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COMMISSION DECISION

of 7.3.2016

ON STATE AID

SA 28876 - 2012/C (ex CP 202/2009)

**[implemented by Greece
for Container Terminal Port of Piraeus]**

(Text with EEA relevance)

(Only the Greek version is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Whereas:

1. PROCEDURE

- (1) On 23 March 2015, the Commission adopted a final decision¹ (“final decision”) with which it concluded that Greece had unlawfully put into effect in breach of Article 108(3) of the Treaty on the Functioning of the European Union, incompatible aid measures in favour of Piraeus Container Terminal S.A (“PCT”) and its mother company and creditor, Cosco Pacific Limited (“Cosco”), and ordered the abolition and the recovery of the aid measures concerned.
- (2) On 2 June 2015, Greece appealed the final decision before the General Court of the European Union.

2. DETAILED DESCRIPTION OF THE MEASURE**2.1. The final decision**

- (3) In 2009 the Commission received complaints concerning several fiscal measures granted by law 3755/2009 (“the Law”) to the concession holder of a part of the Port of Piraeus, Cosco and its subsidiary PCT². These exemptions relate to the initial concession granted in 2008. On 11 July 2012 the Commission opened a formal investigation procedure raising doubts concerning these tax exemptions (“opening decision”).³ On 23 March 2015, the Commission concluded the formal investigation of the case and considered that the following measures constituted unlawful and incompatible state aid:⁴

- Exemption from income tax on interest accrued until the date of commencement of operation of pier III;

¹

OJ L 269, 15.10.2015, p. 93.

²

See recitals 10 to 19 of the final

³

decision. OJ C 301, 05.10.2012, p. 55.

⁴

See Article 1 of the final decision.

- Right to VAT credit refund irrespective of the stage of completion of the contract object; definition of the notion of “investment good” for the purposes of VAT rules; right to arrear interests from the first day following the 60th day after the VAT refund request;
 - Loss carry forward without any temporal limitation;
 - Choice among three depreciation methods concerning the investment costs of the reconstruction of Pier II and the construction of Pier III;
 - Exemption from stamp duty on the loan agreements and any ancillary agreements for the funding of the project;
 - Exemption from taxes, stamp duties, contributions and any rights in favour of the State or third parties on the contracts between the creditors of the loan agreements under which are transferred the obligations and rights resulting therefrom;
 - Exemption from stamp duties for any compensation paid by Port Piraeus Authority (“PPA”) to PCT under the Concession contract, which is outside the scope of the VAT code;
 - Protection under the special regime for foreign investments.
- (4) In the same decision the Commission concluded that Greece did not grant State aid by exempting PCT from rules concerning forced expropriation.⁵

2.2. The measure under assessment: stamp duty exemption for compensations paid by PPA to PCT⁶

- (5) Regarding the exemption from stamp duty for compensations paid by PPA to PCT, in the final decision, the Commission concluded that it entailed a selective advantage in favour of PCT in that it alleviated it from the payment of stamp duties in the case of: a) compensation paid by PPA due to the activation of a penalty clause of the concession contract, and b) other types of compensation paid by PPA, such as for damages related to the concession contract or for international breach of contract.⁷
- (6) Concerning in particular the case of compensation paid by PPA due to the activation of a penalty clause (i.e. under (a) in the immediately above recital) the Commission concluded that the advantage conferred to PCT consisted in its alleviation from the payment of a fixed stamp duty⁸ in such cases. This conclusion was based on the consideration that according to the generally applicable framework, i.e. the stamp duty code⁹ as interpreted by circular 44/1987, the activation of an ancillary agreement related to a contract subject to VAT is subject to a fixed stamp duty¹⁰.
- (7) However, in its application for annulment of the final decision before the General Court, Greece indicated that fixed stamp duties have been generally abolished since 2001¹¹, i.e. before law 3755/2009 introduced the relevant exemption in favour of PCT.

⁵ See Article 2 of the final decision.

⁶ Article 2, paragraph 10 of law 3755/2009.

⁷ See recitals 195-209 of the final decision, and in particular recitals 202-205. See recitals 201-203 of the final decision.

⁸ Presidential decree of 28-7-1931, OJ A239 1931.

⁹ See recital 197 of the final decision.

¹⁰ According to Article 25 of law 2873/2000.

3. ASSESSMENT OF THE MEASURE

- (8) During the administrative procedure that led to the final decision, the Greek authorities never brought to the Commission's attention the fact that fixed stamp duties have been abolished since 2001, by virtue of Article 25 of law 2873/2000. The Greek authorities never mentioned this fact, although the opening decision had opened the formal investigation procedure of Article 108(2) TFEU with respect to the exemption of PCT from stamp duties *in general* (including fixed and proportional stamp duties), provided to PCT on the basis of Article 2(10) of the Law.¹² Therefore, on the basis of the information available to the Commission when the final decision was adopted, the Commission was entitled to conclude that Article 2(10) of the Law granted incompatible State aid to PCT by exempting it from both fixed and proportional stamp duties on compensation paid by PPA to PCT under the concession contract.¹³
- (9) Even if the Greek authorities belatedly¹⁴ informed the Commission on the general abolishment of fixed stamp duties, the Commission, acting as a sound administration and although not obliged to modify the final decision, wishes however to modify that final decision, in order to fully reflect the present situation. Specifically, in view of Article 25 of law 2873/2000, the Commission has no longer any reason to consider that the exemption of Article 2(10) of the Law confers an advantage to PCT in case PPA pays compensations to PCT due to the activation of a penalty clause of the concession contract. According to the generally applicable rules for this type of compensation payment, no stamp duty was due at the time law 3755/2009 was adopted. Therefore, the relevant stamp duty exemption does not confer a selective advantage to PCT and, thus, does not constitute state aid, in this respect.
- (10) As the Commission was only made aware of this information after the adoption of its final decision in this case, within the spirit of good public administration, it now decides to amend its decision of 23 March 2015 as regards this specific advantage of the measure. The final decision is not in any manner modified with respect to PCT's exemption from the (proportional) stamp duty normally due for other types of compensation paid by PPA (i.e. under (b) in recital (5) of the present decision).

4. CONCLUSION

- (11) The Commission has accordingly decided that Greece has not granted State aid to PCT in the form of exemption from the payment of stamp duties in case PPA pays compensation to PCT due to the activation of a penalty clause of the concession contract. Therefore, it amends its decision of 23 March 2015 as regards this aspect of the measure. All the other conclusions of the said decision remain the same.

¹²

See section 4.2.3.8 (recitals 194-203) of the opening decision.

¹³

See also Case C-390/06 *Nuova Agricast* EU:C:2008:224, para. 54.

¹⁴

For the first time with the application for annulment of the final decision before the General Court.

HAS ADOPTED THIS DECISION:

Article 1

The Decision in case SA.28876 regarding Container terminal Port Piraeus & Cosco Pacific Limited (OJ L 269, 15.10.2015, p. 93) is amended as follows:

- In the seventh numbered point of Article 1, a second sentence is added:

‘this measure does not cover compensation to PCT due to the activation of a penalty clause of the Concession contract, where anyway no stamp duty is due;’

Article 2

This Decision is addressed to the Hellenic Republic.

Notice:

If the decision contains confidential information which should not be published, 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 publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission,
Directorate-General Competition
State Aid Greffe B-1049 Brussels
Fax: +32 2 296 12 42
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Done at Brussels, 7.3.2016

For the Commission

*Margrethe VESTAGER
Member of the Commission*

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