

# COMMISSION

## COMMISSION DECISION

of 9 April 2002

### on the State aid implemented by Italy for cableway installations in the Autonomous Province of Bolzano

(notified under document number C(2002) 1191)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/521/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(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<sup>(1)</sup>, pursuant to the provisions cited above and having regard to their comments,

Whereas:

#### I. PROCEDURE

- (1) By complaint dated 27 February 1996, received on 21 May 1996, the Commission was informed that Italy had implemented a measure granting aid for cableways in the Province of Bolzano. By letters dated 29 July 1996, 21 January 1997 and 23 June 1998 Italy provided the Commission with further information.
- (2) By letter of 4 August 2000, the Commission informed Italy that it had decided to initiate the proceedings under Article 88(2) of the EC Treaty in respect of the measure in question.
- (3) The Commission decision to initiate proceedings was published<sup>(2)</sup> and the interested parties were invited to submit their comments on the measure.

- (4) The Commission received comments from interested parties and forwarded them to Italy, which was given the opportunity to react.

- (5) By letter of 12 March 2002, the Italian authorities undertook to re-notify the scheme in 2006.

#### II. DETAILED DESCRIPTION OF THE MEASURE

- (6) Following late notification and an investigation linked to aid granted by DG REGIO under a 5b aid programme, the Commission approved by letter No NN 45/91 of 4 June 1991 the aid provided for by Bolzano Provincial Law No 2/1991 of 21 January 1991 on the budget for 1991 and the period 1991 to 1993 (hereinafter 'Law No 2/1991'), under which State aid may be granted to cableways in the province with a maximum aid intensity of 33 % gross of the cost of individual projects.
- (7) The Autonomous Province then approved a new law, Law No 6 of 4 March 1996 on aid for the construction and modernisation of cableways (hereinafter 'Law No 6/1996'). According to the Province, the law simply renews the old aid scheme and allows for investment aid of up to 90 %.
- (8) Article 1(1) of Law No 6/1996 provides for investment aid in the form of non-repayable grants for:
  - (a) the construction of new passenger transport facilities in the form of aerial cableways, funiculars, belt conveyors or ski lifts;

<sup>(1)</sup> OJ C 27, 27.1.2001, p. 37.

<sup>(2)</sup> See footnote 1.

- (b) the qualitative improvement, technical innovation or increase in the capacity of existing cableway installations;
- (c) the replacement of old parts of existing installations;
- (d) technical improvement and modernisation of ticket vending and reading machines.

Article 1(2) of Law No 6/1996 lays down the maximum aid intensities (as a percentage of investment costs), as follows:

- (a) 90 % for shuttle-service bicable ropeways, which are of special social importance as they link villages;
  - (b) 45 % for funiculars, bicable and monocable ropeways, and belt conveyors;
  - (c) 45 % for ticket vending and reading machines;
  - (d) 50 % for single ski lifts, which fulfil a social-pedagogical purpose and are especially useful for the local population because they supplement significantly the existing range of sports and leisure facilities in winter time;
  - (e) 30 % for ski lifts not covered by point (d).
- (9) Under Law No 6/1996, grants provided for in Article 1(2)(a), (b) and (c) must be paid out in equal instalments over three years. The grants provided for in Article 1(2)(d) and (e) are set off against a single year's budget.
- (10) The aid intensities for investments under Article 1(2)(b) and (d) may be increased by 30 percentage points when the project is of considerable general interest or when it serves to link ski resorts or to link ski resorts with villages or when, because of environmental considerations, a technically costly solution must be chosen.

### III. COMMENTS FROM INTERESTED PARTIES

- (11) Fianet (International Federation of national associations of passenger transport by rope Railways) stressed the importance of cableway transport in a mountain economy in view of its contribution to the development of employment, the protection of the environment and the improvement of the economic position of the local population. It considers that State aid in this field does not distort competition.
- (12) The South Tyrolean Federation for nature conservation stated that there are no objective criteria for determining the amount of State aid allowed and that the reasons for

granting State aid are general in nature. The State aid in question puts pressure on investors to build other cableway installations, seriously damaging the countryside and the environment. Other aid has been granted in addition to that granted under Law No 6/1996, and the State aid distorts competition.

- (13) The Austrian authorities consider that State aid granted in this field on the terms in question, i.e. up to 90 %, does not distort competition to an extent contrary to the common interest. Aid granted on the basis of political and economic principles to firms that would otherwise be loss-making as they are located in regions where a private operator would not invest is in the general interest of the Member State as well as the Community. The authorities are concerned by the fact that the Commission is not applying Article 86(2) of the Treaty in the present case.
- (14) The Association of German Cableways (Verband Deutscher Seilbahnen) stated that there is strong competition in the international cableway market. It also pointed out that some neighbouring European countries apply the reduced VAT rate (half of the standard rate) while in Germany the full VAT rate is applicable to cableways as they are specifically excluded from the reduced rate. The Community Directive on public contracts, however, specifically includes cableways.
- (15) The Associazione Alpina del Sud-Tirolo (Alpenverein Südtirol) stated that, because cableway constructors were granted State aid, they built a considerable number of cableways and, as a result, the unspoilt landscape of the Southern Tyrol was under strong threat.

### IV. COMMENTS FROM ITALY

- (16) In reply to the proceedings initiated under Article 88(2) of the Treaty, the Bolzano provincial authorities provided further information by letters dated 22 January 2001 and 24 May 2001, in which they claim:
- (a) that the former Law No 2/1991 of 21 January 1991, which had been examined and authorised by the Commission (NN 45/91), and the new Law No 6/1996, which simply recasts and consolidates the existing provincial rules, are identical, the latter being a continuation of the former;

- (b) that cableways are transport infrastructure and services of general economic interest and can be divided into three categories as follows:

**category A**, overhead cableways constituting transport infrastructure that replaces public road services. They are the only means of transport linking mountain communities and are, therefore, of special social importance;

**category B**, overhead and surface cableways intended for leisure purposes, of a mainly local or social nature;

**category C**, overhead and surface cableways serving tourist areas.

- (c) that Law No 6/1996 is unlikely to affect trade;

- (d) that the exemption under Article 87(3)(c) is applicable since the aid provided for in the Law is intended to facilitate investment by SMEs.

- (17) The Bolzano provincial authorities also point out that the enterprises holding concessions to operate cableways in the Province of Bolzano, whether they are public or private enterprises, are all SMEs within the meaning of the Community definitions and none of them exceeds the thresholds that define an SME.

- (18) In addition, they stress that commercial cableways in tourist areas have not been financed under Law No 6/1996, with the exception of three cableways at the Stelvio Pass and four in the municipality of Castelrotto, Alpe di Siusi.

## V. GENERAL CONSIDERATIONS REGARDING CABLEWAY INSTALLATIONS

### Existence of State aid

- (19) State aid within the meaning of Article 87(1) of the EC Treaty is present 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.

- (20) 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. Public financing of infrastructures open to all potential users in a non-discriminatory way and managed by the State does not normally fall under Article 87(1) of the EC Treaty, as the Commission has already concluded<sup>(3)</sup>, since in such cases no advantage is conferred on an undertaking within the meaning of Article 87(1) that is in competition with other undertakings. Most transport infrastructure financing takes the form of this kind of investments, e.g. a toll-free public road.

- (21) In the case of cableway installations, however, operators have effective control over access to their facilities and customers normally pay for the use of the installation. A cableway is typically run by a single operator and cableway transport can, at least in principle, be an economically viable activity exercised for profit by private operators.

- (22) Transport operators and any other commercial users of transport infrastructures satisfy the definition of an undertaking within the meaning of Article 87(1). It is clear from the Court's case-law on the concept of 'undertaking' that the central issue is whether an economic activity is being carried out. The organisational form is less relevant. The Court of First Instance held in *Aéroports de Paris*<sup>(4)</sup>, 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 that is not part of the State administration will invariably be regarded as an 'undertaking'. From the point of view of existing or potential competitors, any financial benefit provided to such undertakings could, in principle, distort competition.

- (23) Moreover, not all cableway installations are used for general mobility needs; many are intended for a specific economic category of user, e.g. consumers of a service that is not transport proper. Such is the case of cableways used mainly by skiers. These offer a facility that is essential to the practice of a sport rather than providing a general transport service.

<sup>(3)</sup> See Commission decision of 14 September 2000 in Case N 208/2000, SOIT (NL). See also the Commission 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 July 1998, Chapter 5, paragraph 43) and Commission Communication 'Reinforcing Quality in Sea Ports: A Key for European Transport', COM(2001) 35 final, 13.2.2001, p. 11.

<sup>(4)</sup> Case T-128/98 *Aéroports de Paris v Commission*, [2000] ECR II-3929.

