COMMISSION DECISION

of 23 November 2005

on the State Aid which Italy is planning to implement for Fincantieri

(notified under document number C(2005) 4433)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/639/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 regard to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [1],

Having called on interested parties to submit their comments pursuant to the provisions cited above [2] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 31 July 2003, Italy notified the Commission of the aid. By letters dated 16 September 2003, 6 November 2003, 1 December 2003, 4 February 2004, 12 February 2004, 26 February 2004, 5 April 2004, 25 May 2004, 23 June 2004 and 8 July 2004, it provided the Commission with further information.

(2) By letter dated 22 October 2004, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 12 April 2005.

(5) Other letters were received from Italy dated 25 November 2005, 18 May 2005 and 12 October 2005.

II. DETAILED DESCRIPTION OF THE AID

(6) Italy requested the Commission to grant an extension of the delivery limit of 31 December 2003 provided for in Article 3 of Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ('the Shipbuilding Regulation') as a condition for receiving contract-related operating aid. The extension was requested for Fincantieri, for the delivery of five cruise ships, for a total contract value of € 2,1 billion and an aid amount of € 243 million.

(7) Fincantieri is a state-owned company operating eight shipyards (Monfalcone, Marghera, Sestri Ponente, Ancona, Palermo, Castellammare, Muggiano, Riva Trigoso) in Italy. It is specialised in building cruise ships but also builds other types of seagoing vessels and military ships.

(8) Italy explained that the final contracts for the ships concerned were signed in December 2000 and delivery, according to the contracts, was planned for June and December 2003. The ships were ordered by various subsidiaries of Carnival Corporation ('Carnival'), a US cruise operator. Italy promised, on this basis, contract-related operating aid for the building of the ships.

(9) Italy stated that the shipowner requested a postponement, in the autumn of 2001, of the delivery dates to various dates in 2004 and 2005. This request was motivated by the severe impact on the cruise industry of the terrorist attacks of 11 September 2001. Fincantieri agreed to this and Italy requested an extension of the delivery limit so that the ships could still qualify for operating aid.

(10) In their notification the Italian authorities referred to the Commission's decision of 5 June 2002 [4] authorising a similar extension of the delivery date for a cruise ship under construction at Meyer Werft, Germany. Italy emphasised the similarities between the two cases in terms of (i) the reason given for the extension (the impact of the 11 September 2001 terrorist attacks), (ii) the relevant market (cruises) and (iii) the commercial dependency existing between the shipyard and the shipowner (Carnival is Fincantieri's largest customer).

[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ C 30, 5.2.2005, p. 12.
[3] See footnote 2.
[4] OJ C 238, 3.10.2002, p. 14 (state aid case N 843/01).

(11) By decision dated 20 October 2004 the Commission granted the extension of the delivery limit for four of the ships, but expressed doubts that it could grant the extension for the fifth. The doubts concerned ship 6079 with planned delivery in October 2005. This ship was originally intended to be delivered in 2005 but the delivery date was changed to December 2003 in late 2000; otherwise the ship would not have been eligible for operating aid.

(12) The aid amount that Italy would grant to Fincantieri if the Commission were to extend the delivery limit for ship 6079 is approximately € 33 million (9 % of the contract value of the ship).

(13) There were chiefly two reasons for initiating the formal procedure. One was doubts concerning the feasibility of the plan, whereby one of the five ships (ship 6077) was to be built at the Ancona shipyard, involving a complex production process in which hull sections had to be moved for assembly to a second yard (ATSM Trieste) and back to Ancona, since the length of Ancona's dock is shorter than the ship. Furthermore, Ancona had never built a ship of similar complexity before, casting doubts on the ability to manage this operation, not least concerning outfitting. Linked to this, the construction of ship 6077 at Ancona would have implied an exceptionally high amount of outfitting at the Palermo shipyard because of the shift of production from Ancona to Palermo.

(14) The second reason for initiating the formal procedure was doubts concerning the estimated amount of outfitting that would have had to be done by Fincantieri if all five ships had been delivered in 2003. This would have involved, in the Commission's estimation, twice as much outfitting work in 2003 as Fincantieri had ever done in any other year. Furthermore, for the shipyard at Marghera, the outfitting planned for 2003 would have amounted to around 40 % more than the yard had ever done before. The Commission therefore had doubts as to whether the production plan for Fincantieri in general, and for Marghera in particular, was realistic.

