 - (c) distorts or threatens to distort competition,
 - (d) affects trade between Member States.

3.2 Existence of aid

3.2.1 State resources and imputability

- (26) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. Thus, it applies as well to all advantages granted by regional or local bodies of Member States, whatever their status and description³.
- (27) The Commission notes that the notified measure consists in a transfer of funds from a number of regional and local authorities, namely Calabria Region, Reggio Calabria Province, Messina Municipality and Reggio Calabria Municipality to SO.G.A.S. The transfers have been decided by the respective authority. Therefore, the measure involves State resources and is imputable to the State.
- (28) With respect to the Messina Chamber of Commerce, the Commission notes that in Italy, Chambers of Commerce are classified as local autonomous public bodies by Law n. 580/93. Therefore, their resources are state resources. With respect to the imputability of the decisions of the Messina Chamber of Commerce to the Italian State, the Commission notes at this stage that the Chamber of Commerce is entrusted with certain public policy tasks, which appears to create a *prima facie* indication that its decisions are imputable to Italy.

3.2.2 Selective economic advantage

- (29) In the present case the public funding is selective as it is directed at a single undertaking – SO.G.A.S. In this particular case, it covers the losses suffered by the company in the carrying out of its ordinary activity.
- (30) In order to conclude on whether the State resources granted to the airport operator provide it with an economic advantage, the Commission has to assess whether the market economy investor principle is complied with in this case. The Court has clarified that it should be determined "whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question".⁴
- (31) In this case, the Commission has to assess whether the investment of the State is likely to be financially profitable, in which case the public financing in question would not constitute State aid.
- (32) From the outset, it has to be noted that the Region did not indicate any element in order to demonstrate that its conduct could be comparable to the one pursued by a private investor operating in a market economy. Furthermore, there are no elements in possession of the Commission that would show that this could be the case.
- (33) At this stage there is no indication that the private investor principle would be applicable in this case. It appears that a rational private investor would not invest in a company which suffered significant losses in the recent years, especially in the absence of a viable restructuring plan or profitable investment strategies. The

³ Judgment of the Court of 14 October 1987 in the Case 248/84, *Federal Republic of Germany v Commission of the European Communities*, ECR 1987, p. 04013.

⁴ Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 120.

Commission thus takes the preliminary view that the measure at stake grants an economic advantage to the airport operator.

- (34) Similarly, the Commission has doubts that the contributions granted *pro quota* by other shareholders in order to cover losses incurred in 2004 and 2005 would not provide the airport operator with a selective advantage.
- (35) In addition, the Commission expresses doubts that the capital injection decided by SO.G.A.S. shareholders in December 2007 was carried out at conditions comparable to the ones pursued by a private investor operating in a market economy. This capital injection could also procure a selective advantage to SO.G.A.S.

3.2.3 *Distortion of competition and effect on trade between Member States*

- (36) With respect to distortion of competition, the Commission considers that State aid to an airport operator may distort competition both at the level of airports and at the level of airlines.
- (37) With regard to airports, the Commission notes that passengers using Stretto airport may, depending on their place of residence, alternatively use the airports of Catania, Lamezia Terme and Crotona. If, as in the present case, one of these airports receives financial support, this may enable it to either stay on the market in the first place or to charge airport fees which are below its own costs, and therefore below the market price. Therefore, the Commission concludes that the measures have the potential to distort competition at the level of airports.
- (38) With regard to airlines, the Commission notes that financial support for an airport, as in the present case, may be passed on to airlines in the form of lower landing fees. This in turn may distort competition between airlines serving airports in the same catchment area. Therefore, the Commission concludes that the measures have the potential to distort competition at the level of airlines.
- (39) With regard to effect on trade between Member States, the Commission recalls the ruling of the Court in *Altmark*⁵, according to which it is not impossible that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may none the less have an effect on trade between Member States, as, where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State. In addition, the Court also notes that there is no threshold or percentage below which it may be considered that trade between Member States is not affected. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.
- (40) The Commission notes at the outset that the market for airport management and operation is a market open to competition, on which a number of private and public

⁵ See Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraphs 77-82.

undertakings are active throughout the Union, including on small regional airports. This is also illustrated by the fact that Italy apparently plans to privatise Stretto airport.

- (41) In the case at hand, SO.G.A.S. has no activities outside Italy. However, by keeping SO.G.A.S. afloat, undertakings active in airport management and operation established in other Member States have less chance to provide their services in Italy. Therefore, trade between Member States is affected at the level of airports.
- (42) Furthermore, trade between Member States is also affected at the level of airlines. The Commission observes in this regard that the airport's population catchment area is mainly formed by Calabria and Messina Regions and accounts for approximately one million inhabitants. It mainly serves national destinations. In particular, out of the 491 302 passengers registered in 2008, 93.5% travelled on national routes. Nevertheless, 2 international routes (Paris and Malta) are also concerned. In the light of the Altmark jurisprudence, this in itself is sufficient to establish that there is an effect on trade, as there is no threshold or percentage below which the trade between Member States is not affected.
- (43) Based on these considerations, the Commission concludes that the measures distort competition and affect trade between Member States.
- (44) As a result, the Commission considers at this stage that the notified measure involves State aid. The Commission also expresses doubts concerning the presence of aid in the contributions previously granted *pro quota* by other shareholders of SO.G.A.S. and in the subsequent capital injection.

