



EUROPEAN COMMISSION

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<p>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 [...]</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA.44439 (2016/N) – Sporting Arena Cork – Ireland

Sir,

1. PROCEDURE

- (1) By letter dated 2 October 2015, Ireland pre-notified an aid measure to support the reconstruction and upgrade of the Páirc Uí Chaoimh, Cork. The Commission held a pre-notification meeting with the Irish authorities on 15 October 2015 and gave written comments on 28 October 2015.
- (2) By electronic notification registered at the Commission on 4 February 2016 (SANI 2016/012191), the Irish authorities formally notified the measure, pursuant to Article 108(3) TFEU. By letters of 24 February (2016/019309) and 15 April 2016 (2016/032643), the Commission asked for supplementary information. By letters of 8 April (2016/034661), 9 May (2016/044044), 1 July (2016/064256) and 5 July 2016 (2016/065731), Ireland submitted the requested information
- (3) The Commission also received a complaint from an EU citizen on 5 February 2016. The complaint refers to issues concerning the national administrative process, and alleges that the public funding of the reconstruction of the stadium

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will provide an undue advantage to the aid beneficiary and will distort competition in the local sports market. According to the complainant, the stadium will not have multi-functional character, the public funding is excessive and the costs could have been covered by private funds.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The investment project and the aid beneficiary

- (4) The measure concerns the public funding of the redevelopment and upgrade of the Páirc Uí Chaoimh stadium ("PUiC") in Cork, Ireland.
- (5) The beneficiary of the aid is the Cork County Board ("CCB"). It is one of the 32 county boards which make up the Gaelic Amateur Association¹ ("GAA") in Ireland. The CCB is an amateur sporting body which does not earn profits for distribution to investors and shareholders. All profits have to be reinvested into the development and promotion of Gaelic games and related healthy lifestyle initiatives. At present, the CCB employs 16 people and its recorded turnover in 2015 was EUR 2.87 million.
- (6) The investment project concerns the structural modification and expansion of the PUiC stadium and the construction of a 'Centre for Excellence'.² According to the Irish authorities, at present the stadium has deficiencies in layout, spectator movement and the CCB has been obliged to reduce its capacity from 50,000 to 43,500 and recently to 32,128 for health and safety reasons. Therefore, it is considered that the facility needs to be urgently refurbished and modernised.
- (7) The objectives of the redevelopment project include:
 - Health and Safety Compliance: to carry out planning and infrastructure development in order to bring the stadium in line with health and safety requirements. The funding will make the stadium compliant with national and international technical requirements for hosting sporting events.
 - Disability Access: to provide modern fit-for-purpose disabled facilities in order to ensure a truly inclusive stadium.
 - Stadium Capacity: to increase the stadium capacity from its current (reduced) capacity of 32,128 to 45,000, and to increase annual matches attendance.³
 - Modernisation of the stadium: to increase the number of covered seats, to install floodlights to the pitch in order to facilitate evening games, to optimise grounds entry and exits, to provide comprehensive facilities for spectators (e.g. food /beverages, media, medical, meeting rooms etc.).

¹ The objective of the GAA is to promote amateur Gaelic games (i.e. Hurling, Gaelic Football, Camogie, Ladies' Gaelic Football, Handball and Rounders).

² The Centre for Excellence will be used for coaching and education purposes (e.g. summer coaching camps), Gaelic games-related education seminars and workshops and elite performance training and game development.

³ The Irish authorities consider that such an increase in attendance is justified by the following factors: (i) expected increase in attendance in line with recent and projected market growth; (ii) increase in average attendance due to improved facilities and match-day experiences; (iii) optimisation of game calendar – renewed and newly established home-and-away arrangements entered by CCB with other counties. Full crowd is expected at Munster Championship finals and other significant championship games.

- Centre for Excellence: to construct an all-weather pitch for training and matches at all levels in order to develop Gaelic Games throughout the year.
- (8) The total investment costs of the project amount to EUR 78.34 million in nominal value and EUR 74.88 million in discounted value. They include, inter alia, works on the South and North Stands and the terraces of the stadium, purchase of adjacent land⁴ to build an all-weather pitch, the construction of new indoor and outdoor facilities, demolition and site works.
- (9) The construction works have been the subject of a competitive process, having due regard to the applicable procurement rules. The CCB has selected the contractor; however it will not conclude the main contract before the adoption of the present Commission decision.

