



## EUROPEAN COMMISSION

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Subject: **State aid SA.40448 (2016/NN) – Alleged unlawful State aid to Getzner Textil Weberei GmbH– Germany**

Sir,

### **1. PROCEDURE**

- (1) On 19 February 2015, (2015/016507) Hüpeden & Co. (GmbH & Co) KG (hereinafter "the Complainant") submitted a complaint regarding alleged unlawful aid to the Getzner Textil Weberei GmbH. The Complainant submitted further information on 17 July 2015 (2015/071341) and 2 September 2015 (2015/086637). The Commission sent letters to the Complainant on 11 March 2015 (2015/023460), on 29 July 2015 (2015/074830).
- (2) The Commission services invited the German authorities by letters of 20 April 2015 (2015/036626) and of 17 June 2015 (2015/057141) to comment on the allegations formulated in the complaint. The German authorities replied on 19 May 2015 (2015/046390) and on 19 September 2015 (2015/090383).
- (3) The Commission services sent a preliminary assessment letter to the Complainant on 5 October 2015 (2015/097879), in which they rejected the allegations of the complaint. The Complainant did not accept the conclusions in the preliminary assessment and submitted further arguments on 5 November 2015 (2015/109418). The Commission sent clarifying questions to the Complainant on 27 January 2016 (2015/008736) to which the Complainant replied on 2 March (2016/022218). Further allegations were made by the Complainant on 29 March 2016 (2016/030335). All

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submissions by the complainant will be termed "the complaint" in the following parts of this decision.

## **2. DETAILED DESCRIPTION OF THE ALLEGED MEASURE**

### **2.1. The Complainant**

- (4) The Complainant, Hüpeden & Co. (GmbH & Co.) KG, is a trading company specialised in canned food and textiles with its headquarters in Hamburg, Germany. According to its own admission, the company is active in the production and sale of coloured and uncoloured brocade fabric used in women's clothing in West-African countries<sup>1</sup>. Export sales activity, towards non-African countries unlike import activity, was not specifically indicated on the company's website.

### **2.2. The alleged beneficiary**

- (5) The complaint is directed against a State aid measure granted to the company Getzner Textil Weberei GmbH, an alleged competitor of the Complainant. Getzner Textil Weberei GmbH is based in the city of Gera, in the Federal State of Thuringia. The Getzner Textil Weberei GmbH produces clothing damask, and it is a fully owned subsidiary of the Austrian Getzner Textile AG with headquarters in Bludenz, in Western Austria. Getzner Textil AG is engaged in the sale of Africa damask/brocade in West Africa. Getzner Textil Weberei GmbH, which employs about 75 persons using about 72 air-jet weaving machines, transfers all its production to its Austrian parent company. The alleged beneficiary comprises of Getzner Textil Weberei GmbH and its parent company Getzner Textile AG.

### **2.3. The alleged aid measures**

- (6) The complaint relates to an €12 600 000 direct grant granted to Getzner Textil Weberei GmbH by the State of Thuringia (through the Thüringer Aufbaubank) for an €47 000 000 investment in the construction of a new production hall and what was originally described by the Complainant as the initial acquisition of 108 new weaving machines. In addition, it is alleged that the beneficiary would also undertake a renovation of its old production facility and would acquire 50 new weaving machines in this old but newly renovated facility.
- (7) The measure was granted on the basis of the "Gesetz über die Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur (GWRG) vom 6 August 2009" – which, according to the original allegation<sup>2</sup> of the Complainant, is based on Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87

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<sup>1</sup> The complainant submitted photographs which appear to indicate that products with the trade name "HC" are available in various stores in West Africa. The complainant claims it trades in fabrics under its own trade mark "HC". On its website, the Complainant indicates its name as HC Hüpeden.

<sup>2</sup> In the reply to the Commission services' preliminary assessment letter in which it was pointed out that according to the German authorities, the measure is based on Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid ("the RAG BER") (OJ L 302, 1.11.2006 p. 29.), the Complainant advanced the argument that this legal basis was no longer in force by the time the measure was granted.

and 88 of the Treaty (General block exemption Regulation)<sup>3</sup> (hereafter the "General Block Exemption Regulation" or "GBER").

