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**Subject: State Aid SA.62831 (2021/N) – Lithuania
Individual aid for the development of the multifunctional health,
education, culture and business support complex in Vilnius**

Excellency,

1. PROCEDURE

- (1) On 1 December 2021, following pre-notification contacts, Lithuania notified to the Commission a measure in the form of aid for the construction and operation of a multifunctional health, education, culture and business support complex in Vilnius (“the notified measure”). On 12 January 2022, the Commission sent a first request of information, to which the Lithuanian authorities replied on 2 February 2022. On 8 February 2022, the Commission sent a second request of information, to which the Lithuanian authorities replied on 11 February 2022. On 8 March 2022, the Commission sent a third request of information, to which the Lithuanian authorities replied on 15 March 2022.
- (2) By letter of 9 February 2022, Lithuania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The project and the beneficiary

- (3) The notified measure concerns a project for the construction and operation of a multifunctional complex in Vilnius (the “Vilnius complex”). The infrastructure will be used both for commercial and non-commercial activities and consists of the following parts:
- (a) a Kindergarten to provide public pre-school education services, children care and leisure for 300 children;
 - (b) a National Sports Museum, of 1 500 m² with 10 separate halls (“Sports Museum”);
 - (c) a Cultural Education Centre and Library, of 1 600 m²;
 - (d) a public cultural and sports events infrastructure (“Stadium”), of at least 15 000 seats complying with Union of European Football Associations’ (“UEFA”) category 4 requirements;
 - (e) sports infrastructure for informal education (“Sports Facilities”) comprising of 15 facilities - indoor facilities (6 basketball, 1 artistic and 1 sport gymnastics court, boxing and wrestling rings, gym) and outdoor facilities (3 football fields complying with UEFA requirements, 1 athletics field complying with International Association of Athletics Federations’ requirements); and
 - (f) shared infrastructure within the complex, such as green plots, access roads, parking spaces and other shared infrastructure, which is required for the operation and use of the complex.
- (4) The Vilnius complex project will be implemented through a public-private partnership (“PPP”) on the basis of a Concession Agreement (“CA”) signed by on the one hand the Vilnius City Municipality (“VCM”) and the Ministry of Education, Science and Sports of the Republic of Lithuania (“MESS”), and on the other hand, a consortium consisting of AB Axis Industries², UAB Venetus Capital³ and UAB Kauno Arena⁴ (the “Concessionaire”) and a special purpose vehicle, UAB Vilniaus daugiafunkcis kompleksas⁵, established by the Concessionaire for the implementation of the Vilnius complex project (the “Project Company”). The Project Company and the Concessionaire are jointly and severally liable for the obligations established in the CA.

² 99.44% owned by UAB ICOR, the controlling entity of the Lithuanian ICOR group, which owns more than 100 companies operating in the fields of construction, public utilities, industrial equipment, energy and metalworking, and others. The companies of the corporate group operate on three continents, in more than 10 countries and supply more than 60 countries.

³ Special purpose company fully owned by BaltCap, leading private equity fund manager in the Baltics.

⁴ Company operating the multifunctional arena in Kaunas. It is fully owned by a public institution (VšĮ Kauno “Žalgiris” rėmėjas), which operates in the field of sports.

⁵ The members of the consortium own the following percentage of the Project Company: UAB Venetus Capital – 98%, AB Axis Industries – 1% and UAB Kauno Arena – 1%.

- (5) The CA, signed on 8 October 2021, has a duration of 25 years with an expected construction period of three years and an operation period of 22 years. The Project Company will design and construct the Vilnius complex and finance it during the construction phase. Within 30 working days from the satisfactory completion of the infrastructure⁶, the Project Company will transfer the ownership of the Vilnius complex to VCM. The Project Company will lease the Stadium and the Sports Facilities from VCM and it will operate those on a commercial basis⁷ during the operation period. The other parts of the Vilnius complex will be operated by VCM and MESS. The Project Company will be responsible for the maintenance of the entire Vilnius complex.
- (6) The selection of the Concessionaire was the result of a transparent, objective and non-discriminatory tendering procedure in line with the national regulations transposing Directive 2014/23/EU⁸. The scope of the tender was the design and construction of the Vilnius complex, the operation of the Stadium and Sports Facilities and the maintenance of the entire Vilnius complex. The tender included all public support elements in the technical specifications, so that the tenderers could evaluate and include those elements into their proposed business models. The Lithuanian authorities launched the tender procedure in September 2016, and received two applications. Only the Concessionaire pre-qualified and following negotiations in February 2020 the Lithuanian authorities completed the evaluation of the final offer of the Concessionaire.
- (7) Under the CA, the works for the construction of the Vilnius complex will start after the entry into force of CA⁹ and must be completed within three years. The construction cost of the Vilnius complex amounts to EUR 87 405 393¹⁰, including value added tax (“VAT”)¹¹, in non discounted values. All construction risks, including the risk of increase of construction costs, lie with the Project Company.

⁶ Article 9.4 of the CA.

⁷ Article 9.5 of the CA.

⁸ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1-64).

⁹ Article 4 paragraph 1 and Annex 6 to the CA. The entry into force of the CA requires the fulfilment of the conditions laid down in Annex 6 to the CA, which include the Commission’s approval of the notified measure.

¹⁰ The construction cost of the Vilnius complex excluding VAT amounts to EUR 81 636 653 and is distributed to the different cost categories or components of the infrastructure as follows: research studies (related to elements such as geodetic and topographic works, composition of the soil, strength of the ground foundation and shape of the terrain) EUR 524 746, design EUR 3 650 502, Kindergarten EUR 3 603 629, Sports Museum EUR 3 830 620, Cultural Education Centre and Library EUR 4 850 405, Stadium EUR 36 791 822, Sports Facilities EUR 17 374 645 and shared infrastructure within the complex EUR 11 010 285.

¹¹ For all cost categories (research and design) and infrastructure components involved in non-economic activities (Kindergarten, Sports Museum, Cultural Education Centre and Library and shared infrastructure) VAT of 21% amounting to EUR 5 768 740 cannot be claimed back due to the non-economic nature of the activities.

2.2. Operation and use of the Vilnius complex

- (8) As explained in recital (5) of this Decision, after completion of construction, the operation of the respective parts of the Vilnius complex will be shared between the Project Company and the respective public authorities, VCM and MESS.
- (9) The operation of the Kindergarten, the Cultural Education Centre and the Library shall be carried out by VCM in the context of the exercise of its public functions¹² to be used only for cultural and educational non-commercial activities¹³. The operation of the Sports Museum shall be carried out by the MESS, in the context of the exercise of its public function¹⁴, to be used only for cultural and educational non-commercial activities¹⁵. The Lithuanian authorities note that VCM and MESS will receive only a small financial contribution from the users of the Kindergarten, Cultural Education Centre, Library, and Sports Museum, which will only cover a limited fraction of the true costs of the service. Access to those facilities will be open to the general public.
- (10) The Project Company will operate the Stadium and the Sports Facilities, and shall bear all related operational risks. The Project Company will not be compensated for potential operational losses or receive any additional economic advantage with respect to the operation of the Stadium and the Sports Facilities.
- (11) The Stadium will be used mainly for commercial events (e.g. football matches, concerts). The Project Company must reserve 15 days per year in the Stadium for national State events such as the Lithuanian Song Festival, the Song Festival of Lithuanian students, the 'Gaudeamus' Song Festival for Baltic students and events organised by other public authorities on demand. The Project Company will not receive any remuneration for hosting such events organised in the Stadium, but will be compensated for the ancillary costs related to security, supervision, organisation and other service costs incurred during these events organised in the Stadium within the 15 reserved days (see recital (18)(c) of this Decision).

¹² Article 6 of the Law on Local Self-Government of the Republic of Lithuania, outlining the independent functions assigned to the municipalities with Article 5 (1) of the same Law, includes the organisation of pre-school education and informal education, culture-fostering activities such as culture development projects, establishment and supervision of museums, theatres, cultural centres, libraries and development of physical training and sports.

¹³ This includes also other activities, all non-commercial, such as exhibitions (for example culturally valuable books from libraries of other countries), screening of movies of cultural significance as part of cultural events or with focus to specific socially sensitive audiences.

¹⁴ Article 29(1) of the Law on Government of the Republic of Lithuania establishes the legal basis for the creation of ministries in Lithuania. Statutes of MESS outlines the functions of MESS, which include the distribution of funding to educational institutions, scientific research institutes, and sport organisations, preparation of investment projects in fields of education, science and sports (and implementation of investment project programmes).

¹⁵ This includes also other activities, all non-commercial, such as fairs, exhibitions and non-permanent collections of cultural objects of other countries related to sports and its history.

- (12) In the Sports Facilities, more than half of the available capacity (measured in terms of hours)¹⁶ has to be allocated for informal education¹⁷, mainly of children, youth, seniors and people with disabilities. The remaining capacity can be used by the Project Company at its own discretion. VCM, or other public bodies, will have priority hours for the use of the Sports Facilities for their programmes of informal education during the allocated time. VCM, or other public bodies, however, are not obliged to use this reserved capacity. In such a case, the Project Company must still ensure that the reserved minimum capacity is devoted to informal education.
- (13) For the actual use of Sports Facilities by VCM or other public bodies, the Project Company will charge an hourly fee, which will be defined annually and may not exceed the market price and has to be in the same range as for other users of the Sports Facilities. If there are no facilities in the market comparable to a particular sports facility, the fee charged may not exceed the operating costs of the particular sports facility plus 20% margin. VCM has no control on the fees the Project Company will apply to end-users for the use of the Sports Facilities outside the scope of informal education or for the time intended for informal education but not used by VCM (or other public bodies).
- (14) The Project Company must not grant any exclusive right to any end-user for using the Stadium or the Sports Facilities (particularly professional users) and must grant access on transparent and non-discriminatory basis.¹⁸
- (15) In addition to the operation of the Stadium and the Sports Facilities, the Project Company undertakes the provision of routine maintenance, supervision, security and other services, for the entire infrastructure, including the parts operated by VCM and MESS.

2.3. Expected socioeconomic benefits of the project

- (16) The Lithuanian authorities submit that the construction of the Vilnius complex will create a suitable infrastructure for large-scale events such as sports competitions, concerts, music festivals, conferences, and exhibitions. The project, due to its design as a multifunctional hub, is expected to increase the area attractiveness for commercial activities, to attract investments and to create jobs. The construction of the complex is expected to create more than 1 100 temporary jobs and more than 200 permanent jobs after completion of the construction. The multifunctional purpose of the complex will also increase the liveliness of the area where it will be located (in the North of Vilnius), not only during the events in the Stadium, but more generally throughout the entire year.

¹⁶ The Lithuanian authorities explained that the Technical Specifications, in Annex 2 to the CA, provide for a certain number of hours for each of the Sports Facilities for informal education.

¹⁷ The Lithuanian authorities explained that informal education and education supplementing formal education is organised under the provisions of the Law on Education of the Republic of Lithuania. It encompasses kindergarten, pre-school, other informal children education and adult education in accordance with programmes set in line with standards approved by the Ministry of Education of the Republic of Lithuania.

¹⁸ Article 13.7.7 of the CA.

- (17) The Lithuanian authorities submit that the additional capacity of the Vilnius complex will expand the types of events, both sports and cultural, which can take place in Vilnius, and considerably benefit children and youth engaged in informal (sports, cultural, recreational) education, amateur sports and the general public in Vilnius. In particular, the Lithuanian authorities note that the Vilnius complex will also generate the following benefits:
- (a) The Vilnius complex will promote sports, the social significance of which is acknowledged in the Amsterdam Declaration on Sport and Article 165 TFEU “*the Union shall contribute to the promotion of European sporting issues...*”. The Stadium will be used to host various sports competitions and events. There is currently no existing infrastructure in Vilnius that could host European and international football tournaments matching UEFA/ Fédération Internationale de Football Association (“FIFA”) safety and quality standards, with the only viable alternative being the “S. Dariaus and S. Girėno Stadium” in Kaunas, located at a distance of 100 km from Vilnius. That stadium currently has 9 180 seats to be expanded to 15 000 seats after the end of the ongoing renovation. The Sports Facilities will be made available to the general community with the aim of promoting wider participation in sports for both children and adults, including for educational activities. Particularly, the Vilnius complex will significantly increase the accessibility of informal education for children and youth, who will be able to engage in various sports, educational, cultural and other extra-curricular activities, in modern and well equipped facilities, compared to the currently available poor alternatives (e.g. outdated facilities);
 - (b) The Stadium is also intended to be used for cultural events (e.g. concerts, contests and events concerning the Lithuanian national heritage) and as such contribute to the promotion of cultural diversity, according to Article 167(4) TFEU. There is currently no suitable facility in Vilnius that would have sufficient capacity for international types of events, especially for open air gatherings. Large scale events such as the Lithuania Song Festival, taking place every four years, with around 30 000 participants from Lithuania and other Baltic States, are currently being organised in several different locations. The main purpose of such events – i.e. to get people together – is thus undermined and cannot be achieved at a full scale. The largest currently existing stadium in Vilnius, “The Stadium of Lithuanian Football Federation”, has only 5 067 seats and has major deficiencies in layout, spectator movement and representation. In addition, currently, there are no suitable facilities for open-air summer events in Vilnius. The two main locations for open-air events are the botanical garden of Vilnius University and the Vingis city park. However, both serve primarily different purposes and do not have suitable infrastructure for large scale event organisation, such as sufficient parking places, seats, restrooms, establishments for vendors and merchandisers, protective fences, *etc.*;
 - (c) The Kindergarten is expected to address the lack of sufficient places for children in kindergartens near their living place. According to VCM’s data, 407 children were included in waiting lists to get access to kindergartens in this particular area of Vilnius and the estimated number

of children registered in this area of the city, who will need access to kindergarten in 2022 – 2023, is 1 035. The Cultural Education Centre and Library will provide several conference halls, which can accommodate up to 1 500 guests, and a modern infrastructure to address the active interest of Vilnius residents in books, which is now served from a library in a three-room flat of an old residential building built in the Soviet times. The Sports Museum is expected to raise public awareness of Lithuania’s sport heritage and will also provide space for exhibitions;