3.3 Compatibility of the aid

3.3.1 Legal basis

- (45) As mentioned about, the Commission takes note of the fact that the Italian authorities have confirmed that SO.G.A.S. is not entrusted with any service of general economic interest.
- (46) The Commission further notes that the Italian authorities have specified that the notified measure does not relate to any specific airport investment. Therefore, the compatibility of the measures cannot be assessed against the criteria laid down by the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports⁶ (hereinafter *the 2005 Guidelines*).
- (47) In addition, the Commission underlines that the Italian authorities have argued that SO.G.A.S. would be a firm in difficulty in the sense of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter the R&R guidelines)⁷. However, they have also indicated that the notified measure was not part of a restructuring plan and that no such plan actually existed concerning SO.G.A.S. Thus, at this stage the Commission considers that the R&R guidelines do not apply for the compatibility assessment of the notified measure.
- (48) The guidelines on national regional aid for 2007-2013 (hereinafter *the Regional guidelines*)⁸ provide for the framework of assessment of aid granted on the basis of

⁶ OJ C312/1, 9.12.2005 (points 53 to 63).

⁷ OJ C 244, 01.10.2004, p. 2.

⁸ OJ C 54, 04.03.2006, p. 13.

Article 107(3)(a) and (c) TFEU, aiming to promote the economic development of certain disadvantaged areas within the European Union. Indeed, Article 107(3)(a) states that "aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment" (hereinafter, "regional aid") may be declared compatible with the internal market.

- (49) According to the "National regional State aid map"⁹, Calabria region can be regarded as an area where the standard of living is abnormally low or where there is serious underemployment.
- (50) Consequently, at this stage the Commission considers that the compatibility of the notified measures could be assessed on the basis of Article 107(3)(a) of the TFEU and the Regional guidelines.

3.3.2 *Compatibility assessment*

- (51) The regional aid guidelines lay down that, in certain cases, the structural handicaps of a region may be so severe that regional operating aid could be granted to trigger a process of regional development. In particular, such aid may be granted in regions eligible under the derogation in Article 107(3)(a) provided that (i) it is justified in terms of its contribution to regional development and its nature, (ii) its level is proportional to the handicaps it seeks to alleviate, (iii) is granted in respect of a redefined set of eligible costs and limited to a certain proportion of those costs and (iv) it is temporary and reduced over time.
- (52) Therefore, the compatibility of the aid needs to be assessed in light of the above criteria.

Contribution to regional development and proportionality of the measure (point 76 of the regional aid guidelines)

- (53) Calabria is one of the most disadvantaged regions in Italy. Its GDP per person is equal to 64.5% of the national average.
- (54) According to the Italian authorities, the level of infrastructure equipment of the Calabria region only amounts to 76% of the average level of infrastructure at national level. The remote accessibility, as well as the underdeveloped freight mobility, currently raise critical issues for the region, largely as a result of the lack of adequate infrastructure.
- (55) According to the Italian authorities, the notified aid is part of a wider project of enhancement of the transport network in Calabria. It is alleged that the implementation of the notified measure would allow SO.G.A.S. to improve the infrastructure and the services offered by Reggio Calabria airport, in the light of the regional strategy aiming at improving the transport network and guaranteeing improved access to Calabria region.
- (56) The Commission has acknowledged the importance of improving accessibility, connectivity, and regional development through the development of safe and viable air transport infrastructure.
- (57) In its 2007 Action Plan for Airport Capacity¹⁰, the Commission emphasises the importance of regional airports to the development of an integrated European air

⁹ OJ C 90, 11.04.2008, p. 4, *Guidelines on National regional aid for 2007-2013 — National regional state aid map: Italy*.

transport network¹¹. The Action Plan further acknowledges the necessity to unlock existing latent capacity at regional airports provided that Member States respect state aid rules.

- (58) However, the aid does not aim to support new infrastructure in a regional airport nor a more efficient use of existing infrastructure. It is merely directed at relieving the undertaking from costs they would normally have to bear. At this stage the Commission considers that the public funding cannot be regarded as directly linked to the objective of improving regional connectivity. Consequently, the Commission considers that the aid cannot be considered as justified in terms of contribution to regional development.
- (59) On the basis of these considerations, the Commission considers at this stage that the notified measure cannot be considered as proportional to the objective of improvement of the transport network and accessibility of the region. The Commission notes that the same considerations are applicable as regards the contributions of the other shareholders and the capital injection described in paragraphs (12) - (14) above.

Predefined set of eligible costs and limitation to a certain proportion of those costs (point 77 of the regional guidelines)

- (60) According to point 77 of the regional aid guidelines, operating aid should in principle only be granted in respect of a predefined set of eligible expenditures or costs and limited to a certain proportion of those costs.
- (61) The Commission notes that the aid aims at covering the losses incurred for the financial exercises 2004 and 2005. These losses have not been by nature predefined.
- (62) In addition, the Commission notes that the aid measure concerns the entirety of the Region's contribution as a shareholder of the company to cover the airport operator's losses in 2004 and 2005.
- (63) Therefore, the Commission has doubts that the notified aid fulfils the requirement set out in point 77 of the regional aid guidelines. The same applies as regards the additional support measures referred to in paragraph (59) above.

The aid is temporary and reduced over time (point 79 of the regional guidelines)

- (64) The Commission considers that, as regards the notified measure, the aid is temporary and reduced over time, as it consists in a one-shot contribution related to cover losses suffered in the financial years 2004 and 2005.
- (65) However, as detailed above, at this stage the Commission cannot exclude the aid character of the contributions previously granted by other shareholders of SO.G.A.S. and the subsequent capital injection. Insofar as these measures are considered aid, the Commission expresses doubts as to the temporary character of the aid.

¹⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "An action plan for airport capacity, efficiency and safety in Europe", COM(2006)819 Final, 24 January 2007.

¹¹ Point 12 therein.

- (66) At this stage the Commission therefore considers that this condition does not appear to be fulfilled in the case at stake.

3.3.3 Conclusion

- (67) In light of the above, the Commission expresses doubts that the measure notified by the Italian authorities complies with the requirements of the Regional Guidelines.
- (68) In addition, according to point 9 of the regional guidelines, aid may only be granted to firms in difficulties within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty in accordance with the latter guidelines, the Commission considers that the conditions therein are not fulfilled in the present case.
- (69) As detailed under paragraph (47) above, the Italian authorities have not provided the detailed elements evidencing that the requirements of the R&R guidelines (in particular point 10 of those guidelines) are met in the present case. On this basis, at this stage it appears doubtful that the condition set out in point 9 of the regional aid guidelines is met.
- (70) In the light of the above, the Commission has doubts that the aid notified by the Italian authorities aiming at covering SO.G.A.S. losses incurred in the financial years 2004 and 2005 can be considered compatible with the internal market as directed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, pursuant to article 107(3)(a) of the TFEU.
- (71) In addition, the Commission has doubts that the contributions granted *pro quota* by other shareholders in order to cover losses incurred in 2004 and 2005 would not amount to aid to SO.G.A.S. Moreover, the Commission cannot exclude the aid character of the capital injection decided by SO.G.A.S shareholders in December 2007. At this stage the Commission considers that the capital injection could also amount to State aid to SO.G.A.S.
- (72) As explained under paragraphs (16) - (19) above, several appeals have been lodged at national level against the Regions' decision not to grant the contribution prior authorisation by the Commission.
- (73) The Commission considers that, given the supremacy of the EU law over national law, insofar as the notification has not been withdrawn, and the present procedure is pending, Italy is bound to comply with the standstill clause laid down by Article 108(3) of the TFEU. Therefore, the position taken by the national court should be disapplied and the Italian authorities should not put into effect the notified measure as long as the current procedure is pending, by virtue of the primacy of the standstill obligation in Article 108(3) of the TFEU.

4. DECISION

- (74) The Commission acting under the procedure laid down in Article 108(2) TFEU, requests the Italian Republic to submit its comments and provide all such information as may help to assess the measure, within one month of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (75) The Commission requests the Italian authorities to submit comments and to provide further information on the following issues:

- All necessary information to allow the Commission to carry out an in depth assessment of the compatibility of the notified measure with the internal market, in particular: details on the implementation of the measure, legal basis for assessment of compatibility, detailed information to substantiate the incentive effect of the aid and to evidence the compatibility of the notified aid with the internal market;
 - Detailed information on the contributions granted by other shareholders in order to cover losses incurred in 2004 and 2005, as well as the EUR 2 742 918 capital injection decided in December 2007, in particular on the qualification of the measure as State aid and its compatibility with the internal market;
 - Information on the state of the procedure of partial privatization of the airport operator.
- (76) The Commission wishes to remind the Italian Republic that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (77) The Commission warns the Italian Republic that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories of the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
 Directorate-General for Competition
 B-1049 Brussels
 Fax No: 0032 (0) 2 296 12 42.

Yours faithfully,
 For the Commission

Joaquín ALMUNIA
 Vice-President of the Commission