EUROPEAN COMMISSION

Brussels, 19.VII.2006
C (2006) 3199

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].

PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid N 249/2006 – Poland
Aid to Heesung Electronics Poland Sp. z o.o.

Madam,

1. PROCEDURE

(1) By electronic notification of 20 April 2006, registered at the Commission on the same day, the Polish authorities, in accordance with Article 88(3) of the EC Treaty, notified their intention to grant ad hoc regional aid to Heesung Electronics Poland Sp. z o.o.


2. DESCRIPTION

2.1. Objective

(3) The measure aims at promoting regional development and employment in Dolnośląskie (Lower Silesia) region in Poland.

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2.2. The beneficiary

(4) Heesung Electronics Poland Sp. z o.o. (hereinafter ‘Heesung Poland’), is a recently established large company with limited liability.

(5) Heesung Electronics Co., Ltd. with its seat in Korea is producing lamps, matrixes, light guide panels, inverters and back light units.

2.3. Legal basis

(6) The indicated legal basis for the different types of ad hoc aid are the following:

1. Investment Agreement concluded on November 30, 2005 by and between (i) Minister of Economy of the Republic of Poland; (ii) Minister of Transport and Construction of the Republic of Poland; (iii) Agency for Industry Development S.A.; (iv) the City of Wroclaw; (v) the Commune of Kobierzyce; (vi) Wroclaw Powiat; (vii) Self-government of the Lower Silesia Voivodship; (viii) Polish Agency for Information and Foreign Investment S.A. – on one side – and (ix) and Heesung Electronics Co., Ltd. and (x) Heesung Electronics Poland Sp. z o.o. on the other side (hereinafter: the “Investment Agreement”).


4. Grant agreement between the Minister of Economy and Heesung Electronics Poland Sp. z o.o. dated November 30, 2005.

5. § 1, § 2.1 Point 5, § 3, § 4, § 6 and § 7 of the Resolution of the Local Parliament of Lower Silesia Voivodship dated March 31 2005 on establishment of detailed rules and manner of redeeming the receivables of Local Agriculture Land Protection Fund in Lower Silesia Voivodship related to the amounts due to which the provisions of the Tax Ordinance does not apply, granting other benefits in repayment of such amounts due and nominating the authorities entitled to perform such acts.

2.4. The project

(7) The investment consists in setting up a new establishment manufacturing back light units, one of the components of liquid crystal display (hereinafter: ‘LCD’) module in Kobierzyce, Dolnośląskie region, an assisted area pursuant to Article 87(3) (a) of the EC Treaty, with a regional aid ceiling of 50% net grant equivalent (NGE).

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1 Consolidated text: Polish Journal of Laws from 2003, No. 15, Item 148

2 Official Journal of Dolnośląskie Voivodship, No. 79, Item 1724

As virtually all production of LCD and plasma display panel (hereinafter: ‘PDP’) modules takes place in Asia, the manufacturers of their components including production of backlight units are also located mainly in Asia. This investment creates a possibility to start such component production in Europe.

The eligible expenditure\(^4\) amounts to 115 509 000 in nominal value.\(^5\)

The investments will be carried out between 2006 and 2011. Production is envisaged to start at the beginning of 2007.

2.5. The cluster within which the project takes place

The investment is part of a larger effort to set up an electronic cluster for the production of TFT-LCD TV Modules in Kobierzyce (Tarnobrzeska special economic zone).

The cluster includes investments by eight companies. Apart from Heesung Poland, the electronics cluster involves the following investment projects:

- N 245/2006 – “Aid to LG.Philips LCD” (LPL). LPL will produce LCD TV modules and will act as the anchor investor of the cluster.
- N 246/2006 – “Aid to Ohsung [Dong Seo] Poland”: production of metal components for backlight units and LCD modules.
- N 248/2006 – “Aid to Dong Yang Electronics”: production of plastic components for backlight units, other plastic products and assembly of printed circuit boards.
- N 251/2006 – “Aid to LG Innotek Poland”: production of inverters, TV tuners and power supply units.

An additional investment project N 256/2006 – “Aid to LG Electronics Wroclaw (Household appliances)” concerning the production of washing machines and refrigerators will be carried out in the same geographical location.

Six of the above companies, except Dong Yang Electronics and LGE\(^6\), see their investments as an opportunity to establish themselves in Europe.

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\(^4\) According to the notification, the land is not included in the amount of the eligible costs.

\(^5\) To facilitate comparison, all monetary figures referred in this decision are provided in EUR using for the conversion the exchange rate of 1 EUR = 4.07 PLN provided by the Polish authorities and contained in the Investment Agreement.

\(^6\) Both are already producing in Europe, e.g. in Mława, Poland
(15) Although in a first phase Heesung Poland will essentially rely on orders placed by LPL (for delivery of backlight unit for LCD modules, also since LPL will be the first producer of LCD modules in Europe) this dependence is expected to decrease over time.

(16) Heesung Poland has no long-term delivery contract with LPL and deliveries will be made on purchase orders placed by LPL.

2.6. The aid

(17) The envisaged aid will be administered by various public authorities on state, regional and local level. The aid package consists of different types of **ad hoc aid** as well as aid **under existing aid schemes**.

(18) The notification and present decision only cover the ad hoc aids listed in the following paragraph. These ad hoc aids will be put into effect only after Commission approval. The other aids, which will be granted under approved schemes, are described solely in order to provide a complete overview of the project, and to verify the correct application of the cumulation rules for the project as a whole.

2.6.1. Forms and amounts of aid

(19) Ad hoc aid is granted in the following forms and amounts:

- **Grant for job creation linked to an initial investment**
  
The Ministry of Economy will award a grant in the amount of EUR 10,695,982 in present value (EUR 13,185,700 in nominal value). The aid will be disbursed in tranches between 2007 and 2011.

- **The free transfer of the land**
  
The site of the investment is currently owned by Agency for Industry Development, a company belonging to the Polish State Treasury and managing Tarnobrzeg Special Economic Zone.

  The land will be transferred as a partly developed land for free; however, Heesung Poland will have to bear the costs of land levelling of the site, rain water drainage and the costs of electric power connection.

  Under the investment agreement, the market value of the land was calculated at EUR 22 per square meter, resulting in a total monetary advantage to Heesung

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7 In conformity with Commission notice on current State aid recovery interest rates and reference/discount rates for 25 Member States applicable as from 1 January 2006 (OJ C 336 of 31.12.2005 p. 11), the discount rate applicable for Poland of 5.56% is used to calculate all the present value amounts referred in this decision. All the present value figures provided in the current decision are discounted to 2005 i.e. the year of the signature of the Investment agreement.

8 This was confirmed in an independent price evaluation (which even identified a slightly lower price, i.e. EUR 21.4 per square meter. For the sake of certainty, however, the Polish authorities kept the initial, higher amount in the notification).
Poland of EUR 4 692 732 (213 306 m² * EUR 22) in nominal and EUR 4 445 559 in present value.

- **Exemption from the zone’s management fees**
  Special economic zones require the payment of management fees. Heesung Poland will be exempted from this payment between 2006 and 2017, which represents an aid of EUR 803 729 in present value (EUR 1 164 012 in nominal value).

- **Exemption from de-agriculturization fees**
  De-agriculturization fees are due when agricultural land is designated for other purposes. The Lower Silesia Voivodship exempts Heesung Poland from the payment of this fee between 2006 and 2016, which amounts to aid of EUR 631 049 in present value (EUR 860 441 in nominal value).

(20) The Polish authorities will also grant additional regional aid under several existing aid schemes.

- **Corporate tax exemption**

- **A real estate tax exemption**
  An exemption from real estate tax will be granted under scheme N 221/2005 between 2006 and 2010, representing an advantage of EUR 1 880 219 in present value and (EUR 2 263 161 in nominal value).