- (d) Finally, it is expected that the Vilnius complex will also have a positive effect on the surrounding area. The Lithuanian authorities explained that the project in its current set-up, is VCM’s response to two unsuccessful attempts to build a national stadium, which did not materialise due to a lack of financial resources and political will, during the period 1984 to 2010. In such context, no private investor had shown an interest to invest in a project of similar scale and scope. The remaining abandoned structures in the territory of the former construction site are in danger of collapse, posing serious risks to human life, and causing damage to the environment as well as the urban landscape. The notified measure will ensure the elimination of all those abandoned structures and will significantly contribute to the improvement of the conditions in the area and the quality of life of nearby residents. The Vilnius complex is part of a wider VCM plan to transform the area, which includes maintaining the surroundings of the Vilnius complex – currently a neglected nature reserve, integrating it with an activities’ park and reconstructing the surrounding transport nodes to improve access to the Vilnius complex and throughput in one of the main transport arteries in Vilnius city.

2.4. Financing of the Vilnius complex and the notified measure

- (18) Lithuania has notified an aid package to the Project Company consisting of:
- (a) Direct grant of EUR 146 185 000 in non discounted values¹⁹ (M1 payment), EUR 49 035 000 payable by MESS during the first two years of operation of the Vilnius complex and the remaining payable by VCM in 22 annual instalments during the 22 years of the operation of the Vilnius complex. This amount has been established based upon the estimated construction cost of the infrastructure (including VAT – recital (7) of this Decision) and the estimated financing cost the Project Company will incur, based on a loan agreement with a creditor, Baltcap. For practical reasons and based on a separate agreement, VCM/MESS will execute the payments directly to the creditor. However, the creditor does not become party to the CA and the Project Company is the beneficiary of the aid. The Lithuanian authorities confirmed that the mentioned separate agreement between VCM/MESS, the Project Company and the creditor does not affect the qualification of the Project Company as the sole beneficiary of the aid under the CA.

¹⁹ Appendix 1 of Annex 4 to the CA.

- (b) Annual Remuneration from VCM (M2), in the form of a direct grant of EUR 79 000 in real, non discounted values²⁰. This corresponds to EUR 1 738 000 over the 22 years of operation period. This amount corresponds to the estimated costs the Project Company will incur for the maintenance of the Kindergarten and of the Cultural Education Centre and the Library during the 22 years of operation of the Vilnius complex.
 - (c) Annual Remuneration from MESS (M3), in the form of direct grant of EUR 292 000 in real, non discounted values²¹. This corresponds to EUR 6 424 000 over the 22 years of operation period. This amount corresponds to the estimated costs the Project Company will incur for the maintenance of the Sports Museum and the reserved State events in the Stadium during the 22 years of operation of the Vilnius complex.
 - (d) The exemption from real estate lease and land lease fees of EUR 250 000 in non discounted values, corresponding to an estimated amount of EUR 10 000 per annum for the 25 years of the CA.
- (19) The payments M1, M2 and M3 are fixed throughout the whole duration of the CA to the construction and related financing costs and maintenance costs presented by the Concessionaire and negotiated in the tender procedure, as specified in the CA. The Project Company assumes all risks related to the increase of construction costs (recital (7) of this Decision) and of the prices and costs of maintenance services.
- (20) The financial contribution of the State is based on:
- (a) The Government Resolution No 1269 of 9 December 2015 which sets a maximum of EUR 53 392 000 (in discounted values²², including VAT) from the State budget, to cover part of the investment costs of the construction of the Stadium and the Sports Museum, operational costs of State events organised in the Stadium, operational and maintenance costs of the Sports Museum.
 - (b) The VCM Council Decision No 1-326 of 3 February 2016, which sets and amount of EUR 500 000 per year for the maintenance of the Kindergarten and the Library, EUR 26 187 000 from EU structural funds and EUR 2 311 000 from VCM budget for capital investment and the exemption from real estate and land lease fees applicable to the objects comprising the Vilnius complex for the duration of the concession agreement.
 - (c) The VCM Council Decision No 1-359 of 18 December 2019, updating the amounts provided in the VCM Council Decision No 1-326 of 3 February 2016, which sets an amount of EUR 103 596 000 (including VAT) from

²⁰ Appendix 1 of Annex 4 to the CA.

²¹ Appendix 1 of Annex 4 to the CA.

²² Calculated at the time of the Government Resolution.

the budget of VCM²³ for the funding of all VCM's obligations²⁴ for the Vilnius complex.

- (21) The Lithuanian authorities have provided the Commission with the funding gap analysis of the project considering the cash flows included in the Concessionaire's Base Case Scenario submitted during the tender procedures. The funding gap reflects the support needed to allow for a reasonable return that would enable the completion of the project since, in the absence of the public support, neither the Concessionaire nor any other market investor or financial institution would have financed it.
- (22) Although the Lithuanian authorities expect the Project Company to keep separate accounts for each part of the infrastructure, the CA does not establish such an obligation. The maintenance, both for the commercial and the non-commercial parts of the infrastructure, is bundled with the construction of the infrastructure in its entirety and the operation of the Stadium and the Sports Facilities, as shown in the Concessionaire's Base Case Scenario. Therefore, the funding gap calculation includes, for the entire infrastructure, all construction and maintenance costs and, for the Stadium and Sports Facilities, also the operational costs and revenues. The discount rate amounts to [9.50-11.50]*%, which corresponds to the minimum required rate of return (nominal and post-tax) of the Project Company, as documented in the Concessionaire's Base Case Scenario. On the basis of those parameters the funding gap amounts to EUR [64-78 million], with the net present value of the aid, using the same discount factor, amounting to EUR [61-74 million]²⁵. The Lithuanian authorities provided further explanations on the funding gap analysis as summarized in recitals (23) to (28).
- (23) The Concessionaire's Base Case Scenario provided estimations of construction costs for each of the infrastructure components. The funding gap calculation considers the construction cost of the infrastructure in its entirety, including VAT, as detailed in recital (7) of this Decision.
- (24) For the funding gap calculation, all revenues of the Project Company from the operation of the infrastructure for 22 years have been considered, that is, revenues from the commercial exploitation of the Stadium and revenues from the use of the Sports Facilities in VCM programmes, other informal education programmes, if VCM does not exercise its right to purchase the reserved hours, or other commercial use.
- (25) Expenses include all expenses of the Project Company for the operation and maintenance of the Stadium and Sports Facilities as well as for the maintenance of the rest of the infrastructure operated by VCM/MESS. The maintenance costs were estimated for the parts of the Vilnius complex for the economic and the non-economic activities separately. The service cost for the reserved State events in

²³ Initially a part of investment costs was intended to be covered by the EU funds within three years of completion of construction works but the EU funding was reallocated to other projects and VCM assumed the responsibility to cover this funding.

²⁴ M1 and M2 and monetary expression of risks attributed to VCM, if such risks materialise.

* *Confidential information*

²⁵ The net present value of the M1 element of the aid is EUR [59 -71 million].

the Stadium have also been estimated separately. Expenses also include the real estate lease and land lease fees the Project Company would pay in the absence of the aid.

- (26) The Lithuanian authorities confirmed that, at the time of the tendering procedure in the context of the evaluation of the Concessionaire's offer and in order to ensure that investment and operational costs corresponded to costs in line with the market, all investment and operational cost calculations were evaluated by the financial experts of the Lithuanian Central Project Management Agency and representatives of VCM. The calculations provided by the Concessionaire have been compared with publicly available databases of the Lithuanian construction market prices. The Lithuanian authorities referred to the database of UAB Sistela²⁶, as the most extensive database. UAB Sistela is a certified company specialising in construction pricing and estimates. It has accumulated a comprehensive information database on construction materials, mechanisms and labour price statistics since 1992. The database allows performing price comparisons, analysing price dynamics, evaluating and forecasting changes in construction prices. On this basis, the technical experts verified that the prices in the Concessionaire's Base Case Scenario are in line with market prices. Furthermore, the prices of the services offered in the tender were compared to those currently paid by VCM to various providers of informal education activities. The Lithuanian authorities confirmed that those prices are market prices.
- (27) The funding gap calculation results in an operating profit for the entire operating period. The Project Company is not entitled to any compensation for potential operational losses in the Stadium and Sports Facilities (recital (10) of this Decision), which should incentivise the Project Company to apply competitive prices. The Project Company is also not entitled to any compensation for any unplanned costs or costs due to unexpected circumstances (recital (19) of this Decision).
- (28) Furthermore, as the aid is slightly lower than the funding gap, the Lithuanian authorities have calculated the nominal internal rate of return ("IRR") of the project, both pre-tax and post-tax. Without aid, the IRR is negative (-[9.50-11.50]%). With the aid elements (see recital (18) of this Decision), the IRR is positive and quantified at [8.50-10.50]% pre-tax and [8.50-10.50]% post-tax. The Lithuanian authorities consider the required nominal return of [9.50-11.50]% (see recital (22) of this Decision), and by consequence the estimated nominal IRR after aid, to be in line with the market for a PPP project of this size and complexity also considering the level of risks undertaken by the Project Company. The Lithuanian authorities provided comparative figures of the five largest PPP projects implemented recently in Lithuania.²⁷ Those projects, with investment in the range of EUR 10 to 16 million and demand risk assumed by the public party, have a real IRR in the range of [7-9]% to [12-14]%. Since the real IRR does not take into account inflation, the nominal IRR for those projects is

²⁶ www.sistela.lt.

²⁷ The Police Station in Kaunas, the Police Station in Panevėžys, the Police Station and Custody Centre in Vilnius, the Bypass of Palanga and the Balsiai School.

higher and the estimated nominal IRR after aid of the Concessionaire corresponds to the lower range of those PPP projects.

- (29) The CA provides for monitoring mechanisms such as control rights of VCM and MESS to monitor the Project Company's compliance with its obligations under the CA, the Project Company's obligations to provide financial and other information on a regular basis, and inspection (audit) rights for VCM and MESS, with the assistance of financial, technical, legal experts to check compliance of the services rendered with the requirements of the CA. The Lithuanian authorities consider that those provisions ensure sufficient rights of supervision and avoidance of overcompensation of the Project Company.
- (30) Finally, the Lithuanian authorities submit that, as an additional element to reduce the risk of overcompensation of the Project Company, the CA provides a maximum non discounted contract value of EUR 280 000 000²⁸, which triggers termination of the CA. In case the Project Company achieves unexpectedly high revenues and reaches the maximum contract value, the CA shall be terminated to ensure that the Project Company will not benefit from excessive return.

2.5. Cumulation

- (31) The Lithuanian authorities indicate that the aid under the notified measure cannot be cumulated with any other aid received from other public sources covering the same eligible costs.

2.6. Transparency

- (32) The Lithuanian authorities indicate that they will publish the relevant information relating to the notified measure in the Commission's State aid transparency website²⁹.

3. ASSESSMENT OF THE NOTIFIED MEASURE

3.1. Existence of State aid

- (33) 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*".
- (34) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be imputable to the State and must be granted through State resources; 2) it has to confer an economic advantage on an undertaking; 3) this advantage must be selective and 4) it must distort or threaten to distort competition and affect intra-Union trade.

²⁸ Article 40.1.2 of the CA.

²⁹ <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

- (35) Infrastructure projects, such as the Vilnius complex infrastructure project, often involve different categories of actors and any State aid involved in infrastructure projects may potentially benefit the construction, the operation or the use of the infrastructure.
- (36) The Commission first assessed whether the notified measure involves State aid to the developer of the infrastructure, which in this case is the Project Company. To qualify as State aid, a measure must confer an economic advantage on an undertaking. An undertaking is defined as an entity that is engaged in an economic activity³⁰. Any activity consisting of offering goods and/or services on a given market is an economic activity³¹. In the *Aéroports de Paris* judgment³², the General Court ruled that the operation of an airport had to be seen as an economic activity. Moreover, the *Leipzig/Halle* judgment³³ confirmed that, if an airport runway will be used for economic activities, its construction also constitutes an economic activity. As noted in paragraph 202 of the Commission Notice on the Notion of State aid (“NoA”)³⁴, while those cases relate specifically to airports, the principles developed by the Union Courts are also applicable to the construction of other infrastructures that are indissociably linked to an economic activity³⁵.
- (37) The Commission, therefore, finds it appropriate to, first, assess whether (1) the operation of the Kindergarten, Cultural Education Centre, Library, and Sports Museum constitute economic activities and (2) whether the operation of the Stadium and Sports Facilities constitute economic activities.

³⁰ See, for example, Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

³¹ Judgment of the Court of 16 June 1987, *Commission v Italy*, Case 118/85, ECLI:EU:C:1987:283, paragraph 7, Judgment of the Court (Fifth Chamber) of 18 June 1998, *Commission v Italy*, case C-35/96, ECLI:EU:C:1998:303, paragraph 36, Judgment of the Court of 12 September 2000, *Pavlov and others*, Joined cases C-180/98 to C-184/98, ECLI:EU:C:2000:428.

³² Judgment of the General Court of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, paragraph 125, confirmed by the Court of Justice in its Judgment of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01 P, ECLI:EU:C:2002:617.

³³ Judgment of the General Court of 24 March 2011, *Freistaat Sachsen and Land Sachsen-Anhalt and Others v Commission*, Joined Cases T-443/08 and T-455/08, ECLI:EU:T:2011:117; upheld on appeal in Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*, C-288/11 P, ECLI:EU:C:2012:821.

³⁴ 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, C/2016/2946, OJ C 262, 19.7.2016, p. 1.

³⁵ Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*, C-288/11 P, ECLI:EU:C:2012:821, paragraphs 43, 44. Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 40.

3.1.1. *The qualification of the activities in the Vilnius complex as economic or non-economic activities*

3.1.1.1. Activities in the Kindergarten, Cultural Education Centre and Library, and Sports Museum

- (38) Public education organised within the national education system, funded and supervised by the State may be considered as a non-economic activity³⁶. The non-economic nature of public education is, in principle, not affected by the fact that pupils or their parents may pay tuition or enrolment fees that contribute to the operating expenses of the system, where financial contributions cover only a fraction of the true costs of the service and cannot be considered as remuneration for the service provided³⁷.
- (39) Certain activities related to culture and heritage may also be non-economic in nature, where the cultural institution is accessible to the general public free of charge, and fulfils a purely social and cultural purpose. The fact that visitors of a cultural institution, or participants in a cultural or heritage conservation activity, open to the general public, are required to pay a monetary contribution that covers a limited fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered to be genuine remuneration for the service provided³⁸.
- (40) The Lithuanian authorities indicate that VCM and MESS will operate the Kindergarten, Cultural Education Centre and Library, and Sports Museum in the context of the exercise of their public functions, and that those facilities will be used only for cultural and educational purposes of a non-commercial nature, (recital (9) of this Decision). The Lithuanian authorities note that VCM and MESS will receive only a small financial contribution from the users of the Kindergarten, Cultural Education Centre and Library, and Sports Museum, which will only cover a limited fraction of the true costs of the service (recital (9) of this Decision). They also confirmed that access to those facilities will be open to the general public (recital (9) of this Decision).
- (41) In light of the above, the Commission considers that the Kindergarten, Cultural Education Centre, Library, and Sports Museum will be operated on a non-economic basis.

3.1.1.2. Activities in the Stadium and Sports Facilities

- (42) The Stadium and Sports Facilities of the Vilnius complex will be used to provide services on the market for organising sport and cultural events and for operation of sport facilities, hence for economic activities.

³⁶ Judgment of the Court of Justice of 11 September 2007, *Commission v Germany*, C-318/05, ECLI:EU:C:2007:495, paragraph 68.

³⁷ NoA, paragraph 29.

³⁸ *Ibid.*, paragraph 34.

3.1.2. *State aid to the Project Company as developer/operator of the Vilnius complex*

3.1.2.1. Measure imputable to the State and existence of State resources

- (43) To qualify as State aid, the measure in favour of an undertaking has to be granted by a Member State, or through State resources, and it has to be imputable to the State. In this case, the direct grants (recitals (18)(a) to (18)(c) of this Decision) involve State funds, which will be granted by the State and under its discretion to the beneficiary (recital (20) of this Decision). The exemption from real estate and land lease fees (recital (18)(d) of this Decision) constitutes a transfer of State resources since it involves waiving revenues which would otherwise have been paid to the State. The measure is imputable to the State, since it is administered by VCM and MESS (recital (4)) and it is based on the legal basis reported in recital (20).
- (44) Therefore, the Commission concludes that the notified measure is imputable to the Lithuanian State, and involves State resources.

3.1.2.2. Notion of undertaking

- (45) As noted at recital (34) of this Decision, State aid rules only apply where the recipient of an aid is an “undertaking”.
- (46) The Vilnius complex will be used, at least partly, for economic activities (see recital (42) of this Decision).
- (47) If an infrastructure is used for both economic and non-economic activities, public funding for its construction will fall under the State aid rules only insofar as it covers the costs linked to the economic activities in which case Member States have to ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidise the economic activities.³⁹
- (48) In the case of the Vilnius complex, although the Lithuanian authorities expect the Project Company to use separate accounts for the maintenance of the different parts of the infrastructure, there is no such obligation in the CA. In addition, the construction of the infrastructure concerns an integrated infrastructure that will be used both for economic and non-economic activities and there is no separate funding for the commercial and the non-commercial part of the infrastructure.
- (49) The Commission considers therefore that the Project Company should be considered as an undertaking for the entire construction of the Vilnius complex. Furthermore, as it has been established in recital (42) of this Decision that the Project Company, as operator of the Stadium and the Sports Facilities, is engaged in an economic activity, it should be considered as an undertaking for the operation of the Vilnius complex as well.

³⁹ *Ibid.*, paragraph 205-206.

3.1.2.3. Existence of a selective advantage

- (50) According to settled case law, in order to determine whether a State measure constitutes State aid, it is necessary to establish whether the recipient undertaking receives an economic advantage that it would not have obtained under normal market conditions, i.e. in the absence of State intervention⁴⁰. Only the effect of the measure on the undertaking is relevant, whereas the cause or the objective of the State intervention are not relevant⁴¹. To assess this, the financial situation of the undertaking following the measure should be compared with what its financial situation would have been had the measure not been taken. Paragraphs 127 *et sequitur* of the NoA clarify that State aid encompasses not only positive benefits, but also measures, which, in various forms, mitigate the charges which are normally included in the budget of an undertaking, and which, without being subsidies in the strict meaning of the word, are similar in character and have the same effect⁴².
- (51) The award of the concession to the beneficiary has been the result of an integrated tender for construction of the infrastructure, operation of parts of it for commercial purposes and the provision of maintenance services in parts of it used for non-commercial activities (recital (6) of this Decision). The M1 element of the notified measure, together with the exemption from real estate and land lease fees for the period of construction of the project resulted from a procurement procedure with effectively only one bidder. That procedure can only minimise the aid granted but not exclude an advantage to the beneficiary as such funding would not have been obtained under normal market conditions.
- (52) Operators who make use of the aided infrastructure to provide services to end-users receive an advantage if the use of the infrastructure provides them with an economic benefit that they would not have obtained under normal market conditions. This normally applies if what they pay for the right to exploit the infrastructure is less than what they would pay for a comparable infrastructure under normal market conditions.⁴³
- (53) The Project Company, as operator of the Stadium and the Sports Facilities, does not pay a positive price for the right to operate the infrastructure and is exempted from real estate and land lease fees during the operating period. This, as such, constitutes an advantage which would not have been obtained under normal market conditions. In addition, the Project Company will be compensated, through M2 and M3 payments for the maintenance of the parts of the infrastructures used for non-economic activities and for the costs incurred during

⁴⁰ Judgment of the Court of 11 July 1996, *SFEI and Others*, C-39/94 ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court (Sixth Chamber) of 29 April 1999, *Spain v Commission*, C-342/96 ECLI:EU:C:1999:210, paragraph 41.

⁴¹ Judgment of the Court of 2 July 1974, *Italy v Commission*, Case 173/73, ECLI:EU:C:1974:71, paragraph 13.

⁴² Judgment of the Court (Fifth Chamber) of 8 November 2001, *Adria-Wien Pipeline*, C-143/99, ECLI:EU:C:2001:598, paragraph 38; Judgment of the Court of 15 March 1994, *Banco Exterior de España*, C-387/92, ECLI:EU:C:1994:100, paragraph 13; and Judgment of the Court (Fifth Chamber) of 1 December 1998, *Ecotrade*, C-200/97, ECLI:EU:C:1998:579, paragraph 34.

⁴³ NoA, paragraph 223.

the State events. This, as such, should not necessarily include an advantage. However, since those payments resulted from an integrated tender for the construction and the operation of the Vilnius complex, without a mandatory separate accounting for the economic and the non-economic part of the Vilnius complex, an advantage to the Project Company, as an operator cannot be excluded.

3.1.2.4. Distortion of competition and effect on trade

- (54) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. According to settled case law, a measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient, compared to other undertakings with which it competes⁴⁴. A distortion of competition within the meaning of Article 107 TFEU is, thus, assumed insofar as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition⁴⁵.
- (55) The Lithuanian authorities consider that the Sports Facilities will mostly be used by the inhabitants of Vilnius, and that therefore no negative effects on competition and trade between Member States can be expected. However, the market for organising sport and cultural events, in the Stadium in particular, is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. In the present case, the infrastructure developed by the Project Company will have the capacity to attract and host European and international sports or cultural events. As a result, the Commission concludes that the notified measure is liable to distort competition. In addition, taking into account the nature and international dimension of the sector concerned, which is the construction of infrastructure and the organisation of sport and cultural events and operation of sport facilities (recital (42) of this Decision), as well as the number of operators active in the sector, the Commission considers that the notified measure is liable to affect trade between Member States.

3.1.2.5. Conclusion

- (56) On the basis of the foregoing assessment, the Commission concludes that the notified measure constitutes State aid for the Project Company as the developer and operator of the Vilnius complex, within the meaning of Article 107(1) TFEU.

⁴⁴ Judgment of the Court of 17 September 1980, *Philip Morris*, Case 730/79, ECLI:EU:C:1980:209, paragraph 11; Judgment of the Court of First Instance (Fourth Chamber, extended composition) of 15 June 2000, *Alzetta Mauro and others v. Commission*, joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, ECLI:EU:T:2000:151, paragraph 80.

⁴⁵ Judgment of the Court of First Instance (Fourth Chamber, extended composition) of 15 June 2000, *Alzetta Mauro and others v. Commission*, joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, ECLI:EU:T:2000:151 paragraphs 141 to 147; Judgment of the Court of 24 July 2003, *Altmark Trans* C-280/00, ECLI:EU:C:2003:415.

3.1.3. Aid to VCM/MESS as operator of the Vilnius complex

- (57) VCM/MESS will not perform any economic activity in the Vilnius complex (recital (41) of this Decision) and should therefore not be considered as undertaking. As one of the four cumulative conditions for State aid qualification is not fulfilled, it can be concluded that the notified measure does not constitute State aid to VCM/MESS as operator of the Vilnius complex and, therefore, it is not necessary for the Commission to assess the other State aid elements.

3.1.4. Aid to the end-users

- (58) The Vilnius complex will not be dedicated to a specific user, all end-users will enjoy equal and non-discriminatory access to the infrastructure and the infrastructure will be made available on market terms (recital (14) of this Decision). The Commission therefore concludes that the advantage granted to the Project Company as the operator of the Vilnius complex is not going to be passed on to the end-users of the infrastructure, as far as those would be undertakings.

3.2. Lawfulness of the aid

- (59) The CA was signed on 8 October 2021. Article 3.2 of the CA provides that the CA shall enter into force on the working day following the date on which the conditions laid down in Annex 6 to the CA have been fulfilled and those conditions shall be satisfied within 180 days after signing of the CA⁴⁶. Paragraph 9 of Annex 6 to the CA includes the Commission's approval to the notified measure as one of the preconditions for the entry into force of the CA. Lithuania has thus fulfilled the obligation under Article 108(3) TFEU, by notifying the measure prior to its implementation and making it subject to Commission approval.

3.3. Nature of the aid under assessment

- (60) The Lithuanian authorities notified the support package as investment aid. According to settled-case law, operating aid is defined as aid that is intended to release an undertaking from costs that it would normally have had to bear in its day-to-day management or ordinary activities⁴⁷. The Court of Justice further distinguished investment aid and operating aid, by linking the objective of investment aid to the existence of a specific investment⁴⁸. In line with this case law, the Commission considers the M1 measure and the first three years of the real estate and land lease fee exemption, which is linked to the existence of a specific investment, the Vilnius complex, as investment aid. For the M2 and M3 measures and the real estate and land lease fee exemption as from the start of the operations phase, and because of the absence of a separate accounting, it cannot

⁴⁶ This is the time for the parties to the CA to ensure that the conditions are fulfilled.

⁴⁷ See, for instance, judgment of the Court of Justice of 19 September 2000, *Germany v Commission*, C-156/98, ECLI:EU:C:2000:467, paragraph 30 and case-law cited therein, and judgment of the Court of Justice of 24 November 2011, *Italy v Commission*, C-458/09 P, ECLI:EU:C:2011:769, paragraph 63.

⁴⁸ Judgment of the Court of Justice of 24 November 2011, *Italy v Commission*, C-458/09 P, ECLI:EU:C:2011:769, paragraph 64 and judgment of the Court (Grand Chamber) of 22 September 2020, *Republic of Austria v European Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 109 to 122.

be excluded that those measures could constitute operating aid. It is however the entire aid package that would allow the Project Company to achieve a satisfactory return from the construction and operation of the infrastructure, which was necessary in order to allow it to commit in investing in the construction of the Vilnius complex.

3.4. Compatibility of the aid

- (61) Since the notified measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (62) In derogation from the general prohibition of State aid laid down in Article 107(1) TFEU, aid may be declared compatible if it can benefit from one of the derogations enumerated in the TFEU. In line with established case practice, Article 107(3)(c) TFEU may be an appropriate legal basis for assessing compatibility of State aid to infrastructure. Article 107(3)(c) TFEU stipulates that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be found compatible with the internal market.⁴⁹ Thus, in order to declare the aid compatible, first, the aid must be intended to facilitate the development of certain economic activities or of certain economic areas and, second, the aid must not adversely affect trading conditions to an extent contrary to the common interest.
- (63) Under the first condition, the Commission examines whether the aid is intended to facilitate the development of certain economic activities or of certain economic areas. Under the second condition, the Commission weighs up the positive effects of the planned aid for the development of the activities or the areas that the aid is intended to support and the negative effects that the aid may have on the internal market, in terms of distortions of competition and adverse effects on trade caused by the aid.

3.4.1. Facilitation of development of certain economic activities or certain economic areas

3.4.1.1. Aid contributes to the development of economic activities and economic areas

- (64) The Commission considers that the notified measure contributes to the promotion of sports and cultural events by creating appropriate infrastructure to allow the development of sport and cultural activities, as outlined in recital (17)(a) and (17)(b) of this Decision. The Stadium is expected to host sports competitions, that no existing infrastructure in Vilnius could host, and cultural events, for which no

⁴⁹ See, for instance, Commission decision of 4.8.2016 in case SA.43575 (2015/N) – Latvia – Aid for the construction of cultural and sport center "Daugavas stadions", OJ C 406, 4.11.2016, p.11, Commission decision of 24.5.2017 in case SA.46530 – Slovakia – National Football Stadium, OJ C 354, 20.10.2017, p. 3, Commission decision of 22.7.2016 in case SA.44439 - (2016/N) – Sporting Arena Cork – Ireland, OJ C 390, 21.10.2016, p. 6, and Commission decision of 13.12.2013 in case SA.36893 (2013/N) – Greece – Reset of Greek Motorway concession projects – Central Motorway (E65), OJ C 50, 21.02.2014, p.6.

appropriate facilities currently exist in that area. The creation of modern Sports Facilities is expected to increase interest and participation in sports.

- (65) The notified measure will also strengthen the development of certain economic areas. In particular, in the north area of Vilnius (recital (16)) of this Decision), the project is expected to increase the attractiveness for commercial activities and to create jobs during the construction and operation period of the project.
- (66) The Commission acknowledges that by providing the notified public support for the financing of Vilnius complex, Lithuania indeed contributes to facilitating the development of the economic activities and the economic areas mentioned above in recitals (64) and (65) of this Decision.

3.4.1.2. Aid has incentive effect

- (67) The aid granted through the envisaged measure must have an incentive effect. State aid provides an incentive effect if it changes the behaviour of the undertaking concerned in such a way that it engages in additional activity, which it would not carry out without the aid, or which it would carry out in a restricted or different manner.
- (68) The Commission considers that the aid does not present an incentive effect for a beneficiary where work on a project had already started prior to the aid application by the beneficiary to the national authorities. The Lithuanian authorities have confirmed that the works on the project, as notified, have not yet started, as the CA, although signed, has not entered into force, pending authorisation from the Commission (recital (7) and (59) of this Decision).
- (69) In addition, given that the Project Company (or any other undertaking) would not have undertaken the project without the aid since it would not have obtained a satisfactory return on the investment, the incentive effect of the measure is already present because the aid enables the beneficiary to implement the project whereas, in the absence of the public support, neither the beneficiary nor any other market investor or financial institution would have financed the project (see recital (21) of this Decision).
- (70) The Commission agrees that, in the absence of the notified measure, the project would not have taken place, and thus the development of the economic areas/activities would not have been facilitated. Therefore, the notified measure has incentive effect.

3.4.1.3. No relevant breach of EU law

- (71) If a State aid measure, the conditions attached to it (including its financing method when that method forms an integral part of the aid measure) or the activity it finances entail a violation of a provision or general principles of Union law, the aid cannot be declared compatible with the internal market. The Commission is not aware of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market. More in general, there are no elements suggesting that the notified measure or the activity financed entails a violation of relevant provisions of Union law.

3.4.2. *Aid does not adversely affect trading conditions to an extent contrary to the common interest*

3.4.2.1. Positive effects of the aid

- (72) The Commission firstly notes, that the aid contributes to the development of certain economic activities and economic areas as described in recitals (64) and (65) of this Decision, and, more widely, to the promotion of sports (see recital (17)(a) of this Decision) and cultural events (see recital (17)(b) of this Decision).
- (73) In addition, the project is located and will service a region eligible for assistance under Article 107(3)(c) TFEU⁵⁰. Therefore, the Commission considers that the completion of the Vilnius complex, which will be enabled through the aid under assessment, will have a positive impact on economic, social and territorial cohesion, which are objectives promoted under Article 174 TFEU.
- (74) Finally the notified project is expected to improve the conditions in the area (recital (17)(d) of this Decision). The project will eliminate the existing abandoned Stadium structures and will integrate into the activities' park VCM is planning to develop in the surroundings and into the improved transport infrastructure.

3.4.2.2. Limited negative effects of the aid

- (75) Article 107(3)(c) TFEU requires the assessment of any negative effects on competition and on trade. The aid measure must not unduly affect trading conditions to an extent contrary to the common interest. The Commission considers that negative effects in terms of improving the competitive position of the recipient of the aid, compared to other undertakings with which it competes, could materialise in the sector of construction of infrastructure and of organisation of sport and cultural events and operation of sport facilities, in which competition is present (see recital (55) of this Decision). The aid could therefore be liable to distort competition and affect trade in this sector.
- (76) When designing the notified measure, the Lithuanian authorities ensured that its negative effects are as limited as possible. The Commission assesses below whether the aid is necessary, appropriate and proportionate.

3.4.2.2.1. Necessity and appropriateness of the aid

- (77) A State aid measure is necessary if it is targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself.
- (78) The Lithuanian authorities submit that the Commission has recognised in its practice⁵¹ the need for public intervention for large scale sport infrastructure allowing for the organisation of internationally recognised events. They further note that the necessity of the aid is justified by the unsuccessful previous attempts

⁵⁰ Region LT01 Sostinės regionas, predefined 'c' area on the basis of the Regional aid map for the Republic of Lithuania for the 1 January 2022 to 31 December 2027, approved by the Commission on 25 November 2021, C(2021) 8400 final, SA.64485 (2021/N).

⁵¹ Case SA.46530 – Slovakia – National Football Stadium, recitals (39) and (50).

to construct a Stadium in the same area (recital (17)(d) of this Decision) and the lack of interest from the private sector to undertake a project of similar scope and functionality. The Lithuanian authorities consulted the market (private investors and the general public) in the period 2014 – 2016. It appeared that no investor would be willing to invest in the Vilnius complex without public intervention.

- (79) The Lithuanian authorities submit that the necessity of the aid is justified by the existence of a funding gap, which shows that the net revenues of the project cannot cover the investment cost and thus the aid is necessary to permit a reasonable return that would enable the completion of the project since, in the absence of the public support, neither the Concessionaire nor any other market investor or financial institution would have financed it (recital (21) of this Decision).
- (80) The Commission observes that, although, according to Concessionaire's Base Case Scenario, the operation of the Stadium and Sports Facilities is expected to be profitable, the Concessionaire would still not have sufficient financial resources to also cover the entire construction cost and to achieve a reasonable return. Lithuania has demonstrated this by referring to the existence of a funding gap (see recital (21) of this Decision). Therefore, the Commission considers that the aid that the State will award to the Concessionaire is necessary, as otherwise the project would not be constructed.
- (81) The notified aid constitutes an appropriate policy instrument to further develop the economic activities and areas mentioned above (see recitals (64) and (65) of this Decision). The State aid in the form of direct pecuniary advantages for the Project Company will result in the completion of the Vilnius complex and is as such an appropriate policy instrument to facilitate the economic activities' and areas' development as it appears that no investor would be willing to invest in the project without financial support from the State. Furthermore, by bundling the construction and the operation of the Vilnius complex, risks are transferred to the Concessionaire and the Project Company to the maximum possible.
- (82) In light of the above, the Commission considers that the notified State aid is necessary and constitutes an appropriate policy instrument for developing the project.

3.4.2.2.2. Proportionality of the aid

- (83) A State aid measure is proportionate if the aid amount is limited to the minimum needed to incentivise the additional investment or activity in the area concerned.
- (84) The Lithuanian authorities calculated the funding gap of the project (recital (21) *et sequitur* of this Decision). The Commission considers that the funding gap calculation is based upon reliable parameters. The funding gap calculation including all revenues of the Project Company from the commercial activities and all construction and operational costs for all infrastructure is appropriate given that the Project Company is not obliged to keep separate accounts for infrastructure used for economic activities operated by the Project Company and infrastructure used for non-economic activities. In line with the CA, the funding gap is calculated over a period of 25 years, three years of construction and 22 years of operation period. The Commission considers this duration as reasonable

considering the lifetime of the assets and a reasonable return on the investment for the Project Company.

- (85) The funding gap calculation considers the cash flows included in the Concessionaire's Base Case Scenario submitted during the tendering procedure. The Concessionaire has provided estimations of construction costs for each of the infrastructure components (recital (23) of this Decision). The maintenance costs were estimated for the economic and for the non-economic parts separately (recital (25) of this Decision) to ensure that the M2 amount is limited to the estimated costs the Project Company will incur for the maintenance of the Kindergarten and of the Cultural Education Centre and the Library during the 22 years of operation of the Vilnius complex. Furthermore the Concessionaire provided the estimated costs the Project Company will incur for the maintenance of the Sports Museum and the reserved State events in the Stadium during the 22 years of operation of the Vilnius complex (recital (25) of this Decision), which the M3 measure it intended to compensate. There was no need to estimate in detail the real estate and land lease fee in the Concessionaire's Base Case Scenario since it was clear from the tender documents that any future concessionaire would be relieved from paying such fee. At the time of the tendering procedure, the Lithuanian authorities have involved experts who assessed construction and operational costs with publicly available information on the Lithuanian construction market prices. This includes the database of a certified company specialising in construction pricing and estimates. The Lithuanian authorities thereby ensured that those costs correspond to market prices (recital (26) of this Decision). In addition, the prices of the services offered by the Project Company were compared to those actually paid by VCM for such services (recital (26) of this Decision).
- (86) The Commission verified, based upon the information submitted by the Lithuanian authorities, that the return required by the Concessionaire, used as discount rate to calculate the funding gap, is reasonable and in line with the market (recital (28) of this Decision) and is not in any way guaranteed by the Lithuanian authorities given that the Project Company is not entitled to any compensation for operational losses in the Stadium and Sports Facilities (recital (27) of this Decision) and has to bear any unplanned costs or costs due to exceptional circumstances (recital (27) of this Decision).
- (87) Finally, the Lithuanian authorities have introduced monitoring mechanisms (recital (29) of this Decision) and other elements in the CA agreement (recital (30) of this Decision) to accommodate the risk of overcompensation of the Project Company.
- (88) On the basis of the above, the Commission concludes that the aid for the construction of the Vilnius complex, is proportionate to the objective pursued, taking into account the assessment of the offer of the Concessionaire performed by the Lithuanian authorities at the time of the tendering procedure. The notified measure does not exceed the funding gap, cannot be cumulated with any other aid received from other public sources covering the same eligible costs (recital (31) of this Decision) and is limited to the minimum necessary in order to allow the completion of the construction of the Vilnius complex and therefore proportionate.

3.4.2.2.3. Conclusion on limited negative effects

- (89) In light of the above arguments, the Commission concludes that negative effects of the notified measure on competition and on trade, if any, are limited.

3.4.2.3. Balancing positive and negative effects of the aid

- (90) For the aid to be compatible with the internal market, the limited negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be outweighed by positive effects, in terms of contribution to the facilitation of the development of economic activities and areas. It has to be verified that the aid does not adversely affect the internal market to an extent contrary to the common interest.
- (91) The Lithuanian authorities demonstrated that the socio-economic benefits of the construction of the project outweigh any potential adverse effect on competition or trade between Member States.
- (92) The Commission considers that the notified measure will enable the construction of a multifunctional complex, which, as explained above, will generate important benefits for the economic development of certain economic activities and the relevant region and will contribute to the promotion of European sports and of cultural diversity.
- (93) Taking into account the safeguards put in place by the Lithuanian authorities in order to mitigate the advantages the Project Company may have from the completion of the project, the distortion of competition induced by the notified measure can be considered mitigated accordingly.
- (94) In light of the above, the positive impact of the notified measure in developing the economic activities at issue and the relevant region outweighs any potential negative effects on competition and trade. On balance, the notified measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of sport and cultural activities and of the relevant region. Moreover, such aid does not adversely affect competition to an extent contrary to the common interest. The overall impact on competition is deemed to be positive. The negative effects on competition, if any, would be limited.

3.4.3. *Transparency of the aid*

- (95) Information on the measure will be published in the Commission's State aid transparency website (recital (32) of this Decision).

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)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt.

If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President