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<p>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 [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid C 12/2009 (ex N 19/2009) – Potential aid measures in favour of Järvi-Suomen Portti Osuuskunta

Sir,

The Commission wishes to inform Finland that, having examined the information supplied by your authorities on the aid referred to above, it has decided to extend the procedure laid down in Article 108(2) TFEU.¹

1. PROCEDURE

- (1) The Finnish authorities notified rescue aid to the cooperative *Järvi-Suomen Portti Osuuskunta* (hereinafter referred to as “*Järvi-Suomen Portti*”) on 15 January 2009 (State aid case N 19/2009). During the preliminary examination of the notification, doubts were raised regarding the compatibility of the notified measure with the Internal Market. Thus, on 8 April 2009, the Commission initiated the formal investigation procedure on the notified measures and several measures granted in the past. In the following, the Finnish authorities submitted further information by a letter of 13 May 2009.
- (2) The decision on initiating the formal investigation was published in the Official Journal of the European Union of 13 June 2009². The Commission invited interested parties to

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

comment on the measures in question and one third party submitted information on 13 July 2009. On 31 July 2009 the Commission invited the Finnish authorities to comment on this, to which the Finnish authorities replied by letter dated 28 August 2009. The Finnish authorities provided further information provided by e-mail dated 3 November 2009.

2. BENEFICIARY

2.1. The co-operative Järvi-Suomen Portti

- (3) *Järvi-Suomen Portti* is a co-operative company located in Mikkeli, with production facilities in Mikkeli and Kouvola, both in Eastern Finland (Itä-Suomi), a region eligible for regional aid under Article 107 (3)(c) TFEU. The co-operative was originally established in 1914. Since 1949 it was named *Osuusteurastamo Karjaportti* and since 2003 *Järvi-Suomen Portti*. To date *Järvi-Suomen Portti* employs 300 people and in addition 100 to 120 seasonal workers during spring and summertime.
- (4) *Järvi-Suomen Portti* is active in the manufacturing of food, namely in the field of processing meat into products such as meatballs and sausages. In addition, the co-operative sells packed meat, peaces of meat and carcasses. *Järvi-Suomen Portti* exports little to other Member States. In 2008, value of exports to other Member States amounted to EUR 0.5 million.

2.2. Financial situation of Järvi-Suomen Portti

- (5) Since 1 December 2004, *Järvi-Suomen Portti* is subject to court-supervised restructuring proceedings under the Finnish Restructuring and Enterprises Act 47/1993 (hereinafter referred to as “court-supervised restructuring proceedings”). The restructuring programme, which *inter alia* provided for a partial reduction and rescheduling of the debts of *Järvi-Suomen Portti* by private and public creditors, was approved by decision of the District Court of Mikkeli on 30 January 2006. The duration of the restructuring programme was ten years (1 July 2015). Between 2004 and 2008, *Järvi-Suomen Portti* has terminated 372 employment contracts and outsourced some of its activities such as acquisitions, butchery and cutting activities.
- (6) Before the start of the court-supervised restructuring proceedings, the company was facing difficulties. According to the balance sheets submitted by the Finnish authorities, *Järvi-Suomen Portti*'s losses amounted to EUR 6 million in 2003 and to EUR 10.7 million in 2004. Turnover was decreasing. In addition, it seems that *Järvi-Suomen Portti* was not able to pay its debts in the course of the year 2004.³

² C 134, p. 16.

³ According to minutes of a City Council meeting from 8 March 2004, *Järvi-Suomen Portti* had started restructuring its debts earlier that year and asked the City of Mikkeli to agree on a deferral of the instalments due in 2004 to the year 2005 for the loan granted in 2000, guaranteed by the City of Mikkeli (which was accepted by the City Council).

- (7) The situation of the company remained difficult during the court-supervised restructuring proceedings. In 2005, *Järvi-Suomen Portti* had losses of EUR 9.2 million; in 2006 there was a net profit of EUR 4.3 million, though the deficit before extraordinary items amounted to EUR 4.5 million⁴; in 2007 there were again losses of EUR 7.9 million and in 2008 the losses amounted to EUR 2.8 million. In addition, turnover has constantly fallen since 2003, from EUR 128 million in 2003 to EUR 81 million in 2008.
- (8) In the year 2008, the Finnish Tax authorities filed twice for bankruptcy proceedings against *Järvi-Suomen Portti*. At the first filing, on 7 October 2008, they presented an injunction to pay EUR 461,578.74 €. The filing was then withdrawn by the tax authorities. A re-filing took place on 1 December 2008 with an injunction to pay EUR 981,658.16. According to the press the bankruptcy proceedings against *Järvi-Suomen Portti* have been closed by June 2009 as the co-operative allegedly has paid outstanding debt to the tax authorities.

3. DESCRIPTION OF THE MEASURES

- (9) After the decision to initiate the formal investigation procedure, the Commission received information on allegedly granted measures in favour of *Järvi-Suomen Portti* through third party comments of 13 July 2009 and the submissions of the Finnish authorities dated 13 May 2009 and 28 August 2009 respectively. The measures in question, which were granted in addition to the measures included in the opening decision of 8 April 2009, will be described in the following.

3.1 Measures granted by the City of Mikkeli

3.1.1 Assignment of land

- (10) In 2000, *Järvi-Suomen Portti* was assigned a plot for the construction of the Tikkala production facility by Mikkeli rural district.⁵ The city authority provided municipal engineering in the area and undertook to perform other requisite technical work such as excavation, levelling and other costs on behalf of *Järvi-Suomen Portti*. In addition, it seems that the City of Mikkeli provided the plot of land, the municipal engineering and other requisite technical work without consideration by *Järvi-Suomen Portti*, i.e. no purchase price was paid.

3.1.2 Purchase of Land

- (11) In 2002, the City of Mikkeli bought six properties and one building with related leases from *Järvi-Suomen Portti*. The total purchase price was approximately EUR 7 million.

⁴ Extraordinary items (probably sale of land / companies) amounted to EUR 9 million.

⁵ Mikkeli rural district became part of the City of Mikkeli in 2001.

3.1.3 Guarantee granted on 8 March 2004

- (12) By a decision of 8 March 2004 the City Council of Mikkeli granted an absolute guarantee on a EUR 607.054,55 loan granted by *Keskinäinen Eläkevakuutusyhtiö Tapiola*, a Tapiola Mutual Pension Insurance Company (hereinafter referred to as "*Tapiola*"). The guarantee covered 100 % of the loan granted for a period of 10 years. The loan and the guarantee respectively were given to replace a loan granted by *Tapiola* for which the City of Mikkeli had originally granted a guarantee by a decision of 2 November 1992. The guarantee was granted without commission fee and as an absolute guarantee where the guarantor is liable for the principal debt as if it were the guarantor's own, meaning that the creditor could ask for the repayment of principal debt from the guarantor when the principal debt has become due.

3.1.4 Guarantee granted on 10 May 2004

- (13) In 2004, *Tapiola* decided to grant a 3 year investment loan amounting to EUR 1.7 million to *Järvi-Suomen Portti*. By decision of 10 May 2004, the City Council of Mikkeli granted an absolute guarantee that covered 100% of the loan without any commission fee.

3.1.5 Purchase of shares from Järvi-Suomen Portti

- (14) On 2 September 2005, *Järvi-Suomen Portti* sold 50% of the shares in the real estate company *Kiinteistö oy Suksimäki* to a company owned by the City of Mikkeli, for a purchase price of EUR 860 000.

3.1.6 Reduction of wastewater charge

- (15) On 24 January 2007, the wastewater charge for production facilities of *Järvi-Suomen Portti* were reduced by Decision of the Water Utility Board of the City of Mikkeli.

3.1.7 Write-off of debts in 2007

- (16) By a decision of 5 February 2007, the Mikkeli City Board agreed on the write-off from the 2006 accounts of a receivable from *Järvi-Suomen Portti* amounting to EUR 274,022.93 and transferred the debt recovery proceedings to the legal department.

