Review of the General Block Exemption Regulation with regard to ports and airports; draft amendment of regulation 651/2014

DVF contribution to the first consultation of the European Commission, Directorate-General for Competition

30 May 2016

Deutsches Verkehrsforum (DVF)

The German Transport Forum is the only multi-modal transport industry association in Europe. DVF promotes the improvement of mobility as a basic prerequisite for growth, employment, and sustainability. DVF is supported by 170 member companies, representing the entire value chain – among them major ports and airports.

General Remarks

DVF welcomes the Commission's intention to clarify the application of state aid regulations in the ports and airports sector and to lower the administrative burden of notification requirements.

We believe that the inclusion of ports in the General Block Exemption Regulation (GBER) can be useful.

However, the way how EU state aid regulations are being applied may not impair ports' future – growth perspectives, employment, and attractiveness for investments. In this regard the draft currently presented by DG Competition raises a couple of serious questions.

Need for revision and substantiation

Amendment article 56b (7) and (8)

Paragraphs 7 and 8 in Article 56b should be deleted. The possibility to regulate maritime ports "concessions" or rental and lease contracts has been discussed extensively in the course of the EU concessions directive. Council, Parliament and European Commission as well came to the conclusion that such a regulation at EU level is not viable. This also applies to the time limitation of port operator's contracts which was the focal point of debate on several "Ports Packages".

The contractual relationship between (public) port management and (private) operators is highly diverse among member states. Inter-port competition and efficiency of port services is high. Furthermore, we think there is no legal need to include rules on concession, rental or lease contracts when regulating exemptions from notification requirements for possible state aid. For this reason we ask not to include such a paragraph into the GBER.

Amendment articles 1 (155-157) and 56b (2)

The proposed amendment implies a very extensive notion of state aid, especially due to the inclusion of “access infrastructure”. Following this approach, actually every public funding of an infrastructure that is somehow related to and used for economic ports activities is regarded as state aid. We think that this assumption is not correct. The provision of public transport infrastructure is a legitimate and necessary task of public policy. Naturally, roads, waterways and railways are being used for economic purposes. Solely this does feature not turn state investment into potentially notifiable state aid.

Such an extensive state aid interpretation could put constantly into question the maintenance and development of important, essential parts of the ports-related transport network in Germany – e. g. motorways around Hamburg or Bremen ports, Elbe and Weser rivers as seaward access, or the Hinterland railway network. This approach could lead to contradictory und detrimental results – bearing in mind that stimulating infrastructure investments, economic growth and sustainable transport constitute top EU policy priorities. It would also not reduce, but further increase the burden of potential notifications.

The excessive inclusion of “access infrastructure” as well as “dredging” would lead to an unjustified disadvantage for seaports that are located more towards the country’s interior than their competitors – again Hamburg an Bremen being obvious cases. The European Commission should not neglect that these ports constitute historical geographical locations and economic backbones of the country.

As a conclusion, DVF suggests to exclude “access infrastructure”, “dredging and maintenance dredging” from the amendment.

Furthermore, the inclusion of “ports infrastructure” into the GBER could lead to unjustified implications. German ports, port operators, and public authorities have frequently stated that they regard the generation, preparation and maintenance of land and waterside infrastructure also within a port’s area as a public task. Consequentially, public funding of these works would not qualify for state aid and not require notification – at least not as a general rule. There is a need to distinguish between general infrastructure and specific (terminal-related) infrastructure of ports. DVF wants to reaffirm this position.

Finally, “port superstructure” should be deleted from the amendment. In our understanding, superstructure is being privately financed by ports operators. Consequentially, public funding of these private activities would constitute state aid.

Amendment articles 4 (1) (ee-ff), 56b (4+6), 56c (4+5)

DVF agrees that circumvention of state aid control by artificially splitting up bigger investment projects should be prevented.

However, such a safety mechanism can lead to wrong results if the regulation treats all investments of one beneficiary within a period of three years automatically as part of the same

single investment project. The clause can generate considerable legal uncertainty and contradict the intention of the amendment.

A possible clarification would be to require that the relevant investments are part of one single planning process.

With regard to inland port's investments we propose to increase the notification thresholds in article 4 paragraph 1 (ff) to EUR 50 million.

With regard to maritime port's investments we believe that the eligible costs deserve further consideration.

Amendment of articles 56b (2), 56c (2)

DVF suggests to explicitly include environmental protection measures into the eligible costs.

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