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

- (24) For a measure to constitute State aid within the meaning of Article 87(1), it must essentially distort or be liable to distort competition and affect trade between Member States. In the case of cableways, any distortions of competition or any effects on trade between Member States must be assessed with regard to their location, use and size.
- (25) Cableway installations provide a service only at a given location. The service cannot be provided elsewhere. This fact, however, does not rule out the risk of an effect on trade between Member States since there might be operators that are active internationally and State funding could confer advantages on the beneficiary or discourage other, possibly foreign, operators from providing an alternative service *in loco* possibly by means other than cableways. State funding could help to attract non-resident users, e.g. skiers from the same or a different country, thereby diverting them from other cableways, including those in other Member States.
- (26) In assessing these elements, it is useful to draw a distinction between cableways used for sporting activities and those intended to satisfy the general transport needs of the population.
- (29) It can be argued, however, that sports installations in areas with few winter sports facilities and limited tourism capacity tend to have a purely local use and are not capable of attracting users with a choice of installations in other Member States. In such cases there would not be any distortion of competition or effect on trade on the demand side. However, on the supply side, it would have to be determined whether the recipients operated only at local level and whether State support for that activity harmed or discouraged the alternative supply of cableways by operators from other Member States. The latter possibility 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.
- (30) Accordingly, State support for cableways intended for sporting activities in tourist resorts would normally distort competition and affect trade between Member States. It is accepted, however, that there might be cases of cableways with a purely local use where State funding would not distort competition and affect trade between Member States and would therefore not constitute State aid under Article 87(1).

*Cableways meeting general transport needs**Cableways used for sporting activities*

- (27) The number, price and quality of such cableways can influence the choice of customers who could choose cableways in other Member States instead. Unlike other factors that may affect choice, such as climate, landscape, accessibility and quality of catering, cableways affect all users in a similar way and can be readily compared between different resorts. Ski passes account for a substantial 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 therefore has an impact on the provision of services for winter sports, which is an international business characterised by a high degree of intra-Community trade and strong competition.
- (28) In addition, there are firms that operate cableways in resorts in various Member States. Public funding confers advantages that could be exploited in a market where there is also cross-border competition for the supply of the service.
- (31) Cableways that are mainly intended to satisfy general transport needs of the local population would not normally influence the choice of users who have as alternatives resorts in other Member States. However, State support could benefit an operator active internationally or could adversely 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 recipient operates only locally and an alternative transport activity would not be economically or technically viable: in such circumstances the measure would not distort competition or 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 engaged in an economic activity under Article 87(1) of the Treaty. In view of the gradual liberalisation of the transport sector, it is possible that this transport might be provided by operators from other Member States, in which case the measures would distort or be liable to distort competition and would affect trade between Member States, thereby constituting aid within the meaning of Article 87(1).

(32) To summarise, cableways used to support an activity capable of attracting non-local users will generally be regarded as having an effect on trade between Member States. This might not, however, be the case for sports-related installations in areas with few facilities and limited tourism capacity. Installations mainly catering for the general mobility needs of the population would have an effect on trade between Member States only if there were cross-border competition in the supply of the transport service.

#### Criteria

(33) In distinguishing between the types of installations, the following factors, among others, should be taken into account:

- (a) the location of the cableway (e.g. in an urban area or linking such areas);
- (b) its operating times (e.g. seasonal or all year; during daylight or longer);
- (c) whether use is predominantly local (number of daily as opposed to weekly passes);
- (d) the number and capacity of the installations compared with the number of resident users;
- (e) the presence of other tourist facilities in the area.

(34) An aid scheme for a specific type of installation or one which confers benefits that vary according to the type of installation should set out objective criteria on the basis of which the category of recipient is established.

#### Compatibility of aid for cableways

(35) Where cableways benefit<sup>(5)</sup> from State resources that distort or are liable to distort competition and affect trade between Member States, the resources are covered by the State aid rules of the EC Treaty. The aid must be notified under Article 88(3) of the Treaty and Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(6)</sup>.

(36) This is also true for cableways that are set up or managed by public entities, in which case the general

principle that funding by the State must be provided according to the 'market economy investor principle' continues to apply. In other words, public funds in excess of or on better terms than those that a private investor would provide in the same circumstances constitute State aid which must be notified under Article 88(3). This would apply to all forms of financial intervention, including capital injections, loans and guarantees.

(37) Once the presence of State aid has been established, it is necessary to examine whether the aid is compatible with the common market under one of the exceptions in Article 87(2) and (3). These considerations are without prejudice to the application of 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 (the *de minimis* rule)<sup>(7)</sup>.

(38) In the transport sector a specific State aid approach is needed in view of the obligation on the State to ensure that transport services meet social and environmental concerns. Article 73 of the Treaty provides for an exemption to meet those concerns.

(39) Finally, under Article 86(2) of the Treaty, firms entrusted with the operation of services of general economic interest may qualify for exemption from the competition rules if their application is liable to obstruct *de jure* or *de facto* the performance of the particular tasks assigned to them.

#### Article 87

(40) While the conditions for the application of the exemptions 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) must necessarily be assessed on a case-by-case basis, exemption under Article 87(2)(a) (aid having a social character, granted to individual consumers) is not applicable to aid to cableway operators.

<sup>(5)</sup> Naturally, if cableways benefit from a measure of a general nature, this would not qualify as State aid owing to the lack of selectivity.

<sup>(6)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(7)</sup> OJ L 10, 13.1.2001, p. 30.



(41) Exemption under Article 87(3)(d) (aid to promote culture and heritage conservation) for cableways would normally be ruled out, while the application 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 (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. The assessment would have to adhere to the rules laid down for all economic activities.

(42) Under Article 87(3)(c), State aid may be considered to be 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'. In the past, it had been considered that those requirements for exemption were met since skiers are not very mobile. 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 rules applicable to economic activities in general would no longer be justified; however, the considerations developed in recitals 50 to 55 below should be taken into account.

(43) Aid to cableways might, depending on the case, be compatible under the rules governing, for instance, regional investment aid, aid to SMEs or restructuring aid to restore the viability of a firm<sup>(8)</sup>. 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

(44) In contrast to Article 87(3)(c), the concept of 'coordination of transport' in Article 73 involves more than simply facilitating the development of an industry, it includes some form of planning by the State. In a liberalised market coordination 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 coordination of transport refers to the need for government intervention in the absence of competitive markets or in the presence of market failures.

(45) According to the Commission's practice, three requirements must be fulfilled for aid to meet the needs of coordination of transport within the meaning of Article 73<sup>(9)</sup>:

(a) if the State's contribution towards the total financing of the project is necessary to enable the project or activity to be carried out in the interest of the Community;

(b) access to the aid is granted on non-discriminatory terms;

(c) the aid does not give rise to a distortion of competition to an extent contrary to the common interest.

#### Article 86(2)

(46) Where the financing of transport cableways constitutes State aid, it would normally be assessed under Article 73; however, it is possible that the other types of cableway may qualify for exemption under Article 86(2).

(47) In general, cableways used for sporting activities do not provide a service of general economic interest and their financing cannot be justified under Article 86(2). Rather than satisfying the general and basic needs of the population, they aim to earn profits from winter sports. The prices actually paid by users shows that this service is not a basic good.

(48) Certainly, it is in principle for the Member States to define which services they consider to be of general economic interest. However, the notion of general economic interest servers cannot be extended to services that are of a purely commercial nature and do not respond to the general and basic needs of the population for services that are regarded as an essential part of daily life.

<sup>(8)</sup> 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, 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, 10.3.1998, p. 9).

<sup>(9)</sup> See Commission proposal for a regulation of the European Parliament and the Council concerning the granting of aid for the coordination of transport by rail, road and inland waterway COM (2000) 5 final, 26 July 2000.

(49) These considerations are not invalidated by the fact that the construction and operation of cableways are subject to a concession which requires the firm to operate the installation efficiently and to transport all users at current rates. It is quite usual for a number of occupations and activities to be subject to special authorisations and to certain requirements. In this respect the position of cableway operators does not differ substantially from that of firms in other sectors and does not mean that it should be assessed under Article 86(2).

### Transitional period

(50) The Commission considers that State aid to cableways could play an important part in supporting the balanced economic development of the area. As regards mountain regions in particular, State aid has in the past allowed the development of one of the few possible local economic activities, with beneficial effects on employment and, ultimately, on the stability of the local population and care of the land.

(51) However, the provision of services for winter sports has become subject to increasing cross-border competition. This changes the nature of the problems and increases the distortion caused by the existence of aid to the cableway sector. As the sector approaches maturity, there is a greater risk of unbridled competition between different areas of the Community. For these reasons, the Commission's future policy in the sector needs to be more clearly defined, strictly interpreted and uniformly applied.

(52) The Commission recognises that firms 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 imposing stricter limits on compatibility would probably lead to an adjustment of the price of the various services offered for winter sports, with prices for the use of cableways possibly increasing to compensate for the reduction in subsidies. This change cannot be too abrupt and the rules must be applied gradually.

(53) Accordingly, the Commission identifies a transitional 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 cableways. Aid granted before the prescribed period will be assessed on a case-by-case basis without reference to compatibility thresholds fixed *a priori*.

(54) During the transitional period, the Commission will assess aid projects in the cableway sector 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 <sup>(10)</sup>. However, it will accept a temporary increase in the aid intensity under the existing legislation and guidelines, as quantified below:

(a) 25 additional percentage points for aid granted in 2002;

(b) 20 additional percentage points for aid granted in 2003;

(c) 15 additional percentage points for aid granted in 2004;

(d) 10 additional percentage points for aid granted in 2005;

(e) 5 additional percentage points for aid granted in 2006 <sup>(11)</sup>.

From 2007 onwards, aid not eligible for any of the exemptions provided for by the Treaty and in the various regulations and frameworks in force will be declared incompatible. The analysis set out in recitals 19 to 34, and in particular the explanations given in recital 29, will still apply.

(55) On the basis of the information available to the Commission, the figures indicated, chosen as temporary aid top-ups, and the five-year duration of the transitional period seem to reconcile the need to allow sufficient time for different areas to benefit from the temporary rules and for beneficiaries to adjust to the new approach with the need to bring the treatment of this sector into line with that of other economic activities within a reasonable time.

<sup>(10)</sup> See footnote 8.

<sup>(11)</sup> 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 the 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 scheme grants aid in 2003 and 2004, the accepted aid intensity, other things being equal, would be five percentage points lower for the aid granted in 2004.

### Related activities

- (56) Where the cableway infrastructure under consideration is mainly for servicing skiers, the operators can be described as providing a basic service for skiing. It is not unusual for the firm concerned also to offer other directly related services which are equally indispensable for skiing, such as maintenance of 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 of preparing the ski run. However, investment that is not essential to providing the basic installation service, such as investment in skiing equipment for hire or in facilities for ski schools, cannot be eligible for aid under the abovementioned conditions.

### VI. COMPARISON WITH THE MEASURES INTRODUCED BY LAW No 2/1991

- (57) Law No 6/1996 allows aid to cableways in the Autonomous Province of Bolzano of up to 90 % of the investment cost. It amends the previous Provincial Law No 2/1991, which provided for an aid intensity of up to 33 % of the project costs.
- (58) Article 1(1) of Law No 2/1991, notified to the Commission and approved by it by letter of 4 June 1991, provides for aid with the following maximum intensities:
- (a) 33 % for bicable ropeways, which are of special social importance as they link villages;
  - (b) 15 % for funiculars, bicable and monocable ropeways as well as ticket vending and reading machines;
  - (c) one-off payments of up to 30 % to build and improve the quality of drag lifts;
  - (d) one-off payments of up to ITL 200 million for the reconditioning of cableways.

The Bolzano provincial authorities claim that Law No 2/1991, examined and authorised by the Commission (NN 45/91), replaces and continues Law No 6/1996, which, according to them simply renews and consolidates the provincial rules. The Commission does not agree with this reasoning. A comparison of the two aid schemes shows that the new law considerably modifies the old one by allowing for investment aid of up to 90 %, whereas the old scheme provided for an aid intensity of

only up to 33 % of costs. Furthermore, there are some aspects of the new law that are clearly new in substance. To give one example, Article 1(2)(d) of Law No 6/1996 refers to single ski lifts, which fulfil a social and educational purpose and are granted investment aid of 50 %. No mention was made under Law No 2/1991 of this particular type of installation. The Commission therefore concludes that there can be no doubt that Law No 6/1996 is a new aid scheme. In any event, as the Commission decision of 4 June 1991 approving Law No 2/1991 was valid only for the period 1990 to 1993, the new law should in any event have been notified to the Commission.

### VII. ASSESSMENT OF THE MEASURES INTRODUCED BY PROVINCIAL LAW No 6/1996

- (59) By letter of 24 May 2001 the authorities of the Autonomous Province of Bolzano provided a list of 77 installations in the province that had already benefited from the measures. They also classified the cableways into three categories, transport, local or tourism facilities. There are 12 cableways having a general transport purpose (category A), 56 cableways for purely local recreational use (category B) and 9 cableways used for sporting activities in tourist areas (category C). All of these are small enterprises within the meaning of Regulation (EC) No 70/2001. This classification, however, was carried out *ex post* as an illustration, whereas Law No 6/1996 does not make any distinction between different categories of cableway.
- (60) As regards the future application of the scheme, the Commission considers it compatible with the common market until 2007, inasmuch as it is consistent with the terms of this Decision, in particular recitals 33, 34 and 54 of part V. It also takes note of the commitment to re-notify the scheme in 2006.
- (61) The Commission, however, also needs to assess the application of the scheme to the 77 individual recipients referred to in recital 59. The information provided by the Italian authorities is sufficient for the Commission to endorse the submitted threefold classification of cableways. Accordingly, both on the question of the presence of aid and on the question of compatibility, the Commission's assessment of State aid for the installations varies according to the recipient, as stated in Part V of this decision.



(62) The measures are funded from the State budget, i.e. through State resources. They represent an economic advantage for the recipient, relieving it of part of the cost linked to the investment needed for its activity.

(63) As regards the distortion of competition and the effect on trade between Member States, the cableways catering for the general transport needs of the population operate in a sector where cross-border trade is present. Among the recipients classified by the Italian authorities as transport installations, some are located in areas where alternative transport would not only be technically and economically viable but could also be managed by commercial operators from other Member States. Accordingly, State aid to cableways classified as transport installations can distort or threaten to distort competition and affect trade between Member States.

(64) Similarly, State aid for cableways in tourist areas that are capable of attracting users who have as alternatives foreign installations distorts competition and affects trade between Member States.

(65) Finally, the cableways described as sporting installations for purely local use are located in areas with little or no tourism capacity and a limited number for winter sports facilities. Users would mainly be residents and would not normally have, as alternatives, destinations in another Member State. Given the small number of users, the service would not be provided in the absence of State aid. In the last case, therefore, it can be concluded that State financing does not distort competition or affect trade between Member States and therefore does not constitute State aid within the meaning of Article 87(1).

(66) On the basis of the foregoing considerations, the Commission assesses the compatibility of the aid granted under Law No 6/1996 in the case of the 12 cableways catering for the general transport needs of the population (classified as category A by the provincial authorities) and the nine cableways used for winter sporting activities in tourist resorts (classified as category C by the provincial authorities). On the basis of the information supplied by Italy, however, the Commission does not regard the State support to 56 installations identified as being for local use (category B) as State aid under Article 87(1).

### General transport cableways (category A)

(67) According to the information provided by the Italian authorities, the first category of cableways (category A) operates only as a link between population centres. Some of them are the only means of transport connecting mountain communities with the other inhabited areas in the Province and their social and infrastructure function is obvious.

(68) It is generally acknowledged that the funding of a transport installation which, for economic or technical reasons, has no viable alternative does not distort competition and therefore does not constitute aid under Article 87(1). However, the Commission considers that Law No 6/1996 also provides financing to installations in respect of which there would be other means of transport, at least as an alternative. For these reasons (recital 63), it must decide whether the measures are compatible with the Treaty.

(69) In any event, in the case of cableways intended predominantly to satisfy the general transport needs of the population, the Commission considers that State aid may be needed since market forces are unlikely to provide the necessary investments on a purely commercial basis. Aid to this sector must therefore be assessed under Article 73.

(70) The development of measures to shift traffic from roads to other modes of transport is deemed to be in the interest of the Community and the amounts granted are necessary to enable the project to be carried out. It is also considered that aid to such installations does not distort competition to an extent contrary to the common interest.

(71) The Commission therefore concludes, on the basis of the information from the Italian authorities, that the conditions for exemption under Article 73 are met and that the aid granted to operators of twelve category A cableways is compatible with the State aid rules of the Treaty. It also takes note of the commitment to re-notify the scheme in 2006.

**Cableways for sporting activities (category C)**

- (72) According to the information provided by the Italian authorities, the third category (C) comprises all cableways used for sporting activities in tourist areas. As indicated in recital 64, their funding is caught by the State aid rules of the EC Treaty. Accordingly, it must be decided whether one of the exemptions in Article 87(2) and (3) applies in order to find the aid in question compatible with the common market.
- (73) The aid granted via the measures introduced by Law No 6/1996 is not social in nature, is not granted to individual consumers and is not aid to make good the damage caused by natural disasters or exceptional occurrences. It is not aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany. Hence Article 87(2) is not applicable.
- (74) Since the aid promotes neither the economic development of areas where the standard of living is abnormally low or where there is serious underemployment nor the execution of an important project of common European interest, Article 87(3)(a) and (b) does not apply.
- (75) As for the compatibility of the measures 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<sup>(12)</sup> are not met. 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 difficulty nor is the aid intended to restore the firms' long-term economic and financial viability. The guidelines require that measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors, something which is not provided for by Law No 6/1996.
- (76) The Italian authorities, however, point out that all recipients 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<sup>(13)</sup>. This amounts to a gross aid intensity of 15 % for investment in tangible and intangible assets, as defined by Article 2(c) and (d) of the Regulation.
- (77) If the figure of 15 % obtained in this way is added to the temporary increase in the aid intensity described in recital 54 (top-up), which for 2002 amounts to 25 percentage points, the accepted gross intensity would be 40 %. The Commission considers that this intensity can also be accepted for aid granted before 2002.
- (78) Since, according to the information provided by the Italian authorities, the maximum amount granted in category C has been 30 %, which is well below the authorised ceilings, the Commission concludes that the aid granted to operators of cableways used for sporting activities in tourist resorts is compatible with the State aid rules of the EC Treaty. It also takes note of the commitment to re-notify the scheme in 2006.

**VIII. CONCLUSION**

- (79) The Commission concludes, on the basis of both the foregoing considerations and the information provided by the Italian authorities, that the measures already granted to 77 cableway operators under Law No 6/1996:
- (a) do not constitute State aid because of their local nature, inasmuch as the scheme is applied to firms in category B, as defined in recital 65;
  - (b) constitute State aid that is compatible under Article 73 of the EC Treaty, inasmuch as the scheme is applicable to firms in category A, as defined in recital 63;
  - (c) constitute State aid that is compatible under Article 87(3)(c) of the EC Treaty, inasmuch as the scheme applies to firms in category C, as defined in recital 64.
- (80) As regards the future application of the scheme, the Commission considers that:
- (a) the scheme does not constitute State aid where it is applied to firms in category B, as defined in recital 65;
  - (b) the scheme constitutes State aid that is compatible under Article 73 where it is applied to firms in category A, as defined in recital 63;
  - (c) the scheme constitutes State aid compatible under Article 87(3)(c) where it is applied to firms in category C, as defined in recital 64.

<sup>(12)</sup> See footnote 7.<sup>(13)</sup> See footnote 8.

The preceding paragraph is applicable until 2007, in accordance with the considerations set out in this Decision, in particular recitals 33, 34 and 54 of Part V. The Commission also takes note of the commitment to re-notify the scheme in 2006.

- (81) This Decision is without prejudice to the application of other relevant Community legislation, in particular Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons <sup>(14)</sup>,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures implemented by Italy under Law No 6 of 4 March 1996 for cableway installations in the Autonomous Province of Bolzano:

- (a) do not constitute State aid because of their local nature where the scheme applies to overhead and surface cableways intended for leisure purposes that are of a mainly local nature or of a social character;
- (b) constitute State aid that is compatible under Article 73 of the EC Treaty and Article 49 of the Agreement on the European Economic Area where the scheme applies to overhead cableways constituting transport infrastructure that replaces public road services;
- (c) constitute State aid that is compatible under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement on the European Economic Area where the scheme applies to overhead and surface cableways serving tourist areas.

*Article 2*

The scheme may be applied until 31 December 2006 provided that the following conditions are satisfied:

- (a) the scheme does not constitute State aid where it is applied to sports installations for purely local use that are located in areas with little or no tourism capacity and with only a limited infrastructure;
- (b) the scheme constitutes State aid that is compatible under Article 73 of the EC Treaty and Article 49 of the Agreement on the European Economic Area where it is applied to cableways that meet the general transport needs of the population;
- (c) the scheme constitutes State aid that is compatible under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement on the European Economic Area where it is applied to cableways located in tourist areas capable of attracting users from other, alternative resorts.

*Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 9 April 2002.

*For the Commission*

Mario MONTI

*Member of the Commission*

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<sup>(14)</sup> OJ L 106, 3.5.2000, p. 21.