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**Subject: State Aid SA.45220 (2016/FC) - Slovenia - Alleged aid in favour of
Komunala Izola d.o.o.**

Sir,

1. PROCEDURE

- (1) On 7 April 2016 Marinvest d.o.o. and Porting d.o.o. (the complainants) submitted a formal complaint concerning alleged unlawful State aid in favour of Komunala Izola d.o.o., a Slovene municipal company operating (among other services) a local harbour.
- (2) The Commission forwarded the complaint to the Slovene authorities on 12 May 2016, and asked further questions on 19 September 2016, to which Slovenia replied providing comments, information and supporting documents respectively on 30 June and 17 October 2016. On 24 October 2016 the complainants submitted further allegations and documents.
- (3) Further to a preliminary assessment letter of the Commission services, dated 14 February 2017, the complainants provided on 30 March 2017 further comments and documents on the alleged aid measures.

2. DETAILED DESCRIPTION OF THE ALLEGED AID MEASURES

2.1. The beneficiary of the alleged aid measures

- (4) Komunala Izola d.o.o. (hereinafter: Komunala Izola) is a public utility company established by the Municipality of Izola to provide communal services in the

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municipal area. Komunalna Izola operates a local harbour located in the port area of Izola (hereinafter: Komunalna Izola Harbour).

2.2. The complainants

- (5) Marinvest d.o.o. and Porting d.o.o. (hereinafter: "Marinvest and Porting" or "the complainants") are private companies that have been granted the concession for construction and management of a marina (hereinafter: Marina Izola) situated in the same port area of Izola as the Komunalna Izola Harbour.
- (6) Marinvest and Porting are part of a group controlled by Altan Prefabbricati S.p.A., a company registered in Italy. Altan Prefabbricati owns 100% of the share capital in Universe d.o.o., a Slovene company, which owns 100% of Marinvest's and Porting's total share capital.

2.3. The alleged aid measures

- (7) In their complaint, Marinvest and Porting argued that Komunalna Izola receives unlawful State aid from the Republic of Slovenia in form of:
 - (a) favourable taxation of public utility companies for the management of marinas for commercial purposes compared to taxes imposed on private operators (annual State aid estimated by the complainants: EUR 100 733; the complainants estimated a comparative advantage of Komunalna Izola for the period 2011-2015 amounting to EUR 477 387);
 - (b) a free-of-charge concession of the Komunalna Izola Harbour. According to Marinvest and Porting, Komunalna Izola benefits from a total exemption from costs that are usually borne for the concession of a marina for commercial purposes (annual State aid estimated by the complainants: EUR 61 187);
 - (c) availability of infrastructure facilities (such as land and car parking areas) and services (such as waste collection) for the operation of the Komunalna Izola Harbour provided free of taxes or other charges (annual State aid estimated by the complainants: EUR 98 552.17).

2.3.1. Alleged favourable taxation

- (8) The Republic of Slovenia imposes on undertakings using the water surface the payment of a tax referred to as "*charge for the use of water*". Pursuant to Article 124 of the Waters Act (Official Journal no 67/02 and following) a water right holder pays a charge for the water treatment proportional to the extent of water rights. The amount requested to undertakings operating marinas varies according to the qualification of water areas either as "*water areas for the operation of harbours for boats*" or as "*water areas for the operation of town harbours, recreational marinas and other harbours*".
- (9) The Slovene environmental authorities (Republika Slovenija Ministrstvo za Kmetijstvo in Okolje Agencija Republike Slovenije za Okolje) established that the water areas used by Marinvest and Porting shall be considered as "*water areas for the operation of harbours for boats*". These areas were therefore subject in 2011 and 2012 to a tax of 1.8 EUR/m² and subsequently, from the year 2013 onward, to a tax of 2.07 EUR /m² (amounting to 234 753.02 EUR for a water

surface of 113 236.01 m²). Water areas used by public companies, such as Komunala Izola, have been qualified as “*water areas for the operation of town harbours, recreational marinas and other harbours*”. As a result, Komunala Izola was subject in 2011 and 2012 to a lower tax of 0.3 EUR/m² and subsequently, from the year 2013 onward, of 0.345 EUR /m² (amounting to 20 147 EUR for 58 396.05 m² of water surface).

2.3.2. Exemption from concession fees

- (10) Komunala Izola operates the mooring activity using the water basin over an area of 58 396.05 m² on the basis of Water Permit no. 35534-3/2010-4 of 5 March 2010 amended by the order no. 35534-6/2012 of 30 October 2012. Pursuant to the national Law on Public Utilities, the Maritime Code and the Decree on Municipal Port Facilities of Izola, Komunala Izola performs a service of general economic management of a local harbour on the basis of port infrastructure lease agreement. On 23 January 2015 the Municipality of Izola concluded with Komunala Izola a lease agreement for five floating piers in exchange of an annual total rent of EUR 48 000 (excluding VAT). Additionally, Komunala Izola pays annually a rent of EUR 10 371 (excluding VAT) for service station facilities in the port area, and of EUR 3 250 (excluding VAT) for business premises.
- (11) The complainants pay to the Municipality of Izola for the concession of the commercial Marina Izola an annual fee of EUR 172 012.72 for 163 887 m² of water and land surface (1.0478 EUR/m²).

2.3.3. Alleged free access to infrastructure facilities and services

- (12) As regards car parking, waste collection and land taxes, Komunala Izola is a lessee of the public paid parking lot situated in the area near to the port. The amount of annual rent paid by Komunala Izola for this facility is around EUR 120 000 (excluding VAT). For waste collection, Komunala Izola pays the cost of the removal and deposit as any other user of municipal services, including the communal administration. Regarding land taxes, Komunala Izola pays a tax for the use of a building ground (NUSZ).
- (13) The Complainants pay to the Municipality of Izola charges for waste collection services (EUR 39 099.66), rental of car parking areas (21 192.91 EUR) and taxes on land (EUR 38 259.60).

2.3.4. Conclusions of the complainants on the alleged aid measures

- (14) The complainants concluded that the above described measures represent revenues which the Slovene authorities chose to renounce: These advantages are more precisely: (a) a more favourable taxation of Komunala Izola Harbour for the "use of water" compared to Marina Izola; (b) the absence of a concession fee to be paid by Komunala Izola for the municipal harbour; and (c) the presence of infrastructure facilities and public services made available for free to Komunala Izola. These measures would provide a selective advantage to Komunala Izola in an economic activity open to competition, i.e. the operation of the Komunala Izola Harbour, with an impact on the competitors' activity (Marina Izola) and an effect on trade between Member States. Therefore, these measures would constitute State aid in the meaning of Article 107(1) TFEU.

2.4. Arguments of Slovenia and of the complainants

- (15) In response to the allegations made by the complainant, the Slovene authorities presented two separate arguments. First of all, Slovenia argued that the measures do not constitute State aid in the meaning of Article 107(1) TFEU, mainly because they consider that these measures do not affect competition or trade between Member States (see point 2.4.1 below). Secondly, the Slovene authorities presented specific counterarguments regarding each of the three measures mentioned in points 2.4.2, 2.4.3 and 2.4.4 above. The complainants subsequently provided comments on the counterarguments of the Slovene authorities.

2.4.1. Arguments on impact on competition and effect on trade between Member States

- (16) Concerning the impact on competition and effect on trade between Member States, Slovenia put forward that services provided in the Komunala Izola Harbour are not comparable to the commercial activities run by Marinvest and Porting. They considered that services in the Komunala Izola Harbour cannot affect trade between Member States, principally because of the purely local character of the municipal harbour.
- (17) As from information provided by the Slovene authorities, the total number of berths of the Komunala Izola Harbour is 505 (data of 2015), of which:
- (a) 424 berths for local permanent residents of the Municipality of Izola (84%);
 - (b) 37 berths for local fishermen (7%);
 - (c) 7 berths for the administration, the harbour master's office, etc. (2%); and
 - (d) 37 berths only are available for temporary rental (for tourism/recreation) (7%).
- (18) The Slovene authorities explained that 424 berths are reserved for local permanent residents of the Municipality of Izola only (so-called "municipal berths"). The users of these municipal berths must, in accordance with the Ordinance on Municipal Berths, be permanent residents in the Municipality of Izola. They must prove their residence by presenting a valid vessel registration sheet, issued in the name of a resident of Izola, and a valid personal identification document which demonstrates permanent residence in the Municipality. Local residents who have a municipal berth cannot, and may not, pursue a commercial activity. Exchanging a berth or renting a municipal berth to tourists is not possible, as daily controls of all berths in the Komunala Izola Harbour are conducted during the summer tourist season between 6 a.m. and 10 p.m., and outside the summer tourist season between 7 a.m. and 3 p.m.
- (19) As for the 37 mooring berths which are available for temporary rental, they are intended for owners of vessels not meeting the conditions to obtain a permanent rental. In their submissions, the Slovene authorities explained that temporary rental is differentiated between daily berths, and provisional mooring contracts awarded for a maximum period of one year. The number of daily rentals amounted in 2015 to 280 day berths per year, representing an average of 2 to 3 berths per day during the tourist season. Also the income gained from the rental

of berths to non-residents is very limited. In 2015 it amounted to EUR 47 000 for vessels under 8 meters, EUR 35 000 euros for vessels above 8 meters, and EUR 9 000 for daily berth rentals.

- (20) As already mentioned, for the Slovene authorities the services offered by Komunala Izola Harbour and those offered by Marinvest and Porting are not comparable. Komunala Izola Harbour offers significantly lower standards in comparison with Marina Izola services (e.g. no parking space is provided, no showers are available, there are only public toilets and only some areas have electricity and water connection).
- (21) The Slovene authorities note as well that due to its limited depth the Komunala Izola Harbour is only suitable for smaller boats, and cannot offer the service for larger vessels. In addition to the physical limitations Komunala Izola Harbour has also legal limits: the Ordinance on the Municipal Port of Izola imposes restrictions on the length of vessels, which is limited for certain parts to 8 meters.
- (22) The Slovene authorities conclude that the activity of the local port is geographically limited as it is mainly reserved to local users residing in the Municipality of Izola. Due to lower service standards and to restrictions on the size of vessels, Komunala Izola Harbour is not in a position to compete with commercial marinas.
- (23) By contrast, the complainants pointed out that they identified in the municipal berths 31 vessels owned (wholly or in part) by individuals who do not have their residence in the Municipality of Izola. Secondly, the alleged aid measures may particularly affect interstate trade because of the location of the Komunala Izola Harbour, which is only a few kilometres from Italy, Croatia, Austria and Southern Germany and is therefore capable of attracting customers from other Member States.
- (24) Marinvest and Porting argued also that Komunala Izola Harbour has comparable standards as their Marina Izola as users may use parking, showers, and toilet facilities made available for free by the Municipality of Izola.
- (25) Therefore, Marinvest and Porting considered that the alleged aid measures are capable of distorting competition and affecting the trade between Member States, and asked for the opening of the formal investigation procedure under Article 108 TFUE.

2.4.2. Arguments related to alleged favourable taxation

- (26) The complainants claimed that the measure described in point 2.3.1 involves different levels of taxation, which as a result lead to a favourable taxation for publicly controlled undertakings, such as Komunala Izola. The complainants argue that the public utility companies can rely - in terms of contribution for the use of “*water areas for the operation of town harbours, recreational marinas and other harbours*” on a very low tax rate comparing to private operators such as Marinvest and Porting.
- (27) The Slovene authorities clarified that the charge for the use of water is an environmental fee intended to cover costs of water treatment due to water

pollution caused by water rights holders. Social, economic, geographic characteristics of the area should be taken into account when calculating the charge for the use of water. Pursuant to Art. 9 (1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 *establishing a framework for Community action in the field of water policy*¹, it is necessary to ensure an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services. Slovenia stated that the charge for the use of water is calculated in conformity with the above mentioned criteria. The water pricing policy distinguishes the use of water between tourist and local ports. In local ports, the smaller size of vessels and the effects of the local community, through the provision of berths for the local population and the support to local activities (as fishing), results in a considerably lower pricing of charges for the use of water.

2.4.3. Arguments related to the exemption from concession fees

- (28) The complainants claimed that the Municipality of Izola does not impose on Komunalna Izola the payment of any concession fee for the operation of the municipal harbour (see point 2.3.2).
- (29) The Slovene authorities remarked that Komunalna Izola has no obligation to pay a concession fee because it is a public utility company owned by the Municipality, providing a service of general economic management of the local port (in a "in-house relationship"). Moreover, Komunalna Izola concluded with the Municipality of Izola a lease contract for port infrastructure under which it is obliged to pay an annual rent in total amount of EUR 61 630 (excluding VAT).
- (30) The complainants calculated that Komunalna Izola should pay a concession fee comparable to Marinvest and Porting, calculated on the basis of the rate of 1.04 EUR/m² (i.e. EUR 61 187 for a water surface of 58 396.05 m²).
- (31) According to the Slovene authorities all expenditure such as the rent for the use of the real estate, the right of using the public infrastructure in the port area, the rent for the use of buildings owned by the public authority that are covered by concession fees imposed on private companies is also covered by the rent paid by Komunalna Izola. Therefore, the rent paid by Komunalna Izola and the concession fee paid by the complainants are comparable in terms of amounts and character of the covered charges.

2.4.4. Arguments related to the alleged free access to infrastructure facilities and services

- (32) Finally, Marinvest and Porting claimed that the Municipality of Izola does not impose on Komunalna Izola any payment in terms of taxes, charges or any other contribution for the available public areas (tax on land and charge for the car parking areas) and services (charges for waste collection services)(see point 2.3.3).

¹ OJ L 327 of 22.12.2000, p. 1

- (33) The Slovene authorities explained that the area of the local port does not have a dedicated parking. The Komunalna Izola Harbour is completely different from the Marina Izola tourist port. Komunalna Izola Harbour is a local harbour primarily intended for fishing and municipal berths. Users of these moorings are principally locals who use public parking, or their own private parking places. In most cases local users do not need parking spots. For this reason the claim that Komunalna Izola does not pay the cost of the parking space for their users is beside the point. Moreover, the Slovene authorities explained that that Municipality of Izola signed with Komunalna Izola a lease agreement for the public paid parking lot near the port, and this parking area is accessible to all users. Therefore, Komunalna Izola Harbour users can park their cars under the same conditions as Marina Izola users, or any other user. Regarding the tax on land, Slovenia states that in the area of the Komunalna Izola Harbour there is no land that would require a payment of a similar tax. For the building land situated outside of the Komunalna Izola Harbour, Komunalna Izola pays a tax for the use of construction land (NUSZ). Concerning waste collection services, Slovenia clarified that Marinvest and Porting pay for waste collection from vessels as a part of the concession fee. The Slovene authorities considered that differences in waste collection costs are proportionate to the number of moorings and size of Komunalna Izola Harbour and Marina Izola.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (34) 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 internal market*". It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States.
- (35) In the present case the Commission considers it appropriate to look first at the possible effect on trade between Member States of the alleged aid measures.

3.2. Impact on competition and effect on trade between Member States

- (36) With regard to the criterion of effect on trade between Member States, the Commission notes that such an effect cannot be hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and has an effect on trade between Member States². It is settled case-law that the Commission is not required to carry out an economic analysis of the actual

² See, for instance, Judgment of the General Court of 6 September 2006, *Commission v Italian Republic and Wam SpA*, Joined Cases T-304/04 and T-316/04, ECLI:EU:T:2006:239, paragraph 63; confirmed by Judgment of the Court of Justice of 30 April 2009, *Commission v Italian Republic and Wam SpA*, C-494/06 P, ECLI:EU:C:2009:272, paragraph 57.

situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States³. In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade. It must however be explained how and on what market competition is affected or likely to be affected by the aid,⁴ based on the *foreseeable effects of the measure*.⁵

- (37) In that respect, the Commission has in several cases⁶ considered that certain activities, including the operation of recreational ports⁷, due to their specific circumstances, have a purely local impact and consequently no such effect if the following criteria are met. First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.
- (38) In the present case, Komunala Izola Harbour only supplies services in the municipality of Izola and thus in a limited area within Slovenia. The effect of the operation of Komunala Izola Harbour on the mooring market appears to be very limited and of purely local nature.
- (39) Izola is a municipality of approximately 16 000 inhabitants on the Adriatic coast of the Istrian peninsula in south-western Slovenia. Izola is publicized as a thriving tourist centre with the largest marina in Slovenia (with reference to the complainants' concession of Marina Izola), offering 700 berths for yachts of up to 30 metres, plus a boatyard that can winter around 50 yachts.
- (40) As from information provided by the Slovene authorities (see recitals 17 and 18), the total number of berths of the (allegedly competing) Komunala Izola Harbour is 505, of which only 37 berths are available for temporary rental to non-residents. The vast majority of the berths (468) of Komunala Izola Harbour are

³ See, for instance, Judgment of the General Court of 15 June 2010, *Mediaset v Commission*, Case T-177/07, ECLI:EU:T:2010:233, paragraphs 145-146, confirmed by Judgment of the Court of Justice of 28 July 2011, *Mediaset SpA v Commission*, C-403/10 P, ECLI:EU:C:2011:533, paragraphs 111, 113 and 115; Judgment of the Court of Justice of 8 September 2011, *Commission v Netherlands*, C-279/08 P, ECLI:EU:C:2011:551, paragraph 131.

⁴ See Judgment of the General Court of 22 February 2006, *Le Levant 001 and others v Commission*, Case T-34/02, ECLI:EU:T:2006:59, paragraph 123.

⁵ See, for instance, Judgment of the Court of Justice of 30 April 2009, *Commission v Italian Republic and Wam SpA*, C-494/06 P, ECLI:EU:C:2009:272, paragraph 57; Judgment of the General Court of 6 July 1995, *AITEC and others v Commission*, Joined Cases T-447/93, T-448/93 and T-449/93, ECLI:EU:T:1995:130, paragraph 141.

⁶ See, for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

⁷ See the Commission decisions in State aid cases C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 6.2.2004, p. 63, and SA.39403 (2014/N) – *Netherlands - Investment aid for Lauwersoog port*, C 259, 7.8.2015, p. 4, recitals 28 ff.

reserved for local residents, fishermen and the port administration, and thus do not compete with commercial marinas providing services to tourists. As from these data, it results that only 37 (equivalent to 7%) of the total number of berths in the municipal Komunala Izola Harbour could be regarded as potentially competing with the services offered by private companies specialized in mooring services. As explained by the Slovene authorities, renting out a municipal berth to tourists is prohibited, and controls are conducted every day.

- (41) The analysis on the impact on competition and effect on trade focusses therefore on the 37 berths potentially competing with services provided by private companies to tourists. As a matter of fact, the 37 berths of Komunala Izola Harbour available for temporary rental to non-residents represent an insignificant quantity (around 1.07%) if compared to the Slovene national moorings market⁸, which consists of 3 470 berths (including the 700 moorings of Marina Izola). If compared with the whole Adriatic area market of small ports (marinas) dedicated to nautical tourism, amounting to 78 238 moorings, the 37 temporary berths of the Komunala Izola Harbour represent an insignificant 0.05% of the market.
- (42) The Commission also notes the significant difference in the way in which the complainants' Marina Izola and the Komunala Izola Harbour are promoted on the international market for marinas providing services to tourists. In specialized websites, the complainants' Marina Izola appears as the only marina in Izola offering berths for tourist boats. Services provided by the Komunala Izola Harbour on the other hand are not advertised in the specialised websites targeting foreign tourist⁹.
- (43) Moreover, the economic activity of the local harbour by Komunala Izola appears to be very small in scale, with 93% of capacity reserved for local residents. The total income of Komunala Izola from the operation of Komunala Izola Harbour was EUR 354 333 in 2015, of which the income from "municipal berths" was EUR 234 252. The total annual income from the 37 temporary berths rented to non-residents was EUR 91 000, of which EUR 47 000 was for berths for smaller vessels under 8 m in length, EUR 35 000 for vessels over 8 m in length and EUR 9 000 for daily berths (see recital 19).
- (44) The Commission observes also that, the services provided in the local harbour are not comparable with those in Marina Izola, since significantly lower standards of service are offered (dedicated parking is not provided, showers are not available, only public toilets are available, only some areas of the local harbour have electricity and water connection)(see recital 20). As presented in recital 21, the use of Komunala Izola Harbour for larger boats is also limited in legal and physical way. The limited depth makes the municipal harbour accessible only for smaller boats and the Ordinance on Municipal Port Facilities of Izola limits its use, for certain parts even to boats that are no longer than 8 meters.

⁸ All market data are from the *Adriatic Sea Tourism Report 2017*, publicly available in the internet at: http://www.adriaticseaforum.com/2017/Public/RisposteTurismo_AdriaticSeaTourismReport2017.pdf

⁹ See for example the following websites in the internet:
<http://results.yachting-pages.com/nav/country/slovenia/type/portmarina/0>
<http://www.luxuria-adria.com/en/marinas-slovenia.html>
<http://www.greenpearl.org/marinas-in-slovenia/>
<https://www.skippercitey.com/3/marinas-croatia-slovenia/>

- (45) Based on an overall assessment of the above indications, the Commission considers, in light of the available information, that the services offered by Komunala Izola Harbour are unlikely to attract customers from other Member States. The Commission notes that Komunala Izola is essentially providing mooring services to local residents of the Municipality of Izola, with only a marginal part of its capacity available for non-residents of the Municipality of Izola. Moreover, as from the evidence provided by Marininvest and Porting, even the 31 vessels owned by non-residents (see recital 23) apparently belong to Slovene nationals. Therefore the presence of foreign tourists would be limited to daily berths' rentals only.
- (46) With regard to the effect on the conditions of cross-border investments or establishment, as from data on the mooring market in Slovenia and the Adriatic area (see recital 41), it can be concluded that the activities of Komunala Izola Harbour on the Adriatic mooring market are negligible. Moreover, the alleged aid measures in favour of Komunala Izola Harbour are unlikely to preclude or deter undertakings in other Member States from taking up marina activities in Slovenia, and it can be excluded that Komunala Izola Harbour would seek to enter foreign markets.
- (47) The Commission therefore considers, in light of the available information, that the measures cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
- (48) Consequently, even if some marginal distortion of local competition cannot be completely excluded, the Commission can conclude that the alleged aid measures are not liable to affect trade between Member States.

4. CONCLUSION

The Commission has accordingly decided that the alleged aid measures do not constitute State aid in the sense of Article 107 TFEU.

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission