

State aid: Commission finds no aid given to container terminal operators in Belgium's Port of Antwerp

Port of Antwerp and Deurganckdok area concessions

The Port of Antwerp is managed by the Antwerp Port Authority, a public authority, which is fully-owned by the city of Antwerp. The Authority makes land available to companies to operate in the port area on the basis of concession agreements.

In 2004, the Antwerp Port Authority concluded concession agreements with two container terminal operators, PSA Antwerp NV and Antwerp Gateway NV, for the provision of services related to the transshipment of containers in the at the time new Deurganckdok area of the Port of Antwerp. The concession contracts were concluded for a period of 42 years, i.e. until 2046.

The agreements between the Antwerp Port Authority and the two concessionaires of the Deurganckdok area are similar to the concession contracts awarded by the Authority to other container terminal operators and include a requirement that a minimum quantity of containers is handled in each terminal every year ("minimum tonnage requirements").

Between 2009 and 2012, PSA Antwerp NV and Antwerp Gateway NV did not reach their yearly minimum tonnage requirements. As a result, under the concession agreements, they would have been expected to pay compensation to the Antwerp Port Authority. However, instead of collecting the compensation due from the two companies, in March 2013, the Antwerp Port Authority retroactively revised downwards the minimum tonnage requirements for the two companies. This reduced by around 80% the amount of compensation due by each of the two operators.

Commission investigation

Following a complaint from a competitor, on [15 January 2016](#), the Commission opened an in-depth investigation to examine whether the compensation reductions applied by the Antwerp Port Authority were in line with EU State aid rules, and in particular whether a private operator would have accepted a similar reduction (the market economy operator principle).

The Commission investigation found that:

- In the context of the economic crisis a certain adjustment of the minimum tonnage requirements was justifiable since container volumes and traffic decreased in all major ports in Europe, including in the Port of Antwerp. For the same reason, the Authority of the Port of Antwerp also adjusted the minimum tonnage requirements of other terminal operators.

- PSA Antwerp NV and Antwerp Gateway NV were in a very specific situation compared to other operators active in the Port of Antwerp. As the concessionaires of a new area of the port (Deurganckdok), they were still in a start-up phase when the economic crisis started. This put the two companies in an even more challenging situation in the context of the economic crisis and further justified the adjustment to their minimum tonnage requirements.
- The two concessionaires are key customers for the Port of Antwerp. The Port Authority was concerned that forcing the two concessionaires to pay the full amount of compensation could have had negative effects on the economic situation of the companies and put their relationship with the port at risk.
- The size of the reduction of the minimum tonnage requirements and the methodology applied by the Antwerp Port Authority to determine these adjustments for the two concessionaires were in line with what a private market operator would have used and applied.

Therefore, the Commission found that **the Antwerp Port Authority acted in the same way as a private market operator when reducing the minimum tonnage requirements** for PSA Antwerp NV or Antwerp Gateway NV. As a result, the Commission concluded that no State aid within the meaning of EU rules was granted to the two concessionaires.

Background

Public interventions in favour of companies can be considered free of State aid within the meaning of EU rules when they are made on terms that a private operator would have accepted under market conditions (the market economy operator principle, MEOP). If this principle is not respected, the public interventions involve State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union.

A non-confidential version of this decision will be made available under case number SA.35905 in the State aid [register](#) on the Commission's competition [website](#) once any confidentiality issues have been resolved. New publications of State aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).

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ESMA therefore welcomes the communication [*Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan*](#), published on 13 November 2018 where the EC stated that it will act, to the extent necessary, to address financial stability risks in the EU arising from the withdrawal of the UK without any agreement. In such a scenario the EC has stated that it will adopt a temporary and conditional equivalence decision in order to ensure that there will be no disruption to central clearing.

Therefore, ESMA is engaging with the EC to plan, as far as possible, the preparatory actions for the recognition process of UK CCPs, in case of a no-deal scenario. ESMA has already started engaging with UK CCPs to carry out preparatory work. The aim is to ensure continued access to UK CCPs for EU clearing members and trading venues as of 30 March 2019, should all the conditions in EMIR, including any conditions set out in the equivalence decision, be fulfilled.

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