- (8) The Complainant alleges that the measure was granted in violation of the relevant provisions of the General Block Exemption Regulation for the following reasons.
- (9) First, the Complainant alleges that the investment constitutes a large investment project combined with other investments of the beneficiary with eligible costs exceeding €50 000 000 within the meaning of Point 60 of the Regional Aid Guidelines 2007-2013<sup>4</sup> (hereafter "the RAG") for the following reasons:
- a. The parent company of Getzner Textil Weberei GmbH, Getzner AG in Austria allegedly planned investments of a magnitude similar to the €47 000 000 which should be added to the €47 000 000 investment costs incurred by the Getzner Textil Weberei GmbH in Gera, turning the investment project into a large investment project with eligible costs exceeding €50 000 000.
  - b. Certain "adjustment" costs of 72 weaving machines – which the alleged beneficiary already had before the investment – should have been added to the total costs of the aided investment project.
  - c. The investment project includes the construction of three new weaving halls with a capacity for 180 weaving machines and the Complainant later complemented this description by alleging that a fourth manufacturing hall was planned to increase the capacity to 240 weaving machines at a point later in time; the fourth manufacturing hall allegedly added to the eligible costs of the project increasing it to €64 900 000<sup>5</sup>.
  - d. The total eligible cost of the project exceeds €50 000 000 also because the price of a piece of land the beneficiary purchased from the city of Gera on which the new production facility was to be set up is not added to the cost of the project, and which, if it were added, would raise the cost of the project to over €50 000 000.
- (10) Second, the Complainant alleges that, with further aid elements, the aided investment became a notifiable large investment project within the meaning of Point 64 of the RAG where the State aid intensity exceeds the maximum permissible State aid intensity. In addition to incurring eligible investment costs in excess of €50 000 000, the beneficiary is allegedly granted more aid, the total amount of which exceeds the notification threshold<sup>6</sup> and the permissible maximum State aid intensity ceiling

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<sup>3</sup> OJ L 214, 9.8.2008 p. 3.

<sup>4</sup> According to Point 60 of the Guidelines, "a large investment project will be considered as a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way." Guidelines on national regional aid for 2007-2013 (2006/C 54/08), OJ C 54, 4.3.2006, p. 13.

<sup>5</sup> The Complainant's last submission on 29 March 2016.

<sup>6</sup> Pursuant to Point 64 of the RAG, Member States must individually notify large investment projects if the aid proposed from all sources exceeds the level that would be permissible for an investment project with eligible costs of €100 000 000. In this case, as the investment is situated in a 30% maximum State aid intensity region, this amount would be €22 500 000.

applicable in the region for this particular investment project for the following reasons:

- a. The alleged beneficiary Getzner Textil Weberei GmbH received a regional aid measure for an investment project which is likely to have started in 2012. Thus, the aided investment project and the earlier aided investment project constitute a single investment project, as the second one (i.e. the €47 000 000 project) started within three years of the starting date of the first investment project.
  - b. The parent company of Getzner Textil Weberei GmbH, Getzner AG in Austria, allegedly receives export aid for the promotion of the export of brocade fabrics into the West African region.
  - c. The beneficiary did not pay a market price for the piece of land that it purchased from the city of Gera. This alleged additional aid measure increased the total amount of aid granted to the beneficiary and turned the aid measure and the investment project into a notifiable large investment project.
- (11) Furthermore, on 12 December 2014, the Complainant launched a civil law suit regarding the same measure at the Administrative Court of the city of Gera. The Complainant also submitted a complaint in February 2015 to the State Administration Office ("Landesverwaltungsamt") of the Federal State of Thuringia alleging an infringement of the notification obligation of the aid arising from the sale of the land below market price. The State Administration Office found that the notification obligation was not proven as the land sales agreement took place on the basis of an expert valuation, indicating the value of the land as €12/square meter.
- (12) At the time of writing this decision, the civil law suit is still pending before the national court.
- (13) More specifically on the transfer of the land, the Complainant alleges that the purchase price of the land at which it was transferred to the beneficiary (i.e. €12 /square meter) was not determined in compliance with the provisions of the Commission Communication on State aid elements in sales of land and buildings by public authorities (hereafter the "Land Sale Communication")<sup>7</sup>, as it was not tendered out and its value was not determined by an independent expert.
- (14) According to the Complainant, an expert evaluation from 2007 showed €17.64/square meter as the value of the piece of land. The Complainant further alleges that the square meter price for the type of property at the location at the time of the sale to the beneficiary was perhaps as high as €60.<sup>8</sup>

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<sup>7</sup> OJ C 209, 10.7.97, p.3.

<sup>8</sup> The Complainant alleged that the value in 2014 may have been €40/m<sup>2</sup> and that the Bundesland Thuringen and the Thueringer Aufbaubank estimated that the value could be as high as €60/m<sup>2</sup>. In terms of evidence, the Complainant submitted what appears to be a printout from a database allegedly showing land reference values in a widely used official land value database (in German: "Bodenrichtwertkarte") that the value of the piece of question at the end of 2012 was €40/m<sup>2</sup>.

- (15) In a submission submitted later in the procedure, the Complainant demanded that proof be furnished that the decrease in square meter price from an originally estimated value of €17.64/square meter to €12/square meter (i.e. the purchase price) resulted from the beneficiary's obligation to incur certain infrastructure development costs (Erschließungsbeitrag) and the Complainant argued that the €17.64/square meter price did not refer to the same property and was based on questionable evaluation factors.

### 3. COMMENTS AND INFORMATION FROM GERMANY

- (16) The German authorities disputed that the Complainant has standing in the matter given that Getzner Textil Weberei GmbH is only engaged in the production of brocade fabrics which it entirely transfers to its parent company in Austria. The Complainant, on the other hand, is a wholesaler engaged in the trading of various products, such as canned food and raw textile. According to its own webpage, the German authorities state, the Complainant does not produce fabrics.

- (17) Furthermore, the German authorities argued that the measure was granted in compliance with all applicable provisions of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid<sup>9</sup> (hereafter the "Regional Block Exemption Regulation") based on the following elements:

1. The measure was granted for the construction of a manufacturing hall with a capacity of initially 180 weaving machines. 72 weaving machines already in the ownership of the beneficiary will be moved into the new manufacturing hall, but the costs of this transfer were not considered to be eligible for the regional investment aid measure. To the initial 180 machines, first 48, then 60 further machines will be added. The existing manufacturing facility will be extended by a new manufacturing hall and finally, a further 50 weaving machines will be set up/purchased. Thus, the purpose of the investment was an "initial investment", -- as it involves the setting up of a new establishment as well as the extension of an existing establishment - within the meaning of the applicable regional aid legislation.
2. An initially estimated €300 000 purchase price for the land did form part of the estimated total cost of €47 000 000 for the investment. The total eligible nominal costs were in the end €46 680 000 the net present value of which, using a discount rate of 1.53%, is €45 785 996.
3. The applicable State aid intensity ceiling in the NUTS 3 region of the city of Gera, an Article 107(a) region, at the time of granting the aid was 30% and it was not exceeded.
4. The incentive effect requirement pursuant to the Regional Block Exemption Regulation was satisfied, as the beneficiary applied for aid prior to the start of work. The application took place on 11 March 2014 and work on the investment started on 1 April 2014. The granting body, the Thüringer Aufbaubank, confirmed in writing on 13 March 20013 that, subject to a detailed examination of the fulfilment of all applicable conditions, the investment project is eligible for regional investment aid.

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<sup>9</sup> OJ L 302, 1.11.2006 p. 29.

5. The German authorities were not aware of investment cost items that should have been added to the total (eligible) investment costs. In particular, the costs of the "adjustment" of 72 weaving machines did not form part of the eligible costs, contrary to the allegation of the Complainant.
  6. The investment project in question does not constitute a single investment project with an earlier aided investment project of the beneficiary within the meaning of Point 60 of the RAG 2007-2013, because work on the previous aided investment project started on 6 May 2009, thus it was outside the three year time period required under Point 60 of the RAG 2007-2013.
  7. Any export aid allegedly granted to the beneficiary's parent company in Austria cannot be cumulated with the regional investment aid measure.
- (18) As regards the transfer of land to the beneficiary below market price, the German authorities put forward the following arguments in their comments of 19 May 2015:
1. The transfer/sale of the land does not qualify as a sale of land by public authorities. The city of Gera concluded a sales contract for the purchase and sale of a 23 796 square meter piece of industrial land for the purchase price of €285 552 (equalling €12/square meter) with the beneficiary, Getzner Textil Weberei GmbH. The piece of land had in fact been previously (in 2011) sold to a third party, which, after making a partial 87% payment of the purchase price decided to back out of the agreement. The city of Gera did not transfer back to the third party the partial payment for the land. Therefore, according to the sales contract concluded between the city of Gera and the Getzner Textil Weberei GmbH, the latter paid 87% of the sales price to the third party and the remaining 13% to the city of Gera.
  2. Even if the sale of the land qualifies as a sale of land by a public authority, the city of Gera did satisfy the requirements of the Land Sale Communication because it subjected the sale of the land to public advertising procedures several times over the years<sup>10</sup>. These efforts did not result in finding any buyer for the property until the third party, which almost concluded the purchase of the property as explained above, was found in 2011.
  3. The city of Gera also obtained an expert evaluation of the value of the land in 2007, according to which the value of the property was €17.64/square meter. This value represents a property which does not require any infrastructure development costs (Erschließungsbeitrag). According to the sales contract with Getzner Textil Weberei GmbH, however, significant infrastructure development costs (in the amount of € 72 538.13) were to be incurred by Getzner. In addition, Germany brings forward the argument that industrial property prices have fallen since 2007. Among other things, the city of Gera's explanation that was forwarded to the Commission listed comparable sales in the area in question for the following prices: €10/m<sup>2</sup> for sales between 2010 and 2015, a sale in 2011/2012 for €9.5/m<sup>2</sup>, and another sale in 2014 for €12/m<sup>2</sup>. Besides, the German authorities pointed to a

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<sup>10</sup> In terms of detail, there was an advertisement on the Internet from January 2004, an advertising board in Gera between 2004 and 2007, a presentation of the real estate property at the Munich EXPO (a real estate exhibition) in all years between 2004 and 2011, another Internet advertisement from January 2007, a public sale on 4 July 2008 and once more an Internet advertisement from July 2008.

decrease in value due to an uneven level of the ground which was to require corrective action. Therefore, the expert evaluation together with the credible explanations relating to the decrease in value ensured that the piece of land in question was not sold at a price which was below the market value. Germany also made the subsidiary argument that the Thuringian Ministry of the Economy and the Thüringer Aufbaubank estimated square meter prices in Thuringia to be between €5.34 and €60 at the time of the sale, but even calculating with a €60 square meter value and a resulting additional aid amount of €1 142 208 in the transfer of land, the aid intensity would have increased only to 29%.

4. In September 2015, Germany finally submitted an independent evaluation of the piece of land by a certified, independent assessor that concluded that the value of the land on 1 April 2014 was € 276 154. The method of the calculation of the value of the land was as follows: the reference value for the piece of land was extracted from a database which shows land reference values (in German: "Bodenrichtwertkarte") in view of the location and nature of the land in question. Then value reducing elements were subtracted from the total value of the piece of land in question. The reference value was determined as €15/m<sup>2</sup> resulting in a theoretical value of €356 940. From this, 20% (i.e. €71 388) was deduced given that an "unevenness" or relatively steep decline in the ground required corrective action. The expert who carried out the evaluation is a licensed real estate assessor with a construction engineering degree who operates a company offering engineering and real estate appraisal services. Thus, the German authorities consider that the sale of the piece of land in question was on market terms.

- (19) Hence, the German authorities conclude, the eligible investment costs of the investment project did not exceed €50 000 000, and no further aid elements were granted to the beneficiary. The investment project, therefore, did not qualify as a notifiable large investment project within the meaning of Point 64 of the RAG 2007-2013.

#### **4. ASSESSMENT OF THE ALLEGED AID MEASURES**

- (20) The Complainant essentially alleges that two aid measures were granted to Getzner Textil Weberei GmbH: (i) the direct grant provided as regional investment aid, and (ii) the sale of land below its market value.

##### **4.1. The direct grant**

###### *4.1.1 Existence of aid*

- (21) As laid down in 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 and affects trade among Member States is incompatible with the Internal Market.
- (22) The support to Getzner Textil Weberei GmbH was provided by the German authorities in the form of a direct grant and is thus financed from State resources. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.
- (23) The aid was granted to a single company, Getzner Textil Weberei GmbH, thus the measure is selective.

- (24) The aid relieves Getzner Textil Weberei GmbH from costs which it normally would have to bear itself under normal market conditions and, therefore, Getzner Textil Weberei GmbH benefits from an economic advantage over its competitors.
- (25) The aid was granted by the German authorities for an investment resulting in the production of Africa damask. Since this product can be traded between Member States and the measure strengthens the competitive position of Getzner Textil Weberei GmbH, it is likely to affect trade between Member States and has the potential to distort or threaten to distort competition.
- (26) Consequently, the Commission considers that the direct grant constitutes State aid in favour of Getzner Textil Weberei GmbH, within the meaning of Article 107(1) TFEU.

#### *4.1.2 Compatibility under the Regional Block Exemption Regulation*

- (27) As regards first the allegation that the legal ground for the grant was not based on the Regional Block Exemption Regulation, as at the time of the grant, it was the Commission Regulation (EC) No 800/2008 of 6 August 2008 (thereafter "the General Block Exemption Regulation") in force, the Commission would like to point out that the Regional Block Exemption Regulation was still in force on the date of granting. This is because Article 9 of the Regional Block Exemption Regulation indicates that it remains in force until 31 December 2013, and that at the end of the validity of the regulation, the exemptions continue to be in force until the expiration of the approved regional aid maps. In fact, Germany's regional aid map was extended until 30 June 2014<sup>11</sup>. Thus, the regional aid measure that was granted in March 2014 had a proper legal basis in the Regional Block Exemption Regulation. The Commission notes that the "Gesetz über die Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur (GWRG) vom 6 August 2009" contains a reference to the Regional Block exemption regulation in its footnote 1 of Part II.
- (28) As to the issue of whether or not the aid measure in question was granted in compliance with the provisions of the Regional Block Exemption Regulation, the Commission considers that the measure was indeed granted in compliance with this regulation for the following reasons:
  - 1. The measure was granted for an initial investment as it was granted for the setting up of a new establishment and the extension of an existing establishment within the meaning of Article 2 (1) (c) (i) of the Regulation.
  - 2. The measure was granted in a region eligible for regional aid determined in the approved regional aid map of Germany in force at the time of granting.
  - 3. The State aid intensity ceiling did not exceed the regional aid intensity ceiling in gross grant equivalent. Pursuant to Article 4 (4) of the Regional Block Exemption Regulation, eligible investment costs and aid instalments must be discounted to the time of granting, using the reference rate applicable at the time of grant. The discounted value of the investment aid calculating with the applicable reference

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<sup>11</sup> SA.37424 – Prolongation of the German Regional Aid Map 2007-2013 until and including 30/06/2014, OJ C 50, 21 2.2014, p. 1.

rate of 0.53% in force in on 4 June 2014<sup>12</sup> plus 100 basis points (equalling 1.53%) is €12 191 566 and the discounted value of the investment costs is €45 785 996. The aid intensity calculated with these figures is 26.6%, thus the applicable regional State aid intensity ceiling of 30% is not exceeded.

4. The beneficiary's own contribution to the investment project exceeded 25%<sup>13</sup>, as its own capital made up €11 400 000, and resources from external financing which is free of public support amounted to €23 000 000.
5. The investment did not involve an acquisition of an establishment, and did not involve a lease of assets. Therefore, Article 4 subsections (5) and (6) of the Regional Block Exemption regulation are not applicable. The grant did not cover transport equipment and all assets purchased were new. Therefore, Article 4 subsections (7) and (8) of the Regional Block Exemption Regulation have been complied with.
6. The incentive effect requirement pursuant to the Regional Block Exemption Regulation<sup>14</sup> and Point 1.2.1. Part II of the "Gesetz über die Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur (GWRG) vom 6 August 2009" was satisfied as, prior to the start of works, the beneficiary had applied for aid and the responsible authority had confirmed in writing that, subject to the final outcome of a detailed verification, the project met the conditions of eligibility laid down by the scheme. Specifically, the application took place on 11 March 2014 and works on the investment started on 1 April 2014. The granting body, the Thüringer Aufbaubank, confirmed in writing on 13 March 2014 that, subject to a detailed examination of the fulfilment of all applicable conditions, the investment project is eligible for regional investment aid. The Commission would like to add that the granting did not take place via a document in which the aid measure was promised on 24 January 2014 because the document clearly states it is a "draft" (Entwurf), and it contains an indication that an application will need to be submitted by 15 April. Thus, this document could not create an irrevocable entitlement (*verbindliche Zusicherung*) to the aid measure which would be enforceable in court by the beneficiary. Thus, the incentive effect requirements were properly complied with.
7. The beneficiary committed to maintaining the investment in the region for at least 5 years<sup>15</sup>.
8. The investment project does not constitute an individually notifiable large investment project within the meaning of Article 7 (e) of the Regional Block Exemption Regulation, pursuant to which aid amount exceeding €22 500 000 million would need to be notified in the region where the city of Gera is located<sup>16</sup>.

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<sup>12</sup> [http://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html)

<sup>13</sup> See Article 4 (2) (c) of the Regional Block Exemption Regulation.

<sup>14</sup> See Article 5 (1) of the Regional Block Exemption Regulation.

<sup>15</sup> See Article 4 (2)(a) of the Regional Block Exemption Regulation.

<sup>16</sup> An investment project is notifiable pursuant to Article 7 (4) of the Regional Block Exemption Regulation, if the aid to be granted for the project would exceed 75% of the maximum aid that an investment with eligible expenditure of € 100 000 000 could receive in the region. In a 30% maximum regional State aid intensity region this is €22 500 000.

9. The allegedly planned investments by the beneficiary's parent company in Austria do not need to be added to the €47 000 000 investment costs. This is because pursuant to Point 60 of the RAG, the assessment of whether or not different investment projects constitute a "single investment project", will be determined on the basis of technical, functional and strategic links and the "*immediate geographical proximity*" (emphasis added). Given that the alleged investment is taking place in Austria, this immediate geographical proximity is not present.
  10. Furthermore, as to the allegation of the Complainant on 29 March 2016 that a fourth manufacturing hall will be erected in addition to the three manufacturing halls that were originally planned, the Commission underlines firstly there is no indication in the file that any cost items in addition to the original €47 000 000 were considered to be eligible for the investment. Secondly, even if it is assumed that the total investment costs in fact were subsequently increased to €64 900 000, there is no indication (or even allegation by the Complainant) that additional regional aid was subsequently granted for the project for this allegedly increased investment cost.
  11. Further, the investment project in question does not constitute a single investment project with an earlier aided investment project of the beneficiary within the meaning of Point 60 of the RAG 2007-2013, because work on the previous aided investment project started on 6 May 2009, thus it was outside the three year time period required under Point 60 of the RAG 2007-2013 (see footnote 3).
  12. Finally, any export aid allegedly granted to the beneficiary's parent company in Austria cannot be cumulated with the regional investment aid measure, as, assuming it has been granted, it would have been granted for different eligible costs and for a different purpose/project, and thus it would not fall under the situations of cumulation that Article 6 of the Regional Block Exemption Regulation prohibits. In fact, the aid would even be granted by different Member States. Thus, the export aid does not turn the aided regional investment project into a large investment project within the meaning of Point 60 of the RAG 2007-2013 and Article 7(e) of the Regional Block Exemption Regulation.
- (29) In view of the above, the Commission concludes that the direct grant for regional investment aid was granted in full compliance with the conditions of the Regional Block Exemption Regulation.

#### **4.2. The land sale**

- (30) According to Article 107(1) TFEU, in order to constitute State aid, a national measure must confer an advantage to the undertaking in question that it would not have obtained under normal market conditions. In the present case, Getzner Textil Weberei GmbH would not have received any such advantage if it paid the market price for the acquisition of that land.
- (31) The Commission carried out an evaluation of the credibility of the independent assessor's evaluation of the land prepared in 2015, with a view towards establishing whether the price paid by the beneficiary reflected the market value at the time of the sale in the spring of 2014.
- (32) As regards, the methodology of assessing the value of the land in question, the Commission would like to point out that the Complainant did not offer any

discernible methodology for the calculation of the land's value. It merely questioned the validity of the €17.64/m<sup>2</sup> value (determined in 2007) and referred to square meter values that were allegedly market values in 2014 at the time of sale to Getzner Textil Weberei GmbH according to the Bundesland Thuringen and the Thüringer Aufbaubank. It did not submit any proof that can be convincing that the square meter value of the land in question could indeed have been as high as €40 or even €60 at the time of its sale to Getzner Textil Weberei GmbH. The allegation relating to the square meter value was supposed to be proven through a print out of the "Bodenrichtwertkarte" which allegedly showed that the value was €40/m<sup>2</sup> on 31 December 2012. However, the only element in the attached print out possibly showing a €40/m<sup>2</sup> value could be the figure "40" in the middle of a plot of land, that is allegedly next to the piece of land in question. It cannot be inferred from any other element in the attached print out that the square meter value would have indeed been €40 on 31 December 2012, as it could have designated an area larger than one square meter. The value, even if it is assumed that it refers to a square meter price, refers to a different plot and in a different year. Moreover, there is no explanation whatsoever in that print out on how a square meter value of €40 could have been determined. Further, the Complainant did not offer any further explanation or proof why the square meter value of the land in question would have been €60 in the spring of 2014 according to the Bundesland Thuringen and the Thüringer Aufbaubank.

- (33) On the other hand, the independent expert evaluator's assessment appears to be based on a credible methodology which is contained in an officially signed land value evaluation report. It based the basic square meter price on the official reference value database (the "Bodenrichtwertkarte") applicable to the location, which was indicated as €15/m<sup>2</sup> on the relevant date<sup>17</sup> for use without any construction on it. The reference value of €15/m<sup>2</sup> resulted in a theoretical value of €356 940. From this, 20% (€71 388) was deduced given that an "unevenness" or relatively steep decline in the ground required corrective action. The final value was thus determined as €276 000.
- (34) The Commission finds this evaluation methodology credible. The Commission also sees no reason to doubt either the independence of the expert evaluator or his expertise given his professional qualifications described in recital 18 (4).
- (35) Further, the Commission finds convincing the German authorities' description of the efforts by the city of Gera to sell the property, which was almost successful vis-à-vis a third party in 2011 at a price highly comparable to the price paid by the beneficiary. The Commission would also like to point out that it does not see any reason to doubt the veracity of the information relating to the actual sales prices at which comparable real estate property sales took place (i.e. between €9.5 and €12/m<sup>2</sup> between 2010 and 2014). The €12/m<sup>2</sup> price paid by Getzner Textil Weberei GmbH in 2014 is also in line with these prices. It is also credible to the Commission that the value of the property had to be adjusted given an unevenness of the ground, which resulted in a decrease of the value of the property. Finally, the Commission would like to point out that indeed even the German authorities referred to information from the Thuringian State and the Thüringer Aufbaubank that property prices in Thuringia varied between €5.34 and €60/m<sup>2</sup> in the time period in question. This, however, is not inconsistent with the real estate property assessor's opinion that the value of the land in question was €276 000 (and originally based on a €15/m<sup>2</sup>

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<sup>17</sup> More precisely, the basic square meter price in the Bodenrichtwertkarte on 31 December 2012 was indicated as €15/m<sup>2</sup> which the expert indicated persisted also on 1 April 2014.

price) which is in the band of values indicated by the Thuringian State and the Thüringen Aufbaubank.

- (36) On the basis of these considerations, the Commission finds that the transfer of land in question took place at a market price and thus no advantage was conferred on the Getzner Textil Weberei GmbH in the form of transfer land below market value.
- (37) Therefore, the Commission concludes that the transfer of land in question does not constitute State aid within the meaning of Article 107(1) TFEU.

## 5. CONCLUSION

- (38) In light of the foregoing assessment, the Commission decides that:
- the direct grant for regional investment aid was granted in compliance with the provisions of the Regional Block Exemption Regulation;
  - the transfer of land in question does not constitute State aid; and thus
  - rejects the complaint.

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](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission