



EUROPEAN COMMISSION

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SENSITIVE* : *COMP Operations*

Subject: **State Aid SA.63534 (2021/N) – Italy**
COVID-19: Compensation for ski lift companies

Excellency,

1. PROCEDURE

- (1) By electronic notification of 27 July 2021, following pre-notification discussions¹, the Italian authorities notified a scheme (the “measure”), on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”), to compensate ski lift companies that have suffered financial losses during the period from 4 December 2020 to 30 April 2021 (the “compensation period”) as a result of the restrictive measures taken by the Italian authorities in response to the COVID-19 pandemic.
- (2) On 27 July 2021, the Commission services sent a request for additional information, to which the Italian authorities replied on 28 July 2021.
- (3) Italy exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

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¹ The Italian authorities submitted their pre-notification on 15 June 2021. The Commission services requested additional clarifications on 30 June and 16 July 2021, to which the Italian authorities replied, respectively, on 13 and 20 July 2021.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

- (4) The objective of the measure is to compensate ski lift companies that have suffered damage in the compensation period as a result of the restrictive measures adopted by the Italian authorities in response to the COVID-19 pandemic.
- (5) The Italian authorities explain that Italy was the first country in the European Union to adopt a generalised lockdown measure, impose travel restrictions and be subject to travel restrictions enforced by other Member States and third countries due to the COVID-19 outbreak.
- (6) The Italian authorities add that Italy was the first Member State to impose restrictive measures on the use of ski lifts and on mountain tourism in general due to the COVID-19 pandemic. Those restrictive measures particularly affected ski lift operators and the tourism sector, which in Italy generates 13 % of the country's gross domestic product ("GDP").
- (7) The measure is aimed at supporting both private and public ski lift operators, i.e., companies managing ski lifts, which in Italy generate a turnover of around EUR 1.2 billion and employ over 14 000 employees.
- (8) In particular, the Italian authorities submit that, pursuant to Article 1(10), letter (oo) of the DPCM of 3 December 2020³, the ski lifts in the ski areas in Italy were closed as of 4 December 2020, and that they could "*only be used by professional and non-professional athletes recognised of national interest by the Italian National Olympic Committee (CONI), by the Italian Paralympic Committee (CIP) and / or by the respective federations to allow preparation for sports competitions national and international competitions or the conduct of such competitions*" (unofficial translation). The Italian authorities confirmed that that provision remained in force until 30 April 2021.
- (9) The COVID-19 pandemic and the restrictive measures adopted by the Italian government had significant effects on the winter ski tourism industry in Italy. In particular, all Italian ski resorts remained closed throughout the whole 2020/2021 ski winter season. In addition, restrictive measures (including the travel restrictions) adopted by the Italian authorities considerably reduced mobility between regions, which resulted in a strong reduction in sales for winter ski destinations. In that context, the closure of the activities of ski lift operators pursuant to the DPCM of 3 December 2020 further aggravated the impact on the tourism industry, and more specifically on the eligible beneficiaries under the measure.
- (10) The Italian authorities also note that during the compensation period, the aggregate loss of turnover for the ski lift operators which would benefit from the measure amounted to approximately EUR 813 million. In that respect, the Italian authorities indicate that the turnover achieved by the few ski lifts authorised to operate in derogation from the general closure (i.e., for professional or non-

³ Decreto del Presidente del Consiglio dei Ministri del 3 dicembre 2020, available at the following link: https://www.governo.it/sites/new.governo.it/files/dpcm_20201203.pdf.

professional athletes, as explained in recital (8)) was less than 1 % of the total net revenues of the reference period⁴.

- (11) The objective of the measure is to mitigate the damage that the ski lift operators suffered during the compensation period due to the closure of the 2020/2021 ski winter season to the public, as a result of the restrictive measures enforced by the Italian authorities (see recital (8)).

2.1. Form of the measure

- (12) The measure provides aid in the form of direct grants.

