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Competition DG

Markets and cases II: Information, Communication and Media
State aid

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Permanent Representation of Italy
Rue du Marteau 5-11/Hamerstraat 5-11
1000 Bruxelles/Brussel
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Subject: C 25/2009 (ex N673/2008) – Italy – Digital cinema tax credit

Dear Mr Perini,

By e-mail dated 18 April 2014, the Commission received updated information concerning the above-mentioned measure, in reply to its e-mail sent on 26 February 2014. After an initial examination, the Commission services have found the information at their disposal to be insufficient to allow for a complete assessment of the case.

The Commission services would therefore appreciate if you could answer the following additional questions:

1. In your answer to question 1, you refer to Decree-Law no. 38 of June 22nd, 2012, which we have not received. Could you please send us this document? Moreover, in your answer to question 5, you refer to a Ministerial Decree of January 21st 2010; and in your reply to question 6, you refer to the Legislative Decree 241 of 9 July 2007 – should we add these to the list of applicable legal bases?
2. In your reply to question 2 (on the estimated yearly budget of the scheme) you refer to data on the tax credit benefits granted from 2010 to 2013. However, these amounts vary greatly (between EUR 3.8 million and EUR 18.5 million). Could you therefore please provide us with an estimated yearly budget for the years that will be covered by the decision?
3. In your reply to question 14, you confirm that the Italian authorities commit to notify the prolongation of the scheme at regular intervals. More concretely, we propose 31 December 2022 as an end date, in line with the end date proposed in case SA.37922 (Tax incentives based on the performance of films and audiovisual works). Could you confirm that you agree with this end date?
4. In your reply to question 5, you propose to adjust the maximum cumulative aid intensities to 75% (in general) and 90% for small cinema sites (single and two-screen cinemas). Please provide us with an updated version of the Decree reflecting these changes.
5. Could you clarify if the amount mentioned in the description of category D) of cinemas (in your reply to question 6) refers to the number of cinema sites or screens? Even if most of these cinemas are single-screens, we suppose that the numbers are not fully identical.

Please specify the name of the case and the case number in all correspondence.

6. In your reply to questions 7, 8 and 9, you indicate that the classical VPF framework (with an integrator) has only been used by big cinema networks (UCI and The Space). However, we read news reports on the VPF deal between Giometti and Sony (<http://www.boxoffice.com/news/2013-04-02-giometti-cinema-and-sony-digital-cinema-finalise-vpf-deal>). Giometti is one of the cinema networks (category b)) targeted by the Italian tax credit scheme, whereas you state in your latest answer that the scheme aims to exclude the big cinema networks that have made use of the VPF framework. Could you please clarify this apparent inconsistency? Even if the typical VPF model has so far not been widely used in Italy, it is our understanding that it is in principle open to all cinemas who regularly premiere recent films (its application being based on the so-called "turn rate" of first-run films). The Giometti example indicates that a combination of an integrator-type VPF model with the tax credit could be possible. Therefore, please clarify how the combination of both types of revenue (the aid and the VPF contributions) will be monitored by the Italian authorities to ensure that no surplus of aid is given, nor that any of the aid is indirectly benefiting the integrators.
7. We would like to receive a number of other clarifications on your answers to questions 7, 8 and 9:
- Do we understand correctly that the alternative VPF model is not applicable to screens digitised after 1 January 2014?
 - We have made a comparative table between the two VPF models. Could you please confirm that this table is correct or indicate possible errors?

The classic VPF model in Italy	The alternative VPF model in Italy
A third party integrator (which in turn has VPF contracts with distributors) signs an agreement with a cinema exhibitor.	Based on an agreement between the distributors' association and the exhibitors' association. There are no third parties involved.
The exhibitor does not own the digital equipment and does not pay for it upfront.	The exhibitor owns the digital equipment from the start and covers the entire purchase cost upfront.
Both the distributors and the exhibitor contribute to the gradual amortisation of costs through respectively VPF fees and monthly payments. The division of costs is typically on the basis of a 75% distributors' share and a 25% exhibitor share.	Film distributors pay virtual print fees for digital screenings of films, until 75% of the digital conversion costs are covered. The exhibitor is in any case expected to cover EUR 5 500 of the costs.

8. More generally, with regard to the answers you provided to questions 7, 8 and 9, we have doubts as to the compatibility of this combination of the "alternative" VPF model and the tax credit with the state aid rules. Indeed, from the example you included, it appears that the distributors are also benefiting from the tax credit (see the table below for a comparison of the market VPF situation (no aid) and the current one). This does not seem to be in line with the objectives of the tax credit. While the Italian authorities stress that they cannot control private agreements, we are convinced that it is possible to amend the provisions of the tax credit when misuse of aid or other unwanted effects are observed. For instance, given that 75% of the costs are covered by the distributors, it might be an option to explicitly limit the tax credit to the other 25% of costs. Alternatively, if the Italian authorities consider that it is defensible to support also the distributors, please

provide us with arguments as to why such distribution support can be considered compatible, according to the Italian authorities, under the TFEU.

Digital equipment costs EUR 60 000	VPF model as applied under normal market circumstances	Impact of the Italian tax credit (practice)
Aid amount	EUR 0	EUR 18 000 (30%)
Exhibitor share of the conversion	EUR 15 000 (25%)	EUR 5 500 (9%)
Distributor share of the conversion	EUR 45 000 (75%)	EUR 36 500 (61%)

9. Could you please send us the 2012 Cinetel data you refer to in your reply to question 10?
10. With regard to the last paragraph in your reply to question 10, could you please clarify if you refer to a modification to the decree still to be inserted or to an existing modification? It is our understanding that you refer to the "maximum 60 screens" eligibility threshold and that this is therefore also a modified element of the 2009 Decree (in contrast with your reply to question 13), but we are not sure that our interpretation is correct.
11. Thank you for sending us the figures on the implementation of the Italian digital tax credit in 2010-2013. From these data, we can see which part the different cinema categories (single-screen cinemas, for example) represent among the total number of beneficiaries, but not what percentage of each cinema category has benefited from the tax credit. Can we assume for example that the 325 cinema screens supported represent 24% of all the single-screen cinemas (as you indicate in your reply to question 6 that the total number of single-screens is 1340)? If possible, please provide us with these additional data.

The information should reach the Commission within one month from the date of this letter.

In your reply you are kindly requested to inform the Commission services whether or not any of the information is confidential¹. If so, please submit a non-confidential version of your reply. In the absence of any indication about the confidentiality of your submissions, the Commission services will assume that your reply does not contain any confidential information.

Please note that, to facilitate the assessment of the scheme, this letter is sent to you in English. If necessary, it can be sent in Italian upon a request of your authorities.

Yours sincerely,



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Head of Unit

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¹ Commission communication on Professional secrecy 4582 of 1 December 2003 – Official Journal C 297, 9 December 2003 pp. 6-9.