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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid N 418/2010 – Italy
Rescue aid to Tirrenia di Navigazione S.p.A. in *amministrazione straordinaria*

Sir,

1. PROCEDURE

- (1) On 28 September 2010, the Italian authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), their intention to grant rescue aid to Tirrenia di Navigazione S.p.A. in *amministrazione straordinaria* (hereinafter *Tirrenia*). The notification has been registered under case number N 418/2010.
- (2) According to the Italian authorities the measure should be deemed compatible with the internal market on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty¹ (hereinafter *the Guidelines*).

¹ Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty; OJ C 244, 1.10.2004, p. 2.

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2. DESCRIPTION OF THE MEASURE

2.1. The beneficiaries

- (3) The beneficiaries of the measure are Tirrenia, and through Tirrenia, its regional subsidiary, Siremar – Sicilia Regionale Marittima S.p.A. (hereinafter *Siremar*).
- (4) Tirrenia is a company established in 1936 that provides passenger and freight maritime transport services. The company operates a series of cabotage routes connecting mainland Italy with Sicily, Sardinia and the Tremiti islands and an international link with Albania (Bari-Durazzo).
- (5) Between January 1989 and end of December 2008 the company provided the above-mentioned services under a Convention concluded with the Italian State in 1991, in force for 20 years retroactively as from 1989 (hereinafter *the initial Convention*).
- (6) Decree Law no. 207 of 30 December 2008, converted into Law no.14 of 27 February 2009 laid down the prolongation of the initial Convention up to the end of 2009. Article 19^{ter} of Decree Law no. 135 of 25 September 2009, converted into Law no. 166 of 20 November 2009, further prolonged the initial Convention until 30 September 2010.
- (7) Tirrenia is part of the business group headed up by *Fintecna - Finanziaria per i Settori Industriale e dei Servizi S.p.A.* (hereinafter *Fintecna*), which holds 100% of Tirrenia's share capital and is in turn wholly owned by the Italian Ministry of the Economy and Finance. *Fintecna* is specialised in managing shareholding and privatisation processes, as well as dealing with projects to rationalise and restructure companies facing industrial, financial or organisational difficulties. *Fintecna* promotes either their re-launching on the open market or leads them into an efficiently managed liquidation process.
- (8) *Siremar*, fully-owned by Tirrenia, operates a series of maritime cabotage routes between Sicilia and the neighbouring islands on one side, and Milazzo and Napoli on the other side, under a similar Convention with the Italian State, further prolonged as detailed above.
- (9) In 2009 Tirrenia and *Siremar* had an average number of employees equal to 1,854 and 540 respectively. For the financial year 2009 Tirrenia and *Siremar* had a turnover of EUR 319.4 million and EUR 88.9 million respectively. Therefore, both Tirrenia and *Siremar* qualify as large companies within the meaning of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.²
- (10) Tirrenia also participates in the share capital of the following undertakings:
 - (a) Terminal Traghetti Napoli S.r.l. (50%);
 - (b) Tirrenia Eurocatering S.p.A (49%);
 - (c) Saimare - Servizi Ausiliari Internazionali Marittimi S.p.A. (5.27%);
 - (d) Stazioni Marittime S.p.A. (2.44%).

² OJ L 124, 20.05.2003, p. 36.

- (11) On 23 December 2009 Fintecna published the call for tender aimed at the privatisation of Tirrenia and Siremar. On 4 August 2010, after the failure of the negotiations with Mediterranea Holding, the only bidder which had made a final offer, Fintecna declared closed the procedure.
- (12) Consequently, Law no. 163 of 1 October 2010 (converting Decree-Law no. 125 of 5 August 2010)³ provided for a further prolongation of the Conventions up to the end of the privatisation process.
- (13) The current decision is without prejudice to the assessment of the public service compensation paid to Tirrenia and Siremar under the Conventions mentioned under paragraphs (5), (6), (8) and (12) above.

2.2. Financial difficulties

- (14) The companies are currently facing severe difficulties which have led to the admission of Tirrenia into the collective insolvency procedure foreseen under Italian law for large companies, "*amministrazione straordinaria*"⁴ on 5 August 2010, followed by its declaration of insolvency by the competent Court on 12 August 2010. Siremar was subsequently admitted to the special procedure on 17 September 2010.
- (15) According to the Italian authorities the financial difficulties of both the companies are specific to these companies, in no way imputable to the holding company Fintecna and mainly the result of a severe liquidity problem which prevents them from meeting their operating costs. Hence these difficulties are not the result of an arbitrary allocation of costs within the group.
- (16) Given the monthly income estimated at approximately EUR [...] for Tirrenia and EUR [...] for Siremar, and monthly expenditures amounting to approximately EUR [...] for Tirrenia and EUR [...] for Siremar, the Italian authorities forecast a monthly deficit of EUR [...] for Tirrenia and EUR [...] for Siremar in March 2011. The deficit will be registered starting with October 2010.
- (17) According to the Italian authorities, the cash-flow forecasts took into account the fact that the prolongation of the initial Conventions should have ended on 30 September 2010 and that consequently at that time the following was not certain:
 - (a) when the Conventions would be further extended;
 - (b) the amount of the compensations to be paid to Tirrenia and Siremar under the extended Conventions; and
 - (c) when Tirrenia and Siremar would effectively start to receive the compensations pursuant to the extended Conventions.

³ Conversione in legge, con modificazioni, del decreto-legge 5 agosto 2010, n. 125, recante misure urgenti per il settore dei trasporti e disposizioni in materia finanziaria. Proroga del termine di esercizio della delega legislativa in materia di armonizzazione dei sistemi contabili e degli schemi di bilancio di amministrazioni pubbliche.

⁴ Decreto-legge of 23 December 2003, No. 347, "Misure urgenti per la ristrutturazione industriale di grandi imprese in stato di insolvenza".

- (18) As mentioned in paragraph (12) above, the initial Conventions have been further prolonged by means of Law no. 163 of 1 October 2010. The Italian authorities state that, irrespective of this prolongation, both the timing of the actual payment of the compensation laid down therein, as well as the precise amount to be effectively received by Tirrenia and Siremar are still uncertain. In addition, the Italian authorities submit that during October 2010 – March 2011 the two companies are only going to receive the compensation due by the end of June 2010. More specifically, Tirrenia is expected to receive EUR 11.4 million while Siremar is expected to receive EUR 8.7 million. This amount will be mostly used by Tirrenia to meet maintenance costs incurred from the beginning of October 2010. More specifically, these sums will be used to carry out maintenance works on certain ships, which are currently not used to provide maritime transport activities. This would allow Tirrenia to restore the lines Genoa-Olbia-Arbatax and Bari-Durres temporarily suspended and thus to preserve the jobs of approximately 100 persons currently employed on these lines.
- (19) In addition, the Italian authorities have informed the Commission that, on the basis of the Conventions, the two companies are also entitled to receive, by the end of December 2010, as part of the public service compensation owed, a further contribution amounting to EUR 7 million for Tirrenia and EUR 5.4 million for Siremar. However, the Italian authorities contend that at present it is still uncertain whether these amounts will be actually paid out before the end of March 2011.
- (20) The compensation due for the discharge of the public service obligations in the period January 2011 - March 2011 is calculated on the basis of a new methodology and amounts to approximately EUR 17.5 million for Tirrenia and EUR 13.3 million for Siremar. However, the Italian authorities confirmed that the above-mentioned amounts are not due before the beginning of March 2011 and will certainly not be paid before the end that month.
- (21) In the light of the above, the Italian authorities state that the prolongation of the Conventions by means of Law no. 163 of 1 October 2010 will only have a minor impact on the liquidity needs of Tirrenia and Siremar during the period October 2010 - March 2011.
- (22) According to the Italian authorities the financial difficulties of the companies are mainly due to the significant decrease in traffic levels, as a result of the economic and financial environment, to competitors' aggressive commercial strategies and to the increase in operating costs.
- (23) In addition, the Italian authorities state that the admission of Tirrenia to the procedure of *amministrazione straordinaria* has negatively affected the sales of the companies in August and September 2010 and that this negative trend will probably continue over the next months. Moreover, the current situation has a negative impact on the companies' relationship with the strategic suppliers who currently require payment in advance for each supply.
- (24) Furthermore, given that the maritime transport sector is characterized by a high seasonality, which implies a significant decrease in traffic volumes during the

low season, the Italian authorities note that the revenues of both the companies will suffer a further decline over the next months.

- (25) Moreover, given the previous failed attempt to sell the company, access to private credit is difficult.

2.3. The financial support measure

- (26) Italy intends to grant a State guarantee on credit lines provided by private banks to Tirrenia, for an amount of EUR 95 million. The Italian authorities undertook the loan to be granted by private financial institutions at an interest rate comparable to those observed for loans to healthy firms, and in any event above the reference rate adopted by the Commission for Italy; hence, the 1-year IBOR⁵ increased with at least 100 basis points will be applied.⁶
- (27) According to the Italian authorities, the abovementioned amount represents the minimum financial support necessary for Tirrenia and its subsidiary to continue to provide the public service for the period of time required to finalise the privatization of the companies, which should be completed by the end of March 2011, and aims exclusively at covering public service costs.⁷
- (28) The Italian authorities have provided figures concerning the liquidity needs of the two companies calculated on the basis of the financial information 2008-2009 in accordance with the formula indicated in the Annex of the Guidelines, as shown in the Table below.

A. Earnings (loss) before interests and taxes	[...]
B. Depreciation	[...]
Other provisions	[...]
C. Change in working capital	[...]
D. Sum of A+B+C	[...]
E. Adjustment needed to have equivalent time periods of 6 months (D. divided by 2)	[...]
F. Liquidity needs for a 6-month period	-110

Table 1 – Liquidity needs calculated on the basis of the formula (million EUR)

- (29) The above calculation does not take into account the corresponding public service compensation. The Italian authorities submit that liquidity needs of Tirrenia and Siremar for the period October 2010 - March 2011 cannot be fully and correctly assessed exclusively on the basis of the financial data relating to the previous years, insofar as the current legal and economic context is radically different, in particular as regards the amount of the public service compensation due to the two companies in the discharge of the public service obligations.

⁵ Inter-bank offered rate on the money market.

⁶ In line with the "Communication from the Commission on the revision of the method for setting the reference and discount rates", OJ C 14 of 19.01.2008, p- 6.

⁷ The Extraordinary Commissioner of Tirrenia and Siremar also intends to negotiate a loan amounting to EUR 25 million with a pool of private banks. The operation will be concluded on market terms.

- (30) In particular, the Italian authorities submit that even after the prolongation of the Conventions referred to in paragraph (12) above, taking into account the amount of the public service compensation paid to the two companies in the previous years would lead to a completely inaccurate assessment of the future liquidity needs of Tirrenia and Siremar. Indeed, the Italian authorities explain that the amount of the public service compensation to be paid to the companies for the discharge of the public service obligations starting with 2010 is significantly lower than the value of the compensation provided to the two companies in the previous years. In addition, as detailed above, these amounts will be only partially paid to Tirrenia and Siremar before the end of March 2011.
- (31) The guarantee covers the whole credit held by the bank including capital, interest and every other cost and charge connected with the financing operation. The guarantee becomes operative without any obligation of previous discussion of the debtor firm, on the simple communication of non-fulfilment of the obligation. Within thirty days from the receipt of the request, the Ministry of the Economy must pay to the bank the sum owed by the firm. Upon payment, the Ministry takes over the creditor bank's rights as a preferred creditor.
- (32) In addition, the Italian authorities undertake to communicate to the Commission, no later than six months after the rescue aid measure has been authorized, a restructuring plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.

2.4. Legal basis

- (33) The national legal framework for the public financing includes:
- (a) Decreto Legislativo of 30 January 1979, No. 26 (converted in Law of 3 April 1979, No. 95), *Provvedimenti urgenti per l'amministrazione straordinaria delle grandi imprese in crisi* (Article 2-bis);
 - (b) Decreto Legislativo of 8 July 1999, No. 270, *Nuova disciplina dell'amministrazione straordinaria delle grandi imprese in stato di insolvenza, a norma dell'articolo 1 della legge 30 luglio 1998, n. 274*;
 - (c) Decreto-legge of 23 December 2003, No. 347, converted in Law of 18 febbraio 2004, No. 39, *Misure urgenti per la ristrutturazione industriale di grandi imprese in stato di insolvenza* and
 - (d) Decreto of 23 December 2004, No. 319, *Regolamento recante le condizioni e le modalità di prestazione della garanzia statale sui finanziamenti a favore delle grandi imprese in stato di insolvenza, ai sensi dell'articolo 101 del decreto legislativo 8 luglio 1999, n. 270*.

3. ASSESSMENT OF THE AID

3.1. Existence of aid

- (34) According to Article 107(1) TFEU "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of

certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

- (35) 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 should:
- (a) be granted by the State or through State resources,
 - (b) favour certain undertakings or the production of certain goods,
 - (c) distort or threaten to distort competition, and
 - (d) affect trade between Member States.
- (36) Firstly, the measure at stake consists of a guarantee which is selective as it is deemed to favour Tirrenia and Siremar.
- (37) Secondly, the measure will be financed by the general budget of Italy, and thus undoubtedly by a Member State and through State resources.
- (38) Thirdly, the guarantee will provide the beneficiaries with access to credit lines that, given that the companies are currently subject to insolvency procedures, the beneficiaries would not have been able to obtain at comparable conditions. Under those circumstances, the guarantee confers an economic advantage to the beneficiaries, who are able to improve their overall financial situation.⁸
- (39) Finally, when aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.⁹ It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.¹⁰ In the present case, the beneficiaries operate in competition with other undertakings providing maritime transport services in the EU, in particular since the entry into force of the Council Regulation (EEC) No 4055/86¹¹ and Council Regulation (EEC) No 3577/92¹², liberalising the market of the international maritime transport and maritime cabotage respectively. Therefore, the measure under scrutiny is liable to affect EU trade and distort competition in the internal market.
- (40) In light of the above, the Commission considers that the notified measure in favour of Tirrenia and Siremar constitutes State aid pursuant to Article 107(1) TFEU.

⁸ In accordance with points 3(2) and 4(1)(a) of the Notice of 20 June 2008 on the application of Articles 107 and 108 TFEU to State aid in the form of Guarantees; OJ C 155, 20.6.2008, p. 10.

⁹ See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission, [2004] ECR I-3679, paragraph 44 .

¹⁰ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

¹¹ Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries; OJ L 378, 31.12.1986, p. 1.

¹² Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage); OJ L 364, 12.12.1992, p. 7.

3.2. Compatibility of the aid

- (41) The compatibility with the internal market on the basis of Article 107(3)(c) of the notified rescue aid must be assessed in light of the criteria laid down by the Community guidelines on State aid for rescuing and restructuring firms in difficulty.¹³
- (42) Both Tirrenia and Siremar qualify as firms in difficulty. As they are subject to collective insolvency proceedings under Italian law, the criterion laid down by paragraph 10(c) of the Guidelines is fulfilled.
- (43) Moreover, the Commission notes that these difficulties are too serious to be dealt with by the group itself. More specifically:
- (a) according to the information submitted by the Italian authorities, at the moment of the declaration of insolvency of Tirrenia on 12 August 2010, the company's overdue debts amounted to approximately EUR 15 million, short-term debts to commercial banks to EUR 227 million and the total debt exposure to approximately EUR 646 million (at the end of 2009 the company's total assets amounted to EUR 1,050 billion);
 - (b) according to the information submitted by the Italian authorities, as of 20 August 2010, Siremar's liquidities amounted to approximately EUR 2 million, whilst its debt exposure to approximately EUR 67 million (at the end of 2009 the company's total assets amounted to EUR 109.2 million);
 - (c) since both Tirrenia and Siremar have been admitted to the special procedure mentioned in paragraph (14) above, currently their administration and control exclusively rely with the Extraordinary Commissioner appointed to that end. Consequently, Fintecna cannot currently act as shareholder of the companies and support their liquidity needs.
- (44) Paragraph (25) of the Guidelines lays down five conditions for a rescue aid to be deemed compatible with the internal market, namely the measure has to:
- (a) consist of liquidity support in the form of loan guarantee or loan, granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Commission; any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm;
 - (b) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;
 - (c) be accompanied, on notification, by an undertaking given by the Member State concerned to communicate to the Commission, not later than six months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated;
 - (d) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised; and

¹³ See footnote 1.

- (e) be granted only once (one time, last time principle).
- (45) All the abovementioned conditions are observed in the present case. First, the aid consists of a liquidity support in the form of a loan guarantee. The guarantee is limited to a period of six months from the disbursement of the first loan instalment to the beneficiary. In addition, as mentioned above, the Italian authorities have undertaken that the credit would be granted at an interest rate comparable to those observed for loans to healthy firms, and in any event above the reference rate adopted by the Commission for Italy.
- (46) Second, the aid is warranted on the grounds of serious social difficulties and has no unduly adverse spill-over effects on other Member States. In fact, given the number of employees mentioned in paragraph (9) above, if Tirrenia and Siremar ceased their operation, this would have serious consequences in terms of employment. The aid will allow Tirrenia and Siremar to guarantee continuity in the operation of the maritime transport services, which do not include international links between Member States, without disruption of the public service for the period of time until the privatisation process is finalised. In addition, the beneficiaries have undertaken not to increase the number of lines and ports served or the capacity of the ships used, for the entire duration of the rescue aid, including the lines Genoa-Olbia-Arbatax and Bari-Durres. The Commission therefore considers that spill over effects will be kept to a minimum, in particular considering the limited duration of the State intervention.
- (47) Third, the rescue aid is limited to six months. The Italian authorities have undertaken to communicate to the Commission, no later than six months after the rescue aid measure has been authorized, a restructuring plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.
- (48) Fourth, the Commission acknowledges that the Italian authorities, considering the theoretical maximum amount calculated on the basis of the formula in paragraph (28) above, decided to limit the rescue aid amount to EUR 95 million. The Commission notes that, on the basis of the information submitted by the Italian authorities, this amount is the minimum necessary for the companies to remain operational over the next six months.
- (49) The Commission considers that the companies' deteriorating financial situation described above, their admission into collective insolvency procedure and the estimated liquidity needs lower than the maximum liquidity needs theoretically resulting from the formula, indicate that the aid amount of EUR 95 million realistically and prudentially represents the minimum necessary to keep the firms in business for a period of six months, in line with the paragraph 25(d) of the Guidelines.
- (50) Finally, the Italian authorities confirmed that the companies have not benefited from any rescue aid in the last ten years. Therefore, the notified aid complies with the 'one time, last time principle' as set out in paragraph 25(e) and (72) *et seq.* of the Guidelines.
- (51) In view of the above, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, which is

compatible with the internal market in accordance with Article 107(3)(c) TFEU.

4. DECISION

- (52) The Commission has come to the conclusion that the aid is compatible with the internal market pursuant to Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.

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

(Signed)
Joaquín ALMUNIA
Vice-President of the Commission