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C(2020) 2623 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.48582 (2017/FC) – Germany
Alleged State aid in favour of Maritim Group and KHI Immobilien GmbH (Ingolstadt)**

Excellency,

1. PROCEDURE

- (1) On 4 July 2017, *IGHOGA Region 10-Interessengemeinschaft der Hoteliers und Gastronomen Region 10 e.V.* (hereinafter: the complainant) submitted a formal complaint concerning alleged unlawful State aid in favour of the *Maritim Group* (hereinafter: Maritim) and *KHI Immobilien GmbH* (hereinafter: KHI) regarding the *Kongresszentrum* (hereinafter: CC-IN) and a neighbouring hotel in Ingolstadt, Germany.
- (2) Further to a preliminary assessment letter of the Commission services, dated 29 September 2017, and a telephone conference between the Commission services and the complainant's legal representative on 3 October 2017, the complainant filed three requests for a deadline extension¹ to provide additional comments. The

¹ The first one was dated 18 October 2017, with an extension request until 6 November 2017. The second one was dated 27 October 2017, with an extension request until 20 November 2017. The third one was dated 20 November 2017, with an extension request until 21 November 2017.

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Commission services granted all three deadline extensions. On 21, 22 and 30 November 2017, the complainant provided to the Commission comments and additional documents.

- (3) On 4 December 2017, the Commission services forwarded the non-confidential version of the complaint and the Commission services' preliminary assessment as well as a non-confidential version of the complainant's additional submission to Germany for its comments. On 14 December 2017, on request by Germany, the Commission services granted an extension of the deadline until 31 January 2018 to provide comments. On 31 January 2018, Germany submitted its comments and further information.
- (4) On 24 April 2018, the Commission services forwarded to the complainant the documents received from Germany. On 29 June 2018, the complainant submitted further comments.
- (5) In a meeting between the representatives of the complainant and the Commission services on 30 July 2018, the complainant envisaged to provide further information. On 11 October 2018, the Commission services received that submission from the complainant. .
- (6) On 16 May 2019, the complainant submitted a letter *'in the light of Article 265(2) TFEU asking for the Commission's position on the complaint'*².
- (7) On 15 July 2019, the Commission services addressed a request for information to Germany to which Germany replied on 26 August 2019, following a deadline extension until 2 September 2019, requested by Germany and accepted by the Commission services.
- (8) By letter to the complainant, dated 16 July 2019, the Commission services reiterated their preliminary assessment (particularly regarding the lack of an effect on trade between Member States) and informed the complainant that Germany has been invited to further comment on two aspects of the complaint (see request for information of 15 July 2019, recital (7)).
- (9) In a meeting with the Commission services on 25 September 2019, the complainant's legal representative indicated to provide further written comments on the Commission services' letter of 16 July 2019. The Commission services received those on 18 November 2019 (see below recital (12)).
- (10) On 10 October 2019, the Commission services sent a request for information to Germany with a deadline to reply within 15 working days from the date of receipt. Germany requested on 17 October 2019 an extension of the deadline until 28 November 2019. On 18 October 2019, the Commission services did not grant the requested extension, but instead an extension until 15 November 2019. Germany submitted further information on 15 November 2019.
- (11) On 5 November 2019, the complainant's legal representative informed the Commission services that the complainant's additional written comments as announced on 25 September 2019 would be delayed.

² German: *'(...) möchte ich Sie entsprechend Artikel 265 Absatz 2 AEUV um eine inhaltliche Stellungnahme zu unserem Beschwerdevortrag ersuchen.'*

- (12) On 18 November 2019, the Commission services received further comments from the complainant as announced on 25 September 2019 (see recital (9)) and 5 November 2019 (see recital (11)). In that submission, the complainant in the light of Article 265 (2) TFEU requested a formal Commission decision on its complaint within two months.³
- (13) On 19 December 2019, the Commission services forwarded Germany's non-confidential documents to the complainant and reiterated their preliminary assessment. On 2 January 2020, the complainant submitted comments on Germany's submission, including event statistics of its members.
- (14) By letter of 30 January 2020, the complainant asked if the Commission would adopt a formal decision on the complaint within the deadline of Article 265(2) TFEU.⁴

2. DETAILED DESCRIPTION OF THE ALLEGED AID MEASURES

- (15) The complainant alleges aid measures in favour of Maritim.

2.1. The beneficiary of the alleged aid measures

- (16) Maritim is a privately owned, mainly Germany-based hotel chain⁵, whose portfolio includes for example leisure, city and airport hotels.

2.2. The complainant

- (17) The complainant is a trade association of 14 operators and owners of hotels and restaurants in the centre of Bavaria (Germany), comprising the municipality of Ingolstadt and the surrounding districts ('*Landkreise*') of Eichstätt, Neuburg and Pfaffenhofen. The complainant's members have between 32 and 177 rooms, comprising between 69 and 250 beds, as well as between 1 and 10 event rooms with a total event surface between 65 m² and 465 m².

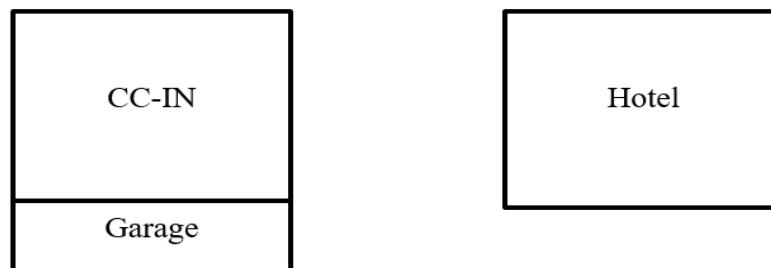
³ German: '*Daher ersuchen wir Sie, (...) innerhalb einer Frist von zwei Monaten ab Übermittlung dieses Schreibens eine endgültige Verbescheidung unserer Beschwerde vorzunehmen.*'

⁴ German: '*(...), möchten wir Sie um Auskunft darüber ersuchen, ob die Kommission innerhalb der weiteren Zweimonatsfrist nach Artikel 265 Absatz 2 Satz 2 AEUV eine solche Entscheidung anzunehmen bereit ist.*'

⁵ 45 hotels in total out of which 32 in Germany, 9 outside the EU, 4 within the EU and 1 planned in the Netherlands (at date 2 April 2020).

2.3. The chronology of the project

- (18) Maritim is the selected operator of the CC-IN. The latter will be constructed and owned by the municipality of Ingolstadt, via its 100%-subsidiary and municipal



<u>Owner:</u>	IFG (publicly owned)	KHI (privately owned)
<u>Operator:</u>	Maritim (CC-IN) IFG (Garage)	Maritim

undertaking *IFG Ingolstadt AöR* (hereinafter: IFG). Maritim will also operate a hotel to be constructed, which will be privately owned by KHI and located next to the CC-IN. Ownership and planned operation are shown in the following overview:

- (19) The chronology of the project can be presented as follows:
- (20) Initially, the municipality of Ingolstadt intended to build a unified complex of hotel and congress centre on a plot of land on the site of a former foundry (*'Gießereigelände'*). Hereto, in 2010, IFG carried out a Europe-wide tender procedure, in form a competitive dialogue, which however was unsuccessful as insolvency proceedings were opened against the remaining bidder before the contract was signed.
- (21) Subsequently, the original plan of one unified building was abandoned. Instead, it was decided to build the hotel and congress centre on two separate plots of land on the former foundry site.
- (22) In 2014, IFG selected through a tender procedure the private company KHI as the purchaser of the land on which the hotel is to be built. The call for tenders was published on 14 and 15 February 2014 in local and national press. To this end, 16 interested parties requested the documents relating to the planned sale of land. Finally, four companies submitted formal bids, out of which KHI was chosen. IFG sold the respective property to KHI on 30 September 2014. For the operation of the hotel, KHI concluded a lease contract with Maritim.
- (23) On 5 March 2015, KHI and IFG founded a partnership under German civil law, the *'Hotel-Kongress Ingolstadt Gbr mbH'* (hereinafter: HKI) with limited liability, aiming at a close coordination of planning and construction as the hotel and CC-IN are to be built next to each other. KHI owns 55 % of HKI, whilst IFG owns 45 %. The articles of the partnership contract stipulate that certain construction costs in accordance with DIN 276⁶ are to be borne by the shareholders in accordance with

⁶ DIN = *'Deutsches Institut für Normung e.V.'* (German Institute for Standardisation) is the German national organisation for standardisation and the German ISO (International Organization for

an appropriate key to be determined. On 7/8 May 2015, the shareholders of HKI further concluded an agreement on the cost allocation of certain construction costs.

- (24) The CC-IN, and the already partly built underground car park (hereinafter: Garage)⁷ will be publicly owned by IFG. Whilst the latter operates the Garage, it carried out a tender procedure for the operation of the CC-IN.
- (25) In July 2015, IFG published a call for tenders in the regional and national press and online.⁸ The respective procurement documents were requested by and handed over to a total of 14 persons/entities. All of them are based in Germany, the majority (11 out of the 14) in Ingolstadt or within a radius below 100km. Out of those 14 requests, one was made by a member of the complainant. Since out of these 14 requesting parties, only Maritim submitted a formal bid, it received the award. Subsequently, Maritim and IFG on 26/28 April 2016 signed a lease agreement for the operation of the CC-IN.
- (26) CC-IN will have a usable surface of approx. 6,600 m² (*Nutzfläche*), with a separable room for up to 1,200 visitors, a conference room for up to 300 visitors and at least six smaller seminar/meeting rooms of approx. 50 m² each and two foyer areas (700 m² and 100 m²)⁹.
- (27) According to local media¹⁰, the hotel and CC-IN are currently under construction and likely to be completed in spring 2021.

2.4. The alleged aid measures

- (28) The initial complaint, dated 4 July 2017, concerned on the one hand the planned CC-IN, to be constructed/owned by IFG and operated by Maritim, and on the other hand the Garage, to be owned and operated by IFG. Furthermore, the complaint concerned the hotel, to be constructed/owned by KHI, and operated by Maritim.
- (29) In the course of the preliminary investigation, the complainant however mainly focused all allegations on alleged aid only in favour of Maritim in its role as CC-IN operator, but formally upheld its entire initial complaint¹¹. The main streams of argumentation throughout all submissions consistently concerned the existence of (in-) direct advantages and an alleged effect on trade between Member States.
- (30) In the view of the complainant, Maritim would receive unlawful State aid in the form of a(n):

Standardization) member body. DIN Standards cover different fields of technology. DIN 276 is used in construction to determine project costs and as a basis for fee calculations for architects and engineers.

⁷ Works for the Garage had started already in 2012.

⁸ Published in: Frankfurter Allgemeine Zeitung, Süddeutsche Zeitung, Donaukurier, Allgemeine Hotel- und Gastronomiezeitung and Frankfurter Allgemeine Sonntagszeitung. Also online at: Frankfurter Allgemeine Zeitung and Süddeutsche Zeitung.

⁹ The maximum number of conference participants/seats is 2,223.

¹⁰ Press article of 25 November 2019 in *Donaukurier*, <https://www.donaukurier.de/lokales/ingolstadt/Giessereigelaende-Eine-Buehne-fuers-Kongresszentrum;art599,4401609>

¹¹ E.g. letter of complainant, dated 2 January 2020.

- (a) direct advantage for Maritim as CC-IN operator, through a contractually agreed rent, which was allegedly abnormally low compared to the market price based on an alleged flawed tender procedure;
- (b) indirect advantage for Maritim as hotel operator, through the sale of the publicly owned plot of land on which the hotel will be built and owned by KHI, allegedly not based on an open and non-discriminatory tender procedure;
- (c) indirect advantage for Maritim as hotel operator through coverage of certain hotel construction costs by IFG;
- (d) indirect advantage for Maritim as hotel operator since it can allegedly use the congress facilities of CC-IN, avoiding the need to build such facilities itself;
- (e) indirect advantage for Maritim as hotel operator through the municipality's advertisement of the hotel in connection with CC-IN¹²;
- (f) indirect advantage for Maritim as hotel operator through the use of the Garage below the CC-IN.