3.1.8 Write-off of debts in the financial statements of 2008

- (17) According to the information submitted by the Finnish authorities, the City of Mikkeli made a write-off for an uncertain receivable from *Järvi-Suomen Portti* amounting to EUR 5.7 million in its financial statements of 2008.

3.2 Measures granted by Finnvera

- (18) According to the information submitted by the Finnish authorities, *Finnvera Oyj*⁶ (hereinafter referred to as *Finnvera*) granted several loans and guarantees to *Järvi-Suomen Portti* in the years 2004 to 2008.
- (19) Loans were granted in 2006 and 2007:
- On 12 January 2006, *Finnvera* granted a loan amounting to EUR 180,000 at an interest rate of EURIBOR 6 months + 2% per year.
 - On 6 July 2007, *Finnvera* granted a loan amounting to EUR 250,000 at an interest rate of EURIBOR 6 months + 2.5% per year.
- (20) Guarantees were granted in 2004, 2006 and 2008:
- On 17 March 2004, *Finnvera* granted a 100% guarantee for a loan amounting to EUR 91,000 with a guarantee fee of 3% per year.
 - On 14 September 2006, *Finnvera* granted a guarantee amounting to EUR 300,000 with a guarantee fee of 1.65% per year. The guarantee covered [between 10 and 20]*% of a loan amounting to [an amount between EUR 1.5m to 2.2m].
 - On 9 January 2008, *Finnvera* granted a guarantee amounting to EUR 280,000 with a guarantee fee of 2.5% per year. The guarantee covered [between 75 and 85]% of a loan amounting to [an amount between EUR 300,000 and 400,000].

4. ASSESSMENT

- (21) In order to establish whether the measures described above could constitute State aid in the meaning of Article 107 TFEU (see below point 4.2) and if so, whether such State aid could be compatible (see below point 4.3), it is necessary to define the point of time from which *Järvi-Suomen Portti* has to be considered a company in difficulty (see below point 4.1).

4.1. Company in difficulty

- (22) According to the Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty⁷ (hereinafter referred to as “Rescue and Restructuring Guidelines 2004”) a

⁶ Finnvera is a state-owned special financing company. The purpose of the company is to provide financing services to promote and develop business, particularly that of small and medium-sized enterprises, and to promote and develop the exports and internationalisation of enterprises. The statutory basis of Finnvera is the Act on the State-Owned Specialised Financing Company no. 443 of 18 June 1998.

⁷ Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ 2004/C 244/02, prolonged by the Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, OJ 2009/C 156/3.

company can be considered as being in difficulties where it is unable to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term. The Rescue and Restructuring Guidelines 2004 lay down certain circumstances under which a company can be presumed to be in difficulties. A similar definition was included in the previous Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty⁸ (hereinafter referred to as “Rescue and Restructuring Guidelines 1999”), which were replaced by the Rescue and Restructuring Guidelines 2004 with effect from 10 October 2004.

- (23) In the opening decision the Commission concluded that it seems that *Järvi-Suomen Portti* has been a company in difficulty since the beginning of the court-supervised restructuring proceedings on 1 December 2004.⁹ According to the information submitted by the Finnish authorities after the adoption of the opening decision, the company was facing financial difficulties before. (cp. above point 5 et seq.). Taking into account that *Järvi-Suomen Portti* has been loss-making since 2003, its turnover has been decreasing and it was not able to pay its debts in the course of the year 2004, as well as the fact that the situation of the company remained difficult during the court-supervised restructuring proceeding and that during the year 2008, the Finnish Tax authorities filed twice for bankruptcy proceedings of the company, the Commission preliminarily assumes that *Järvi-Suomen Portti*, at least since the beginning of 2004, has met the requirements of the Rescue and Restructuring Guidelines 2004 and 1999 respectively. Thus, the company can be considered as a company in difficulty at least since the beginning of 2004.

4.2. Existence of State aid

- (24) Article 107(1) TFEU lays down 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 and affects trade among Member States is incompatible with the Internal Market.
- (25) The preliminary assessment will mainly focus on the question whether the measures granted by the City of Mikkeli and *Finnvera* confer an advantage to the beneficiary that could not have been obtained under normal market conditions. The Commission consequently needs to analyse these measures in the light of the private market economy investor principle, in particular as the Finnish authorities have argued for most of the measures that the authorities have acted in compliance with this principle.

⁸ Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, (Notice to Member States including proposals for appropriate measures, OJ 1999/C 288/02.

* Confidential information.

⁹ According to the restructuring programme (point 4.2 and point 10.1), if court-supervised restructuring proceedings had not commenced, *Järvi-Suomen Portti* would most likely have been declared bankrupt, as the co-operative's solvency, profitability and liquidity were poor.

4.2.1. Assignment of land

- (26) The Finnish authorities do not deny that the plot of land in question was assigned to *Järvi-Suomen Portti*. No further information was provided on this transaction, such as price paid by *Järvi-Suomen Portti*, date of the assignment, evaluation of the plot of land, information on other costs for the requisite technical work in relation with the land or the costs for municipal engineering. On the contrary, according to the minutes of a meeting of the City Council of Mikkeli, the City Board proposed in November 1999 to the Board of Directors of *Järvi-Suomen Portti* that "the City is ready to allocate the necessary plot, prepared for construction and with utility connections, free of any consideration". In June 2000, the proposal was approved by the City Council of Mikkeli.
- (27) Sales of land and buildings by public authorities can be considered as aid free if the requirements of the Commission Communication¹⁰ on such sales are met. According to this Communication, a sale of land and buildings does not include State aid if it follows a sufficiently published, open and unconditional bidding procedure or if an independent expert evaluation was carried out. When one of these conditions is met the sale can be considered to be at a market price. At this stage, the Commission has doubts that such a market price was paid, as it seems that the land prepared for construction and with utility connection was assigned to *Järvi-Suomen Portti* without consideration. Hence it has doubts that the sale was undertaken in accordance with the private market economy investor principle.

4.2.2. Purchase of Land

- (28) According to the Finnish authorities, the purchase of the properties in the year 2002 related to the construction project of the Tikkala production facility for which *Järvi-Suomen Portti* needed funding. The Finnish authorities claim that the properties were bought on a market price. The third party alleges that the terms of the purchase of land were favourable for *Järvi-Suomen Portti*.
- (29) The market economy investor principle is also applicable to the purchase of land or other assets by a State. Such purchase could include State aid if it cannot be considered a normal commercial transaction. Even if a public authority purchases goods and services at a market price, State aid may nevertheless still be present if it turns out that the State did not have an actual need for the land or assets in question.¹¹
- (30) So far, the Finnish authorities did not provide evidence that the purchase of the properties was done under market conditions, such as an evaluation of the properties by an independent expert. Hence, the Commission has doubts that the terms and conditions of the purchase comply with the private market investor principle.

¹⁰ Commission Communication on State aid element in sales of land and buildings by public authorities, OJ 1997 C 209/3; cp. as well on privatisation Competition Report of 1993, paragraphs 402 to 404.

¹¹ Case T-14/96 Bretagne Angleterre Irlande (BAI) v. Commission [1999] ECR II-139 paragraph 71; joined Cases T-116/01 and T-118/01, P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya v. Commission [2003] ECR II-02957 paragraphs 114 et seq..

4.2.3. *Guarantee granted on 8 March 2004*

- (31) According to the guarantee notice¹² that was in force at that time, the measure could constitute State aid since the guarantee covered 100% of the loan in question. This conclusion would not be changed by the guarantee notice currently in force.¹³ Moreover, granting the guarantee as absolute guarantee without a guarantee fee, i.e. in effect taking on a financial risk without any quid-pro-quo, cannot be described the behaviours of a market operator, in particular as the Commission considers that the company was in difficulty at that time (see above point 22 et seq.). The Commission hence has doubts that the measure in question was in conformity with the private market economy investor principle.

4.2.4. *Guarantee granted on 10 May 2004*

- (32) The Finnish authorities consider the guarantee as a continuum of funding provided for the investment in the Tikkala production facility in the year 2000 by the City of Mikkeli. According to the information in the possession of the Commission, however, the guarantee was granted for a new loan (City Council Decision of 10 May 2004).
- (33) Hence, a similar reasoning as for the guarantee granted in March 2004 can be applied. First, it could constitute State aid according to the guarantee notice that was in force at that time and the guarantee notice currently in force respectively, since the guarantee covers 100% of the loan in question. Moreover, granting the guarantee as absolute guarantee without a guarantee fee cannot be regarded as the behaviour of a market operator, in particular as the Commission assumes that *Järvi-Suomen Portti* was already in difficulty at that time (see above point 22 et seq.). The Commission hence has doubts that the measure in question was in conformity with the private market economy investor principle.

4.2.5. *Purchase of shares from Järvi-Suomen Portti*

- (34) The Finnish authorities claim that the shares of the real estate company *Kiinteistö oy Suksimäki* were purchased at a market price from *Järvi-Suomen Portti*. They refer to an independent valuer's statement according to which the value of the shares amounted to approximately EUR 1 million based on the prevailing rent level. This value was adjusted as regards the actual prevailing rent level and the shares were hence bought at a price of EUR 860,000.
- (35) As described above under point 29, the market economy investor principle is also applicable to the purchase of land or other assets by a State. In this context it is crucial that the purchase was a normal commercial transaction. So far, the Finnish authorities did not provide the evidence that the purchase of the shares was done under market

¹² Cp. Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ 2000 C 71/14, para. 4.2.

¹³ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ 2008 C 155/10.

conditions. Hence, the Commission has doubts that the measure in question was in conformity with the private market economy investor principle.

4.2.6. *Reduction of wastewater charge*

- (36) The third party alleges that the reduction of wastewater charges constituted aid to the company. According to information available, the Tikkala production facilities had to pay an increased wastewater charge since 1 May 2004. The increased rate was applied because of the greater load in the industrial wastewater. The amount of increase was determined depending on the composition of the wastewater at an annual inspection. At this stage, the Commission has no indication that the annual inspections were not conducted in accordance with the applicable regulations. This increased wastewater charge was reduced to the standard wastewater charge in the above mentioned decision of the Water Utility Board. The Commission understands that such standard rate applies to other companies within the district of the City of Mikkeli. Hence, at this stage, the Commission considers thus that such a reduction does not confer an advantage to *Järvi-Suomen Portti* and as a result it will not be considered as State aid within the meaning of Article 107(1) TFEU.

4.2.7. *Write-off of debts in 2007*

- (37) According to the Minutes of the City Board of Mikkeli, the debt recovery proceedings were transferred to the legal department when the receivables were written off. This could indicate that the measure was simply an accounting act. However, as the Finnish authorities did not comment on the write-off of debt in 2007, it is not entirely clear whether the measure was simply an accounting act or whether the City of Mikkeli also waived the debts in question, i.e. the legal obligation to pay back the debts ceased to exist. If the legal obligation ceased to exist, the write-off would confer an advantage to *Järvi-Suomen Portti* and it is questionable whether a private market investor would have acted in the same way.

4.2.8. *Write-off of debts in the financial statements of 2008*

- (38) The Finnish authorities argue that the write-off of debts did not have an effect on the legal relationship between creditor and debtor as it was an accounting act and that the City of Mikkeli will further attempt to collect the debts that were written off in the financial statements. The Commission has doubts as regards this argumentation, as the Finnish authorities so far did not provide evidence that there is still a legal obligation for *Järvi-Suomen Portti* to reimburse the debts. If the legal obligation ceased to exist, the write-off would confer an advantage to *Järvi-Suomen Portti* and it is questionable whether a private market investor would have acted in the same way.

4.2.9. *Measures granted by Finnvera*

- (39) First, it has to be assessed whether the measure is granted by a Member State or through State resources. To this end, the measure has to be granted directly or indirectly through

State resources and it has to be imputable to the Member State in question.¹⁴ As the Finnish State owns 100 % of the company *Finnvera*, the Commission considers this requirement to be met.

- (40) As regards the question whether the measures confer an advantage to the *Järvi-Suomen Portti*, the Finnish authorities argue that none of the measures granted by *Finnvera* include an element of aid.
- (41) As regards the loans, the Finnish authorities argue that the loans granted by *Finnvera* do not constitute State aid as the interest rate exceeded the reference rate. As the Commission considers *Järvi-Suomen Portti* to be a company in difficulty at least since the beginning of 2004, it has doubts that the relevant reference rates were exceeded. Under the Reference Rate Communication applicable at the time the loans were granted¹⁵, the reference rate for companies in difficulty had to be increased by 400 or more basis points¹⁶. It seems that the interest rate for the loans was below such an increased reference rate calculated on the said basis.¹⁷ In addition, the Finnish authorities argue that the loans did not entail State aid as they were provided *pari passu* with private creditors and included a considerable allocation of risk between the State and commercial players. In this context, collaterals were divided in relation to the risk taking. The Commission, however, was not provided concrete information on the loans granted by private creditors, such as dates, amount of the loan, conditions and collateralisation. Hence, the Commission has doubts that the loans comply with the private market economy investor principle.
- (42) As described above, the Finnish authorities argue that the guarantees granted by *Finnvera* did not constitute State aid and refer to *Finnvera's* guarantee schemes that were brought to the knowledge of the Commission by a letter on 21 June 2000. However, the Finnish authorities did not provide any explanation how the information on *Finnvera* guarantee schemes could show the absence of aid in the guarantees granted in favour of *Järvi-Suomen Portti*. In particular, it seems that guarantees granted to a large company, at a time when it was already in difficulty, would not fall under such schemes. If the measures were granted outside an existing aid scheme and taking into account that *Järvi-Suomen Portti* was in difficulty at the time of the granting, the Commission has doubts whether the guarantees could comply with the private market economy investor principle.

4.2.10. Conclusion on existence of State aid

- (43) On account of the arguments above, the Commission considers that measures taken by the City of Mikkeli in the form of assignment of land, purchase of land and shares, guarantees and debt write-off possibly constituted an advantage to the beneficiary that he would not

¹⁴ Case C-345/02 Pearl BV and Others v. Hoofdbedrijfschap Ambachten [2004] ECR I-7139, paragraph 35.

¹⁵ Commission notice on the method for setting the reference and discount rates, OJ 1997 C 273/3.

¹⁶ "The reference rate thus determined is a floor rate which may be increased in situations involving a particular risk (for example, an undertaking in difficulty, or where the security normally required by banks is not provided). In such cases, the premium may amount to 400 basis points or more if no private bank would have agreed to grant the relevant loan".

¹⁷ E.g. loan granted on 12.1.2006: EURIBOR 6 months + 2% amounted to 4.661% whereas reference rate + 400 basis points amounted to 7.7%; loan granted on 6.7.2007: EURIBOR 6 months +2.5% amounted to 6.597%, whereas reference rate + 400 basis points amounted to 8.62%.

have obtained under normal market conditions. The reduction of the wastewater charges seems not to entail such an advantage. In addition, it seems that the measures in question are financed by State resources, since they are directly granted by the City of Mikkeli and from its funds. Furthermore, they were selective as they were limited to *Järvi-Suomen Portti*. These selective grants were likely to distort competition and affect trade between Member States, by providing an undertaking with an advantage over other competitors not receiving such grants. Indeed, there is trade between Member States in meat products, in which the beneficiary operates.

- (44) As to the measures granted by *Finnvera* in the form of loans and guarantees, the Commission preliminarily considers that they are imputable to the State and confer an advantage to the beneficiary that he would not have obtained under normal market conditions. In addition, they fulfil the other criteria laid down in Article 107(1) TFEU. Like the measures granted by the City of Mikkeli, they were selective and are likely to distort competition and affect trade between the Member States.

4.3. Compatibility of the State aid measures

- (45) State aid measures can be considered compatible on the basis of the exceptions laid down in Article 107(2) and 107(3) TFEU.

4.3.1. Assignment of land in 2000; purchase of land in 2002

- (46) *Järvi-Suomen Portti* is located in Itä-Suomen, in the year 2000 and the year 2002 respectively a region eligible for regional aid under Article 107(3)(a) TFEU. So far, the Commission was not provided sufficient information on whether the assignment of land in the year 2000 or the purchase of land in the year 2002 could be considered compatible as regional aid and it is not clear whether the aid could be considered compatible on another basis.

4.3.2. Guarantees granted on 8 March 2004 and on 10 May 2004

- (47) As regards the guarantees granted in 2004, it is assumed that the company was in difficulty at the time when they were granted (cp. above point 22 et seq.). Aid granted to a company in difficulty would have to meet the conditions provided in the Rescue and Restructuring Guidelines 1999. So far, the Commission was not provided sufficient information that would allow it to determine whether the requirements set out in the Guidelines were met. If it were considered that the company was not in difficulty at the time when the guarantees were granted, it would have to be assessed whether the guarantees could be compatible on another basis.

4.3.3. Purchase of shares from Järvi-Suomen Portti; write-off of debts in 2007 and 2008

- (48) As regards the purchase of shares in 2005 and the write-off of debts in 2007 and 2008, the compatibility of the aid measures would be assessed in application of the Rescue and Restructuring Guidelines 2004, as the Commission assumes that the company was in

difficulty at the time of the granting of the measures. So far, the Commission was not provided sufficient information that would allow it to determine whether the requirements set out in the Guidelines were met. If it were considered that the company was not in difficulty at the time when the measure was granted, it would have to be assessed whether it could be compatible on another basis.

4.3.4. Measures granted by Finnvera

- (49) As regards measures granted by *Finnvera* in the years 2004 to 2008, it must be taken into account that *Järvi-Suomen Portti* is considered to have been at the time of granting a company in difficulty within the meaning of the Rescue and Restructuring Guidelines 2004 and 1999 respectively. Hence, the compatibility of the aid in the form of subsidised loans or guarantee would be assessed under the said Guidelines. So far, the Commission was not provided sufficient information that would allow it to determine whether the requirements set out in the Guidelines were met. If it were considered that the company was not in difficulty at the time when the measure was granted, it would have to be assessed whether it could be compatible on another basis.

5. CONCLUSION

- (50) In the light of the above considerations, the Commission has decided to extend the formal investigation procedure provided for in Article 108(2) TFEU to the measures in question.

Decision

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests Finland to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. In particular, information should contain:

- Terms and conditions of the assignment of land for the Tikkala production facility in the year 2000 and related documents; terms and conditions of the municipal engineering and other requisite technical work provided by the City of Mikkeli and the related documents;
- Terms and conditions of the purchase of land in 2002 and the related documents; information whether the purchase of the land was done under market conditions;
- Additional information on the loans granted by Tapiola in the year 2004 and the guarantees that were granted by the City of Mikkeli in order to secure these loans;
- Terms and conditions of the purchase of shares from *Järvi-Suomen Portti* in 2005 and the related documents; information whether the purchase of the properties was done under market conditions;

- Documents relating to the effect that the debt write-offs in 2007 and 2008 had on the legal obligation to pay back the debts in question; information whether the City of Mikkeli is trying to recover the debts in question and related documents; brief description of the relation between the debt write-offs and the restructuring programme;
- Details on the loans granted by private creditors together with Finnvera in 2006 and 2007, in particular date of granting, amount, interest rate and collateralisation in order to allow the Commission whether the loans were granted *pari passu* together with such private creditors;
- Legal basis on which the guarantees in 2004, 2006 and 2008 were granted by Finnvera; information, whether guarantees were granted together with private parties and if so, terms and conditions of the guarantees granted by private parties;
- Explanation on the funding which allowed *Järvi-Suomen Portti* to repay the outstanding debts amounting to approximately EUR 1 million towards the tax authorities in summer 2009 and relating documents.

It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Finland that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Finland that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels

Fax No: +32-2-296.1242

Yours faithfully,
For the Commission

Neelie Kroes
Member of the Commission