



EUROPEAN COMMISSION

Brussels, 20.03.2013

C(2013) 1517

PUBLIC VERSION

This document is made available for information purposes only.

**Subject: State aid SA.35135 (2012/N) – Germany**  
**Multifunktionsarena der Stadt Erfurt**

Sir,

## **1. Procedure**

- (1) On 20 September 2012, Germany notified the plan of the City of Erfurt, Capital of the Land of Thüringen, to renovate and reconstruct its sport stadium into a multifunctional arena. Upon request, Germany submitted further information on 5 and 14 December 2012. On 15 January 2013 the Commission asked Germany, in accordance with Article 4(5) of Regulation 659/1999, to agree to an extension of the period of two months within which the Commission is required to adopt a decision until the end of February 2013. This request was accepted by Germany on 16 January. Following a request of 21 January 2013, on 19 February Germany supplied additional information.

## **2. Description of the measure**

- (2) The City of Erfurt, capital of the German Land Thüringen (200 000 inhabitants) plans to renovate and improve with public funds its existing sport arena. It plans to transform it from a mere sports stadium into a multifunctional arena which will be used primarily for football, athletics, popular sport, or other events like concerts, but in addition should now also offer the possibility to host company events or congresses for business and other users in the Region. Events may use the entire arena, planned for 28 000 persons, or single tribunes and internal facilities for up to 2000 persons. International events are only envisaged for non-professional athletics competitions.

Seiner Exzellenz Herrn Dr Guido WESTERWELLE  
Bundesminister des Auswärtigen  
Werderscher Markt 1  
D - 10117 Berlin

- (3) The reasons for the investment are an urgent need of restoration in all respects of the stadium of 1931 and a lack of appropriate facilities for such events although a market analysis had demonstrated that there is a need for congress and event facilities for more than 2000 participants or visitors. In the region there is no commercial or other arena which could compete with the planned stadium. Other existing local event or meeting locations have a maximum capacity of around 500 people.
- (4) The city owns the stadium. The Land Thüringen and Erfurt decided to jointly finance the renovation. The estimated costs are €35,191,000. The Land will cover 83.8% (€29,479,000), which it intends to finance from the fund "Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur" (Improvement of the Regional Economic Structure - GRW), and the City of Erfurt the remaining 16.2% of the costs.
- (5) An operating company will be entrusted with the operation of the stadium. This company will be founded by the town which will retain 51% of this company; the remaining 49% will be sold to a private commercial company which will be found following a Europe-wide tender. The amount of the rent which the operating company will have to pay to the town is determined by the town's cost of maintaining the stadium premises and of the depreciation of its 16.2% share in the renovation costs over 25 years. Accordingly, also the operation contract will be over 25 years. Erfurt envisages a profit of 3-4% for the operating company. The rent, which was calculated on this basis and which will be specified in the tender procedure, will rise annually by 2%.
- (6) The operating company will rent out the stadium to its various users. A regular user will be the local third league professional football club. It will furthermore rent it to non-commercial users for school sport, non-professional athletic competitions, cultural or societal events and to professional users (company events, congresses).
- (7) Prices charged to professional users will be market oriented. For the captive client, the football club, they will be determined by a comparison with prices clubs pay in other arenas of comparable size. For non-commercial users (cultural, social, popular sport, or non-professional sport competitions), the fees will be set at a lower level which respects the financial ability of the users to pay. For that purpose, the city will rent stadium capacity from the operator, which it passes on to these users, or at single occasions refund the difference to the operator.

## **2.2. Assessment**

### *2.2.1. Existence of aid*

- (8) The question arises whether the planned measure could constitute State aid within the meaning of Article 107 (1) TFEU, by supporting through State resources an economic activity which derives therefrom an advantage which could affect competition and trade between Member States.

- (9) The stadium renovation is fully financed by public funds. Also a possible financing through the ERDF programme is attributable to the State as the allocation of the fund is administered under the responsibility of the German authorities. The funding of the arena may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the Leipzig/Halle airport judgment of the Court of Justice<sup>1</sup>, if all the requirements of Article 107 (1) are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. Accordingly, the economic activity of operating the infrastructure would benefit from aid.
- (10) The infrastructure is put at the disposal of an undertaking which will let it to various users against remuneration. This operating company may exploit the arena, although the full costs of building the infrastructure are not passed on to it. It is thus saving costs in comparison to a situation which would reflect commercial terms. Although the private partner of the operating company will be chosen as a result of an open, transparent and non-discriminatory procedure (ensuring that it does not receive more than a normal market return for its activity and thus excluding overcompensation), an advantage would be present for the operating company; the rent will not include the recovery of the full costs of building the infrastructure, which is used by the operating company for carrying out its economic activity<sup>2</sup>, and the city will refund the operator for the low fees it is asked to request from non-commercial users, an income it would not have without this financial intervention. Therefore, the operator enjoys an economic advantage from state resources. The operator is thus the beneficiary of aid.
- (11) Regarding a possible effect on trade and competition in the internal market, the envisaged commercial exploitation concerns local and regional firms and not international events. The next border, with the Czech Republic, is around 100 km away. It is therefore unlikely that the operation of the Erfurt stadium will have a strong cross border effect like e.g. arenas which are planned for commercial events (in particular music and sport) of international level. The market for organising sport and other types of public events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. Therefore, the measure at issue has at least a potential effect on trade and competition in the internal market. This is also underlined by the fact that Erfurt is looking EU wide for the private investor participating in the operation company.
- (12) The renting of the stadium infrastructure may furthermore constitute aid for the users, if the users can be considered undertakings and if the rent they pay is below market levels. Non-professional users do not qualify as undertakings within the meaning of Article 107. Offering them the arena for a low rent does therefore not constitute aid. The rent the professional football club has to pay is determined on the basis of a comparison with fees comparable clubs are paying elsewhere, and will be set at the higher end of the range of these fees. Thereby the club is not enjoying an advantage compared to the clubs it is competing with. Other professional users have to pay a market oriented fee. The operator, with its participation of a private investor has an

---

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

<sup>2</sup> Judgment of the General Court of 24 March 2011, *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, Cases T-443/08 and T-455/08, ECR 2011 II-01311, paragraph 107.

incentive not to undercut prices for the final users. The German authorities committed furthermore to apply a market oriented fee. However, in the absence of any clarification on how that fee will be calculated the Commission cannot exclude that part of the economic advantage benefitting the operator will indeed be transferred to the final users through prices which are indeed below those for the use of comparable infrastructure under normal market conditions.

### 2.2.2. *Compatibility*

- (13) The public financing of the reconstruction of the 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 competition.
- (14) With regard to the achievement of a policy objective of common interest, the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered a State responsibility towards the general public<sup>3</sup>. The Amsterdam Declaration on Sport and Article 165 TFEU both acknowledge the social significance of sport: "The Union shall contribute to the promotion of European sporting issues...". The arena will also be used for cultural events (concerts, shows), as well as providing a meeting place (conferences, fairs, church meetings) and as such contribute to the promotion of cultural diversity, according to Article 167(4) TFEU also a Union policy objective.
- (15) The arenas will thereby ensure the general public's access to sport and culture, which is a typical task of municipalities. There is a lack of capacity and/or adequate and up-to-date facilities for sports and cultural events. For the local football clubs and other sport organisations there are no alternative arenas available; existing privately owned facilities for congress or seminar type of events can only cater to much smaller types of events. Thus, the Erfurt stadium is the only large arena in a mid-size town with the purpose to serve for events of principally local or regional character. The objective is not to attract international commercial events but to cater to the local or regional needs for a place to organise major events. The realisation of the arenas must therefore be regarded as satisfying policy objectives of common interest.
- (16) The aid is well-targeted as it addresses the specific problem of under-investment in sports infrastructure. The public financing of the arena is necessary because the existing facilities have become outdated and do not anymore meet the requirements of the public. In addition, according to the German authorities, there is no private investor willing to finance a medium sized regional multipurpose stadium which is a facility implying a large and risky investment.
- (17) The financing is also justified by the fact that such an infrastructure otherwise would be absent in the region concerned. There is no duplication with existing commercial event facilities of comparable size in the region. The largest existing conference and event facility has a capacity of 500 places.

---

<sup>3</sup> Cf. point 67 in decision on case C4/2008, Netherlands, Investment in Ahoy sports palace by Rotterdam.

- (18) Although both towns are within a distance of 50 km, their size and structure justify an arena for each. For the local sport they need it anyway; and the local population and institutions require own event facilities on the ground. Jena is a University town and has traditional and important industry. Erfurt is the Capital of the Land Thüringen and sees the need to offer central meeting facilities for the Land in order to better fulfil this function. It is furthermore a University town.
- (19) The upgrade of the arena to further possible uses is also inspired by a wish to make better use of public funds and to obtain some return on it. Erfurt wants to seize the opportunity of the necessary renovation to upgrade the stadium in a way that it may also host, in addition, other events of different sizes other than sport, for which it identified a need among the local community.
- (20) Furthermore, the subsidised infrastructures will be open to the general public, without jeopardising the primary sport objective. This will ensure that several different types of users and sectors will be able to benefit from the subsidized facility. In addition, the professional activities which are to be carried out in the arena are of local character; therefore the aid will not affect trading conditions to an extent contrary to the common interest.
- (21) Finally, through the EU wide tender to find a commercial partner in running the arena, Erfurt keeps the aid to this company at the possible minimum. Therefore the public financing of the project is also proportionate. By the same token, in the light of the commitment of the German authorities to apply market prices, the possible advantage given to professional users does not appear to be disproportionate either to the objectives of common interest pursued by the building and operation of the arena and therefore it can be considered compatible for the same reasons that justify the aid for its building and operation.
- (22) The public financing of the reconstruction and operation of the multifunctional arena of the City of Erfurt is therefore pursuing acknowledged public policy objectives, is necessary and proportionate and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107 (3) c TFEU.

### **2.3. Conclusion**

- (23) The Commission has accordingly decided to consider the aid for the construction and operation of the multifunctional arena of the City of Erfurt to be compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

European Commission  
Directorate-General for Competition  
State Aid Greffe  
1049 Brussels  
Belgium  
Fax No: +32 2 29 61242

Yours faithfully,  
For the Commission

*Joaquin ALMUNIA*  
Vice-President