Commission Decision (EU) 2019/422 of 20 September 2018 on the State aid SA 36112 (2016/C) (ex 2015/NN) implemented by Italy for the Port Authority of Naples and Cantieri del Mediterraneo S.p.A. (notified under document C(2018) 6037) (Only the Italian version is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/422

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), 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 provision(s) cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) In March 2006, the Commission requested information from the Italian authorities on potential State support to Cantieri del Mediterraneo S.p.A. ('CAMED') concerning planned works on a dry-dock located in the Port of Naples (dry-dock No 3). Following the reply of the Italian authorities of 3 April 2006, the Commission did not act nor investigate the matter further to the Italian comments, and the Commission services closed the file internally, as the support was considered not to involve State aid. Italy has never formally notified to the Commission the measures at stake.

(2) On 21 January 2013, a ship repairer active in the Port of Naples expressed concerns in respect of funding provided by public authorities in Italy to three investment projects allegedly carried out between 2006 and 2014 for the refurbishment of three dry-docks (*bacini di carenaggio*) operated by CAMED by means of a concession contract. The case was registered as SA.36112 (2013/CP) – Alleged aid to Cantieri del Mediterraneo. On 27 June 2013, the complainant provided the Commission with additional information.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/422. (See end of Document for details)*

(3) Between 28 February 2013 and 12 June 2013 the Commission requested information from the Italian authorities in the light of the complainant's allegations.

(4) On 21 October 2013 the Commission services communicated to the complainant their preliminary findings concerning the alleged State aid to CAMED and informed the complainant that, based on the information available at the time, the alleged measures did not seem to constitute aid within the meaning of Article 107(1) TFEU since the presence of an advantage to CAMED appeared to be excluded. The Commission services explained that at that stage there were no indications that operating aid had been granted at the level of the operator, since CAMED did not appear to be released from costs which it would normally have had to bear in its day-to-day management or normal activities.

(5) Between 19 November 2013 and 10 February 2015 the complainant submitted further information. In particular, the complainant expressed concerns that the measures represented illegal investment aid to the Port Authority of Naples and illegal operating aid to CAMED. The Commission services requested additional information from the Italian authorities on 17 June 2014, 14 November 2014, and 12 March 2015, to which the Italian authorities replied on 1 August, 3 and 29 September 2014, 11 February 2015, and 10 June 2015. Since the information available showed that the public funding had already been granted, on 4 June 2015 the Commission services informed Italy that the measures would be registered as unlawful aid (2015/NN) - Investment Aid to the Port Authority of Naples and Cantieri del Mediterraneo S.p.A., and the procedural rules applicable would be those laid down in Chapter III of Council Regulation (EC) No 659/1999[(2)].

(6) On 21 September 2015, the Commission services met the Italian authorities and the Commission requested additional information on 7 October 2015, to which the Italian authorities replied on 9 November 2015. On 11 November 2015 the Commission services met the complainant.

(7) By letter dated 28 June 2016, the Commission informed the Italian authorities that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid.

(8) The Commission decision to initiate the procedure ('the Opening Decision') was published in the *Official Journal of the European Union*[(3)] on 7 October 2016. The Commission invited interested parties to submit their comments on the aid/measures.

(9) The Commission received comments from two interested parties: CAMED and the complainant. It forwarded them to the Italian authorities, which was given the opportunity to react; its comments were received by letter dated 12 January 2017.

(10) The Commission sent additional questions to Italy on 9 and 16 November 2017, to which they replied on 24 November 2017.

2. DETAILED DESCRIPTION OF THE AID

2.1. Background and recipients of aid

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(11) The Port of Naples is located in the Campania region and is administered by PAN.

(12) In the Port of Naples, there are three dry-docks owned by the State (dry-docks Nos 1, 2, and 3) and two floating docks owned by two private operators (docks Nos 5 and 6).

(13) Dry-docks Nos 1, 2, and 3 are used to provide ship repair activities by CAMED and in principle any other ship repairer in compliance with 'Regulation for the operation of ship-repairing docks of the Port of Naples'[(4)] adopted in 2002 and later modified (the '2002 Regulation')[(5)]. According to the Italian authorities, all dry-docks in the Port of Naples must be made available to all interested users (e.g. other ship-repairers) on the basis of certain pre-defined and objective rules.

(14) The Italian authorities explained that, following the decision to withdraw from the Port of Naples by the Fincantieri Group – one of the largest operators of the shipbuilding sector at that time – at the end of the last century, the docks were in a very poor state. At that time, CAMED[(6)] was active as a port repairer in the Port of Naples by virtue of a land concession act valid from 1909 to 2008. According to the Italian authorities, CAMED agreed to invest in the area, provided that PAN undertook a number of structural investments on the dry-docks Nos 1, 2, and 3. Following a request filed by CAMED in 1999 to PAN, the latter agreed to perform works to modernise and make the dry-dock No 3 adequate for use ('the 2001 Agreement')[(7)].

(15) In 2001 CAMED requested from PAN the authorisation to perform a number of works on the docks in exchange for a 40 years prolongation of the existing land concession (*concessione demaniale*). Following CAMED's request, PAN started the administrative procedure under Italian law for the award of a land concession contract[(8)]. PAN published in the Municipality's register and in its own register CAMED's request for a land concession together with the business plan for a period of 20 days (from 18 January 2002 until 6 February 2002). The publication invited interested parties to present their observations or alternative proposals. According to the procedure, in case of objections or complaints, the decision on the award of the concession is taken by the competent Minister.

(16) Since PAN received no observations following the publication of CAMED's request, it granted to CAMED the land concession act (*atto di concessione demaniale*) No 125 of 29 July 2004 ('the 2004 Concession') for the operation and use of the three dry-docks, with the obligation to make them available to all interested users (e.g. other ship-repairers) in compliance with the 2002 Regulation. CAMED agreed to terminate the previous land concession valid from 1909. According to the 2004 Concession, CAMED has the right to operate and use the dry-docks for 30 years, starting from 28 July 2003 instead of the requested 40 years, in exchange of a yearly land use fee, calculated on the basis of fixed legal parameters (EUR/sqm) and annually adjusted to inflation pursuant to Ministerial Decree of 15 November 1995. The land use fee paid over the period 2004-2017 is presented in Table 1.

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TABLE 1

Concession fees

(in EUR)

Year	Yearly concession fee
2004	124 117
2005	103 300
2006	139 900
2007	147 800
2008	146 341
2009	154 392
2010	149 148
2011	153 321
2012	159 071
2013	143 671
2014	142 178
2015	132 664
2016	133 658
2017	133 257

(17) According to Article 1 of the 2004 Concession, the duration of the concession allows the amortisation of previous investments and a new programme of investments by CAMED with a value of EUR 24 million (Italian lira 47 662 million)[9]. According to the 2004 Concession, CAMED also provided a guarantee (*cauzione*) of EUR 275 000 in respect of the obligations provided for under the concession.

(18) According to Article 3 of the 2004 Concession, PAN also committed to perform structural works on the area granted to CAMED by 2006 and more specifically to: (i) adapt the pumping plant of docks Nos 1 and 2; (ii) build a new certified dry-dock caisson (*barche-porte*) for docks Nos 1, 2 and 3; (iii) redevelop walls (*paramenti*) and bedding (*platea*) for dock No 2; (iv) conduct structural redevelopment of quays (*banchine*) and walls for dock No 2 and quay 33b.

(19) After the Opening Decision, the Italian authorities clarified that CAMED carried out investments in the amount of EUR 24 610 420 in accordance with the 2004 Concession and additional investments in the amount of EUR 17 931 075 until 2016.

2.2. **Allegation of State aid by the complainant**

(20) In the first submission, the complainant argued that CAMED received aid at both levels: (i) as an operator (i.e. manager of the dry-docks), by means of a reduction of the costs for the refurbishment of the infrastructure (operating aid); and (ii) as a user of the infrastructure (e.g. as a ship-repairer), because the infrastructure, which should in principle be open to all business end-users on a non-discriminatory basis, was in fact solely used by CAMED. The complaint also contained antitrust allegations that are not relevant for the present decision and for which the complainant has been the addressee of a separate decision adopted on 24 July 2014.

(21) According to the complainant, the advantage received by CAMED derived from the performance of the following works ('the Interventions'):

(1) Intervention No 1: Structural refurbishment of some parts of dock No 3 (aid amount: EUR 12 928 537).

(2) Intervention No 2: Adaptation of the pumping plant of docks Nos 1 and 2, renewal of pier walls adjacent to dock No 2 (aid amount: EUR 23 170 000).

(3) Intervention No 3: Repair and strengthening of the internal pier of dock No 3 (*Molo Cesario Console*) (aid amount: EUR 13 000 000).

(22) With the submission of 19 November 2013, the complainant extended the scope of the complaint claiming that the Interventions conferred aid to PAN, in line with the Commission's case practice[10]. According to the complainant there would also be aid at the level of the concessionaire (CAMED) because the concession was not entrusted by means of a public, open, transparent and non-discriminatory tender. The complainant further underlined the absence of any evidence to conclude that the land use fee paid by CAMED could exclude any advantage. According to the complainant, the methodology foreseen by the national legislation for setting the land use fees (see recital 16) does not allow to reflect the increased value of the infrastructure after possible interventions, since it consists in a fixed amount of EUR/sqm.

(23) On 1 October 2015 the complainant also provided a list of PAN's decisions (delibere No 308/2015, No 181/2015, No 233/2015, No 277/2015, No 279/2015, No 281/2015, No 293/2015, No 302/2015) for works to be carried out in the dry-docks, as evidence of the breach of the standstill obligation.

2.3. **Italy's comments on the alleged State aid measure/Financing of the investment project and legal basis**

(24) The Italian authorities clarified before the adoption of the Opening Decision that only part of the works foreseen for the refurbishment of dry-dock No 3 have been completed in 2006, following a public procurement procedure (Intervention No 1), while the works foreseen by Interventions 2 and 3 had not been completed at that time. Of the whole project agreed with CAMED in the 2001 Agreement and the 2004 Concession, only one part had actually been fully performed.