(15) For these two reasons the Commission doubted that all five ships could have been delivered in 2005. However, on the basis of the same information and analysis, the Commission accepted that it could have been possible to deliver four of the ships.

(16) The Commission considered that the main doubts concerned ship 6079, which is the third sister ship to 6077, built at the same yard, Marghera, with planned delivery in October 2005. The delivery of this ship was postponed in relation to the December 2000 production plan owing to the decision to build ship 6077 at Marghera. These doubts are also based on indications (letter of intent signed before the final contracts were signed in December 2000) that the current production sequence, with a very late delivery for ship 6079, was originally intended.

III. COMMENTS FROM INTERESTED PARTIES

(17) Fincantieri submitted comments in a letter dated 3 March 2005.

(18) It stated that any of the company's yards, irrespective of whether they were part of the cruise ship or transport vessel divisions, were in a position to build the same ship components, without any need to alter production engineering choices or executive planning in the workshop, as it would be possible to count on a network of subcontractors that could meet quality and quantity requirements.

(19) It also stated that the Ancona shipyard would have had no problems building an entire cruise ship of the dimensions and design characteristics of ship 6077 (the sister ship of 6079), including all fittings, using only its own production facilities, infrastructure and plant, if only the agreement between Fincantieri, the local and regional authorities, the port authorities and the metalworkers' unions set out in the memorandum of intent of 6 December 1999 had been implemented immediately. However, this did not take place.

(20) When the production engineering of ship 6077 was examined it was decided to build the ship in two parts: the larger section at Ancona and the smaller section at Riva Trigoso. The same production plan had been devised for building the aircraft carrier Conte di Cavour at the Riva Trigoso and Muggiano yards, and had been employed for the construction of the Disney Magic cruise ship at the Ancona and Marghera shipyards in 1997. The so-called jumboisation was planned at the ATSM dry dock in Trieste. As the latter had a dock that was suitable for fitting out and finishing ships, it could have overcome any production difficulties encountered at the Ancona shipyard while offering the significant advantage, which should not be underestimated, of proximity to the industrial area around the shipyard at Monfalcone.

(21) In the final analysis, in choosing to build the 6077 at Ancona, at least for a large section of the hull and much of the outfitting work, Fincantieri adopted an effective and far-sighted strategy which, should problems arise, offered a number of alternatives that would take advantage of the integrated nature and flexibility of its yards to ensure that it would be possible to deliver the ship by the end of 2003 as required by the contract.

IV. COMMENTS FROM ITALY

(22) The comments from Italy following the initiation of the formal procedure reflect the comments made by Fincantieri, i.e. that the December 2000 plan was challenging but realistic. Italy considers that the delivery dates could have been kept thanks to Fincantieri's production flexibility, in other words its ability to 'pool' the construction process by outsourcing to other yards (including some not normally engaged in the building of cruise ships), through an infrastructure and plant investment project dedicated to that end and through advanced building techniques.

(23) Concerning the planned involvement of ATSM in the construction of one of the ships, Italy's comments reflected those of Fincantieri, i.e. that ATSM could easily have combined the two outfitted sections of vessel 6077, although this method of construction is an alternative, and in some ways a less satisfactory one, to the 'normal' sequence of construction phases. In any event, the work of joining sections has now become routine for Fincantieri. As regards the Commission's doubts about Ancona's previous experience in building ships of similar complexity, Italy considers that it had gained such experience with the construction and outfitting of around half of the Disney Magic and with the passenger ship Danielle Casanova.

(24) Italy also argues that the Palermo yard has in the past (1996-97) carried out much more demanding production plans than the one envisaged in 2000. As regards the Commission's estimation that the December 2000 production plan would have involved, in 2003, twice as much outfitting work as Fincantieri had ever done in any other year, Italy refutes that statement and claims that in almost all the yards the December 2000 production plan would have relied on the 'standard capacity' of the yard in question, and only in certain cases would peak capacity have been reached.

(25) In reply to the Commission statement that for the Marghera shipyard the outfitting planned for 2003 would have amounted to around 40 % more than the yard had ever done before, Italy states that the workload (including outfitting) scheduled for the Marghera yard in the plan dating from 2000 was absolutely consistent with the capacities and capabilities actually demonstrated by the yard since it had previously managed to deliver four ships in 15 months, as was planned for 2003.

(26) Italy was also offered the opportunity to comment on the essential elements of the report by the independent expert whom the Commission consulted when it assessed the information provided by Italy prior to the launch of the formal investigation procedure.

(27) In its reply dated 18 May 2005 Italy commented on three main aspects of the expert's report.

(28) First, according to Italy, the expert based his assessments on total delivery in the year 2003, without taking account of the production cycle, in other words the gradual increase in compensated gross tonnage (cgt) that occurs throughout the construction period. By not distributing, over the time-span necessary for actual production, the tonnage relating to the nine ships scheduled for delivery in 2003 (some of which were at an advanced stage of construction by the end of 2002), the expert had concluded by asserting that in 2003 Fincantieri would have had to produce twice the cgt it had produced in the past. That finding was, in Italy's opinion, incorrect since, for the purposes of assessing Fincantieri's production capacities, the tonnage delivered in 2003 did not correspond to the tonnage actually produced in that year. Italy claims that the production data were consistent with capacities observed in the past and in any event did not exceed the maximum capacity levels.

(29) The production data demonstrate in Italy's view that even in the years that would have been most busy, namely 2002 and 2003, the production volumes for the Monfalcone, Marghera and Sestri Ponente shipyards would not have diverged by more than 20 % from historical values. As regards the payload (accommodation and air conditioning), which is the significant and distinctive part of the work on ships of this type, the difference is even more marked in the case of the Sestri Ponente shipyard (which increased its output from 1 863 tonnes in 1998 to 14 303 tonnes in 2003); such a steep increase was facilitated by using subcontractors and extending the scope of their responsibilities via turnkey contracts.

(30) The figures for output in terms of hours of labour (in-house/outsourced) show that, in the years preceding the ones covered by the production schedule, greater use was made of subcontracting than was contemplated in the December 2000 schedule.

(31) Finally, Italy claims that the fear that subcontractors might have been insufficient or unavailable is completely unfounded, also in view of the fact that the fitting-out of the 'hotel' part of the ships (which coincides with the last phase of production in the shipyard) involves the very subcontractors with whom Fincantieri has long-term cooperation relationships. Even in the unlikely event of a shortage or unavailability of skilled workers, the problem would easily be overcome through outsourcing the work to the building sector, mainly firms involved in the construction of large hotels, given the similarity of the furnishings and fittings in the 'hotel' part.

(32) Italy concludes by fully endorsing the comments made by Fincantieri.

(33) By letter dated 12 October 2005 Italy commented on the conclusions reached by the second expert consulted by the Commission in order to assess the arguments put forward by Italy in its reply to the decision initiating the formal procedure.

V. ASSESSMENT OF THE AID

Legal basis

(34) According to Article 87(1) of the Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market. The Court of Justice of the European Communities has consistently held that the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(35) The Commission notes that the question of extending the delivery limit is decisive for determining whether the ship in question qualifies for contract-related operating aid under Article 3 of the Shipbuilding Regulation. The operating aid in question consists in financing from state resources part of the costs that the yard in question would normally have to bear when building a vessel. Moreover, shipbuilding is an economic activity involving trade between Member States. The aid in question therefore falls within the scope of Article 87(1) of the Treaty.

(36) Under Article 87(3)(e) of the Treaty, categories of aid specified by a decision of the Council acting by a qualified majority on a proposal from the Commission may be considered compatible with the common market. The Commission notes that the Council adopted the Shipbuilding Regulation on that basis on 29 June 1998.

(37) The Commission notes that, according to the Shipbuilding Regulation, 'shipbuilding' means building of self-propelled seagoing commercial vessels. The Commission also notes that Fincantieri builds ships of this type and that it is consequently an undertaking covered by the Regulation.

(38) Italy's request has to be assessed on the basis of the Shipbuilding Regulation, although it expired at the end of 2003. This is because the scheme under which Italy granted the aid was approved in accordance with that Regulation, the aid was granted when the Regulation was still in force, and the rules linked to the three-year delivery limit are laid down in that instrument.

(39) According to Article 3(1) of the Shipbuilding Regulation, a maximum ceiling of 9 % for contract-related operating aid was allowed until 31 December 2000. Under Article 3(2), the aid ceiling applicable to the contract would normally be the one in force at the date of signature of the final contract. However, this does not apply to ships delivered more than three years from the signing of the contract; in such cases, the ceiling applicable is the one in force three years before the date of the delivery of the ship. Consequently, the last delivery date for a vessel qualifying for operating aid was, in principle, 31 December 2003.

(40) Article 3(2) stipulates, however, that the Commission may grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard due to exceptional circumstances, unforeseeable and external to the company. It should be noted that Italy bases its request for extension of the delivery limit on such exceptional and unforeseeable circumstances.

(41) The Commission notes that the Court of First Instance interpreted a similar provision in its judgment of 16 March 2000 ([5]), in which it stated that the provision in question must be given a restrictive interpretation.

Appraisal of the compatibility of the aid in the light of the doubts expressed by the Commission and the comments submitted by Italy and Fincantieri

(42) The Commission first points out that the present Decision concerns one ship, but the assessment is based on the entire production planned by Fincantieri in December 2000. Delivery of all five notified ships in 2003, plus other ships already scheduled for delivery in 2003, would have imposed a very heavy workload on the Fincantieri yards. The Commission therefore considered it necessary to verify that Fincantieri would have been technically able to deliver the ships in question by the end of 2003.

(43) The additional information provided by Italy and Fincantieri in response to the doubts raised by the Commission in its decision initiating the formal procedure was analysed by the Commission and by an independent technical expert ([6]) at the Commission's request. The report drawn up by this expert was made available to Italy for comments by a letter from the Commission dated 26 August 2005. Italy commented on this report in a letter dated 12 October 2005.

Production of a ship at the Ancona shipyard and effects on the Palermo shipyard

(44) The first doubt raised by the Commission was the ability of the Ancona shipyard to build, in combination with the ATSM shipyard in Trieste, one of the five cruise ships (6077) covered by the notification.

([5]) Case T-72/98 *Astilleros Zamacona SA v Commission* [2000] ECR II-1683.

([6]) For administrative reasons, a different one from the expert consulted before the formal procedure was initiated.

(45) Italy claims that it would have been possible to build one of the five ships at Ancona and ATSM even though the dry dock at Ancona is shorter than the ship in question, thanks to a special procedure used once before for a cruise ship, i.e. combining two ship sections (jumboisation). The Commission did not state in the decision initiating the formal procedure that such a method would be impossible, but underlined its complexity; Italy agrees with this and acknowledges that it was a 'less satisfactory method of construction'.

(46) In the decision initiating the formal procedure, the Commission noted in this context that Ancona had never built ships of similar complexity before, to which Italy replied that it had built a major section for three similar ships, and a passenger ship approximately half the size of the ship in question (44 000 grt as compared with 82 500 grt). The sections and the ship were thus considerably smaller than the cruise ship 6077 planned to be built. Since in cruise ship construction complexity is closely linked to size, the Commission in this respect concludes that Italy has not successfully refuted the facts set out in the decision initiating the formal procedure.

(47) The decision also stated that construction of one of the cruise ships at Ancona and ATSM in Trieste would have involved moving other planned construction to another Fincantieri yard, Palermo, and that the Commission had doubts that this yard could have coped with the resulting increase in outfitting work. Italy argues that such work would have been theoretically possible. However, no evidence is provided and the reply focused on construction in terms of cgt instead of the precise issue of outfitting. The Commission nevertheless notes that production at Palermo in 2003 was 33 000 cgt, which falls far short of the maximum production claimed by Italy (63 000 cgt) and is far less than the production according to the December 2000 plan (53 000 cgt).

(48) Furthermore, Italy informed the Commission that already in June 2001 (less than six months after the contract for the five cruise ships was signed) there was a production crisis at Palermo, even without the extra work planned, which made it necessary to delay deliveries. The Commission therefore considers that the Palermo yard would not have been able to fulfil the December 2000 plan as regards outfitting, and Italy has not given any reply on this point.

(49) The Commission also notes that the information provided by Italy and Fincantieri shows that it was not clear in December 2000 whether the outfitting of ship 6077 was intended to take place at ATSM or at Ancona. According to the production plan dated December 2000 and exhibit 5 in the letter dated 25 May 2005, the outfitting was to take place at Ancona, but the letter from Fincantieri dated 3 March 2005 states that the outfitting was to take place at ATSM to overcome any production difficulties encountered at the Ancona shipyard.

(50) According to the expert consulted by the Commission, Italy has not come forward with convincing information as regards the organisation and resources to be set up at ATSM's dry dock and he strongly doubts that a yard, mainly used for ship repair and inexperienced in cruise vessels, could be turned into a fully organised yard able to deliver a cruise vessel within a tight deadline.

(51) Italy commented on this aspect in its letter dated 12 October 2005. Italy considers that Fincantieri's organisational skills were sufficient to put, at short notice, ATSM in a position to perform its intended task. It also stresses that in its ship-repair activities ATSM is currently working in synergy with Fincantieri. However, the Commission is still not convinced by Italy's arguments that ATSM could be transformed from a dry-docking facility for ship repairs into a fully functioning shipyard in a short period of time.

(52) The conclusion is thus that Fincantieri itself doubted Ancona's ability to outfit the ship; neither has it provided any proof that ATSM was able to do so. Based on the above observations, the Commission considers that the December 2000 plan was unrealistic and unspecific both as regards the construction of a ship at Ancona/ATSM and as regards the situation at Palermo, confirming its doubts on these points.

Outfitting by the Fincantieri group

(53) In the decision initiating the formal procedure, the Commission estimated that delivery of all five ships plus all the other ships planned would have involved twice as much outfitting work as Fincantieri had ever done before, and that for the Marghera shipyard the outfitting planned for 2003 would have amounted to around 40 % more than the yard had ever done before.

(54) Italy replied, for one thing, that the hull erection capacity was sufficient. This argument is however not relevant, since the Commission did not question the ability to construct the hulls.

(55) Fincantieri and Italy also question the Commission's estimates of the amount of outfitting in relation to previous years and argue for example that the increase was not more than 20 %. They also claim that it would have been possible to accomplish the necessary outfitting within the deadline with the help of the network of subcontractors.

(56) The Commission maintains, however, and is supported in this by its technical expert, that the outfitting issue is as pertinent as stated in the decision initiating the formal

procedure. Although Italy has indicated that individual yards could have increased their production up to their peak level by operating two shifts, to do so simultaneously in all or most of its shipyards would, in the Commission's opinion, involve a very high risk and cost and would place a heavy strain on management capacities, particularly since Italy underlines the central management structure of Fincantieri's production process.

(57) The outfitting work is particularly critical for hulls 6078 and 6079, which were both planned to be built at the Marghera shipyard and delivered before the end of December 2003, with an interval of only two months between them. The Commission's view, supported by the expert's assessment, is that Italy, although providing some figures on how it had planned to accomplish all the outfitting, has not given a proper reply to this important point.

(58) In its letter dated 12 October 2005, Italy comments on this point made by the expert, stating that delivery of two ships within a period of two months was feasible, and that for example nine months had been set aside for ship 6078, compared with seven months for 6079, so as to be able to work on 6079 if necessary. The Commission points out here that the planned outfitting times for sister ships 6075, 6076 and 6077 were nine, eight and ten months respectively. Nine months for 6078 therefore appeared to be not particularly long, and seven months for 6079 extremely short, given that the outfitting work on that vessel was planned to be carried out simultaneously with ship 6078.

(59) The Commission takes note of Italy's statement that the outfitting time for some previous ships was reduced to seven or even six months. However, this took place in shipyards that were able to work in the normal way, outfitting one ship at a time.

(60) The fact that Marghera managed in the past to deliver four ships in 15 months does not dispel the Commission's doubts, since they mainly concern the two planned deliveries within two months. The Commission also notes that real production at Marghera in 2003, which was still considered a busy year for Fincantieri ([7]), was around 130 000 cgt, far less than the planned production of 160 000 cgt for 2003 in the December 2000 plan.

(61) The delivery of four ships in a short timeframe would furthermore, in the view of the expert consulted by the Commission, have caused difficulties for the shipowner, who would probably have had to overcome serious organisational problems in order to be in a position to take delivery of four vessels within two months.

(62) As for ships 6078 and 6079, which were planned to be delivered from the Marghera shipyard, the planned production times of 18 and 19 months were according to the Commission's expert extremely short. In this respect the expert questions the claims made by Italy in its letter dated 25 May 2005 that there would be a learning curve which would reduce the time needed for the later ships in a series. While this assumption is correct when ships are built in the same yard and with the same methods, it is, according to the expert, not correct when the same type of ship is built in different locations, with different teams, as would have been the case under the December 2000 plan.

(63) In its letter dated 12 October 2005, Italy comments on this point. It considers that there is a learning curve even when ships are built in different locations. The Commission can agree that a certain learning curve exists even when production takes place at different yards, e.g. as regards aspects linked to the central management structure and the supply of major equipment. Nevertheless, when ships are built in different locations, and even with different production methods, it is clear that this learning curve is much less significant than when there is repeated production in the same yard.

(64) The Commission notes that the three sister ships 6077, 6078 and 6079 would not have been built at the same yards and with the same production methods under the December 2000 plan. It also notes that according to Italy ship 6079 is in fact not the third in a series but the fifth, and that labour savings of 16 % and 8 % for the first and second sister ships had already been achieved. To expect additional efficiency gains and time savings for each further ship is even less plausible for the last two ships in a series of five than in a series of three ships. The Commission therefore considers that the estimated reductions in production times for ships 6078 and 6079 in the plan dating from 2000 were unrealistic.

Missing evidence

(65) The technical expert consulted by the Commission following the initiation of the formal procedure provided the Commission with some examples of what kind of information Italy/Fincantieri could have provided to show that Fincantieri really had the intention and the capability to deliver all five ships by the end of 2003.

(66) One such example is orders to suppliers for main items such as propulsion systems or main power generators. These have to be ordered at an early stage so as to be sure to receive them in time. Another such example would be contracts with subcontractors, which should have been concluded before the end of July 2001 according to the process description presented by Italy, and in any event before September 2001. However, Italy has only presented a list of subcontractors that potentially work for Fincantieri. A third example of proof that could have been provided would be actual dates of downpayments on contracts or

([7]) According to Fincantieri's annual report for 2003, '2003 was a particularly busy year for the Cruise Ship Business Unit, which was engaged in delivering three ships in a brief period of time'.

performance bonds/bank guarantees arranged for the orders and normally produced against payment of the first instalment for a new ship.

(67) Italy and Fincantieri did not provide any such evidence of Fincantieri's intention and ability to deliver all the ships by the end of 2003, including ship 6079, even though by letter dated 26 August 2005 the Commission informed Italy that precisely this type of information would have been useful. The lack of such information further supports the Commission's view that the December 2000 production plan was unrealistic and that ship 6079 could not have been delivered by the end of 2003.

Expected delivery of the ship

(68) The Commission finally notes that according to a press release issued on 20 June 2005 by the ship operator (Holland America Line), the vessel in question (ship 6079), to be named MS Noordam, is to be delivered in January 2006. The Commission notes that if this information on the delivery date is correct, the aid could not have been granted by Italy even if the Commission had allowed an extension of the delivery limit until the end of October 2005, as requested by Italy.

VI. CONCLUSION

(69) The Commission has analysed the information provided by Italy following the Commission decision to open a formal investigation into the technical ability to deliver all the ships that were scheduled for delivery in 2003 according to Fincantieri's December 2000 plan, and in particular hull 6079. In the Commission's view the information that Italy has provided has not dispelled the doubts it raised concerning the feasibility of the December 2000 plan submitted by Italy. The original doubts were shared by an independent expert. The new information was assessed by another independent expert, who also came to the same conclusion as the Commission. Italy had the opportunity to comment on the conclusions set out in the reports by both experts.

(70) Based on its assessment of all the available facts the Commission comes to the conclusion that the original production plan, with delivery of all five notified cruise ships before the end of 2003, was unrealistic. The doubts concerning the ability to deliver ship 6079 by the end of 2003 have therefore been confirmed.

(71) The Commission notes that it has already authorised an extension of the delivery limit for four ships produced by Fincantieri, in accordance with Article 3(2) of the Shipbuilding Regulation. That provision applies only to unexpected disruptions of a substantial and defensible nature due to exceptional circumstances, unforeseeable and external to the company, and the Court has already stated that it should be given a restrictive interpretation.

(72) On the basis of the conclusion set out in paragraph 70, an extension of the delivery limit is not defensible, and for this reason the Commission cannot authorise an extension of the delivery limit for hull 6079,

HAS ADOPTED THIS DECISION:

Article 1

The three-year delivery limit laid down in Article 3(2) of Council Regulation No 1540/98 cannot be extended for ship 6079 built by Fincantieri.

The contract-related operating aid for the ship may accordingly not be implemented.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 November 2005.

For the Commission

Neelie KROES

Member of the Commission