Subject: State aid SA.36223 (2013/N) — Spain

Investment Aid to the Port of Santa Cruz of Tenerife

Sir,

1. PROCEDURE

(1) By SANI notification of 15 March 2013, Spain notified public support for a port infrastructure investment project at the Port of Santa Cruz de Tenerife. Additional information was provided by e-mail of 19 April 2013.

2. DESCRIPTION

2.1. The objective of the notified project

(2) The Port of Santa Cruz de Tenerife (hereinafter "the PSCT") is located on the North-Eastern coast of the island of Tenerife, within the perimeter of the city of Santa Cruz de Tenerife. The Canary Islands have the status of assisted region under Article 107(3)(a) of the Treaty during the period 2007-2013.¹


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(3) The PSCT provides both passenger and freight transport services, being the main sea entry/exit gate for the island of Tenerife. The PSCT currently holds in Santa Cruz de Tenerife two freight terminals, which in 2010 had a total traffic volume of 4.5 million tons (comprising solid bulk, liquid bulk, and freight not transported in containers) and respectively of 331 000 TEU (containers). The passenger traffic (cruise ships) in 2011 was of 536 000 persons.

(4) The objective of the investment project is the construction of a freight port section for the PSCT in Granadilla, on the South-Eastern coast of the island. This will allow principally to de-congest traffic in the city main port, but will also facilitate the import of liquid natural gas to the island (with the associated benefits of switching to a greener energetic model), and create for the local undertakings new commercial opportunities in Western Africa. The location of the freight section in Granadilla will allow synergy with the South Tenerife Airport and the industrial zone of Granadilla. With this investment project, the PSCT should attain by the year 2040 a traffic volume of 9.5 million tons of freight in general (including liquid bulk, solid bulk and merchandise not transported in containers), and respectively of 623 000 TEU.

2.2. Planned investments

(5) The project foresees the construction of:

- one container terminal, with a docking length of 650 m and a net surface of 26 hectares, and

- one polyvalent terminal (for bulk and general merchandise), with a docking length of 320 m and a total surface of 18.9 hectares.

(6) This involves the construction of an outer breakwater (dique exterior) and a counter-breakwater (contradique), and the filling of a total surface of 740 000 sqm. In particular, the new port section will have one surface of 11.9 hectares for logistic services, and another surface of 12 hectares for the installation of a gas plant. According to the information provided by the Spanish authorities, the planning of the project foresees adequate connections of the port section in Granadilla with the inland network, via two access points to the highway TF-1, which are currently used in relation to the nearby Industrial Poligon and are adequate to host the traffic of the new port section.

(7) The project has four main parts:

a) Works for 'sheltering' the harbour (obras de abrigo del puerto): protection and reinforcement of the Northern side of the quay and the external breakwater (dique exterior) – total cost EUR 128 million.

b) Counter-breakwater (contradique): works to protect the Southern side of the quay – total cost EUR 27.8 million.
c) Commercial areas, comprising: a) surfaces for storage of solid bulk and merchandise not transported in containers; b) one container terminal; c) an area for a gas plant; and d) an area for logistic services - total cost EUR 86.8 million.

d) Restoration of the near-by natural reserve Montaña Roja Phase 1 –see section 2.5 below- total cost EUR 0.6 million.

2.3. Financing of the investment project

(8) The total cost of the investment project is of EUR 243.8 million. Spain requested from the European Regional Development Fund (ERDF) a co-financing of EUR 67 million. The other EUR 176.8 million will be provided by PSCT on market terms, i.e. with a EUR 120 million syndicated loan from a group of Spanish banks, taken by the PSCT without any sort of state support, and with EUR 56.8 million from revenues obtained by PSCT from its commercial activities.

(9) The co-financing of EUR 67 million requested from the ERDF will be used exclusively to co-finance the first two parts of the project, i.e. works for sheltering the harbour (obras the abrigo) and the counter-breakwater (contradique), which cost in total EUR 155.8 million. The costs for the other two parts of the project, i.e. the construction of the commercial zones, and the costs that were already incurred for the restoration of the natural reserve of Montaña Roja Phase 1 (see section 2.5 below), are to be entirely and exclusively financed by the PSCT.

(10) The Spanish authorities provided a financial and economic cost/benefit analysis for this investment project, and an analysis based on the funding gap method. Over a reference period of 25 years, the project has a negative financial net present value (NPV) of – EUR 150.8 million and a financial rate of return of -1.58%. The funding gap ratio (FGR), calculated as the ratio between the financial NPV of the project (– EUR 150.8 million) and the discounted investment costs (EUR 203.9 million), is of 73.5%. This analysis indicates that the project is not financially sustainable without public support.

2.4. The beneficiary: the PSCT

(11) The infrastructures resulting from the project shall be property of the PSCT. PSCT is a public entity classified as 'State port of general interest' by the Spanish framework Law on State ports and the merchant navy (Ley de Puertos del Estado y de la Marina Mercante – hereinafter "LEPEYMM").

2 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.

3 Real Decreto Legislativo 2/2011, de 5 de septiembre, por el que se aprueba el Texto Refundido de la
Under Law No. 48/2003, which defines the economic regime and the services provided by the Spanish ports classified as 'ports of general interest' (puertos de interés general), the infrastructures and spaces within the perimeter of such ports are within the public domain, and shall be administered by the Port Authorities. Port operations, the services rendered, safety and coordination are within the attributions of the Port Authorities. According to the law, the latter may either provide port services themselves, or entrust them to operators/service providers. In this case, the PSCT shall rent the port infrastructures to distinct operators/port service providers on the basis of administrative concession contracts, as explained below.

The PSCT will divide the port surfaces into functional slots of different sizes, which shall be rented to various service providers - according to procedures established by the LEPEYMM, as explained in recitals (14)-(16) below. In essence, irrespective of the applicable administrative procedure leading to the conclusion of the rental/concession contract (see below), all service providers shall pay to the PSCT a pre-established rental fee (the procedure for the establishment of the individual rental fees is explained in recital (14) below), plus the applicable port charges, in function of their volume of activity. This system ensures that the PSCT will select the service providers who offer most volume of activity and are therefore likely to pay more port charges, thus optimising the utilisation of the port infrastructures.

Article 83 of the LEPEYMM establishes that the ports can rent directly functional areas with a surface below 2500 sqm, without a competitive procedure. However, the rental price shall be established on the basis of an expertise carried out in accordance with the criteria established in Article 175 of the LEPEYMM, i.e. by reference to rental prices of comparable surfaces with similar use, taking into account also factors such as the degree of urbanisation of the area, available connecting infrastructures, etc. Article 177 of the LEPEYMM requires that the results of such expertise be published and submitted for approval to the Spanish Ministry of Finance. The latter approves the expertise by Ministerial Order, published in the B.O.E. Functional areas above 2500 sqm shall be rented through open public tender or through a 'project competition' administrative procedure, as described below.

Based on Article 86 of the LEPEYMM, the PSCT must organise open public tenders (trámite de concurso) for the award of the administrative concession contracts in case of rental of surfaces which are destined to the provision of port services of general use, as well as for the rental of freight terminals, whenever there are various interested bidders. The tenders for the concession

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Ley de Puertos del Estado y de la Marina Mercante. Boletín Oficial del Estado (hereinafter "BOE"), núm. 253 de 20 de octubre de 2011, páginas 109456 a 109710. See Article 4 on ports of general interest, and Annex I to the Law, listing them.

4 Ley 48/2003, de 26 de noviembre, de régimen económico y de prestación de servicios de los puertos de interés general – BOE núm. 284 de 27 de noviembre de 2003, as modified by Ley 33/2010, de 5 de agosto, de modificación de la Ley 48/2003, de 26 de noviembre, de régimen económico y de prestación de servicios en los puertos de interés general – BOE núm. 121 del 7 de agosto de 2010.
contracts shall be organised in full respect of Spanish and EU public procurement law.5

Where Article 86 of the LEPEYMM is not applicable, the functional areas of over 2500 sqm shall be rented through a 'project competition' administrative procedure (trámite de competencia de proyectos), as required by Article 85 of the LEPEYMM. The 'project competition' administrative procedure means that, whenever the PSCT receives a request for the rental of a functional area within this category, it is obliged by law to open a competitive selection procedure. Any other interested parties shall be allowed one month to apply for the rental of the same surface. The rental price shall be the same for all candidates (i.e. the rental price established through the expertise), but the PSCT shall select the service provider to whom to rent the surface on the basis of the presented business plans. The PSCT shall select the service provider who offers a higher volume of activity, and consequently will pay more port charges.

2.5. Chronology of the project

The first viability studies for this investment project were made in 1998. On 14 May 2002, the government of the Canary Islands declared the project to be of priority interest. The initial investment plan was approved by the Spanish Ministry of Development by Ministerial Order of 13 March 2004. On 16 March 2004, Spain submitted an application to obtain co-financing from the Structural Funds for the investment project.6

Between 2003 and 2005, Spain carried out different evaluations on the environmental impact of the project in Granadilla. The main environmental issue at stake is that the construction of the port terminal in Granadilla will block the water current moving sand along the Eastern coast of the island, thus affecting the habitat of several submarine species. Because of the uniqueness of some of its species, the area had been classified to be of Community importance in Council Directive 92/43/EC on the conservation of natural habitats.7

Article 6(4)(2) of the above-mentioned Council Directive stipulates that, when "[...] in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory


6 Project no 2004-ES-166PT005.

measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."

(20) On 7 November 2005, Spain requested the Commission to issue a Decision on this project based on this Article. On 6 November 2006, the Commission adopted a Decision\(^8\) establishing that the Spanish authorities had demonstrated the overriding public interest justifying the project of Granadilla. The same Decision took into account the environmental compensatory measures that were proposed by Spain to offset the negative impact of the project, which included: a) the establishment of an independent foundation to guarantee the accomplishment of the compensatory measures, prior to the start of works on the project; b) the establishment of new under-water natural habitats to replace those of Montaña Roja and Sebadales del Sur; and c) restoration of the sand dunes zone of Montaña Roja.

(21) The independent foundation to supervise the implementation of the environmental compensatory measures (see point a) above) was established in April 2008.\(^9\) The works for the restoration of the sand dunes zone of Montaña Roja Phase 1 (see point c) above) were initiated in September 2007, and they were concluded in May 2008. The final project for the establishment of new under-water natural habitats to replace Montaña Roja and Sebadales del Sur (see point b) above) was approved by the Administration Council of the PSCT on 18 December 2012.

(22) During the period 2004-2008, the PSCT carried out public tenders for awarding the construction contracts for the external breakwater (dique exterior) and counter-breakwater (contradique). The construction works were started on 13 February 2009 for the external breakwater, and on 14 February 2009 for the counter-breakwater.

(23) On 23 February 2009, the Supreme Court of the Canary Islands (Tribunal Superior de Justicia de Canarias) suspended the application of an administrative order that was issued on 2 February 2009 by the Counsellor for Environment of the government of the Canary Islands, by which the latter had removed the species of Cymodocea nodosa from the catalogue of protected species under the local legislation.

(24) In light of the above-mentioned ruling of the Supreme Court of the Canary Island, the PSCT suspended temporarily the works for the construction of the external breakwater and counter-breakwater, as of 26 February 2009.


\(^{9}\) The foundation is entitled Fundación Observatorio Ambiental de Puerto de Granadilla.
On 20 March 2009, the Spanish authorities submitted an application for the co-financing from the Structural Funds of a technically-modified/updated version of the project, requesting co-financing of EUR 67 million for the works to shelter the harbour and the counter-breakwater (see recital (7)).

With the adoption of Law 4/2010, the species of *cymodocea nodosa* was declared species of interest for the eco-system of the Canary Islands. On 13 July 2010, the works for the external breakwater (*dique exterior*) and counter-breakwater (*contradique*) were re-started.

The General Secretariat for Environment of the Spanish Ministry for Environment approved the project by Resolution of 5 February 2003. This Resolution established a number of corrective measures that the PSCT would have to apply in order to mitigate the negative impact of the project on the environment. The Spanish authorities declare that these corrective measures, together with the compensatory measures established in the Commission Decision of 2006 (see recital (20) above), shall be respected during the implementation of the investment project. According to the Spanish authorities, although the project was successively modified after the date of the above-mentioned Resolution, it was not necessary to submit new documentation on the environmental impact of the project, as the modifications only involved a downsizing of the works initially foreseen. When the new port section becomes functional, the PSCT shall ensure that the applicable environmental rules are respected and the ‘polluter pays principle’ is adhered to - as stipulated in the LEPEYMM and in Law 48/2003 on ports of general interest (see recitals (11)-(12) above).

2.6. Competition context

According to the Spanish authorities, the new port infrastructures to be acquired by the PSCT shall not result in a substantial distortion of competition at European and international level.

This project shall add new capacities to the already existent ones in Spain and in the EU in terms of traffic of containers and merchandise not transported by container. As indicated in recital above, with this project, the PSCT should attain by the year 2040 a traffic volume of 9.5 million tons of freight in general (liquid bulk, solid bulk and merchandise not transported in containers), and respectively of 623 000 TEU.

The Spanish authorities estimated demand for the various types of freight transport to be hosted by the Granadilla section of the port (liquid bulk, solid

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10 Published in the B.O.E. of the Canary Islands of 9 June 2010.
11 Resolución de 5 de febrero de 2003, de la Secretaría general de Medio Ambiente, por la que se formula declaración de impacto ambiental sobre el proyecto “nuevo puerto en el litoral del polígono industrial de Granadilla. Fase I”, de la Autoridad Portuaria de Santa Cruz de Tenerife, BOE núm. 49 ofr 26.02.2003, p. 7776-.
12 The term ‘TEU’ stands for Twenty-Foot Equivalent Unit, which is a standardized measure of a ship’s cargo-carrying capacity. The dimensions of one TEU are equal to that of a standard 20’ shipping container. Large container ships can carry above 14 000 TEU.
bulk, containers and non-containerised merchandise) to establish that the new capacities added by this project shall meet realistic expectations of increase of the demand. The Spanish authorities consider that, given the geographical location of the Canary Islands, the PSCT is naturally placed on the North-South axis of the international traffic of containers. It is estimated that the opening of the Granadilla section of the port will increase the international container traffic of this port from 16 000 TEU/year in 2010 (a reference year of low demand due to the crisis) to 454 000 TEU as of 2024 onwards, to be followed by a yearly increase of 2% after 2024. The expected increase of container traffic at the Port of Santa Cruz de Tenerife is also due to the fact that ports in the Gibraltar area who also participate in the international traffic of containers on the North-South axis have a less privileged geographical position in this respect. The main international hub ports in the Gibraltar area are the ports of Algeciras, Tanger and to a lesser extent Malaga. The Portuguese Port of Sines may also opt for international container traffic on the route North-South, but is worse positioned geographically than the PSCT for the route Mediterranean – South America or Mediterranean-South Africa. The Port of Santa Cruz de Tenerife’s nearest direct competitor is the Port of Las Palmas, which ranks as the fifth largest Spanish port, with a container traffic of 1.45 million TEUs in 2007. Likewise to the Port of Santa Cruz de Tenerife, the Port of Las Palmas hosts both passenger and freight transport. The Spanish authorities underline, however, that the Port of Las Palmas’s freight capacity is currently largely reserved for one multinational shipping company, while other shipping companies have restricted access to its infrastructures. With this project, the Port of Santa Cruz de Tenerife should become an alternative for those shipping companies whose access to the Port of Las Palmas is limited.

2.7. Legal basis

(31) The legal basis for the ERDF grant of EUR 67 million to co-finance this project is Council Regulation 1084/2006.13

2.8. Form and duration of the aid

(32) As indicated in recital (8) above, the public funding for this project takes the form of a direct grant from the ERDF. The aid shall be disbursed until the end of the works for sheltering the harbour and constructing the counter-breakwater, which are scheduled to be concluded by end 2015.

2.9. Cumulation

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

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3. **ASSESSMENT**

3.1. **Existence of aid**

(34) 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.

(35) 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. Considering that the public support for this project is mainly benefitting PSCT, which according to Spanish law is a public entity (see recitals (11)-(12) above), it should also be examined whether the PSCT engages with this project in an economic activity and therefore qualifies as an undertaking for the purposes of the assessment of the public financing in support of this investment project.

(36) In the present case, the existence of state aid must be examined at the level of: the PSCT, who will administrate the public-owned infrastructures resulting from this project; the future port services providers - concessionaires of the infrastructures; and of the port business end-users (shipping and transport companies).

3.1.1. **Existence of aid at the level of the PSCT**

3.1.1.1. **Notion of undertaking**

(37) Pursuant to Spanish law applicable to ports of general interest (see recitals (11)-(12) above), the port authorities of ports classified as such are public entities established for the purpose of administrating the port infrastructures, which are public-owned. The port authorities may either provide themselves the port services, or rent the port infrastructure to other service providers on the basis of administrative concession contracts.

(38) According to established Court jurisprudence,\(^{14}\) whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of EU competition law. The Commission established in a series of decisions that the construction and exploitation of some types of infrastructure can be considered as being of an economic nature.\(^{15}\) In the wake of the *Leipzig-Halle* judgment,\(^{16}\)

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it is the future use of the infrastructure, i.e. whether the infrastructure shall be commercially exploited or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not.

(39) The notified project concerns the construction of port infrastructures that, as explained in recitals (12)-(16) above, shall be commercially-exploited by the PSCT through their rental/concession to service providers. In this context, the PSCT 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. State resources and imputability

(40) As indicated in recital (8)-(9) above, Spain requested an EU co-financing of EUR 67 million for this project. The EU resources (ERDF funds) that shall be made available for co-financing this project are placed at the disposal of the Spanish authorities, and therefore amount to State resources.

(41) As regards imputability to the State of the public financing, it is noted that the Spanish 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 Spanish State.

3.1.1.3. Selectivity

(42) As the public financing is granted specifically to the PSCT, the measure is selective.

3.1.1.4. Economic advantage

(43) In order to establish whether the public resources granted to the PSCT 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).

(44) The Commission therefore assessed 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*17 ("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

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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. The FRR is also notably low (see recital (10) above). Given the results of the financial analysis provided by the Spanish 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 Spanish authorities do not claim that the market investor test is met, it must be concluded that in this case the public funding is not given on terms that would have been acceptable to a private investor, and the measure therefore confers an economic advantage to the PSCT.

3.1.1.5. Distortion of competition and affectation of trade

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.18

As indicated in recitals (4) and (29) above, with this investment project the PSCT shall add new freight transport capacity on the market. In particular, by the year 2040 the PSCT shall attain a traffic volume of 9.5 million tons/year, implying more than the double of the freight traffic volume that this port had in 2010, and a container traffic volume of 623 000 TEU/year, which is also almost the double of the volume in 2010, of 331 000 TEU/year. The newly-created transport capacity shall affect both competition and intra-Union trade, because PSCT is, given its location, in direct competition with the Port of Las Palmas (on the island of Las Palmas), which also hosts merchandise and international container traffic (see recital (30) above), and at least potentially in competition with the ports of Algeciras (Spain), Sines (Portugal) and Malaga (Spain) for the international container traffic on the North-South axis (see recitals (30)-(30) above).

3.1.2. Existence of aid at the level of the contractors: constructors of the port infrastructures, future service providers

As indicated in recital (22), according to the information provided by the Spanish authorities, the PSCT concluded contracts for the execution of the works for the external breakwater (dique exterior) and for the counter-breakwater (contradique) on the basis of open and non-discriminatory public tenders, carried out over the period 2004-2008. In particular, the public tender for the award of the contract for the works to shelter the harbour area was concluded on 27 February 2007, and on 14 May 2007 a contract was concluded with the winning bidder, a consortium formed by FCC

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Construcción, Sato y Promotora Punta Larga, S.A. The contract for the construction of the counter-breakwater was also adjudicated following public tender concluded on 25 September 2008, to a consortium composed of Dragados S.A., Traysesa y Flota Proyectos Singulares S.A.

In addition, the contract for the restoration of the natural reserve Montaña Roja, which is one of the environmental compensatory measures that Spain undertook to carry out in relation to this project (see recitals (7) and (20)-(21) above), was awarded to Áridos Herrera S.L. on 6 June 2007, following open and non-discriminatory public tender. Similarly, the PSCT published on 23 May 2009 a call for open tender for the award of the contract for the execution of a sand by-pass in Granadilla - which is destined to mitigate the effects of the port works on the underwater current.

With respect to the rental of the infrastructures resulting from the project to service providers, as explained in recitals (13)-(16) above, the PSCT shall conclude administrative concession contracts on the basis of procedures regulated by the Spanish framework law on ports LEPEYMM. First, the PSCT shall organised open and non-discriminatory tenders for the rental of those port infrastructures which are destined to the provision of port services of general use, as well as for the rental of the freight terminal (Article 86 LEPEYMM). Secondly, functional areas over 2 500 sqm which do not fall into one of the categories for which the public tender is obligatory under Article 86 LEPEYMM shall nevertheless be rented following a 'project competition' administrative procedure, based on the criteria defined in Article 85 LEPEYMM. Thirdly, functional areas below 2 500 sqm shall be rented directly, but on the basis of rental price established though an expertise carried out according to criteria aimed at establishing the market value of these functional areas, as required by Article 83 LEPEYMM.

The above-described administrative contracting procedures shall observe transparency and non-discrimination criteria, and the economically-most-advantageous offers shall be chosen. Therefore, without the need to take a definitive view on the qualification of the measure as aid, these procedures will tend to minimise the economic advantage in favour of the future service providers (i.e. the advantage will be the minimum necessary to ensure the actual operation of the infrastructure).

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 port service providers 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

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20 See ftn. above.
21 OJ series S no. 103 of 29.05.2008.
22 See ftn no. 3.
to them and to also 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

(53) 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.

(54) 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.

(55) 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

(56) 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.

(57) 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.

23 See Commission Decisions on State aid cases Ventspils Port, Krievu Sala and Klaipeda, as cited in fn. 15 above.
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 lists the PSCT as one of the international connecting points.

The PSCT is geographically well-placed to play a role in the international freight traffic on the North-South axis. The Granadilla project also has several positive effects for the island of Tenerife. It will allow to de-congest the traffic at the current port facilities in the city of Santa Cruz de Tenerife, and will facilitate the import of natural gas to 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 indicates 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, Spain provided documentation to the effect that the environmental impact of this project has been assessed by the responsible Spanish authorities and was consulted with the Commission.

### 3.2.2. Necessity and proportionality of the aid

The project has a negative FNPV of – EUR 150.8 million, which shows that the net revenues to be derived over a period of 25 years do not remunerate the investment costs. The funding gap ratio (FGR) estimated for this project is of 73.5%. It is notable that, in spite of the very high negative present value (NPV) of the investment project and the relatively high FGR identified, the Spanish authorities requested public financing of EUR 67 million, which represents only 27.5% of the total investment costs. This was possible because the PSCT has borrowed on market terms the sum of EUR 120 million (see recital (8) above) for this project, and will also provide another EUR 56.8 million from own revenues. It is unlikely that the PSCT would have been able to finance entirely on its own the entire sum of EUR 243.8 million necessary for the 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.

With respect to the incentive effect of the aid, the Commission notes first that the works for this project were initiated after the application for aid. As noted in section 2.5 above, the Spanish authorities first applied for ERDF co-funding for this project in March 2004. The works for the construction of the external breakwater (dique externo) and counter-breakwater (contradique) started on 13-14 February 2009, were then temporarily suspended on 26 February 2009, and re-started in July 2010. The works for the restoration of the natural reserve

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27 See the recent Commission Decisions on port infrastructure projects cited in fn. 15 above.
in Montaña Roja that were carried out throughout the period September 2007 – May 2008 were entirely financed by the PSCT.

(64) Furthermore, the high negative NPV and the high FGR that were calculated for this project are indications that the project is not viable over a reference period of 25 years without public support. It should also be taken into account that the PSCT makes a notable effort to fund itself, without any kind of public support, EUR 176.8 million from the total cost of EUR 243.8 million of the project (see recital(8) above). It is therefore unlikely that the PSCT would be able to obtain the remaining EUR 67 million on the market. Indeed, the principle of incentive effect is that aid is necessary when it is unlikely that a given project could be carried out in its absence. The Commission considers that, in the light of the foregoing considerations, the aid is necessary for this project.

(65) As regards proportionality (i.e. keeping public funding down to the minimum necessary), it is first noted that the FGR identified for this project is of 73.5%. While an aid intensity of 73.5% would appear in principle to be relatively high – for instance, in the recent Ventspils and Krievu Sala port cases the aid intensity was at the level of 50%, and in Klaipeda at the level of 65% - it should nevertheless be underlined that the actual aid intensity in this case is of only 27.5% (i.e. the aid of EUR 67 million represents only 27.5% of the total cost of EUR 243.8 million), and therefore considerably below the estimated FGR of 73.5%. It is therefore concluded that the aid is limited to what is necessary in order to make the project feasible.

(66) In addition, the fact that the design and constructions works for the project were contracted following public, open and non-discriminatory tender (see recital (22) above) is also a good indication that the public financing shall be kept to the minimum necessary. It is also reminded in this context that the PSCT shall contribute EUR 176.8 million to the financing of this investment. In a similar way, the fact that the new infrastructure built with the project shall be rented to service providers based on public, open and non-discriminatory selection procedures (see recitals (13)-(16) above) shall also ensure that the PSCT shall maximise the return on this investment.

(67) Furthermore, the Commission has already observed in recitals (48)-(52) above that the procedures for the selection of the future service providers and of access to port services should ensure that any possible advantage to the service providers and to the end users will be limited to the minimum necessary to ensure the actual operation and use of the port infrastructures.

(68) In the light of the above, the Commission concludes that the aid is necessary and proportional.

28 See fn. 15 above.
29 See also fn. 15 above.
3.2.3. Distortion of competition and affectation of intra-EU trade

With this project, the PSCT acquires infrastructures allowing to notably increase its freight transport capacity: from 4.5 million tons/year of general freight in 2010 (liquid bulk, solid bulk and freight not transported in containers) to 9.5 million tons/year by 2040, and from 331 000 TEU (containers) in 2010 to 623 000 TEU/year by 2040.

Given its geographical position, the PSCT is naturally placed on the North-South axis of the international traffic of containers and on the routes Mediterranean to South America/South Africa. However, the Canary Islands are located at a non-negligible distance from continental Europe (to give just one example, 1295 km from Santa Cruz de Tenerife to Cadiz, on the Southern coast of Spain), which makes it more unlikely that the PSCT could compete for freight transport against other ports than the few indicated by the Spanish authorities as potential competitors of the PSCT: the ports of Sines (Portugal), Algeciras (Spain), Malaga (Spain) and Tanger (Morocco). As indicated in recital (30) above, the PSCT’s nearest direct competitor is the Port of Las Palmas, which ranks as the fifth largest Spanish port, with a container traffic of 1.45 million TEUs in 2007. However, given that the freight transport capacities of the Port of Las Palmas are largely utilised at present by one shipping company, with this project the PSCT is not only a competitor to the Port of Las Palmas, but also aims to become an alternative for shipping companies whose access to the Port of Las Palmas is limited.

At the same time, it must be taken into account that the Port of Santa Cruz de Tenerife is the main entry/exit gate by sea to the island of Tenerife, and that this project will allow the island to achieve important objectives, such as decongesting the traffic in the current city port, allowing the import of natural gas to the island, and facilitating the connectivity of the local entrepreneurs with markets outside the Canary islands.

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 (53)-(72) above), the Commission concludes that the aid totalling EUR 67 million is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to the PSCT 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**

(74) The Commission has accordingly decided that the public financing totalling EUR 67 for the works to shelter the harbour and for the construction of a counter-breakwater at the section in Granadilla of the Port of Santa Cruz de Tenerife 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.

(75) 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.

(76) 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:

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Yours faithfully,  
For the Commission

Joaquin ALMUNIA  
Vice-president