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Subject: State aid SA.46749 (2016/N) – Sweden
Aid for investment in the Haraholmen Logistic centre in the port of Piteå

Madam/Sir,

1. PROCEDURE

- (1) On 2 November 2016, Sweden notified public support for a seaport infrastructure project in the port of Piteå, registered under number SA.46749.
- (2) The Commission requested additional information by letters of 21 December 2016 and 23 February 2017 and by emails on 24 March 2017 and 6 April 2017, to which Sweden replied by letters of 19 January 2017, 1 March 2017, 31 March 2017 and 7 April 2017.
- (3) On 22 February 2017, Sweden agreed that the present decision would be adopted and notified in English.

2. DESCRIPTION

2.1. Objective

- (4) The notified project concerns the construction of a new berth quay, logistics areas near the quay and an intermodal connection between the quay and a rail terminal in the port of Piteå (hereinafter "the Port"). The objective of the new structure is to meet the likely growing demand for goods freight traffic.

Utrikesminister Margot WALLSTRÖM
Utrikesdepartementet
Arvfurstens palats
Gustav Adolfs torg 1
SE - 103 23 Stockholm

2.2. The beneficiary

- (5) Currently, the Port is owned and managed by Piteå Hamn AB, which is 100% owned by the municipality of Piteå. Another company, ShoreLink, is responsible for the operative management of the Port. The two companies are not related to each other. Their relationship is governed by a contract whereby ShoreLink pays an annual fee to Piteå Hamn AB under market conditions.
- (6) The investment in the new infrastructure will be carried out by Piteå Hamn AB, which will also remain the owner of the investment.
- (7) The contract for the operation of the new infrastructure will be awarded on the basis of a call for tender for the operator of this new infrastructure. Sweden stated that the newly built infrastructure will be accessible to all users on equal and non-discriminatory basis at market prices comparable to other ports in the region.
- (8) The aid will be granted to Piteå Hamn AB. According to Sweden, Piteå Hamn AB will therefore be the beneficiary of the aid.

2.3. Planned investment

- (9) The total investment cost of the notified project amounts to SEK 130 million (around EUR 13.3 million).

2.4. Financing of the investment project, duration and cumulation of aid

- (10) The project will be financed through direct grants from the European Regional Development Fund managed by the Swedish Agency for Economic and Regional Growth (SEK 65 million), and national co-financing by County Administrative Board (SEK 10 million) and Piteå municipality (SEK 23.381 million). The total value of these grants amounts to SEK 98.381 million. The remaining part of the investment cost, amounting to SEK 31.619 million, will be financed by the beneficiary through a bank loan on market terms.
- (11) Sweden submitted a calculation of the estimated funding gap¹ of the project, calculated as the difference between the discounted value of the expected operating profits of the investment (SEK 27.499 million) plus the discounted residual value of the infrastructure (SEK 4.12 million) and the discounted investment costs of the project (– SEK 130 million), during a reference period of 30 years (2017-2047).²
- (12) The calculations show that the project would be loss-making without public support, since over 30 years the financial net present value (NPV) is

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.

² The project is foreseen to be finalised in 2018 and to reach its full capacity in Q4 2018 or Q1 2019. The financial analysis submitted by Sweden took a reference period for its full operation of 30 years into account, starting in 2017.

significantly negative (– SEK 98.381 million). Without public support the project is therefore not financially sustainable.

- (13) Sweden confirmed that Piteå Hamn AB has already applied for the aid and that the works on the project have not yet started.
- (14) According to the notification, a cumulation of the aid with other aid for the same eligible costs is excluded.

2.5. Competition context presented by Swedish authorities

- (15) Sweden clarified that the catchment area of the Port, as defined by Piteå Hamn AB, consists of the geographical area in the northern part of Sweden and as far as Ornskoldsvik in the south. Piteå Hamn AB's average market share in the catchment area is 9% and 1% for the whole of Sweden. The Port of Piteå is one of several ports along the coast of Norrland. These are relatively specialised ports and strongly linked to their respective geographical industrial areas. The Swedish authorities make a reference to the report "Förstudie Haraholmen-logistiska konsekvenser av godsvolymer 2012-2021" estimating an increase of freight volumes by 25% up until 2021.
- (16) According to the Swedish authorities, competition among regional ports can occur to a limited extent. This could be the case for freight of regular container liner services and may be relevant for limited volumes of sawn timber. As for transport of project cargo there is no competition with other ports. Shipping services are used as far as possible to the nearest port in order to avoid bulky road transports that require specific traffic permits. These logistic flows require favourable transport facilities in terms of connecting road infrastructure to and from the port. Bottlenecks could consist of limitations such as viaducts, roundabouts or bridges that limit accessibility to and from the port.

2.6. Legal basis

- (17) Public funding for this project has been awarded on the basis of *Förordning (SFS 2014:1383) om förvaltning av EU:s strukturfonder*.

2.7. Transparency

- (18) Sweden committed to publish, within six months of the granting act, on a comprehensive State aid website at national or regional level, the following information, which will be kept for at least ten years and will be available to the general public without restrictions:
 - (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/(ies),
 - (c) the identity of the beneficiary, the form and amount of aid granted, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).

3. ASSESSMENT

3.1. Existence of state aid

- (19) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (20) In order to conclude whether state aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (*i.e.* transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for the measure under assessment.
- (21) In the present case, the existence of State aid must be examined on the level of 1) the owner/manager, 2) operator, and 3) users.

3.1.1. Existence of Aid on the level of the owner

3.1.1.1. Notion of undertaking

- (22) The notified project concerns the construction of infrastructure in the Port of Piteå, which is commercially exploited by Piteå Hamn AB by making infrastructure available against remuneration.
- (23) Thus, Piteå Hamn AB 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

- (24) As stated above, the project will be funded partly through direct grants by the Swedish authorities of SEK 33.381 million and partly through funding by the ERDF of SEK 65 million.
- (25) The direct grants will stem from the public budget of Norrbotten County Administrative Board, *i.e.* state funding that is subject to decision at regional level, as well as from the Piteå Municipality, and thus involves State resources.
- (26) The ERDF funding for the project was placed at the disposal of the Swedish authorities before having been released to Piteå Hamn AB and, therefore, must also be regarded as constituting State resources.
- (27) As regards imputability of the direct grants to the State, the decision to fund the specific construction project was directly taken by the Swedish authorities. Therefore, this part of the notified measure is imputable to the State.
- (28) As regards imputability to the State of the ERDF funding at stake, it is noted that the Swedish authorities enjoy a high degree of discretion in the selection at national level of the projects to be financed with said funding. The present project was directly chosen by the Swedish authorities. Therefore, the ERDF funding in the present case is also imputable to the State.

3.1.1.3. Selective economic advantage

- (29) The State resources defined under paragraph 3.1.1.2 above were provided in form of grants. A grant is a non-refundable financial instrument which bears no financing cost. At market terms, such a financing instrument would not have been available to the beneficiary.
- (30) The public financing is planned to be granted specifically to Piteå Hamn AB for carrying out a specific and individual project and is, therefore, selective.
- (31) The public financing, therefore, confers a selective economic advantage not available at market conditions to Piteå Hamn AB.

3.1.1.4. Distortion of competition and affectation of trade

- (32) According to established case law, when financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, there is at least a potential effect on trade between Member States and distortion of competition.³
- (33) In the present case, the measure will be used to expand the infrastructure of the Port. As such, it will strengthen its competitive position and, therefore, the aid at least potentially distorts competition between different ports in Europe.
- (34) Therefore, the public funding of the notified project is liable to distort competition and affect trade between Member States.

Conclusion on the existence of aid at the level of Piteå Hamn AB

- (35) In light of the above, the notified aid measure for investment in the Haraholmen Logistic centre in the port of Piteå constitutes state aid to Piteå Hamn AB within the meaning of Article 107(1) TFEU.

3.1.2. Existence of State aid on the level of the operator

- (36) Sweden declared that the future operator of the port infrastructure will be chosen on the basis of a competitive, transparent, non-discriminatory and unconditional tender, in compliance with the relevant EU public procurement law and the applicable national legislation.
- (37) Therefore, as any economic advantage at the level of the future operator can be excluded, the future operator will not receive State aid within the meaning of Article 107(1) TFEU.

3.1.3. Existence of State aid on the level of the users

- (38) Port users shall also enjoy equal and non-discriminatory access to the infrastructure. The Swedish authorities confirmed that the fees charged to the port users correspond to the level of fees charged in comparable ports and, therefore, constitute market prices.

³ 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.

- (39) 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. Legality of the aid

- (40) The Commission takes note of the commitment of the Swedish authorities to respect the stand-still obligation laid down in Article 108(3) TFEU and not to grant the aid until the Commission adopts a decision authorising the notified measure.

3.3. Compatibility of the aid

- (41) 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.
- (42) In line with well-established case practice,⁴ the Commission examines whether the State aid to Piteå Hamn AB meets a clearly-defined objective of common interest, is necessary and proportional to this objective, has an incentive effect, does not affect competition and intra-EU trade to an extent contrary to the common interest and complies with transparency principles.

3.3.1. Contribution to an objective of common interest

- (43) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*,⁵ the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU.
- (44) 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*,⁶ 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.
- (45) The above elements indicate that the notified aid contributes to an objective of common EU interest.

⁴ 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.

⁵ COM(2009) 279/4, paragraph 46.

⁶ 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.

3.3.2. Necessity, proportionality and incentive effect of the aid

- (46) The negative NPV (funding gap) of SEK 98.381 million, over a reference period of 30 years, shows that the expected net revenues of Piteå Hamn AB do not cover the investment costs of SEK 130 million. Piteå Hamn AB contributes to the funding of the project with SEK 31.619 million gathered through bank loans obtained on market terms. It is unlikely that Piteå Hamn AB would be able to obtain the amount necessary to cover the investment costs exceeding its own contribution at market terms. Therefore, the aid is necessary for this project.
- (47) Sweden confirmed that the application for the aid was submitted before the commencement of the work on the project. In addition, as shown above, 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.
- (48) According to the established case practice referred to in recital (42), aid to port infrastructure project is considered to be proportionate if the amount of aid does not exceed the funding gap of the project. The amount of aid to Piteå Hamn AB is (SEK 98.381 million). It follows from the calculations shown in recitals (11) - (12) that this amount does not exceed the funding gap of (– SEK 98.381 million). Therefore, the aid is proportionate.
- (49) In the light of the above, the Commission concludes that the aid is necessary, proportionate and has an incentive effect.

3.3.3. Avoidance of undue negative effects on competition and trade between Member States

- (50) Sweden submitted information regarding the competition context within which the Port operates. In line with established case practice mentioned in recital (42), the information submitted by the Swedish authorities allows the Commission to assess the extent of possible undue negative effects on competition and trade between Member States.
- (51) The information submitted by the Swedish authorities allows the Commission to consider that the projections contained therein are reasonable and can, as such, be accepted. This information, in particular, shows that the increase in the Port's capacities will be counterbalanced by market growth.
- (52) As a result of the aided project the total freight volume would increase from current 1.5 million tons per year to up to 1.8 million tons per year by 2021. It is unlikely that the project will have a negative impact on other ports located close to the new port namely the ports of Skellefteå, Luleå and Umeå. This is mostly due to avoidance of unnecessary road transports by companies delivering goods to ports.
- (53) In light of these elements, the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

3.3.4. Transparency

- (54) Lastly, the Commission observes that Sweden has provided assurances that the transparency conditions will be respected.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid granted to Piteå Hamn AB, 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 the operator and port users within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

The Commission notes that Sweden has agreed that the present decision would be adopted, notified and published in the English language.

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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*