- **Employment support instruments**
  Aid for job creation will be paid out between 2007 and 2011 on the basis of the schemes XE 15/2004 and XE 8/2006 (EUR 209 951 in present value, EUR 255 500 in nominal value).

(21) No corporate income tax is payable on any of the above aid measures enumerated in paragraph 19.

2.6.2. **Aid intensity**

(22) The notified ad hoc aid amounts to EUR 16 576 319 in present value (EUR 19 902 884 in nominal value).

(23) On the basis of total eligible investment costs of EUR 99 186 575 in present value (EUR 115 509 000 in nominal value) this corresponds to an aid intensity expressed in Gross Grant Equivalent (GGE) of 16.71%.

2.6.3. **Cumulation**

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9 As the aid intensity expressed in gross grant equivalent is equal or higher than the net grant equivalent, the aid which respects the applicable aid ceiling in gross terms will always remain below this ceiling also in net terms. Therefore, it is not necessary to calculate the net grant equivalent of the aid.
The total aid package (existing schemes and ad hoc aid) result in a total amount of EUR 30 974 389 in present value (EUR 40 136 530 in nominal value), corresponding to an aid intensity (GGE) of 31.23%.

The investment agreement specifies that the applicable regional aid ceiling determined in accordance with Multisectoral Framework on regional aid for large investment projects (hereinafter: MSF) must not be exceeded and stipulates that the aid will be proportionally reduced, if the expected investment amount is not reached.

2.7. The eligible costs

The eligible investment costs are calculated on the basis of the costs relating to initial investment.

Table 1. Breakdown of the project costs relating to initial investment (nominal values).

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Production Lines</td>
<td>33</td>
<td>52</td>
<td>68</td>
<td>80</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Eligible expenditures for new investment (in EUR)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>11 856 000</td>
</tr>
<tr>
<td>QA, IT, FA (*)</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>44 828 000</td>
</tr>
<tr>
<td>Building &amp; Structures</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>58 825 000</td>
</tr>
<tr>
<td>Sum eligible expenditures</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
<td>115 509 000</td>
</tr>
</tbody>
</table>

(*) QA= quality assurance equipment, IT = information technologies equipment, FA = factory automation

2.8. Maintenance of the assisted activity and own contribution

Heesung Poland undertakes that the project will be maintained for at least five years from its completion, as well as that the new jobs created by the company will be maintained during a minimum period of five years from the creation of a given new job. This condition applies if the beneficiary receives at least one form of regional State aid described in paragraphs 19 and 20 above.

The beneficiary has to finance at least 25 % of the eligible costs from its own resources free of any aid.

2.9. Incentive effect

The aid was negotiated and applied for by the investor before starting works on the investment.

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11 The Polish authorities do not use the alternative possibility of calculating the aid by reference to job creation costs, since this would lead to lower eligible costs.

# Business secret
(30) The investor has the right to withdraw from the project or to re-negotiate the Investment Agreement, if the European Commission adopts a negative or conditional decision on the aid measure in question or opens a formal investigation procedure.

2.10. Regional contribution

(31) Dolnośląskie region (NUTS code\textsuperscript{12}: PL51) is a region with large socio-economic handicaps where the unemployment rate was 17.5\% in the third quarter of 2005. GDP per capita is 47.5\% of EU-25 average\textsuperscript{13} and unemployment is 280.8\% of EU-25 average and 131.3\% of the Polish average.\textsuperscript{14}

(32) The project will lead to the creation of 2,742 jobs and approximately 2,740 indirect jobs in the proximity of investment. It will have a positive effect by facilitating structural change and activation of the region affected by the liquidation of coal mines. In addition, the investment will allow to improve the economic condition and competitiveness of production plants situated in the region

(33) The project constitutes a part of a completely new electronics cluster, the first production of LCD modules in Europe, which will attract additional investors, producers and sub-suppliers and therefore continue to support job creation and the region’s economic development.

3. ASSESSMENT

3.1. Legality of the aid measure

(34) By notifying the aid measure before putting it into effect, the Polish authorities respected their obligations under Article 88(3) of the EC Treaty.

3.2. State aid in the sense of Article 87(1) of the EC Treaty

(35) The package of aid is financed by the Polish authorities, which constitutes State resources within the meaning of Article 87(1) of the EC Treaty. As the aid is granted to a single company, the measure is selective. The aid relieves Heesung Poland from costs which it would have to bear under normal market conditions. Therefore the company is favoured and benefits from an economic advantage over its competitors which threatens the distortion of competition. Insofar as the products concerned by the project are subject to trade, there is a risk that the aid could affect trade between Member States. Consequently, the notified measure constitutes State aid within the meaning of Article 87 (1) of the EC Treaty.


\textsuperscript{13} Average for the period 2000-2002 (EU-25=100). GDP per capita measured in purchasing power standard.

\textsuperscript{14} Average for the period 2001-2003 (EU-25=100).
3.3. **Compatibility with the common market**

(36) The Commission has assessed the project under the Guidelines on National Regional Aid\(^\text{15}\) (hereinafter “RAG”) and the MSF. This assessment has led to the following observations:

– Dolnośląskie region, Poland is entirely eligible for regional aid under Article 87 (3) (a) of the EC Treaty.

– Pursuant to Article 87 (3) (a) of the EC Treaty, aid may be considered to be compatible with the common market when it promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Although as a general rule, the Commission does not favour the award of ad hoc regional aid, in the present case the Commission takes note, in view of the information given in section 2.10 above, that the project will produce substantial positive spillovers which should provide a major contribution to the development of an EU disadvantaged region.

– Despite the sectoral limitation of the measure, the benefits of such investment outweigh the possible distortion of competition.

– The notified aid is aid for initial investment and aid for job creation, as defined in point 4.4 and 4.11 of the RAG.

– The aid beneficiary’s own contribution is above the required 25% threshold (cf. point 4.2 of the RAG).

– The Polish authorities commit that the investment under evaluation will be maintained for at least 5 years after completion of the investment (cf. point 4.10 of the RAG).

– The Polish authorities commit to maintain new jobs linked to investment for at least 5 years following their creation (cf. point 4.14 of the RAG).

– The aid application has been submitted before the work is started on the project (cf. point 4.2 of the RAG).

– The eligible costs of the project involve the costs of buildings and plant/machinery (cf. point 4.5 of the RAG).

– The intensity of 16.71 % gross for the notified ad hoc aid is below the applicable adjusted regional aid ceiling of 37.60% NGE (cf. point 21 of the MSF).

– The rules on cumulation of aid are respected (cf. point 4.18 of the RAG), and the regional aid ceiling will not be exceeded.

(37) The Commission therefore concludes that the ad hoc aid meets the conditions of the RAG and the MSF.

(38) As noted above, the notified ad hoc aid concerns an investment project which is part of a cluster of investments by eight different undertakings in the same geographical locality. The Commission has considered it necessary to verify that the different projects in the

cluster were not being artificially divided into different sub-projects in order to avoid the application of the adjusted lower aid ceilings. In order to do this, the Commission has undertaken a single assessment of the inter-relationships between the different projects in the cluster in its decision of this day on the anchor investment of the cluster, N 245/2006 “LG. Philips LCD Poland, Sp. z o.o.”, to which reference is made. As a result of this assessment, the Commission has concluded that there are no grounds to believe that the projects have been artificially sub-divided in order to circumvent the application of MSF.

3.4. Conclusion

(39) On the basis of the foregoing assessment, the Commission considers the notified aid of EUR 16 576 319 (PL 67 465 618) in present value in favour of Heesung Electronics Poland Sp. z o.o. representing an aid intensity of 16.71 % gross to be compatible with the EC Treaty in application of Article 87 (3) (a) of the EC Treaty and Article 61 (3) (a) of the EEA Agreement.

4. Decision

(40) The Commission has accordingly decided to consider the aid measure compatible with the EC Treaty.

(41) The Commission further reminds the Polish authorities that all plans to modify this aid measure have to be notified to the Commission.

(42) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: 32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission