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PUBLIC VERSION

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**Subject: State aid SA.35418 (2012/N) – Extension of Piraeus port – Greece**

Sir,

**1. PROCEDURE**

- (1) By SANI notification of 27 September 2012, the Greek authorities informed the Commission of an infrastructure investment project at the port of Piraeus.
- (2) Additional information was requested by letters of 15 October 2012, 7 December 2012, 15 February 2013 and 30 April 2013, and e-mails of 9 November 2012 and 27 May 2013, to which the Greek authorities replied by e-mails of 7 November 2012, 14 December 2012 and 29 May 2013, and letters of 20 December 2012, 7 March 2013 and 22 May 2013. A meeting between the Commission services and the Greek authorities was held in Brussels on 8 November 2012

## 2. DESCRIPTION

### 2.1. The objective of the notified project and the beneficiary

- (3) The port of Piraeus is located in the region of Attica within the Athens-Piraeus urban area, 12 km southwest from the city-center of Athens. It acts as both a port of call with 868 879 passengers in 2012 and as a turnaround port with 329 128 passengers in the same year (i.e. approximately 1.2 million passengers in total in 2012). It is the largest passenger and container port of Greece and one of the largest in the EU. Also, according to the *Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility*<sup>1</sup>, the port of Piraeus is in the list of pre-identified projects on the core network in the field of transport, as part of the "Core Network Corridor" of *Hamburg-Rostock-Burgas/TR border-Piraeus-Lefkosia* (trans-European transport networks, TENs).
- (4) The notified project concerns the extension of the passenger port of Piraeus, with the construction of 2 new docking stations for cruise ships<sup>2</sup>. It has an overall cost of EUR 120 million. It will be used by cruise ships of "new generation", i.e. longer than 300 m and of a capacity of 4,000 passengers. According to data submitted by Greece, in 2011 new generation ships represented app. 36% of the cruise capacity in the Mediterranean (80 000 berths out of app. total 220 000). At this moment, out of totally 9 docking stations for cruise ships, the port of Piraeus only has 1 docking station that covers the requirements of "new generation" cruise ships.
- (5) The project consists of the construction of basic port infrastructure, including landing space (quays) of totally 3,000 m length and 18 m depth, land area of 140.000 sqm, a breakwater of total 1,100 m length, and networks of drainage, optic fibers and supply of electricity and water. The project will be carried out under the European Regional Development Funds programming period 2007-2013 through the National Operational Program "Attica region 2007-2013". It will be operational as of 2016. The breakdown of project's cost is as follows (in EUR million):

Construction of quays, breakwater and land area	118.1
Networks (drainage, optic fibres, electricity-water supply)	1.9
<b>Total</b>	<b>120.0</b>

<sup>1</sup> COM(2011) 665 final, 19.10.2011.

<sup>2</sup> Initially the Greek authorities notified the construction of 6 new docking stations for cruise ships, with an overall cost of EUR 230 million, of which 225.2 million would be financed from State resources. The notification was subsequently reduced to 2 docking stations of a total cost of EUR 120 million.

- (6) The new infrastructure shall be managed and exploited by the Piraeus Port Authority S.A. ("PPA")<sup>3</sup>, in the context of the existing concession agreement of 13 February 2002<sup>4</sup> between PPA and the Greek State (owner of Piraeus port), whose duration is until 2052. According to this agreement, PPA has the exclusive right of use and exploitation of land, building and infrastructure of the port land zone of the Port of Piraeus.
- (7) PPA was established by law 2688/1999, through conversion of a body governed by public law (Piraeus Port Authority, created in 1930) into a public utility company. It is a *société anonyme* established for the purpose of operating, maintaining and developing the State-owned infrastructure in the Piraeus port. The annual fee which PPA pays to the Greek State for the above concession is equal to 2% of its revenues. PPA's activities include provision of ships' anchoring services, cargo handling, loading and unloading services as well as goods storage and car transportation. PPA is also responsible for the maintenance of port facilities, the supply of water, electricity, telephone connections, supply of services to travellers, and renting space to third parties. Regarding services to cruise vessels, PPA provides berthing, mooring/unmooring, waste collection, water supply and also collects port dues. In 2011 and 2012, PPA had a throughput of approximately 2 million passengers from cruise vessels, which produced revenues of EUR 11.9 million (13% of total revenues) and EUR 13.3 million (12% of total revenues), respectively.
- (8) Both the design and the actual construction works shall be entrusted through a public, open and non-discriminatory tender, in compliance with EU and Greek rules on public procurement. The estimated duration of works is from 15 March 2014 to 31 December 2015.
- (9) According to Greece, the new infrastructure will have the following benefits for the Greek economy: a) increase of annual expenditure by cruise companies, amounting to EUR 33.5 million in 2016 and reaching EUR 70.9 million in 2020; b) increase in annual expenditure by cruise passengers and crew, amounting to EUR 11.7 million in 2016 and reaching EUR 22.3 million in 2020; and c) creation of employment through 5 464 new work posts in both the project's construction and operation.

## **2.2. Financing of the investment project**

- (10) The total cost of this investment project is of EUR 120 million. PPA shall contribute from own resources EUR 6.1 million. The rest of the investment costs, namely EUR 113.9 million, shall be provided from public sources, as follows: EUR 96.9 million provided from Structural Funds and EUR 17 million from the national budget. On the basis of the above, the proportion of public funding to the overall investment cost is equal to 95%.

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<sup>3</sup> According to its website, PPA employs more than 1.300 people and annually provides services to more than 24.000 ships.

<sup>4</sup> Ratified by Law 3654/2008, FEK A 57-3/4/2008.

- (11) The Greek authorities provided a cost/benefit analysis for the notified project, and an analysis based on the *funding gap* method. Over a reference period of 25 years, the project has a negative financial net present value of minus EUR 102.8 million with a discount rate of 5%. The funding gap ratio<sup>5</sup> is of 95%. In addition, according to the data submitted by the Greek authorities, the revenues of the first five years of operations of the project are only marginally higher than its operating expenses for the same period. This analysis indicates that the project is not financially sustainable without public support.

### 2.3. Competition context

- (12) According to the Greek authorities, the new infrastructures at the port of Piraeus resulting from the notified project shall not result in a substantial distortion of competition at European and international level. Also according to the Greek authorities, the end users shall enjoy equal and non-discriminatory access to the new infrastructure.
- (13) This project shall add, as of 2016, new capacities to the already existent ones in Greece and in the EU in terms of traffic of cruise ships. In 2012, the port of Piraeus serviced an overall of 1.2 million passengers and 762 ship calls. In the period 2016-2020, this new capacity is estimated to result in the following total annual number of cruise passengers of Piraeus: 1.3 million in 2016, 1.6 million in 2017, 1.9 million in 2018, 2.1 million in 2019 and 2.4 million in 2020. The new capacity is also estimated to result in the following total annual number of cruise ship calls: 803 in 2016, 883 in 2017, 963 in 2018, 1043 in 2019 and 1123 in 2020.
- (14) The Greek authorities submit that the port of Piraeus currently has a relatively low estimated share in cruise traffic in the Mediterranean, equal to around 6% in 2011. The Greek authorities also estimate that the port of Piraeus will gain an additional market share of 3% from this project until 2020. Also according to the Greek authorities, the notified project would have a positive effect on the cruise volumes in the Mediterranean. This is supported by statistical data, showing that the port calls and passenger traffic in other ports increase, as the port calls and passenger traffic in Piraeus increases (correlation coefficients<sup>6</sup> above 0.5 for the ports of Barcelona, Venice, Livorno, Rome-Civitavecchia, Crete-Heraklion and Genova<sup>7</sup>). Also, according to the Greek authorities, in

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<sup>5</sup> The funding gap ratio is defined as the ratio between the financial net present value of the project (calculated as the difference between the discounted investment costs and the discounted net revenues to be obtained for the project during the given reference period, which for this project is of 25 years) and the discounted total costs of the project (which for this project is of EUR 200.6 million).

<sup>6</sup> The correlation coefficient is a statistical measure that determines the degree to which two variables' movements are associated. The correlation coefficient will vary from -1 to +1, where -1 indicates perfect negative correlation, and +1 indicates perfect positive correlation. A correlation coefficient of above +0.5 for two variables would usually be interpreted as showing strong correlation between the movements of those two variables.

<sup>7</sup> Data until 2010 come from the Economic Impact Report of the European Cruise Council: <http://www.europeancruisecouncil.com/MediaRoom.aspx>. Data from 2011 onwards come from

2011-2012 Piraeus recorded a decrease of 18% in passenger numbers, at the same time when Civitavecchia had also a decrease of 7% and Venice a decrease of 2%. In addition, according to data submitted by the Greek authorities on the development of the Mediterranean cruise market, in 2001-2011 Piraeus had an increase of passengers by 183%, at the same time when the rest of the major Mediterranean ports had also an increase of passengers, between 69% and 440%<sup>8</sup>. In this sense, it appears that an additional port receiving cruise ships in the Mediterranean could strengthen cruise travel in the whole area, since cruise travel normally includes stops in more than one port.

#### **2.4. Legal basis**

- (15) The legal basis for the structural funds contribution to the financing of this project (see recital 10 above) is the Commission Decision C(2007) 5443 of 05.11.2007 approving the National Operational Program "*Attica region 2007-2013*". According to the Greek authorities, the national legal bases for the national budget contribution are law 3654/2008 (article 1(7) thereof) and law 2688/199 (article 2(3) thereof).

#### **2.5. Form and duration of the aid**

- (16) As indicated in recital (10) above, the public funding for this project takes the form of direct grant to PPA. The aid shall be disbursed in instalments until the end of the construction works, at the end of 2015.

#### **2.6. Cumulation**

- (17) The Greek authorities commit that the aid received for this project will not be cumulated with aid received from other local, national or EU sources for the same eligible costs.

### **3. ASSESSMENT**

#### **3.1. Existence of aid**

- (18) Article 107(1) TFEU stipulates that 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 and affects trade among Member States is incompatible with the internal market.
- (19) It follows that, for a state measure to be qualified as state aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: use of state resources; selective advantage to the beneficiary; and

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Medcruise (not yet published). The calculation of correlations was undertaken by Piraeus Port Authority SA.

<sup>8</sup> Civitavecchia 440%, Barcelona 306%, Livorno 273%, Venice 239% and Genoa 69% (referenced sources: MedCruise, Clia Europe).

(potential) distorting effects on competition as well as trade between Member States.

- (20) In the present case, the existence of state aid must be examined at the level of PPA, which is the present and future operator of the infrastructure, the infrastructure's designers-constructors and end-users (cruise shipping companies).

### **3.1.1. Existence of aid at the level of the port authority PPA**

#### 3.1.1.1. Notion of undertaking

- (21) According to established Court jurisprudence,<sup>9</sup> whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of EU competition law. The Commission established in a series of decisions that the exploitation of some types of infrastructure can be considered as being of an economic nature.<sup>10</sup> In the wake of the *Leipzig-Halle* judgment,<sup>11</sup> it is the future use of the infrastructure, i.e. whether the infrastructure shall be commercially exploited or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not.
- (22) The notified project concerns the construction of infrastructure at the Port of Piraeus, which shall be commercially exploited by PPA through its provision of services to cruise liners. In this context, PPA will engage in an economic activity, and it is therefore considered to be an undertaking for the purposes of the present decision.

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<sup>9</sup> See e.g. Case C-41/90 *Hofner and Elser* [1991] ECR I-1979, para. 21; C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, para. 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

<sup>10</sup> See e.g. Commission Decision of 15.12.2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventspils Port*, OJ C 72 of 20.03.2010; Commission Decision in State aid case no. 44/2010 *Public financing of port infrastructure in Krievu Sala* – Latvian Republic, OJ C 215 of 21.7.2011, p. 19; Commission Decision on State aid case no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1; Commission decision C(2012) 9468 final of 19/12/2012 on state aid SA.34940 (2012/N) *Port of Augusta*, OJ C 77 of 15.03.2013..

<sup>11</sup> Joined cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T-443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000 see also Case T-128/89 *Aéroports de Paris v. Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P [2002] ECR I-9297, and Case T-196/04 *Ryanair v. Commission* [2008] ECR II-3643, paragraph 88.

### 3.1.1.2. General vs. project-specific infrastructures

- (23) The Greek authorities considered that part of the expenses for this investment project, and more specifically, the expenditure for constructing of a breakwater (see recital 5 above) is linked to the exercise by the PPA of activities within the public remit.<sup>12</sup>
- (24) However, it must be noted in this respect that, first, these expenditures, which Greece considers to be within the public remit, have been included in the total costs of the project for the purposes of the cost-benefit analysis and the identification of the funding gap ratio for this project. Second, these expenses are intrinsically linked to the part of the project which shall be commercially exploited by PPA, and indeed, without these expenses, the construction of the infrastructure which shall be commercially exploited would not be possible.
- (25) According to the jurisprudence, the distinction between activities within the public remit and economic activities must be done on a case-by-case basis.<sup>13</sup> Therefore, while indeed certain categories of expenses may as a matter of principle fall within the public remit, notably expenses for performing tasks of ensuring security, safety, police services,<sup>14</sup> or environmental protection functions<sup>15</sup>, it must nevertheless be assessed on a case-by-case basis if such expenses fall indeed within the public remit, or they are intrinsic part of a project with a commercial end.
- (26) In the case at hand, the expenses for constructing the breakwater cannot be distinguished from the core expenses for the construction of the entire project. As explained above, in this particular case the breakwater is an intrinsic part of the overall project which consists in constructing infrastructure that shall be commercially exploited. Thus, the public resources covering construction costs for the breakwater have to be assessed as state aid along with the other works.

### 3.1.1.3. State resources and imputability

- (27) As indicated in recital (10) above, this project shall be co-financed up to the total amount of EUR 113.9 million exclusively through public resources. The EU resources that shall be made available for co-financing this project are placed at the disposal of the Greek authorities, and therefore amount to State resources. The Greek authorities themselves also provide funding for this project.
- (28) As regards imputability to the State of the public financing, it is noted that the Greek authorities enjoy a high degree of control in the selection at national

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<sup>12</sup> See e.g. Commission Decision on *Ventspils Port*, OJ L 319, 2.12.2011, p. 92..

<sup>13</sup> See e.g. Joined cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T-443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000.

<sup>14</sup> Case C-343/95 *Diego Cali & Figli* [1997] ECR-1547.

<sup>15</sup> See fn. 23 below.

level of the projects of this nature to be financed. The notified project was directly chosen by, and is therefore imputable to, the Greek State.

#### 3.1.1.4. Selectivity

- (29) As the public financing is granted specifically to PPA, the measure is selective.

#### 3.1.1.5. Economic advantage

- (30) In order to establish whether the public resources granted to PPA provide it with an economic advantage, the Commission must assess whether such measure would have been undertaken on the same terms by a private investor (market economy investor test).
- (31) In this case, the Commission must assess if the public investment in the port infrastructure is likely to yield a rate of return that would be acceptable to a private investor acting in normal market conditions. The financial assessment of the project is relevant in this respect. The Commission's *Guide to the cost-benefit analysis of investment projects*<sup>16</sup> ("the Guide") places particular emphasis on the *financial net present value* (FNPV), as a financial indicator used to evaluate the financial sustainability of the investment. This indicator measures the present (discounted) amount of the inflow of net benefits generated by the investment.
- (32) In this case, the financial data shows a negative value of the FNPV, i.e. the expected revenues do not cover the investment costs of the project (see recital 11 above). Given the results of the financial analysis provided by the Greek authorities, it must be concluded that the investment would not have been undertaken by a private investor. Therefore, in the light of the above and of the fact that the Greek authorities do not claim that the market investor test is met, it must be concluded that in this case the State did not act as a market investor, and the measure confers an economic advantage to PPA.

#### 3.1.1.6. Distortion of competition and affectation of trade

- (33) According to established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and competition.<sup>17</sup>

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<sup>16</sup> See [http://ec.europa.eu/regional\\_policy/sources/docgener/guides/cost/guide02\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide02_en.pdf).

<sup>17</sup> See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, para. 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, para. 44.



- (34) As indicated in recital (13) above, with this project, the port of Piraeus shall create new capacity in terms of cruise transport. In 2012, the port of Piraeus serviced an overall of 1.2 million passengers and 762 ship calls. In the period 2016-2020, this new capacity is estimated to result in the following total annual number of cruise passengers of Piraeus: 1.3 million in 2016, 1.6 million in 2017, 1.9 million in 2018, 2.1 million in 2019 and 2.4 million in 2020. The new capacity is also estimated to result in the following total annual number of cruise ship calls: 803 in 2016, 883 in 2017, 963 in 2018, 1043 in 2019 and 1123 in 2020. While, according to the Greek authorities, the port of Piraeus has a relatively low estimated share in cruise traffic in the Mediterranean, the new capacity nevertheless has the potential to affect both competition and trade between Member States, as different ports in several Member States (such as the ports of Venice, Livorno, to name some examples) also receive cruise ships and are at least potentially in competition with the port of Piraeus.

### **3.1.2. Existence of aid at the level of the design and construction work contractors**

- (35) With respect to the design and construction work contractors, as indicated in recital (8) above, the Greek authorities commit to conclude contracts following public, open and non-discriminatory tender, in compliance with EU and Greek rules on public procurement. The tenders shall therefore observe transparency and non-discrimination criteria, and the economically-most-advantageous offers shall be chosen. This procedure will minimise any potential economic advantage in favour of the design and construction work contractors.

### **3.1.3. Existence of aid at the level of port users**

- (36) With regard to the end users of the new infrastructure, the Commission observes that, according to the Greek authorities, they shall enjoy equal and non-discriminatory access to the new infrastructure. Moreover, the passenger tariffs of PPA vis-à-vis end users are similar to tariffs in competing EU ports and PPA does not envisage reducing them or lowering them below cost level<sup>18</sup>. In this context, it is noted that the revenues of the first five years of operations of the project are only marginally higher than its operating expenses for the same period (see also recital 11 above).
- (37) In the light of the above, the Commission concludes that any potential advantage in favour of end users will be granted on non-discriminatory terms and will be minimised (i.e. it will be the minimum necessary to ensure the actual use of the infrastructure, while ensuring the profitability of PPA).

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<sup>18</sup> Total tariffs of EUR 20.8/passenger in April 2012, for a number of actions like embarkation, disembarkation, luggage embarkation, luggage disembarkation and x-rays; only the port of Barcelona has higher total tariffs (EUR 25.9/passenger), whereas the ports of Valencia, Lisboa and Venezia have lower or similar tariffs (respectively, EUR 7.95/passenger, EUR 20.9/passenger and EUR 21/passenger) (2011 data).

### 3.2. Compatibility of the aid

- (38) To the extent that the notified public financing amounts to state aid, it must also be assessed if the aid is compatible with the Treaty.
- (39) The Greek authorities have argued that the notified measure is compatible under Article 107(3)(c) TFEU, 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 found compatible with the internal market. The Commission observes that, according to established practice,<sup>19</sup> the appropriate legal basis for assessing compatibility of the state aid to port investment projects is indeed Article 107(3)(c) of the Treaty.
- (40) It should therefore be examined if the notified public funding meets a clearly-defined objective of common interest, is necessary and proportional to this objective, and does not affect competition and intra-EU trade to an extent contrary to the common interest.

#### 3.2.1. Objective of common interest

- (41) In the Commission's Communication *Ports: an engine for growth*,<sup>20</sup> the Commission underlines that ports can contribute significantly to the economic recovery and long term competitiveness of European industries in world markets while adding value and jobs in all EU coastal regions, and that funding and financing transport infrastructure and facilities is one of the key challenges for the EU transport network in the years to come. It is also noted that in one recent case (Klaipeda<sup>21</sup>) the Commission considered that port infrastructure for the transport of ferry passengers, which could potentially be used for cruise vessels, served objectives of transport policy. In this respect, the Greek authorities have stated that the Piraeus port infrastructure in question is likely to be used in the future (complementary or purely) in port activities other than cruise, like coastal traffic, if the size of the ships or the demand impose such use.
- (42) According to the Commission's proposal for a *Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility*<sup>22</sup>, the port of Piraeus is part of EU's core transport network. According to the proposed Regulation (article 44 thereof), "[t]he core network shall consist of those parts of the comprehensive network which are of the highest strategic importance for achieving the objectives of the trans-European transport network policy. The core network shall in particular contribute to coping with increasing mobility and to the development of a low-carbon transport system. The core network shall be interconnected in nodes and provide for

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<sup>19</sup> See Commission Decisions on State aid cases *Ventspils Port*, *Krievu Sala* and *Klaipeda*, as cited in fn. 9 above.

<sup>20</sup> See Communication from the Commission: *Ports: an engine for growth*, COM (2013) 295.

<sup>21</sup> See fn. 18 above.

<sup>22</sup> COM(2011) 665 final, 19.10.2011.

*connections with neighbouring countries' transport infrastructure networks."* In this context, the port of Piraeus is in the list of pre-identified projects on the core network in the field of transport, as part of the "Core Network Corridor" of *Hamburg-Rostock-Burgas/TR border-Piraeus-Lefkosia*.

- (43) The Commission further notes that the project contributes to the EU objective of economic convergence and cohesion. This is because, as submitted by Greece, the expected annual expenditure by cruise passengers and crew using this new infrastructure will amount to EUR 11.7 million in 2016 and reach EUR 22.3 million in 2020. Also, this new project is expected to create new employment of 5 464 work posts. Also according to Greece, the annual benefits to the Greek economy from cruise companies using this project would amount to EUR 33.5 million in 2016 and reach EUR 70.9 million in 2020 (see recital 9 above).
- (44) Finally, the Commission notes that the project will strengthen the port of Piraeus. Indeed, the project in question will enhance the port's cruise activity and therefore reduce other activities' relatively dominant role within the port (e.g. cargo), thus contributing to the significant diversification of the port's operations.
- (45) The above elements demonstrate that the project contributes to an objective of common EU interest and in particular the EU maritime transport policy and the economic convergence and cohesion. This is because the upgrading of the infrastructure will allow a better exploitation of sea transport services and in particular the cruise industry, while supporting the regional development.

### **3.2.2. Necessity and proportionality of the aid**

- (46) The negative FNPV of the overall project shows that the net revenues to be derived over a period of 25 years do not remunerate the investment costs. It is consequently very unlikely that the market would be willing to finance PAA for undertaking this project. In addition, the Commission has consistently considered that port infrastructure projects require considerable capital investments that can only be recovered in the very long term, and their economic viability may not normally be ensured without public funding.<sup>23</sup> It is furthermore noted that the works on the project have not started prior to the application for obtaining public funding and the financial projections show that the investment would not be realised in the absence of State aid (see recitals 11 and 32 above).
- (47) Therefore the public funding is necessary and has incentive effect, insofar as it enables PPA to undertake an investment project that would not have been undertaken in the absence of the public support, either by PPA or by market forces alone.
- (48) As regards proportionality, i.e. keeping public funding down to the minimum necessary, the Commission notes that the project's aid intensity (the proportion of public funding to the overall investment cost of the project) is equal to 95%

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<sup>23</sup> See the recent Commission Decisions on port infrastructure projects cited in fn. 9.

(see recital 10 above). This aid intensity would appear to be relatively high, since, for instance, in the recent *Klaipeda* port case<sup>24</sup> the aid intensity was at the level of 65%. However, it also needs to be stressed that the aid intensities of different infrastructure projects at different ports are not directly comparable. The necessity for public funding for each project is in function of certain variables, such as the kind of activities to be carried out with the infrastructure, volumes of traffic, expected revenues, costs for constructing the infrastructure, etc., which are specific to the features of each specific infrastructure project. Indeed, the Commission notes that the cruise industry has a high seasonal effect, since transport of passengers by ships is significantly reduced during winter time, which means that port calls and therefore port revenues from passengers are lower than revenues deriving from other activities that operate throughout the whole year, such as freight transport. It should finally be noted that the public funding provided for this project is limited to the funding gap ratio identified for the project, namely of 95%. Therefore the aid is limited to what is necessary in order to make the project feasible.

- (49) In addition, the fact that the design and constructions works for the project shall be contracted following public, open and non-discriminatory tender, and that the economically-most-advantageous offer shall be chosen, is also a good indication that the public financing shall be kept to the minimum necessary and may actually be reduced, in case of discounts from the bidding contractors.
- (50) Furthermore, the Commission has already observed in recital (36) above that any possible advantage to the end users will be limited to the minimum necessary to ensure the actual operation and use of the port infrastructure in question.
- (51) In the light of the above, the Commission concludes that the aid to PPA is necessary and proportional.

### **3.2.3. Distortion of competition and affectation of intra-EU trade**

- (52) With this project, the port of Piraeus acquires infrastructure which allows it to increase its presence in the segment of "new generation" cruise ships, i.e. longer than 300 m and of a capacity of 4,000 passengers, a capacity that it has only to a limited extent at present (as explained in recital 4 above, out of totally 9 docking stations for cruise ships, the port of Piraeus currently has only 1 docking station that covers the requirements of "new generation" cruise ships).

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<sup>24</sup> See fn. 9 above.

- (53) However, as indicated in recital (14) above, the port of Piraeus is estimated to have a relatively low market share in cruise traffic in the Mediterranean, equal to 6%, which is expected to increase by 3% until 2020 from this project. Moreover, as the Greek authorities underlined, it also needs to be taken into account that the notified project would have a positive effect on the cruise volumes in the Mediterranean. This is supported by statistical data, showing that the port calls and passenger traffic in other ports increase, as the port calls and passenger traffic in Piraeus increases (correlation coefficients above 0.5 for the ports of Barcelona, Venice, Livorno, Rome-Civitavecchia, Crete-Heraklion and Genova). Therefore, strengthened capacity in one port receiving cruise ships in the Mediterranean would strengthen cruise travel in the whole area, since cruise travel normally includes stops in more than one port. Thus, it is very unlikely that the new transport capacity created with this project will allow the port of Piraeus to acquire a significant, let alone dominant, share in the relevant market.
- (54) The above elements allow concluding that the aid for this project does not affect competition and trade between Member States to an extent that would be contrary to the common interest.

#### **3.2.4. Conclusion**

- (55) On the basis of the foregoing findings (see recitals 38-54 above), the Commission concludes that the aid totalling EUR 113.9 million is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to PPA is not disproportionate, and the aid does not affect competition and trade between Member States to an extent that would be contrary to the common interest. On these grounds, the Commission concludes that the aid is compatible with the Treaty under Article 107(3)(c).

## **4. CONCLUSION**

The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

This Decision is without prejudice to any possible scrutiny under environmental or Structural Funds rules. Similarly, the Decision does not prejudice any possible further analysis by the Commission as far as compliance with public procurement rules is concerned.

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/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State aid Greffe  
1049 Brussels  
Belgium  
Fax No: +32 (0)2 2961242

Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-president