2.2. Budget and duration of the measure

- (13) The Italian authorities indicate that pursuant to Law Decree No. 41 of 22 March 2021 (Article 2, letter (a)), as converted into Law No. 69 of 21 May 2021, published in the Italian Official Gazette (“Gazzetta Ufficiale”) No. 120 of 21 May 2021, a fund with an endowment of EUR 700 million has been set up in the budget of the Ministry of Economy and Finance for the year 2021 for grants in favour of subjects engaged in business activities for the sale of goods or services to the public, carried out in the municipalities located within the ski areas. Out of those EUR 700 million, a total of EUR 430 million are allocated in favour of ski lift operators (“*impianti di risalita*”).
- (14) The period for the submission of applications will start after notification of the Commission’s decision approving the measure to the Italian authorities and will last until 31 December 2021. The Italian authorities indicate that the latest date on which beneficiaries can be granted aid under the measure is 31 December 2021.

2.3. National legal basis

- (15) The Italian authorities submit that the legal basis of the measure is set out by Article 1 (10), letter (oo), of the DPCM of 3 December 2020, together with Article 2, letter (a), of Law Decree No. 41 of 22 March 2021, as converted into Law No. 69 of 21 May 2021.
- (16) The measure will not enter into force until it is authorised by the Commission. To this end, the legal basis contains a standstill clause, according to which the measure may only take effect after it has been approved by the Commission.

2.4. Administration of the measure

- (17) The Italian authorities indicate that the granting authority and competent authority to manage the measure is the Ministry for Cultural Heritage and Activities and Tourism (Directorate General for Tourism).

⁴ The Italian authorities explain in this respect that the reference period relates to the years from 2017 until 2019 (full calendar years), as further explained in recital (25).

2.5. Beneficiaries

- (18) The beneficiaries of the measure are Italian public and private ski lift operators. In order to benefit from the measure, ski lift operator must meet the following requirements:
- a) be registered in the Italian Business Register with ATECO⁵ codes 49.39.01;
 - b) not be a company in difficulty pursuant to the GBER⁶ and not have bankruptcy proceedings underway;
 - c) be active in Italy;
 - d) have fulfilled the obligations of protection against insolvency or bankruptcy provided for by Legislative Decree 23 May 2011, n. 79;
 - e) not be subject to disqualifications pursuant to article 9, paragraph 2, of Legislative Decree No. 231; and
 - f) have fulfilled the obligations regarding social security, tax and insurance matters.
- (19) The Italian authorities submit that there are more than 400 beneficiaries under the measure.

2.6. Sectoral and regional scope of the measure

- (20) The measure is open to public and private undertakings managing ski lifts.
- (21) The measure applies to the whole territory of Italy and excludes the financial sector.

2.7. Basic elements of the measure

2.7.1. Eligible activities and period

- (22) Only the activities consisting in the operation of ski lifts, including cableways, will be eligible under the measure. If one or more beneficiaries also carry out other activities, those activities will be excluded from the calculation of the eligible compensation.
- (23) The eligible period under the measure is the compensation period, i.e., from 4 December 2020 until 30 April 2021.

⁵ Italian equivalent of the European Nomenclature “NACE”. It refers to the national classification of economic activities used by the ISTAT (Italian Institution for Statistics).

⁶ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1 (“GBER”).

2.7.2. Calculation of the compensation

- (24) The Italian authorities explain that the compensable damage arising during the compensation period, to be paid in the form of direct grants to the eligible beneficiaries, will be calculated in two steps, as described in the following sections.

2.7.2.1. First step of the calculation

- (25) The Italian authorities will first calculate the average turnover for each eligible operator in the reference period, i.e. from 2017 until 2019 (full calendar years)⁷. Then, they will apply a reduction coefficient of 49 % to the fixed non-avoidable costs (referred to by the Italian authorities as “Incompressible Costs”) share of that average turnover.
- (26) The Italian authorities explain that the reduction coefficient will lead to an amount that is much lower than the fixed non-avoidable costs of the relevant beneficiaries during the relevant period. In that respect, the Italian authorities provided an analysis including data from 164 ski lift operators⁸, according to which fixed non-avoidable costs are on average equal or greater than 70 % in the reference period.
- (27) More precisely, the first step of the compensation will be based on the following formula:
- (i) Incompressible Costs Estimation (ICE) = 70 % * Average Turnover (years 2017, 2018 and 2019)
 - (ii) Discount overcompensation cost coefficient (DCC) = 30 %
 - (iii) Cost Reductions (CR) = (DCC) * (ICE) = 30 % * [70 % * Average Turnover (years 2017, 2018 and 2019)] = 21 % Average Turnover
 - (iv) Contribution Granted (CG) = (ICE) – (CR) = [70 % * Average Turnover (years 2017, 2018 and 2019)] – [21 % * Average Turnover (years 2017, 2018 and 2019)] = 49 % * Average Turnover (years 2017, 2018 and 2019)

2.7.2.2. Calculation of the final compensation amount

- (28) As a second step, in order to ensure the absence of overcompensation for each beneficiary, the aid amount to be granted will be limited on the basis of the damage actually suffered by the relevant operators.
- (29) In particular, the Italian authorities submit that they will check the damage suffered by each beneficiary undertaking by calculating the difference between the EBITDA for the reference period and the EBITDA for the compensation period. The Italian authorities confirm in this respect that the calculation of the

⁷ Based on the relevant financial statements filed by each operator.

⁸ The analysis was carried out by ANEF (*Associazione Nazionale Esercenti Funiviari*), which represents 90 % of the cableways operators in Italy.

final compensation amount will be done within one year from the adoption of the Commission decision on the measure.

- (30) The reference period in the context of the second step of calculation of the final compensation amount will correspond to the same months as the eligible period (i.e., 4 December⁹ to 30 April) in the three-year period 2017-2019, i.e., December 2016 to April 2017, December 2017 to April 2018, and December 2018 to April 2019.
- (31) The maximum amount of the compensation will be determined using the following formula: *Average EBITDA for the reference period 2017-2019 – EBITDA for the compensation period December 2020 to April 2021.*
- (32) The Italian authorities confirmed that for ski lift operators carrying out activities other than ski lift activities (e.g., bars, restaurants and others), the EBITDA used to make the *ex post* compensation adjustment will only reflect the costs and profits relating to ski lift activities. To do this, the Italian authorities confirmed that they will apply a rate of correction for the variation between the EBITDA for the compensation period and the EBITDA for the reference period which corresponds to the weight of the ski lift operators in the company's total turnover (calculated over the period used as a reference for the calculation of the EBITDA).
- (33) In addition, the Italian authorities explain that an adjustment will be applied to the average EBITDA in the reference period when calculating the difference with the EBITDA with the compensation period. The adjustment will correspond to the growth rate of GDP between 2019 and 2020. The first estimate from Istat¹⁰, published on 2 July 2021, indicates a growth rate of -8.9 %¹¹. Thus, the adjustment would be applied as follows: *[Average EBITDA for the reference period 2017-2019] * (1 – 0.089) – EBITDA for the compensation period December 2020 to April 2021.*
- (34) Furthermore, the Italian authorities confirmed that if the monthly damage compensation per individual beneficiary exceeds EUR 4 million¹², on average over the compensation period, the counterfactual profits (i.e., EBITDA) must be determined on a case-by-case basis. In that analysis for each beneficiary concerned, the individual counterfactual profits have to be adjusted for the economic effects of declines in demand due to lower aggregate demand, or to greater customer reluctance, or the generally applicable restrictions on capacity and social distancing measures. In particular, the actual impact of the restrictions will be established by comparison with periods in 2020 and 2021, where such

⁹ The Italian authorities confirm that for the calculation of the EBITDA of December, which will start on 4 December (and does not take into account the entire month), they will follow a pro-rata daily approach.

¹⁰ Source: Istat – *Istituto nazionale di statistica*, available at <https://www.istat.it/it/archivio/259142>.

¹¹ The adjustment based on the growth rate of GDP between 2019 and 2020 (-8.9 %) can be retained as it is larger than the one that would result from the average GDP growth rates 2017 vs 2020, 2018 vs 2020 and 2019 vs 2020.

¹² In order to determine whether the ceiling of EUR 4 million is exceeded Italy should calculate the damage compensation without applying the deduction of the 8.9 % GDP decline to the counterfactual profit.

eligible restrictions were not applicable. If it is demonstrated that an individual adjustment is not possible in certain cases, a haircut of 20 % on the average profits of the reference period will be applied¹³.

- (35) Any aid already received pursuant to other measures will be deducted from the compensable damage. The Italian authorities also confirmed that any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered.
- (36) The Italian authorities confirmed that the payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other sources for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- (37) The Italian authorities confirmed that the benefit of the aid is excluded for any beneficiary who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.

2.8. Cumulation

- (38) The Italian authorities confirm that aid under the measure cannot be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (39) The Italian authorities have committed to provide a report no later than one year after the date of the present decision specifying the amount of compensation and recoverable advances granted and including a summary of all recoveries ordered under the measure.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (40) By notifying the measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (41) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

¹³ Having regard to the overall economic downturn in Italy between 2019 and 2020, which led to a GDP growth rate of -8.9 %, and in the absence of sector-specific economic growth indicators for those years, the Italian authorities consider that a 20 % haircut can be deemed conservative, since it represents double the growth rate in Italy between 2019 and 2020 and factors in an additional correction to avoid overcompensation.

- (42) The measure is imputable to the State, since it is granted by the Ministry for Cultural Heritage and Activities and Tourism (see recital (17)). It is financed through State resources, since it is financed by the State general budget (see recital (13)).
- (43) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (12)). The measure thus confers on beneficiaries an advantage that they would not have had under normal market conditions.
- (44) The advantage granted by the measure is selective, since it is awarded only to certain entities, namely those that meet the eligibility requirements of the measure (see recital (18)), and not to all economic operators that have suffered damage due to the exceptional occurrence of the COVID-19 pandemic.
- (45) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (46) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (47) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Italian authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (48) This assessment has led to the following observations.

3.3.1. The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU

- (49) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law¹⁴, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (50) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field¹⁵. In this regard, the following indicators relating to the event concerned

¹⁴ Judgement of the Court of Justice of 11 November 2004, *Spain v. Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in joined cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

¹⁵ Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

must be cumulatively met: (i) unforeseeable or difficult to foresee¹⁶; (ii) significant scale/economic impact¹⁷; and (iii) extraordinary¹⁸.

3.3.2. *The COVID-19 pandemic as an exceptional occurrence*

- (51) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (52) The WHO declaration of a pandemic¹⁹, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption²⁰. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.
- (53) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market.²¹ The

¹⁶ Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, OJ C 135, 9.5.2012, p. 1, recital 31.

¹⁷ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France, OJ C 127, 29.5.2003, p. 31), or because of the number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, OJ C 120, 25.04.2012, p. 1, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, OJ C 170, 16 July 2002, p. 16, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, OJ C 120, 25.04.2012, p. 1, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, OJ C 170, 16 July 2002, p. 16, recital 19).

¹⁸ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

¹⁹ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

²⁰ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

²¹ See also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

General Court has recognised that “[...] it is indisputable that the Covid-19 pandemic constitutes an exceptional occurrence within the meaning of Article 107(2)(b) TFEU”.²²

- (54) In this context, the COVID-19 pandemic can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. *Causal link between the COVID-19 pandemic and the damage compensated by the measure*

- (55) The Commission has examined the measure pursuant to Article 107(2)(b) TFEU, which requires a direct link between the damage and the exceptional occurrence for which the State aid measure provides compensation. That assessment has led to the following observations.
- (56) As described in detail in section 2, the COVID-19 pandemic has led to the adoption of restrictive measures by Italy, which resulted in the closing down of the activities carried out by ski lift operators in Italy from 4 December 2020 until 30 April 2021. Those restrictive measures were intended to prevent the spread of the virus, but they negatively affected the tourism sector and in particular the operations of the relevant beneficiary undertakings (see recital (8)). The damage suffered by ski lift operators benefitting from the measure is therefore directly linked to the COVID-19 pandemic through the restrictive measures imposed by the Italian government.
- (57) The measure aims at compensating those beneficiaries for the damage suffered due to the imposition of the restrictive measures linked to the COVID-19 pandemic. For the calculation of the damage, the Italian authorities have considered a compensation period running from 4 December 2020 until 30 April 2021 (see section 2), i.e. the same period when the ski lifts were closed in Italy (see recital (8)).
- (58) The Commission considers that, for the purposes of calculating the damage subject to compensation under Article 107(2)(b) TFEU, losses occurring during the compensation period can be considered as damage directly linked to the exceptional occurrence. Given the mandatory character of the restrictive measures introduced by the Italian government, operators of ski lifts suffered significant financial damage owing to the impossibility of operating their economic activity and, consequently, of obtaining their expected revenue. Foregone revenues over the compensation period will be eligible for partial compensation, during which period the measures prohibiting access to the public to ski lifts operated by the beneficiaries of the measure were in place.
- (59) The Commission concludes that the measure aims to cover the losses incurred by the beneficiaries as a direct effect of the COVID-19 pandemic and related restrictive measures between 4 December 2020 until 30 April 2021.