2.2. The aid measure

- (10) The beneficiary submitted an aid application to the Minister for Public Expenditure on 23 September 2013, i.e. before the start of the works on the investment project in March 2015.
- (11) The beneficiary provided a Business Case for the PUIC Stadium Development ("Business Case") which was an independent economic appraisal and contained an analysis of various options in terms of spectator capacity targets, the extent of the refurbishment and the scope of the facilities to be provided.⁵ The Irish authorities considered the scope and size of the investment project and the aid as the minimum necessary to deliver the strategic objectives of the measure and considered that it represents value for money. A government decision on exchequer spending for the project was issued on 13 May 2014. The Irish authorities have not yet issued the Letter of Offer (provisional or final) on the proposed funding, pending the outcome of the Commission's assessment of the aid measure.
- (12) The initial design phase of the project commenced in 2014 and certain demolition works have been carried out as from March 2015. The project is expected to be completed in mid-2017.

⁴ The CCB will not pay less than the market price established in an independent valuation that was carried out in accordance with the national Royal Institution of Chartered Surveyors Valuation standards prior to the sale negotiations in 2011. An updated valuation report was presented to the Commission (from 2016) which demonstrates that the price for which the CCB will acquire the land after the adoption of the current decision is at least the market price. Therefore, the CCB did not accrue an advantage in the land acquisition.

⁵ The options with higher investment costs estimated in 2013 (ranging from €73M to €96.4) were ruled out as they did not represent value for money (due to longer disruptions in operation during the construction period or too high a capacity for the identified needs) and were likely to be unaffordable when evaluated against the preferred option. Other options involving a smaller investment did not satisfy the set objectives. In particular, they would not provide the required capacity for hosting major games and the scale of seated accommodation needed in order to offer long-term seat packages. These elements are a prerequisite for the funding contributed by the GAA Munster and Central Council and are pivotal to the funding strategy of the facility. The option "Do nothing" was not considered to be viable as the facility is rapidly deteriorating and it would no longer serve the needs of the GAA, leading to the loss of major Munster Championship games. Following the completion of the tender process for the construction works, the initially estimated EUR 70 million of the selected option were revised and increased to EUR 78.34 million (in nominal value), which was approved by the Irish authorities.

- (13) The aid will be granted in the form of a direct grant of EUR 30 million in nominal value (EUR 27.75 million in discounted value). The envisaged aid for investment costs of EUR 78.34 million (EUR 74.88 million in discounted value) corresponds to an aid intensity of 37.06 %. The remaining costs of delivering the stadium redevelopment will be funded from private sources, i.e. from GAA and CCB own resources.⁶
- (14) The aid amount does not exceed the difference between the investment costs EUR 74.88 million (in discounted value) and the operating profit of the investment [EUR 27 million – EUR 40 million] (in discounted value) over a period of 32 years as demonstrated by the funding gap analysis. The operating profit was deducted from the investment costs ex-ante on the basis of reasonable projections.⁷

Table 1: Investment costs and aid amount

Parameters	Discounted values, EUR million	Nominal values, EUR million
Investment costs	74.88	78.34
Net operating profit	[27-40]	
Project funding gap	[33-49]	
Aid amount	27.75	30.00

2.3. Operation and use of the PUiC stadium

- (15) The CCB will remain the owner⁸ and operator of the stadium following the completion of the project.

2.3.1. Users of the infrastructure

- (16) The whole set of facilities under the investment project will have multi-functional character. The sports infrastructure will not be used exclusively by a single

⁶ The contribution of the Central GAA Council is EUR 20 million and that of the Munster GAA Council is EUR 3.75 million. The CCB's contribution amounts to EUR 10 million. The CCB also plans to sell a plot of land at Kilbarry, estimated at [...]*. In order to ensure sufficient funding during the construction phase, the CCB will raise funds through advance ticket sale schemes (for long-term seat packages).

* *Business secret*

⁷ The operating profit has been calculated by taking into account the operating revenues and the operating costs of the facility over the reference period of the project and the residual value of the infrastructure at the end of the project timeframe. Ireland took into account all projected revenues from the operation of the stadium, including revenues from organising sport events and advertising as well as revenues from renting out the facilities to third parties (for e.g. concerts, meetings etc.) and expected revenues from making the facility available to a third party for food and beverages provision. The revenue projections are considered to be reasonable as they are calculated in view of the projected demand and availability of the facilities for such events and taking into account current market rates for the use of the different types of facilities.

