Commission Decision (EU) 2020/1411 of 2 March 2020 on the State aid No C 64/99 (ex NN 68/99) implemented by Italy for the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group) (notified under document C(2020) 1108) (Only the Italian text is authentic) (Text with EEA relevance)

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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 provision(s) cited above[1], and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. Commission Decision 2005/163/EC

(1) Following numerous complaints, in 1999 the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of aid paid to six companies of the former Tirrenia Group, namely Tirrenia di Navigazione S.p.A. ('Tirrenia'), Adriatica di Navigazione S.p.A. ('Adriatica'), Caremar – Campania Regionale Maritima S.p.A. ('Caremar'), Saremar – Sardegna Regionale Marittima S.p.A ('Saremar'), Toremar – Toscana Regionale Marittima S.p.A. ('Toremar') and Siremar – Sicilia Regionale Marittima S.p.A. ('Siremar'). At that time these companies were controlled by the public company Finmare that held the share capital of Tirrenia, which in turn owned the regional companies Adriatica, Caremar, Saremar, Siremar and Toremar.

(2) The aid took the form of subsidies paid directly to each of the companies in the group to support the maritime transport services those companies provided under six public service agreements concluded with the Italian State in 1991 ('the Initial Conventions'). The purpose of the Initial Conventions was to guarantee the provision of

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/1411. (See end of Document for details)*

maritime transport services, the majority of them connecting mainland Italy with Sicily, Sardinia and other, smaller, Italian islands.

(3) By letter dated 6 August 1999, the Commission informed Italy of its decision to initiate the formal investigation procedure ('the Opening Decision'). By letter dated 28 September 1999, the Italian authorities submitted their comments on the Opening Decision.

(4) Following the publication of the Opening Decision in the *Official Journal of the European Union*[(2)], several private operators submitted their comments to the Commission. Those comments were forwarded to the Italian authorities to give them the opportunity to react.

(5) On 18 October 1999, Italy brought an action for annulment against the Opening Decision before the Court of Justice, in respect of the part stipulating that the aid be suspended. The case was registered under case number C-400/99. In addition, on 19 October 1999 Tirrenia, Adriatica, Caremar, Saremar, Siremar and Toremar brought before the General Court an action for annulment of the Opening Decision as a whole, by virtue of Article 230(4) of the EC Treaty [now Article 263(4) TFEU]. This application was registered under case number T-246/99.

(6) By judgment of 10 May 2005 in case C-400/99, the Court of Justice annulled the Opening Decision 'to the extent to which it entailed suspension of the tax treatment applied to the supply of fuel and lubricating oil for vessels of the Tirrenia Group', until notification to the Italian authorities of the decision closing the procedure in relation to the undertaking concerned[(3)]. For the remainder, the application was dismissed.

(7) By judgment of 20 June 2007 in case T-246/99[(4)], the General Court rejected the application presented by Tirrenia and Adriatica, Caremar, Saremar, Siremar and Toremar for annulment of the Opening Decision as a whole.

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

(9) With regard to this request, the Commission noted that, while Tirrenia acted as group leader in terms of the Group's financial and commercial strategy, the then six member companies were legally independent and operated in geographically distinct market segments subject to varying degrees of competition, both from private Italian operators and from operators from other Member States. The Commission also noted that the subsidies paid by the Italian authorities, pursuant to the Initial Conventions referred to in recital 2, were calculated to cover the net operating loss on the routes served by each of the said companies and that they were granted directly to those companies without going through Tirrenia. Lastly, the other aid measures covered by the procedure – investment aid and aid of a fiscal nature – required separate analysis in respect of each company of the Group. Accordingly, the Commission decided that

it could accede to the Italian authorities' request, and by Decision 2001/851/EC[(5)] it closed the procedure initiated in respect of the aid awarded to the Tirrenia ('the 2001 Decision').

(10) The procedure remained open with regard to the aid granted by Italy to the remaining five companies in the Tirrenia Group (i.e. Adriatica, Caremar, Saremar, Siremar and Toremar, 'the Regional Companies'). During various bilateral meetings between 2001 and 2003, the Italian authorities supplied information on each of the routes operated by these companies, indicating the particular features of the markets in question, the traffic trend, the presence of competing private companies, if any, and changes in the amount of the public financing granted to each of the companies.

(11) In addition, in January, February and September 2003 a number of complainants, notably certain private operators competing with Caremar in the Gulf of Naples, submitted additional information to the Commission, containing new data to be taken into account in the investigation procedure. The Italian authorities were invited to submit their comments on these additional issues. A bilateral meeting was held on 20 October 2003, as a result of which the Italian authorities made certain commitments regarding a number of high-speed connections operated by Caremar in the Gulf of Naples. These undertakings were formalised by letter of 29 October 2003, which reached the Commission on 31 October 2003, and confirmed by a letter dated 17 February 2004. In respect of Adriatica, the Italian authorities submitted additional information to the Commission by fax dated 23 February 2004.

(12) Finally, by Decision 2005/163/EC[(6)] ('the 2005 Decision'), the Commission declared the compensation granted by Italy to the Regional Companies to be partially compatible with the internal market, partially compatible conditional on the observance of certain undertakings by the Italian authorities, and partially incompatible. The Commission imposed recovery of the part of the aid, which was declared incompatible with the internal market.

(13) In particular, Articles 1, 2, 3, 4 and 5 of the 2005 Decision state:

— 'Article 1

Without prejudice to the provisions of paragraph 2, the aid granted by Italy to Adriatica as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty.

The aid granted to Adriatica for the period January 1992 to July 1994 in relation to the Brindisi/Corfu/Igoumenitsa/Patras connection is incompatible with the common market.

Italy shall take all necessary steps to recover from Adriatica the aid referred to in paragraph 2 granted to that company unlawfully.

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Recovery shall be effected without delay in accordance with the procedures stipulated under Italian law, provided that these permit the immediate and effective execution of this decision.

The aid to be recovered shall yield interest from the date on which it was made available to the recipient to the date on which it is recovered. The interest shall be calculated on the basis of the reference rate used to calculate the equivalent regional aid subsidy on a compound basis, as stipulated in the Commission Communication on the interest rates to be applied when aid granted unlawfully is being recovered.

As of 1 January 2004, separate accounts must be kept for all the public service activities imposed by Italy on the Adriatica company on each of the routes concerned.

— Article 2

The aid granted by Italy to Siremar, Saremar and Toremar as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty.

As of 1 January 2004, separate accounts must be kept for all the public service activities imposed by Italy on Siremar, Saremar and Toremar on each of the routes concerned.

— Article 3

The aid granted by Italy to Caremar as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty.

Italy shall give an undertaking that, by no later than 1 September 2004, it will:

(a) abolish the aid granted to Caremar for the provision of scheduled high-speed passenger transport services on the Naples/Capri route;

(b) reduce, in terms of places on offer, the capacity of the scheduled high-speed passenger transport services on the Naples/Procida/Ischia route from 1 142 260 to 633 200 places during the winter period and from 683 200 to 520 400 places during the summer period;

(c) limit the aid granted to Caremar for the provision of scheduled high-speed passenger transport services on the Naples/Procida/Ischia route to covering the net operating loss on the services;

(d) have separate accounts kept for all the public service activities imposed by Italy on Caremar on each of the routes concerned.

— Article 4

The capacity reduction undertakings specified in Article 3 shall be included in the interministerial decree adapting the regional companies' five-year plan for the period 2005-2008.

— Article 5

The Commission shall be notified in advance of any permanent change, whether partial or total, to the level of services offered by Adriatica, Siremar, Saremar, Toremar or Caremar such as would entail an increase in the aid'

1.2. **General Court's judgment annulling the 2005 Decision**

(14) Three actions challenging the 2005 Decision have been brought before the General Court, respectively by (i) Tirrenia, which in 2004 had acquired the ongoing business of Adriatica (Case T-265/04); (ii) Caremar, Saremar, Siremar, and Toremar (Case T#292/04); and (iii) a competitor, Navigazione Libera del Golfo S.p.A. (Case T# 504/04).

(15) By judgment of 4 March 2009 in Joined Cases T-265/04, T-292/04 and T-504/04 ('the 2009 Judgment')[(7)] the General Court annulled the 2005 Decision.

(16) In particular, the General Court ruled that the Commission had not sufficiently stated reasons for qualifying the aid as new, rather than existing, as claimed by the applicants. In particular, it considered that the Commission had not adequately justified why it considered that the aid did not pre-date the entry into force of the EC Treaty in Italy, as the Italian authorities had argued during the procedure that the aid in question was based on the provisions of Royal Decrees adopted in 1936. Furthermore, the Court considered that the Commission had not sufficiently addressed the Italian authorities' allegations made during the formal investigation procedure to the effect that the subsequent amendments to the relevant legal framework exclusively resulted in a reduction in the overall aid amount[(8)].

(17) Secondly, the General Court ruled that the Commission had failed to apply Article 4(3) of Council Regulation (EEC) No 3577/92[(9)] ('the Maritime Cabotage Regulation') stipulating that existing public service contracts may remain in force up to their expiry date. The General Court considered that the compensation paid to the Regional Companies of the Tirrenia Group under the Initial Conventions for the operation of the cabotage routes constituted existing aid, insofar as the Commission had already concluded that such compensation did not exceed what was necessary to finance the public service obligations[(10)].

1.3. **Procedure after the annulment of the 2005 Decision**

(18) By letter dated 7 April 2010, the Commission invited the Italian authorities to submit their comments on the annulment of the 2005 Decision and provide all information required to assess exhaustively the measures in question. In particular, it asked the Italian authorities to provide (i) clarifications on the operation by Adriatica and Saremar of the international routes, namely the period of operation, the legal act laying down the public service obligations and the features of the service: regularity,