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**Subject: State aid SA.44693 (2016/N) (ex 2016/PN) – Netherlands – Investment aid towards the Cruise Port of Harlingen**

Sir,

**1. PROCEDURE**

- (1) On 1 March 2016, the Netherlands pre-notified planned aid to support an investment project in the Cruise Port of Harlingen. Following various exchanges, on 7 November 2016, the Netherlands formally notified its plans to grant this aid.

**2. DESCRIPTION**

**2.1. Objective**

- (2) The objective of the investment project is to establish a cruise port in Harlingen, apt to receive small- and mid-sized cruise ships with a length of up to 160 meters.

**2.2. Planned investments**

- (3) The project consists of (1) the setting up a multifunctional floating mooring (*afmeervorziening*) and of (2) the deepening of the waterway to a depth of 8.5 meters. The total investment costs amount to EUR 2 932 000.

**2.3. Financing of the investment project**

- (4) The project will be financed through a direct grant by the Province of Friesland, amounting to EUR 733 000 and another direct grant by the Municipality of Harlingen, amounting to EUR 1 629 000. Consequently, the total grant amounts to EUR 2 362 000. The remaining part of the investment

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cost, amounting to EUR 570 000, will be provided through own funds contributed by the Municipality of Harlingen. The own funds stem from commercial revenues.

- (5) The Dutch authorities provided a financial analysis based on the funding gap of the notified project. The main revenues for this project come from port and quay fees and tourist taxes. The funding gap of the project, calculated as the difference between the discounted value of the expected net operating profits (EUR 567 436) and the discounted value of the costs (– EUR 2 932 000) shows that the project has a negative financial net present value ('NPV') of – EUR 2 364 564 over a reference period of 30 years.

#### **2.4. The beneficiary**

- (6) The infrastructure will be owned by the Municipal Port Service Harlingen ('MPSH'), which is part of the public body of the Municipality of Harlingen. Hence, in the capacity of MPSH, the Municipality will own and operate the planned cruise port infrastructure.
- (7) The infrastructure will be accessible to any interested user on a non-discriminatory basis. All users will be charged the same port fees in accordance with established and published tariffs. The Dutch authorities confirmed and demonstrated that the fees charged to the port users correspond to the level of fees charged in comparable ports.

#### **2.5. Competition context presented by the Dutch authorities**

- (8) According to the Dutch authorities, the construction of the new cruise port will not have any negative impact on competition in the EU.
- (9) The Netherlands explained that the sea cruise sector in the Netherlands mainly uses the cruise terminals in IJmuiden, Amsterdam and Rotterdam. In 2012, these ports received a total of 421 000 cruise passengers. By contrast, all sea cruise ports in the North Sea region, including ports in Germany, Belgium, the United Kingdom and Norway received 5 536 000 passengers in the same year (of which Norway received 2 277 000).
- (10) The new cruise port in Harlingen is expected to receive 7 880 passengers yearly in a conservative scenario and 11 820 in an optimistic one. Even under the optimistic scenario, the market share of Harlingen will be 2.8% as compared with the passengers of all cruise ports in the Netherlands in 2012 and 0.2% as compared with all cruise ports of the North Sea Region.

#### **2.6. Legal basis**

- (11) *Subsidiebesluit gedeputeerde staten (01225644) d.d. 7 juli 2015*

#### **2.7. Cumulation**

- (12) The Dutch authorities confirmed 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.

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

- (13) The aid takes the form of direct grants. The total amount including the aid shall be disbursed in a single instalment once the aid is approved by the Commission.

## **2.9. Aid intensity**

- (14) The aid intensity amounts to 80.6%.

## **2.10. Transparency commitment**

- (15) The Netherlands committed to ensure the publication of the following information on a comprehensive State aid website, at national or regional level:
- (a) the full text of the individual aid granting decision and its implementing provisions, or a link to it,
  - (b) the identity of the granting authority,
  - (c) the identity of the beneficiary, the form and amount of aid granted, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).

# **3. ASSESSMENT**

## **3.1. Existence of aid**

- (16) Article 107(1) TFEU provides 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (17) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on an undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and must affect trade between Member States.
- (18) In the present case, the existence of State aid is examined at the level of the MPSH, which is the owner and operator of the future cruise port, and the users (cruise shipping companies).

### 3.1.1. *Existence of aid at the level of the owner and operator of the Cruise Port*

#### 3.1.1.1. The notion of undertaking

- (19) According to established Court jurisprudence<sup>1</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 an undertaking for the purposes of EU competition law. The Commission established in a series of decisions that the exploitation of some types of ports infrastructure, including cruise terminals, can be considered as being of an economic nature.<sup>2</sup>
- (20) Furthermore, according to the Leipzig-Halle judgment,<sup>3</sup> it is the future use of the infrastructure, i.e. whether the infrastructure shall be commercially exploited or not, which determines whether its construction constitutes an economic activity and falls within the scope of the EU State aid rules.
- (21) The measure under scrutiny concerns the funding provided for the construction of a cruise terminal, which is commercially exploited by the MPSH through providing services to cruise liners against remuneration. In view of the above, the Commission considers that the financing of the construction of the cruise port, taking account of its subsequent commercial operation, supports an economic activity performed by the MPSH. The latter, for this purpose, is deemed to be an undertaking, which falls within the scope of Article 107 TFEU.

#### 3.1.1.2. State resources and imputability

- (22) As stated above, the project will be partly funded through direct grants by the Province of Friesland respectively the Municipality of Harlingen and, as such, is partly financed through State resources.
- (23) As regards imputability to the State, the decision to fund the specific construction project was directly taken by the Dutch authorities. Therefore, the notified measure is imputable to the State.

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<sup>1</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>2</sup> For cruise terminals see Commission Decision of 19.06.2013 in State Aid case no. SA.35738 (2012/N) - *Aid for the upgrading of Katakolo port*, OJ C 204 of 18.07.2013; Commission Decision of 02.07.2013 in State Aid case no. SA.35418 (2012/N) – *Extension of Piraeus port*, OJ C 256 of 05.09.2013. For other types of ports infrastructure 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 of 15.06.2011 in State aid case no. 44/2010 *Public financing of port infrastructure in Krievu Sala*, OJ C 215 of 21.7.2011; Commission Decision of 22.02.2012 on State aid case no. SA.30742 (N/2010) *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012; 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>3</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 in Case C-82/01P [2002] ECR I-9297 and Case T-196/04 *Ryanair v. Commission* [2008] ECR II-3643, paragraph 88.

#### 3.1.1.3. Selective economic advantage

- (24) The public financing was granted individually to the MPSH for carrying out a specific and individual project and is, therefore, selective.

#### 3.1.1.4. Distortion of competition and effect on of trade between Member States

- (25) According to established 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, there is at least a potential effect on trade between Member States and competition.<sup>4</sup>
- (26) In the present case, the financial support granted by the Dutch authorities will be used for constructing a new cruise port. After completion of the project there will be additional capacity to receive cruise ships, which will at least potentially increase competition between ports in Europe and in particular in the North Sea Region, including ports located in Norway, the United Kingdom, Germany, the Netherlands and Belgium. Thus, the project is capable of affecting competition and trade between Member States by potentially diverting commerce away from other Member States.

#### 3.1.1.5. Conclusion on the existence of aid at the level of the MPSH

- (27) In light of the above the Commission concludes that the public funding granted to the MPSH for the project constitutes State aid.

#### 3.1.2. *Aid to the benefit of port users*

- (28) The Commission notes that port users will be given equal and non-discriminatory access to the infrastructure. Furthermore, the information provided by the Dutch authorities shows that the fees charged to the port users correspond to the level of fees charged in comparable ports and, therefore, reflect market prices.
- (29) Thus, the Commission concludes that no advantage will be granted to port users and, therefore, that no State aid is provided to those users.

### 3.2. **Compatibility of the aid**

- (30) According to established case practice,<sup>5</sup> the appropriate legal basis for assessing State aid to port investment projects is Article 107(3)(c) of the Treaty, 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.

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<sup>4</sup> See e.g. judgment in *Philip Morris v. Commission*, Case 730/79, EU:C:1980:209, paragraph 11, and judgment in *Italy v. Commission*, C-372/97, EU:C:2004:234, paragraph 44.

<sup>5</sup> See Commission Decisions cited in footnote 2 above.

- (31) It must therefore be examined if the notified aid meets a clearly-defined objective of common interest, is necessary and proportional to this objective, has an incentive effect and does not affect competition and intra-EU trade to an extent contrary to the common interest.

*3.2.1. Objective of common interest*

- (32) In the established case practice mentioned in recital (19), the Commission has considered that improved port infrastructure contributes to common objectives of the EU. Furthermore, and more specifically, the trans-European transport networks (TEN-T) Regulation, includes the Port of Harlingen as part of the European comprehensive network.
- (33) These elements show that investment aid to the project contributes to an objective of common EU interest.

*3.2.2. Necessity, proportionality and incentive effect of the aid*

- (34) The negative NPV (funding gap) of – EUR 2 364 564 shows that the expected net revenues of the MPSH do not cover the investment costs of EUR 2 932 000. The negative NPV indicates that the project is not viable without public support. Therefore, it is most unlikely that the MPSH would be able to obtain on the market the full aid amount exceeding its planned own contribution. The requested aid is thus necessary for this project.
- (35) According to the established case practice referred to in recital 19, aid to port infrastructure is considered to be proportionate if the amount does not exceed the project funding gap. The planned aid, (EUR 2 362 000), does not exceed the funding gap identified for the project (– EUR 2 364 564). Therefore, the aid is also proportionate.
- (36) The works for this project have not been initiated yet and the application for the aid was, therefore, done before commencement of the project. In addition, the MPSH would not be able to raise the funding required for carrying out the project itself, meaning that the project could not be carried out in the absence of the aid. It follows that the aid must be regarded as having an incentive effect.
- (37) In the light of the above, the Commission concludes that the aid is necessary, proportionate and has an incentive effect.

*3.2.3. Distortion of competition and effect on trade between Member States in light of the common interest*

- (38) As shown above in recitals (9) and (10), the new cruise port is expected to be a relatively small player on the Dutch cruise market, with an estimated market share not exceeding 2.8%. In the North Sea region, the market share of the new cruise port will only be 0.2%.
- (39) The planned infrastructure will (upon completion) increase capacity for the provision of port services in Harlingen. Yet, the information provided by the

Dutch authorities shows that this increase will not be sizeable and the resulting increase in market share will be minimal as compared to the overall size of the North Sea region market.

- (40) Based on the above 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.

*3.2.4. Transparency of the aid*

- (41) Lastly, the Commission observes that the Netherlands committed to comply with the transparency principles.

#### **4. CONCLUSION**

- (42) The Commission has accordingly decided:
- (a) not to raise objections to the aid granted to the owner and operator of the planned infrastructure in the port of Harlingen, on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.
  - (b) that the notified measure does not constitute State aid to port users within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission