



COMMISSION OF THE EUROPEAN COMMUNITIES

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Subject: State aid No SA.30742 (N/2010) – Lithuania – Construction of Infrastructure for the Passenger and Cargo Ferries Terminal in Klaipėda

Dear Sir,

1. PROCEDURE

- (1) By electronic notification of 12 April 2010, the Lithuanian authorities notified, according to Article 108(3) TFEU, a measure providing for public financing for the construction of port infrastructure in Klaipėda Port. The notification has been registered under case number SA. 30742 (N 137/2010). Additional information was provided in submissions of 1 October 2010, 29 December 2010, 17 March 2011, 20 June 2011, 5 August 2011, 19 October 2011, 24 November 2011 and 8 December 2011.

2. DESCRIPTION

2.1. The objective

- (2) The overall objective of the notified measure is to enable the establishment of the new passenger and cargo ferries' terminal in order to improve connectivity of Lithuania with the neighbouring regions by sea and to develop maritime tourism by making it possible to serve modern ro-pax ferries. The current infrastructure for receiving ferries in the port of Klaipėda does not allow providing safe, efficient and high quality services; due to insufficient depth of the channel, the access is possible only to the small-draught ships. The absence of adjustable ramp causes further problems. With a varying water level in the Curonian Lagoon, gates of ferries do not comply with the height of quays. As a result, it is complicated for the vehicles to go in and out of the ferry. The existing ferry terminal International Ferry Terminal (hereinafter - IFT) is situated far from the city centre and the main road transport routes. Maritime passengers, arriving to IFT, are forced to travel to

the very fringe of the city and to cross railway crossings implying frequent delays. Also departing passengers face a number of inconvenience and delays due to poor and badly situated infrastructure. This prevents the development of the maritime transport of passengers as alternative to travel by road/plane and slows down the development of the maritime tourism.

2.2. Beneficiary – the Port Authority (SE KSSA)

- (3) Klaipėda port is the only seaport in Lithuania (Article 107(3)(a) territory). It plays an important role in the Lithuania's economy: it generates 5% of the Lithuanian GDP, 37% of Klaipėda county GDP and 44% of Klaipėda city GDP. The port of Klaipėda is directly or indirectly related to 18% of Lithuania's total GDP. About 22% of the Klaipėda City residents are related to maritime activities.
- (4) Still, Klaipėda port is a relatively small port in the European context (it handled just 321,000 international passengers in 2010).
- (5) The port is managed by a State-owned limited company, the direct beneficiary of aid.
- (6) The port authority is responsible for maintenance of quays and piers and dredging.
- (7) It collects port dues from ships berthing at the port according to the rates specified in the ministerial order¹.
- (8) In addition, it receives fees from the port operators for the use of quays and piers that it manages pursuant to the ministerial order approving the rules for calculation of Klaipėda port land lease fees². As the Port Authority is largely faced with "mandatory" counterparts in terms of the rental agreements it signs, the Government of Lithuania opted for a fixed fee-setting system to limit possibly unjustified discretion on the port authority's side on the one hand, and downwards pressure concerning the rental fees from the lessors. Fees specified in the above order are based on objective criteria, they are transparent and easy to administer. These fees are expressed as a fixed annual amount per 1 meter of working length of quay of a particular draught, as established in a ministerial order³.
- (9) As to the land plots adjacent to quays, the port authority concludes rental agreements. In cases where rental fees were not established through a tender procedure (most of cases, also the new ferry terminal case), port operators pay rental fees according to the official rate established in a ministerial order⁴.

¹ See http://www.portofKlaipėda.lt/en.php/port_regulations/port_dues/294

²

http://www.portofklaipeda.lt/en.php/port_regulations/rules_for_calculation_of_klaipda_state_seaport_land_lease_fee/12182

³ e.g. 20€ if draught is 1-1.99 m; 5m – 56€; 10m – 202€; 15m - 727€; over 17m – 1212€, see http://www.portofKlaipėda.lt/en.php/port_regulations/rules_for_calculation_of_klaipda_state_seaport_land_lease_fee/12182

⁴ The basic annual fee is 0.9€ per m². It is multiplied with 1.1 in case of railway presence on the land area used by the lessee.

- (10) The Port Authority doesn't receive any support with respect to its current costs from the State.
- (11) The Port Authority does not provide essential technical-commercial services to ship-owners on a fee basis and does not compete with other market operators for such services

2.3. *Planned investments and their financing*

- (12) The overall value of investments related to the establishment of the new terminal in Klaipėda will be EUR 49.2 million. Two economic entities will be involved: the Port Authority and the future terminal operator, private limited company - JSC „Klaipėdos kelevių ir krovinių terminalas“ (hereinafter - KKIKT).

2.3.1. The investment by the Port Authority

- (13) The Port Authority will take care of the (re-) construction of the 387 m long quay and 252 m long pier, the associated dredging as well as 2 regulated ramps (the latter constitute an integral part of quay/pier given that they enable embarking and disembarking of passengers/vehicles possible independently of the varying water level in the Curonian Lagoon). This new infrastructure will be managed by the Port Authority itself in terms of maintenance, collection of the relevant port dues and collection of the fees for the use of the infrastructure by the future terminal operator KKIKT.
- (14) After the construction of these quays and of one pier, the terminal could moor 3 vessels simultaneously of the following types: Ro-Ro vessels, Ro-Pax vessels, passenger ferries. New infrastructure will also allow to service cruise vessels in case there is no free berthing place in existing specialized cruise terminal.
- (15) The total cost of the investment to be implemented by the port authority is EUR 27.825 million according to the contract concluded in the second half of 2010:

Activity (excluding VAT)	Thous. EUR:
Planning	48
Design	491
Expertise	1
Construction works	25 075
Preparation of working project	579
Preparation of technical certificate	12
Technical supervision	233
Project implementation supervision	132
Reserve (5% from construction works)	1 254
TOTAL (excluding VAT)	27 825

- (16) Out of the EUR 27.8 million:
- the port authority will finance itself EUR 9.9 million which it will be able to recover through port dues and rental payments; this investment will be done using the port authority's cash reserves and commercial credits free of state aid;

- the remaining EUR 17.9 million will be covered by the State on a grant basis, using the resources of the Cohesion Fund (i.e. grant will be used to finance roughly 65% of the eligible investment costs undertaken by the port authority). This sum stems from the funding gap calculation included in the feasibility study produced by the Lithuanian Transport and Road Research institute for the Port Authority.

The port authority will recover only 35% of the total investment (EUR 27.8 million) whereas the terminal utilisation rate is forecasted to be well above 50%.

- (17) The request for EU funding was submitted and conditional approval⁵ was received before open tender for the construction of the relevant infrastructure took place and the binding contract was concluded. Preliminary works are already taking place using the resources of the Port Authority itself.

2.3.2. The investment by the private terminal operator

- (18) The future terminal operator KKIKT, in turn, will take care of the other necessary investments related to the new cargo passenger terminal (including a building for passenger service). The relevant structures will be built by KKIKT on the land plots it rents from the Port Authority – land plots adjacent to the quay and piers. The newly constructed structures will be in the terminal operator's ownership as he will entirely finance them from his own resources. On the contrary, the land underneath will continue to be kept in the State ownership and rental fees will be charged by the State. Investments to be financed by the private terminal operator are estimated at 21,3 M€:

Type of expenditure	Thous. EUR
Cargo warehouse	5323
Control and inspection point	686
Design	1031
Terminal's covered gallery; field network	10206
Terminal security-related investments	1066
Terminal equipment, passenger handling and office equipment	3023
TOTAL:	21335

- (19) KKIKT will neither own nor rent the subsidised infrastructure (quay and pier). It will, however, pay the fees to the Port Authority for using the quay and pier for passenger and cargo handling activities, on conditions fixed in the relevant ministerial order (see point (8) above).
- (20) The investments carried by two parties (port authority and KKIKT) are complementary even if implemented by two independent undertakings in a sufficiently autonomous way: KKIKT would not be able to get involved in terminal business if the new quay/pier were not in place; similarly, Port Authority would need that one or the other complementary

⁵ Conditional on State aid clearance

facility is present in the vicinity to be able to get income from its investment in quay and pier.

