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Subject: State Aid SA.34655 (2017/NN) – Germany
Investment aid for Nursing Home and connected facilities in the City of Dahn

Sir,

1. PROCEDURE

- (1) By letter dated 10 April 2012, registered on 12 April 2012, the Commission received a complaint concerning the granting of alleged unlawful State aid to the *PRO.objekt GmbH & Co. KG* ("*PRO.objekt*"). The complainant also identified *SenVital GmbH* ("*SenVital*") as an indirect beneficiary of the alleged aid. *PRO.objekt* is a private investor that converted an old hospital building in the German City of Dahn into a nursing home, while *SenVital* is the nursing home operator to which *PRO.objekt* subsequently rented the facility. *SenVital* currently operates seven nursing homes in Germany, with a total capacity for 950 tenants.
- (2) The complainant – the operator of a competing nursing home in the region surrounding the City of Dahn – alleged that the City of Dahn granted *PRO.objekt* a total of EUR 5.5 million in investment aid, with a view to supporting the latter's investment in the old hospital building in the city of Dahn with the purpose of converting it into a nursing home with connected facilities (health centre with dialysis centre). The complainant alleged that this grant amounted to incompatible State aid. Additionally, the complainant argued that, on the basis of the investment grant, the operator of the nursing home – *SenVital* – received an indirect advantage. The complainant explained that due to the investment aid it received from the City of Dahn, *PRO.objekt* was able to lease the converted

S. E. Herrn
Sigmar GABRIEL
Bundesminister des Auswärtigen
Werderscher Markt 1
10117 Berlin
DEUTSCHLAND

nursing home to *SenVital* below the market rate, which in the complainant's eyes amounted to indirect State aid. The complainant maintained that the alleged indirect State aid is not compatible with the internal market.

- (3) On 21 May 2012, the Commission informed Germany about the complaint and sought Germany's comments thereon. Germany submitted its comments by letter dated 7 September 2012, registered on the same day.
- (4) The Commission forwarded a non-confidential version of Germany's submission to the complainant on 6 November 2012, giving the complainant the opportunity to comment thereon. In response, the complainant submitted information by letters dated 13 February 2013, registered on 18 February 2013, and 9 April 2013, registered on the same day. The complainant submitted further information by letter dated 12 November 2013, registered on 19 November 2013.
- (5) By letter of 4 February 2014, the Commission informed the complainant of its preliminary assessment, explaining that it had preliminarily concluded that the measure in question did not amount to State aid. By letter of 3 April 2014, registered on the same day, the complainant objected to the Commission's preliminary assessment and submitted further information.
- (6) On 3 February 2015, the Commission services met with the complainant upon their request. Subsequently, the Commission sent a request for further information to Germany on 23 February 2015. Germany submitted its comments on 7 May 2015, registered on the same day. Following the meeting, the complainant submitted further information on 8 April 2015, 12 May 2015, 20 May 2015, 15 December 2015 and 1 December 2016, all registered on the respective days.
- (7) On 19 January 2017, the Commission sent a request for information to Germany to which Germany replied on 1 February 2017, registered on the same day.

2. DESCRIPTION OF THE MEASURE

- (8) The measure under assessment relates to the conversion of an old hospital building in the City of Dahn into a nursing home with connected facilities, i.e. apartments for assisted living (*betreutes Wohnen*) and medical practices with a dialysis centre (*Ärztehaus mit Dialysestation*). The building in question housed the *St. Josef Krankenhaus* until the end of 2005, when the owner and operator – the *Orden St. Dominikus* – decided to terminate the hospital operations. The building was vacant thereafter. The initial owner and operator searched for a long time in vain for an investor. A private individual bought the building on 2 July 2007 with the aim of finding a new use for the building. On 7 January 2011 he set up *PRO.objekt* to which he transferred the property of the old hospital building. *PRO.objekt* was set up for the sole purpose of converting the abandoned hospital building into a nursing home with connected facilities. It does not carry out any other economic activity than renting the modernised building to *SenVital* (nursing home) and to physicians and therapists (connected facilities). The City of Dahn, which was interested in rededicating the vacant building in the city centre, supported this endeavour.
- (9) On 16 November 2011, the City of Dahn and *PRO.objekt* concluded an urban development agreement (*städtebaulicher Vertrag*). As its main objectives, the urban development agreement lays down, first, revitalising the city centre of

Dahn by facilitating the conversion of the abandoned hospital building into a nursing home with connected facilities (medical practices with dialysis centre), with positive effects also for employment (creation of 90 jobs), and, second, covering the current and predicted future need of long-term care and medical services in Dahn. The establishment of the medical practices with a dialysis centre was of particular importance for the city of Dahn after the closure of the *St. Josef Krankenhaus* in order to ensure health services in local proximity for the citizens living in Dahn, in particular for older citizens and citizens with chronic diseases. Similarly essential was the creation of new jobs. The area in which the city of Dahn is located is economically underdeveloped, having suffered for decades from the consequences of the decline of the footwear industry formerly prevalent in the region.

- (10) Under this contract, *PRO.objekt* agreed to undertake all necessary renovation and modernisation measures to convert the old hospital building into a nursing home with connected facilities. The total investment necessary was estimated to amount to EUR 15 788 737. At the same time, the City of Dahn agreed to support the necessary investments by a grant of up to EUR 5 500 000. Of this sum, 80% would in effect be provided by the *Land Rhineland-Palatinate*, in which the City of Dahn is located, while the remaining 20% would be borne by the City of Dahn, the *Verbandsgemeinde Dahner Felsenland* and the District *Südwestpfalz*. *PRO.objekt* was allowed a profit of only 5.38% upon its investment – a rate which was substantively lower than the initial expectations and the absolute minimum to keep *PRO.objekt* on board.
- (11) Under the urban development agreement, *PRO.objekt* was bound to use the building as a nursing home with connected facilities for 20 years. After the conclusion of the conversion works, *PRO.objekt* leased the nursing home to *SenVital* and the connected facilities to physicians and therapists.
- (12) The urban development agreement is based on the provisions of §164a(3) and §177 BauGB (*Baugesetzbuch* – German Federal Building Code). §164a(3) BauGB regulates the use of public funds earmarked for "urban development", both in combination with §177 BauGB and going beyond the scope of that provision, including where an urban development agreement has been concluded. Pursuant to §177(4) BauGB, the owner of a building must be reimbursed by the public authorities for part of the costs of the renovation and modernisation works which the public authorities have obliged him to carry out (for instance by way of an urban development agreement) if and to the extent that the necessary investment cannot be refinanced by means of the revenue generated from this modernised building. According to §177(5) BauGB, it is the responsibility of the public authorities to determine the level of revenue that the owner can normally generate from the modernised building in question (for instance, by reference to the applicable rent tables), and to set the level of reimbursement.
- (13) With a view to ensuring that only truly necessary renovation and modernisation works are undertaken, the measures are assessed by the *Aufsichts- und Dienstleistungsdirektion*¹ (ADD) even before the urban development agreement can be concluded. With respect to the old hospital building in the City of Dahn,

¹ The ADD is a regional public authority in Rhineland-Palatinate, *inter alia* charged with overseeing the municipal administrations.

the ADD approved the relevant plans. The investor was then obliged to award the construction contract by means of an EU-wide tender. The urban development agreement also envisaged a reduction of the public support if the owner's total investment ended up being lower than projected, but excluded additional support if the total investment was higher than projected. Finally, *PRO.objekt* had to present the final accounts for the renovation and modernisation works within one year of their conclusion.

- (14) *PRO.objekt* concluded a lease agreement with *SenVital* on 13 March 2012. The lease agreement was concluded for a duration of 25 years, with an initial rent of EUR 413 415 per year (for the nursing home). *SenVital* refinances its costs pursuant to the provisions of the SGB XI (*Sozialgesetzbuch XI* – German Federal Social Code XI). In general, the costs for the operation of a nursing home can be divided into three categories: (i) nursing care services, (ii) accommodation plus catering, and (iii) investments necessary to operate the nursing home facilities, such as the leasing costs for the building. To cover the nursing care, *SenVital* receives a nursing fee (*Pflegevergütung*, §82(1) SGB XI), which also includes a profit margin. Pursuant to §82(1) SGB XI, the costs for nursing care are borne by the tenant or his sponsor, i.e. the nursing insurance. The costs for accommodation and catering have to be borne by the tenant (§82(1) SGB XI). With regard to investments necessary to operate the nursing home facilities (*betriebsnotwendige Investitionsaufwendungen*, §82(3) SGB XI), the expenses may be allocated to the tenant pursuant to §82(3) SGB XI. According to this provision, *SenVital* can pass on the costs of leasing the premises to its tenants to the extent that they are not covered by public funding. The maximum amount of costs imposed on the tenants is regulated by the *Land*. In Rhineland-Palatinate, the relevant provision can be found in §7 LPflegeASGDVO².

Judgement of the VG Neustadt an der Weinstrasse

- (15) In parallel to its State aid complaint with the Commission, the complainant also filed a lawsuit against the City of Dahn before the German administrative court *VG Neustadt an der Weinstrasse* on 24 July 2012, asking the court to declare null and void the urban development agreement concluded between *PRO.objekt* and the City of Dahn. The complainant argued, *inter alia*, that the financial support granted to *PRO.objekt* infringed Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), prohibiting Member States from putting into effect an aid measure before the Commission has reached a final decision on its compatibility with the internal market.
- (16) In its judgment of 16 March 2015, the administrative court declared the action inadmissible. The complainant had no legal standing as the urban development agreement in question only created rights and obligations between the City of Dahn and *PRO.objekt*. The court (VG Neustadt) denied that the subsequent lease agreement between *PRO.objekt* and *SenVital* established a legal relation with the complainant. It also considered that *PRO.objekt* and the City of Dahn had not

² LPflegeASGDVO refers to "Durchführungsverordnung zum Landesgesetz zur Sicherstellung und Weiterentwicklung der pflegerischen Angebotsstruktur", i.e. Implementing Regulation to the State law on securing and developing the supply of nursing capacities. In Rhineland-Palatinate, the Landesamt für Soziales, Jugend und Versorgung is the competent authority to approve the chargeable costs on the basis of §7 LPflegeASGDVO.

designed their contract to the detriment of the complainant by means of collusive behaviour.

3. ASSESSMENT OF THE MEASURE

- (17) In the present case, the Commission recalls that the complaint mentions both the direct grant to *PRO.objekt* for the conversion of the hospital building into a nursing home and the lease agreement between *PRO.objekt* and *SenVital* as alleged aid measures, the latter being an alleged indirect aid. It is necessary to assess in the first place whether the grant to *PRO.objekt* amounts to State aid which is incompatible with the internal market. The rent paid by *SenVital* will be considered at the end of the assessment.

3.1. Existence of Aid

- (18) Article 107(1) TFEU provides that "*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*". Accordingly, a measure constitutes State aid if the following four cumulative conditions are met:

- (a) The measure must confer a selective economic advantage upon an undertaking.
- (b) The measure must be imputable to the State and financed through State resources.
- (c) The measure must distort or threaten to distort competition.
- (d) The measure must have the potential to affect trade between Member States.

3.1.1. Selective advantage in favour of an undertaking

- (19) 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.³ According to the Court of Justice, an economic activity is any activity consisting in offering goods and services on a market.⁴ *PRO.objekt* is an undertaking: it leases the nursing home and its connected facilities.
- (20) An advantage is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State

³ Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU: C:2006:8, paragraph 107.

⁴ See Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraph 7; Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 75.

intervention.⁵ It is selective if it favours only 'certain undertakings and certain goods'. The public funding in question (EUR 5.5 million) was provided in the form of a grant. A grant is a non-refundable financial instrument which bears no financing cost. At market terms, such a financing instrument would not be available to the beneficiary. As such, the grant constituted an advantage. This advantage was selective, as it was provided to one individual beneficiary, namely *PRO.objekt*.

3.1.2. Use of State resources and imputability

- (21) The decision to grant the funding in question was directly taken by the City of Dahn and is, therefore, imputable to the State. 80% of this financing was born by the *Land* of Rhineland-Palatine and 20% by the City of Dahn, the *Verbandsgemeinde Dahner Felsenland* and the District *Südwestpfalz*. Consequently, it is clear that the grant is financed from State resources.

3.1.3. Distortion of competition

- (22) A measure granted by the State is considered to distort or to threaten to distort competition if it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes.⁶ For all practical purposes, a distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist if the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.⁷ As *PRO.objekt* owns a building, which it rents out on the market, it is active in a liberalised sector (property rental market). Consequently, in the case at hand, the grant to *PRO.objekt* at least threatens to distort competition within the meaning of Article 107(1) TFEU.

3.1.4. Effect on trade between Member States

- (23) Public support to undertakings is prohibited under Article 107(1) TFEU only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".⁸
- (24) Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other Member States to

⁵ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

⁶ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, 730/79, ECLI:EU:C:1980:209, paragraph 11; Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraph 80.

⁷ Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraphs 141 to 147; Judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, ECLI:EU:C:2003:415.

⁸ Case T-288/97 *Regione autonoma Friuli-Venezia Giulia v Commission* ECLI:EU:T:1999:125, paragraph 41.

enter the market by maintaining or increasing local supply⁹, or to exercise their right of establishment.

- (25) It is a matter of settled case law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, the market share of the undertakings potentially in receipt of aid or the position of competing undertakings or of trade flows between Member States.¹⁰ In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
- (26) Nevertheless, an effect on intra-Union trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.¹¹
- (27) In that respect, the Commission has in several cases¹² considered that certain activities had a purely local impact and no effect on trade between Member States. It has assessed whether the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States (consumer perspective), and whether it can be foreseen that the advantage will have more than a marginal effect on the conditions of cross-border investments or establishment (investor perspective).
- (28) The direct investment grant to *PRO.objekt* could be considered as not liable to affect trade between Member States because of its limited local impact: *PRO.objekt* was set up specifically and exclusively for the purpose of investing in the conversion of the old hospital building in the City of Dahn and does not carry out any other commercial activity apart from renting out the modernised building. Consequently, there is no indication that any advantage *PRO.objekt* may draw from the investment grant would be used to facilitate any further (domestic or cross-border) investments.

⁹ See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* ECLI:EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* ECLI:EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

¹⁰ See for instance Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, paragraph 131.

¹¹ See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, paragraph 141.

¹² See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4; SA.37432 *Funding to public hospitals in the Hradec Králové Region*, 29.04.2015; SA.37904 *Alleged State aid to medical centre in Durmersheim*, 29.04.2015; SA.33149 *Städtische Projektgesellschaft "Wirtschaftsbüro Gaarden-Kiel"*, 29.04.2015; SA.38035 *Alleged aid to a specialised rehabilitation clinic for orthopaedic medicine and trauma surgery*, 29.04.2015; SA.39403 *The Netherlands – Investment aid for Lauwersoog port*, 29.04.2015; SA.37963 *United Kingdom – Glenmore Lodge*, 29.04.2015; and SA. 38208 *United Kingdom – Member-owned golf clubs*, 29.04.2015.

- (29) However, the Commission observes that since the substantial penetration of foreign investors in the real estate investment market for retirement / nursing homes in Germany¹³ manifests itself through the presence of a nursing home in Dahn belonging to a foreign undertaking (Casa Reha¹⁴) the grant in question may affect the conditions of cross-border investment and establishment to more than a marginal extent and may consequently affect trade between Member States.
- (30) In any event, in the present case it is not necessary to draw a definitive conclusion as to whether the condition of effect on trade between Member States is met and thus as to whether the grant in question constitutes State aid pursuant to Article 107(1) TFEU, because the Commission considers that the measure is compatible with the internal market for the reasons explained in the following section.

3.2. Compatibility with the internal market pursuant to Article 107(3)(c) TFEU

- (31) Under Article 107(3)(c) TFEU, an aid measure may be considered compatible with the internal market where it *'facilitate[s] the development of certain economic activities or of certain economic areas, where [such aid measure] does not adversely affect trading conditions to an extent contrary to the common interest'*. The application of Article 107(3)(c) TFEU requires the Commission to weigh the positive and desired effects of an aid measure against the adverse effects on trading conditions that may result from its implementation.
- (32) In accordance with Commission decision practice, for an aid measure to withstand that test, it must comply with five cumulative conditions.¹⁵ First, the aid measure must serve a well-defined objective of common interest. Second, it must be an appropriate instrument for achieving that objective. Third, it must be necessary and have an incentive effect. Fourth, it must be proportionate. Fifth, it must not affect trading conditions to an extent contrary to the common interest.

3.2.1. Objective of common interest

- (33) According to the German authorities, the measure pursues two main objectives: (1) revitalising the city centre of Dahn by facilitating the conversion of the hospital building, which had been abandoned for several years, into a nursing home with connected facilities, with positive effects also for employment (creation of 90 jobs), and (2) covering the current and predicted future needs for long-term care and medical services in Dahn, in particular after the closure of the *St. Josef Krankenhaus*, which used to occupy the building. These objectives are laid down in paragraphs 2 to 4 of the preamble and Article 1(1) to (3) of the urban development agreement.
- (34) The measure serves a number of objectives of common interest expressed in the TFEU: in particular employment (title IX), social policy (title X), public health

¹³ In the first half of 2014, the total volume of transactions in the real estate market for retirement / nursing homes in Germany amounted to ca. EUR 385 million. Foreign investment made up 53% of these transactions (see *CBRE Pflegeimmobilienreport Deutschland, Oktober 2014*).

¹⁴ Seniorenpflegeheim Sozialkonzept Mariettenhof. Casa Reha is registered in Luxembourg.

¹⁵ See for instance the Commission decisions SA.33952 (2012/NN) *Climbing centres of Deutscher Alpenverein*, 5.12.2012 and SA.23129 (2012/C) *NEUWOGES*, 16.9.2014.

(title XIV) and economic, social and territorial cohesion (title XVIII). First, the measure created 90 jobs and therefore serves the common interest of a coordinated strategy for employment laid down in Article 3 Treaty on the European Union (TEU) in conjunction with Article 145 TFEU, which is particularly important in an economically underdeveloped region such as the area of Dahn and given the fact that the *St. Josef Krankenhaus* was closed. Second, the measure serves the objective of common interest laid down in Article 174 TFEU, namely structural policy, which explicitly aims at economic, social and territorial cohesion and promotion of rural areas and border regions such as the area of the city of Dahn which has suffered from the consequences of the decline of the footwear industry. Third, given the fact that the former hospital was closed since the end of 2005, the measure improved, due to the connected facilities (medical practices with a dialysis centre) linked to the nursing home, public health in the area, an objective of common interest laid down in Article 168 TFEU. The establishment of the medical practices with a dialysis centre was of particular importance for the city of Dahn after the termination of the operation of the *St. Josef Krankenhaus* in order to ensure health services in local proximity for the citizens living in Dahn, in particular for older citizens and citizens with chronic diseases. Thus, the grant to *PRO.objekt* serves the above described objectives of common interest.

3.2.2. *Appropriateness of the measure*

- (35) The measure achieved the desired objectives of common interest described above. There are no indications that other measures involving no or less public funding were available which would have achieved the same objectives. On the contrary, according to the German authorities, the *Orden St. Domenikus*, the initial owner and operator of the *St. Josef Krankenhaus*, searched for a long time in vain for an investor for the old hospital building which had been empty since the end of 2005. An investor could only be found due to the prospect of public support. Public support to a lesser extent was not a solution as, in accordance with § 177 BauGB, the amount actually granted was the result of a thorough assessment of all costs and revenues connected with the project at the end of which the public support was limited to the costs not covered by the revenues (the so-called "unprofitable costs"). According to the German authorities the only alternative scenario would have been the demolition of the old hospital building and its replacement by an ordinary housing development (e.g. apartments or office space), which would not have served the objectives of common interest described above. The measure thus was appropriate.

3.2.3. *Necessity and incentive effect*

- (36) The German authorities have demonstrated that the projected revenues of the project are not sufficient to cover its full investment costs.¹⁶ Therefore, *PRO.objekt* would not have realised the conversion without the public funding of EUR 5 500 000. Consequently, the public funding was necessary and had an incentive effect.

¹⁶ See in particular paragraphs 10, 12, 13 and 35 above. The total investment was estimated to amount to EUR 15 788 737, and the "unprofitable costs" (i.e. the costs not covered by the revenues) amounting to EUR 5 920 745.

3.2.4. Proportionality

- (37) In view of the importance of the objectives of common interest described above (notably, urban development and employment as well as health and long-term care) the public support measure has to be considered proportionate to the pursued objectives. In principle investment aid is less distortive than operating aid. Moreover, the investment grant is limited to the minimum necessary to implement the project: in accordance with § 177 BauGB, the amount actually granted was the result of a thorough assessment of all costs and revenues connected with the project at the end of which the public support was limited to the costs not covered by the revenues. In addition, the beneficiary was allowed a profit of only 5.38% upon his investment. The Commission notes that that figure is substantively lower than the initial expectation.

3.2.5. No adverse effect on trading conditions to an extent that is contrary to the common interest

- (38) The single purpose nature of *PRO.objekt* and the relatively limited extent of the investment grant (EUR 5 500 000) are factors allowing the Commission to conclude that any adverse effect on trading would be very limited and in any event not be contrary to the common interest.
- (39) The allegations in the complaint concerning *SenVital* are not such as to alter that conclusion.
- (40) The purpose of the investment grant was the conversion of the old hospital building. The rates charged by the investor (*PRO.objekt*) to the nursing home (*SenVital*) that operates out of the converted building are only a result of the costs of the investment and may therefore be regarded as simply secondary effects of that compatible investment grant.
- (41) In order to distinguish between an indirect advantage and mere secondary economic effects it is necessary to assess, from an *ex ante* point of view, the foreseeable effects of the measure in question. An indirect advantage is present only if that measure is designed in such a way as to channel its secondary effects towards identifiable undertakings or groups of undertakings and if these effects grant an advantage to those undertakings.¹⁷
- (42) In the case at hand, the information available to the Commission does not give any indication, from an *ex ante* point of view, that the investment grant provided to *PRO.objekt* for the purposes of implementing the investment project of converting the old hospital into a nursing home was designed in a way that would channel its secondary effects specifically towards *SenVital*. In particular, there are no such indications in the urban development agreement. The simple fact that the operator of an infrastructure pays fees to the infrastructure owner that do not fully cover the construction costs of that infrastructure is not enough to conclude that there is indirect aid being granted to that operator.
- (43) Finally, even if indirect aid was granted to *SenVital*, the Commission considers that such indirect aid being solely a consequence of the compatible investment

¹⁷ See paragraph 116 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1-50.

grant to *PRO.objekt* would have to be considered as compatible with the internal market for the same reasons as explained above (recitals 33-37).

4. CONCLUSION

On the basis of the foregoing assessment, the Commission has decided, in case there was aid in the present instance, not to raise objections to the direct grant awarded to *PRO.objekt* or indeed to the conditions of the lease agreement between *PRO.objekt* and the operator of the nursing home in Dahn, on the grounds that both are compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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 Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission