DECISIONS

COMMISSION DECISION

of 17 July 2013

on measure/aid scheme/State aid SA.34369 (13/C) (ex 12/N) — Construction and operation of public intermodal transport terminals, which the Slovak Republic is planning to implement

(notified under document C(2013) 4423)

(Only the Slovak text is authentic)

(Text with EEA relevance)

(2014/524/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By e-mail of 6 April 2011 the Commission received a complaint from Metrans/Danubia/, a.s. ('Metrans') concerning alleged State aid granted for the construction of public intermodal transfer terminals ('the complaint'). The Commission received further information from Metrans by e-mail dated 9 June 2011. The complaint was registered as case SA.32828.

(2) By letter of 6 October 2011 the Commission transmitted the complaint to Slovakia with a request for information, to which Slovakia replied by letter of 6 December 2011, stating that the measure in question was still in the preparatory stage and that no funding had yet been granted. The Commission informed Metrans of this reply by letter of 12 December 2011, in which it stated its preliminary finding that the measure did not constitute State aid within the meaning of Article 107(1) TFEU and subsequently closed case SA.32828.

(3) On 16 February 2012 Slovakia electronically pre-notified a measure for the planned construction and operation of public intermodal transport terminals. By e-mails of 5 June, 12 June, 12 July and 16 July 2012 Slovakia provided further information on this measure, including letters of support from the transport and logistics undertakings DHL and GEFCO.

([1]) OJ C 45, 16.2.2013, p. 13.

(4) By e-mail of 12 July 2012 Metrans transmitted a letter of support to the Commission from Green Integrated Logistics (Slovakia) s.r.o. ('GIL'), which operates the transfer terminal in Sládkovičovo. The Commission transmitted this letter to Slovakia by letter of 18 July 2012 to which it subsequently received a reply by e-mail of 14 August 2012, reiterating that no funding had yet been granted for the project.

(5) On 17 July 2012 Slovakia electronically notified the measure to the Commission in accordance with Article 108(3) TFEU. As part of that notification, Slovakia submitted letters of support from DHL Express (Slovakia), s.r.o. ('DHL'), GEFCO Slovakia, s.r.o., Bohemiakombi, s.r.o. and Kombiverkehr. Slovakia submitted further information by e-mails of 3 September, 18, 22, 24, 26 and 29 October, 6, 9, 13 and 14 November and 6 December 2012.

(6) By letter dated 23 January 2013 the Commission informed Slovakia of its decision to initiate the procedure provided for in Article 108(2) TFEU. The Commission received the comments on the opening decision from Slovakia on 12 February 2013.

(7) The opening decision was published in the *Official Journal of the European Union* ([2]) on 16 February 2013. The Commission invited interested parties to submit their comments on the measures in question within one month of the publication date.

(8) The Commission sent the decision to initiate the procedure to the entities that had expressed their interest during the preliminary examination, namely Bohemiakombi, s.r.o.; DHL Express (Slovakia), s.r.o.; GEFCO Slovakia, s.r.o.; Kombiverkehr, Metrans and its legal adviser Schwarz advokáti s.r.o.; and Green Integrated Logistics (Slovakia) s.r.o. as well as to other potentially interested parties identified by the Commission, namely the University of Žilina — Chair of railway transport and ZCHFP SR — ChemLog (Association of Chemical and Pharmaceutical Industry of the Slovak Republic) on 18 February 2013.

(9) The Commission received comments on the opening decision from the following interested parties on the following dates:

(a) Association of Chemical and Pharmaceutical Industry of the Slovak Republic on 22 February 2013;

(b) Bohemiakombi on 4 March 2013;

(c) Kombiverkehr on 6 March 2013;

(d) DHL on 8 March 2013,

(e) Schwarz advokáti on behalf of Metrans on 11 March 2013;

(f) on 6 March 2013 WienCont Container Terminal Gesellschaft m.b.H. ('WienCont') requested an extension of the deadline for submitting its comments. On 7 March 2013 the Commission granted WienCont an extension until 18 March 2013. The Commission received the comments on the opening decision from WienCont on 18 March 2013.

(10) By letters dated 19 and 20 March 2013 the Commission sent Slovakia the comments it had received from the interested parties. Slovakia sent its reply to the comments on 5 April 2013.

(11) By e-mail of 29 April 2013 the Commission asked Metrans further questions. By e-mail of 6 May 2013 Metrans transmitted its answers including a non-confidential version.

(12) By e-mail dated 8 May 2013 the Commission sent Slovakia the non-confidential information it had received from Metrans. Slovakia transmitted its comments on 16 May 2013.

(13) By e-mails of 8 and 17 May 2013 the Commission asked Slovakia further questions, to which Slovakia replied by e-mail on 17 and 29 May 2013.

(14) The Commission asked WienCont further questions by e-mail of 21 May 2013, to which WienCont replied by e-mail of 7 June 2013.

([2]) See footnote 1.

(15) On 6 June 2013 the Commission and Slovakia held a meeting in Brussels.

(16) The Commission transmitted the non-confidential information received from Metrans and WienCont to Slovakia by e-mails dated 10 June 2013.

(17) By letter dated 10 June 2013 Slovakia limited the notification to one terminal in Žilina.

(18) Slovakia transmitted its comments on the information from Metrans and WienCont on 14 June 2013.

(19) By e-mail of 18 June 2013 the Commission requested further information, which it received by e-mail of 19 June 2013.

2. DESCRIPTION OF THE MEASURE AND COMMENTS RECEIVED PRIOR TO INITIATION OF THE INVESTIGATION PROCEDURE

2.1. THE INTERMODAL TRANSFER TERMINALS

(20) In the original notification the measure provided for the construction and operation of a network of public intermodal transfer terminals suitable for continental combined transport of goods. Slovakia originally planned to finance the construction of four publicly accessible intermodal transfer terminals in Bratislava-Pálenisko, Leopoldov-Hlohovec, Žilina-Teplička and Košice-Bočiar.

(21) Slovakia decided on the original number of terminals and their location on the basis of a market study prepared in 2007 by Intraco Consulting, a Belgium-based consultancy firm for combined transport and logistics coordination. The number and location of the terminals was determined taking account of the following factors:

— the terminals should serve the largest possible territory in Slovakia,

— the potential to fully utilise the capacity of the terminals,

— the location on the main railway lines, corresponding to the pan-European transport corridors as a part of the Trans-European Transport Network (TEN-T) and the location on the railway connections included in the European Agreement on Important International Combined Transport Lines and Related Installations ('AGTC Agreement'),

— the connectivity of the planned industrial parks in Slovakia.

(22) Since the measure as notified could lead to distortion of competition as stated in the opening decision, Slovakia decided to limit it to financing the construction and operation of a single public intermodal transfer terminal in Žilina-Teplička suitable for the continental combined transport of goods. This terminal is to be a pilot project for the possible future construction of a network of public intermodal transfer terminals across Slovakia.

(23) It will be a publicly accessible intermodal transfer terminal complying with the AGTC Agreement and the International Union of Railways (UIC) rules.

