Danske Havne

Bredgade 23, 2. tv
1260 Copenhagen
Tel. +45 7211 8100

Ref Bjarne Løf Henriksen
blh@danskehavne.dk
Dir +45 72118105
www.danskehavne.dk

European Commission
Directorate-General for Competition
State aid registry
1049 Brussels
Ref.: HT.4691
Fax (32-2) 296 12 42

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Danish Ports concerning the GBER hearing

With great interest Danish Ports has read the European Commission's draft regulation of the General Block Exemption Regulation with a common interpretation of state aid, and when port infrastructure investments are exempted from the general state aid rules.

The interest of Danish Ports

The proposal has interest because commercial ports are an important part of Denmark's total infrastructure. Most Danish ports are owned by municipalities, but must act in a commercial and fair competitive basis. This means that the ports in spite of public ownership should be operated commercially and generally must have sufficient funds to maintain and develop the port within the port's own economy.

Danish ports are in competition with other ports in Denmark and neighbouring countries. COWI has recently for Danish Ports produced a neighbour check analysis. From the report we know, that:

1. several of Denmark's neighbouring countries have access to other and larger support programs than Denmark / Danish ports, and
2. there is a clear trend showing extreme caution in Danish authorities in terms of infrastructure support; the authorities interpret the rules for state aid to ports so restrictive that there is only very limited economic support for Danish ports.

The caution of the Danish authorities in providing infrastructure support is primarily a national issue that probably comes from the lack of clear European rules, hence the Danish Ports' impression and expectation that clear rules can lead to a more consistent and fair approach to both EU and national support for infrastructure projects.

Challenges of the proposal
Danish Ports believes that the proposal content should be explored to ensure a sound implementation and consistency with the current practice:

1. the proposal should not hinder current and possible future funding mechanisms for the development of port infrastructure in relation to the current Danish practice. The Danish Ministry of Growth and Business should for example focus on the possibility of municipal funding guarantee to the municipality owned ports,
2. there must be consistency between the proposed definitions and existing EU legislation, particularly for ports and infrastructure types,
3. services of general economic interest (SGEI) should be included in the proposal and defined what this covers in relation to the ports,
4. maintenance and dredging are integral parts of ports infrastructure. The government has certain obligations in particular transit and entry waters. It should be as natural that the state maintains and expands both the blue motorways of the sea as the grey roads on land, as this is in line with fair competition for all modes of transport,
5. the need to invest in infrastructure for alternative fuels and more stringent requirements for environmentally friendly transport solutions. Therefore it should be possible to provide support for these parts to the extent that it leads to innovation and new ideas,
6. make sure that the proposal does not open for more state aid and speculation in loss-making activities,
7. make sure that the proposal has the proper context and linkage to existing legislation and EU strategy.

Re 1 – Ensuring the Danish funding model
Modernisation of state aid rules for ports should take into account current national access for public investment funding and guarantees - not operational support.

Danish Ports considers it essential to emphasize that the Danish ports are large capital and employment-intensive companies that regardless of organizational form is predominantly owned by local authorities. Commercial ports expand and maintain complex infrastructure and therefore have an ongoing need for funding, which to a certain extent is financed through KommuneKredit (the Credit Institution for Local and Regional Authorities in Denmark).

Danish Ports presumes that the proposal will not affect the financing of Danish ports' current funding options via KommuneKredit. This needs confirming of the Danish Ministry of Business and Growth.

Re 2 – Definition of ports and types of infrastructure
Danish Ports believes that the proposed definitions in some cases differ from existing EU legislation and recommend applying the existing common definitions.

The proposal, article 2	**Existing regulation** Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security	**Proposed regulation** Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports COM/2013/0296 final - 2013/0157 (COD)
(152) 'Port' means an area of land and water made up of infrastructure and equipment for, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods, or the embarkation and disembarkation of passengers and any other infrastructure necessary for transport operators within the port area; (153) 'Maritime port' means a port for, principally, the reception of waterborne vessels by sea;	'port' means any specified area of land and water, with boundaries defined by the Member State in which the port is situated, containing works and equipment designed to facilitate commercial maritime transport operations;	'seaport' means an area of land and water made up of such works and equipment so as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers; and any other infrastructure necessary for transport operators within the port area;

Danish Ports recommends that definitions of types of infrastructure should be checked against existing predefined and eligible infrastructure components in relation to the Trans-European Network of Transport (TEN-T), as the EU should have proven experience from existing practice.

From the proposal:

> (155) 'Port infrastructure' means infrastructure and facilities that generate a direct income for the port managing body including berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, and transport facilities within the port area;

(156) 'Port superstructure' means surface arrangements, buildings as well as mobile equipment (e.g. cranes) and fixed equipment that directly relate to the transport function of the port;
(157) 'Access infrastructure' means any type of infrastructure necessary to ensure the access and entry from land or sea and river by users to the maritime or inland port, in particular, access roads, access rail tracks, breakwaters, access channels, locks;

In a current EU Regulation[1] eligible infrastructure components in transport infrastructure and motorways of the sea are listed. Maritime transport infrastructure shall comprise, in particular:

(a) maritime space
(b) sea canals
(c) maritime ports, including the infrastructure necessary for transport operations within the port area
(d) the connections of the ports to the other modes in the trans-European transport network
(e) dykes, locks and docks
(f) navigational aids
(g) port approaches and fairways
(h) breakwaters
(i) motorways of the sea
(j) associated equipment
(k) telematic applications, including e-Maritime services and VTMIS.

Danish Ports sees a challenge in the proposal's definitions of port infrastructure. The above mentioned infrastructure components a) to k) is more appropriate for infrastructure investments, which should be exempted from the general state aid rules, in the case of infrastructure investments in access and defence from sea and land, insofar the public funding is not selective and potentially benefits a whole region, hinterland and/or corridor and/or potentially links those with the rest of the world.

Re 3 – Services of general economic interest
Danish Ports believes that the infrastructure that supports services of general economic interest (SGEI) should be included in the proposal. It is not defined what this covers in relation to ports. For example, the Danish ports are obliged to receive ship calls (Danish Port Act § 5). A country's security of supply, via a modern port sector can be categorized under the SGEI. Ports preparedness to combat fire, terrorist incidents, oil spills or access to Coast Guard all require investments in general infrastructure and access roads. Investments of this type should have access to state aid due to a clear positive socio-economic effect of the investment.

[1] Regulation 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, section 4, article 20

Re 4 – dredging
According to Danish Ports, the proposal's definition of dredging is a challenge for current practice in Denmark.

The proposal, article 2	**Existing Danish regulation** Notice 1130 of 23/09/2015 of bypass, recovery and dumping of seabed material (Denmark)	**Proposed regulation** Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports COM/2013/0296 final - 2013/0157 (COD)
(158) 'Dredging' means the removal of sand, sediment or other substances from the bottom of the waterway access to a port in order to allow waterborne vessels to have access to the port; (159) 'Maintenance dredging' means dredging routinely done in order to keep the waterway accessible;	"The dredging and deepening material": Seabed material obtained by cleaning or dredging of ports and channels or when in other cases the need for cleaning or dredging in the territorial sea, see. § 20c of the Act on raw materials. This includes all cases where there is a need to remove the seabed material in order to maintain or increase the water depth or to place an infrastructure, etc. on the seabed, and wherein the removal is permitted;	"dredging" means the removal of sand, sediment or other substances from the bottom of the waterway access to a port in order to allow waterborne vessel to have access to the port and comprises both the initial removal (capital dredging) and the maintenance dredging in order to keep the waterway accessible;

Dredging associated with access to the port can be regarded as a non-economic activity - also with regard to ongoing maintenance to keep waterways accessible, why this proposed clearly specified in the proposal. Maintenance and deepening are integral parts of ports infrastructure. The government has certain obligations in particular transit and entry waters. It should be as natural that the state maintains and expands both the blue motorways of the sea as the grey roads on land, as this is in line with fair competition for all modes of transport.

Re 5 – Environmental infrastructure
Danish Ports calls on the Commission to formulate a definition in terms of environmental infrastructure in ports according to the reference in the initial consideration paragraph 5, since this type of infrastructure is unclear:
"... Investments are necessary, in particular, for the adaptation of port access infrastructure and port infrastructure and superstructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance ..."

A definition of environmental infrastructure in ports creates a need to add this as a new point (c) of Article 56b paragraph. 2:
"(New) for infrastructure needed for adapting to the use of alternative fuel and/or for implementing stricter requirements on environmental performance."

Re 6 – More state aid and speculation in loss-making activities
Apart from the proposed recital 7, Danish Ports raises the question whether the proposal might be opening for speculation in infrastructure investment with operating loss:
"… In order to be proportionate, the aid should not exceed the maximum permissible aid intensity provided for in this Regulation, which for maritime ports varies according to the size of the investment project. The aid amount should not go beyond the difference between the eligible costs and the operating profit of the investment ..."

Article 56b paragraph 7, in conjunction with the intensity of the paragraph 4 (a) - (d) seeks to limit the splitting up of projects into smaller parts to utilize maximum state aid. The so-called salami method. Danish Ports sees a flaw in this method as ports' development projects are not necessarily linked, although they might be performed at the same time.

Re 7 – The proposal should be linked to current EU strategy
The need for transparent state aid is mentioned in the white paper: 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system (COM/2011/0144)':

> Annex 1, paragraph 4:"A maritime "Blue Belt" and market access to ports… and set up appropriate port facilities ("Blue Lanes")… Enhance the transparency on ports' financing, clarifying the destination of public funding to the different port activities, with a view to avoid any distortion of competition."

The need to invest in Europe's port infrastructure and security of supply as well as efficient transport between land and sea is mentioned in the EU White Paper:

> Paragraph 27: On the coasts, more and efficient entry points into European markets are needed, avoiding unnecessary traffic crossing Europe. Seaports have a major role as logistics centres and require efficient hinterland connections. Their development

is vital to handle increased volumes of freight both by short sea shipping within the EU and with the rest of the world.

Paragraph 36: A Single European Transport Area should ease the movements of citizens and freight, reduce costs and enhance the sustainability of European transport… Market access to ports needs to be further improved.

Paragraph 41: The quality, accessibility and reliability of transport services will gain increasing importance in the coming years, inter alia due to the ageing of the population and the need to promote public transport. Attractive frequencies, comfort, easy access, reliability of services, and intermodal integration are the main characteristics of service quality. The availability of information over travelling time and routing alternatives is equally relevant to ensure seamless door-to-door mobility, both for passengers and for freight.

The latter paragraph 41 is covered by the EU Port Regulation, which is currently discussed in Trilog negotiations under the Dutch EU Presidency. The Commission proposal for a block exemption should refer to the other references in the EU White Paper as well as other relevant and applicable EU legislation.

Danish Ports is a private association for commercial ports in Denmark, established in 1917. Member of European Sea Ports' Organisation (ESPO) with EU transparency register ID no. 040632614929-26. For more information:
http://www.danskehavne.dk/?lang=en

Danish Ports can contribute to a more detailed discussion.

With kind regards,
Bjarne Løf Henriksen
Commercial and Political adviser, Danish Ports
blh@danskehavne.dk