2.4. The terminal operator; conditions applicable to its operations in the port

- (21) The future terminal operator, KKIKT, is a company already operating in the relevant area, even if it currently has a different profile (it provides for maritime waste solutions) which will gradually be abandoned. The company, however, has a strong "link" to the terminal business through its parent and sister companies. The company was granted the right to use the improved infrastructure as well as to rent additional land needed for the operation of the ferry terminal given that it already had long-term rental agreements with respect to land plots directly adjacent to the quays where aided investments will take place. The relevant quays' territory were, in turn, identified as the best place for accommodating new ferry-terminal related infrastructure during the feasibility study carried out by the Lithuanian Transport and Road Research institute for the Port Authority. 5 potential locations have been subject to the relevant analysis. It has to be noted that the relevant choice had to be made in circumstances where there were no free lots of the port land adjoining the port waters. As a result, the new terminal operation had to be unavoidably offered to one of the existing lessors of the land adjacent to the port's quays.
- (22) As none of the land plots KKIKT rents from the Port Authority (plots which will be used for the new terminal operation) were rented out on the basis of an open tender procedure, rental payments paid by the terminal operator to the port authority correspond to the ones fixed in the ministerial order referred to above (see point (8) above).
- (23) Current rental contracts cover a period of 25 years and end in autumn 2034. Thereafter, either a tender will be organised or a new notification will be submitted if the contracts will be prolonged beyond 2034. Amendments are currently being prepared to the law on Klaipėda State Seaport which will abrogate the provision stipulating that a lessee of the port land who has duly fulfilled his obligations laid out in the port land lease contract shall have the pre-emption right to renew the contract upon expiry of its validity term⁶.
- (24) To verify the adequacy of the applicable rental payments⁷ (fees for the usage of quay/pier and fees related to the adjacent land plots) in the specific case of the new ferry terminal operator, the Lithuanian authorities have submitted an independent assessment made by UAB Catella Corporate Finance⁸ for the Port Authority.
- (25) The benchmarking part of the report, as well as additional submissions by the Lithuanian authorities in this respect were not very precise, but for objective reasons. E.g. contacting neighbouring Ports (Gdynia, Port of Tallinn, Freeport of Riga, Port of Karlshamn) as well as Port of Gdansk, Port of Kiel, Port of Sassnitz and Port of Rostock did not produce any meaningful results. *Inter alia*, port authorities in the surrounding region (such as Ports of

⁶ This corresponds to the official commitment recently submitted to the Commission within the infringement procedure 2007/4595 related to Article 49 TFEU.

⁷ as per ministerial order

⁸ UAB Catella Corporate Finance is a Lithuanian subsidiary of Catella Property Group which is a major property transactions advisor with operations in 12 European countries.

Tallinn, Gdynia, Kiel) often operate ferry terminals themselves and therefore there are no rental contracts which can be used as a benchmark.

- (26) Otherwise, the following figures were quoted with respect to the rental fees in neighbouring ports: 1,5% of land cadastral value per year (Port of Liepāja), 0,25 – 0,5% of land cadastral value per year (Ventspils free port), EUR 4.5 per m² per year (Port of Helsinki). Based on such data, the Lithuanian authorities claimed that the fees applicable with respect to the new ferry terminal operator are within the range of what is witnessed in the surrounding region.
- (27) It was also mentioned that the International Ferry Terminal operated by *SC Klaipėdos jūrų krovinių kompanija* was paying fees for the use of m² port land almost two times lower than the new terminal operator will be paying. The condition of the quays and surrounding infrastructure, however, differ remarkably in two locations. It also has to be mentioned that the fees paid by the old terminal were not determined through an open tender.
- (28) The adequacy of the rental payments was then verified by the independent expert based on the so called residual value method. This verification shows that the rental payments based on the ministerial order would exceed by 5% the sum obtained based on the above method.
- (29) The Lithuanian authorities will ensure that every five years the rental fees payable by port land lessees will be reviewed to verify to what extent they correspond to the market price and, if necessary, the fees will be adjusted accordingly.

2.5. Competition context

- (30) Shipping lines to Germany (Kiel), Sweden (Karlskrona), Estonia (Tallinn) are planned to be main income sources of the new terminal. The line to Kiel should start operating immediately after opening of the terminal in 2013, the line to Karlskrona – from the year 2014, the line to Tallinn – from the year 2016. Lines to others ports in the Southern region of the Baltic Sea (Denmark, Poland) could be operated in the future as well and the relevant possibilities are under exploration.
- (31) The line to Kiel will be shifted from the existing terminal of the International ferry port. Passenger and cargo flows on this line have been constantly growing.
- (32) Negotiations on opening Klaipėda – Karlskrona line have already been started with operators of shipping lines. A lot of Lithuanian citizens left for Sweden and Norway (emigrants, temporary workers, students), thus number of trips (personal and business) has been constantly increasing implying good business potential for a new ferry line.
- (33) The third line to Tallinn was chosen in the view of currently absolutely unemployed potential for transportation in the Baltic Sea on North-South direction, in contrary to East-West direction, which is overloaded. This line is also expected to be attractive for business entities that are developing their activities in three closely inter-related Baltic States.

- (34) According to the Lithuanian authorities construction of the new ferry terminal will not result in any substantial distortion of competition at international level. Neighbouring ports (direct competitors of Klaipėda port) handle significantly larger passenger flows and are concentrated on different markets. Tallinn port, e.g., mostly serves shipping lines to Helsinki, Riga port - to Stockholm, while the planned terminal should mainly contribute to the development of shipping lines in the southern region of the Baltic Sea.
- (35) As to potential intra-port competition, the operator of the existing terminal IFT *Klaipėdos jūrų krovinių kompanija* sees its main activities as cargo transportation. The existing lines mostly serve the train wagons and Ro-Ro ferries where the drivers of heavy vehicles make the greatest part of passengers. The planned new ferry terminal will be oriented mostly to the new shipping lines, using modern Ro-Pax ferries. The possibilities to service them in the existing terminal are rather limited.
- (36) In addition, the IFT operator (*SC Klaipėdos jūrų krovinių kompanija*) and the operator of the new terminal (KKIKT) have the same owners. Therefore the issue of potential distortion of intra-port competition through the proposed project hardly exists. Rather the opposite: an intense collaboration is in place to ensure the optimum use of the relevant infrastructure by gradual transfer of the ferry servicing to the new terminal (To start with, the busiest ferry line presently served by IFT will be transferred to the new terminal where it will have much better opportunities for expansion).
- (37) Similarly, the new ferry terminal will not have negative impact on the Klaipėda's Cruise ship terminal in view of the following reasons:
- a. infrastructure of cruise ship terminal is specially designed for cruise ships and their passengers, while infrastructure of Passenger and cargo ferry terminal – for passenger and freight ferries and their passengers.
 - b. Cruise ship terminal is located in the old town - popular place among tourists.
 - c. Shorter navigation distance from the port gates to cruise ship terminal.
 - d. Due to higher capital and maintenance costs, the new ferry terminal will not be able to offer competitive tariffs for cruise ships.
- Therefore, the Passenger and Cargo Ferry terminal will be used to accommodate cruise ships only when they can not be berthed at cruise ship terminal.
- (38) As to the level of the shipping companies, non-discriminatory access will be ensured with respect to all shipping line operators.

2.6. Legal Basis

- (39) The legal basis for granting the aforementioned aid is formed inter alia of the following documents:
- Operational programme 2007–2013: measures for economic growth, approved by resolution No. C(2007) 3740 of the European Commission, dated 30-07-2007;
 - Order No. 3-210 of the Minister of Communications of the Republic of Lithuania, dated 14-05-2009;
 - Order No. 3-524 of the Lithuanian Minister of Communications, dated 19-10-2009.

2.7. Form of the aid

(40) The public financing will be granted as a direct grant.

2.8. Cumulation

(41) The aid covered by the present notification cannot be cumulated with State aid received from other sources to cover the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid

(42) (According to Article 107(1) TFEU "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, in so far as it affects trade between Member States, be incompatible with the common market".

(43) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, all the above-mentioned conditions need to be fulfilled. Namely, the financial support:

- (a) is granted by the State or through State resources,
- (b) favours certain undertakings or the production of certain goods,
- (c) distorts or threatens to distort competition,
- (d) affects trade between Member States.

(44) In the present case, State aid has to be considered at the port authority, at the level of the terminal operator as well as at the level of the port users.

3.1.1. Existence of aid at the level of the port authority (SE KSSA)

(45) The Commission has already considered that the construction and operation of some types of infrastructure can be considered as economic activity⁹.

(46) As the notified public financing concerns investments in infrastructure that is offered for use against a remuneration (i.e. commercially exploited) by the port authority, the construction and operation of such infrastructure has to be considered as an economic activity.

(47) In the light of the above, and in line with the Court jurisprudence¹⁰, the Commission concludes that the port authority is engaged in economic activities and should be

⁹ Decision of the Commission in the following State aid cases: N44/2010 - Public financing of port infrastructure in Krievu Sala, paras 60-68; C39/2009 - Public financing of port infrastructure in Ventspils Port, OJ C72, 20.03.2010, paras 53-58; N60/2006 - Port of Rotterdam, paras 42-52; N520/2003 Flemish ports, paras 34-54; N478/2004 Coras Iompair Eireann (CIE), paras 24-34.

considered as an undertaking for the purposes of competition law as far as the economic activities it carries out are concerned.

- (48) The resources of the Cohesion Fund are transferred to the relevant national authority or body designated for that purpose by the Member State before being paid to the port authority. Therefore they are considered to be at the disposal of the Lithuanian authorities and therefore amount to State resources. As regards the imputability to the State of the public financing, the Commission notes that the Lithuanian authorities enjoy a high degree of decision-making powers in the selection at national level of the subsidised projects and that the notified measures are directly chosen by – and thus imputable to – the Lithuanian State.
- (49) Since the measure is only granted to the Klaipėda port authority, it is selective.
- (50) In order to establish whether the State resources granted to the port authority provide it with an economic advantage, the Commission has first to assess whether the measure complies with the market economy investor test. In this case, the Commission has to assess whether the investment of the State in the port infrastructure is likely to yield a rate of return that would be acceptable to a private investor in a market economy. To this end the Commission has to consider the financial assessment of the project. In this respect, the Guide to cost-benefit analysis of investment projects¹¹ (hereinafter the Guide), places particular emphasis on two financial indicators to evaluate the financial sustainability of the investment, i.e. the financial net present value (FNPV) and the financial internal rate of return (FRR). The indicators measure the present amount of the net benefits flow generated by the investment and the capacity of the net revenues to remunerate the investment cost, respectively. In this case, the financial data shows a negative value of the FNPV, i.e. the generated revenues do not cover the investment costs of the projects. Given the result of the financial analysis submitted by the Lithuanian authorities, such investment would not have been carried out by a private investor. The Commission thus concludes that in the case at stake the State did not act in conformity with the market economy investor principle and that the measure in question confers an economic advantage to the port authority.
- (51) According to the established case law, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. Klaipėda port is one of the important ports on the Baltic Sea and competes with the neighboring EU ports such as Ventspils, Gdansk, Kaliningrad, Riga, etc. The Commission thus considers that the aid in question is capable of affecting competition and intra-Union trade.
- (52) Based on the above, the Commission concludes that the notified measure constitutes State aid at the level of the port authority.

¹⁰ See *inter alia* judgement of 24 October 2002, case C-82/01P Aéroport de Paris, ECR 2002, I -9297 as well judgement of 24 March 2011 in case T-443/08 and T-445/08 Freistaat Sachsen and Land Sachsen-Anhalt v Commission.

¹¹ http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide02_en.pdf

3.1.2. Existence of the aid at the level of the terminal operator

- (53) The Commission notes that the operator of the new terminal will be allowed to use the improved infrastructure against the fees specified in the Ministerial order. Similarly, rental contracts were concluded with respect to the adjacent territories (territories needed for the operation of the terminal) and rental fees will be collected at the level specified in the Ministerial order.
- (54) The future terminal operator might be an indirect beneficiary of the aid granted to the Port Authority unless he pays market fees for accessing the infrastructure built with this aid.
- (55) The Commission considers, that the fee paid by the terminal operator may contain State element for the reasons mentioned below.
- (56) The terminal operator was not selected through an open and non-discriminatory tender.
- (57) The Commission notes that the independent assessment entrusted to UAB Catella Corporate Finance, a Lithuanian subsidiary of Catella Property Group has certain drawbacks (as will be explained below) despite the credentials of the evaluator: Catella Property Group is a major property transactions advisor with operations in 12 European countries; this is an operator independent both from the port authority and the terminal operator; the Commission has received the needed certificates attesting the professional qualification of the valuers involved.
- (58) First, the benchmarking of the rental fees entrusted to the independent expert by the Lithuanian authorities is not conclusive. While the few data obtained by the independent expert and supplemented by the port authority do not point to the fact that the fees applicable with respect to the new terminal are too low, the available data are of very general nature and not necessarily concern comparable infrastructures. In addition, for a number of ports in the region no benchmark data are available at all as ferry terminals are operated by port authorities themselves (such as Ports of Tallinn, Gdynia, Kiel), i.e. there are no rental agreements which could be used as a reference.
- (59) Second, the evaluation based on the discounted cash flow method¹² which was used to supplement the benchmarking technique also has its limitations given that it is largely based on the data produced by the potential aid beneficiary itself, i.e. cash flow forecasts of the terminal operator (the positive aspect, in this specific case, however, is that these are forecasts stemming from the business plan submitted *inter alia* to credit institutions and not produced specifically for the purposes of State aid assessment). While this calculation shows that this specific operator would normally not be able to pay higher rental fees, in itself, this calculation is not sufficient for arriving at the conclusion that no aid is involved.
- (60) Thus, in this specific case, the Commission considers that the presence of aid at the level of the terminal operator cannot be excluded. In addition, the Commission notes that the port authority will recover only 35% of the total investment (EUR 27.8 million) whereas the terminal utilisation rate is forecasted to be well above 50%.

¹² Evaluation aimed at determining maximum rental fees that the company could pay given the cash flows foreseen, the interest required by the banks and the return on equity required by the shareholders.

Since, as explained below, this potential aid is in any event compatible with the internal market, the Commission does not need to definitely conclude on this aspect.

3.1.3. Existence of aid at the level of shipping companies

- (61) According to the Lithuanian authorities, in the case under scrutiny, all potential freight forwarders and ship-owners will have equal, non-discriminatory access to the port infrastructure. Therefore no aid will be involved at this level.

3.2. Compatibility of aid

- (62) Compatibility of the notified aid must be assessed in the light of the exceptions laid down in Article 107(3) TFEU.
- (63) The Commission considers that the appropriate legal basis for assessment of the aid is Article 107(3)(c) TFEU directly, which stipulates that "aid to facilitate 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" may be considered to be compatible with the internal market.
- (64) Therefore, the Commission has to examine whether the notified public funding meets a clearly defined objective of common interest, is necessary and proportional to this objective and does not affect trade to an extent contrary to the common interest.

3.2.1. Objective of common interest

- (65) The Commission has emphasized the crucial relevance of sea ports for an efficient and sustainable transport network. The Commission's Communication *A sustainable future for transport: Towards an integrated, technology-led and user friendly system* underlined that concerning freight transport, an intelligent and integrated logistic system must become a reality, where development of ports and intermodal terminals is key element. The Communication also emphasises the importance of the modal shift towards more environmentally friendly modes.¹³
- (66) Commission's Communication *Strategic goals and recommendations for the EU's maritime transport policy until 2018*¹⁴ underlines that providing new port infrastructure as well as improving the use of existing capacities is essential to ensure that ports can cope efficiently with their gateway function.
- (67) The port ensures the connection between the TEN-T motorway network, TEN-T railway network and the Motorways of the Baltic Sea. New ferry terminal in Klaipėda is an important infrastructure in terms of accessibility and development of the region.
- (68) Accordingly, the Commission considers that the measure facilitates the attainment of an objective of common interest.

¹³ COM(2009) 279/4, paragraph 46 therein.

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Strategic goals and recommendations for the EU's maritime transport policy until 2018", COM(2009) 8.

3.2.2. *Necessity and proportionality of the aid measure*

- (69) The negative Financial Net Present Value of the overall project shows that the net revenues derived from the total investment by the port authority during the 25 years' term of the rental agreements are not sufficient for recovering the investment cost and getting a market interest.
- (70) In addition, the Commission has constantly considered that port infrastructure projects require substantial capital investments that can only be recovered in the very long term and thus their economic viability may not normally be ensured without public funding.
- (71) While the aid intensity ~65% appears to be higher than in the Latvian port cases¹⁵ (where it was at the level of 50% for the relevant type of infrastructure), it has to be stressed that aid intensities are not directly comparable in these cases. Notably, in the Latvian cases a wider range of costs was supported (State intervention was not limited to the costs related to quays, but also covered a range of investments on the adjacent territories). It is also necessary to mention that the State, using the financial assistance of the Cohesion Fund, will cover only 36% of the total investment costs related to the establishment of the new ferry terminal in Klaipėda (investment costs of the port authority and the terminal operator counted together).
- (72) More importantly, EUR 17.9 million contribution from State resources is determined based on the funding gap¹⁶ analysis. The following aspects would suggest that the public funding requirement was kept to the minimum:
- (73) First, the port authority has carried out an open tender for the selection of the company that will construct the new infrastructure (i.e. construction cost will be kept to the minimum).
- (74) Second, as far as revenue part of the project is concerned, rental payments setting principles in the port of Klaipėda as approved by a Ministerial degree ensure that the price for the use of infrastructure is dependent on the quantity and quality of infrastructure provided (as the project underway would impact both quantity and quality of the infrastructure – berthing area will be extended and the depth at the quay/pier will increase – the port authority's income from the relevant territory of the port will substantially increase).
- (75) The port authority has undertaken a reasonable effort to verify that in the specific case of the future ferry terminal operator the application of the standard methodology for setting rental payments would not entail non-justified benefits for the terminal operator by asking for an independent expert assessment. While the benchmarking part of the independent expert report is weak for objective reasons (as explained above), the second evaluation method - residual value method used by the independent expert shows that the rental

¹⁵ See the Commission decisions in cases N44/2010 and C39/2009.

¹⁶ Gap between the current value of the investment cost and the current value of the net revenue from the investment over a specific reference period.

payments based on the ministerial order would exceed by 5% the value established as an adequate fee by the independent expert.

- (76) Thus there is sufficiently solid ground to believe that neither the rental fees at the level of the terminal operator have been set at excessively low level nor the funding gap identified at the level of the port authority and serving as the basis for payment of the investment aid has been overestimated.
- (77) Although the independent assessment has its limitations, also taken into account the specifics of this case (the sole seaport of the country, situation in an assisted region and the contribution to regional development), the aid to the port authority and the terminal operator can be considered proportionate.
- (78) Finally the Commission notes that the Lithuanian authorities submitted a commitment to regularly (each 5 years) review rental payments to ensure that the fees paid by the terminal operator will remain adequate in future and no undue advantage will accrue to the terminal operator.
- (79) Moreover, before the current rental contracts will end (autumn 2034), either a tender will be organised for the operation of the subsidised infrastructure or a new notification will be submitted if the contracts will be prolonged beyond 2034. In this respect, the Commission also notes that the Lithuanian authorities have re-iterated their commitment to amend the law on Klaipėda State Seaport with a view to abrogate the provision stipulating that a lessee of the port land who has duly fulfilled his obligations laid out in the port land lease contract shall have the pre-emption right to renew the contract upon expiry of its validity term (this commitment has recently been submitted to the Commission within the infringement procedure 2007/4595 related to Article 49 TFEU).
- (80) In the light of the above, the Commission thus concludes that the notified aid pursues an objective of common interest and is necessary and proportional to the attainment of that objective.

3.2.3. Distortion of competition and effect on trade

- (81) The construction of the new passenger and freight terminal in Klaipėda will not compromise functioning of neighbouring ferry terminals/ports:
- Klaipėda's existing ferry terminal is ill-suited for passenger transportation purposes and its passenger transportation activities will be progressively scaled down (see point 36 above);
 - Similarly, as explained above, the new infrastructure will not have a negative impact on the functioning of the Klaipėda's Cruise ship terminal (see point 37 above);
 - As to the competition with neighbouring EU ports, there are three main ports in the Eastern Baltic Sea region (Tallinn, Riga, Klaipėda) which share passenger and Ro-Ro market mostly according to their geographical location. The port of Tallinn is mostly serving the ferry lines to/from Helsinki and Stockholm, Riga – ferry line to Stockholm whereas Klaipėda will continue to serve ferry lines to/from Kiel, and will serve new ferry

lines to the South of Sweden and Tallinn. The Riga port, the next closest EU seaport providing similar services is more than 200 km away and serves geographically different traffic flows (as explained above). While there is also a closer located (+/- 100km) Liepaja port in Latvia providing certain minimum ferry services (like twice a week connection to Travemünde), here again, the services provided/to be provided are not overlapping.

- (82) In the light of the above the Commission concludes that the notified aid does not affect trade to an extent contrary to the common interest.

4. DECISION

- (83) The Commission has accordingly decided that the public financing for the construction of infrastructure for the Passenger and Cargo Ferries Terminal in Klaipėda Port notified by Lithuania clearly constitutes State aid within the meaning of Article 107 (1) TFEU at the level of the port authority and possibly also constitutes State aid at the level of the terminal operator. This aid, however, is compatible with the Treaty on the Functioning of the European Union in the light of Article 107(3)(c) TFEU.
- (84) This Decision is without prejudice to any possible scrutiny under environmental or the Cohesion Fund's rules. Similarly, the decision in no way prejudices any possible further analysis by the Commission as far as compliance with public procurement rules is concerned.
- (85) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/eu_law/state_aids/state_aids_texts_lt.htm. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
B-1049 Brussels
Fax No: +0032 (0) 2 2961242

Yours faithfully,

For the Commission

Joaquín Almunia
Vice-president

Factsheet for publication in the OJ, C series

Authorisation for State aid pursuant to Articles 107 and 108 TFEU Cases where the Commission raises no objections

Text with EEA relevance

Date of adoption of the decision	
Reference number of the aid	SA. 30742 (N137/2010)
Member State	Lithuania
Region	Klaipėdos apskritis
Title (and/or name of the beneficiary)	Klaipėdos keleivių ir krovinių terminalas
Legal basis	Komisijos Sprendimas K(2007) 3740 (2007-VII-30) patvirtinantis veiksmų programą „Ekonomikos augimas“ dėl Bendrijos paramos iš Europos regioninės plėtros fondo ir Sanglaudos fondo pagal Konvergencijos tikslą Lietuvos Respublikoje
Type of measure	Individual aid
Objective	Sectoral development, Regional development
Form of aid	Direct grant
Budget	EUR 17.9 million
Intensity	65%
Duration (period)	01.03.2011 - 31.12.2012
Economic sectors	Transport
Name and address of the granting authority	Susisiekimo ministerija, Gedimino Av. 17, LT-01505 Vilnius, Lietuva

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_lt.htm