(24) The location of the pilot project was chosen as being the furthest from the current modern and large terminals, while still fulfilling the requirements in paragraph 21.

(25) The useful length of each of the terminals will be 750 metres of track under two gantry cranes equipped with piggyback hangers able to handle the swap bodies and semi-trailers used for continental transport, as well as intermodal (ISO) sea containers. There will also be angular parking slots under the cranes for the optimal handling of semi-trailers and a short-term storage space under the cranes for non-pileable swap bodies. The new terminal will have an annual capacity of 450 000 gross tonnes. The construction of the terminal should be completed during 2015.

(26) The terminal will remain in the ownership of the State. The national railway infrastructure manager, Železnice Slovenskej republiky ('ŽSR') will execute the ownership rights for the State. In particular, ŽSR will be tasked with collecting the concession fees from the operator of the terminal.

(27) The operation of the terminal will be contracted out for a period of 30 years to an operator selected on the basis of a non-discriminatory and transparent tendering procedure. So as to ensure non-discriminatory access to the terminal and to prevent a conflict of interests arising between the selected terminal operator and the transport undertakings, the operator of the terminal may not be a transport undertaking using the terminal, so as not to compete with the transport undertakings and combined transport operators which will be making use of the terminal. If the selected operator fails to fulfil the conditions agreed to under the concession agreement, the State may withdraw the concession and put it out to tender again.

(28) Public access to the terminal will be guaranteed by inserting a provision in the concession agreement concluded with the selected operator of the terminals stipulating that services will be offered on a non-discriminatory basis and at open market rates. The grant decision itself will also contain a clause ensuring non-discriminatory public access to the infrastructure.

2.2. LEGAL BASIS FOR THE MEASURE

(29) Funding for the measure will be granted on the basis of Section 4(2)(m) of State Aid Act No 231/1999, as amended, and Act No 523/2004 on the budgetary rules of public administration, amending certain acts.

2.3. BUDGET

(30) Slovakia plans an initial investment of EUR 25,04 million for the construction of the terminal, which will be built and owned by the State. This amount, which will be financed from the Cohesion Fund (85 %) and the State's own resources (15 %), will cover 100 % of the initial investment costs. However, the operator of the terminal will be required to pay concession fees of at least 15 % of the investment costs over a 15-year period.

2.4. BENEFICIARY OF THE MEASURE

(31) The beneficiary of the measure is the operator of the terminal, since it will benefit from an infrastructure for which it will pay concession fees that cover only a minor part of the total construction costs of the terminal.

(32) ŽSR is not considered a beneficiary of the measure, since it will only administer the ownership rights on behalf of the State. The concession fees ŽSR is to collect on behalf of the State will in turn lower the compensation it receives from the State for performing its public task as the national railway infrastructure manager.

2.5. CUMULATION AND STANDSTILL OBLIGATION

(33) The measure may not receive aid from other sources for the same eligible costs.

(34) The aid will be granted after the agreement of the Commission is obtained.

2.6. GROUNDS FOR INITIATING THE PROCEDURE

(35) In initiating the procedure provided for in Article 108(2) TFEU in respect of the original notification, the Commission considered:

(a) whether there was a need for the construction of the intermodal transfer terminals and the development of continental combined transport in Slovakia in order to encourage a modal shift from road to rail and inland-waterway transport; and

(b) whether the consequent distortion of competition resulting from the measure would be contrary to the common interest.

3. **COMMENTS FROM SLOVAKIA ON THE DECISION TO INITIATE THE INVESTIGATION PROCEDURE**

(36) Concerning the need for the aid, Slovakia reiterated its opinion, based on the studies and analysis submitted to the Commission and on the views of future users of the terminals, that without the construction of public

neutral terminals there would be no significant shift in the future from road transport to rail and inland-waterway transport. Slovakia cites Kombiverkehr, which found considerable growth in demand for combined transport in Slovakia, especially on the east and south European axis. However, this demand could be met only if there were access to well-placed and functioning terminals with adequate capacity providing completely neutral services, as contained in the German programme for construction of the terminals.

(37) Concerning the Commission's doubts about the distortion of competition being contrary to the common interest, Slovakia states, first, that the objective of the project is to develop continental intermodal transport, which, as an entirely new segment in intermodal transport, is currently not used at all or only to a very limited extent. Secondly, the expected savings in terms of external costs are 13 times higher than the investment costs and most of these savings will take place in the EU outside Slovakia. Finally, the distortion of competition is minimalised by the condition that the operator of the new terminals will have to pay 15 % of the total investment costs in the form of concession fees, while the prices for its services will be regulated and controlled.

(38) In response to the concerns raised in the decision initiating the investigation procedure, Slovakia states that the new terminals will represent about 16 % of the total theoretical capacity of the intermodal terminals in Slovakia expressed in transhipping capacity in intermodal transport units (ITU), as set out in the table below.

Capacity of intermodal transport terminals in Slovakia

Intermodal transport terminals	Transshipment capacity in ITUs	
	Theoretical	% share
Bratislava - ÚNS	30 000	
Bratislava - Prístav	20 000	
Sládkovičovo	20 000	
Žilina - Intrans	60 000	
Dunajská Streda	600 000	
Košice - Intrans	45 000	
Košice - Haniska	100 000	
Dobrá	75 000	
Ružomberok	30 000	
Existing - total	**980 000** (*)	**84 %**
Bratislava - Prístav	40 000	
Leopoldov	40 000	
Žilina - Teplička	40 000	
Košice - Bočiar	40 000	
New - total	**180 000** (**)	**16 %**
All terminals - total	**1 160 000**	**100 %**

(*) theoretical transhipment output with existing layout and use of handling techniques and process technology
(**) theoretical transhipment output of the new terminals after finalisation of the first stage of construction

Source: Ministry of Transport, Construction and Regional Development of the Slovak Republic, based on information provided by owners and operators of terminals.

(39) Furthermore, Slovakia provided the following numbers concerning the development of international road freight transport in Slovakia.

Year	International road haulage (thousand tonnes)	Year-on-year growth	Cumulative growth
2007	27 202		
2008	30 931	13,7	13,7
2009	28 879	– 3,4	9,8
2010	30 866	3,3	13,5
2011	33 585	8,8	23,5

Source: Statistical Office of the Slovak Republic.

(40) Lastly, Slovakia states that it will apply to its public intermodal terminal Articles 31 and 56(9) of Directive 2012/34/EU of the European Parliament and of the Council ([3]), which will have to be transposed into national law by 16 June 2015. According to the Slovak authorities these rules will provide for an adequate regulatory framework that will reduce the effect of taking over existing customers from existing terminals.

4. **COMMENTS FROM INTERESTED PARTIES**

4.1. ASSOCIATION OF CHEMICAL AND PHARMACEUTICAL INDUSTRY OF THE SLOVAK REPUBLIC

(41) The Association of Chemical and Pharmaceutical Industry of the Slovak Republic ('ZCHFP SR') has an interest in safe and ecological transport for the chemical industry. It therefore participated in the ChemLog project which was aimed at mapping, analysing and supporting combined transport and public intermodal terminals in Slovakia.

(42) ZCHFP SR attached to its comments two studies from ChemLog, a European cooperation project between regional authorities, chemical industry associations and scientific institutions from Germany, Poland, Czech Republic, Slovakia, Hungary and Italy, in which ZCHFP SR participates: '*The Strategy of Combined Transport Development of Chemicals in Central Europe*' and the '*Feasibility Study — Development of railway transport of chemicals in Slovakia in relation to adjacent countries and prepared combined transport terminals*'.

(43) ZCHFP SR concludes that the public terminals in Slovakia will have a positive contribution mainly for continental combined transport, as the current terminals transport only ISO containers. According to ZCHFP SR only very few swap bodies and semi-trailers were transported from Slovakia by rail as the current operators are not interested in them and there are currently no regular connections from Slovakia to an intermodal node in western Europe.

4.2. BOHEMIAKOMBI

(44) Bohemiakombi is a combined transport operator active in Slovakia, where it operates mainly from companies' sidings. According to Bohemiakombi, the most common users of continental lines in Europe are small and medium-sized road transporters and forwarders. They offer door-to-door transport and in order to use combined transport they need the services of neutral terminals and combined transport operators. These SMEs cannot invest in terminals of their own and therefore need the public transhipment infrastructure. In the absence of such infrastructure, these undertakings use only road transport.

([3]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

(45) Bohemiakombi claims that the private terminals can be used for continental transport only to a very limited extent as the operators of the terminals also offer door-to-door transport and are thus in direct competition with the road transporters. The use of the private terminals is thus connected with the risk that the transport transferred from road to rail can be taken over by the private terminal operator, who has access to all information about the consignments and offers competing services.

(46) Bohemiakombi states that the usual charge for intermodal transhipment in Slovakia is EUR 45-50 for one transhipped unit, which is double the cost of public terminals elsewhere in the EU. According to Bohemiakombi this is a barrier to the modal switch from road to rail. Bohemiakombi believes that the public intermodal terminals constructed from public funds will provide cheaper services and thus lower the barrier to switching to rail transport.

(47) Bohemiakombi concludes that the State aid will reinforce competition in intermodal terminal services.

4.3. KOMBIVERKEHR

(48) Kombiverkehr notes that it transports very few continental units to Slovakia — below 1 000 per year. Kombiverkehr argues that this is due mainly to the high costs of transhipment, which are in excess of EUR 45 per unit transferred from truck to train or vice versa, or about double the costs at the publicly co-financed terminals in Germany. The units currently transported are mainly from the chemical industry, for which road transport is more costly and associated with higher environmental risks. Moreover the transport units of the chemical industry can often be handled from the top using the same spreader as for maritime combined transport.

(49) According to Kombiverkehr the majority of international transport in Slovakia is general cargo, such as packed products, car industry products, machines and consumer goods, which come in semi-trailers and partially in swap bodies. But Slovak terminals do not have the necessary equipment for transhipping such units.

(50) According to Kombiverkehr the development of sustainable continental combined transport requires

(a) terminals with the following technical specifications:

— 700 m of usable rails,

— direct rail connection to a main rail corridor,

— spreaders and piggyback hangers,

— sufficient storage place taking into account that the units cannot be piled,

— sufficient holding sidings for trains at the terminal or nearby;

(b) transhipment charges that are competitive with road transport — up to EUR 20-25 per road-rail transhipment;

(c) independent terminal managers that can ensure non-discriminatory access. Although the current terminals may be used by third parties, Kombiverkehr states that the conditions for third parties are precarious. First, as the terminal operators are also transporters there is always a danger for third party combined transport operators that their clients will be taken over by the terminal operator. Second, terminal operators are interested in third parties only as long as they have free terminal capacity. As soon as they have sufficient own transport volumes, their interest in providing access for third parties disappears. Lastly, an unregulated terminal operator has many ways of making the use of his terminal by third parties more difficult or economically disadvantageous, through, for example, price setting, service quality and distribution of terminal slots.

(51) For Kombiverkehr developing new access points to combined transport for its clients entails large initial losses that can only be recouped after one to two years of regular operation. Therefore, it cannot afford to offer new products at terminals without long-term security.

(52) Kombiverkehr therefore supports Slovakia's plan to have the new terminal operated by independent undertakings. At the same time, however, it believes that operators of combined transport would be more interested in the development of the terminal if they had a stake in its operation. For the operation of the terminal to be neutral and non-discriminatory, Kombiverkehr advocates the following conditions:

— the terminal operator should be an independent undertaking with an independent management,

— no combined transport operator should have more than 50 % ownership of the company operating the terminal,

— clear rules for the terminal operator concerning, for example, slot allocation and conditions,

— control of the terminal operator by an independent supervisory board and the rail regulator.

(53) According to Kombiverkehr, the potential for a shift in goods transport from road to rail is huge, in particular on routes to Germany (Rhein-Ruhr-Gebiet and Hamburg/Hanover), as well as to the Netherlands and Belgium. The traffic on these routes is currently around 1 000 lorries a week.

(54) Kombiverkehr claims that it is interested only in continental transport of goods, which is currently done by road. Therefore, by using the new terminal it would not lower the transhipment and cargo volumes at the existing terminals in Slovakia where combined transport is already in use.

4.4. DHL

(55) DHL claims that the current intermodal terminals in Slovakia are not open for public service and do not provide liberalised access to transhipment between the public road and rail infrastructure. DHL supports the Slovak authorities in their effort to liberalise combined transport by means of the construction of the four new rail-road intermodal terminals.

4.5. METRANS

(56) Metrans argues that the arguments Slovakia uses to justify the State aid for constructing the terminals are unsubstantiated, incorrect or otherwise not relevant. In summary the company's arguments against the measure as originally notified are as follows:

Neutrality of the existing terminals

(57) According to Metrans, Slovakia's claim that the current terminal operators do not provide the required neutral services is not true and Slovakia has so far failed to provide any evidence for this claim. Metrans operates its terminals on a neutral basis and provides its services also to independent carriers. Metrans allows operations using other trains. For instance, at the Košice terminal of Interport operated by Metrans, it provides exclusively terminal-related services, while any transport is handled by other parties. As far as Metrans is aware, the same applies to other publicly accessible terminals. Slovakia has never raised any official or unofficial complaints with Metrans with regard to any alleged lack of neutrality nor have any competition authorities opened any investigations or otherwise addressed Metrans in this respect. Moreover, according to Metrans, Slovakia cannot prevent operators of public terminals from also entering the transportation business, which would mean the loss of their alleged neutrality. Lastly, Metrans argues that all-in-one services lead to greater technical efficiency and a reduction in prices (with the whole transport and handling process controlled by computer and better quality of service), which, together with service quality, enables the terminals to better compete with road transport. Regarding the issue of whether the existing intermodal terminal operators in Slovakia offer intermodal terminal services to independent combined transport operators and how these services are publicly advertised, Metrans pointed to the section of its website that offers warehouse services and provided a list of the independent transport operators, carriers, shipping companies and leasing companies that had used its services. Metrans also refers to four companies using its terminal that offer intermodal transport services.

Continental transport

(58) According to Metrans, it is incorrect to say that the existing terminals do not handle continental transport. Metrans claims that of the total of 127 trains it handles a week twelve are dispatched to Duisburg and twelve to Rotterdam, these trains being exclusively for continental transport. Moreover, 10 % of all the trains handled fall into the continental transport category. About 50 % of the volumes handled at its terminal in Košice Haniska are for continental transport. At its terminals Metrans has the equipment to handle all continental units, such as reach stackers or detachable piggyback spreaders for handling continental units, such as exchangeable swap bodies and semi-trailer bodies, and can, where necessary, build RO-LA ramps. However, Metrans notes that there is no demand for such services. Metrans argues that the use of swap bodies, semi-trailers or trucks is inefficient compared with the 45-foot (13,7-metre) wide ISO pallet containers designed specifically for combined transport,

as the transport costs for these containers are 30 % lower than for the transport of truck trailers. Furthermore, around 25 % of the company's turnover is generated from services related to continental transport. The relevant market extends beyond the Slovak border, with terminals in neighbouring countries constituting effective competition and performing services related to continental transport. Metrans claims that the public terminals will not be tailored for continental transport.

Compliance of existing terminals with the AGTC Agreement

(59) According to Metrans, investment in terminals with AGTC-compliant parameters (terminal tracks 750 m long) is commercially inefficient and constitutes sunk costs. The railway infrastructure in Slovakia and in neighbouring countries (such as the Czech Republic and Hungary) does not allow for the operation of trains longer than around 550 metres. This situation is unlikely to change over the next 5-7 years, but several terminals, including both of Metrans's terminals, are in a position to extend their terminal tracks to 750 metres within a time horizon of one-two years and thus react as soon as the railway infrastructure capacity allows the use of such trains.

Construction and operation of neutral terminals is possible without State aid

(60) Metrans claims that it is itself the best proof that the intermodal terminal market is attractive for private investors and that these terminals can be commercially feasible. In addition to its green-field investment in the largest terminal in Slovakia in Dunajská Streda, in 2012 Metrans opened a new terminal in Košice. Any such investment is very sensitive to changes in the law after the investment has been made and to State support for combined transport. Slovakia's plans to invest State money in terminals (together with an inefficient State transport policy) are already discouraging private investors from further investments in upgrading existing terminals or from making further green-field investments.

The measure as originally notified distorts competition

(61) According to Metrans, operators of public terminals will gain a significant competitive advantage, as they will receive an 85 % subsidy on the total capital expenditure. Slovakia cannot effectively prevent operators from offering dumping prices (any price-fixing in the concession agreement could at some point be challenged as an unlawful hard core restriction). Metrans disagrees with Slovakia's argument that the public terminals will charge prices comparable to existing terminals. The internal market (extending beyond Slovakia's borders) will be significantly affected; for example, the greater Bratislava area that is also served by two terminals in Vienna. Metrans provided the Commission with the charges that it offers upon request to any interested customers. According to this schedule of charges, the company charges considerably less than envisaged under the measure per operation for any type of unit. Lastly, the planned terminal in Košice would be only one kilometre from the new terminal of Metrans. In the vicinity of Bratislava, where another new terminal is to be built, there are already two terminals in Vienna, two in Budapest and one in Dunajská Streda.

Construction of new public terminals will not attract new volumes from road to combined transport

(62) As Metrans states, the terminal services (handling, reloading, etc.) constitute only around 2 % of the total costs of combined transport. The charges for using the railway infrastructure make up around 40-50 % of the total transport costs. New terminals, therefore, attract only customers who are already using combined transport. Only effective State support of combined transport may help increase volumes.

Savings in external costs

(63) The savings in external costs claimed by Slovakia can be made only if additional transport is attracted from road to rail and, even then, not merely by constructing public terminals. Metrans argues that the construction of the terminals will not lead to a significant increase in combined transport volumes and thus the savings in external costs will not be achieved.

Existing capacities are sufficient and increased demand can be satisfied by the market

(64) According to Metrans, the existing terminals are currently using only around 50 % of their actual capacity. Moreover, the total volumes of transported goods in Slovakia have steadily declined in recent years. Metrans supports this claim with statistics on transportation of goods in Slovakia, showing 203 million tonnes in 2009, 191 million tonnes in 2010 and 179 million tonnes in 2011. Thus the economic forecasts cited by Slovakia in support of its claim are incorrect and out of date. Even if increased demand for combined transport could not be met by the existing overcapacities, it could be met at relatively low cost in the short or medium term by either upgrading and extending existing capacities or by private investors building new capacities. Metrans states that in 2010 the total volume of all existing intermodal terminals in Slovakia was 1,9 million tonnes. The planned capacity of the new public terminals is 1,8 million tonnes per year, which represents almost 100 % of the market.

(65) Metrans concludes that, under the current economic and market situation (existing overcapacities, steadily declining volumes of transported goods, unstable transportation policy), the four public terminals are not viable projects. If built, they will give rise to further overcapacity, which will only distort competition and drive out private operators, who need to operate on a level that covers not only their variable but also their fixed costs.

4.6. WIENCONT

(66) WienCont is the owner and operator of a large tri-modal terminal in Vienna. It argues that the State aid for the construction of four public intermodal terminals in Slovakia is not necessary for the development of intermodal transport in Slovakia and will distort competition in a non-negligible way. WienCont argues that aid of EUR 135,5 million and aid intensity of 85 %/100 % is completely unnecessary, given that since 2006 WienCont has been operating and expanding its terminal with operating and investment subsidies from the City of Vienna of EUR 11,6 million and aid intensity of 31 %.

(67) WienCont further casts doubts on the forecast on growth in intermodal transport provided by Slovakia and points to the statistics that show that industrial growth in Slovakia between 2010 and 2012 was only 13 %. It also cites a more recent forecast by Snizek & Partner (2011), which assumes growth in unaccompanied goods transport from 300 000 ITU in 2008 to 440 000 ITU in 2030. According to this forecast the entire market could be covered by the capacities of WienCont's terminals. The Austrian authorities are nevertheless supporting the construction of another large intermodal terminal in Vienna Inzersdorf, which has just started.

(68) WienCont claims that construction of a second terminal in the region, in Bratislava, would weaken the position of Vienna as a hub. It further claims that the construction of new terminals would lead to a shift from road transport to rail transport.

(69) In 2011 and 2012 WienCont's capacity was 250 000 ITUs. It handled 72 541 ITUs in 2012 and 71 369 ITUs in 2011, with transport from Slovakia accounting for 2 968 ITUs in 2012 and 2 148 ITUs in 2011, while transport to Slovakia was zero in 2012 and 59 ITUs in 2011. WienCont's handling charges per container in terminal are comparable to those in the measure for a container in terminal, but higher for warehouse use and for handling a trailer.

5. SLOVAKIA'S COMMENTS ON THE COMMENTS FROM INTERESTED PARTIES

(70) Slovakia noted that four of the six parties that demonstrated their interest supported the aid for the construction of the public terminals. Slovakia's reactions to the submissions from Metrans and WienCont are set out below.

5.1. REACTION TO THE SUBMISSION FROM METRANS

Neutrality of the existing terminals

(71) Slovakia reasserts that Metrans is not a neutral terminal operator as it is itself a transport operator. It points to the submissions from Bohemiakombi and Kombiverkehr, who mention a possible risk of conflict of interest of Metrans who acts both as terminal operator and as an operator of combined transport and door-to-door transport. Slovakia also refers to the requirement under EU law that an operator of railway infrastructure may not be

in competition with the transport undertakings using that railway infrastructure. Slovakia reasserts that it can enforce the neutrality of the operator which it will select for the operation of its public terminals. As regards the transporters who use the terminals of Metrans, Slovakia notes that it is not aware of any of them operating a regular combined transport route.

(72) Concerning the efficiency of all-in-one services Slovakia notes that the ownership of infrastructure by a transport undertaking leads to a monopolistic position and therefore the owner of the infrastructure should not also use the infrastructure as a transport operator. In this connection Slovakia points to the fact that Metrans has a market share of 55-60 %.

(73) Slovakia notes that the website of Metrans, on which Metrans claims to advertise its transhipment services, does not offer intermodal terminal service to operators of intermodal transport, but to shipping companies and leasing companies.

Continental transport

(74) Slovakia claims that there are no statistics showing the continental transport claimed by Metrans. Slovakia has never received any information showing that Metrans owns the equipment necessary for the handling of continental ITUs. It assumes that Metrans considers continental transport to include sea containers that were loaded outside of Europe, but transhipped in one of the inland terminals.

(75) Slovakia argues that the UIRR statistics ([4]) refute Metrans's claim that there is no market for semi-trailers and swap bodies.

(76) Slovakia also explains that the design of the planned terminals is particularly suitable for continental transport. The transhipment equipment will be able to handle semi-trailers and swap bodies. The space under the crane will be designed specifically to serve continental ITUs: there will be spaces between the ITUs which are necessary for handling by piggyback hangers; and there will be diagonal parking spaces for semi-trailers, which will enable direct handling by trucks. Therefore, unlike in other terminals specialised in containers, it will be possible to handle these types of ITUs in a single step. This will lower the transhipment price for continental ITUs at the public terminals.

Compliance of existing terminals with the AGTC Agreement

(77) In line with EU priorities for railway transport policy Slovakia is investing in infrastructure that will allow transportation of 750 m-long trains. Slovakia also takes the view that the Metrans terminal in Dunajská Streda cannot be extended, since it is limited on one side by the E575 road and on the other side by the curved track connecting the terminal to the main rail network.

Construction and operation of neutral terminals is possible without State aid

(78) According to Slovakia, the economic studies prepared for the public terminals show that the construction and operation of the terminals cannot be financed solely from revenue from the activities of the terminals. Slovakia assumes that Metrans cross-finances the construction of the terminals from its revenue from transport activities.

(79) Slovakia also offered cooperation with Metrans in construction of the public terminals, but Metrans was not willing to fulfil Slovakia's conditions regarding non-discriminatory access.

Competition will be distorted

(80) Slovakia points out that Directive 2012/34/EU lays down the principles for setting fees for the use of services of terminals as well as the responsibility of an independent railway regulator to assess these fees and to regulate them in the event of complaints.

([4]) International Union for Road-Rail Combined Transport: http://www.uirr.com/en/media-centre/annual-reports/annual-reports/mediacentre/516-annual-report-2011.html

(81) Slovakia states that it also supports the development of combined transport by private companies; it for instance invested in the capacity increase on the Bratislava-Dunajská Streda railway track, which was due to the increased needs of Metrans.

(82) Slovakia notes that Metrans marked its price list of terminal services as confidential, which shows that its prices are not published.

Construction of new public terminals will not attract new volumes from road to combined transport

(83) In its response to this unsubstantiated claim, Slovakia cites the submission from Kombiverkehr, which states that continental combined transport will develop if independent operators of terminals ensure non-discriminatory access to their services and if the price per handling operation does not exceed EUR 20-25 per transhipped unit.

(84) Slovakia further argues that according to the UIC ([5]) statistics continental combined transport accounts for 47,14 % of total combined transport. However, since in Slovakia the shift from road to rail has not yet reached this level, there is still high potential for continental intermodal transport, other than just sea containers.

Unaccompanied combined transport: TEU 2011

CT market segment	Continental	Maritime	Total
	(TEU)		
Domestic CT	3 863 110	7 065 030	10 928 140
International CT	4 678 050	2 510 730	7 188 780
Total CT	8 541 160	9 575 760	18 116 920

(85) Slovakia argues that, since, according to Metrans, the costs of transhipment represent about 2 % of total transport costs and since, according to Kombiverkehr, the initial cost of a new continental route can be recovered only after one or two years, it is highly unlikely that operators of new routes would introduce new routes to destinations where a route already exists. Slovakia claims that, while the customers of Metrans are predominantly shipping companies and Metrans transports mainly sea containers, the new terminal will focus on the transfer of cargo from road to rail. It will be for a different group of customers and offer its services in different market segments.

Savings in external costs; existing capacities are sufficient and increased demand can be satisfied by the market

(86) Slovakia argues that the decrease in transported volumes in Slovakia is irrelevant for estimating the potential for the development of continental transport, as the decrease is due mainly to the fall in national transport volumes. Therefore, Slovakia sets greater store by the statistics (provided in its submission above) that show the increase in volumes of road transport, as these are the relevant volumes to be targeted by the shift from road to rail.

(87) Slovakia submits that the new terminals will represent only 16 % of the future capacity of Slovak intermodal terminals.

(88) In reacting to the comments by Metrans regarding distortion of competition, the inability to attract new volumes from road transport and coverage of new demand using existing capacities, Slovakia refers to the submission from Kombiverkehr, which estimates the potential for continental combined transport to and from Slovakia to be considerable. Kombiverkehr states that the weekly road transport volume from northern Germany, Belgium and the Netherlands to Slovakia and vice versais about 1 000 lorries. Kombiverkehr envisages transferring only some of the cargo currently transported by road, so it would not target any of the current sources of turnover of the existing terminals.

([5]) International Union of Railways: http://www.uic.org/IMG/pdf/2012_report_on_combined_transport_in_europe.pdf

5.2. REACTION TO THE SUBMISSION FROM WIENCONT

(89) First, in response to WienCont's point that it had aid intensity of only 31 % for expanding its terminal, whereas Slovakia is offering 100 % aid for the initial investment, Slovakia notes that WienCont is majority-owned by the public authorities. Moreover, the railway infrastructure it uses is owned by the railway infrastructure manager and the land it uses is owned by the City of Vienna. The construction costs for the new Slovak terminals include both the purchase of land and the construction of railway infrastructure, as well as the construction of an entirely new terminal. Slovakia states that the overall investment in the construction of the WienCont terminal, including the rails and the land, was financed more than 90 % from public funds. Furthermore, according to Slovakia, this objection is contrary to the objectives of the Cohesion Fund, which aims at reducing differences between Member States by financing infrastructure and environmental protection.

(90) Second, in response to the claim that WienCont covers all demand in the Vienna area and the Bratislava terminal would threaten its commercial activities, Slovakia notes that only 4,6 % of the total volumes handled at WienCont are from Slovakia. Even if WienCont lost all these volumes, which Slovakia doubts, the company would not be harmed to an extent that would justify not constructing a modern tri-modal terminal in Bratislava on the Danube.

6. **FOLLOW-UP EXCHANGE OF INFORMATION WITH METRANS, WIENCONT AND SLOVAKIA**

(91) The Commission's follow-up exchange of information with Slovakia, Metrans and WienCont clarified a number of issues in the information provided by these parties.

(92) Although Metrans could not prove the extent to which it provides continental combined transport, it was able to show that it does provide such transport and its current continental transport volumes are not negligible. For continental transport Metrans uses containers, in particular the 45-foot (13,7 m) wide containers and tank containers. Metrans has also shown that it owns certain equipment, suitable for transhipping intermodal transport units other than containers. Slovakia provided the Commission with statistical data sheets obtained from Metrans that show that Metrans did not transport any lorries, swap-bodies or semi-trailers.

(93) In order to refute the arguments put forward by Metrans that there is no demand for combined transport in intermodal transport units (ITU) other than containers, Slovakia puts forward examples of the neutral access terminal in Lovosice in the Czech Republic, which started operating in 2006 with regular routes mainly transporting containers, where the amount of transported ITUs increased by 81 % between 2007 and 2012, and by 2012 swap bodies and semi-trailers accounted for 75 % of transhipments. Another example given by Slovakia is the neutral access terminal of Wuppertal-Langerfeld, which currently transports almost exclusively swap bodies and semi-trailers. Even at the WienCont terminal, which is a significant transhipment location for sea containers, swap bodies account for 21 % of transhipments.

(94) WienCont provided a presentation produced by Snizek & Partner which claims that in a terminal that is operated at 88 % of its capacity the quality of the operations will be seriously impaired.

(95) Finally, in order to alleviate possible concerns as to the extent of possible distortion of competition and in order to test its assumptions concerning the transfer of cargo from road to rail, Slovakia agreed that it would initially construct just one terminal as a pilot project. Slovakia therefore limited the original notification to just the terminal in Žilina-Teplička. This terminal will be more than 200 km away from the Metrans terminals in Dunajská Streda and Košice and from the WienCont terminal. Moreover, Slovakia informed the Commission that the existing terminal of Intrans in Žilina would be closed in the near future. The Commission's assessment of the measure is set out below.

7. **ASSESSMENT OF THE AID**

(96) Article 107(1) TFEU states 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'.

(97) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure constitutes State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. Specifically, the financial support should:

(a) be granted by the State or through State resources;

(b) confer an advantage on the beneficiary undertakings;

(c) favour certain undertakings or the production of certain goods (the selectivity criterion);

(d) distort or threaten to distort competition, and affect trade between Member States.

(98) According to the case-law of the Court of Justice of the European Union, the construction and operation of infrastructure may constitute an economic activity ([6]). As the notified measure concerns investment aid for infrastructure that is used for commercial exploitation, the construction and operation of such infrastructure must be considered to constitute an economic activity and the measure, therefore, falls within the scope of Article 107(1) TFEU.

(99) For the notified measure the Slovak authorities will construct the terminal and select the concession holder, who will be responsible for operating it. This initial investment will be funded by the Cohesion Fund (85 %) and the State's own resources (15 %). Since the resources of the Cohesion Fund are transferred to the relevant national authority, they are considered to be at the disposal of the Slovak authorities and to constitute State resources.

(100) Advantage: on the basis of the preliminary market investigation conducted by the Slovak authorities, it cannot be excluded that the participation in the future selection process will be very limited and that the selection process will not fulfil the criteria of a competitive tender. Consequently, and given the high likelihood that the tendering will be insufficiently competitive, it cannot be excluded that an economic advantage will be conferred on the operator.

(101) Selectivity: since the measure exclusively benefits the selected operator of the terminal, it should be considered selective in nature.

(102) Distortion of competition and effect on intra-EU trade: when aid granted by a Member State strengthens the position of an undertaking compared with that of other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid ([7]). It is sufficient that the recipient of the aid competes with other undertakings in markets open to competition ([8]). In the present case, the notified measure will strengthen the position of the new transfer terminals in relation to existing terminals and therefore has potentially distorting effects on competition in so far as this market is open to competition. Hence, the aid is liable to distort competition and affect trade within the Union.

(103) In view of the above the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

7.1. LEGALITY OF THE MEASURE

(104) The Slovak authorities have fulfilled their obligation, in accordance with Article 108(3) TFEU, to notify the aid before putting it into effect. The Commission takes note of the fact that the aid will not be granted until approved by the Commission.

7.2. COMPATIBILITY ASSESSMENT

(105) The Commission has previously assessed aid for infrastructure projects directly on the basis of Article 93 TFEU ([9]) and, following the CJEU ruling in *Altmark* ([10]), which precluded the direct application of Article 93

([6]) See, inter alia, Case C-82/01P *Aéroports de Paris* [2002] ECR I-9297 and Cases T-443/08 and T-445/08 *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, not yet published in the European Court Reports.
([7]) See, in particular, Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11; Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21; and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44.
([8]) Case T-214/95 *Het Vlaamse Gewest* v *Commission* [1998] ECR II-717.
([9]) See Commission Decision of 31 January 2001 in Case N 597/2000, OJ C 102, 31.3.2001, p. 8; Commission Decision of 14 September 2001 in Case N 208/2000, OJ C 315, 4.1.2000, p. 21; Commission Decision of 15 November 2000 in Case N 755/1999, OJ C 71, 3.3.2001, p. 17 and 19 ; Commission Decision of 11 November 2001 in Case N 550/01, OJ C 24, 26.1.2002, p. 2.
([10]) Case C-280/00 *Altmark Trans GmbH* [2003] ECR I-7747.

TFEU, on the basis of Article 107(3)(c) TFEU for intermodal terminals ([11]). Since the entry into force of Regulation (EC) No 1370/2007 of the European Parliament and of the Council ([12]), Article 93 TFEU has become directly applicable as the legal basis for establishing the compatibility of aid for land transport not covered by that Regulation and, in particular, of aid for the coordination of transport.

(106) Article 93 TFEU states that aid which meets the needs of coordination of transport is compatible with the Treaties. The term'coordination of transport' used in that provision has a significance which goes beyond simply facilitating the development of an economic activity. It encompasses intervention by public authorities aimed at guiding the development of the transport sector in the common interest. The CJEU has ruled that this Article 'acknowledges that aid to transport is compatible with the Treaty only in well-defined cases which do not jeopardise the general interests of the Community' ([13]).

(107) The progress made with liberalising the land transport sector has in some respects considerably reduced the need for coordination. In an efficiently liberalised sector, coordination can in principle result from the action of market forces. Even after the liberalisation of the sector, there may, however, still be various market failures. These justify the intervention of the public authorities in this field.

(108) The transport sector may experience 'coordination' difficulties in the economic sense of the term, for example in the connections between different transport networks. The Commission has on these grounds already authorised State aid on the basis of Article 93 TFEU ([14]).

(109) For a given aid measure to be considered to 'meet the needs' of transport coordination, it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Union.

(110) Therefore, the Commission has consistently held that aid is compatible with the internal market on the basis of Article 93 TFEU if the following conditions are met:

(a) the aid contributes to an objective of common interest;

(b) the aid is necessary;

(c) the aid is proportionate;

(d) the access to the infrastructure in question is open to all users on a non-discriminatory basis;

(e) the aid does not lead to distortions of competition contrary to the common interest.

(111) The Commission will therefore assess whether these five criteria are met in the present case, for the aid to be considered compatible with the internal market on the basis of Article 93 TFEU.

7.2.1. **Objective of common interest**

(112) The Union has for some time pursued a policy of achieving a balanced combined transport system, and the fostering of the competitiveness of combined transport vis-à-vis road usage is a part of this policy. The aim of the Union's combined transport policy is to achieve a modal shift from carriage by road to other modes of transport.

(113) Union instruments, such as Council Directive 92/106/EEC ([15]) of 7 December 1992 aim at fostering the development of combined transport. The White Paper on Transport Policy ([16]) encourages the use of rail and other environmentally friendly modes of transport in order to develop competitive alternatives to road haulage.

([11]) See Commission Decision of 11 February 2009 in Case N 651/08 — *Combinant multimodal container terminal* (EFRO), OJ C 60, 14.3.2009, p. 4.
([12]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).
([13]) Case C-156/77 *Commission v Belgium* [1978] ECR I-1881, paragraph 10.
([14]) See Commission Decision of 20 July 2010 in Case C 17/10, *Firmin srl*, OJ C 278, 15.10.2010, p. 28.
([15]) Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).
([16]) *Roadmap to a Single European Transport Area — Towards a competitive and resource-efficient transport system*, COM(2011)144 of 28.3.2011.

(114) In addition, combined transport policy is in line with the conclusions of the Gothenburg European Council of June 2001, which declared that measures helping the modal shift from road transport to more environmentally friendly transport modes are at the heart of the policy for sustainable transport.

(115) The Commission recognises that it is primarily the task of market operators to improve combined transport within markets with free access and where the rules of free competition and supply and demand prevail. However, to fully unleash the potential of combined transport, the willingness to take risks inherent in switching from road to alternative modes of transport may need to be stimulated.

(116) Furthermore, the focus on combined transport options is also increasingly justified by the following consideration: Europe's industry maintains or increases the competitiveness of its Europe-based production largely by advanced logistics, optimising production and distribution and creating value in the process. These sophisticated supply chains are increasingly vulnerable to the decreasing reliability and increasing costs of road haulage. Combined transport logistics will thus have to become a prime objective for Europe's manufacturing industry.

(117) Lastly, the Commission refers to the need to accelerate investments in infrastructure, particularly in environmentally friendly transport modes which are part of the Trans-European Networks (TENs) and high-speed ICT networks ([17]).

(118) The construction of intermodal terminals that guarantee equal access to all users has been supported by several EU instruments. Decision No 661/2010/EU of the European Parliament and of the Council ([18]) requires establishing a trans-European transport network, which must be, as far as possible, interoperable within modes of transport and encourage intermodality between the different modes of transport. Projects of common interest, according to that decision, must contribute to the sustainable development of transport by improving safety and reducing environmental damage caused by transport, in particular by promoting a modal shift towards railways, intermodal transport, inland waterways and maritime transport. Article 10 of Council Directive 91/440/EEC ([19]) of 29 July 1991 on the development of the Community's railways requires Member States to ensure that railway undertakings from other Member States have access to the infrastructure on equitable conditions for the purpose of operating international combined transport goods services. Moreover, in its Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the Trans-European Transport Network ([20]), the Commission proposed that operators of freight terminals should ensure that freight terminals are open to all operators, provide this access in a non-discriminatory way and apply transparent charges.

(119) The construction of intermodal terminals that guarantee equal access to all users is directed at attaining an objective of common interest in that it contributes to enhancing combined transport and encouraging a modal shift from road to rail and inland-waterway transport and thereby to decreasing congestion, accident rates, emissions, noise and the negative impact on the climate stemming from road transport. It is not disputed by any of the submissions in response to the initiation of the procedure that the objective of the measure, i.e. supporting the shift from road transport to rail and inland waterways, is an objective of common interest.

(120) As regards the planned construction and operation of the terminal in Žilina-Teplička, according to the data provided by the Slovak authorities the benefits in terms of savings in external costs are over 15 times higher than the construction costs of the planned infrastructure. Moreover, most of the total expected benefits of EUR 399 million will be achieved in the EU outside Slovakia, since for transport between Slovakia and the rest of the EU the stretch of the journey travelled outside Slovakia is usually longer than the stretch inside Slovakia.

(in EUR)

Environmental savings over 30 years for the Žilina terminal	
Savings on congestion	107 117 951
Savings on accidents	32 175 502
Savings on emissions	223 748 276

([17]) Communication 'A European Economic Recovery Plan', COM(2008) 800 final, 26.11.2008.
([18]) Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network (OJ L 204, 5.8.2010, p. 1).
([19]) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25).
([20]) COM(2011) 650 final, OJ C 37, 10.2.2012, p. 16.

(in EUR)

Environmental savings over 30 years for the Žilina terminal	
Savings on noise	7 338 003
Savings on climate	16 390 770
Total savings	386 770 502

Source: Cost-benefit analysis for the Žilina terminal submitted by the Slovak authorities

(121) Accordingly, the Commission considers that the construction of the Žilina-Teplička intermodal terminal may help attain an objective of common interest as it contributes to enhancing multi-modal transport and encouraging a modal shift from road to rail and inland-waterway transport, thereby reducing congestion, accidents, emissions, noise and the negative impact on the climate caused by road transport.

7.2.2. **Necessity and proportionality**

(122) In the past ([21]), the Commission has authorised investment aid for intermodal terminals with an aid intensity of 50 %. Recently, where Member States have demonstrated the economic need for a higher aid intensity, the Commission has been willing to accept such higher intensities in duly justified cases ([22]).

(123) In the present case, the Slovak authorities have notified a measure which provides for aid intensity of at least 85 % in favour of the future concession holder. This project is different from the private terminals of Metrans, which the company built with no State aid from Slovakia, and from the nearby WienCont terminal (owned by the City of Vienna), which has been receiving aid with an average intensity of 31 % for the purchase of additional equipment since 2006. In the case of WienCont the investment was not initial investment for a new terminal built from scratch, as is the case with the Žilina-Teplička terminal. Moreover, WienCont uses the rails of the infrastructure manager and the land of the City of Vienna, for which it pays a rent that does not necessarily equal what it would cost to purchase these facilities.

(124) In any case, as the aid intensity in the Slovak case is above 50 %, the Commission has to consider whether this higher aid intensity can exceptionally be found compatible with the internal market.

(125) As regards the necessity of the aid, the cost-benefit analysis submitted by the Slovak authorities projects a negative internal rate of return for the planned transport terminal in Žilina-Teplička without public support. When Slovakia takes into account the entire initial investment, including the costs of purchasing the land, the funding gap of the project at a discount rate of 5 % corresponds to the initial investment of EUR 25,04 million. A discount rate of 5 % is comparable to the return on long-term public debt in Slovakia ([23]).

(126) The table below summarises the investment costs, operating costs, expected return on investment and aid amount planned for the construction of the Žilina terminal as calculated in the cost-benefit analysis submitted by the Slovak authorities.

([21]) See Commission Decision of 31 January 2001 in Case N 597/2000, Netherlands — *Subsidieregeling voor bijzondere bedrijfsaansluitingen op vaarwegen*, Commission Decision of 14 September 2001 in Case N 208/2000, Netherlands — *SOIT*, Commission Decision of 15 November 2000 in Case N 755/1999, Italy — *Bolzano*, and Commission Decision of 20 December 2010 in Case N 490/2010, Belgium — *Verlenging van steunregeling N 550/2001 inzake publiek-private samenwerking voor de bouw van laad- en losinstallaties langs de waterwegen in het Vlaams Gewest*.

([22]) See Commission Decision of 20 December 2011 in Case SA.33434, France — *Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre*; Commission Decision of 23 November 2011 in Case SA.33486, Germany — *Förderprogramm Umschlaganlagen für den kombinierten Verkehr* (not yet published); and Commission Decision of 17 October 2012 in Case SA.34501, Germany — *Extension of the inland port of Königs Wusterhausen/Wildau*.

([23]) In September 2012, the interest on long-term public debt in Slovakia was 4,2 %, see ECB, http://www.ecb.int/stats/money/long/html/index.en.html

(in EUR millions)

Terminal	Investment costs	Operating costs	Total costs	Revenu	State aid	Expected profit	NPV after state aid (5 %)
Žilina	25,04	24,81	49,85	24,81	25,04	0	0,00

Source: Slovak authorities, cost-benefit analysis

(127) As the initial investment is limited to the funding gap of the project, the Commission concludes that the aid is necessary to ensure the construction of the intermodal transfer terminal and the development of combined transport in Slovakia. It also takes the view that the aid will be kept to the minimum necessary, since it is greater than the funding gap and is, therefore, proportionate for achieving the common interest objective of ensuring the shift from road transport to rail transport.

7.2.3. **The access to the infrastructure in question is open to all users on a non-discriminatory basis**

(128) The purpose of the measure is to construct public intermodal transfer terminals for continental combined transport, in particular semi-trailers and swap-bodies, in order to support the shift from road to rail transport. To achieve this objective, the terminals will:

(a) be operated by companies independent of the transport companies using them;

(b) provide for open access;

(c) offer non-discriminatory and transparent conditions.

(129) In order to ensure non-discriminatory access to the terminals and to prevent a conflict of interests from arising between the selected terminal operator and the transport undertakings, the operator of the terminals will be independent of the transport undertakings.

(130) Moreover, the Slovak State will remain the owner of the terminals and will include in any concession agreement the obligation for the operator of the terminals to guarantee open access to all users, including all transporters and operators of intermodal transport terminals, on a non-discriminatory basis. If the selected operator fails to fulfil this condition of the concession agreement, the State will have the power to withdraw the concession and put it out to tender again.

(131) Therefore, the access to the infrastructure in question will be open to all users on a non-discriminatory basis.

7.2.4. **The aid does not lead to distortions of competition contrary to the common interest**

(132) The measure as originally notified would affect intermodal terminal services in the Slovak Republic, which also attracts cross-border demand from Austria, the Czech Republic, Hungary and, to a lesser extent, Poland. In order to avoid the risk of distortion of competition, as set out in the decision initiating the procedure, and in order to test their assumption regarding the impact of the terminal on shifting goods transport from road to rail, the Slovak authorities undertook to limit the project to building a single pilot project terminal in Žilina-Teplička. This terminal will be more than 200 km from the current Metrans and WienCont terminals. Its catchment areas will therefore not overlap with the Metrans and WienCont areas. This will limit the impact of the measure on competition ([24]).

([24]) In its decision of 9 November 2011 in Case SA.32632 (2011/N) *ETGE*, OJ C 82, 21.3.2012, p. 2, paragraph 15, the Commission refers to an attraction radius of 35 km in an area with a high density of terminals (Belgian-Dutch border). The Slovak authorities reckon on a catchment area of 100 km. In the Prague area there are 7 terminals operating within an attraction radius of 70 km: 2 large terminals in Prague, 2 in Mělník (40 km) and 3 in Lovosice (70 km).

(133) According to the Slovak authorities, there is a temporary terminal in Žilina which belongs to Intrans. Unlike the planned terminal, this terminal is small and located in the centre of the town. At this terminal the loading ramp is accessible only from a single track 400 m long, which it is not possible to extend. The terminal is designed for sea containers and does not have any gantry cranes or equipment for transhipment of swap bodies and semi-trailers. Due to town-planning developments, the existing Žilina terminal will in any case be closed in the near future.

(134) The Slovak authorities have confirmed that the handling charges at the public terminals will correspond to the handling charges of the intermodal transport terminals already operating in the market. According to a survey conducted by the Slovak authorities, the handing charges at terminals in the EU are between EUR 16,30 and EUR 56 per unit, the average charge being EUR 30. The cost-benefit analysis submitted by the Slovak authorities was based on the assumption that the future handling charges per unit at all four public terminals would be EUR 28-29. The charges at the public terminal in Žilina-Teplička will, therefore, be set to maintain the competitiveness of rail transport compared with the road sector. Increased fees would mean that the operator of the public terminals would be unable to attract enough cargo from the road transport sector to cover its operating costs.

(135) The Commission therefore concludes that the measure does not distort competition to an extent contrary to the common interest.

8. **CONCLUSION**

(136) In view of the above, the Commission concludes that all the conditions are fulfilled and the investment aid of EUR 25,04 million for the Žilina-Teplička terminal is compatible with the internal market.

(137) Given Slovakia's original plan to build four public intermodal terminals, the Commission requires monitoring of the terminal that is to be built on the basis of the pilot project currently notified. This monitoring will allow the Commission to take a more solid decision on the necessity of the aid and its effect on competition, if at some point in the future Slovakia notifies aid for the remaining three terminals,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Slovak Republic is planning to implement for the construction of the terminal in Žilina-Teplička in the form of initial investment aid of EUR 25,04 million is compatible with the internal market within the meaning of Article 93 of the Treaty on the Functioning of the European Union.

Implementation of this aid of EUR 25,04 million is accordingly authorised.

Article 2

In three years' time the Slovak Republic shall provide the following information:

(a) the total volume of intermodal transport, the volume of continental transport and the volume of transport using means other than ISO containers in Slovakia and at the Žilina-Teplička terminal;

(b) the prices charged at the Žilina-Teplička terminal;

(c) whether the clients of the new terminals had previously been using the existing terminals and, if so, a survey on why they switched.

Article 3

This Decision is addressed to the Slovak Republic.

Done at Brussels, 17 July 2013.

For the Commission
Joaquín ALMUNIA
Vice-President