3.3.4. *Proportionality of the aid*

- (60) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not

²² Judgment of 17 February 2021, T-259/20, Ryanair v Commission, EU:T:2021:92, paragraph 26.

result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.

- (61) The measure is proportionate to the damage suffered by the beneficiaries of the measure, for the following reasons:
- (62) First, the compensation is limited to the losses of ski lift operators. Activities other than ski lifts are excluded from compensation under the measure (see recitals (22) and (32)).
- (63) Second, the level of compensation is established in relation to a clear and adequate counterfactual period: it is defined in the final calculation in relation to the results achieved over the same reference period of the years 2017-2019 (see recitals (29) to (31)). A rigorous damage calculation of the measure is further ensured. In particular, the Italian authorities will apply an adjustment to the average EBITDA in the reference period when calculating the difference with the EBITDA with the compensation period from December 2020 to April 2021. That adjustment will correspond to the growth rate of GDP between 2019 and 2020, which is estimated, based on official data, at -8.9 % (see recital (33)). In addition, if the monthly damage compensation per individual beneficiary exceeds, on average over the eligible period, EUR 4 million, the counterfactual profits must be determined on a case-by-case basis. In that analysis for each beneficiary concerned, the individual counterfactual profits have to be adjusted for the economic effects of declines in demand due to lower aggregate demand, or to greater customer reluctance, or the generally applicable restrictions on capacity and social distancing measures. In particular, the actual impact of the restrictions will be established by comparison with periods in 2020 and 2021, where such eligible restrictions were not in force. If it is demonstrated that an individual adjustment is not possible in certain cases, a haircut of 20 % on the average profits of the reference period will be applied (see recital (34)). The Commission considers that that 20% haircut is an appropriate proxy for a restriction-free counterfactual since it corresponds to a fall in demand of over twice the fall in the growth rate of GDP in Italy between 2019 and 2020 (i.e. -8.9%), while also factoring in an additional correction to avoid overcompensation. The Commission is of the view that such an approach, based on figures relating to the performance of the Italian economy overall, is an appropriate one in the absence of sector-specific data, in light of its highly prudent character.
- (64) Third, the measure ensures that, ultimately, the compensation is strictly limited to the losses caused by the application of the restrictive measures. As stated in recital (31), the final amount of the compensation cannot be higher than the difference in EBITDA between the reference period and the compensation period, also taking into account the adjustment corresponding to the growth rate of GDP between 2019 and 2020 (recital (32)). In addition, for ski lift operators carrying out activities other than the ski lift activities (e.g., bars, restaurants and others), the EBITDA used to make the ex post compensation adjustment will only reflect the costs and profits that relate to the ski lift activities. To do this, the Italian authorities will apply a rate of correction for the variation between the EBITDA for the compensation period and the EBITDA for the reference period which corresponds to the weight of the ski lift operators in the company's total turnover (calculated over the period used as a reference for the calculation of the EBITDA) (see recital (32)).

- (65) Fourth, any aid granted under the measure will be net of any aid already received pursuant to other measures (see recital (35)).
- (66) Fifth, only damages incurred during the application of the ski lifts' closure (from 4 December 2020 until 30 April 2021) may be compensated (see recital (23)).
- (67) Sixth, as described in recital (36), the Italian authorities confirmed that the payment made to beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other sources for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- (68) Seventh, as mentioned in recital (29), the Italian authorities will verify *ex post* the exact amount of damage incurred by each beneficiary of the measure. Any payments under the measure exceeding the damage suffered as a direct consequence of the COVID-19 pandemic will be recovered.
- (69) Eighth, as described in recital (37), the benefit of the aid is excluded for those beneficiaries who are responsible for the damage suffered, who did not conduct their activities with due diligence or in compliance with applicable legislation, or who did not take appropriate measures to mitigate the damage.
- (70) Italy also confirms that aid under the measure cannot be cumulated with other aid for the same eligible costs (see recital (38)).
- (71) Italy has therefore ensured that the compensation under the measure will not exceed the damage directly suffered by each beneficiary from the loss of revenue caused by the COVID-19 outbreak.

3.3.5. *Conclusion on compatibility of aid with Article 107(2)(b) TFEU*

- (72) In view of the above, the Commission considers that the damage compensation under the measure is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

