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Subject: State aid SA.37402 (2013/N) — Hungary
The intermodal development of the Freeport of Budapest

Sir,

1. PROCEDURE

- (1) On 25 September 2013, Hungary notified a public support measure for an intermodal infrastructure investment project at the Freeport of Budapest (hereinafter "the FoB").
- (2) By letter of 23 October 2013, the Commission requested additional information, to which the Hungarian authorities replied on 15 November 2013. On 23 October 2013, the Hungarian authorities also agreed the present decision to be adopted and published in the English language.

2. DESCRIPTION

2.1. The objective of the notified measure

- (3) The objective of the notified measure is to provide financing for investments to enhance the intermodal capabilities of the FoB. Those investments concern the upgrading of inland port infrastructure, i.e. the construction of connecting roads

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and rail tracks. The Region in which the investments will take place has the status of an economic development region under Article 107(3)(c) TFEU during the period 2007-2013.¹

¹ See Commission Decision of 13.09.2006 on State aid N 487/2006 – Hungary- Regional aid map 2007-2013, Summary published in OJ C 256 of 24.10.2006. The full text of the Decision (authentic language English translation) is available at http://ec.europa.eu/competition/state_aid/cases/215978/215978_600086_22_1.pdf.

- (4) The FoB is a freight port owned by MAHART-Freeport Co. Ltd. (hereinafter “Mahart”). The operation of the FoB has been outsourced to Freeport of Budapest Logistics (hereinafter "Freeport") through the granting of a concession for 75 years (ending in 2080).
- (5) The measure aims at encouraging a modal shift from road to other more environmentally-friendly means of transport, such as rail and inland water transport, by means of improving the intermodal capacity of the FoB as a logistic centre. The measure further aims to decrease road traffic and reduce the risk of accidents within the port.
- (6) The measure contributes to the improvement of the Trans-European networks. FoB serves as a logistics hub on three TEN-T traffic corridors (the Mediterranean Corridor, the Orient/East-Mediterranean Corridor, and the Rhine/Danube Corridor). According to the Hungarian authorities, the measure may also be beneficial for other inland ports in neighbouring Member States, since inland waterway freight transport between Member States will be enhanced. According to the Hungarian authorities, this positive impact has been demonstrated by joint research carried out with several other ports and different market players in the framework of the INWAPo project whose main aim is to activate the unexploited potential of waterborne transport in Central Europe and the role of river and sea ports to achieve better inter-modality².
- (7) The Hungarian authorities estimate a growth in the volume of the intermodal flow of goods arriving at the FoB from 961 000 tonnes in 2012 to 1 028 000 tonnes in 2020, i.e. an increase of 6.9%. According to the Hungarian authorities, the modal shift, which is to be understood in the present case as the volume of freight that is shifted from road to waterways and rail due to the project, will be approximately 1.4% per year. Without the measure, the projected increase in cargo volume would be transported on roads which would result in a decrease in rail and inland waterways transport of ca. 2.3% per year.

2.2. Planned investments

- (8) The measure concerns road, rail and waterside infrastructural developments to the FoB. The project comprising nine components of infrastructure investments totalling EUR 11.05 million, as set out in the table below.

² <http://www.inwapo-project.eu/>

Project Elements	Total costs (Millions of EUR)
Construction of the northern connection road – north	0.167
Construction of the northern connection road – south	1.445
Construction of the north-south connection road	0.812
Reconstruction of the outdoor loading and unloading facilities and tracks	2.387
Capacity building of the tracks at the barn building	1.697
Upgrading the tracks	1.905
Construction of the small outdoor loading and unloading facilities	0.899
Illumination of switching lead No. 5 (street lightening)	0.029
Construction of truck parking lot No. 4	0.891
Total works costs	10.23
Engineering	0.081
Technical assistance	0.166
Other costs	0.061
Contingency	0.512
Total net investment costs	11.05

2.3. Financing of the investments

- (9) The total cost of the investments is EUR 11.05 million. Public financing of EUR 10.223 million will be provided partly from the Cohesion Fund (EUR 8.69 million), and partly from national funds (EUR 1.533 million from the State). The remaining EUR 827 000 will be funded by Mahart.
- (10) The Hungarian authorities provided an updated financial and economic cost/benefit analysis 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 (FNPV) of – EUR 10.223 million and a financial rate of return (FRR) of – 3.71%. The funding gap (FG),³ calculated as the difference between the

³ The funding gap is defined as the difference between the discounted operating profits of the investment and the discounted investment costs during the given reference period, which is 25 years for this project.

discounted value of the expected operating profits of the investment (EUR 0.120 million) and the discounted investment costs of the project (– EUR 10.343 million), is – EUR 10.223 million.

2.4. The beneficiary: Mahart and Freeport

- (11) The infrastructures resulting from the measure will be the property of Mahart. Mahart is a public company, owned by the Hungarian National Asset Management Inc., which acquired the ownership of the FoB, including the related infrastructures, in the context of the privatisation of the port, which took place in 1995.
- (12) FoB has been operated by Freeport since September 2005. Freeport has a concession for the port's operation for 75 years. The Hungarian authorities clarified that the contract has been awarded to Freeport by means of a public, open and non-discriminatory tender. The maintenance and operation costs of lands and buildings recorded in the books of Mahart should therefore be covered by Freeport. However, any investments undertaken by Freeport through own resources or through loans granted to it are capitalised in the books of Freeport.
- (13) Freeport pays an annual sales commission or wharfage fee. The rate of the wharfage fee is performance related. It is normally 80% of the total fee which Freeport receives from the port's users (shipping companies), but it should be at least HUF 50 million (annually adjusted for inflation). The payable amount is always the amount which is more favourable for Mahart.

2.5. Competition context

- (14) According to the Hungarian authorities, the development of the FoB shall not result in a substantial distortion of competition at Union or international level.
- (15) The FoB is located on the Csepel Island, close to Budapest city centre and only 7 kilometres from the main highway. Due to its central position in Hungary, its hinterland area covers the whole country. The site on which the FoB is located has a surface area of 108 hectares, with 5 800 metres of quay, 15 kilometres of railway, 3 basins and 18 berths, a Ro-Ro ramp and terminal and intermodal rail/road/waterway connections. Overall, the FoB has 530 000 square metres of free space, and 1 634 million square metres of storage area, out of which 86 135 square metres is covered.
- (16) Although in comparison to other Hungarian inland ports, FoB is among the major players, its annual freight volume (between 1-1.5 million tonnes) makes it a medium-sized player among European and even Central European inland ports. Its freight volume also represents a moderate share of the Hungarian freight market. Compared to maritime ports, the cargo volumes are very small. According to the Hungarian authorities, the projected increase in volume by 24 000 tonnes annually or 6.9% in total would not have a significant impact on competition.

- (17) According to the Hungarian authorities, intermodal substitutability in the Hungarian waterborne freight transport depends on the geographical conditions and the available infrastructure in each individual port.⁴
- (18) Indeed, according to the Hungarian authorities, competition between inland ports and the demand for inland port services is rather dependent on the shipping distance. More specifically, freight forwarders try to minimize the shipping distance (also by means of rail or road transport), so that geographical location is one of the most important aspects for choosing one port over another.
- (19) As regards the individual infrastructures in each port, the Hungarian authorities argue that competition between ports depend on the very specific nature of the assets employed in terms of functionality in each port. For example, facilities used to provide container-related services cannot generally be readily converted into facilities needed to provide other services without some form of investment and time lag.
- (20) In this context, the Hungarian authorities state that the measure is granted for the construction of an infrastructure which is accessible to all users and on the basis of fees which are similar to the fees charged in other Hungarian inland ports.

2.6. Legal basis

- (21) The legal basis for the public funding is the Transport Operational Programme,⁵ i.e. a decree which allows the national managing authority to spend public funds on selected projects.

2.7. Form and duration of the aid

- (22) The public funding for this project takes the form of a direct grant.

2.8. Cumulation

- (23) The Hungarian authorities commit that aid received for this project cannot be cumulated with aid received from other local, national or Union sources for the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid

- (24) 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

⁴ The Hungarian authorities refer to the OECD report on competition between ports and port services (2011) available at <http://www.oecd.org/daf/competition/48837794.pdf>.

⁵ <http://www.nfu.hu/doc/356>

certain goods and affects trade among Member States, is incompatible with the internal market.

- (25) It follows that, for a measure to constitute State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met:
- (a) the measure must be granted by the State or through State resources,
 - (b) it must confer an advantage on the recipient undertaking(s),
 - (c) it must favour certain undertakings or the production of certain goods (selectivity), and
 - (d) the measure must distort or threaten to distort competition and affect trade between Member States.
- (26) In the present case, the presence of State aid must be examined at the level of Mahart, who is the owner of the infrastructure, at the level of the port manager - Freeport, and at the level of the users.

3.1.1. Existence of aid at the level of Mahart

3.1.1.1. *Notion of undertaking*

- (27) As indicated in recital (11), Mahart is a public company, owned by the Hungarian National Asset Management Inc., which acquired the ownership of the port, including the related infrastructures.
- (28) According to the case-law of the Court of Justice of the European Union ("CJEU"),⁶ 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 Union law.
- (29) The Commission established in a series of decisions that the construction and exploitation of intermodal platforms can be considered as being of an economic nature⁷. In light of the Leipzig-Halle judgment⁸, it is the future use of that infrastructure, i.e. whether the infrastructure is commercially exploited or not,

⁶ See e.g. Case C-41/90 *Hofner and Elser* [1991] ECR I-1979, paragraph 21; C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, paragraph 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

⁷ See e.g. Commission Decision of 20 November 2011 in case SA.33434 (2011/N) - *France – Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre*, OJ C 23 of 23.2.2012, p. 3; Commission Decision of 20 December 2010 in case N 490/2010, OJ C 122 of 20.4.2011, p. 2; Commission Decision of 20 July 2010 in case C 17/2010, OJ C 278 of 15.8.2010; Commission decision of 15 June 2011 in SA.32224 – *Pay Bas – Development of the Alblaserdam Container Transferium*, OJ C 215 of 21.7.2011, p. 22.

⁸ 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-1311 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.

which determines whether funding for the construction of infrastructure falls within the scope of the State aid rules.

- (30) The notified measure concerns funding for the development of road, rail and waterway infrastructure that will be owned and commercially-exploited by Mahart. The concessionaire Freeport will provide the services of the port on the market against remuneration. In this capacity, Mahart will engage in an economic activity, so that it can be considered to be an undertaking under Article 107(1) TFEU.

3.1.1.2. State resources and imputability

- (31) As indicated in recital (9) above, the measure will be financed from resources available to Hungary – EUR 8.69 million from the Cohesion Fund and EUR 1.533 million in the form of a direct grant from Hungary. Since all of the public financing received for the project consists in money managed by the Hungarian State, the measure is financed through State resources.
- (32) The decision to award the public financing of the project falls under the discretion of the Hungarian State and is thus imputable to Hungary.

3.1.1.3. Selectivity

- (33) As the public financing is granted specifically to Mahart, the measure is selective.

3.1.1.4. Economic advantage

- (34) The Commission notes that the public financing to be provided for the project from Union and national sources clearly confers an economic advantage on Mahart insofar as the measure partially covers the investment costs that the latter would otherwise have had to bear to carry out the project.
- (35) The Commission also notes that the financial assessment of the project included in the cost-benefit analysis (see above recital (10)) shows that the project has a negative funding gap, which makes it unlikely that Mahart could have obtained the necessary financing for this investment on the market without any State support.
- (36) It therefore follows that the measure confers an economic advantage on Mahart.

3.1.1.5. Distortion of competition and effect on intra-EU trade

- (37) According to the case-law, when 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 a potential distortion of competition⁹.

⁹ See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, paragraph 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, paragraph 44.

- (38) The Commission notes that the FoB could be at least potentially in competition with similar ports in Hungary, such as those in Győr or Dunaujváros. Furthermore, the Commission notes that over 75 % of inland navigation in the EU consists of cross-border transport¹⁰ and that the FoB could also be potentially in competition with ports in other Member States on the Danube, such as those in Vienna and Bratislava, which are located approximately 250 and 200 kilometres from the FoB, respectively.
- (39) Moreover, as indicated in recitals (5) and (7) above, the project allows the FoB to add new intermodal and logistic traffic capacities on the market. In particular, by 2020, the FoB shall increase traffic volumes by 67 thousand tonnes/year (an increase of 6.9%).
- (40) Therefore, the public financing of the notified project is capable of distorting competition and affecting trade between Member States.

3.1.2. Existence of aid at the level of the port manager

- (41) Freeport is responsible for the management of the FoB, which it has operated since 2005, following a public, open and non-discriminatory procurement procedure. Freeport has a concession to operate the port until 2080.
- (42) As regards the possible existence of aid at the level of the port manager, although Freeport is not the owner of the new infrastructure, it does have the right to use the improved infrastructure until the end of its concession period – i.e. until 2080. As a result, Freeport will be able to handle more goods and benefit from the improved inter-modal capabilities of the FoB.
- (43) The Commission notes that the concession fee that Freeport pays to Mahart has been established in the context of a public, open and non-discriminatory procedure (see recital (12) above), which would exclude or minimise the economic advantage in favour of the Freeport (i.e. the advantage, if any, would be the minimum necessary to ensure the actual operation of the infrastructure). The Commission also notes that the concession fee is variable and depends on the proceeds obtained from the goods handled (see recital (13)), so that it could be argued that no undue advantage is passed on to the port operator since it will pay more for any increased usage of the infrastructure.
- (44) In any event, it is not necessary to conclude on the question whether aid is also present at the level of the port operator, since in the present case the same compatibility assessment carried out at the level of port owner would apply to Freeport.

3.1.3. Existence of aid at the level of the end-users

- (45) With regard to end users, the Commission observes that they shall enjoy equal and non-discriminatory access to the improved infrastructure. Moreover, the

¹⁰ See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions towards quality inland waterway transport NAIADES II, COM/2013/0623

future terminal operator will have to base its pricing policy on economic considerations, so as to obtain sufficient revenues to enable it to pay for the concession fee and also to make a profit. In light of these elements, the potential advantage for end-users, if any, will be the minimum necessary to ensure the actual use of the infrastructure, while ensuring the profitability of the concessionaire.

3.2. Legality of the aid measure

- (46) The Hungarian authorities fulfilled their obligation, in accordance with Article 108(3) TFEU, to notify the aid before putting it into effect. The Commission takes note of the fact that the aid will only be granted after an approval by the Commission.

3.3. Compatibility of the aid

- (47) The Commission has previously assessed investment aid to intermodal projects on the basis of Article 93 TFEU directly¹¹ and, following the CJEU ruling in the *Altmark* case¹², which precluded the direct application of Article 93 TFEU, on the basis of Article 107(3)(c) TFEU for intermodal terminals¹³. Since the entry into force of Regulation (EC) No 1370/2007¹⁴, Article 93 TFEU has become directly applicable as the legal basis for establishing the compatibility of aid for land transport not covered by that regulation and, in particular, of aid for the coordination of transport.
- (48) Article 93 TFEU provides that aid which meets the needs of coordination of transport shall be compatible with the Treaties. The concept of 'coordination of transport' used in that provision has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest. The CJEU has ruled that this Article "acknowledges that aid to transport is compatible with the internal market only in well-defined cases which do not jeopardise the general interests of the [Union]"¹⁵.
- (49) The transport sector may experience "coordination" difficulties in the economic sense of the term for example in the connections between different transport

¹¹ See Commission Decision of 31 January 2001 in case N 597/2000, OJ C 102 of 31.3.2001; Commission Decision of 14 September 2001, in case N 208/2000, OJ C 315 of 4.1.2000; Commission Decision of 15 November 2000, in case N 755/1999, OJ C 71 of 3 March 2001; and Commission Decision of 11 November 2001, in case N 550/2001, OJ C 024 of 26.01.2002.

¹² Case C-280/00 *Altmark Trans GmbH* [2003] ECR I-7747.

¹³ See Commission Decision of 11 February 2009, in case N 651/2008 - *Combinant -Multimodal container terminal (EFRO)*, OJ C 60 of 14 March 2009.

¹⁴ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

¹⁵ Case 156/77 *Commission v Belgium* [1978] ECR 1881, paragraph 10.

networks. The Commission has on this ground already authorised State aid on the basis of Article 93 TFEU¹⁶.

- (50) For a given aid measure to be considered to "meet the needs" of transport coordination, it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Union.
- (51) Therefore, the Commission has, in its constant decisional practice, considered that aid is compatible with the internal market on the basis of Article 93 TFEU, if the following conditions are met:
- (a) the aid contributes to an objective of common interest,
 - (b) the aid is necessary and proportionate,
 - (c) the access to the infrastructure in question is open to all users on a non-discriminatory basis,
 - (d) the aid does not lead to distortions of competition contrary to the common interest.
- (52) The Commission will therefore assess whether these criteria are met in the present case for the aid to be considered compatible with the internal market on the basis of Article 93 TFEU.

3.3.1. Objective of common interest

- (53) The Union has for some time pursued a policy of achieving a balanced combined transport system and the fostering of the competitiveness of intermodal transport vis-à-vis road usage is a part of this policy. The aim of the Union's combined transport policy is to achieve a modal shift from road freight to other modes of transport.
- (54) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*¹⁷, the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system within the Union. The same Communication acknowledges the importance of the shift towards more environmental-friendly modes of transport.
- (55) EU legal instruments such as Council Directive 92/106/EC of 7 December 1992¹⁸ on the establishment of common rules for the combined transport of goods between the Member States, are explicitly targeted at reinforcing

¹⁶ See Commission Decision of 20 July 2010 in case C 17/2010, *Firmin srl*, OJ C 278, 15.10.2010, p.28. Commission Decision of 17 October 2012 in case SA.34501, Germany – *Extension of the inland port of Königs Wusterhausen/Wildau*.

¹⁷ COM(2009) 279/4, paragraph 46.

¹⁸ OJ L 368 of 17.12.1992, p. 38.

transport intermodality. The White Paper on Transport Policy¹⁹ also encourages the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport.

- (56) Finally, the Commission recalls the need to accelerate investments in infrastructure, particularly in environmentally-friendly transport-modes which are part of the Trans-European Networks (TENs)²⁰. In particular, the Commission has recently adopted the Naiades II Communication (September 2013)²¹, which encourages the development of quality infrastructures for inland navigation.
- (57) On this account, the Hungarian authorities estimate that the project will ensure an increased modal shift from road to rail and inland waterway transport. The modal shift as a result of this project is estimated at 1.4% per year. Without the project, the corresponding increment of cargo volume would be transported on roads which would result in a decrease in rail and inland waterway transport of approximately 2.3% per year. The shift towards rail-based modes of transport will reduce CO₂ emissions and noise pollution and will allow for road decongestion. The project therefore contributes to an objective of common EU interest of achieving a balanced combined transport system.
- (58) The Commission further notes that the project is located in a region assisted under Article 107(3)(c) TFEU during the period 2007-2013 and also constitutes a part of the TEN-T network (see recitals (3) and (6) above).
- (59) In light of the above considerations, it is concluded that the project contributes to attaining the common transport objective of ensuring a modal shift from road to waterways and rail.

3.3.2. Necessity and proportionality of the aid

- (60) In the past²², the Commission has authorised investment aid for intermodal terminals up to an aid intensity of 50 %. Recently, where Member States have demonstrated the economic need for a higher aid intensity, the Commission has been willing to accept such higher intensities in duly justified cases²³.

¹⁹ COM (2011) 144 of 28.3.2011.

²⁰ See the agreement reached in trialogue between the European Parliament, Council and European Commission on 30 May 2013, http://europa.eu/rapid/press-release_IP-13-478_en.htm.

²¹ See footnote 10 above.

²² See Commission Decision of 31 January 2001 in case N 597/2000, Netherlands – *Subsidie-regeling voor bijzondere bedrijfsaansluitingen op vaarwegen*, Commission Decision of 14 September 2001 in case N 208/2000, Netherlands – *SOIT*, Commission Decision of 15 November 2000 in case N 755/1999, Italy – *Bolzano*, and Commission Decision on 20 December 2010 in case N 490/2010, Belgium – *Verlenging van steunregeling N 550/2001 inzake publiek-private samenwerking voor de bouw van laad- en losinstallaties langs de waterwegen in het Vlaams Gewest*.

²³ See Commission Decision of 20 December 2011 in case SA.33434, France - *Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre*; Commission Decision of 17 October 2012 in case SA.34501, Germany – *Extension of the inland port of*

- (61) In the present case, the Hungarian authorities have notified a measure which foresees an aid intensity of 92.5 % in favour of Mahart. That is, Mahart shall contribute EUR 0.827 million to the financing of the project, which covers 7.5% of the total funding for the project, while EUR 10.223 million of the funding will come from public sources. As the aid intensity in the present case is above 50%, the Commission has to consider whether this higher aid intensity can exceptionally be found compatible with the internal market in the present case.
- (62) The Commission stresses that the aid intensities of other infrastructure projects at other ports are not directly relevant. The necessity for public funding for each project must be determined 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.²⁴ Indeed, the Commission notes that the aim of the project is not focused on increasing capacity and revenues, but rather on improving intermodality.
- (63) As regards the necessity of the aid, the Commission's *Guide to the cost-benefit analysis of investment projects*²⁵ ("the Guide") places particular emphasis on two financial indicators to evaluate the financial sustainability of an investment, i.e. the *financial net present value* (FNPV) and the *financial internal rate of return* (FRR). These indicators measure the present (discounted) amount of the inflow of net benefits generated by the investment and, respectively, the capacity of the net revenues to remunerate the investment cost.
- (64) The Commission has consistently considered that intermodal platform infrastructure projects require considerable capital investments that can only be recovered in the very long term and that their economic viability may not normally be ensured without public funding²⁶. For the project in question, the financial data show a funding gap of - EUR 10.223 million, i.e. the expected revenues do not cover the investment costs of the project over the reference period of 25 years. Given the results of the cost-benefit analysis provided by the Hungarian authorities, it must be concluded that the investment could not have been undertaken by a private investor without public support. The public funding is thus necessary for the realisation of the project and has an incentive effect.
- (65) As regards the proportionality of the measure (i.e. keeping public funding down to the minimum necessary to achieve its objective), the Commission notes that the public funding provided does not exceed the funding gap identified for the project, namely EUR 10.223 million. Therefore, the aid is limited to the minimum necessary to make the project feasible and achieve the objective of

Königs Wusterhausen/Wildau; Commission Decision of 19 June 2013 in case SA.35738, Greece - *Aid for the upgrading of Katakolo port*; Commission Decision of 2 July 2013 in case SA.35418, Greece - *Extension of Piraeus port*.

²⁴ See Commission Decision of 19 June 2013 in case SA.35738, Greece - *Aid for the upgrading of Katakolo port*, recital 72; Commission Decision of 2 July 2013 in case SA.35418, Greece - *Extension of Piraeus port*, recital 48.

²⁵ See http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide02_en.pdf.

²⁶ See the recent Commission Decisions on infrastructure projects cited in fn. 23 above

common interest of ensuring a modal shift. Moreover, Freeport will have to base its pricing policy towards end users on economic considerations, in order to obtain sufficient revenues to make a profit on the capital invested.

- (66) In light of the above, the Commission concludes that the aid is necessary and proportionate to achieve the objective of common interest of ensuring a modal shift from road to rail and inland waterway.

3.3.3. Access to the infrastructure in question is open to all users on a non-discriminatory basis

- (67) As the Commission has already noted in recital (45) above, access to the intermodal platform will be provided to all end-users on an open and non-discriminatory basis.

3.3.4. No distortion of competition contrary to the common interest

- (68) The measure provides for the investment in inland port infrastructure, i.e. construction of connecting roads and rail tracks. The infrastructure itself constitutes the backbone of the traffic and logistics industry and plays a vital role in that industry. There is no funding for the operation or use of the infrastructure (coordination aid), nor is there aid to infrastructure for logistics activities, start-up aid or other measures linked to the operation of combined transport.
- (69) Given that the aid is granted to the construction of an infrastructure which is accessible to all (on the basis of fees that are similar to fees of other Hungarian inland ports) and that the aid provides benefits to both the companies already established in the impact area and those to be established at a later stage, it can therefore be considered that the measure does not lead to distortions of competition contrary to the common interest. Moreover, as determined above, the aid is limited to the minimum necessary and there is no overcompensation.
- (70) In comparison with other Hungarian and European inland ports, the FoB is a moderate player and an increase in volume by 6.9% would not distort competition to an extent contrary to the common interest.
- (71) In addition, the Hungarian authorities confirmed that the fees charged by Freeport are in line or higher than the two ports which could be considered FoB's main competitors – namely the Port of Győr-Gyöngyös and the Port of Dunaujváros. Furthermore, the Hungarian authorities have confirmed that after the implementation of the project, real prices charged by Freeport will not change. In addition, the Hungarian authorities argue that a reduction of port fees would generate a significant deficit in the financing of the project, since the discounted net revenues have been taken into consideration in the cost-benefit analysis of the project. Therefore, a future decrease in the port fees seems highly unlikely.
- (72) In light of these elements, the Commission concludes that the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

(73) The Commission notes that Hungary has agreed the present decision to be adopted and published in the English language.

3.4. Conclusion

(74) In the light of the foregoing, the Commission considers that the aid meets the needs of coordination of transport and that it is therefore compatible with the internal market in accordance with Article 93 TFEU.

4. DECISION

In light of the above, the Commission concludes that the notified measure constitutes State aid which is compatible with the internal market pursuant to Article 93 TFEU. The Commission has accordingly decided not to raise objections to the contribution by Hungary to financing of the intermodal development of the Freeport of Budapest.

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