



Brussels, 19.8.2016
C(2016) 5450 final

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**Subject: State Aid SA.45849 (2016/N) – Germany
Ferry port Sassnitz - breakwater**

Sir,

1. PROCEDURE

- (1) On 4 July 2016, Germany formally notified public support for an infrastructure project in the port of Sassnitz.

2. DESCRIPTION

2.1. Objective of the notified project

- (2) The port of Sassnitz is located in the German Land Mecklenburg-Vorpommern at the Baltic Sea. The infrastructure in the port is owned and directly operated by the *Fährhafen Sassnitz GmbH* ('FHS').
- (3) The port of Sassnitz is a significant logistics hub and maritime industrial centre in Mecklenburg-Vorpommern and Northern Germany. While the port, which was originally created as a specialized ferry port, suffered from a decline in ferry traffic, it is, at the same time, faced with an increase in demand for logistics

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services for offshore wind farms ('OWF') in the south-western Baltic Sea as well as for project cargo handling.

- (4) The objective of the notified project is to extend the existing infrastructure by constructing a new breakwater (*Nordmole*) and extending the existing one (*Südmole*) in order to provide protection for the existing berths no. 1 and 1a, which were previously adapted for catering to the needs of crew transfer vessels ('CTV') and other work boats. The aim of this measure is to calm the water in the port basin in order to create secure conditions for small vessels, in particular CTV.
- (5) According to Germany, once the aforementioned berths benefit from the new and extended breakwaters, the port will be able to accommodate CTV 365 days per year instead of currently only 314 days per year. The berths concerned by the investment will increase their total capacity by 16.2%.

2.2. Planned investment

- (6) The total investment cost of the notified project amounts to EUR 4.6 million.
- (7) The notified project consists of the following measures and relevant investment costs:

Measure	Costs (EUR)
Planning	[...]*
Construction and extension of breakwaters	[...]
Project total	4 600 000

2.3. Financing of the investment project

- (8) The project will be financed through a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern (*Landesförderinstitut Mecklenburg-Vorpommern*) amounting to EUR 4 140 000. The remaining part of the investment cost, amounting to EUR 460 000, will be financed by the FHS through a loan on market terms.
- (9) The German authorities provided an analysis based on the funding gap¹ of the project, calculated as the difference between the discounted value of the expected net operating profits of the investment (EUR 12 000) plus the discounted residual value of the infrastructure (EUR 40 000) and the discounted investment costs of the project (– 4 398 000 EUR), which shows that over a reference period of 27

* Confidential information

¹ The funding gap is defined as the difference between the discounted operating profits of the investment (i.e. the profits deriving from the investment plus a possible residual value of the infrastructure at the end of its estimated economic life) and the total discounted investment costs during a given reference period.

years² the project has a negative financial net present value (NPV) of – EUR 4 346 000. The negative NPV indicates that the project is not financially sustainable without public support.

- (10) As regards the main revenues stemming from the investment, the German authorities indicated increased port fees (*Hafengebühren*) and demurrages (*Liegegelder*).

2.4. The beneficiary

- (11) The infrastructure is owned by FHS, which also administers and operates the seaport. FHS is a public undertaking, 90% of which are owned by the City of Sassnitz and 10% by the Land Mecklenburg-Vorpommern.
- (12) The infrastructure, in particular the berths that will be protected by the breakwaters, will be accessible for any interested user on a non-discriminatory basis. As such, the breakwaters will benefit all users on a non-discriminatory basis. In addition, all users will be charged the same port and demurrage fees in accordance with established and published tariffs. The German authorities provided data showing that the current fees charged in the port of Sassnitz are in line with fees charged in comparable ports in the Baltic Sea.

2.5. Competition context presented by the German authorities

- (13) According to the German authorities, the notified project will not significantly affect competition, as the capacity increases due to the notified project are offset by projected market growth.
- (14) As indicated above, the berths concerned by the notified investment will be used in connection with logistics services for OWF.
- (15) Although not required for the Commission's State aid assessment, Germany took a position on the relevant market involved in the present aid measure. The information provided by Germany defines the relevant geographic market for port services in the OWF logistics provided by the FHS as the Baltic Sea east of the Rügen Island. The Eastern boundary is set in continuation of the Eastern border of the Polish West Pomeranian Voivodeship. It extends north to the limits of the German and Polish exclusive economic zone. This market extension is determined by the maximum acceptable distance for OWF from each port, which is 75 km.
- (16) According to the information provided by Germany, the port of Sassnitz will increase its share of the total quay length available for CTV within the defined market from presently 6.2% to 7.4%. However, according to the market study submitted by Germany, the market for OWF in the south-western Baltic Sea is still at an early development stage and is expected to grow significantly in the next 15 years. As such, according to the market study, the increase in capacity in the port of Sassnitz due to the notified project will be offset by the total market growth.

² The calculation is based on a planned period of 25 years of operations plus 2 years of an investment and construction phase.

2.6. Legal basis

- (17) The foreseen national legal basis for the grant is the *Koordinierungsrahmen der Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur"* ('GRW').

2.7. Form and duration of the aid

- (18) As indicated above, the funding takes the form of a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern. The funding shall be disbursed in several instalments, the last one to be made within the year 2017.
- (19) Because the public funding is granted in instalments, Germany, in analogy to Article 7(3) of Regulation 651/2014 (GBER),³ calculated for the purpose of assessing the aid proportionality the discounted value of the funding, being EUR 3 958 000.

2.8. Cumulation

- (20) According to the notification, a cumulation of the aid with other aid for the same eligible costs is excluded.

2.9. Transparency commitment

- (21) Germany committed to ensure the publication of the following information on a comprehensive State aid website, at national or regional level:
- (a) the full text of the individual aid granting decision and its implementing provisions, or a link to it,
 - (b) the identity of the granting authority,
 - (c) the identity of the beneficiary, the form and amount of aid granted, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).
- (22) The information will be published within 6 months from the granting act and the information will be kept for at least 10 years and will be available to the general public without restrictions.

3. ASSESSMENT

3.1. Existence of aid

- (23) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods

³ Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

shall, in so far as it affects trade between Member States, be incompatible with the internal market.

- (24) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on an undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and must affect trade between Member States.
- (25) In the present case, the existence of State aid must be examined at the level of the owner and operator of the infrastructure (FHS) and at the level of the port users (logistics companies).

3.1.1. *Existence of Aid on the level of the owner and operator of the port*

3.1.1.1. Notion of undertaking

- (26) According to established case law by the Court,⁴ 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.
- (27) As regards infrastructure financing, the Court, in its judgment in *Leipzig-Halle*,⁵ established that it is the future use of the infrastructure, *i.e.* its economic exploitation or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not. In line with this case law the Commission established in a series of decisions that the construction and exploitation of some types of port infrastructures constitute economic activities.⁶
- (28) The notified project concerns the construction of infrastructure in the Port of Sassnitz, which is commercially exploited by FHS by providing port services on the market against remuneration. There is undoubtedly competition between sea ports, as was also confirmed by the market study provided by Germany. As such, there is a market for port services, on which FHS, through its operation and

⁴ 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.

⁵ 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.

⁶ See e.g. Commission Decision of 15 December 2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventspils Port*, OJ C 72 of 20.03.2010; Commission Decision of 2 July 2013 in State Aid case no. SA.35418 (2012/N) – Greece – *Extension of Piraeus Port*, OJ C 256 of 5.09.2013, p. 2; Commission Decision of 18 September 2013 in State Aid case no. SA.36953 (2013/N) – Spain – *Port Authority of Bahía de Cádiz*, OJ C 335 of 16.11.2013, p. 1; Commission Decision of 27 March 2014 in State aid case no. SA.38302 – Italy – *Port of Salerno*, OJ C 156 of 23.05.2014, p.1.

economic exploitation of the infrastructure in question, is in competition with other ports.

- (29) Thus, in the construction and operation of the berths equipped with new and extended breakwaters, FHS engages in an economic activity and must, therefore, be considered an undertaking within the meaning of Article 107(1) TFEU.

3.1.1.2. State resources and imputability

- (30) As stated above, the project will be partly funded through a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern (*Landesförderinstitut Mecklenburg-Vorpommern*), which is the central agency of the Land Mecklenburg-Vorpommern for the funding of investments and the modernization of the economy and of infrastructures. To this end, it is entrusted with public tasks by the Land. For the project at hand, the funding will stem from public funds, notably from the GRW. As such, the project is partly financed through State resources.
- (31) As regards imputability to the State, the decision to fund the specific construction project was directly taken by the German authorities. Therefore, the notified measure is imputable to the State.

3.1.1.3. Selectivity

- (32) As the public financing is granted to an individual (construction) project, the measure is selective.

3.1.1.4. Economic advantage

- (33) The public funding will be provided through a grant. A grant is a non-refundable financial instrument which bears no financing cost. On the market, such a financing instrument would not be available to the beneficiary.
- (34) The public financing to be provided, therefore, confers an economic advantage to the beneficiary.

3.1.1.5. Distortion of competition and affectation of trade

- (35) According to established case law, when financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, there is at least a potential effect on competition and trade between Member States.⁷
- (36) In the present case, the financial support granted by Germany will be used for extending the port of Sassnitz to adapt it to meet demand in a growing market. After completion of the project the port of Sassnitz will increase its capacity and will, therefore, at least potentially increase competition between ports in Europe and in particular in the relevant geographical market identified by the German authorities (see recitals (13)-(16)). Thus, the project is capable of affecting

⁷ 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.

competition and trade between Member States by potentially diverting commerce away from other Member States.

Conclusion on the existence of aid at the level of the owner and operator

- (37) In light of the above, the Commission concludes that the notified measure constitutes aid to the owner and operator of the planned infrastructure.
- (38) The aid corresponds to the total amount of the public grant by the regional development institute of the Land Mecklenburg-Vorpommern of EUR 4 140 000.

3.1.2. Aid at the level of port users

- (39) The information provided by the German authorities shows that the fees charged to the port users correspond to the level of fees charged in comparable ports and, therefore, constitute market prices. In addition, the port of Sassnitz is in competition with other ports and can only increase prices in line with the price developments on the market.
- (40) Furthermore, port users shall enjoy equal and non-discriminatory access to the infrastructure.
- (41) Thus, the Commission concludes that no advantage will be granted to port users and that there is, therefore, no aid granted to those users.

3.2. Compatibility of the aid

- (42) According to established case practice,⁸ the appropriate legal basis for assessing compatibility of 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.
- (43) It must therefore be examined if the notified public funding meets a clearly-defined objective of common interest, if it is necessary, proportionate and has an incentive effect, if the aid does not lead to distortions of competition contrary to the common interest and if it complies with the transparency principles.

3.2.1. Objective of common interest

- (44) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*,⁹ the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU.
- (45) In the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Strategic*

⁸ See Commission Decisions cited in footnote 6 above.

⁹ COM(2009) 279/4, paragraph 46.

Goals and Recommendations for the EU Maritime Transport Policy until 2018,¹⁰ 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 function.

- (46) According to the trans-European transport networks (TEN-T) Regulation,¹¹ the Port of Sassnitz is considered as part of the European comprehensive network. According to this Regulation, the TEN-T could be best developed through a dual-layer approach, consisting of a comprehensive network and a core network. The comprehensive network constitutes the basic layer of the new TEN-T and consists of all existing and planned infrastructure meeting the requirements of the TEN-T Regulation.
- (47) The Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Blue Energy – Action needed to deliver on the potential of ocean energy in European seas and oceans by 2020 and beyond*¹² underlines that our seas and oceans have the potential to become important sources of clean energy. It emphasises that marine renewable energy, which includes both offshore wind and ocean energy, presents the EU with an opportunity to generate economic growth and jobs, enhance the security of its energy supply and boost competitiveness through technological innovation. The Communication sets out a two-step action plan that will assist this promising industrial sector in developing its potential. The first phase of action foresees a detailed assessment of ocean energy resources and offshore infrastructures such as ports and vessels, as improvements in these areas would help to optimise the management of ocean energy devices and thus trigger corresponding cost reductions. The Communication concludes that for ocean energy to deliver on its potential, the time is ripe to bring Member States, the industry and the Commission together to work in a collaborative manner to accelerate its development. In light of these conclusions of the Communication and with regard to the present case the Commission observes that in order to accelerate the development of ocean energy in the form of OWF the construction of port capacities, such as the construction of a new breakwater and the extension of an existing one in Sassnitz, is necessary.
- (48) Further, as stated above, the port of Sassnitz is a significant logistics hub and maritime industrial centre in Mecklenburg-Vorpommern and Northern Germany. According to the market study provided by Germany, the planned investment is projected to create a total of approximately 70 new jobs and is as such important for the development of the regional economy.

¹⁰ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018, COM (2009) 8.

¹¹ 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, text available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R1315:EN:NOT>.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Blue Energy Action needed to deliver on the potential of ocean energy in European seas and oceans by 2020 and beyond, COM/2014/08 final.

- (49) The above elements indicate that the project contributes to an objective of common EU interest and to the development of both an economic activity and an economic area.

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

- (50) The negative NPV (Funding Gap) of – EUR 4 346 000 over a reference period of 27 years (2016-2042) shows that the expected net revenues of FHS do not cover the investment costs. The negative NPV indicates that the project is not viable without public support. It should also be noted that FHS makes an effort to partially fund the project itself, by contributing EUR 460 000 to the project with own resources financed through a loan on market terms. It is unlikely that FHS would be able to obtain the full remaining amount exceeding its planned own contribution on the market. Therefore, the Commission considers that the requested aid is necessary for this project.
- (51) With regard to the incentive effect of the aid, according to the information provided in the notification, the application for the aid was done on 27 May 2013. Works on the project beyond planning activities have not been initiated yet and the aid will only be granted by the regional development institute once the Commission has taken a decision declaring the aid to be compatible with the internal market. In addition, as shown above, FHS would not be able to raise the funding required for carrying out the project itself, meaning that the project could not be carried out in absence of the aid. It follows that the aid must be regarded as having an incentive effect.
- (52) As regards proportionality (*i.e.* keeping public funding down to the minimum necessary), the discounted amount of the aid (EUR 3.958 million) is below the funding gap identified for the project (– EUR 4.346 million). Therefore, the aid is proportionate.
- (53) In the light of the above, the Commission concludes that the aid is necessary, proportionate and has an incentive effect.

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

- (54) As indicated above, Germany submitted information defining the relevant market as well as the port's current market share and projections as to the future developments on said market. Although the Commission is not required to define the relevant market in State aid cases, the information submitted by the German authorities is useful for the Commission to assess the possible distortion of competition and affectation of the intra-EU trade by the present measure. The Commission has analysed the information submitted by the German authorities and comes to the conclusion that the market definitions as well as projections contained therein are reasonable and can, as such, be accepted.
- (55) According to this information, the market share of the port of Sassnitz within the relevant market as regards the total quay length available for CVTs amounts to around 6%.
- (56) The information provided by the German authorities shows that the notified project will lead to an increase in capacity and market share of the port of Sassnitz. However, an infrastructure project like the present one by its nature

leads to a sudden (upon completion) increase in capacity. Yet, in the present case, the information provided by the German authorities shows that this increase will be proportionate to the projected increase in the relevant markets and will, therefore, be counterbalanced by market growth.

- (57) Based on the above elements, the Commission concludes that the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

4. CONCLUSION

The Commission has accordingly decided:

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

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:

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Yours faithfully
For the Commission

Carlos MOEDAS
Member of the Commission