Subject: State aid SA. 34940 (2012/N) – Port of Augusta – Italy

Sir,

1. **PROCEDURE**

   (1) By SANI notification of 4 October 2012, Italy notified an infrastructure investment project at the Port of Augusta, Sicily. Additional information was provided by e-mails of 6 November 2012, 27 November 2012 and 29 November 2012.

2. **DESCRIPTION**

   2.1. **The objective of the notified project**

   (2) The Port of Augusta is a commercial port located on the Eastern coast of Sicily, which is an assisted region under Article 107(3)(a) of the Treaty.\(^1\) The port is situated at a distance of 5 km from the city of Augusta, and at approximately 30 km south of the city of Catania with its sea port, airport and inland port in Catania Bicocca (currently under construction).

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At present, the Port of Augusta is mainly specialised in the traffic of liquid bulk (petrochemicals), and to a lesser extent of solid bulk. It currently hosts a traffic of around 33 million tons of merchandise, of which around 31.5 tons of liquid bulk.

The objective of the notified project is to expand and adapt the existing port infrastructure to also allow for the traffic of large containers in the sea-sea, sea-road and sea-rail modalities, as well as to allow the Port to participate in transport along the Motorways of the Sea. With the notified investment, the port should attain by the year 2025 a total maximum capacity of 800,000 TEU/year, and a traffic volume of 500,000 TEU/year as of 2015.

2.2. The beneficiary: the Port Authority of Augusta

The port infrastructures resulting from the notified project shall be property of the Italian State. This property shall be administrated by the Port Authority of Augusta (hereinafter "PAA"), which is an autonomous public entity governed by Law No. 84/1994 (the Italian framework law on ports).

Under Law No. 84/1994, the main attributions of Italian port authorities are: a) programming, coordination and promotion of the commercial and industrial activities carried out in the port; b) maintenance of the open access infrastructures and spaces; c) programming and planning of port activities; d) administration of the yards and docks.

Based on Article 18 of Law No. 24/1994, the Italian port authorities are empowered to conclude concession contracts for the use of the port infrastructures with companies carrying out commercial and/or industrial activities within the meaning of Article 13(3) of Law No. 84/1994, in exchange for a concession fee. Law 84/1994 does not empower the Italian port authorities to provide themselves transport services or any commercial services. Based on Article 14 of Law No. 84/1994, the Italian port authorities must provide services of pilotage, while towage and mooring services are carried out by the Port Captaincy (Capitaneria del Porto). The tariffs for pilotage, towage and mooring services in Italian ports are established by the Italian Ministry of Transport.


According to the Italian authorities, the above-mentioned public tender procedure shall ensure that the resulting concession fee(s) to be paid by the future concessionaire(s) reflect a market price for the concession(s). At any rate, the Italian authorities engage to cross-check the resulting concession fee(s) based on the Discounted Cash Flow method, and by benchmarking against fees for comparable concession contracts in other ports in Italy and abroad.

### 2.3. Planned investments

The overall cost of the notified project is EUR 145.33 million. The project has four main parts, or 'interventions', which are described by the Italian authorities in the notification as indicated below.

**Intervention 1**

This part of the project consists of expanding the existing yard by adding an additional surface of 82,000 sqm, to be used for the storage of containers and solid bulk. The total cost of this part of the project is of EUR 28.30 million. The construction works on this part of the project should be concluded by end 2015.

The design project for the works on Intervention 1 shall be done by RTI, a company belonging to the engineering group Technital S.p.A., which was selected following public, open and non-discriminatory tender procedure. The call for tender was published on 04 October 2008, and the contract with RTI was signed on 25 March 2009.

The actual works for Intervention 1 shall be contracted following public, open and non-discrimination tender procedure, in compliance with EU and Italian public procurement law, as stipulated in Article 2 and Article 4(b) of a Convention signed between the PAA and the Italian Ministry of Transport on 16 November 2010.

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7 The contract was registered at the Fiscal Agency of Verona, under no. 3172 series 3, on 31 March 2009.
(14) The new infrastructures resulting from this part of the project shall be exploited by private operator(s), on the basis of concession contracts to be concluded following public, open and non-conditional tender, carried out in compliance with EU and Italian public procurement law (see recital (8) above).

(15) The costs for this part of the project are as follows:

<table>
<thead>
<tr>
<th>A. Public works of general nature and open use</th>
<th>Costs (EUR)</th>
<th>Total costs A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Internal and external fencing</td>
<td>832,333.6</td>
<td>1,512,891.34</td>
</tr>
<tr>
<td>2. Environmental mitigation</td>
<td>448,139.00</td>
<td></td>
</tr>
<tr>
<td>3. Reserves</td>
<td>232,418.98</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Infrastructure works of commercial use</th>
<th>Costs (EUR)</th>
<th>Total Costs B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ground preparation</td>
<td>13,909,160.42</td>
<td>26,797,108.66</td>
</tr>
<tr>
<td>2. Paving</td>
<td>1,981,464.06</td>
<td></td>
</tr>
<tr>
<td>3. Structure</td>
<td>125,507.04</td>
<td></td>
</tr>
<tr>
<td>4. Anti-fire system</td>
<td>463,104.24</td>
<td></td>
</tr>
<tr>
<td>5. Sewage system</td>
<td>3,086,468.27</td>
<td></td>
</tr>
<tr>
<td>6. Electric system</td>
<td>2,395,720.89</td>
<td></td>
</tr>
<tr>
<td>7. Projecting, call for tender expenses, publicity</td>
<td>4,825,682.84</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>28,300,000</strong></td>
<td></td>
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</tbody>
</table>

**Intervention 2**

(16) This part of the project consists of strengthening a part of the existing dock of 150 m, and installing on it two gantry cranes for the movement of large containers. This part of the existing dock needs to be reinforced in order to support the weight of both the gantry cranes and the large containers. The two gantry cranes shall have the capacity of moving containers of over 50 tons and other weight over 60 tons. They shall operate on fixed rail, which must be embedded into the dock. The total cost of Intervention 2 is EUR 38.70 million, of which EUR 21.70 million for the purchase and installation of the two gantry cranes. Construction works on this part of the project should be finished by end 2015.

(17) Both the design and the actual construction works for Intervention 2 shall be entrusted to one single operator, to be selected through public, open and non-discriminatory tender, in compliance with EU and Italian rules on public procurement. The call for tender was published on 26 January 2011. At the time of this Decision the selection procedure was not yet concluded.

(18) The part of the existing dock of 150 m affected by Intervention 2 overlaps for a length of 75 m with a part of the existing dock of 300 m which is currently used by a private terminal operator, under a concession contract covering the period 30 November 2006 - 29 November 2021. Thus, during the works on Intervention 2, this operator shall be able to use only 225 m of the part of 300 m of dock that he had contracted. However, no compensation is foreseen for this operator during the works, as the concessionaire will have the possibility of moving his activities 75 m further down the existing dock.

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As indicated in recital (8) above, the new infrastructures resulting from Intervention 2 shall be rented in concession regime following public, open and non-conditional tenders to be carried out in compliance with EU and Italian public procurement law. However, according to the Italian authorities, the current operator shall be given the possibility to opt for using the new dock and cranes resulting from Intervention 2 from 2015 until expiry of his concession contract in 2021. In such case, his concession fee shall be increased to a level to be determined with the Discounted Cash Flow method, and taking into account the value of the investments made by this operator in the meantime. The current operator shall also have the possibility to participate in the public tender for the concession of the new infrastructures resulting from the other interventions.

The costs for this part of the project are as follows:

<table>
<thead>
<tr>
<th>A. Public works of general nature and open use</th>
<th>Costs (EUR)</th>
<th>Total costs A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reserves</td>
<td>723,928,00</td>
<td>723,928,00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Infrastructure works of commercial use</th>
<th>Costs (EUR)</th>
<th>Total Costs B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Purchase and installation of the two gantry cranes</td>
<td>21,735,000,00</td>
<td>37,976,072,00</td>
</tr>
<tr>
<td>2. Foundation works</td>
<td>8,685,000,00</td>
<td></td>
</tr>
<tr>
<td>3. Dock strengthening works</td>
<td>2,685,000,00</td>
<td></td>
</tr>
<tr>
<td>4. Projecting, call for tender expenses, publicity</td>
<td>4,871,072,00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>38,700,000,00</strong></td>
</tr>
</tbody>
</table>

The costs for this part of the project are as follows:

<table>
<thead>
<tr>
<th>A. Public works of general nature</th>
<th>Costs (EUR)</th>
<th>Total costs A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reserves</td>
<td>723,928,00</td>
<td>723,928,00</td>
</tr>
</tbody>
</table>

As Intervention 3 is functionally linked to Intervention 4 (see recitals (25)-(28) below), the design and construction works shall be carried out for both these Interventions by the same operator, who shall be selected following public, open and non-discriminatory tender, in compliance with EU and Italian law on public procurement. The call for tender was published on 24 December 2010. At the time of this Decision the selection procedure was not yet concluded.

The new infrastructures resulting from this part of the project shall be exploited by private operator(s), on the basis of concession contracts to be concluded following public, open and non-conditional tender, carried out in compliance with EU and Italian public procurement law (see also recital (8) above).

The costs for this part of the project are as follows:

<table>
<thead>
<tr>
<th>A. Public works of general nature</th>
<th>Costs (EUR)</th>
<th>Total costs A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reserves</td>
<td>723,928,00</td>
<td>723,928,00</td>
</tr>
</tbody>
</table>

and open use
1. Environmental mitigation 3.858.615,00
2. Reserves 845.288,43 4.703.903,43

B. Infrastructure works of commercial use

<table>
<thead>
<tr>
<th>Costs (EUR)</th>
<th>Total Costs B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Dock embankment 4.865.361,37 21.126.096,57</td>
<td></td>
</tr>
<tr>
<td>2. Dock paving, internal and external fencing 3.648.870,77</td>
<td></td>
</tr>
<tr>
<td>3. Sewage installation 1.552.960,93</td>
<td></td>
</tr>
<tr>
<td>4. Water installation 65.165,59</td>
<td></td>
</tr>
<tr>
<td>5. Anti-fire installation 421.591,52</td>
<td></td>
</tr>
<tr>
<td>6. Electric installation 756.322,56</td>
<td></td>
</tr>
<tr>
<td>7. Projecting, call for tender expenses, publicity 9.615.823,83</td>
<td></td>
</tr>
<tr>
<td>Total 25.830.000,00</td>
<td></td>
</tr>
</tbody>
</table>

Intervention 4
(25) This part of the project consists of constructing a second new dock, of a total length of 410 m, and an adjoining new yard of 116.000 sqm. The total cost of this part of the project is of EUR 52.50 million.

(26) As mentioned in recital (22) above, the design and construction works for this part of the project shall be entrusted to the same operator who shall be selected for Intervention 3. The works on Intervention 4 should be finished by end of the year 2015.

(27) The new infrastructures resulting from this part of the project shall be exploited by private operator(s), on the basis of concession contracts to be concluded following public, open and non-conditional tender, carried out in compliance with EU and Italian public procurement law (see recital (8) above).

(28) The costs for this part of the project are as follows:

<table>
<thead>
<tr>
<th>A. Public works of general nature and open use</th>
<th>Costs (EUR)</th>
<th>Total costs A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Environmental mitigation 2.207.900,00 4.367.966,49</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Reserves 2.160.066,49</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Infrastructure works of commercial use</th>
<th>Costs (EUR)</th>
<th>Total Costs B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ground preparation 18.422.868,95 48.132.033,51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Structures 15.571.251,39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Paving 5.475.646,43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Anti-fire system 160.429,91</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Water system 32.597,13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Sewage system 646.496,33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Electric system 684.139,74</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Projecting, call for tender expenses, publicity 7.138.603,63</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total 52.500.000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.4. Financing of the investment project
(29) The total cost of this investment project is of EUR 145.33 million. The PAA shall contribute from own resources (revenues obtained by the PAA from port taxes, concessions, etc.) EUR 45.245.229. The rest of the funding up to EUR 145.33 million, namely EUR 100.088.771, shall be provided from various
public sources, as follows: funding provided by FAS CIPE,\textsuperscript{10} funding provided under Law 166/02\textsuperscript{11} and Decree 188/T of 1.8.2007,\textsuperscript{12} a subsidised loan to the PAA, and funding from the Programma Operativo Nazionale (PON) Reti e Mobilità 2007-2013,\textsuperscript{13} the national operational programme for developing transport networks in the Southern Italian regions of Sicily, Calabria, Campania and Puglia, which is co-funded by the European Regional Development Fund.

(30) The Italian authorities provided a financial and economic cost/benefit analysis for the notified project, and an analysis based on the \textit{funding gap} method. Over a reference period of 25 years, the project has a negative financial net present value of – EUR 83.842.386 and a financial rate of return of 0.13\%. The funding gap ratio -calculated as the ratio between the above-mentioned financial net present value of the project and the discounted total cost of the project, which is of EUR 121.738.478- is of 68.87\%. This analysis indicates that the project is not financially sustainable without public support.

2.5. \textbf{Competition context}

(31) According to the Italian authorities, the new infrastructures at the Port of Augusta resulting from the notified project shall not result in a substantial distortion of competition at European and international level.

(32) This project shall add, as of end 2015, new capacities to the already existent ones in Italy and in the EU in terms of traffic of large containers. As indicated in recital (4) above, with this project, the Port of Augusta shall attain by the year 2025 a total maximum capacity of 800.000 TEU/year, and a traffic volume of 500.000 TEU/year by 2015.

(33) However, the Italian authorities underline that, with this additional capacity, the Port of August should nevertheless count for about only 2 \% of the total container traffic volume in the Mediterranean in 2025.\textsuperscript{14} This is because the overall volume of container traffic in the Mediterranean is estimated by Italy to increase at a rate of 5.8\% per year up to 2025. The small share of the overall container traffic in the Mediterranean to be held by the Port of Augusta indicated that there is little risk of relocation of container traffic from other ports in Italy and the EU towards Augusta. At present the Italian ports with the highest volume of container traffic are Gioia Tauro, Genova and La Spezia.

\textsuperscript{10} CIPE is the Italian Inter-Ministerial Committee for Economic Programming. Decision 35/05 of CIPE concerns the allocation of funds for under-utilised areas. See also http://www.cipecomitato.it/it/in_primo_piano/fondi_strutturali_e_fas.html.

\textsuperscript{11} Legge 1 agosto 2002, n. 166, Disposizioni in materia di infrastrutture e trasporti, Gazzetta Ufficiale n.181 del 3-8-2002 - Suppl. Ordinario n. 158.

\textsuperscript{12} Decreto n. 118/T del 01/08/2007, attuativo della Legge n. 296/2006 (Finanziaria 2007), concerning the system of 15-year funding from the Italian Ministry of Infrastructure to the Italian port authorities.

\textsuperscript{13} Further details on this operational programme at http://ponreti.mit.gov.it.

\textsuperscript{14} Study for the Region of Sicily of 2007.
which serve different sea transport routes than the ones that would be served by the Port of Augusta.

(34) Finally, it is relevant to bear in mind that the near-by Port of Catania is currently over-crowded, and it seems sensible to redirect traffic towards the Port of Augusta, where expansion is feasible.

2.6. Legal basis

(35) The legal basis for the PON contribution to the financing of this project (see recital (29) above) is the Commission Decision C(2007) 6318 of 07.12.2007 approving the National Operative Program "Networks and Mobility" 2007-2013.15 The legal basis for the other sources of public financing are also indicated in recital (29).

2.7. Form and duration of the aid

(36) As indicated in recital (29) above, the public funding for this project takes the form of direct grants and subsidised loans to the PAA. The aid shall be disbursed until the end of the construction works, at the end of 2015.

2.8. Cumulation

(37) The Italian authorities commit that the aid received for this project cannot be cumulated with aid received from other local, national or EU sources for the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid

(38) 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.

(39) 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 (potential) distorting effects on competition as well as intra-EU trade.

(40) In the present case, the existence of state aid must be examined at the level of: the PAA (the port authority); the present and future terminal operators (concessionaires of the infrastructure); and the port end-users (shipping companies).

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3.1.1. Existence of aid at the level of the port authority PAA

3.1.1.1. Notion of undertaking

(41) Pursuant to Italian law on ports (see recitals (5)-(7) above), in Italy port authorities are public entities established for the purpose of ensuring the overall maintenance and development of public-owned infrastructure in the Italian ports.


(43) The notified project concerns the construction of infrastructures at the Port of Augusta, which shall be commercially-exploited by the PAA through their rental/concession to terminal operators. In this context, the PAA will engage in an economic activity, and it is therefore considered to be an undertaking for the purposes of the present decision.

3.1.1.2. General v. project-specific infrastructures

(44) The Italian authorities considered that part of the expenses for this investment project, and more specifically, the expenditure for fencing inside and around the new yards, environmental mitigation, and reserves for the execution of project – see recitals (15), (20), (24) and (28) - are linked to the exercise by the PAA of activities within the public remit.\footnote{See e.g. Commission Decision on Ventspils Port, as cited in fn. 17 above.}

(45) However, it must be noted in this respect that, first, these expenditures, which Italy 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 the PAA, and indeed, without these expenses, the construction of the infrastructure which shall be commercially exploited would not be possible.

(46) According to the jurisprudence, the distinction between activities within the public remit and economic activities must be done on a case-by-case basis. 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, or environmental protection functions - 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.

(47) In the case at hand, the expenses for fencing inside and outside the new yards, environmental mitigation related to the project to construct an infrastructure that shall be commercially exploited, and reserves that make possible the investment in the construction of the infrastructure, cannot be distinguished from the core expenses for the construction of that infrastructure. As explained above, they are an intrinsic part of the overall project, and make it possible to construct and operate an infrastructure that shall be commercially exploited.

3.1.1.3. State resources and imputability

(48) As indicated in recital (29) above, this project shall be co-financed up to the total amount of EUR 100.088.771 exclusively through public resources. The EU resources that shall be made available for co-financing this project are placed at the disposal of the Italian authorities, and therefore amount to State resources. The Italian authorities themselves also provide funding for this project, based on different legal instruments – see recital (29) above).

(49) As regards imputability to the State of the public financing, it is noted that the Italian authorities enjoy a high degree of control in the selection at national level of the projects of this nature to be financed. The notified project was directly chosen by, and is therefore imputable to, the Italian State.

3.1.1.4. Selectivity

(50) As the public financing is granted specifically to the PAA, the measure is selective.

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21 See ftn. 20 above.

22 See ftn. 20 above.
3.1.1.5. Economic advantage

(51) In order to establish whether the public resources granted to the PAA 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).

(52) 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\(^{23}\) (“the Guide”) places particular emphasis on two financial indicators to evaluate the financial sustainability of the 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.

(53) 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, and that the FRR is also notably low (see recital (30) above). Given the results of the financial analysis provided by the Italian 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 Italian 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 the PAA.

3.1.1.6. Distortion of competition and affectation of trade

(54) According to an 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, than there is at least a potential effect on trade between Member States and competition.\(^ {24}\)

(55) As indicated in recitals (32)-(33) above, with this project, the Port of Augusta shall create new capacity in terms of container transport, and expand its existent capacity for the transport of solid bulk. In particular, by the year 2025 the Port of Augusta shall attain a total maximum capacity of 800,000 TEU/year, and a traffic volume of 500,000 TEU/year. While the share of the Port of Augusta in the overall container and dry bulk traffic in the Mediterranean may be relatively small (estimated to be of 2% by the year 2025), the newly-created transport capacity shall nevertheless affect both competition and intra-Union trade, as different ports in several Member States (such as the ports of Marseille, Valencia and Algeciras, to name just a few


examples) are at least potentially in competition with the port of Augusta to attract traffic.

3.1.2. Existence of aid at the level of the design and construction work contractors, current and future terminal operators

(56) With respect to the operators to exploit the new infrastructures built through this project, as indicated in recitals (14), (19), (23) and (27) above, the Italian authorities commit to conclude concession contracts following public, open and non-discriminatory tender. 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 future concessionaires of the new infrastructure resulting from the project (i.e. the potential advantage will be the minimum necessary to ensure the actual operation of the infrastructure).

(57) Finally, it should also be examined if the private concessionaire who currently operates on the existing dock (see recitals (18)-(19) above) is likely to receive any advantage from the project.

(58) On this account, it is noted, first, that the current concessionaire is negatively affected by works for Intervention 2 (the strengthening of part of the existing dock). These works will affect 75 m of the 300 m of dock that he is currently using. However, the Italian authorities do not intend to offer any compensation for this affectation, as the concessionaire will have the possibility to move his activities 75 m further down the dock. On this basis it can be concluded that the current concessionaire cannot derive an advantage during the works on the project.

(59) Another aspect that should be examined is if the current concessionaire may derive any advantage from the use of the new infrastructure built with the project. As indicated in recital (18), the Italian authorities envisage the possibility that the current concessionaire might be interested to modify his current concession contract so as to also have access to the reinforced dock and two cranes constructed with Intervention 2. For such a possibility, the Italian authorities envisage that the concession fee would be adapted upwards, to reflect the market value of the extended concession based on the discounted Cash Flow Method, while taking into account the value of the investment made by the concessionaire in the meantime.

(60) Even though, the best modality for ensuring that the concession price to be paid by the current operator for the use of the new infrastructure will be market-conform would be to organise an open, public, and non-discriminatory tender, taking into account the overlap between Intervention 2 and the concession contract currently entrusted to that private operator that will expire in 2021 and the fact that its concession fee will be adapted upwards to reflect the expected cash flow, which must be calculated on the basis of solid and reliable assumptions, the Commission concludes that those arrangements provide sufficient safeguards to ensure that any potential advantage granted to
that operator will be minimised (i.e. will be the minimum necessary to ensure the actual operation of the infrastructure).

Finally, the Italian authorities also indicated (see recital (18) above) that the current concessionaire will also have the possibility to participate in the public, open, and non-discriminatory tenders for the use of the other infrastructures built through this project, once the works for their construction are concluded (end 2015). For this scenario, it is noted, similarly to the above findings regarding the future new concessionaires, that participation in the tender procedure will minimise any potential economic advantage in favour of the future concessionaires.

3.1.3. Existence of aid at the level of port users

With regard to the end users of the new infrastructure the Commission observes that they shall enjoy equal and non-discriminatory access to the new infrastructure. Moreover, the various concessionaires of the port will have to base their pricing policy vis-à-vis end users on economic considerations in order to obtain sufficient revenues to be able to pay for the concession fees applicable to them and make a profit. Those concession fees will be established according to procedures ensuring that the aid elements benefitting the concessionaires, if any, are limited to the minimum. 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 the concessionaires).

3.2. Compatibility of the aid

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.

According to established practice, the appropriate legal basis for assessing compatibility of the 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.

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

25 See Commission Decisions on State aid cases Ventspils Port, Krievu Sala and Klaipeda, as cited in ftn. 17 above.
In the Communication entitled *A Sustainable Future for transport: towards an integrated, technology-led and user-friendly system*, the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU. The same Commission acknowledges the importance of the shift towards more environmental-friendly modes of transport.

In the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018*, the Commission underlines that providing new port infrastructures, as well as improving the use of the existing capacities, is essential to ensuring that EU ports can cope efficiently with their gateway function.

Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on *Union Guidelines for the Development of the Trans-European Transport Network* includes the Port of Augusta among the EU maritime ports classified as "category A" in terms of importance, based on traffic volumes, connection to ground trans-European transport networks (TENs). The same documents qualifies as project of common interest the project concerning the adaptation of infrastructures to intermodal transport in Category A ports, and in particular ports located on islands and at the periphery.

The Port of Augusta is ideally placed to play a key role in the development of maritime transport in the Tyrrhenian and Ionian seas. Due to congestion and territorial limitations at the Port of Catania, the synergy between these two ports is essential for enhancing the role of the Catania-Augusta pole in the transport of merchandise to and from the island of Sicily. As the Italian authorities indicate, the strengthening of this East-coast pole shall also benefit the already-numerous logistic and road transport companies that are located in the Eastern part of the island. Not in the least, the project will contribute to the development of a cohesion area, currently assisted under Article 107(3)(a) of the Treaty.

The above elements demonstrate that the project contributes to an objective of common EU interest and to the development of both an economic activity and an economic area.

In addition, Italy provided documentation to the effect that the environmental impact of this project has been assessed by the Italian Ministry of Environment and consulted with the Commission responsible services.

### 3.2.2. Necessity and proportionality of the aid

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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 the 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.\(^{29}\) 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 (recital 53).

Therefore the public funding is necessary and has incentive effect, insofar as it enables the PAA to undertake an investment project that would have been undertaken in the absence of the public support neither by the PAA nor by market forces alone.

As regards proportionality (i.e. keeping public funding down to the minimum necessary) while an aid intensity of 68.87% appears to be relatively high – for instance, in the recent Ventspils and Krievu Sala port cases\(^ {30}\) the aid intensity was at the level of 50%, and in Klaipeda\(^ {31}\) at the level of 65% - 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. It should also be noted that the public funding provided for this project is limited to the funding gap ratio identified for the project, namely of 68.87%. Therefore the aid is limited to what is necessary in order to make the project feasible.\(^ {32}\) 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. It should also be noted in this context that the PAA shall contribute from own resources EUR 45,245,229 for this project. In a similar way, the fact that the new infrastructure built with the project shall be rented to terminal operators at prices to be determined through public, open and non-discriminatory tenders, allowing that the highest price offers be selected, shall ensure that the PAA shall maximise the return on this public investment.

\(^{29}\) See the recent Commission Decisions on port infrastructure projects cited in ftn. 17.

\(^{30}\) See ftn. 17.

\(^{31}\) See also ftn. 17.

\(^{32}\) 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.
Furthermore, the Commission has already observed in recitals (56)-(62) that the arrangements set up by the Italian authorities ensure that any possible advantage to the concessionaires of the ports as well as to the end users will be limited to the minimum necessary to ensure the actual operation and use of the port infrastructures.

In the light of the above, the Commission concludes that the aid to the PAA is necessary and proportional.

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

With this project, the Port of Augusta acquires infrastructure which allows it to enter into the transport segment of large terminal containers – a capacity that it does not have at present (as explained in recitals (2)-(3), the Port of Augusta is currently specialised in the transport of liquid and solid bulk).

However, as indicated in recitals (33) and (55) above, the estimated share of the Port of Augusta in the overall traffic of large containers in the Mediterranean Sea by 2025 is of approximately 2%. It is therefore very unlikely that the new transport capacity created with this project will allow the Port of Augusta to acquire a significant, let alone dominant, share in the relevant market. Moreover, as the Italian authorities underlined, it also needs to be taken into account that there is a recognised need to redress the balance between the capacities for large container traffic in the ports of the North of the EU and those existent in the South of the EU. It also seems unlikely that the Port of Augusta shall be able to redirect towards it the large container traffic from the competing Ports of Gioia Tauro, Genova and La Spezia, because these ports serve different routes than the ones on which the Port of Augusta shall operate. Moreover, as the Italian authorities explain, the EU ports from the Mediterranean are already subject to intense price competition from the ports on the Northern coast of Africa.

The above elements allow concluding 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. Conclusion

On the basis of the foregoing findings (see recitals (63)-(79) above), the Commission concludes that the aid totalling EUR 100,088,771 is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to the PAA and the other possible aid beneficiaries is not disproportionate, and the aid does not affect competition and intra-EU trade 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. **DECISION**

(81) The Commission has accordingly decided that the public financing totalling EUR 100.088.771 for the construction of the infrastructure at the Port of Augusta constitutes State aid within the meaning of Article 107(1) of the Treaty. The aid is however compatible with the Treaty under Article 107(3)(c) of the Treaty.

(82) 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.

(83) 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/eu_law/state_aids/state_aids_texts_en.htm](http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm).

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

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State aid Greffe  
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Yours faithfully,  
For the Commission

*Joaquin ALMUNIA*  
Vice-president of the Commission