⁸ The stadium will be legally vested with the three trustees of the CCB (the CCB, the Munster Council, and the GAA) as prescribed by the GAA's Club Property Transaction Guidelines (by reference to the provisions of the Land Act 2005).

professional user. A non-exhaustive list of the intended use of the PUIC is provided below.

– *Gaelic games and other activities promoted by the GAA*

- (17) The stadium will be mainly used for amateur Gaelic games at all levels (club and county levels for men and women of all age groups, including College and school players). The facilities will also be used to provide training and educational activities relating to Gaelic games. It should be noted that all players engaged in Gaelic games are amateurs and not professional sport players.
- (18) The PUIC will serve as the ‘home’ venue for inter-county teams games involving the Cork teams and potentially also as a neutral venue for Munster final games involving counties that do not have a stadium with adequate capacity. Such venues are normally chosen by the Munster Council on a geographical suitability basis.
- (19) The PUIC will also be used for Irish language, music and dance competitions (Scór Competitions) which the GAA organises among its clubs and counties.

– *Other sporting events*

- (20) The facilities of the PUIC stadium have previously been available for other sports events organised by third parties⁹. Additionally, the PUIC stadium could be rented out to other field sports. According to Ireland, such requests have been extremely rare, but if required, such permissions could potentially be available for PUIC. If Ireland wins the bid to host the 2023 Rugby World Cup, the redeveloped PUIC would be among the stadia hosting this event.

– *Commercial use*

- (21) The redeveloped PUIC stadium will also be used on a limited basis for commercial activities. These include renting out of the facilities for events, meetings and concerts to third parties¹⁰. The all-weather pitches and training facilities will also be available to hire by third parties.
- (22) The CCB also plans to seek commercial providers for services such as food and beverages provision. Those will be contracted through an open, transparent and non-discriminatory market tender.

– *Use by the local communities*

- (23) The facilities of the PUIC stadium will also be made available to local communities for sports, cultural and educational activities. For instance, for

⁹ Examples of such events include: schools' athletic championships, boxing championships, dog shows, indoors sports such as table tennis, baseball etc.

¹⁰ The Irish authorities consider that up to two concerts per year may be organised at the PUIC stadium, which will be the only venue for large outdoor concerts in Cork. Due to the busy schedule of the PUIC for sporting and other non-commercial events, and the long time needed for preparation of the facility for concerts, it is considered that the opportunities for staging outdoor concerts are limited. If the opportunity arises, the CCB will obtain a license from the Cork City Council. In any event, the projected revenues from concert organisation have been included in the calculation of the funding gap for this investment project as explained above).

meetings of local community groups and organisations, local exhibitions, health and wellbeing activities, fitness classes, youth clubs, talks and lectures of public interest etc.

2.3.2. Terms and conditions for the use of the PUIC stadium

- (24) According to the Irish authorities, the PUIC facilities will be open to various users on a non-discriminatory and transparent basis.
- (25) As stated above, the CCB will rent out the PUIC's facilities to third parties to organise sporting and other commercial events. In such cases, the CCB will charge market-conform fees that are established on the basis of a market analysis (taking into account the fees normally payable for the use of similar infrastructure). This requirement will be included in the Letter of Offer for the proposed aid.
- (26) For certain community groups, access to the facilities will be granted free of charge. These include, for instance, local resident or voluntary associations (for organising various meetings or activities in the interest to the community). According to Ireland, primary schools located in the vicinity of the stadium will also be able to use the facilities without charge.
- (27) The Irish authorities will monitor the use of the facility over a period of at least 15 years. If the terms of the grant are not complied with, and the facility is not used as intended, this could result in the claw-back of aid.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (28) According to Article 107(1) TFEU, *"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 shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (29) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Union trade.
- (30) With regard to the requirement that the measure must be granted through State resources and be attributable to the State, this criterion is fulfilled in the present case as the measure is decided by the State and the State will contribute a direct grant for the renovation of the PUIC stadium.
- (31) The public funding of the modernisation and upgrading of PUIC may constitute aid if it leads to a selective advantage for specific economic activities.

- (32) According to the Leipzig/Halle airport judgment of the Court of Justice¹¹, the public funding of the construction and/or upgrade of infrastructure may constitute State aid when the said infrastructure will be used for commercial activities. Following the Court's judgment, the economic character of the later use of the infrastructure would determine the economic nature of its construction.
- (33) In the present case, the facility will be primarily used by non-professional users (e.g. amateur sport players, schoolchildren, community groups, and volunteers). However, the PUIC stadium will also be used for professional/ commercial activities such as organising sporting and other commercial events (e.g. concerts, meetings), therefore for economic activities.
- (34) The Commission reminds that the Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking therefore depends entirely on the nature of its activities. This general principle has three important consequences: (1) the status of the entity under national law is not decisive, (2) the application of the State aid rules as such does not depend on whether the entity is set up to generate profits, and (3) the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.
- (35) In this case, even though the CCB is a voluntary-led and amateur sport association that is not set up to generate profits, it is considered to be an undertaking that will own and reconstruct a facility which will be used for economic activities. Therefore, the measure confers a selective advantage to CCB that is relieved of a part of the costs which it would normally have to bear for the renovation of the PUIC stadium.
- (36) As described above, the facilities will be primarily used by non-professional users that do not qualify as undertakings within the meaning of Article 107 TFEU. The CCB will also rent out parts of the PUIC (e.g. meeting rooms, training facilities) on a transparent and non-discriminatory basis to various users some of which may be considered as undertakings. In such cases, the CCB will charge prices calculated on the basis of a market analysis (taking into account the fees payable for the use of comparable facilities in Ireland).
- (37) Nevertheless, in the absence of further clarifications on how the fee will be calculated, the Commission cannot be exclude that the renting out of the PUIC facilities may involve aid to users that are undertakings within the meaning of Article 107 TFEU, if they pay a rent below the rent for the use of comparable infrastructure under normal market conditions. On the contrary, the fees paid by non-professional users that do not qualify as undertakings do not fall within the ambit of State aid rules.

¹¹ Cases T-443/08 and T-455/08 *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:T:2011:117, para. 107; Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig- Halle GmbH v European Commission*, ECLI:EU:C:2012:821. See also the judgement of 24 October 2002, case C-82/01P *Aéroport de Paris*, ECLI:EU:C:2002:617.

- (38) In the present case, given that aid to the commercial users of the PUIC would be compatible with the internal market, as demonstrated below, it is not necessary to definitely conclude on the existence of aid at this level.
- (39) Finally, when aid granted by a Member State strengthens the position of an undertaking compared to that of other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid¹². It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹³. 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.
- (40) According to the Irish authorities, the majority of the events hosted at the PUIC stadium will be of local or regional character and users of the facilities will predominantly come from within Ireland. However, given that the stadium may also be used for matches (and other commercial events such as concerts) that will attract competitive teams, or visitors from other Member States, and the relative proximity of another Member State (the United Kingdom), it cannot be excluded that the aid granted for the PUIC stadium could distort competition and affect intra-Union trade.
- (41) The Commission therefore concludes that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Legality of the aid measure

- (42) By notifying the aid before its granting, the Irish authorities have respected their obligations under Article 108(3) TFEU. The Letter of Offer (provisional and final approval letter) will only be issued after the current decision has been adopted.

3.3. Compatibility

- (43) The public financing of the reconstruction of the PUIC stadium with the aim to offer it, in part, for commercial use 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 competition¹⁴.

3.3.1. Objective of common interest

- (44) 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 contributes to the promotion of European sport, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function, according to Article 165 TFEU.

¹² See Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, para. 11; Case C-53/00 *Ferring* [2001] ECR I-9067, para. 21; and Case C-372/97 *Italy v Commission* [2004] ECR I-3679, para. 44

¹³ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717

¹⁴ For instance, see European Commission decisions SA.33618 (2012/C), Sweden, Uppsala para 47 and SA.37373, Netherlands, ice arena Thialf

- (45) In the present case, the PUiC stadium will be used by the CCB for organising sport competitions and for fostering the development of Gaelic games. The facilities will be available to amateur Gaelic games players and to the general community with the aim to promote the wider participation in sports both for children and adults (particularly for women), including for education activities.
- (46) The PUiC will also be used for cultural and community events (e.g. concerts, local exhibitions etc. organised either by the CCB, community organisations or commercial users) and will thus contribute to the promotion of cultural diversity, according to Article 167(4) TFEU.
- (47) In view of the above, the Commission considers that the reconstruction of the PUiC stadium contributes to the attainment of policy objectives of common interest.

3.3.2. *Necessity, proportionality and incentive effect of the aid*

- (48) Concerning the necessity of the notified measure, the Irish authorities indicated that the existing facilities of the PUiC stadium have become outdated and have significant capacity limitations imposed by Safety Regulations. In the absence of major refurbishment works, the PUiC stadium might not have a safety certificate and would no longer meet the requirements of the public.
- (49) The aid is well-targeted as it addresses the specific problem of under-investment in sports infrastructure in Ireland. The redevelopment of the PUiC stadium is in line with the objectives of the national Sports Capital Programme, i.e. to increase the number of modern sports facilities throughout Ireland. The measure will thus result in better facilities being available to the public..
- (50) The public funding is also justified by the fact that such infrastructure would otherwise be absent in the region concerned. The Irish authorities explained that there is no other existing infrastructure in the Cork County which can host major Munster championship games. The second largest stadium in the Cork County is Páirc Uí Rinn with a capacity of 16,400 that would not appropriately cater for the sporting needs of the largest county and second largest city in Ireland. There is no duplication of sports facilities as the premier Gaelic games competitions are organised on a County basis with each county requiring its own stadium to host competitions. Also, Ireland explained that there is no similar facility to the Centre of Excellence in the region. The PUiC stadium therefore complements existing infrastructure in other counties and in the region.
- (51) Moreover, the planned use of the facility ensures that different types of users will be given access to the facilities, including most notably local communities and (on a limited basis) commercial users. Following the completion of the investment project, the stadium will have increased multi-functionality, including multi-purpose community and educational facilities. Thus, the renovated infrastructure will provide increased access not only to sport events and sporting opportunities, but also to education and cultural activities.
- (52) The Commission considers that the aid granted in the form of a direct grant constitutes an appropriate aid instrument to achieve the desired objective of the investment project as the amount of aid is necessary to bridge the funding gap of the project.

- (53) In the absence of public financing, the project would not be realised as it would not be viable for a private investor, as demonstrated by the funding gap analysis. According to the funding gap analysis, the net operating profit over a period of 32 years ([EUR 27 million – EUR 40 million] in discounted value)¹⁵ cannot cover the full investment costs of the project (EUR 74.88 million in discounted value). The beneficiary submitted an aid application before the start of the works on the project, which demonstrates that the formal incentive effect requirements have been respected. It has thus been established that the public co-financing of the PUIC is necessary as without it the financing needed for the project implementation would not be forthcoming. The public funding remains below the funding gap and is therefore limited to what is strictly necessary to implement the project. The Commission therefore considers it to be proportionate.
- (54) In addition, the CCB ensured that the entrustment to a third party to carry out the construction works was assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules. In addition to the above-mentioned considerations, this ensures that the necessity and proportionality requirements are fulfilled.
- (55) Concerning the commercial use of the PUIC stadium, the CCB as a private operator has a strong incentive to maximise its revenues and not to charge prices which are too far below the prices for the use of comparable infrastructure. Any revenues from the commercial use of the infrastructure will contribute to reducing the running costs of the stadium. Moreover, any profit would help the CCB in its mission to further invest in the development and promotion of Gaelic games-related activities. In addition, the Irish authorities will impose an obligation on the CCB to charge market full rates when renting out the PUIC facilities to commercial users.
- (56) In the light of the above, the aid is necessary, proportionate and has an incentive effect.

3.3.3. Avoidance of undue negative effects on competition and trade between Member States

- (57) Regarding the extent of possible effect on trade and competition between Member States, the Commission considers that the PUIC stadium will be used for local and regional and only in very exceptional cases international competitions. The very limited number of cross-border games that may involve teams from Northern Ireland are allocated equally between the different counties, and therefore, there is very limited effect on competition and trade between Member States.
- (58) Also the other envisaged use of the stadium, the commercial exploitation by the CCB will be provided at full market rates and access to the facilities will be open to several users and will be granted on a transparent and non-discriminatory basis. Such commercial use concerns almost exclusively local and regional 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

¹⁵ The operating profit is based on reasonable projections of possible revenues and costs derived from the operating of the infrastructure and the residual value of the infrastructure at the end of the reference period. Please see footnote 7 for further details.

operation of the PUIC stadium will unduly distort competition and trade between Member States.

Accordingly, the stadium itself is of regional importance only and the economic activities of the aid beneficiary have only a very limited effect on trade and competition between Member States.

- (59) On the basis of the above, the Commission considers that the Irish authorities have demonstrated that the public funding of the infrastructure under assessment is pursuing public policy objectives of EU interest, 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) TFEU.

4. CONCLUSION

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.

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 electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Registry
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission