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**Subject: State Aid SA. 46572 (2017/N) – Germany
Bavarian games support measure**

Sir,

1. PROCEDURE

- (1) On 7 July 2017, following pre-notification contacts, the German authorities notified to the Commission the Bavarian scheme to support the development and production of digital games.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Context, objectives, legal basis, and duration

- (2) The objectives of the measure are to reinforce the Bavarian development and production economy, to ensure a varied cultural landscape and to encourage innovation. The measure should also contribute to the strengthening of the European digital audiovisual sector. Particular attention goes to the promotion of young talent. More concretely, the scheme aims to support the development of high-quality, culturally or pedagogically valuable digital games and innovative, interactive media projects with a games element (hereinafter "digital games").

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- (3) Since 2009, the Bavarian State grants support to promote digital games through a scheme implemented in accordance with the *de minimis* regulation¹. As they consider it appropriate, necessary and proportionate to support the games sector beyond *de minimis* ceilings, the German authorities have proceeded with a notification. They wish to support larger projects with higher financing requirements that are able to compete in the international market.
- (4) The German authorities have submitted data to demonstrate that the games sector is a global market, but that Germany has limited international competitiveness in games production. In particular, a study² of the German sector-specific trade association *Bundesverbands Interaktive Unterhaltungssoftware* (BIU) has shown that the size of the German games market amounts to EUR 2.8 billion (2015 data). Yet even if the overall size of the German games market is increasing, the specific market share of German games is decreasing. In the global market, the market share of German games is below 1%. Limited to the German market alone, German game developers have a market share of only 6.5% (2015).
- (5) The German authorities have also submitted data on the media use by children and youth³, which shows that international blockbusters (such as Minecraft, FIFA, or Grand TheftAuto) are the most popular games.
- (6) The German authorities point towards two particular market hurdles for German developers in the current German gaming market:
 - (a) In the PC and games console segments of the market, large international productions with very large budgets dominate the marketplace. The German market share is less than 1%.
 - (b) In the digital games stores (Apple and Google), German products often cannot achieve sufficient visibility due to their limited (marketing) budgets. The market share for German games lies below 10%, according to the German authorities.
- (7) In this context, the situation for cultural and educational games is particularly problematic, according to the German authorities. They are the target of the Bavarian support scheme.
- (8) Culturally valuable games have similar production costs, but significantly smaller markets compared to so-called "global games". Therefore the economic risks associated with their production are higher. According to the German authorities, it is difficult to obtain private funding for the production of such games and the market pressures games developers not to emphasise the culturally European elements of their game in order to sell to global audiences.

¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1, http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf.

² BIU (2016). Jahresreport der Computer- und Videospiegelbranche in Deutschland 2016, https://www.biu-online.de/wp-content/uploads/2016/07/BIU_Jahresreport_2016.pdf.

³ Medienpädagogischer Forschungsverbund Südwest (mpfs) (2016). JIM-Studie 2016 – Jugend, Information, (Multi-)Media, https://www.mpfs.de/fileadmin/files/Studien/JIM/2016/JIM_Studie_2016.pdf.

- (9) The Guidelines for support of Bavarian digital games (*Bayerische Richtlinie für die Förderung digitaler Spiele*) and the general budget rules of the Free State of Bavaria form the legal bases of the scheme.
- (10) The scheme will be in place until 31 December 2020. The measure will not enter into force before approval by the European Commission.

2.2. Budget, beneficiaries, aid forms, amounts and intensities

- (11) The budget of the support, financed from the general budget of the Ministry of Economics, will equal EUR 1.3 million in 2017 and EUR 1.9 million in the subsequent years (subject to approval by the Bavarian Parliament). The overall budget until the end of 2020 equals EUR 7 million.
- (12) The measure consists of support for a) concept development, b) prototype development and c) production.
- (13) The measure targets studios and undertakings that are active in the development or distribution of digital games. In order to benefit from the aid, the undertaking has to have (or commit to set up) a permanent establishment, branch or seat in Bavaria, at the moment the aid is paid out.
- (14) Concept development support consists of grants of up to EUR 20 000. In case of subsequent prototype development and/or production funding, the concept development costs can no longer be included in the budget calculations.
- (15) Prototype development support consists of interest-free, repayable loans of up to 80% of the estimated development costs, capped at maximum EUR 80 000 (EUR 120 000 for particularly complex projects). The loan has to be reimbursed if there is a market launch or sale of rights in the five years following the aid payment. The prototype development costs cannot be included in the budget calculations of possible subsequent production support. Part of the budget must be covered by the beneficiary's (non-specified) own investment.
- (16) Production support for games consists of conditionally repayable interest-bearing loans. Support is limited to 50% of production costs, up to maximum EUR 500 000. An own investment by the beneficiary of at least 10% is required. The reimbursement of the loan will typically occur on the basis of domestic and foreign revenues, at a rate of 50% of the proceeds that are due to the beneficiary. The reimbursement obligation ends at the earliest three years after the market launch.
- (17) The aid can be cumulated, within the limits of possible maximum aid intensities laid down by German or European law. The granting authority will verify that these limits are respected. However, the aid cannot be cumulated with other support from the Free State of Bavaria.

2.3. Eligibility criteria, selection procedure and award conditions

- (18) The supported games must have an age rating of at most "16 years and up" or an equivalent classification from a valid control system for the German market.
- (19) An award committee of the Bavarian film and television fund (FilmFernsehFonds Bayern) will propose certain projects for support to the LfA Förderbank Bayern.

For those applications recommended by the award committee, the LfA Förderbank Bayern examines the calculation and the financing plan as well as the other support conditions. In case of doubts, it may send the application back to the award committee. The LfA Förderbank Bayern also handles the allocation of funds.

- (20) The award committee operates independently and consists of the director of the FilmFernsehFonds Bayern, a representative from the Bavarian Ministry of Economic Affairs and Media, and at least five other members with a business or academic background of relevance to the field of game development.
- (21) The award committee makes its selection on the basis of the criteria outlined in the table below. At least two criteria of Group 1 and two of Group 2 (of which at least II.1 or II.2) must be fulfilled, as well as at least one criterion of Group 3.

GROUP 1: Cultural context and cultural content
1. The setting of the game is in Germany, the European Economic Area (EEA) or has historical references to it.
2. The main characters relate to Germany or the EEA, or represent a personality of the German or European world history, or a fictional figure of German or European cultural history.
3. The game is released at least in a German-language version.
4. The game's theme, motives or ideas relate to Germany or the EEA. For example: a) The game's design or story grasp Germany's culture (daily life, popular culture, gaming culture, youth culture, high culture, learning culture, media culture, etc.), its society, identity, history or other aspects of life in Germany or the EEA. b) The game's story is based on a literary work, film, television or other basis related to the German or European (language) area, for instance including fairy tales, stories and science fiction. c) The game finds its origin in the German games tradition or develops it further. d) The game represents aspects of the regional diversity of Germany or the EEA. e) The game is a reflection of Bavarian or German cultural heritage. <i>The cultural context and content can in exceptional cases also be non-European, if it is very clearly outlined and particularly creative or innovative, as well as having fulfilled a particularly large number of criteria of groups 2 and 3.</i>
GROUP 2: Cultural/creative hub
1. The project has a particular effect on the domestic cultural and creative industries, for example because a substantial part of the creative work (concept development, programming, music recording) takes place in Bavaria.

<p>2. At least 50% of the team members have their residence in Bavaria, are subject to taxation there or are otherwise familiar with the Bavarian culture (for instance because of their qualifications acquired in Bavaria or through spending a relevant amount of time in Bavaria or Germany). The following team members must fulfil this condition in any case:</p> <p>a) producer</p> <p>b) lead writer/ concept developer/author</p> <p>c) leading composer/sound designer</p> <p>d) art director</p> <p>e) technical director</p> <p>f) leading game designer</p>
<p>3. Promotion of young professionals: the team includes graduates from universities or institutes of higher education of up to two years ago:</p> <p>a) Graduates of universities or colleges situated in Bavaria.</p> <p>b) Graduates from foreign universities or colleges, currently residing in Bavaria.</p>
<p>GROUP 3: Artistic, creative and technological innovation</p> <p><i>The game is particularly creative or innovative in the following areas:</i></p>
<p>1. Narrative or game structure.</p>
<p>2. Design of the characters, the setting, the story or the surroundings.</p>
<p>3. The game's music.</p>
<p>4. Interactivity, multi-player functionality, user interface, user-generator content.</p>
<p>5. Use of Artificial Intelligence.</p>
<p>6. Use of new technologies for the development, implementation or application of the game.</p>

- (22) The German authorities do not possess sufficiently detailed market data on the games sector to be able to determine an accurate prevision of the share of games that is expected to pass the selection procedure. On the basis of a limited sample, consisting of the top 20 PC and console games that were released in March 2017, the German authorities estimate the pass rate of the scheme at 25%.
- (23) The beneficiaries are not permitted to subcontract more than 50% of the recognised production costs of the project.

2.4. Other elements

- (24) The German authorities commit to publish individual aid amounts of more than EUR 500 000 on the Transparency Award Module "TAM". In practice, this is not expected as the maximum aid amount under the scheme equals EUR 500 000 (see paragraph (16)). All funded projects are also published on the website of the Bavarian film and television fund.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (25) The German authorities consider the scheme to constitute State aid within the meaning of Article 107 (1) TFEU.
- (26) According to Article 107 (1) TFEU, *"Save as otherwise provided in the Treaties, 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"*.
- (27) The measure is financed from the general budget of the Ministry of Economics and as such the Free State of Bavaria (see recital (11)).
- (28) Under the scheme, undertakings active in the games development and distribution sector (see recital (13)) receive an economic advantage in the form of grants or conditionally repayable loans that serve to reduce their production costs.
- (29) The support is limited to a particular sector, i.e. companies in the video games sector and is therefore selective.
- (30) The measure distorts competition and affects trade between Member States, as the video games sector has an international character (see e.g. recital(4)).
- (31) Therefore the Commission considers that the digital games scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility of the aid measure

3.2.1. General legality

- (32) Beneficiaries are not required to be a national undertaking established under national law. Only at the moment of the payment of the aid, a seat, branch or permanent establishment has to be set up.
- (33) The eligibility and selection criteria that ensure the Bavarian cultural character of the scheme do not require team members to have the German nationality or residence.
- (34) Among the selection criteria is a requirement related to the inclusion of recent graduates in the team. The criterion, which is not compulsory, does not introduce discrimination on nationality grounds. The requirement rather encourages the transfer of know-how and expertise between the Bavarian games sector and related education.

- (35) There are no direct territorial spending conditions, requiring the beneficiaries to spend a certain amount (of aid) in the German territory, attached to the scheme.
- (36) Among the selection criteria (see paragraph (21)), the execution of a substantial part of the creative work in Bavaria forms one of the ways in which potential beneficiaries can demonstrate their connection to a Bavarian cultural/creative hub. However, it is possible to demonstrate this connection in other ways, by including sufficient recent graduates and other team members that can demonstrate a link with the Bavarian culture.
- (37) The German authorities have also introduced a limit for subcontracting expenditure, which has been set at 50% of the production budget. This ensures that an essential part of the game development is done by the beneficiary itself, while providing him with sufficient flexibility to outsource certain tasks. The notion of limiting subcontracting expenditure is in line with Commission case practice in the video games sector⁴.

3.2.2. Promotion of culture in line with Article 107 (3) (d) TFEU

- (38) According to the Free State of Bavaria, the proposed measure is cultural aid in accordance with Article 107 (3) (d) TFEU.
- (39) Article 107 paragraph 3 (d) of the TFEU states that “*aid to promote culture and heritage conservation may be considered to be compatible with the common market where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*”.
- (40) The Commission has not developed guidelines for the application of this provision on aid to games. Recital 24 of the 2013 Cinema Communication⁵ states that aid measures to support games are addressed on a case-by-case basis. Nevertheless, the Commission applies the aid intensity of the Cinema Communication by analogy to aid schemes for educational or cultural games of which the necessity can be demonstrated.
- (41) The assessment of video games support on the basis of Article 107 (3) (d) TFEU is in line with Commission practice⁶ in this sector.

⁴ See cases C47/2006 – France - Crédit d'impôt pour la création de jeux vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C47_2006; SA.36139 (2013/C) - UK - Video games tax relief, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36139; SA.33943 – France - Prolongation du régime d'aide C 47/2006 - Crédit d'impôt en faveur de la création de jeux vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33943 ; SA.39299 (2014/N) – France - Crédit d'impôt en faveur de la création de jeux vidéo – modifications, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39299; SA.47892 (2017/N) – France - Crédit d'impôt en faveur de la création de jeux vidéo – modifications et prolongation - http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47892.

⁵ Communication from the Commission on state aid for films and other audiovisual works, Official Journal of the European Union, 15.11.2013, C 332, pp. 1-11.

⁶ In the video games sector, the Commission has so far approved aid on the basis of the cultural derogation in cases C47/2006 – France - Crédit d'impôt pour la création de jeux vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C47_2006; SA.36139 (2013/C) - UK - Video games tax relief, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36139; SA.33943 – France - Prolongation du régime d'aide C 47/2006 - Crédit d'impôt en faveur de la création de jeux

- (42) The Bavarian digital games scheme aims to support the development of high-quality, culturally or pedagogically valuable digital games. In order to ensure that the selected projects fit this goal, an extensive selection procedure has been set up, with detailed criteria and involving an expert award committee (see section 2.3).
- (43) The selection process ensures that only digital games of high-quality, which are culturally or educationally valuable, can be supported under the scheme. It puts emphasis on the cultural content of the game, its innovative character and its cultural affiliation with the Bavarian games and/or educational community (see recital 21).
- (44) On the basis of the limited data available, the German authorities estimate the pass rate of the scheme at 25%, which is in line with the selectivity of other games schemes approved by the Commission⁷.
- (45) The Commission is therefore satisfied that the provisions of the Bavarian digital games scheme ensure that the aid is granted to promote culture in line with Article 107 (3) d) TFEU.

3.2.3. *Appropriateness, necessity and proportionality of the measure*

The scheme is the appropriate instrument

- (46) The German authorities have explained that the culturally valuable games that are targeted by the measure are particularly risky to produce and therefore depend on support to be realised. The Commission therefore considers that the measure is appropriate in view of the stated objectives of the scheme and the inherent difficulties for the market to achieve those objectives.
- (47) The grants and conditionally repayable loans form adequate support tools to achieve this goal, while there may be a (partial) reimbursement of the aid in case a supported game is particularly successful in the market.
- (48) The design of the scheme, in particular the eligibility and selection criteria, allow public support to be channelled to Bavarian digital games of educational and/or cultural value, making it appropriate for the achievement of the cultural objectives of the German authorities.

Necessity of the scheme

- (49) The German authorities have underlined that culturally valuable games have similar production costs, but significantly smaller markets compared to "global

vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33943 ; SA.39299 (2014/N) – France - Crédit d’impôt en faveur de la création de jeux vidéo – modifications, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39299; SA.47892 (2017/N) – France - Crédit d’impôt en faveur de la création de jeux vidéo – modifications et prolongation - http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47892 ; SA.45735 (2017/N) – Denmark – Scheme for the development, production and promotion of cultural and educational digital games, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45735.

⁷ In particular the UK video games tax relief and French video games tax incentive (see footnote 4), which put forward a pass rate of around 30%.

games". Therefore the economic risks associated with their production are higher and it is difficult to access market financing for the production of such games.

- (50) The aid can therefore be considered necessary in order to foster the production of culturally relevant games. Taking into account the commercial market pressures, less Bavarian, German or European cultural elements would be present in the produced games in the absence of aid.
- (51) The limited available market data confirm that the German games market is dominated by globalised games.
- (52) In light of the above, the Commission concludes that the necessity of support in view of incentivising the production of Bavarian or German high-quality, culturally or pedagogically valuable digital games is demonstrated.

Proportionality of the scheme

- (53) The scheme has a limited budget and the aid amounts are also relatively small (recitals(11), (14), (15) and (16)).
- (54) The aid is proportional since support under the scheme is limited to 50% of production costs. The aid can be cumulated with other types of support, within the limits set by German and European law. This is in line with the provisions of the 2013 Cinema Communication, which are applicable to the games sector by analogy.

3.2.4. Limited distortion of competition and effect on trade

- (55) The small budget and aid amounts of the scheme in comparison with the large size of the global games market (see recitals (4) and (11)) result in a limited market impact.
- (56) The requirements set by the German authorities with regard to subcontracting, in line with earlier case practice mentioned before (recital(37)), can be considered acceptable by the Commission as a means to ensure that the beneficiaries are the ones taking responsibility for the actual development of the game.

3.2.5. Transparency

- (57) The commitments of the German authorities with regard to the publication of information on the aid scheme (see recital (24)) are in line with the transparency provisions contained in several Communications⁸.

⁸ See the Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (C(2014) 3349/2), http://ec.europa.eu/competition/state_aid/modernisation/index_en.html#.

3.2.6. Conclusion

- (58) Overall, the Commission takes the view that the aid will not unduly strengthen the market power of beneficiary firms or hamper the dynamic incentives for market operators, but, on the contrary, will increase the diversity of supply on the games market. The possible distortions of competition are outbalanced by the expected positive cultural results of the scheme. The Commission therefore concludes that the Bavarian digital games scheme can be considered compatible with the internal market pursuant to Article 107 (3) d) 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) (d) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

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