2.5. Complainant's main arguments

- (31) The complainant's main arguments are described in the following subsections:

2.5.1. Alleged direct advantage in favour of Maritim as CC-IN operator

- (32) The complainant contests the allegedly exceptionally low rent for the CC-IN of [amount and calculation of rent]*.¹³ This would allegedly result in a rent of [amount of rent]. According to the complainant, such a rent does not correspond to a market price as the tender for the operation of the CC-IN was allegedly flawed.
- (33) The complainant argues that by failing to fulfil its obligation to conduct a competitive, transparent, non-discriminatory and unconditional tender, IFG granted Maritim an advantage within the meaning of Article 107 (1) TFEU. IFG allegedly deliberately structured the call for tenders for the operation of the CC-IN in such a way that only Maritim was able to submit a credible bid. The complainant presumes that prior to the start of the tender procedure, IFG had already negotiated with Maritim the future structure of the operation of the CC-IN. It mentions that, from the outset, the CC-IN planning did not include kitchen equipment, so that a caterer would necessarily have to access the kitchen equipment of the adjacent hotel operated by Maritim. Without the possibility of such a catering service, no potential bidder other than Maritim would thus have an economic interest in

¹² In that regard the complainant alleges a uniform advertisement of CC-IN and hotel in the course of a tourism trade fair ('Internationale Tourismus Börse').

* Confidential information.

¹³ See however clarifications by Germany in recital (41) and footnote 17.

operating the CC-IN. The complainant also indicated that under national (procurement) law, it could not appeal the procurement procedure.¹⁴

- (34) Further, the complainant submitted an internal draft resolution dated 10 November 2015 for an IFG board meeting on 23 November 2015, from which it results that Maritim's participation in the tender of the CC-IN operation is subject to the conclusion of the contract for the hotel operation with KHI.
- (35) To support its arguments of an advantage, the complainant refers to the Commission Notice on the Notion of State aid (hereinafter: NoA)¹⁵. In the complainant's view, Germany did not meet the specific requirements set out in paragraphs 89 et seq., thereby rendering the presumption that the successful bid corresponds to market conditions inapplicable in the present case. The complainant argues that, since only one bid was submitted, paragraph 93 NoA lays down special conditions for ensuring the market price, which Germany has not fulfilled. The complainant suggests that Germany has the burden of proof for the market-conformity of the rent.

2.5.2. *Alleged indirect advantages in favour of Maritim as hotel operator*

- (36) The complainant brings forward additional arguments related to some of the various alleged indirect advantages for Maritim in its capacity as hotel operator (see recital (30)).
- (37) The complainant suspects that through the above-mentioned agreement on the cost allocation between IFG and KHI within the framework of their common subsidy HKI (see recital (23)), the publicly-owned company IFG would cross-finance certain construction costs of the private hotel owner KHI. Those costs would e.g. concern the hotel façade and driveway. The complainant claims that such a cross-financing would ultimately benefit Maritim as the hotel operator (see recital (30) lit. c).
- (38) The complainant further alleges that Maritim as hotel operator would indirectly benefit from publicly financed facilities of the CC-IN (such as congress facilities and a guest terrace), since it does not have to build these itself, but Maritim's guests could use them in the CC-IN (see recital (30) lit. d).

2.5.3. *Effect on trade between Member States*

- (39) As regards a potential effect on trade between Member States, the complainant argues twofold: Firstly, the relevant sector to be looked at, in its view, is the 'convention hotel' sector. Ingolstadt accommodation statistics would show 30.71% foreign guests in 2016. Secondly, the complainant presents event statistics of its members that are said to prove that in 2018 between 20 and 45 % of the events in its members premises were - by the complainant's own definition - 'international'

¹⁴ The complainant argued that there were no remedies for that type of public contract/concession and that anyhow a potential national procurement remedy would have been inadmissible due to the lack of legal standing and elapsed deadlines. Neither was the complainant entitled to apply for interim measures.

¹⁵ 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.

events¹⁶. The complainant also refers to the presence of the automobile manufacturer *Audi AG* (hereinafter: Audi) in the municipality of Ingolstadt resulting in an international focus of the CC-IN.

2.6. Arguments of Germany

- (40) In response to the complainant's allegations, Germany argues that the measures do not fall within the concept of State aid pursuant to Article 107 (1) TFEU. Germany claims that there is no advantage in favour of Maritim, as in particular the agreed rent for the operation of the CC-IN corresponds to a market price. In addition, the measures do not have an effect on competition or trade between Member States.

2.6.1. Arguments related to an alleged direct advantage for Maritim as CC-IN operator

- (41) With regard to the agreed rent for the operation of the CC-IN, Germany first clarified the facts, providing evidence, including the lease contract. According to that contract, [details on elements of the rent]¹⁷.
- (42) Germany considers this rent to be in line with market conditions as it was determined based on an open, non-discriminatory and unconditional tender procedure.
- (43) Germany argues that Maritim was neither pre-selected nor preferred for the operation of the CC-IN and assures that the CC-IN was to be constructed in accordance with the needs/requirements of the respective best bidder. In the tender procedure, there was no indication that kitchen or catering equipment could not be provided at the CC-IN. Rather, it was left to the bidder to decide on the division, arrangement and design of the congress and meeting rooms as well as the other necessary ancillary rooms within the framework of the given external dimensions of the building. The bidder could therefore decide whether and to what extent he would create space in the leased property for the catering of the events, either through a kitchen or through corresponding space for a catering model. According to Germany, the 13 other requesting parties (except Maritim) were primarily interested in offering catering services, but not in operating the CC-IN as a whole, and therefore lost interest before submitting a bid.
- (44) Further, Germany argues that [circumstances of setting the rent]. On this basis, the lease contract was concluded while taking into account the mutual interests and risks of both parties without any subsidies and assumption of losses by IFG.
- (45) In addition, Germany stresses that prior to the conduct of the tender procedure, IFG carried out an analysis of the conditions under which congress centres are operated and marketed in various comparable cities in Germany. An analysis showed that there are no standard lease/operator contracts that are customary in the industry as each contract is characterized by location, company and/or property-specific regulations. Germany found during its analysis that the operation of comparable

¹⁶ See complainant's submission of 2 January 2020. On 18 November 2019, the complainant had submitted another statistic of one of its members, showing that the highest number of participants per event was 142, for an event, which the complainant itself classified as 'national'. In the complainant's self-designed category 'international', the biggest event had 108 participants.

¹⁷ [Method for calculation of the rent].

congress centres generated losses, which are borne in full or to a certain extent by the respective owner/lessor vis-à-vis the tenant/operator.¹⁸ To the contrary, according to the agreement between IFG and Maritim, the full operational risk lies solely with Maritim.

2.6.2. *Arguments related to alleged indirect aid in favour of Maritim as hotel operator*

- (46) Germany points out that the operation of the hotel was not assigned by IFG, who sold the property for the hotel in a tender procedure (as described in recital (22)). Hotel and CC-IN will each be built on separate plots owned by different owners. Both are independent buildings with an extension on two sides. Hotel and CC-IN are operated independently, based on individually concluded lease agreements.
- (47) With regards to alleged indirect advantages to Maritim as hotel operator through cross-financing of KHI's constructions costs, Germany states that the basis for the distribution of construction costs is transparent as they are determined in line with the approved cost calculation of the general planner (cost calculation according to DIN 276¹⁹). Each cost position is allocated to the respective owner/building, where it arises, thus ensuring complete and comprehensible recording of the construction costs.
- (48) With reference to the argument of a uniform advertising, Germany emphasises that *Ingolstadt Tourismus und Kongress GmbH* (hereinafter: ITK), a wholly-owned subsidiary of IFG, provides information to interested parties about existing conference and hotel capacities in a neutral manner and thus without any respective preference for individual providers. According to Germany, there are no agreements between the municipality of Ingolstadt or IFG and third parties on joint advertising. Germany also stressed that, contrary to the complainant's allegation, neither the city of Ingolstadt, nor IFG nor ITK advertised the CC-IN and the hotel at the 'Internationale Tourismusbörse'.²⁰
- (49) Regarding the usage of the Garage, Germany clarified that IFG will construct and manage the Garage as a public parking space for which each user pays a fee according to the relevant tariff for parking facilities of IFG in the municipality of Ingolstadt. Neither hotel nor CC-IN have reserved parking spaces.

2.6.3. *No effect on trade between Member States*

- (50) Germany repeatedly stressed the local character of the CC-IN. Reference data of comparable centres in the region, namely the cities Ulm and Würzburg, show that

¹⁸ Germany claims according to a 2010 survey by the European Association of Event Centres ('*Europäischer Verband der Veranstaltungs-Centren e.V.*' (hereinafter: EVVC)), congress centres comparable to the CC-IN are generally subsidised by the respective municipalities in Germany (49 percent of the participants in the survey did not pay any rent, only 17 of the respondents answered the question about the amount of the rent, with around 41 percent of the respondents paying a rent of up to EUR 100,000). Germany refers to the city of Wiesbaden, where the *Rhein-Main Congress Center* (hereinafter: RMCC) received operating subsidies amounting to EUR 11.2 million for 2019. In order to further underline the rent's market-conformity, Germany highlights two other congress centres in comparable cities in terms of size and population (*Stadthalle [city 1]* and *Stadthalle [city 2]*) whose respective rent, according to Germany, is [information on rent amount].

¹⁹ See footnote 6.

²⁰ To support its comment, Germany provided photographs of the respective stands at the trade fair.

in the period from 2017 to 20 October 2019, 99% of usage requests relate to regional or national events whilst only 1 % could be characterised as international events. Moreover, according to Germany, Maritim as CC-IN operator targets and expects mainly regional events, such as high school balls of the local schools ('*Abiturbälle*'), events of local associations (e.g. Rotary or Lions Club), municipal parties in addition to information and election events. Germany expects that those events account for the majority of CC-IN's revenues. In that regard, Germany provided lists of past events in other congress centres in the same region.

- (51) Regarding the Audi presence in Ingolstadt, Germany claims that the CC-IN is far too small for e.g. company product presentations. Further, the Audi Academy in the immediate vicinity is already available for the company's employee training events or smaller business meetings; as are the event rooms available to Audi, notably the *Audi-AG-Konferenzcenter*, *Audi-Forum*, *AVUS am Audi-Forum* as well as *Audi-Sportpark*. Moreover, Germany underlines that to the knowledge of IFG, there is no agreement between Maritim and Audi on a specific use of the CC-IN by Audi. According to Germany, the fact that Audi also operates internationally does not yet classify the company as an international organizer since Audi is still an enterprise based in Germany and its events in Germany can therefore only qualify as German events. Even if Audi organizes an event at which also guests from abroad participate, this does not result in an international orientation of the CC-IN, since apart from the occasional foreign participants, such events do not target the general international public (tourists, etc.) nor make them relevant to the EU internal market in terms of number and size.
- (52) In addition, Germany does not consider the municipality of Ingolstadt as a city, which is in principle attracting users of congress centers in other Member States.

3. ASSESSMENT OF THE MEASURE/EXISTENCE OF AID

- (53) In the following, the Commission analyses whether the alleged measures constitute state aid. According to Article 107 (1) TFEU, '*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*'.
- (54) In order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the measure has to be granted from State resources and must be imputable to the State, (ii) it has to confer an advantage on undertakings, (iii) the advantage has to be selective, and (iv) the measure has to distort or threaten to distort competition and affect trade between Member States.
- (55) As explained below, the Commission concludes that the contested measures neither confer an advantage within the meaning of Article 107 (1) TFEU, nor indicate to (threaten to) distort competition or affect trade between Member States.

3.1. No advantage

- (56) The Commission has in detail analysed the complainant's allegations and did not identify a direct or indirect advantage within the meaning of Article 107 (1) TFEU.

3.1.1. No direct advantage for Maritim as CC-IN operator

- (57) The Commission first analysed a potential direct advantage for Maritim as CC-IN operator. It should be pointed out that if transactions are carried out following a competitive, transparent, non-discriminatory and unconditional tender procedure in line with the principles of the TFEU on public procurement, it can be presumed that those transactions are in line with market conditions, provided that certain conditions are fulfilled.²¹
- (58) The Commission takes note of Germany's statement that IFG has fulfilled its obligation to conduct such a competitive, transparent, non-discriminatory and unconditional tender procedure for the operation of the CC-IN, resulting in Maritim as selected operator. However, if only one bid is submitted, pursuant to paragraph 93 NoA, the respective tender procedure would normally not be sufficient to ensure a market price, unless '(i) there are particularly strong safeguards in the design of the procedure (...) or (ii) the public authorities verify through additional means that the outcome corresponds to a market price'.
- (59) The mere fact that only one bid was submitted does however not result in the reverse presumption (see recital (57)), i.e. a direct indication that the contested measure is not in line with market conditions. Only one submitted bid is not proof that an advantage indeed exists. It simply follows that in such an event an individual assessment must be carried out.
- (60) The Commission notes that, since indeed only Maritim submitted a bid, on that basis (see recital (57)) it cannot be presumed that the outcome of the tender is in line with market conditions.
- (61) However, regarding the rent paid to IFG by Maritim, the Commission considers it worthwhile to note, that, [information on rent amount]²². In fact, [information on rent amount] (see recital (41) and footnote 17 for rent calculation based on lease agreement provisions).
- (62) The contractually agreed rent between IFG and Maritim, according to Germany, was determined based on a comparison with other rents that comparable conference center operators are paying in the same region in Germany (see Germany's comments in recital (45)). Compared to the rent of those centers mentioned, the CC-IN rent will be set at a higher end of the range of these amounts. The rent of two other congress centres in comparable cities in terms of size and population²³ (*Stadthalle [city 1]* and *Stadthalle [city 2]*) is, according to Germany, even lower than [...], which further indicates market conformity. Both facilities are also comparable with the CC-IN in terms of size and structure.²⁴

²¹ See NoA paragraph 89.

²² [Circumstances of setting the rent] (see recital (44)), which constitutes an indication that the German authorities tried to maximise the level of the rent beyond the mere organisation of a tender procedure.

²³ In terms of population and size, the municipality of Ingolstadt (total area: 133.4 km²/population: 138,716 in 2019) ranks roughly between the cities of [information on area and population of city 1] and [information on area and population of city 2].

²⁴ The CC-IN is intended to consist of only 1 large conference hall in addition to 6-8 smaller rooms with a planned surface in total of 6,600 m² (the maximum number of conference participants/seats is 2,223); the *Stadthalle [city 1]* comprises a total area of approx. 2,140 m² and a max. total capacity of up to

- (63) The Commission thus concludes that there is no direct advantage for Maritim as CC-IN operator.

3.1.2. No indirect advantages for Maritim as hotel operator

- (64) Regarding the various alleged indirect advantages for Maritim (see recital (30) lit. b to f), the Commission considers that there are no such indirect advantages.
- (65) In particular, regarding the alleged indirect advantage for Maritim as hotel operator due to a flawed tender of the hotel land sale to KHI, the Commission takes note of the competitive, transparent, non-discriminatory and unconditional tender procedure regarding this sale as described above (see recital (22)). It can thus be presumed that this transaction is in line with market conditions. The complainant has not brought forward any arguments/facts that would rebut this presumption. There are no substantial facts indicating an erroneous procedure. Even if this transaction was not market conform, it seems not apparent how Maritim as hotel operator, would benefit.
- (66) Furthermore, with regard to the alleged cross-financing of hotel construction costs, indirectly benefitting Maritim as hotel operator, it should be noted that the construction costs are shared transparently via HKI between IFG and KHI, in accordance with the applicable national standards (cost calculation according to DIN 276²⁵).
- (67) The Commission further notes that hotel and CC-IN will each be built on separate plots owned by different owners and operated autonomously, based on individually concluded lease agreements. Therefore, it is not apparent how Maritim as hotel operator could indirectly benefit from the possibility of using the congress capacities of the CC-IN. In particular, given that, on the one hand, alleged arrangements for a joint use of facilities have repeatedly been denied by Germany and, on the other hand, as they were not sufficiently substantiated by the complainant.
- (68) In addition, the Commission rejects the argument of a de facto advantage for Maritim as hotel operator through conference participants having the possibility to stay overnight in the neighboring hotel. A potential impact on guest-nights in the hotel – if any at all²⁶ – through events in the neighboring CC-IN, would in the Commission’s view be a simple consequence of the CC-IN construction, i.e. result of a development in the market. Such overnight stays would not result from Maritim operating the CC-IN, but could rather result from the fact that hotel and CC-IN are located next to each other. It seems that – had a different entity been chosen as operator of the CC-IN – the number of overnight stays would likely have been affected (if at all) in the same vein.

3,500 visitors (the Great Hall alone covers an area of 1,500 m² and can accommodate up to 2,300 people); *Stadthalle [city 2]* offers space for up to 2,600 visitors in the Great Hall, which covers an area of 928 m² (up to 14 other rooms are available from 22 m² to 97 m² in addition to one Small Hall which can hold up to 600 guests).

²⁵ The applicable standard in construction to determine project costs and as a basis for fee calculations for architects and engineers, see footnote 6.

²⁶ As described below (see section 3.2), it appears that the majority of events will be local in their nature.

- (69) The Commission takes note of Germany's statement (see recital (48)) that there are no agreements between the municipality of Ingolstadt or IFG and third parties on joint advertising and that CC-IN and hotel have not been advertised at the 'Internationale Tourismusbörse'. To the contrary, the complainant does not bring forward any substantiated facts regarding its allegation of a uniform advertising of CC-IN and hotel by the municipality. It is therefore neither apparent how Maritim could benefit from such an alleged but not proven uniform advertising.
- (70) With regard to the allegations concerning the use of the Garage, IFG will construct and manage it as a public parking space for which all users will be required to pay a fee according to the relevant tariffs. Neither the hotel nor the CC-IN have reserved parking spaces (e.g. article 1 paragraph 5 of the lease agreement between IFG and Maritim clarifies that parking areas and parking spaces are not part of the relevant lease agreement). Therefore, there is no advantage for Maritim.
- (71) The Commission thus concludes that the alleged indirect advantages (see recital (30) lit. b to f) are not supported by the evidence and that Germany consequently did not grant any advantage within the meaning of Article 107(1) TFEU.

3.2. No effect on trade between Member States

- (72) Furthermore, even if there was an advantage (*quod non*), the Commission considers that the alleged measures cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
- (73) In that regard, the Commission confirms the views, repeatedly expressed in previous preliminary assessments of its services addressed to the complainant (see recitals (2) and (8), preliminary assessment letters of 29 September 2017 and 16 July 2019).
- (74) The Commission notes that an effect cannot be hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and has an effect on trade between Member States²⁷. It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States²⁸. 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. It must however be explained how and on what market competition is

²⁷ See, for instance, Judgment of the General Court of 6 September 2006, *Commission v Italian Republic and Wam SpA*, Joined Cases T-304/04 and T-316/04, ECLI:EU:T:2006:239, paragraph 63; confirmed by Judgment of the Court of Justice of 30 April 2009, *Commission v Italian Republic and Wam SpA*, C-494/06 P, ECLI:EU:C:2009:272, paragraph 57.

²⁸ See, for instance, Judgment of the General Court of 15 June 2010, *Mediaset v Commission*, Case T-177/07, ECLI:EU:T:2010:233, paragraphs 145-146, confirmed by Judgment of the Court of Justice of 28 July 2011, *Mediaset SpA v Commission*, C-403/10 P, ECLI:EU:C:2011:533, paragraphs 111, 113 and 115; Judgment of the Court of Justice of 8 September 2011, *Commission v Netherlands*, C-279/08 P, ECLI:EU:C:2011:551, paragraph 131.

affected or likely to be affected by the aid,²⁹ based on the foreseeable effects of the measure.³⁰

- (75) In that respect, the Commission has in a number of decisions³¹ considered that certain activities, due to their specific circumstances, have a purely local impact and consequently no such effect if the following criteria are met: First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.³²
- (76) In any event, each Commission's analysis whether trade between Member States is affected and competition is distorted, requires an individual assessment on a case-by-case basis.
- (77) Based on the available information, the events held at the CC-IN will concern mainly activities related to the municipality of Ingolstadt in order to meet a local demand for venue possibilities (limited area) and are therefore unlikely to attract more than a negligible number of international participants. The effect of the CC-IN on the conference facilities/congress market thus appears to be very limited and of purely local nature.
- (78) This is based on various indicators such as size of the project (see below section 3.2.1), the local catchment area (see below section 3.2.2), the lack of international attraction/promotion of the CC-IN (see below section 3.2.3) and a comparison with the national market (see below section 3.2.4).
- (79) In this respect, the Commission's recent case practice in relation to conference centres equally supports this finding. In terms of size and international scope, the CC-IN does neither fall into the same category as the Congress Center in Hamburg (hereinafter: CCH³³) nor the International Congress Centre in Katowice (hereinafter: ICC³⁴), both of which the Commission considered to have an effect on trade between Member States (see below sections 3.2.1 and 3.2.2).

²⁹ See Judgment of the General Court of 22 February 2006, *Le Levant 001 and others v Commission*, Case T-34/02, ECLI:EU:T:2006:59, paragraph 123.

³⁰ See, for instance, Judgment of the Court of Justice of 30 April 2009, *Commission v Italian Republic and Wam SpA*, C-494/06 P, ECLI:EU:C:2009:272, paragraph 57; Judgment of the General Court of 6 July 1995, *AITEC and others v Commission*, Joined Cases T-447/93, T-448/93 and T-449/93, ECLI:EU:T:1995:130, paragraph 141.

³¹ See, for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; 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.

³² Paragraph 196 NoA.

³³ See the Commission Decision of 7 April 2017, SA.42545 (2015/N), *Revitalisation of the Congress Center Hamburg (CCH)*, recital 5 (hereinafter: 'CCH Decision').

³⁴ See the Commission Decision of 17 July 2013, SA.35606 (2013/N), *Poland – International Congress Centre in Katowice* (hereinafter: 'ICC Decision').

- (80) Comparing the present case to previous decisions on congress centres, in particular as regards the orientation and scale of events, the CC-IN seems rather comparable to the conference hall in Visby³⁵ (Sweden), where the Commission considered the project to be predominantly local and therefore did not find any effect on trade between Member States (see below sections 3.2.1 and 3.2.2).

3.2.1. *Size of the project*

- (81) First, CC-IN with its planned surface of 6,600 m² is a small congress centre, in particular when comparing its surface to the 18,000 m² of the CCH³⁶, which is almost three times the size.
- (82) Second, with regard to the capacity, the maximum number of conference participants/seats is 2,223 in Ingolstadt³⁷, whereas it is of 12,500 in Hamburg³⁸ and 12,000 in Katowice - i.e. more than 5 times as high.
- (83) Third, the number of planned conference rooms differ as well: In Ingolstadt, only 6-8 smaller and one large conference room³⁹ are planned.
- (84) In contrast, the CCH provides up to 50 conference rooms (variable room concept) and the ICC Katowice⁴⁰ holds apart from one large multi-purpose hall (up to 8000 people), a banquet hall (up to 1000 people), a banquet hall foyer (up to 300 people), an auditorium (up to 600 people), in addition to various conference rooms (for up to 1200 people) and exhibitor offices (up to 100 people) with the total exhibition space being 12,600 m².

3.2.2. *Local catchment area*

- (85) Another major difference between the centres in Hamburg and Katowice on the one hand and the CC-IN on the other, is their geographical location and catchment area. In the case of CC-IN, the latter is distinctly local.
- (86) First, the municipality of Ingolstadt covers an area of 133.4 km², compared to Hamburg with 755.1 km². Although Katowice, with a total area of 164 km², seems rather comparable at first glance to Ingolstadt, all other factors, such as the city's population or ICC's targeted groups/planned events clearly differ from the case of the CC-IN (see below recitals (87) et seq.).

³⁵ Commission Decision in State aid case N 486/2002 *Sweden — Congress hall in Visby* OJ C 75, 27.3.2003 (hereinafter: 'Visby Decision').

³⁶ Figures based on information submitted by Germany during the notification procedure in 2015, leading to the CCH Decision. Today (2020), the surface appears to be even bigger: 36,000 m² (see <https://www.das-neue-cch.de/informieren/daten-fakten/>).

³⁷ CC-IN will have a separable room for up to 1200 visitors, a conference room for up to 300 visitors and at least six smaller seminar/meeting rooms of approx. 50 m² each and two foyer areas (700 m² and 100 m²), see recital (26).

³⁸ See footnote 36.

³⁹ Similar to the planning of the *Congress hall in Visby* (State aid case N 486/2002) where the construction predominately focused on one large meeting room for local community events.

⁴⁰ See the Commission Decision in State aid case SA.35606 (2013/N) *Poland — International Congress Centre in Katowice* JOCE C/265/2013, 17.7.2013, footnote 1.

- (87) Second, unlike the municipality of Ingolstadt with 136,981 (2018) / 138,716 (2019) inhabitants, Katowice is more than twice as populous with 294,510 (2018); Hamburg counts even 1.89 million (2018) inhabitants.
- (88) Third, while the CC-IN has a rather local catchment area, both the CCH in Hamburg and ICC Katowice have a clearly international scope. In contrast to both conference centres, which see themselves as multifunctional congress and event centres and strive for increased recognition of their international/European events⁴¹, the CC-IN is targeting mainly local customer groups and has therefore a local catchment area. CC-IN targets essentially graduation events of the local schools ('*Abiturbälle*'), events of the local associations, municipal events of parties and information and ball events of local organizations, such as Rotary or Lions Club.⁴² Germany expects that those activities account for the large majority of its revenues.
- (89) Fourth, documents of the tender procedures for the CC-IN⁴³ indicate that primarily locally based business enterprises⁴⁴, associations and institutions; private and cultural associations alongside social groups as well as the municipality of Ingolstadt and its shareholders themselves will be using the facilities. According to Germany, experience shows that demand is made up of around 80% of local and regional customers.⁴⁵ That does however not mean, as the complainant seems to suggest, that the remaining 20% were expected to be international customers, but rather simply not local and regional ones.
- (90) Fifth, data from comparable congress centres operating in the region, namely the cities Ulm and Würzburg⁴⁶, provide a strong indication that the CC-IN will be mainly used by local and regional clients. With regard to the conference centres in these two cities, Germany indicated that 99% of inquiries in the period from 2017 to 20 October 2019 generally concerned regional or national events, while international inquiries accounted for only 1%. During the respective time period the enquiries primarily stemmed from regional or national entities. In addition, in these

⁴¹ See e.g. recital 17 of the ICC Decision and recital 39 of the CCH Decision.

⁴² In this respect, the CC-IN is rather comparable to the Visby congress hall, which was designed as a meeting place for local communities, voluntary activities of local associations and for holding various cultural events.

⁴³ See e.g. '*Aufforderung zur Abgabe eines Angebots für den Erwerb einer Teilfläche des Grundstücks FlNr. 3096/278 der Gemarkung Ingolstadt Kongresshotel auf dem ehemaligen Gießereigelände Ingolstadt, Stand 20.02.2014*' as well as '*Aufforderung zur Abgabe eines Angebots zum Abschluss eines Pachtvertrages für das Congress Centrum auf dem ehemaligen Gießereigelände Ingolstadt, Stand:15.07.2015*'.

⁴⁴ Regarding the presence of Audi as alleged by the complainant (recital (39)), it should be noted that this does not as such lead to an international orientation of the CC-IN. The Commission could not identify any evidence of possible international events in the CC-IN due to this presence (see also explanations provided by Germany in recital (51)).

⁴⁵ German: '*Für einen wirtschaftlichen Betrieb ist dabei die Nachfrage der Ingolstädter Wirtschaft von besonderem Interesse, da hier nach den Erfahrungen aus anderen Veranstaltungshäusern, der Schwerpunkt der Nachfragepotentiale liegt – d.h. erfahrungsgemäß setzt sich die Nachfrage aus rund 80% lokaler und regionaler Kunden zusammen.*'

⁴⁶ Both cities are comparable to Ingolstadt, in terms of population and location. Numbers of inhabitants: Ulm 126,540 (2019), Würzburg 130,455 (2019) and Ingolstadt 138,716 (2019). All three cities are situated in the south of Germany, Ingolstadt and Würzburg in the *Land* Freistaat Bayern and Ulm in the *Land* Baden-Württemberg, right at the border to Freistaat Bayern. Würzburg and Ulm are in located within a radius of less than 200km from Ingolstadt.

comparable centres other regional events such as events organised by local associations, municipal parties or information and election events organised by local entities were held.

- (91) Sixth, the finding of a local catchment area is also confirmed by the above-mentioned fact (see recital (25)) that all of those entities that requested the procurement documents, are based in Germany, the majority (11 out of the 14) even in Ingolstadt or within a radius below 100km.
- (92) Seventh, the Commission accepted in the CCH decision that events with a typical maximum duration of one day with approximately up to 500 and occasionally up to 1000 visitors/participants, which are mainly offered to a rather local population and for which there is little cross-border publicity, are typically qualified as local events.⁴⁷ From the information submitted by the complainant and Germany, it appears that the planned activities in the CC-IN embody such local character, as the demand for conference/seminar and event space is likely to emanate predominantly from local companies, individuals or the municipality of Ingolstadt itself. The core business of the CC-IN is to host events and conferences consisting of approximately 50 to 300 participants, i.e. mainly local events.⁴⁸
- (93) Eighth, even the list provided by the complainant (see recital (39)) of events in 2018 in its members' premises indicates the local nature of events held in the municipality of Ingolstadt. The Commission notes that the complainant's members are based in the city Ingolstadt or the neighboring region, which is why their statistics can give an indication about the events taking place in Ingolstadt. In this submission, the complainant itself categorized certain events as 'international', without indicating any benchmark for this categorization. From the provided documents⁴⁹, it appears that the vast majority (approximately 88%) of the 2018 events in the complainant's members' premises had less than 50 participants, and only in exceptional cases more than 100 participants (approximately 3% of the events), in single cases up to 300 participants. To the Commission it thus rather appears that the majority of this list concerns small events.

3.2.3. *Lack of international attraction*

- (94) The procurement procedure carried out in the year of 2015 for the operation of the CC-IN emphasizes the lack of international attraction, as simply a total of 14 undertakings (all of German origin) showed interest in the tendering and requested further tender documents. Ultimately, apart from Maritim, no other company submitted a bid. This might partly be due to the fact that the advertisements with the call for tenders were only published in German newspapers as the contracting authority considered the CC-IN project to be rather local.
- (95) However, in the case of the *Süddeutsche Zeitung* and *Frankfurter Allgemeine Zeitung* the call for a tender was also available online⁵⁰ and could therefore have been perceived by the international community if there had been any interest.

⁴⁷ CCH Decision, recital 5.

⁴⁸ See documents of the tender procedures for the CC-IN, footnote 43.

⁴⁹ See in particular Anlage 1 und 2 to the complainant's submission of 2 January 2020, listing the events in 2018 of members of the complainant.

⁵⁰ See footnote 8.

These two newspapers are among the most prominent ones in Germany and therefore likely to be considered by undertakings established in other Member States that are looking for business opportunities in Germany. As the lack of bids shows, there was no such interest.

- (96) Despite completion being planned for spring 2021⁵¹, at present, no future events in the CC-IN are promoted on the international market for congress/conference centre. To date, no web-presence forecasts any events planned at the congress centre. CC-IN was neither advertised on specialised websites targeting foreign tourist nor promoted on international touristic fairs (e.g. no advertising of the CC-IN during the International Tourism Fair of 2018 and 2019).

3.2.4. Comparison with national market

- (97) With regard to the effect on the conditions of cross-border investments or establishment, from data on the congress centres and congress hotels in Germany and the area around the municipality of Ingolstadt, it can be concluded that the activities of the CC-IN on conference facilities/congress market are negligible.⁵²
- (98) Data demonstrate that the majority of event participants in Germany was not international. The annual *'Meeting & EventBarometer'*, commissioned by the EVVC, the *'German Convention Bureau e.V.'* (hereinafter: GCB) and the German National Tourist Board *'Deutsche Zentrale für Tourismus e.V.'* (hereinafter: DZT), examines the entire German event market - i.e. both the congress and event sector – in order to assess the respective industry. Their most recent market survey of 2018/2019 demonstrates that the proportion of international participants in Germany has been below 10% in the last years (total participants: 412 Mio. (2018), 405 Mio. (2017) and 394 Mio. (2016) / international participants: 37.2 Mio. (9% in 2018); 36.5 Mio. (9% in 2017) and 32.9 Mio (8.4% in 2016)). Even in the hypothetical and unlikely case that all foreign guests who stayed in 2017 in Ingolstadt⁵³ were also attending conferences/congress events, these international participants would nonetheless account for only 0.037% of the total number of participants of conferences/events in Germany⁵⁴ and for only 0.41% of the total number of international participants in Germany⁵⁵. Therefore, it can be assumed that the municipality of Ingolstadt is a marginal actor on the international conference market. In its November 2018 press release⁵⁶, even the city of Nürnberg, which has approximately four times more inhabitants (2019: 529,200) than the municipality of Ingolstadt (2019: 138,716), and is located less than 100 km away, declared that so far it has been strongly national in character as a congress venue (2017: 7.5% international participants / 3% international organizers).

⁵¹ See recital (27).

⁵² Regarding this criterion, see also Commission Decision of 20 July 2017, SA.45220 (2016/FC), *Slovenia - Alleged aid in favour of Komunala Izola d.o.o.* recital 46, as confirmed in the Judgment of the General Court (Second Chamber) of 14 May 2019, *Marinvest d.o.o. and Porting d.o.o. v European Commission*, Case T-728/17, ECLI:EU:T:2019:325, paragraph 104.

⁵³ According to official Ingolstadt tourism statistics by the municipality: 150,412 foreign guests in 2017.

⁵⁴ 405 Mio. of total participants / 150,412 hypothetical international participants in Ingolstadt.

⁵⁵ 36.5 Mio. international participants / 150,412 hypothetical international participants in Ingolstadt.

⁵⁶ German: *'Der Kongressplatz Nürnberg ist bislang noch stark national geprägt.'* See *'Kongress-Initiative Nürnberg feiert 15 Jahre'*, Pressemitteilung Nr. 1238 / 30.11.2018, available at: https://www.nuernberg.de/presse/mitteilungen/presse_58180.html

Consequently, in the smaller sized municipality of Ingolstadt, even fewer international participants are likely to attend local conference/event venues such as the CC-IN.

3.2.5. *Overall assessment*

- (99) Based on an overall assessment of the above indications, the Commission considers that the alleged measures in favor of Maritim are unlikely to attract customers from other Member States and cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.

4. CONCLUSION

The Commission has accordingly decided that the measures do not constitute State aid in the meaning of Article 107(1) 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>.

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President