Commission Decision (EU) 2020/1412 of 2 March 2020 on the measures SA.32014, SA.32015, SA.32016 (11/C) (ex 11/NN) implemented by Italy for Tirrenia di Navigazione and its acquirer Compagnia Italiana di Navigazione (notified under document C(2020) 1110) (Only the Italian text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2020/1412

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 5 October 2011 the Commission opened the formal investigation procedure in respect of various measures adopted by Italy in favour of the companies of the former Tirrenia Group[2] ('the 2011 Decision'). The investigation concerned *inter alia* the compensations granted to Tirrenia di Navigazione ('Tirrenia') for the operation of a number of maritime routes as of 1 January 2009, and the privatisation process (see section 2.3.3) which resulted in the Tirrenia business branch (see also recital 27) being acquired by Compagnia Italiana di Navigazione ('CIN').

(2) The 2011 Decision was published in the *Official Journal of the European Union*[3]. The Commission invited interested parties to submit their comments on the measures under investigation.

(3) As concerns the measures subject to this Decision, the Commission received comments from Tirrenia in Extraordinary Administration ('Tirrenia in EA'), Pan Med Lines ('Pan Med'), CIN and Grandi Navi Veloci (also referred to as GNV) (see

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section 5). It forwarded them to Italy, which had the opportunity to react. Italy did not submit any comments.

(4) On 10 January 2012, the Italian authorities formally notified, allegedly for reasons of legal certainty, the draft public service contracts ('Conventions') which would be concluded with the respective future acquirers of the Tirrenia and Siremar business branches and on which basis compensation would be granted to these acquirers. On 24 January 2012, 4 February 2012 and 3 July 2012, the Commission requested additional information from the Italian authorities on the notified measures. That information was provided by the Italian authorities by letters dated 9 February 2012, 11 May 2012 and 19 July 2012. By their letter dated 19 July 2012, the Italian authorities also informed the Commission that the new Convention between the Italian State and CIN had been signed the day before.

(5) On 7 November 2012, the Commission extended the investigation procedure *inter alia* (see section 2.2) in respect of (i) the illegal prolongation of rescue aid granted to Tirrenia; and (ii) public service compensation granted to CIN under the new Convention concluded with the Italian State. An amended version[(4)] of that Decision was adopted by the Commission on 19 December 2012 ('the 2012 Decision').

(6) The 2012 Decision was published in the Official Journal of the European Union[(5)]. The Commission invited interested parties to submit their comments on the measures under investigation.

(7) As concerns the measures subject to this Decision, the Commission received comments from CIN, Tirrenia in EA and Pan Med (see section 5). It forwarded them to Italy, which had the opportunity to react. Italy did not submit any comments.

(8) On 5 October 2012 the Commission contracted Ecorys Netherlands BV to provide it with an estimation of the market value of the relevant assets of Tirrenia put up for sale (see section 2.3.3.5) based on two alternative scenarios. Ecorys submitted its final report on 4 September 2013 ('the Ecorys Report'). The Commission forwarded this report to Italy on 27 September 2013. Italy submitted its comments to the Ecorys Report, including a counter-valuation by its own independent expert Banca Profilo, by letter dated 17 December 2013.

(9) By its decision of 22 January 2014 ('the 2014 Decision')[(6)], the Commission closed the formal investigation procedure as concerns various measures adopted by the Sardinian Region in favour of Saremar. The appeal lodged by Saremar and the Region against that decision was dismissed by the General Court in 2017[(7)].

(10) On 12 February 2016, 29 May 2018, 18 September 2018, 10 October 2018 and 22 November 2018, Grimaldi Euromed S.p.A. ('Grimaldi') made submissions to the Commission as described in section 6. At Grimaldi's request, the Commission services also met with the company's legal representative on 17 July 2018.

(11) On 25 January 2018, 29 March 2018, and 31 August 2018 the Commission requested additional information from the Italian authorities. The Italian authorities provided this information on 26 April 2018, 31 May 2018, 2 November 2018 and 11

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December 2018. On 23 and 24 January 2019, the Commission services met with the Italian authorities in Rome. In the following months, the Italian authorities submitted the additional information requested by the Commission during that meeting.

(12) This Decision only concerns possible aid measures to Tirrenia and CIN, as specified in recital 31. All remaining measures subject to the 2011 and 2012 Decisions are being investigated separately under cases SA.32014, SA.32015 and SA.32016 and are not therefore covered by this Decision. In particular, those remaining measures concern other companies of the former Tirrenia Group.

2. BACKGROUND AND DESCRIPTION OF THE MEASURES SUBJECT TO INVESTIGATION

2.1. General framework

2.1.1. *The initial Conventions*

(13) The Tirrenia Group was traditionally owned by the Italian State through the company Fintecna[8] and initially included six companies, namely Tirrenia, Adriatica, Caremar, Saremar, Siremar and Toremar. These companies provided maritime transport services under separate public service contracts concluded with the Italian State in 1991, in force for twenty years between January 1989 and December 2008 (hereinafter 'the initial Conventions'). Fintecna held 100 % of Tirrenia's share capital which in turn wholly owned the regional companies Adriatica, Caremar, Siremar, Saremar and Toremar. Adriatica, which used to operate a number of routes between Italy and Albania/Croatia/Greece/Montenegro, was merged with Tirrenia in 2004.

(14) The purpose of these public service contracts was to guarantee the regularity and reliability of the maritime transport services, the majority of them connecting mainland Italy with Sicily, Sardinia and other smaller Italian islands. To that effect, the Italian State granted financial support in the form of subsidies paid directly to each of the companies of the Tirrenia Group.

(15) Tirrenia has been providing maritime transport services on a number of mixed (passengers, cars and lorries) routes and also on some freight routes, mostly between mainland Italy and respectively Sardinia, Sicily and the Tremiti Islands, and also between Sardinia and Sicily. The exact routes concerned are described below.

(16) On 6 August 1999, the Commission initiated the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of aid paid on the basis of the initial Conventions to the six companies that then formed the Tirrenia Group.

(17) During the investigation phase, the Italian authorities requested that the Tirrenia Group case would be split up so that priority could be given to reaching a final decision concerning Tirrenia. This request was motivated by the Italian authorities' plan to privatise the Group, beginning with Tirrenia, and their intention to speed up the process in relation to that company.

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(18) The Commission acceded to the Italian authorities' request, and by Commission Decision 2001/851/EC[9] it closed the procedure initiated in respect of the aid awarded to Tirrenia ('the 2001 Decision'). The aid was declared compatible subject to certain commitments by the Italian authorities.

(19) By Commission Decision 2005/163/EC[10] ('the 2004 Decision'), adopted on 16 March 2004, the Commission declared the compensation granted by Italy to the Tirrenia Group companies other than Tirrenia[11] to be partially compatible with the internal market, partially compatible conditional upon the respect of a number of commitments by the Italian authorities, and partially incompatible with the internal market. The decision was based on accounting data spanning from 1992 to 2001 and contained certain conditions aimed at ensuring the compatibility of the compensation throughout the duration of the initial Conventions.

(20) By Judgment of 4 March 2009 in Cases T-265/04, T-292/04 and T-504/04[12] ('the 2009 Judgment') the General Court annulled the 2004 Decision. This Decision is without prejudice to the ongoing procedure following the 2009 Judgment.

2.1.2. *The prolongation of the initial Conventions*

(21) Article 26 of Decree Law No 207 of 30 December 2008, converted into Law No 14 of 27 February 2009, laid down the prolongation of the initial Conventions (including the one applicable to Tirrenia) which were initially due to expire on 31 December 2008 for one year, until 31 December 2009.

(22) Article 19-*ter* of Decree Law No 135 of 25 September 2009, converted into Law No 166 of 20 November 2009 ('the 2009 Law'), laid down that, in view of the privatisation of the Tirrenia Group companies, the shareholding of the regional companies (except for Siremar) would be transferred from parent company Tirrenia without any consideration being paid as follows:

(1) Caremar to the Region of Campania. Subsequently, the Region of Campania would transfer to the Region of Lazio the going concern[13] operating the transport connections with the Pontino archipelago on a stand-alone basis from that moment under the name Laziomar;

(2) Saremar to the Region of Sardinia;

(3) Toremar to the Region of Tuscany.

(23) The 2009 Law also specified that new 'Conventions' were to be agreed between the Italian State and Tirrenia and Siremar by 31 December 2009. Likewise, the regional services would be enshrined in draft 'Public Service Contracts', to be agreed by Saremar, Toremar, and Caremar with the regional authorities by 31 December 2009 (with Sardinia and Tuscany) and 28 February 2010 (with Campania and Lazio) respectively. The draft new Conventions / Public Service Contracts would be put up for tender with the companies themselves and then signed with the buyers upon finalisation of the privatisation of each of those companies[14].

(24) To that end, the 2009 Law further prolonged the initial Conventions (including the one applicable to Tirrenia) from 1 January 2010 until 30 September 2010.

(25) The 2009 Law also laid down fixed annual compensation ceilings for the operation of the services as of 2010 (under the prolongation of the initial Conventions as well as under the new Conventions and Public Service Contracts), at a total amount of EUR 184 942 251, as follows:

TABLE 1

Compensation ceilings as of 2010

Company	**Maximum annual compensation (EUR)**
Tirrenia	72 685 642
Siremar	55 694 895
Saremar	13 686 441
Toremar	13 005 441
Caremar	29 869 832[a]

a Out of which EUR 19 839 226 from Campania and EUR 10 030 606 from Lazio.

(26) Finally, Article 1 of Law No 163 of 1 October 2010 converting Decree-Law No 125 of 5 August 2010 ('the 2010 Law') laid down the further prolongation of the initial Conventions (including the one applicable to Tirrenia) from 1 October 2010 until the completion of the privatisation processes of Tirrenia and Siremar.

2.1.3. *The privatisation of Tirrenia and the conclusion of the new Convention*

(27) In September 2010, a tender procedure (see section 2.3.3) was launched to find a buyer for the Tirrenia business branch bundled together with the new Convention for the provision of maritime services over a period of eight years in exchange for public service compensation. In this context, reference is made to the Tirrenia business branch instead of to Tirrenia since the tender procedure concerned only those assets and contracts necessary to perform the public service obligations specified in a new Convention to be concluded with the acquirer. Tirrenia's remaining assets, which it used for other purposes (such as ships, real estate and works of art), were to be sold via separate procedures. Furthermore, the tender procedure did not concern the liabilities of Tirrenia so none of the debts accrued by Tirrenia until the date of sale were transferred to the buyer. To this date, Tirrenia in EA continues to exist as a separate entity albeit with the primary purpose of being liquidated after having reimbursed its creditors.

(28) Following its successful offer in the tender procedure, CIN signed on 25 July 2011 the contract to acquire the Tirrenia business branch. The new Convention between the Italian State and CIN was signed on 18 July 2012. On this basis, the ownership of the Tirrenia business branch was transferred from the State to CIN on 19 July 2012.