EUROPEAN COMMISSION

Brussels, 13.6.2016
C(2016) 3607 final

| | | |
|---|---|---|
| In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […] | | PUBLIC VERSION<br><br>This document is made available for information purposes only. |

**Subject: State Aid SA.43624 – Germany – LIP – Aid to Hamburger Rieger GmbH**

Sir,

## 1. PROCEDURE

(1) By electronic notification registered on 23 December 2015, the German authorities notified to the Commission regional aid in favour of Hamburger Rieger GmbH (hereinafter "Hamburger Rieger") subject to Commission approval.

(2) By letters of 5 February 2016 (2016/012327), 16 March 2016 (2016/027169) and on 19 May 2016 (2016/047616) the Commission requested supplementary information which was submitted by letters registered at the Commission on 3 March 2016 (2016/022657), 24 March 2016 (2016/030044), 8 April 2016 (2016/), on 13 April 2016 (2016/036225) and on 19 May 2016 (2016/047638). On 10 March 2016, a meeting between the Commission services, the German authorities and the investor took place, in which the case was further discussed.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

## 2. DETAILED DESCRIPTION OF THE AID MEASURE

### 2.1. Objective of the aid measure

(3) The German authorities intend to promote regional development by providing regional aid for an initial investment allowing doubling the production capacity of Hamburger Rieger's white top testliner production plant (second paper machine) in Spremberg. Production in this second paper machine is to be based on a production process which, according to Germany, constitutes a new process innovation in the meaning of paragraph 15 of the Guidelines on Regional State Aid for 2014-2020[1] (hereinafter "RAG"). Spremberg is situated in the Spree Neiße area, in Brandenburg, an area eligible for regional aid under Art. 107(3)(c) TFEU, with a standard regional aid ceiling of 20% under the German regional aid map for the period from July 2014 to 2020[2] (hereinafter "Regional Aid Map"). The project is expected to create 195 new jobs.

### 2.2. The beneficiary

(4) The recipient of the aid is Hamburger Rieger GmbH, part of the Division Hamburger Containerboard, fully owned subsidiary of the Prinzhorn Group. The Prinzhorn Group is a large undertaking with more than 5000 employees and is active in 13 countries.

(5) The German authorities confirmed that Hamburger Rieger is not a company in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[3].

### 2.3. The investment project

#### *2.3.1. The notified project*

(6) The notified investment project concerns the extension of the capacities for the production of white top testliner and involves the setting up of a new stock preparation process and the construction of a (second) paper machine, both based on new process innovations. The existing production line (PM1) and its production process remain unchanged, and the synergies between the two production lines are very limited. Works on the investment project are planned to start after the a positive decision on the notified aid will be taken by the Commission; the implementation of the investment project will take 36 months. Full production is to be reached within six months after completion of the project.

(7) White top testliner is used in the production of container board for packaging purposes. Hamburger Rieger produces it in Spremberg exclusively from recycled fibre (recycled waste paper).

(8) White top testliner is composed of one layer of whitish paper, and one to several layers of brown/greyish papers. Any form of printing of the later package material takes place on the white side of the testliner. The investment is driven by the progressively decreasing availability of white and other waste paper as raw

---

[1] OJ C 209, 23.07.2013, p.1

[2] SA.37423 (N/2013), OJ C 280 of 22.08.2014 p.1.

[3] OJ C 249, 31.7.2014, p. 1–28

material (less and less books and newspapers are sold). Future paper production will have to do with lower grade of white and less white waste paper, and improve the use of the available waste paper. The new production method would allow using recycled paper of lower quality (lower amount of white paper).

Stock preparation process

(9) In the stock preparation part of the process dry bales of raw materials – waste paper – are dissolved with water; paper fibres and fillers are separated and impurities are removed. In the "state of the art" stock preparation process washed-out fillers are excreted, disposed of, and new fillers have to be added to reach the required paper properties.

(10) The envisaged innovative stock preparation process includes […]. This means that […].

(11) For these reasons this part of the new process is also considered to be more environmentally friendly […].

(12) As the new process is very complex in its structure and operation, it also requires an intelligent, innovative control software. The software is to stabilise process variation to ensure constant production conditions and high usage of fibre material. As a basis for the intelligent control system a highly complex measurement sensor technology and a variety of control modules, including a new control strategy are needed.

(13) [Company X] holds a European patent[4] for this new stock preparation process. Hamburger Rieger is in negotiations with [Company X] for […]. [Company X] confirmed that this patent which entails a new stock preparation process, exceeding significantly the state of the art, would be implemented in the new Hamburger Rieger paper production process for the first time globally.

(14) An independent expert report submitted by Germany (prepared by the company PTS Fibre based solutions) confirmed that the innovative stock preparation process would be implemented for the first time globally.[5]

(15) The innovative element in the stock preparation process will have a significant impact on this part of the production process.

Subsequent part of the production process carried out by the paper machine

(16) After stock preparation, the subsequent part of the paper production process is carried out by the paper machine. The paper machine takes over the treated pulp suspensions, which are different for the different layers, and produces several layers of paper webs. The classic (PM1) paper production in Spremberg is based on a three-layer concept, comprising three lines of raw materials, which are treated separately, and prepared to provide adequate amounts of good quality

[4] […]

[5] PTS is considered an independent expert. PTS declared that it has no conflict of interest, in particular that the experts and their family members have no financial or family ties, and no ongoing contacts with Hamburger Rieger GmbH or with companies belonging to the Prinzhorn group, and no other contracts and/or orders or items for negotiations are pending and/or promised.

fibres for the paper machine. The resulting thin pulps are then joined together, with the white layer on top.

(17) After a certain degree of drying is achieved, the paper is treated by the film press section, which serves to improve the quality of the paper. Since 2011, in Spremberg's PM1, a film-press pigmentation process - “coating instead of fibres” (“Strich statt Stoff”) - is applied on the basis of a patent[6] held by Hamburger Rieger.

(18) The drying process is then continued, eventually interrupted by a coating of the paper. The dried paper is rolled up on full width paper reels, with the white layer on the inside. In a final step, the paper from the reels is cut into relevant widths, put on smaller reels, with the white side outside, packaged, and shipped to customers, i.e. to container board producers.

(19) The innovative process to be introduced will rely on only two layers, […]. The film press pigmentation process will thus […] at the risk of losing some white pigment. The film press pigmentation process also makes it possible to reduce the use of cost-intensive raw materials, in particular paper fibres in the top layer, and to completely replace some raw materials with pigment coat (“coating instead of fibres” (“Strich statt Stoff”)), drastically reducing material resources.[…]

(20) Two layer production of white top testliner exists already in other paper plants. […] production is already used for other types of paper, and is not considered by Hamburger Rieger as innovative either. The Hamburger Rieger patent for the film press pigmentation process is already applied in the existing paper machine in Spremberg.

(21) According to Germany, the novelty in this part of the production process is mainly to be seen in the first time combination of the different already known elements, […]. The independent expert report considers that this combination leads to a significantly improved production process.

(22) The […] of the layers of the paper requires changes in the way most parts of the paper machine are built.

(23) Germany considers that the new production process qualifies as a "new process innovation" in the meaning of paragraph 15 of the RAG, as the combination of these processes – […] – is the first time implementation of innovations in the paper production process.

### *2.3.2. Eligible investment costs*

(24) The eligible investment costs amount to EUR 371 million in nominal value, which is EUR 363 million in present value[7]. Table 1 below presents the breakdown of the eligible costs in nominal value.

*Table 1: Breakdown of eligible investment costs (nominal in EUR millions)*

6 EP 2701909 B1

7 The present values in this decision are calculated on the basis of a discounting rate of 1.17 %, applicable at the time of notification. Present values are discounted to the year 2016, which is the planned date of award.

| In million EUR (rounded) | 2016 | 2017 | 2018 | 2019 | Total |
|---|---|---|---|---|---|
| | | | | | |
| **Building** | […] | […] | […] | […] | 81.89 |
| **External Equipment** | […] | […] | […] | […] | 13.55 |
| **Machinery/Equipment** | […] | […] | […] | […] | 275.56 |
| **Intangible assets** | 0 | 0 | 0 | 0 | 0 |
| **Total** | […] | […] | […] | […] | **371.00** |

(25) The German authorities confirmed that all assets included in the eligible expenditure will be new.

### 2.4. Legal basis

(26) The notified financial support constitutes an individually notifiable case in the application of an aid scheme, which was put into effect under Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty[8] (General Block Exemption Regulation, hereinafter "GBER"), having as its national legal basis the Bund-Länder-Gemeinschaftsaufgabe “Verbesserung der regionalen Wirtschaftsstruktur” (GRW) - gewerbliche Wirtschaft (einschließlich gemeinnützige außeruniversitäre wirtschaftsnahe Forschungseinrichtungen) (SA.39463, (2014/X)).

### 2.5. Aid amount

(27) The total aid in the form of a direct grant amounts to EUR 34 million in nominal value and EUR 32.9 million in present value.

*Table 2: Aid amount (in EUR thousands)*

| | 2017 | 2018 | 2019 | 2020 | Total |
|---|---|---|---|---|---|
| Cash grant (nominal) | […] | […] | […] | […] | **34 000** |
| Cash grant (PV) | […] | […] | […] | […] | **32 891.2** |

### 2.6. Aid intensity and cumulation with other investment aid

(28) The envisaged aid of EUR 32.9 million in present value for eligible expenditure of EUR 363 million in present value corresponds to an aid intensity of 9.06 %. The German authorities declared that the financial support for the project will not be combined with any other financial support that would be disbursed for the same eligible costs from any other local, regional, national or European Union source.

(29) The German authorities confirm that neither the approved maximum aid amount in present value nor the approved aid intensity will be exceeded if the amount of eligible expenditure deviates from the estimated amount.

8 OJ L 187, 26.6.2014, p. 1–78

### 2.7. Own contribution

(30) The aid beneficiary will contribute at least 25% to the financing of the investment.

### 2.8. Maintenance of the assisted activity

(31) The direct grant is awarded under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after completion of the investment project.

### 2.9. Contribution to regional development (cohesion) objective

(32) Germany explained that the investment will contribute to the regional development of Spremberg, Spree Neiße and the Brandenburg region for the following reasons:

- The investment project creates 195 new direct jobs for high-skilled employees in the Brandenburg region. The quality of the created jobs and the required level of qualification are high (for the positions of paper technologists, industrial mechanics, industrial electricians, process control engineers).
- The investment will also lead to the creation of indirect jobs: Germany suggests that each new direct job will result in the creation of two indirect jobs, in particular with suppliers and service providers.
- The beneficiary provides extensive training programmes in order to improve the qualification of its employees.
- The investment project will also have significant positive regional structural effects in view of the planned closure of the opencast brown coal mines and power plants of Vattenfall (currently one of the largest employers in the region). The investment project will contribute to the diversification of the regional economy, which is primarily based on brown coal.
- The investment project involves an innovation and is the source of a significant transfer of technology (knowledge spillovers) to a structurally weak region. The beneficiary anticipates closer cooperation with academic institutions, in particular with the Technical University Cottus-Senftenberg (with which the beneficiary has already been actively cooperating before the investment).
- The company plans to keep its production for at least five years after completion of the investment project and future follow-on investments are foreseen, which is an indication of the long term engagement of the company in the region.

### 2.10. Appropriateness

(33) Germany notes that the Commission accepted already in the Dell Poland decision[9] that State aid, among other measures, is an appropriate means to promote the regional development of regions where the GDP per capita and the

[9] C46/2008, decision of 23 September 2009, published in OJ L 29, 2.2.2010, p. 8. paragraph 171.

wage levels are lower than the national average, and the unemployment rate is higher than the national average.

(34) The GDP per capita in Brandenburg was 71% of the German average in 2013 and the average disposable income per inhabitant in 2013 was approximately 87% of the German average. The unemployment rate was 2.7 percentage points higher than the German average in October 2015.[10]

(35) Germany argues that, in this kind of economic situation, a direct subsidy has already been acknowledged by the Commission's case practice as an appropriate means to address the economic shortcomings.

## 2.11. Incentive effect

(36) The formal application for aid was submitted by Hamburger Rieger on 26 November 2015, i.e. before the start of works on the investment. In addition, during the assessment of the measure, the location decision was pending as the beneficiary is waiting for a confirmation on whether the aid could be eligible for regional aid.

### *2.11.1. Counterfactual scenario*

(37) Germany explained that the alternative location to implement the investment project would be [location 1] (non-assisted area in Bavaria). At an earlier stage also a location in Turkey was considered. However, this alternative location was not further pursued due to expected difficulties in the supply of sorted waste paper.

(38) Germany provided relevant internal company documents showing that [location 1] would be a realistic and plausible alternative to the existing establishment in Spremberg. [location 1] is close to an existing establishment of Hamburger Rieger in Trostberg and has already been considered as a potential location for earlier investments due to certain attractive conditions. There is a possibility to buy the necessary land for the investment project in question in [location 1] at short notice.

(39) The company compared the economic feasibility of both locations, taking into account the total costs of the investment, the planned production costs over a reference period of ten years and the residual value of the investment after ten years for each location. While the investment costs would be higher in [location 1], with resulting higher residual value, the production costs would be lower in [location 1] than in Spremberg.

(40) The calculations and cost estimates for the two options were carried out at the same level of accuracy.

(41) The investment costs are slightly higher in [location 1], mainly due to the costs relating to the setting up of the energy supply facility. The land acquisition costs in [location 1] are compensated by the land preparation costs in Spremberg (brown-field investment, land partly to be decontaminated).

---

[10] Sources: Bundesagentur für Arbeit (Federal Employment Agency) and the statistical offices of the Federal and "Länder" level.

(42) The residual value would be higher in [location 1] due to the higher investments in the beginning, which results into a slight cost disadvantage for Spremberg.

(43) The overall production costs (calculated over a ten year period) would however be much higher in Spremberg despite the fact that labour costs would be lower in Spremberg than in [location 1]. The cost disadvantage of Spremberg is mainly due to higher energy, raw material and water supply costs. The energy costs are higher in Spremberg, because the necessary steam would have to be generated from gas, which is more expensive than steam supplied by a waste incinerator. In [location 1] almost two thirds of the steam demand could be supplied by a local waste incinerator and only about one third would have to be generated from gas. As most of the raw material, i.e. recycled brown waste paper, is supplied from within a close area and as there is a higher demand for recycled brown waste paper in the area around Spremberg than around [location 1], it is estimated that the related costs would be higher in Spremberg. For the [location 1] plant, the company could have its own well (investment costs for the well were taken into account under investment costs), whereas in Spremberg, the water would have to be bought from third parties; therefore, the water supply related costs would be higher in Spremberg. The local business tax ("Gewerbesteuer") in Spremberg is higher than in [location 1]. Other costs, such as costs for transport, waste water, waste treatment, maintenance costs of machines, etc. would be rather identical in both locations.

(44) The level of revenues resulting from the operation is independent from the location of the investment.

(45) In conclusion, the comparisons submitted by Germany show - on the basis of the comparison of the respective investment and production costs and residual values - a total cost disadvantage of of EUR 38.48 million for Spremberg compared to [location 1].

(46) Taking into account a possible state aid, the cost disadvantage of locating the investment in Spremberg could be reduced to EUR 5.6 million. The company considers that this disadvantage could be compensated by the fact that the expansion of the site in Spremberg has certain non-quantifiable and strategic advantages as compared to the set up of an entirely new site in [location 1], e.g. expandable workforce and an existing reliable supplier network.

#### *2.11.2. Decision making process*

(47) In general, at the Prinzhorn Group investment plans are developed at the level of the regional companies, which are then evaluated at the level of the relevant division, which is in the case of Hamburger Rieger at the level of Hamburger Containerboard. On the basis of this preparatory work, the relevant division submits a proposal for a decision to the Group's Supervisory Board, Prinzhorn Holding. The Supervisory Board takes all important decisions, it approves, inter alia, investments into major projects, new locations, or land purchases.

(48) Company documents show that Spremberg and [location 1] as alternative investment locations were presented to the Executive Committee of the Containerboard Division and discussed already in 2013; the plans were then further elaborated in 2014 in the Executive Committee of the Containerboard Division. In spring 2015, the management of the Containerboard Division laid

down the economic and strategic parameters for developing the [location 1] / Spremberg business models. On this basis, the finance department then drew up complete business plans for each location, which were presented and finalised at a meeting of the management of Hamburger Rieger GmbH and the management of the Containerboard Division in October 2015.

(49) The management of the Containerboard Division prepares the proposal for a decision for the Supervisory Board of the Prinzhorn Group, which summarises the results of the Spremberg / [location 1] comparison and shows the possible subsidy for an investment in Spremberg. During the Commission’s assessment of the notified aid measure, the decision on the location was still pending, as the beneficiary has been waiting for the confirmation from the Commission on whether the investment could be eligible for regional aid.

### 2.12. General provisions

(50) The German authorities undertook to submit to the Commission:

- within two months after the issuance of the definite aid granting act, a copy of this act;
- on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the amounts being paid and on any other investment projects started at the same establishment/plant);
- within six months after payment of the last tranche of the aid, in accordance with the notified payment schedule, a detailed final report.

## 3. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

### 3.1. Existence of aid

(51) The financial support will be given by the German authorities in the form of a direct grant. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) TFEU.

(52) As the aid is granted to subsidiaries of a single company, Hamburger Rieger (part of the Prinzhorn Group), the measure is selective.

(53) The financial support given to Hamburger Rieger will relieve the company from costs which it normally would have had to bear itself, and therefore the company benefits from an economic advantage over its competitors.

(54) The measure is likely to affect trade between Member States as it applies to the paper production sector, where trade between Member States exists.

(55) As the measure favours the production of Hamburger Rieger, competition is distorted or is threatened to be distorted.

(56) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

### 3.2. Legality of the aid measure

(57) If the regional investment aid amount to be granted exceeds the notification threshold laid down in Article 4(1)(a) of the GBER, the aid is not covered by the exemption, and has thus to be notified individually. In the Spree Neiße area, the applicable threshold is EUR 15 million, therefore the planned aid measure cannot be exempted from notification.

(58) In addition, according to paragraph 15 of the RAG, regional aid to investments of large undertakings in c-areas is considered compatible only if it is granted for initial investments that create new economic activities in these areas[11], or for the diversification of existing establishments into new products or new process innovations. Aid for these activities is individually notifiable unless it supports initial investments that create new economic activities in these areas. The resulting individual notification obligation for "new products" and "new process innovation" cases applies independently from the aid amount envisaged.

(59) By notifying the awarding of the aid subject to Commission approval, the German authorities have respected their obligations under Article 108(3) TFEU.

(60) The aid to Hamburger Rieger will be granted only after the Commission's approval.

(61) Having established that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU and that it is subject to Commission approval, it is necessary to examine whether the investment project is eligible for aid and whether the measure can be found compatible with the internal market.

(62) As the objective of the measure is to promote regional development in an area designated in accordance with Article 107(3)(c) TFEU, and the aid is to be granted in the period between 1 July 2014 and 31 December 2020, the legal basis for its assessment are the RAG.

(63) In line with the provisions of the RAG, the Commission will first establish whether this investment project, which is to be undertaken by a large undertaking in a c-area, and which does not concern an initial investment in favour of new economic activity in the meaning of paragraph 20(i) of the RAG can be found eligible for regional aid, as its production process is based on a new process innovation. The Commission will then verify the compatibility of the notified aid in application of the Common Assessment Principles laid down in the RAG.

### 3.3. Eligibility of the notified project

(64) Germany intends to grant aid to an initial investment in the form of a capacity extension of the existing establishment of Hamburger Rieger, a large undertaking, in Spremberg, an area eligible for regional aid pursuant to Article 107(3)(c) TFEU.

(65) Paragraph 15 of the RAG reads as follows: "Since regional aid to large undertakings for their investments is unlikely to have an incentive effect, it cannot be regarded to be compatible with the internal market under Article 107(3)(c) of

[11] See recital (67) of this decision which sets out the definition of a ‘new economic activity’.

the Treaty, unless it is granted for initial investments that create new economic activities in these areas, or for the diversification of existing establishments into new products or new process innovations."

(66) The capacity extension of the Spremberg establishment constitutes an initial investment in the meaning of the RAG. In fact, an initial investment is defined in paragraph 20(h) RAG as an investment in tangible and intangible assets related to (i) the setting-up of a new establishment, (ii) the extension of the capacity of an existing establishment, (iii) the diversification of the output of an establishment into products not previously produced in the establishment, or (iv) a fundamental change in the overall production process of an existing establishment.[12] The expenditure for the capacity extension initial investment is thus, according to paragraph 20(e) of the RAG, and within the limits defined in this paragraph, in principle eligible for regional aid.[13]

(67) However, an initial investment in the form of a mere capacity extension does not qualify as an initial investment which creates new economic activities. In fact, the notion of initial investment that creates new economic activities is defined according to paragraph 20(i) as follows: (a) an investment in tangible and intangible assets related to (i) the setting up of a new establishment, or (ii) the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; or (b) the acquisition of the assets belonging to an establishment that has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not a same or similar activity to the activity performed in the establishment prior to the acquisition. The notion of same or similar activity is defined according to paragraph 20(s) as an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities.

(68) Therefore, the capacity extension investment of a large company in a 'c' region can only be eligible for regional investment aid, if the investment is based on a new process innovation or if it is related to the diversification of existing establishments into a new product. However, the "new product" window is not applicable as the plant is already producing white testliner, and as white testliner is a well established standardised product. In the present case the capacity extension investment in the existing Spremberg establishment is based on a new production process and can only be considered eligible for regional investment aid, if it is based on a new process innovation in the meaning of paragraph 15 of the RAG.

(69) The existing Spremberg establishment can only be eligible for regional investment aid, if its production process is based on a new process innovation in the meaning of paragraph 15 of the RAG.

---

[12] According to paragraph 20(h)(b) of the RAG, an initial investment can also be "an acquisition of assets directly linked to an establishment provided the establishment has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller. The sole acquisition of shares of an undertaking does not qualify as an initial investment".

[13] Paragraph 20(e) of the RAG: 'eligible costs' means, for the purpose of investment aid, tangible and intagible assets related to an initial investment or wage costs.

(70) Therefore, it needs to be established whether the envisaged production process qualifies as "new process innovation" in the meaning of paragraph 15 of the RAG.

(71) The RAG do not provide a definition of the concept of "new process innovations", nor do they lay down precise criteria for the assessment of such types of initial investment cases. The Research and Development and Innovation (RDI) chapter of the GBER sets out a definition for "process innovation"[14], which could provide some guidance as to the scope of the concept. This GBER definition is based on the third edition of the Oslo Manual[15], developed jointly by Eurostat and the OECD in 2005, which provides guidelines for the collection and interpretation of data on innovation and also offers a widely accepted standard for the definition of innovation, and amongst others, of "process innovation".

(72) The Oslo Manual and the GBER define a process innovation as "the implementation of a 'new' or 'significantly improved' production or delivery method. This includes significant change in techniques, equipment and/or software." The GBER definition excludes minor changes or improvements, increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products.

(73) As the RAG require that the eligible investment should not only rely on a "process innovation", but on a "**new** process innovation" , the Commission considers that only those "process innovations" which have a high degree of novelty should be considered eligible.

(74) Based on the above the Commission decides that for an envisaged production process to qualify as a "new process innovation" in the meaning of paragraph 15 of the RAG, it has to represent a substantial (fundamental) change to the state of the art of the relevant production process, and not an incremetal or routine improvement. The Commission also takes the view that the eligibility of an investment can only be confirmed if the innovative element is not limited to introducing a punctual improvement, with relevance only for a minor part of the production process, but that the change which the new process innovation introduces to the state of the art, shall have a significant impact on the overall production process. Furthermore the Commission considers that the required novelty of the process innovation is only ensured if the new innovative production process is applied for the first time in the given sector in the EEA.

---

14 According to Article 2(97) of the GBER ‘process innovation’ means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), excluding minor changes or improvements,increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products.

15 http://www.oecd-ilibrary.org/science-and-technology/oslo-manual_9789264013100-en

(75) The Commission considers that these conditions are met in the notified case, for the following reasons:

- The notified investment project carries innovative elements in both parts of the production process: stock preparation and the subsequent part of the production process carried out by the paper machine.

- The new process of […] in the stock preparation will be world-wide the first time implementation of an innovation based on a patent. This was confirmed by the company holding the patent and by the independent expert.

- The envisaged production process of the paper machine relies on several innovative, though individually already known and applied elements (see recitals (19) to (22) of this decision). However, the envisaged introduction of the process of surface pigmentation in […] two-layer paper production constitutes the first time combination of these elements, and creates a substantial change to the state of the art of white top testliner production. The independent expert report confirms that this combination will be applied for the first time at worldwide level.

- The two process innovations – in stock preparation and in the paper machine - have a significant impact on the entire production process, (i) as […] will have an impact across the entire stock preparation process; and (ii) as the […] layers of the paper, and the two-layer production requires changes in the way most parts of the paper machine are built and the whole production is designed.

(76) Since the envisaged process innovation in the stock preparation is word-wide the first time implementation of a patent, and as the combination of the surface pigmentation ("coating instead of fibres", "Strich statt Stoff") based on Hamburger Rieger's patent in […] two-layer paper production is also the first time implementation world-wide, the degree of novelty is high.

(77) Taking into account the above, as the two new processes of the notified investment project (i) represent a substantial change to the state of the art of the relevant production processes, (ii) have a significant impact on the overall production processes and (iii) are new at least to the sector within the EEA, the Commission considers that the the notified investment project is based on a "new process innovation".

(78) In conclusion, as the notified investment project qualifies as "new process innovation" and an initial investment in the meaning of RAG, the Commission considers that it is eligible for regional aid, provided all compatibility criteria of the RAG are met.

### 3.4. Compatibility of the aid measure

(79) The Commission communication on state aid modernisation[16] of 8 May 2012 called for the identification and definition of common principles applicable to the

[16] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on EU State Aid Modernisation (SAM), COM/2012/0209 final

assessment of the compatibility of all aid measures. In their section 3, the RAG define and operationalize these "Common Assessment Principles" (CAP) for the purposes of regional aid.

(80) The assessment under the CAP of the RAG takes place in three steps:

- in a first step, it is checked whether **minimum requirements** regarding credibility of counterfactual scenario, appropriateness, incentive effect, and proportionality of the aid and its contribution to regional development are met (see RAG, sections 3.2-3.6);

- in the second step, it is verified, that the aid does not lead to **manifest negative effects** (blacklist) that would prohibit the granting of aid, e.g. aid exceeding the allowable maximum aid intensity ceiling, creating overcapacity in a sector in absolute decline, attracting an investment that would have gone without the aid to another region with a similar or worse off socio-economic situation, or causal for the closure of activities elsewhere in the EEA (see RAG, section 3.7.2);

- in the third step, for not blacklisted aid projects meeting the minimum requirements, a **balancing** is carried out to ensure that the contribution to regional development outweighs the negative effects on trade and competition (see RAG, sections 3.7.1 and 3.7.4) .

### *3.4.1. Minimum requirements*

#### *3.4.1.1. Contribution to regional objective and need for State intervention*

(81) The RAG 2014-20 require the Member State to prove in concrete terms the real and sustained contribution of the aided investment to the regional development of the target region. To help Member States in this task, Section 3.2.2. of the RAG lists a number of indicators that Member States may use in order to demonstrate the regional contribution of individual investment aid notified to the Commission To prove the real and sustained contribution, the Member State also has to show that the viability of the project is demonstrated by a financial contribution of the aid beneficiary of at least 25% of the eligible costs[17], provided through its own resources or by external financing, in a form that is free of any public financial support. In addition, the investment (the aided assets) has to be is maintained in the area concerned for a minimum period of five years (three years for SMEs) after completion of the investment[18].

(82) The Brandenburg region is eligible for regional aid pursuant to Article 107(3)(c) of the TFEU. The Commission takes note of the investment's positive regional effects, as presented by Germany (see recital (32) of this decision) and considers that in particular the direct and indirect job creation effects, the potential to attract additional suppliers and service providers, the knowledge transfer into the region and the improvement of the regional skills base represent a significant contribution to the development of the region and to the achievement of the EU cohesion objective.

[17] See paragraph 38 of the RAG

[18] See paragraph 36 of the RAG

(83) The Commission notes that the beneficiary will contribute at least 25% of the eligible costs, and commits to keep the investment for 5 years after completion of the project in the area concerned (see recitals (30) and (31) of this decision).

*3.4.1.2. Appropriateness of regional aid/the aid instrument*

(84) According to paragraph 50 of the RAG, the notified aid measure must be an appropriate policy instrument to address the policy objective concerned, and underlines that an aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instruments are available. Section 3.4 therefore introduces a double appropriateness test. Under this first appropriateness test, Member States have in particular to identify the bottlenecks to regional development and the specific handicaps of firms operating in the target region, and to clarify to what extent bottlenecks to regional development could also successfully be targeted by non-aid measures. Under the second appropriateness test, the Member State has to indicate why – in view of the individual merits of the case - the chosen form of regional investment aid is the best instrument to influence the investment or location decision.

(85) Germany based its explanation (see section 2.10 of this decision) for appropriateness of the aid instrument on the economic situation of the situation in the Brandenburg region and provided evidence to prove that the region is disadvantaged in comparison with the average of other regions in Germany.

(86) The Commission notes that the neediness of Brandenburg in general, and of the Spree Neiße/Spremberg area in particular is confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(c) TFEU. The Commission notes that Brandenburg benefitted in the past of a multitude on non-aid measures and horizontal aid measures but that these non-aid measures alone proved insufficient to address the regional handicaps in particular of peripheral areas. This applies for the Spremberg area, which will suffer in addition also from the closure of its lignite mining activities. The Commission, in line with earlier case practise under comparable provisions of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects (hereinafter “IDAC”)[19] (e.g. in the Dell Poland decision, Porsche decision[20]) therefore accepts that state aid, and regional investment aid in particular, is an appropriate form of support to achieve the cohesion objective for the Spremberg area concerned.

(87) The aid is granted in the form of a direct grant. The Commission considers that a direct grant constitutes an appropriate aid instrument to achieve the desired objective as the amount of aid necessary to bridge the viability gap between the locations of Spremberg and [location 1] can only be made available to the firm by direct grants.

[19] OJ C 223, 16.09.2009, p.3.

[20] OJ L 287, 31.10.2015

*3.4.1.3. Incentive effect*

(88) According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

(89) Paragraphs 64-65 of the RAG set out the formal incentive effect requirements, i.e. works on an individual investment can start only after submitting the application form for aid. As the beneficiary applied for aid on 26 November 2015, i.e. before start of works on the investment, this condition has been respected.

(90) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the RAG requires the Commission to verify in detail that the aid is necessary to provide a substantive incentive effect for the investment. In this context – as set out in section 3.5.2 of the RAG – the Member State is also required to provide a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The Commission has to verify that these scenarios are realistic and credible. According to paragraph 68 of the RAG, a counterfactual scenario is credible if it is genuine and relates to the decision-making factors at the time of the decision.

(91) The RAG (see paragraph 69) requires the Member State to demonstrate to the Commission the existence of the incentive effect of the aid and to provide clear evidence that the aid effectively had an impact on the investment choice or the location choice. It thus places the burden of proof regarding the existence of an incentive effect on the Member State.

(92) Paragraph 61 of the RAG stipulates that the (substantive) incentive effect can be proven in two possible scenarios: in the absence of aid the investment would not be sufficiently profitable (scenario 1); in the absence of aid the investment would take place in another location (scenario 2).

(93) Paragraph 71 of the RAG indicates that for scenario 2 – which is invoked by Germany in the present case - the Member State could provide the required proof of the incentive effect of the aid by providing contemporary company documents that show that a comparison has been made between the costs and benefits of locating the investment in the assisted region selected with alternative locations. For that purpose, the Member State is invited by paragraph 72 of the RAG to rely on official board documents, risk assessments, financial reports, internal business plans, expert opinions, other studies and documents that elaborate on various investment scenarios.

(94) To verify the viability in a scenario 2 context, all relevant costs and revenues[21] have to be taken into account, with the exception of possible subsidies available in the alternative location, where this alternative location is in the EEA.

[21] See paragraph 80 of the RAG: The revenues can be neglected if they are the same in both locations.

(95) The Commission notes that the German authorities submitted the required information in form of comprehensive, contemporary and genuine evidence documenting the decision-making process of the beneficiary (Hamburger Rieger, Containerboard division and the Prinzhorn Holding) concerning the investment and location decision. The provided documents confirm that the investment decision itself (but not the location decision) is already taken[22], and that the counterfactual situation described as scenario 2 applies. The documents explain the counterfactual scenario which involves two locations: [location 1] and Spremberg (both situated in Germany)[23]. The Commission considers that the presented counterfactual scenario is therefore credible in the meaning of paragraph 68 of the RAG.

(96) The two locations presented in the counterfactual scenario involve an existing site (Spremberg) and a green-field site [location 1] situated within 20 km of distance to an existing site (Trostberg) of Hamburger Rieger. While Spremberg is located in an assisted region (with 20% aid intensity ceiling), [location 1] is not eligible for regional aid under the German regional aid map for 2014-20.

(97) The calculations and cost estimates for the two options were carried out at the same level of accuracy and are based on the same types of cost items and characteristics of the investment project. Details of these cost calculations - which constitute business secrets -, both for investment and operating costs, were made available and explained to the Commission. The Commission verified that the underlying parameters are realistic.

(98) The comparative calculation of production and investment costs attributable to the location [location 1] and Spremberg is based on the assumption that the average production in both possible locations will be the same. Despite the longer life-expectancy of a well maintained paper machine, operating costs were calculated over a ten-years period, as it would be inappropriate to calculate for a longer time horizon due to the unavoidable uncertainty regarding future energy and raw material prices that constitute the bulk of the running costs.

(99) If the investment was to be implemented at the Spremberg site, the investment expenditure would be slightly lower (about EUR 5.5 million in nominal value) compared to those that would arise in [location 1], resulting also in a slight difference of the residual value of the assets after the end of the ten-year period (about EUR 3 million in nominal value).

(100) On the other hand, production costs over the ten year period in Spremberg would be considerably higher than in [location 1] (about EUR 49 million in nominal value).

(101) The advantage of Spremberg in terms of investment costs is insufficient to compensate for the lower production costs that would be incurred in [location 1].

(102) Taking into account also differences in training costs, taxes, and residual values, Spremberg would have a cost disadvantage of EUR 38.48 million in present value (EUR 46.5 in nominal value).

(103) There is no indication that revenues from the investment would differ at the two locations.

---

[22] http://www.euwid-papier.de/news/einzelansicht/Artikel/hamburger-plant-neue-testliner-maschine.html

[23] At very early stages another location outside the EEA was also considered, but this was discarded quickly due to economic considerations.

(104) The internal detailed calculations of the company, and the availability, at short notice, of a production site in immediate proximity of a incineration facilty with available heating capacities, and benefitting of water rights/wells shows that [location 1] is a realistic and – in the absence of aid - more viable location.

(105) Hence, the Commission considers with regard to the substantive incentive effect - based on genuine, contemporary and realistic evicence submitted by Germany - that the aid effectively has an impact on the investment's location choice. By reducing the viability gap in favour of Spremberg, the aid could trigger the still outstanding location decision in favour of Spremberg.

(106) There is no indication that the relevant location decision would *de facto* already have been irreversibly taken[24] before the company formally applied for aid. Germany confirmed that the location decision will be taken only after the Commission decided on the notified aid.

(107) In view of the above, the Commission considers that the aid meets the formal incentive requirements and has real (substantive) incentive effect.

#### *3.4.1.4. Proportionality of the aid amount*[25]

(108) According to section 3.6 of the RAG, the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned. For scenario 2 situations, according to paragraph 106 of the RAG, the Member State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph 72 of the RAG[26].

(109) As a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs ("net-extra cost" approach) of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. Pursuant to paragraph 80 of the RAG, in scenario 2 situations (location incentives), the aid amount should not exceed the difference between the net present value of the investment in the target area with the net present value in the alternative location, while taking into account all relevant costs and benefits.

(110) The Commission notes that Germany submitted the required genuine documentation, and considers that Germany successfully demonstrated on the basis of this documentation that the proportionality test is met, because the notified aid of EUR 32.9 million in present value (2016 prices) does not exceed the difference in costs of between the two possible locations of Spremberg and [location 1]. The calculations of the counterfactual analysis show that without the aid, Spremberg would be by EUR 38.48 million less viable (in present value of 2016) than the location of [location 1]. The gap due to the higher costs would be substantially narrowed down by the possible State aid.

24 E.g. as a result of agreements with worker councils, or as a consequence of earlier decisions on major dedicated building infrastructure investments, or investments on intrinsically linked downstream investments.

25 See the following section of this decision) regarding conformity with the applicable aid intensity ceiling (see paragraph 81 to 86 and paragraph 107 of the RAG).

26 See recital (73) of this decision for details.

(111) The Commission notes that even if aid is granted, the Spremberg still registers a cost disadvantage of about EUR 5.6 million relative to the [location 1]investment project. In earlier cases approved under the comparable rules of the IDAC, then Commission accepted that limited differences between aid and net handicap are not only in line with the proportionality test, but also do not put into question the incentive effect of the aid. The Commission notes that the remaining cost disadvantage could be acceptable for Hamburger Rieger due to certain, non-quantifiable and strategic advantages of locating the investment in Spremberg, in particular the existence of a reliable and known supplier network (see recital (46) of this decision).

(112) As the cap resulting from the "net extra-cost" approach is not exceeded, the Commission considers that the proportionality of the aid is demonstrated.[27]

*3.4.1.5. Conclusion as to the respect of the minimum requirements*

(113) The assessment in recitals (81) to (112) of this decision allows to conclude that all minimum requirements laid down in sections 3.2 to 3.6 of the RAG are met.

### *3.4.2. Manifest negative effects on competition and trade*

(114) Section 3.7.2 of the RAG explicitly list a series of situations where the negative effects on trade and/or competition manifestly outweigh any positive effects, and where regional aid is prohibited:

*3.4.2.1. Manifest negative effect: The (adjusted) aid intensity ceiling is exceeded*

(115) A manifest negative effect would exist according to paragraph 119 of the RAG where the proposed aid amount exceeds, compared to the eligible (standardised) investment expenditure[28], the maximum (adjusted) aid intensity ceiling that applies for a project of the given size, taking into account the required "progressive scaling down"[29].

(116) The applicable regional aid ceiling in the Brandenburg area is 20%. In view of the expected higher distortion of competition and trade, the maximum aid intensity for large investment projects must be scaled down using the mechanism as per paragraph 20(c) of the RAG. The planned total eligible expenditure in present value for the notified investment project is EUR 363 million. In application of the scaling down mechanism of paragraph 20(c), this leads to a maximum allowable aid intensity of 9.06% GGE (Gross Grant Equivalent) for the project. The notified aid intensity of 9.06% in this case is thus not higher than the regional aid ceilings corrected by the scaling-down mechanism.

---

[27] See footnote 25

[28] The standardised eligible expenditure for investment projects by large firms is described in detail in section 3.6.1.1 and 3.6.1.2 of the RAG 2014-20, and is unchanged compared to the predecessor rules.

[29] See paragraph 86 and 20(c) of the RAG

(117) Sections 3.6.1.1 and 3.6.1.2 of the RAG explain which investment costs can be taken into account as eligible costs[30]. In the present case, section 3.6.1.1 applies as the eligible costs for the proposed investment aid are calculated on the basis of investment costs. The Commision notes that the eligible costs are established in line with the provisions of this section as the acquired assets will be new[31], the investment concerns an initial investment in the form of a capacity extension[32], and no leasing costs[33] and no immaterial assets[34] are taken into account.

(118) As the aid intensity does not exceed the maximum allowable and is applied to eligible expenditure established in line with the relevant rules, and as the notification excludes the combination of the notified aid with other aid, the basic requirement indentified in paragraphs 107 and 118 that the maximum aid intensities are not exceeded, is met; and the level playing field required by paragraph 81 of the RAG is ensured. Therefore also the double cap condition, laid down in paragraph 83 of the RAG, resulting from the combination of the net extra cost approach ("aid limited to the minimum necessary", see paragraph 79 of the RAG and section 3.4.1.4 of this decision) with the allowable ceilings is respected.

*3.4.2.2. Manifest negative effect: The aid creates overcapacity in a market in absolute decline*

(119) According to paragraph 120 of the RAG, a manifest negative effect arises also where the investment aid creates capacity in a market in absolute decline, as such aid is likely to crowd out competitors, or to prevent low cost firms from entering, and risks weakening incentives for competitors to innovate. This verification is however necessary only where additional capacity is created on the relevant geographic market by the aid. Where the investment would have happened in any event ("scenario 2"), the aid – provided it is limited to the minimum necessary to change the location decision - influences only the location decision, and additional capacity would have come on the relevant geographic market independent of it. Therefore, this verification will normally be required only in Scenario 1 situations[35]. Exceptionally, it might become necessary in Scenario 2 if the most viable region for the implementation of the investment in the absence of aid, and the target region, should be situated in different geographic markets[36]. As the counterfactual situation concerns a scenario 2 situation and the aid is limited to the minimum, and as the two locations considered are situated in the same Member State and without doubt situated in the same geographic market, the overcapacity in an declining market test does not have to be carried out. The

30 Pursuant to paragraph 20(e ) of the RAG, eligible costs means for the purpose of investment aid, tangible and intangible assets related to an initial investment or wage costs.

31 See RAG, paragraph 94.

32 Therefore the specific conditons applicable for initial investments in the form of a fundamental change of the production process of an existing establishment (see paragraph 96 of the RAG), of the diversification of an existing establishment (see paragraph 97 of the RAG), or the takeover of the assets of a establishment (see paragraph 99 of the RAG) do not apply.

33 See paragraph 98 of the RAG

34 See paragraph 100 of the RAG

35 See paragraph 120 of the RAG

36 See paragraph 139 the RAG

Commission therefore considers that the aid does not have any negative effect on competition, and thus does also not create overcapacity in a market in absolute decline.

### 3.4.2.3. *Manifest negative effect: Counter-cohesion effect*

(120) Paragraph 121 of the RAG lays down an anti-cohesion effect provision that applies exclusively for scenario 2 situations. This provision prohibits[37] the region with the lower project-specific viability to participate in subsidy races to the detriment of equally weak or worse-off regions. The provision thus does not prevent the target region from compensating the disadvantage compared to an alternative region with a higher project-specific viability and a better socio-economic situation (i.e. with regard to a non-assisted area, or an area with lower aid intensity ceiling), provided its project-specific viability exceeds that of other possible locations with the same or an higher aid intensity ceiling.

(121) Germany confirms that the aid beneficiary considered only one other alternative EEA location for the investment project, namely [location 1], i.e. a non-assisted area (as it is not included in the Regional Aid Map). This information is backed by publicly available information (press article of 26.3.2015[38]). Therefore, the Commission considers that the aid has no anti-cohesion effect.

### 3.4.2.4. *Manifest negative effect: Closure of activities elsewhere/relocation*

(122) Pursuant to paragraph 122 of the RAG, where the beneficiary has concrete plans to close down or actually closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements[39].

---

[37] According to paragraph 121 this would constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements, because it runs counter the very rationale of regional aid.

[38] http://www.euwid-papier.de/news/einzelansicht/Artikel/hamburger-plant-neue-testliner-maschine.html; the third possible location mentioned in the article was located outside the EEA, see also footnote 23 of this decision

[39] Such cases are subject to individual notification pursuant to paragaph 23 of the RAG and Article 13(d) of the GBER 2014. In its Practical Guide to the GBER, the Commission clarified that (1) the beneficiary is to be defined at "group level", which is considered to be an economic entity with a common source of control rather than just a single subsidiary (a single legal entity), that (2) the “closure of the same or similar activity” is to be looked at the level of the given establishment, rather than at the level of a region or a Member State, that (3) the provision applies only if the closure happens in one EEA country and the aided investment is carried out in another, that (4) the concept of closing down means that the activity is fully (100%) closed at the establishment concerned or that the activity is partially closed when this results in substantial job losses, and that (5) the notification of the aid measure is necessary if the beneficiary has closed down the same or similar activity within two years before the date of application or if the beneficiary plans to close such an activity over the entire period from the date of the application and two years after the completion of the initial investment. The Guide also clarifies that "substantial job losses" are defined as losses of at least 100 jobs or as a job reduction of at least 50% of the workforce in the establishment on the date of the application (compared to the average employment in the establishment in any of the two years preceding the date). The notion of "same or a similar activity" is defined by Article 2(50) of the GBER, and means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of

(123) Germany and the aid beneficiary declared that the beneficiary has not closed down the same or similar activity in the EEA in the two years preceding the application for aid, and does not have any concrete plans to do so within two years after completion of the investment. The Commission verified that an earlier closure of a plant in Austria took place outside the two-year limit. The Commission therefore considers that the aid is not causal for any closure and relocation.

#### *3.4.2.5. Conclusion as to the existence of manifest negative effects on competion and trade*

(124) The assessment in recitals (114) to (122) of this decision therefore allows to conclude that the aid has no manifest negative effect on competition or trade in the meaning of section 3.7.2.

### *3.4.3. Balancing of positive and negative effects of the aid*

(125) Paragraph 112 of the RAG lays down the following: "For the aid to be compatible, the negative effects of the measure in terms of distortion of competition and impact on trade between Member states must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Certain situations can be identified where the negative effects manifestly outweigh any positive effects, meaning that aid cannot be found compatible with the internal market."

(126) The assessment of the minimum requirements showed that the aid measure is appropriate, that the counterfactual scenario presented is credible and realistic, that the aid has incentive effect and is limited to the amount necessary to change the location decision of the beneficary. By triggering the location of the investment in assisted region, the aid contributes to the regional development of the Spremberg (Spree Neiße) region. The assessment also showed that the aid has no manifest negative effect: it does neither lead to the creation or maintanaince of a overcapacity in a market in absolute decline, nor does it lead to excessive effects on trade, it respects in particular the applicable regional aid ceiling, has no anti-cohesion effect, and is not causal for the closure of activites elsewhere and their relocation to Sptemberg. In addition, the aid does not entail a non-severable violation of EU law[40].

(127) Undue negative effects on competition that would have to be taken into account in the remaining balancing are identified in paragraphs 114 and 115 and 132 of the RAG and concern the creation or reinforcement of a dominant market position or the creation or reinforcement of overcapacities in an underperforming market (even if this market is not in absolute decline).

(128) The Commission considers that the aid does not lead to (or reinforces) a dominant market position of the aid beneficiary, as the investment would have taken place in any event, and therefore, pursuant to paragraph 139 of the RAG, has no effect on competiton if it is limited to the amount necessary to change the location

economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

[40] See paragraph 28 of the RAG

decision (see also recital (119) of this decision). For the same reason, the aid does not lead to the creation of overcapacity in a market in decline. The aid which is limited to the amount necessary, and thus does not make available "free money" to the aid beneficiary, has therefore no negative effect on competition.

(129) In the present case, also the effect of the aid on trade is particularly limited not only since the regional aid ceiling is respected, and the measure has no counter-cohesion and relocation effect, but also since the locational choice of the investor is influenced only within the limits of the same Member State. In fact, the affect of the investment on trade flows between Member States would be very largely the same whether it takes place, without aid in [location 1], or with aid in Spremberg. The remaining effects on trade between Member States that could be due to the aid – e.g. sales on slightly different geographic export markets, possibly import substitution affecting imports from slightly different countries of origin, or possibly a different geographic origin of suppliers, appear very marginal.

*Conclusion as to the overall balancing*

(130) As the aid mets all minimum requirements, has no manifest negative effect, and the analysis in recitals (128) and (129) shows that it has no effect on competion, and only very limited effects trade, the Commission considers that the substantial positive effects of the aid on the regional development of the Spremberg (Spree Neiße) region, and in particular the employment and income generation effects of the investment, clearly outweigh any negative effects.

### *3.4.4. Transparency*

(131) In view of para.II.2 of the Transparency Communication from the Commission[41] Member States must ensure the publication on a comprehensive State aid website, at national or regional level, of a full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority or authorities; the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such information must be published after the decision to grant the aid has been taken, must be kept for at least ten years and must be available to the general public without restrictions. Member States are not required to publish the above-mentioned information before 1 July 2016.

(132) The Commission notes that Germany confirmed that all requirements concerning transparency set out in para.II.2 of the Transparency Communication will be respected.

[41] Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30.

## 4. CONCLUSION

(1) The Commission has accordingly decided:

not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

(2) The Commission reminds the German authorities of their commitment to fulfil the reporting obligations.

(3) The Commission further reminds the German authorities that all plans to modify that aid measure must be notified to the Commission.

Finally, the Commission notes that Germany agreed to have the present decision adopted in the English language.

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 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

*Margrethe Vestager*
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION