



EUROPEAN COMMISSION

Brussels, 21.8.2015
C(2015) 5803 final

**Subject: State aid SA. 39177(2015/N) — Hungary
The Intermodal Development of the Port of Baja**

PUBLIC VERSION

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Sir,

1. PROCEDURE

- (1) Following pre-notification contacts, Hungary notified on 22 January 2015 public support to an infrastructure investment project at the Port of Baja ("the Port"). Requests for information were sent on 12 March 2015, 13 May 2015, 10 June 2015 and 27 July 2015, to which the replies were received on 18 March 2015, 22 June 2015 and 3 August 2015.
- (2) On 22 January 2015, the Hungarian authorities also agreed that the present decision would be adopted, notified and published in the English language.

2. DESCRIPTION

2.1. The objective of the notified measure

- (3) The objective of the notified measure is mainly to upgrade several parts of the run-down and damaged infrastructure of the Port of Baja (the Port). The project will mainly ensure that the existing traffic can be served also in the future. The notified measure shall also encourage a modal shift from road to other more environmentally-friendly means of transport, such as inland waterway transport, by

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means of improving the intermodal capacity of the Port. This will also improve the accessibility of the region.

- (4) The measure contributes to the improvement of the Trans-European networks. The Port is situated on the TEN-T traffic corridor VII. The planned port development project is part of the Hungarian Transport Operational program (TOP) which aims to support competitiveness and the improvement of environmental sustainability. According to the Hungarian authorities, this positive impact has been demonstrated by a joint research carried out with several other ports and different market players in the framework of the GIFT project of the South East Europe Programme.¹

2.2. Planned investments

- (5) The Port of Baja is a freight port, located on land owned jointly by the Hungarian State, by the Municipality of Baja and ATI DEPO Plc (a private logistics company). The ownership rights of the Hungarian State are exercised by the Hungarian National Asset Management Inc. ("MNV"). The Lower-Danube-Valley Water Directorate (a central governmental body under the guidance of the Ministry of Interior) is responsible for the management of these State assets.
- (6) The Port is currently managed by the Baja Public Port Ltd ("BPP"), a company established by the Port owners, i.e. by MNV, the Municipality of Baja and ATI DEPO Plc. When BPP realises profit, a dividend is not paid to its shareholders as any profit has to be used for the development of the Port.
- (7) The planned developments concern road, rail and waterside infrastructural developments and consist of the following parts:
 - the reconstruction of the existing road pavement in Gránátos street, and the construction of a new road (IV. Károly road), including a parking lot. All roads concerned will be open for the general public, free of charge.
 - the reconstruction of the existing rail tracks and the extension through new rail tracks and the installation of loading equipment. The existing rail tracks are owned by the Hungarian State via MNV and via the Hungarian State Railways (MÁV Zrt.). The existing rail tracks are operated by MÁV Zrt, the national rail manager. The new tracks will be publicly owned, however not operated by MÁV Zrt. For all the port rail tracks not operated by MÁV Zrt and for the loading equipment, the future operators will be selected through a public, open and non-discriminatory tender.
 - stability works at the river wall including the construction of a new berth for heavy goods loading. Apart from this berth, the works will not bring any benefit to the current tenants as the loading capacity will remain at the same level as prior to the investment and the berths will continue receiving barges of the same size. The works are in fact intended to make the infrastructure adequate for its use under the current rental agreements. The operator of the new berth for heavy goods will be selected through a public, open and non-discriminatory tender.

¹ <http://www.gift-project.eu/index.php/en/>

- the development of a waste acceptance point ("Green Terminal"). The operator of the new terminal will be selected through a public, open and non-discriminatory tender.

(8) The breakdown of the costs of the project is presented in the table below:

Project Elements	Total costs (millions EUR)
Reconstruction and extension of the railway tracks	6.100
Roadwork	0.631
Restoration of the stability of the river wall	1.491
Block paving	0.176
Construction of a berth for heavy goods loading	0.407
Construction of a vertical river wall	0.474
Development of a Green Terminal	0.085
Railway planning	1.169
Engineering services	0.678
Tendering	0.102
Project management	0.441
Project communication	0.023
Contingency	0.445
Total net investment costs	12.220

Table 1: Total investment costs

2.3. The beneficiaries: the Baja Public Port (BPP) and the Lower Danube Valley Water Directorate

- (9) The planned infrastructure will be built on land owned by the Hungarian State and the Municipality of Baja. Hungary confirmed that no infrastructures built or developed in the context of this project will be owned by private entities.
- (10) Currently the role of the port manager is entrusted by the owners to BPP, a company owned by MNV, the local municipality, and ATI DEPO Plc. BPP is responsible for the operation and management of port activities, the maintenance of the facilities in place and for the further port developments. BPP pays a yearly rental fee for the use of State land and State assets to the Lower-Danube-Valley Water Directorate.
- (11) The Hungarian authorities explained that the BPP will be responsible for the management of the Port and will receive revenues resulting from the planned infrastructure investment (from port operators and users), as can be seen from the chart below:

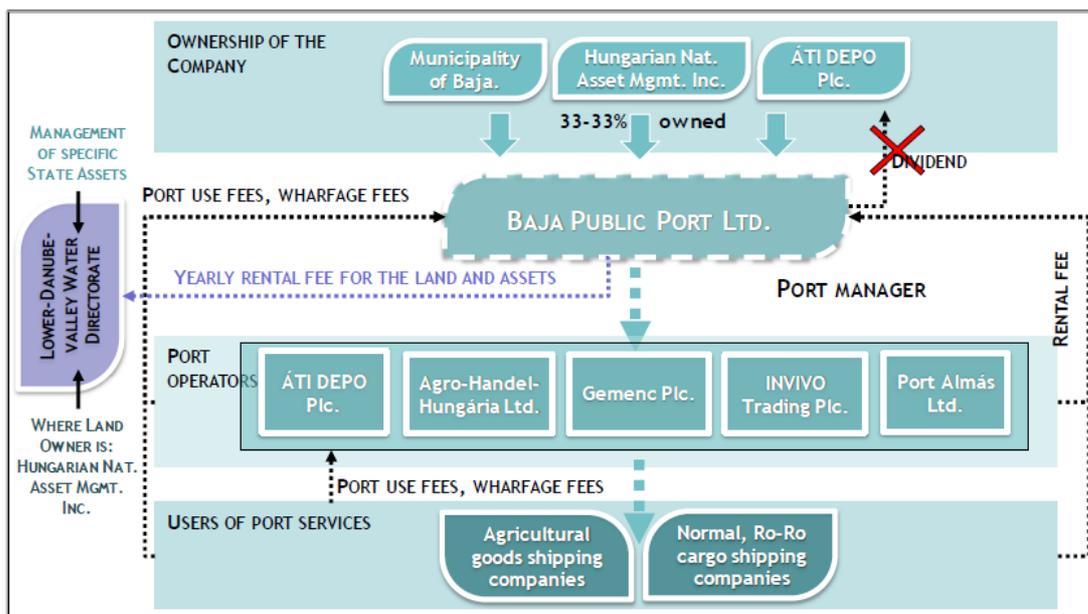


Figure 1: Main financial flows of the Port

- (12) Several operators currently operate in the Port on the areas affected by the investment. Their contracts will expire in the course of the next years. The Hungarian authorities explained that as regards the stability works on the river wall, such works are intended to ensure that the damaged infrastructure remain adequate for its use pursuant to the existing rental agreements with the operators. The current operators will still use the rented infrastructure until the expiry of their contracts. On the other hand, future operators of the new berth for heavy goods and of the upgraded Green Terminal shall be selected through open and non-discriminatory procedures.
- (13) Finally, the Hungarian authorities have confirmed that final users shall have open access to the Port infrastructure on a non-discriminatory basis.

2.4. Financing of the investments

- (14) The total cost of the investments is EUR 12 220 000. Public financing of EUR 11 607 000 will be provided from the Cohesion Fund (EUR 9 866 000), and from national funds (EUR 1 741 000). The remaining EUR 612 000 will be funded on market terms by BPP from its own resources (e.g. annual net profit and accumulated retained earnings obtained from the performance of economic activities and, if needed, from the advance payment of rental fees obtained from port operators).
- (15) The Hungarian authorities provided a funding gap analysis showing the difference between the discounted value of the expected discounted net revenue of the investment accruing to BPP and Lower Danube Valley Water Directorate on a consolidated basis and the discounted investment costs of the project during 30 years. The project has a negative financial net present value (NPV) of EUR 11 607 000. The negative NPV indicates that the project is not financially sustainable without public support.
- (16) As regards the revenues of BPP, the Hungarian authorities indicated the following main categories linked to the project: (a) port use fees paid directly to BPP

regarding the areas not currently rented, (b) port use fees paid indirectly to BPP (via port operators who rent port areas), (c) revenues from wharfage use fees (paid indirectly to BPP), (d) revenues from the rental of a port area (€/sqm) to port operators, (e) revenues from the services of the Green Terminal, (f) other revenues (rental of warehouses, rental of equipment, rental of offices, revenues from storage).

- (17) According to the Hungarian authorities the fees of the Port are close to fees applied in similar Hungarian Danube ports (*i.e.* Győr-Gyönyű, Budapest and Dunaújváros). Hungary confirmed that the estimated revenues have been calculated on the basis of market assessments by taking into account the highest possible fee levels which would not jeopardize the objective to increase inland waterway transport.
- (18) The Hungarian authorities have calculated that, to generate sufficient revenues to make the project commercially viable without public funding, all fees would have to be increased by more than 410%. With such an increase of the fees, the Port would not attract any business and the aimed objective of common interest would not be achieved.

2.5. Competition context

- (19) The Port is located on the left bank of the Danube river in the South of Hungary, close to the borders with Croatia and Serbia. Today, there are 10 docks operating in the Port performing cargo loading, RO-RO loading, outdoor and indoor storage and other port services.² Although in comparison with other Hungarian ports, the Port of Baja is among the major players, its annual freight volume (in the recent 10 years oscillating between 500 000 and nearly 800 000 tons) makes it a moderate player among European and even Central European ports.
- (20) According to the Hungarian authorities, the development of the Port shall not result in a substantial distortion of competition at Union or international level. The Hungarian authorities claim that inland ports rather compete with other modes of transport, mainly road and to a lesser extent with rail. That is why modal shift is possible.
- (21) The Hungarian authorities estimate an increase in the transshipment volume of the Port, primarily concerning agricultural products (*i.e.* cereals and corn) but also other cargo groups (like ores, coal, coke, stone and sand). The estimated growth of intermodal traffic of goods arriving at the Port (intermodal goods traffic) shall be high in the first year after the implementation of the project and moderate in the years that follow. In total, the transshipment volume shall grow from a current 613 thousand tonnes (data for 2014) to 698 thousand tonnes in 2025 (a 14 % increase over 12 years). In the Business As Usual scenario, the transshipment volume in 2025 would reach a lower level, *i.e.* 628 thousand tonnes.
- (22) Based on 2013 statistics provided by the Hungarian authorities, the share of waterway transport as part of overall transport of goods in Hungary is only 3 %, while road and rail transport constitute respectively 75 % and 22 %. According to the demand analysis performed by the Hungarian authorities, the cargo growth of

² See: <http://www.danubeports.info/index.php?id=1280>.

65 000 tons for 2025 in Baja is expected to be drawn primarily from road transport. This volume growth represents 0.038 % of the total road transport volume of Hungary (or alternatively 0.132 % of the total rail freight volume). The planned 65 000 tons of growth is 1.253 % of the total transshipment volume of Hungary as regards waterborne transport (without transit).

- (23) The Hungarian authorities provided an assessment of the impact of the planned project on the potentially competing ports in the vicinity of the Port. The assessment takes into account a port's specialisation in certain types of traffic, their location on the West or on the East side of the Danube, and the presence of necessary infrastructure to cross the river (e.g. conditions of roads and bridges). Hungary explained that competition between inland ports depends, among other things, on the shipping distance (also by alternative modes of transport) which allows for reaching the area served by a port (the so called hinterland or catchment area) and also on the kind of goods concerned.
- (24) According to the assessment conducted by the Hungarian authorities, approximately 60 kilometres is the maximum radius within which it is still competitive to choose a port and waterway transport over other modes of transport and other ports assuming the existence of appropriate port infrastructure. In case of special products which require more specific infrastructures and handling and transporting equipment, this distance is even shorter and investments would be needed to make the port suitable for other special products. According to the Hungarian authorities, the catchment area of the Port of Baja is much smaller, namely approximately 20-30 kilometres, which is the maximum radius within which it is still competitive to choose the Port and waterway transport over other modes of transport and over other ports.³ In fact, as explained by Hungary in case SA.41275 (2015/N) - Hungary - Development of the Mohács Port,⁴ the catchment area of the Port of Baja typically covers the South Great Plain region (East to the river Danube). Although the South Trans-danubian region, in particular Baranya and Tolna counties, are geographically close to the Port of Baja, two main difficulties prevent the Port of Baja from expanding its activity to that area, which is located on the West side of the Danube. Firstly, the Gemenc Landscape Protection Areas, which is located on the West side of the river Danube at Baja, does not allow for environmental reasons a significant number of heavy trucks crossing the Danube, despite the presence of a bridge. In addition, the capacity of the Alsónyék – Pörböly section of Road no. 55 is too limited to allow the transport of significant volumes of freight traffic.
- (25) According to the Hungarian authorities, there are no other ports in such close vicinity to the Port of Baja. The closest ports in Hungary are located in the area of Mohács within 60 kilometres (i.e. the public port of Mohács and the following four private ports: 1) Agrograin port, 2) Bólyi Mezőgazdasági Termelő és Kereskedelmi Zrt's port, 3) Kreatív Stúdió Ltd's port, and 4) Margittasziget 92 Ltd's (AGROPTIM) port),⁵ the port of Paks located within 75 kilometres and the port of Dunaújváros located within 120 kilometres from Baja. In Croatia, the port of Osijek is located within 115 kilometres of the Port.

³ Based on a recent survey of the INWAP0 project: <http://www.inwapo-project.eu/> .

⁴ See Commission Decision of 18 August 2015 in case SA.41275 (2015/N) - Hungary - Development of the Mohács Port, not yet published, recitals 26 and 27;

⁵ See footnote 4.

- (26) According to the Hungarian authorities, those Hungarian ports do not compete with the Port of Baja, since they are located too far from Baja. Although most of them currently handle agricultural products, which represent the majority of the traffic of the Port of Baja, the relatively small catchment area (20-30 kilometres) makes the competition between those ports very limited. As regards competition with the Port of Mohács, the Hungarian authorities explained that the Port of Baja will continue to focus on agricultural and associated food-processing products, while Mohács is likely to concentrate on manufacturing, energy and construction industry. As regards the other private ports located in the area of Mohács, for three of them located on the West side of the river Danube (the Agrograin port, the port of Bólyi, and the Kreatív Stúdió Ltd's port) the relevant catchment areas do not overlap due to the presence of the Gemenc Landscape Protection Areas and limited capacity of the Alsónyék – Pörböly section of Road no. 55. In addition, apart from the port of Bólyi, the other private ports are dedicated to their own production of agricultural products and do not provide services to third parties. For this reason, the Hungarian authorities also exclude any competition between the port of Baja and the AGROPTIM port, although they are located on the same (East) side of the river Danube.
- (27) The Hungarian authorities explained also that the Port of Osijek in Croatia is not in competition with Port because it is located on a different river (Drava) and due to the specific channel capacity of the border crossing between Croatia and Hungary, which effectively isolates the catchment areas of the two ports.
- (28) Finally, Hungary has confirmed that the infrastructure shall be accessible to all final users on the basis of fee levels that will be close to fees applied in similar Hungarian Danube ports.

2.6. Legal basis

- (29) The legal basis for the public funding is the Hungarian Transport Operational Programme,⁶ *i.e.* a decree which allows the national managing authority to spend public funds on selected projects.

2.7. Form and duration of the aid

- (30) The public funding for this project takes the form of a direct grant from the Cohesion Fund and from the national budget.

3. ASSESSMENT

3.1. Existence of aid

- (31) Article 107(1) of the Treaty on the Functioning of the European Union (“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.

⁶ <http://www.nfu.hu/doc/356>

- (32) 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 on intra-EU trade.
- (33) In the present case, the presence of State aid is examined at the level of the owner/manager of the infrastructure, namely BPP and the Lower Danube Valley Water Directorate and at the level of the operators.
- 3.1.1. Existence of aid to the owners/manager
- 3.1.1.1. *Notion of undertaking*
- (34) As indicated in recitals (5) and (6) above, the Lower Danube Valley Water Directorate manages the assets of the Port and BPP is entrusted with the management of the infrastructure.
- (35) According to the case-law of the Court of Justice of the European Union ("CJEU"),⁷ whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of Union law.
- (36) The Commission established in a series of decisions that the construction and exploitation of inland ports and intermodal platforms can be considered as being of an economic nature.⁸ In light of the Leipzig-Halle judgment,⁹ it is the future use of that infrastructure, *i.e.* whether the infrastructure is commercially exploited or not, which determines whether funding for the construction of infrastructure falls within the scope of the State aid rules.
- (37) The notified measure concerns funding for the development of road, rail and waterway infrastructure that will be built on land owned by the Hungarian State and the Municipality of Baja. The State exercises the ownership rights through MNV, whereas the Lower-Danube-Valley Water Directorate manages those State assets.

⁷ See e.g. judgment in *Hofner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; judgment in *Poucet and Pistre v. AGF and Cancava*, C-160/91, EU:C:1993:63, paragraph 17; judgment in *Commission v. Italy*, C-35/96, EU:C:1998:303

⁸ See e.g. Commission Decision of 20 November 2011 in case SA.33434 (2011/N) - *France – Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre*, OJ C 23 of 23.2.2012, p. 3; Commission decision of 15 June 2011 in SA.32224 – *Pay Bas – Development of the Alblaserdam Container Transferium*, OJ C 215 of 21.7.2011, p. 22; Commission Decision of 18 December 2013 in case SA.37402 (2013/N) – *Hungary – Port of Budapest*, OJ C 141 of 9.5.2014.

⁹ Judgment of 24 March 2011, *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission*, T-455/08, and *Feistaat Sachsen and Land Sachsen Anhalt v. Commission*, T-443/08, EU:T:2011:117, confirmed by the Court of Justice, judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, C-288/11 P, EU:C:2012:821; see also judgment of 12 December 2000, *Aéroports de Paris v. Commission*, T-128/89, EU:T:2000:290, confirmed by the Court of Justice, C-82/01P, EU:C:2002:617; judgment of 17 December 2008, *Ryanair v. Commission*, T-196/04, EU:T:2008:585, paragraph 88.

(38) The infrastructure will be managed by the Lower-Danube-Valley Water Directorate and BPP. The existence of a market for the management of inland ports is proved by the fact that the Port is in competition with other ports on the Danube (see recitals (21) to (25) above). The infrastructure will be commercially exploited by the Lower-Danube-Valley Water Directorate by charging a rent to BPP and by BPP by demanding fees for its use. Those fees will constitute the main source of income for the purposes of financing the planned development, which will allow BPP to increase the capacity of the Port and to extend its business of managing the Port. In this capacity, BPP and the Lower-Danube-Valley Directorate will engage in an economic activity, so that they can be considered to be undertakings under Article 107(1) TFEU.

3.1.1.2. Economic vs. non-economic infrastructures

(39) Hungary notified all the expenses for this investment project as an economic activity.

(40) According to the case-law, activities that normally fall under State responsibility in the exercise of its powers as a public authority are not of an economic nature and do not fall within the scope of the State aid rules.¹⁰ This may concern expenses for performing tasks of ensuring security, safety, police services,¹¹ or anti-pollution surveillance in ports¹² – insofar as they are not an intrinsic part of a project with a commercial end. The financing of such activities has to be limited to the costs to which they give rise and may not be used instead to fund other activities.

(41) Moreover, public funding of general infrastructure that is not meant to be commercially exploited, such as public roads, bridges or canals, is in principle excluded from the application of the State aid rules, provided it is made available for public use without consideration.

(42) In the case at hand, Hungary has explained that the public roads will not be used for economic purposes and do not constitute dedicated infrastructure, since they will be open for free to all citizens and their access will not be restricted only to port users. The roads financed by the project will remain part of the public road network of Baja, whose maintenance is the responsibility of the Municipality of Baja. The provision of public roads for the general public by local authorities with the use of public funds is not an economic activity, but part of that authority's public tasks. In fact, the road network will not be used economically as BPP will not demand fees for its use, nor will its use be restricted solely to BPP or the Port operators.

(43) The Court of Justice has further clarified that it is not sufficient for a project to be essential, linked, or a pre-condition for the economic activities performed by an undertaking in order to establish the economic nature of a given activity of

¹⁰ See judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, C-288/11 P, EU:C:2012:821, paragraph 42.

¹¹ Commission Decision N309/2002 of 19 March 2003 on *Aviation security - compensation for costs incurred following the attacks of 11 September 2001*.

¹² See judgment in *Diego Cali & Figli*, C-343/95, EU:C:1997:160, paragraphs 22 and 23.

infrastructure construction.¹³ The fact that the road development is linked to other parts of the project does not as such change the nature of the activity, which falls within the scope of public tasks.

- (44) In light of the above, funding for the improvement of the public road network does not amount to State aid within the meaning of Article 107(1) TFEU.

3.1.1.3. State resources and imputability

- (45) As indicated in recital (14) above, the measure will be financed from resources available to Hungary: EUR 11 607 000, of which EUR 9 866 000 will be provided from the Cohesion Fund and EUR 1 741 000 from national funds. Since the public financing received for the project is at the disposal of the Hungarian state, the measure is financed through State resources.

- (46) As regards the imputability of the financing to the State, the Hungarian authorities enjoy a high degree of decision-making powers in the selection of subsidised projects. Since the notified project is directly chosen by the Hungarian authorities, the aid is therefore imputable to the Hungarian State.

3.1.1.4. Selectivity

- (47) As the public financing is granted specifically to BPP, the measure is selective.

3.1.1.5. Economic advantage

- (48) The public financing to be provided for the notified project clearly confers an economic advantage to the beneficiary, because the measure covers the investment costs that it would otherwise have to bear to carry out the project.

- (49) The public funding will be provided through grants. A grant is a non-refundable financial instrument which bears no financing cost. At market terms, no such financing instrument in the form of a grant would be available to the beneficiary.

- (50) Therefore, the public funding for the notified measure confers an economic advantage on the beneficiary.

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

- (51) According to the case-law, when financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and a potential distortion of competition.¹⁴

- (52) The Port is at least potentially in competition with similar ports and intermodal platforms in Hungary and Croatia, such as the public Port of Mohacs, the other four private ports located in Mohacs, and the ports of Paks, Dunaújváros and Osijek.

¹³ See judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, EU:C:2012:821, paragraph 47.

¹⁴ 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.

- (53) Therefore, the public financing of the notified project is capable of distorting competition and affecting trade between Member States.
- (54) As regards the reconstruction of the existing rail tracks, the Commission notes that as long as rail tracks: (i) are part of the national railway network, (ii) are and will be managed by the national rail manager (MAV), which engages in no other economic activities besides the management of the national rail infrastructure, and (iii) will be open to all rail undertakings under non-discriminatory conditions, public support for the construction of this part of the rail infrastructure does not distort competition nor affect intra-EU trade and thus does not constitute State aid within the meaning of Article 107(1) TFEU, given the absence of competition between infrastructure managers.¹⁵

3.1.2. Existence of aid to the operators

- (55) After the renovations of the river wall, current operators will continue to use the rented infrastructure until the expiry of their contracts. The foreseen works are in fact intended to make the infrastructure adequate for its use under the current rental agreements. Those operators will not obtain any substantial benefit since at the completion of the works the loading capacity of the area will remain the same and the berths will receive barges of the same size as prior to the investment. On the other hand, the Hungarian authorities have confirmed that the strengthening of the section of the berth for heavy goods will change the functional use of that part of the infrastructure. Therefore, for the operation of the new berth for heavy goods, as well as for the operation of the new Green Terminal, public, open, and non-discriminatory tenders will be organised. The award criteria will be transparent and non-discriminatory, and will ensure that the economically-most-advantageous offers shall be chosen.
- (56) As regards the new rail tracks and the equipment, the Hungarian authorities also confirmed that the future operator of all sections within the port that are not operated by MAV will be chosen on the basis of public, open and non-conditional tenders.
- (57) The Hungarian authorities have undertaken to ensure that the tender procedures used to select future operators of the port infrastructure to be built result in concession fees in line with market prices. In particular, the Hungarian authorities will cross-check the fees resulting from such tenders and conduct a comparative analysis with fees paid for similar concession contracts in similar Hungarian Danube ports.
- (58) Therefore, as any economic advantage at the level of future operators and lessees can be excluded, the future operators and lessees will not receive State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid measure

- (59) The Hungarian authorities fulfilled their obligation, in accordance with Article 108(3) TFEU, to notify the aid before putting it into effect. The aid shall only be granted after an approval by the Commission.

¹⁵ Commission Decision C(2002)2622fin in case N 356/2002-*UK-Network Rail*, OJ 2002, C 232.

3.3. Compatibility of the aid

(60) The Commission has, in its constant decisional practice,¹⁶ considered that investment aid for inland ports is compatible with the internal market on the basis of Article 93 TFEU if it contributes to an objective of common interest, is necessary and proportionate, the access to the infrastructure in question is open to all users on a non-discriminatory basis, and the aid does not lead to distortions of competition contrary to the common interest.¹⁷

3.3.1. Objective of common interest

(61) The Union pursues a policy of achieving a balanced combined transport system and aims to achieve a modal shift from road freight to other modes of transport. Improving the position of intermodal transport vis-à-vis road usage is part of this policy.

(62) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*,¹⁸ the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system within the Union. The same Communication acknowledges the importance of the shift towards more environmental-friendly modes of transport.

(63) Moreover, the development of inland navigation and its integration into multi-modal transport is a major objective of EU transport policy. EU legal instruments such as Council Directive 92/106/EC of 7 December 1992¹⁹ on the establishment of common rules for the combined transport of goods between the Member States, are explicitly targeted at reinforcing transport intermodality. The White Paper on Transport Policy²⁰ also encourages the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport. In its Communication on the promotion of inland waterway transport “NAIADES II”, the

¹⁶ Commission Decision of 17 October 2012 in case SA.34501, Germany – *Extension of the inland port of Königs Wusterhausen/Wildau*, OJ C176 of 21.06.2013, p. 1, Commission Decision of 18 December 2013 in case SA.37402 (2013/N) – *Hungary – Port of Budapest*, OJ C 141 of 9.5.2014., Commission Decision of 1 October 2014 in State Aid case no. SA.38478 (2014/N) – *Hungary – Development of the Győr-Gönyű National Public Port*, OJ C 418 of 21.11.2014, p. 1.

¹⁷ The Commission has previously assessed investment aid to intermodal projects on the basis of Article 93 TFEU directly and, following the CJEU ruling in the *Altmark* case, which precluded the direct application of Article 93 TFEU, on the basis of Article 107(3)(c) TFEU for intermodal terminals. Since the entry into force of Regulation (EC) No 1370/2007, Article 93 TFEU has become directly applicable as the legal basis for establishing the compatibility of aid for land transport not covered by that regulation and, in particular, of aid for the coordination of transport.

¹⁸ COM(2009) 279/4, paragraph 46.

¹⁹ OJ L 368 of 17.12.1992, p. 38.

²⁰ COM (2011) 144 of 28.3.2011.

Commission stated that “[t]he EU’s inland waterway infrastructure is insufficiently interconnected and integrated with other modes of transport”.²¹

- (64) The Hungarian authorities estimate that the project will ensure that the existing levels of inland waterway traffic will remain stable and will not decrease. Furthermore, the conditions for an increased modal shift from road and rail to inland waterway transport are also put in place. The cargo growth of 65 000 tons for 2025 in the Port is expected to be drawn primarily from road transport. It therefore follows that the project pursues the objective of achieving a modal shift from road transport to more environmentally friendly modes of transport, which is an objective of common interest.
- (65) Finally, the need to accelerate investments in environmentally-friendly transport-modes is a part of the Trans-European Networks (TENs). The TEN-T Regulation,²² includes the Port in the EU comprehensive network to be set in place by 2050.
- (66) In light of the above considerations, the notified project contributes to attaining the objective of common EU interest of ensuring modal shift from road to waterways and rail.

3.3.2. Necessity and proportionality of the aid

- (67) As regards the necessity and the incentive effect of the aid, the negative NPV (Funding Gap) of – EUR 11 607 000 over a reference period of 30 years shows that the expected net revenues in the project scenario do not remunerate the investment costs of EUR 12 220 000. That calculation appears reasonable since, as explained in recitals (17) and (18), the Hungarian authorities have based the calculations of the estimated revenues of the project on market assessments and have taken into account the highest possible fee levels. The negative NPV indicates that the project would not be carried out without public support. It is unlikely that BPP would be able to obtain this amount on the market on a commercial basis. Therefore, the Commission considers that the requested aid is necessary for this project and has an incentive effect.
- (68) As regards the proportionality of the aid in the present case, BPP shall contribute EUR 612 253 at market terms to the financing of the project, while EUR 11 607 000 of the funding will come from public sources. The aid intensity is therefore 95 %. The Commission has on a number of occasions considered that intermodal platform infrastructure projects require considerable capital investments that can only be recovered in the very long term and that their economic viability may not normally be ensured without public funding.²³ As a general rule, however,

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards quality inland waterway transport NAIADES II", COM/2013/0623 final

²² See Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU.

²³ See e.g. Commission Decision of 17 July 2013 - Slovakia - on *Construction and operation of public intermodal transport terminals* (Case SA.34369), in OJ 2014 L238/11; Commission Decision of 11 June 2013 – Germany - on *Extension of inland port Königs Wusterhausen / Wildau* (Case SA.34501), in OJ 2013 C176/1; Commission Decision of 20 December 2011 – France - on *Aid to the financing of*

the total public financing, including both national and EU public funds, may not exceed the funding gap of the project. Limiting the total public funding to the identified funding gap is a means of ensuring that the State aid given for such projects is limited to what is strictly necessary to achieve the common interest objective of the financed project.

- (69) The public funding provided for the project (*i.e.* EUR 11 607 000) does not exceed the funding gap identified for the project. Therefore, the aid is limited to the minimum necessary to make the project feasible and achieve the objective of common interest of ensuring a modal shift.
- (70) In light of the above, the aid is necessary and proportionate.

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

- (71) As noted in recital (28) above, access to all Port infrastructures affected by the project will be provided to all end-users on an open and non-discriminatory basis.

3.3.4. No distortion of competition contrary to the common interest

- (72) As argued by the Hungarian authorities, inland ports compete with other modes of transport, mainly road and to a lesser extent with rail once the required infrastructure is available. That is also why a modal shift from road and rail is possible (see recital (63) above).
- (73) As a result of the investment, the expected cargo volume in the Port will reach 698 thousand tonnes in 2025 (from the current 613 thousand tonnes in 2014). This is a relatively minor increase of 13.8 % over 12 years and it will not change the market position of the Port (see recital (18)).
- (74) It is unlikely that the project will have a negative impact on other ports namely those located in the area of Mohács, and the ports in Paks, Dunaújváros and Osijek, due to the very small catchment area of the port of Baja and the fact that they are all located outside that catchment area (see recitals from (26) to (26) above). In any event, as regards the closest ports to Baja, such as those located in the area of Mohács, the Commission notes that the public Port of Mohács will concentrate on manufacturing, energy and construction industry. The reconversion of inland ports' infrastructure and equipment to handle different types of goods normally requires additional investments (e.g. from agricultural products to containers and vice versa). As a consequence, supply side substitutability can be excluded. As regards the other four private ports, the Commission notes that three of them are dedicated to their operators' agricultural production and do not offer shipping services to third parties. Finally, since the port of Bólyi is located on the opposite (West) side of the river Danube, the catchment areas of the two ports do not overlap due to the

a multimodal dock in the maritime port of Le Havre (Case SA.33434), in OJ 2012 C 53/1; Commission Decision of 23 November 2011 on Funding transshipment facilities for intermodal transport – Germany (Case SA.33486), in OJ 2013 C 306/4; Commission Decision of 1 October 2014 in State Aid case no. SA.38478 (2014/N) – Hungary – *Development of the Győr-Gönyű National Public Port*, OJ C 418 of 21.11.2014, p. 1.

presence of the Gemenc Landscape Protection Areas and limited capacity of the Alsónyék – Pörböly section of Road no. 55.

- (75) In addition, the demand analysis performed by the Hungarian authorities shows that the increase in volume of transhipped goods in the Port of Baja will be shifted primarily from roads (see recital (22) above). In other words, without the project this volume would be transported on roads.
- (76) As already noted, the Hungarian authorities confirmed that the Port will charge fees close to fees applied in similar Hungarian Danube ports, namely the Port of Győr-Gyönyű, Budapest and Dunaújváros.
- (77) In light of these elements, the Commission concludes that the aid for this project does not distort competition to an extent that would be contrary to the common interest.

3.4. Conclusion

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

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union.

The Commission notes that Hungary has agreed that the present decision is adopted, notified and published in the English language.

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 electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
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