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Subject: **State aid SA.36105 (2013/N) – Germany, Fußballstadion Chemnitz**

Sir,

1. PROCEDURE

- (1) On 21 January 2013, Germany notified the plan of the City of Chemnitz to renovate and reconstruct its football stadium. Upon request, Germany submitted further information on 28 February, 24 April and 11 June 2013.

2. DESCRIPTION OF THE MEASURE

- (2) The City of Chemnitz in the German Land Sachsen (243 000 inhabitants) plans to renovate and improve with public funds its existing football stadium which offers 15 000 places. Chemnitz expects total costs in the order of EUR 25 million.
- (3) The improvement of the stadium became necessary in the first place because its main user, the local football club "Chemnitzer FC" (CFC), has been promoted to the Third League and because the stadium does not fulfil the regulations of the German Football Federation (Deutscher Fußballbund, DFB) on stadium characteristics for Third and Second League Clubs. In any case, the stadium, which was built in 1934 and has not been thoroughly renovated since then, is in need for renovation. There is also no other comparable facility

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in the town which would be capable of meeting the requirements of a professional football club.

- (4) The City of Chemnitz intends to conduct the renovation and upgrade and to lease the stadium thereafter for 20 years to the CFC Marketing GmbH, which is fully owned by the CFC (they will hereinafter commonly be referred to as CFC). Thereby the stadium will continue to be at the disposal of the CFC in a way it was already before. Should during the lease term another football club in Chemnitz be promoted to the third or a higher league, the CFC will have to allow this club to use the stadium; the conditions for this use will be determined once this situation arises.
- (5) The future annual rent the CFC is expected to pay will be 2.5% of its turnover, but at least EUR 180 000; should the CFC be promoted to the Second League, the rent will be 2% of the turnover, but at least EUR 250 000. According to the German authorities, this amount is comparable to the rent other clubs have to pay for similar stadiums. Until now, the CFC has paid for the lease a rent of EUR 25 000. In addition, the CFC has to bear the stadium running and maintenance costs, including repair, building insurances, or security. These costs are estimated at another EUR 612 000.
- (6) The CFC will use the stadium on 22 days per year for the matches of the professional team. The training of the team takes place on a training ground elsewhere. This leaves much room for the use of the sport infrastructure by others. Therefore, there will be an agreement between the City of Chemnitz and the CFC which ensures the use in the public interest. This concerns popular sport activities mainly for the youth, football games of amateur teams, and use for sports education by schools. This use also includes any kind of non-commercial events and seminars in the VIP and press rooms of the stadium. The CFC will be contractually required – like it is already now - to let the City of Chemnitz the stadium for these purposes free of charge; the City then makes it available to the other users. Furthermore, the CFC will be entitled to sublet the stadium for commercial use, in order to generate income. Such use may consist in concerts and all sorts of gatherings a stadium may host.
- (7) Germany provided data to support that the rent to be paid by the CFC is comparable to what other third league clubs are paying. With the help of the DFB it looked at the prices the 20 third league clubs are paying, and in particular where the stadium they use is of a comparable size. For clubs which use a publicly owned stadium of a similar size, the German authorities identified annual rents between EUR 35 000 and EUR 450 000. The DFB explains the difference in rents also by the fact that sometimes these rents also cover operating costs, like maintenance or energy costs, sometimes not. In the case of Chemnitz, the CFC as leaseholder is obliged to also carry the overall operating costs, which are calculated at EUR 612 000 per year. Therefore the German authorities consider a lease for EUR 180 000 to be within the range of the charges to other clubs. They underline that the EUR 180 000 are just a basis amount and that depending on the turnover and the economic success of the club the rent may be higher.

- (8) The CFC belongs to the Third Football League in Germany. The Third League plays only with professional players. It was founded to create better development and support possibilities for talented players. It offers them more chances to be contracted as professional players. Revenues of the club are generated by ticket sales and merchandising with principally local firms; Third League clubs are also active in player transfers, although the transfers are usually for free or for low amounts. According to the German authorities, there were however single cases of transfer of players against remuneration from and to other Member States.

3. ASSESSMENT

3.1. Existence of aid

- (9) The planned measure constitutes State aid within the meaning of Article 107 (1) TFEU, if it supports through State resources an economic activity which derives thereby an advantage which could affect competition and trade between Member States.
- (10) The stadium renovation is fully financed by public funds. This may constitute aid if it leads to an advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the Leipzig/Halle airport judgment of the Court of Justice¹. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. The market of professional sport is characterized by high level of competition with significant private and commercial investments. Operating a large football stadium may, at least in part, constitute an economic activity. Accordingly, this economic activity benefits from aid if it is supported by public funds.
- (11) It would not have been possible to carry out the project without public funding. The infrastructure is put at the disposal of the private operator CFC. It acts as the sole operator, who will rent it to various other users against remuneration, and to a limited extent will also use it for its own professional football activity. The arguments put forward by Germany are not sufficient to exclude the existence of an advantage for the operator². Furthermore, the operator is not chosen by a tender procedure. Accordingly, CFC enjoys an economic advantage from State resources.
- (12) Also the professional football activities of the CFC may qualify as an economic activity within the meaning of Article 107 (1) TFEU. Sport is subject to EU law, including competition rules, in so far as it constitutes an economic activity. This is in particular the case where a sporting activity takes

¹ Judgment of 19 December 2012 in Case C-288/11, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

² The available data, as provided by the German authorities, are not even sufficient to allow a reliable comparison of the rent fee with the pricing for other similar arenas. The examples provided differ considerably and do not show whether they also cover operating costs and maintenance costs.

the form of gainful employment or the provision of services for remuneration, like in the case of professional football³. In view of the many markets on which professional football clubs deploy activities (participation in competitions, selling tickets and broadcasting rights, transfers of players, sponsoring, merchandising and publicity agreements and others), measures providing an advantage to a professional football club will in all likelihood have the potential to confer an advantage to an economic activity.

- (13) Therefore it cannot be excluded that the CFC, which is an economic actor in competition with other clubs not benefiting from such support, enjoys a selective economic advantage from state resources within the meaning of Article 107(1) TFEU.
- (14) Regarding a possible effect on trade and competition between member States, the German authorities argue that the activities of Third League clubs have no such impact. Stadium visitors would be coming only from the region of the club. Third League clubs would also not be participating in international competitions, like e.g. the Champions' League. Sponsoring and merchandising would only concern local firms. However, there is a, albeit limited, number of player transfers taking place between Member States. By improving a club's cash flow, State aid can also affect its ability to recruit international players, who are the object of competition between European clubs. The financial situation of a club may also improve its chances to attract good players even in cases where no transfer fees are paid. Accordingly, there exists the possibility of an effect on trade and competition.
- (15) Also the other envisaged use of the stadium, the commercial exploitation by the CFC, concerns in the first place local and regional firms and not international events. It is therefore unlikely that the operation of the stadium will have a strong cross border effect like e.g. arenas which are planned for commercial events (in particular music and sport) of international level. However, the market for organising sport and other types of public events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. Therefore, the renovation of the stadium has at least a potential effect on trade and competition in the internal market.
- (16) Through the lease of the stadium, the CFC is thus the beneficiary of aid which has to be assessed under Article 107(3) TFEU.
- (17) The renting of the stadium infrastructure may furthermore constitute aid for the users, if the users can be considered undertakings and if the rent they pay is below market levels. However, the non-professional users, for which the stadium has to be made available by the CFC, do not qualify as undertakings within the meaning of Article 107. Offering them the arena for a low rent for free does therefore not constitute aid. Other professional users have to pay a market oriented fee to the CFC. The CFC as private operator has a strong incentive to maximise income and not to undercut prices for the final users.

³ Case C-325/08, *Olympique Lyonnais*, at paragraphs 27 and 28; Case C-415/93 *Bosman*, paragraph 73; Case C-519/04 P *Meca-Medina and Majcen v Commission*, paragraph 22 .

However, and in the absence of any clarification on how that fee will be calculated, the Commission cannot exclude that part of the economic advantage benefitting the operation will be transferred to the final users through prices which are indeed below those for the use of comparable infrastructure under normal market conditions. .

3.2. *Compatibility*

- (18) The public financing of the reconstruction of the stadium with the aim to offer it, in part, for commercial use through a lease to the local football club may be compatible with the internal market pursuant to Article 107(3)c TFEU if it pursues a policy objective of common interest, is necessary and proportionate and does not cause undue distortion of competition.
- (19) With regard to the achievement of a policy objective of common interest, the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered a State responsibility towards the general public⁴. The Amsterdam Declaration on Sport and Article 165 TFEU both acknowledge the social significance of sport: "The Union shall contribute to the promotion of European sporting issues...".
- (20) The Commission highlighted⁵ that the sport sector has enormous potential for bringing the citizens of Europe together. Sport has an educational role, as well as social, cultural and health dimension. There is an overall European need to better use the potential of sport as an instrument for social inclusion in the policies, actions and programmes of the European Union and the Member States.
- (21) The arena is not for the exclusive use of the CFC. One of the objectives pursued by the renovation of the stadium is to increase through adequate sport infrastructure and equipment the participation of the general public in sport, here in particular football activities, by inter alia, promoting training of the youth. The arena will also be used for cultural events (concerts, shows), or conferences or fairs and as such contribute to the promotion of cultural diversity, according to Article 167(4) TFEU also a Union policy objective.
- (22) Therefore, the lease contract will ensure non-professional, mainly youth football players' access and facilities for cultural events, which is a typical task of municipalities. There is a lack of comparable facilities. For the local football club there is no alternative arena available; existing facilities for sport and other types of events are not capable to host mass events. Thus, the Chemnitz stadium is the only local large arena. The realisation of the arena must therefore be regarded as satisfying policy objectives of common interest.

⁴ Cf. point 67 in decision on case C4/2008, Netherlands, Investment in Ahoy sports palace by Rotterdam.

⁵ Commission staff working document on the EU and Sport: Background and context – accompanying document to the White Paper on Sport (COM (2007) 391 final).

- (23) The public financing of the arena is necessary because the existing facility has become outdated and will not be duplicating other comparable infrastructures. Apart from the need to align it to DFB standards, of which also other clubs of the town may benefit, should they be promoted to the Third League, it does also more in general not anymore meet the requirements of the public. The financing is also justified by the fact that such an infrastructure otherwise would be absent in the region concerned.
- (24) The public financing of the arena is also proportionate. It is not possible to determine a market price for the rent the local professional football club has to pay for the use of the single existing stadium that can be used for home matches. Therefore, the price has been determined on the basis of a comparison with fees comparable and competing clubs are paying elsewhere; it is not at the lower range of these fees. The rent is also significantly higher than the rent the club is currently paying for the stadium (EUR 180 000 instead of EUR 25 000). Furthermore, the rent increases with the turnover, once 2.5% of the turnover is more than the basis rent of EUR 180 000.

The Commission notes furthermore that it is planned that the stadium is used for non-professional school and youth and adult amateur sport during the week all 5 days morning and afternoon training, and at weekends, the CFC match schedule permitting, amateur matches. The room left for evening and occasional weekend events is below 50% of the possible capacity use. The depreciation rate for the stadium is, according to section 7(4) German income tax code (Einkommenssteuergesetz), 3% per year. With an investment of EUR 25 million this would be EUR 750 000 per year. Together with the rent of EUR 180 000 and the EUR 612 000 for stadium operation, maintenance and repair – costs which at least in part are normally carried by the building owner – the CFC is contributing a considerable part to the stadium refinancing. Thereby the club is not enjoying an excessive advantage compared to the clubs it is competing with⁶.

- (25) Finally, in exchange for benefitting from State aid, as a quid pro quo, the beneficiary club shall ensure participation of the general public in sport activities. Outside match days, it has to leave the stadium to the municipality, if requested, for popular sport use (in particular by schools and youth sport), while remaining responsible for the operation of the infrastructure. The scheme will result in more and better infrastructure available to the public since the facilities supported by the scheme will include a commitment to allow the use of the stadium by the general public. The stadium shall also be used for other purposes besides the activities of the football club. This will ensure that several different types of users and sectors will be able to benefit from the subsidized sport infrastructure.
- (26) Regarding the extent of a possible effect on trade and competition between Member States, Third League clubs like the beneficiary are not participating in international competitions and do not benefit from the sale of international

⁶ See also SA.35135 (2012/N), *Multifunktionsarena der Stadt Erfurt* or SA.31722 (2011/N) *Hungary, sport infrastructure development scheme*.

broadcasting rights. Stadium visitors would be coming only from the region of the club. Third League clubs would also not be participating in international competitions, like e.g. the Champions' League. Sponsoring and merchandising would only concern local firms. There are only very few player transfers in the Third League taking place between Member States.

- (27) Also the other envisaged use of the stadium, the commercial exploitation by the CFC, concerns in the first place local and regional firms and not international events. The objective is not to attract international commercial events but to cater to the local or regional needs. It is therefore unlikely that the operation of the stadium will have a strong cross border effect like e.g. arenas which are planned for commercial events (in particular music and sport) of international level.
- (28) Accordingly, the stadium itself is of regional importance only and the economic activities of the beneficiary of the aid, the Third League club CFC, have only a very limited effect on trade and competition between Member States. From this perspective, aid to the stadium use by the club through a lease rent which is on a level that is comparable with competing clubs has only very limited possibilities to affect trade and competition between Member States.
- (29) The public financing of the reconstruction and operation of the stadium of the City of Chemnitz is therefore pursuing acknowledged public policy objectives, is necessary and proportionate and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107(3)c TFEU⁷.

4. CONCLUSION

- (30) The Commission has accordingly decided not to raise any objections to the above-mentioned measure on the ground that the aid for the construction and use and operation of the multifunctional arena of the City of Chemnitz by the CFC is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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/competition/elojade/isef/index.cfm>.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or fax to:

European Commission
Directorate-General for Competition

⁷ Cf. State aid decisions in similar cases of local arenas SA.35135 – *Germany, Multifunktionsarena der Stadt Erfurt* and SA.35440 – *Germany, Multifunktionsarena der Stadt Jena*.

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Yours faithfully,
For the Commission

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