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2008/366/EC:

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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 419/2008**of 13 May 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽¹⁾, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 May 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 May 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 13 May 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	53,3
	TN	103,0
	TR	99,1
	ZZ	85,1
0707 00 05	JO	178,8
	MK	40,9
	TR	120,3
	ZZ	113,3
0709 90 70	TR	131,4
	ZZ	131,4
0805 10 20	EG	42,6
	IL	57,5
	MA	55,5
	TN	52,0
	TR	58,9
	US	49,8
	ZZ	52,7
0805 50 10	AR	125,8
	IL	134,7
	MK	58,7
	TR	139,2
	US	129,7
	ZA	137,3
	ZZ	120,9
0808 10 80	AR	95,9
	BR	83,3
	CA	95,7
	CL	86,4
	CN	89,9
	MK	65,0
	NZ	113,2
	US	114,1
	UY	76,7
	ZA	80,1
	ZZ	90,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 30 January 2008

**on State aid C 35/06 (ex NN 37/06) implemented by Sweden for
Konsum Jämtland Ekonomisk Förening**

(notified under document number C(2008) 311)

(Only the Swedish version is authentic)

(Text with EEA relevance)

(2008/366/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement of the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By a complaint registered on 14 November 2005, Den Nya Valfärden informed the Commission about the sale of a plot of land by the Municipality of Åre to Konsum Jämtland Ekonomisk Förening (hereinafter 'Konsum') allegedly involving illegal State aid.

(2) By letter dated 3 January 2006, the Commission requested additional information about the transaction from the Swedish authorities, which was submitted by letters dated 2 March 2006 and 28 March 2006.

(3) By letter dated 3 January 2006, the Commission also requested additional information from the complainant about the transaction, which was submitted by letter dated 1 February 2006.

(4) By letter dated 19 July 2006, the Commission informed Sweden that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure ⁽²⁾.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the measure.

(6) Sweden submitted observations by letter dated 27 September 2006.

(7) The Commission received no comments from interested parties.

(8) By letter of 24 January 2007 the Commission requested further information, which was provided by the Swedish authorities by letter dated 21 February 2007.

⁽¹⁾ OJ C 204, 26.8.2006, p. 5.

⁽²⁾ Case C 35/06.

⁽³⁾ See footnote 1.

II. DETAILED DESCRIPTION OF THE MEASURE

1. Complainant ⁽⁴⁾

- (9) The complainant, Den Nya Vålfärden, is a business organisation financed by contributions from a large number of companies, acting on behalf of one of its members, Lidl Sverige KB (hereinafter 'Lidl').
- (10) Lidl entered the Swedish market in September 2003 and currently has 130 hard discount stores in Sweden. It is forecast to reach 3 % of the market by the end of 2007, while it had a market share of 2,2 % by the end of 2006. It had a turnover of SEK 3,7 billion (around EUR 393 million) in 2006/07. Lidl has made losses since it began its activities in Sweden and posted an operating loss of SEK 339 million (around EUR 36 million) for 2006/07.
- (11) Lidl is a relatively small player in the food retail market in Sweden.

2. Aid beneficiary ⁽⁵⁾

- (12) Konsum is a cooperative society which sells consumer goods, including food and groceries, throughout the Jämtland County. In 2004, it had a turnover of SEK 260 million (around EUR 28 million).
- (13) On 1 January 2006, Konsum Jämtland Ekonomisk Förening merged with Konsum Nord Ekonomisk Förening. Both companies are members of Kooperativa Förbundet, the Swedish Cooperative Union, which gathers the country's 51 consumer cooperative societies with around 3 million members. It owns, among others, 42 % of Coop Norden, the second largest player in the Fast Moving Consumer Goods (hereinafter FMCG) sector in Sweden, with a market share of 16,2 % in 2005, and one of the largest players in Denmark and Norway. Kooperativa Förbundet is also active in real estate, media and other activities. It had profits of SEK 701 million (around EUR 74 million) and sales of SEK 24,4 billion (around EUR 2,6 billion) in 2006.

3. Land sale

- (14) The complaint concerns the sale of land by the Municipality of Åre to Konsum for a price which was allegedly below market value.
- (15) On 5 October 2005, the Municipal Council of Åre decided to sell a plot of land in Produkthusområdet (Åre Prästbord 1:30, 1:68 and 1:69) to Konsum for SEK 2 million (around EUR 0,2 million). The sale was not preceded by a public tender.

- (16) The land sale was due to be approved at the Municipal Council meeting of 24 August 2005 for a price of SEK 1.
- (17) On 23 August 2005, however, Lidl submitted a bid of SEK 6,6 million (around EUR 0,7 million) for the same plot of land by a phone call to the Municipal Chief Executive Officer followed by an e-mail sent on the same day.
- (18) On 24 August 2005 Radio Sweden P4 Jämtland publicised Lidl's bid and interviewed a Municipal Commissioner, who confirmed the submission of the bid.
- (19) Subsequent to Lidl's bid, the Municipal Executive Office renegotiated the sale price with Konsum and a revised price of SEK 1 million was agreed.
- (20) On 24 August 2005, the Municipal Executive Board approved the sale for SEK 1 million. The minutes of this meeting refer to Lidl's bid as the basis for the decision to sell the land for SEK 1 million and not for SEK 1, as originally planned. According to the minutes, the Municipal Executive Office was given the task of trying to find an alternative site in Åre for Lidl.
- (21) The sale for SEK 1 million was later revoked by the Municipal Executive Board in its meeting of 20 September 2005 following an appeal by two members of the Municipality to the County Administrative Court.
- (22) Finally, the sale for SEK 2 million was approved by the Municipal Executive Board on 5 October 2005. An official letter of the Municipal Executive Office to the Municipal Council dated 20 September 2005 refers to Lidl's bid and mentions that the Municipal Executive Office has been in contact with Lidl concerning its establishment in another place.
- (23) By letters of 28 October 2005 to the Municipal Executive Board and of 30 November 2005 to Den Nya Vålfärden, Lidl confirmed that its SEK 6,6 million bid still stood and that it would be interested in participating in any tender for the land.
- (24) At the time of the sale, Konsum was already established in the Municipality of Åre and Lidl was trying to open its first outlet in Åre.

III. DECISION TO INITIATE PROCEEDINGS UNDER ARTICLE 88(2) OF THE EC TREATY

- (25) The Commission decided to open the formal investigation procedure mainly for the following reasons:

— The sale was not preceded by a public tender;

⁽⁴⁾ Source of data in this section: 'Just-food.com'; 26 October 2007.

⁽⁵⁾ Source of data in this section: information submitted by the complainant and annual reports of Kooperativa Förbundet for 2005 and 2006.

- The Swedish authorities had been unable to provide evidence of an independent evaluation of the land, even though they mentioned an evaluation of some plots of land in the same area carried out by Ernst & Young Real Estate;
- The price of the sale to Konsum and Lidl's bid seemed to be directly comparable and there seemed to be no specific conditions attached to Lidl's bid. The various increases in the planned sale price subsequent to Lidl's bid (from SEK 1 to SEK 1 million and, finally, to SEK 2 million) seemed to support this finding. Since Lidl's bid was higher than the actual sale price, State resources seemed to be involved;
- The measure might affect trade between Member States, in particular since both Konsum and Lidl are international players;
- The measure did not seem to be compatible with the regional aid guidelines and there seemed to be no other possible legal basis for approving the aid.

IV. COMMENTS FROM INTERESTED PARTIES

- (26) The Commission received no comments from interested parties.

V. COMMENTS FROM SWEDEN

- (27) The main argument put forward by the Swedish authorities was that the sale to Konsum was part of a series of land deals, notably involving the sale by Konsum of a plot of land in another area of Åre (Åre Torg, located in the city centre), which was to be used by the Municipality for other development purposes.
- (28) Through the land sale, Konsum relocated its outlet away from that area, thereby allowing the Municipality to achieve its aim. Accepting Lidl's bid would not allow the Municipality to pursue this new development plan, since Konsum would have remained at its current premises.
- (29) However, the sale contract does not mention any other land deal nor the value of the land sold by Konsum in the other area of Åre ⁽⁶⁾.
- (30) Two new relevant documents were submitted by the Swedish authorities, namely the evaluation report from Ernst & Young Real Estate and a judgement of the Administrative Court of Jämtland County of 24 May 2006 on the appeal against the decision of the Åre

Municipal Council's decision to approve the sale of the land to Konsum.

1. Evaluation report

- (31) The evaluation report does not specifically concern the plot of land sold to Konsum, but rather other plots in the same area, one of which is adjacent to the land bought by Konsum. The evaluation, which dates from May 2003 ⁽⁷⁾, is based on information in the consultant's databases, actual tenancy agreements and purchases and standardised operating and maintenance costs for comparable properties. The evaluation was based on a cash flow analysis, taking into account the intended use of the land.
- (32) According to the evaluation, the market value of the land sold to Konsum would amount to SEK 1,65 million, which compares to the actual transaction price of SEK 2 million.
- (33) The Swedish authorities claimed that, when selling the land, they took into account the fact that the evaluation from Ernst & Young Real Estate was conducted in May 2003 and the sale was carried out in October 2005, almost two and a half years later. However, no evidence of this was provided.

2. Judgement by the County Administrative Court

- (34) The County Administrative Court's review was confined to the legality of the decision. The Court assessed whether the Municipality had exceeded its powers, by favouring a private business for no particular reason.
- (35) The County Court decided that the decision was legal and that there was no favouring of the buyer for the following reasons:
- Lidl's bid was received just before the Municipal Council issued its decision;
 - The sale concerned land which was subject to special utilisation conditions, according to the master development plan applicable to the area;
 - There was not enough evidence that the sale price was below market value;
 - The decision of the Municipal Council must be regarded as part of a larger plan to relocate businesses away from the city centre. This plan included the sale of the land to Konsum.

⁽⁶⁾ A previous draft contract for the sale of the land for SEK 1 million did contain an obligation for Konsum to sell the city centre land within a deadline, but this clause was not present in the final contract.

⁽⁷⁾ The sale itself occurred in October 2005.

3. Further information submitted by the Swedish authorities

- (36) In January 2007, DG COMP requested the Swedish authorities to explain the methodology which they had used to reflect the time lag between the date of the evaluation by Ernst & Young Real Estate (May 2003) and the date of the transaction (October 2005) on the sale price and to provide evidence in this respect.
- (37) In February 2007 the Swedish authorities provided a letter signed by the Head of the Town Council of Åre, where several general market indexes (Retail Price Index, Property price index for retail outlets, etc.) are applied to the sale price in order to estimate the increase in price of the land during the period mentioned above.
- (38) The most relevant index is the property price index for retail outlets, which relates to built-up areas in larger towns and, for 2005, is composed of approximately one-third shopping centres and two-thirds other retail outlets. All indexes lead to an updated value of the land at the time of the sale which is lower than the actual sale price.
- (39) The Swedish authorities argued that there is basically no market for business/retail activities in Åre and so this evaluation could not take into account the prices of real transactions.

VI. ASSESSMENT OF THE MEASURE

1. State aid under article 87(1)

- (40) The existence of State aid must be assessed with reference to the Commission Communication on State aid elements in sales of land and buildings by public authorities ⁽⁸⁾ (hereinafter 'Communication').
- 1.1. Use of State resources
- 1.1.1. Application of the Communication
- (41) The Communication lays down two possibilities for excluding the presence of State aid in sales of land and buildings by public authorities: when the sale is carried out through an unconditional bidding procedure, accepting the best bid or, in the absence of such procedure, when the sale price is at least equal to the value established by an independent expert evaluation.

- (42) Such an evaluation must be carried out by one or more independent asset evaluators ⁽⁹⁾ prior to the sale negotiations, in order to establish the market value of the asset on the basis of generally accepted market indicators and evaluation standards.
- (43) In the case at hand, there was no formal bidding procedure. There was an *ex ante* evaluation of an adjacent plot of land, which was undoubtedly carried out by an independent asset evaluator and on the basis of generally accepted evaluation standards, within the meaning of the Communication (see Section V.1 above). Although the evaluation did not concern the plot which was sold but rather an adjacent plot, the result of the evaluation can be considered as a reasonable estimate of the market price of the land at the time it was carried out.
- (44) However, this evaluation was carried out in May 2003, almost two and a half years before the sale took place (in October 2005). During such a long period of time, the value of the land may have changed significantly.
- (45) During the formal investigation procedure and on the basis of a request from the Commission, the Swedish authorities provided an update of this evaluation (see Section V.3 above).
- (46) There seems to have been no formal updating of the Ernst & Young evaluation before the sale took place, to take into account the time lag between the date of the evaluation and the date the land was sold to Konsum. Otherwise, the Swedish authorities would have provided such evidence dating back to around the transaction date. Thus, it seems very likely that the information provided by Sweden in February 2007 is an *ex post* justification for the sale price.
- (47) Unlike the Ernst & Young evaluation, the update was not performed on the basis of generally accepted evaluation standards (e.g. cash flow analysis), taking into account expected future revenues. It does not constitute a full evaluation of the land, but rather the application of general market indexes to estimate the theoretical increase in price of the land. Most of the indexes provided are very general (e.g. Retail Price Index) and national in scope and thus do not seem to be adequate in the context of the specific sale.

⁽⁸⁾ OJ C 209, 10.7.1997, p. 3.

⁽⁹⁾ An asset evaluator is defined as a person with appropriate academic qualifications and experience. The evaluator must be independent, in the sense that the public authorities should not be entitled to issue orders as regards the result of the evaluation. State evaluation offices and public officers or employees are regarded as independent provided that undue influence on their findings is effectively excluded.

(48) The real estate index seems to be the most appropriate one. However, it is national in scope and does not take into account the specificity of the region in which the sale took place. Also, it relates mostly to larger towns, while Åre is a small town. Furthermore, it does not relate to the particular food retail sector, but rather to consumer retail in general. Therefore, it is not certain that this index captured the actual trend of real estate prices for food retail purposes in Åre from May 2003 to October 2005.

(49) The argument from the Swedish authorities that there is basically no market for business/retail activities in Åre — an argument which was put forward as justification for not taking into account the prices of real transactions — is somehow contradicted by the fact that, in 2003, Ernst & Young was able to perform a full evaluation based on the market prospects of the land for the particular food retail activity and on actual tenancy agreements and purchases in the same area.

(50) In any case, before the sale took place there was an alternative and, in the Commission's opinion, more reliable indicator of the market price of the land, namely the bid put forward by Lidl (see Section VI.1.1.3 below).

1.1.2. Conditions attached to the sale

(51) The land in question was subject to urban planning restrictions, namely as regards its intended use, i.e. a food and groceries commercial outlet, and the commercial surface. These restrictions must be considered within the Municipality's own legitimate public law powers.

(52) The Swedish authorities argued that the disputed land deal was part of an overall deal, involving the sale of land in the city centre by Konsum to the Municipality to be used for other development purposes, in accordance with the Municipality's master development plan. However, there is no formal link whatsoever between the two transactions in the sale contract and during the Commission's investigation Sweden did not submit any concrete information regarding the other transaction or showing that the two transactions were part of one single deal.

(53) No relevant restrictions were imposed in the sale contract. Thus, it must be considered that there were no 'special obligations' attached to the sale, within the meaning of the Communication.

(54) There were no conditions attached to Lidl's bid or to the sale contract. The activity to be developed on the land would be similar (food and groceries retail outlet) and in

line with the urban planning restrictions legitimately imposed by the Municipality. Therefore, the bid put forward by Lidl and the actual sale price to Konsum are directly comparable.

1.1.3. Application of the market economy investor principle

(55) According to established case law⁽¹⁰⁾, the starting point in assessing whether the sale involved state resources must be the market economy investor principle (hereinafter 'MEIP'). According to this principle, the aid amount involved in the sale of a public asset is equal to the difference between what the recipient in fact paid and what it would have had to pay in an arm's-length transaction on the open market to buy an equivalent property from a private vendor at the time of the sale.

(56) Therefore, should a private seller have been able to sell the land to Lidl at the bid price, i.e. if Lidl's bid was credible and binding, State resources would have been present.

(57) The Commission considers that Lidl's bid was credible and binding, for the following reasons:

— Lidl's bid was first put forward on 23 August 2005 by a phone call to the Municipal Chief Executive Officer followed by an e-mail sent on the same day. The bid was not submitted by more formal means because Lidl had just become aware that the sale was to take place at a price of SEK 1 on the following day. It can be assumed that there was therefore no time for formalising the bid in any other way;

— On 24 August 2005 the bid was publicised by a radio station which interviewed a Municipal Commissioner on the subject. The credibility of the bid was not put in question;

— On the same day that Lidl submitted its bid, the Municipal Executive Office renegotiated the sale price with Konsum, which immediately agreed to pay SEK 1 million for the land, instead of SEK 1. On the following day, the Municipal Executive Board approved the sale for SEK 1 million. The minutes of this meeting refer explicitly to Lidl's bid as the basis for the decision to sell the land for SEK 1 million and not for SEK 1, as originally planned. According to the minutes, the Municipal Executive Office was given the task of trying to find an alternative site for Lidl. This demonstrates that the municipal authorities had themselves already deemed Lidl's bid credible and binding;

⁽¹⁰⁾ See, for example, Judgment of the Court of First Instance of 29 March 2007 in Case T-366/00 ('Scott').

- An official letter of the Municipal Executive Office to the Municipal Council dated 20 September 2005 referred to Lidl's bid and mentioned that the Municipal Executive Office had been in contact with Lidl concerning its establishment in another place in Åre;
 - By letters of 28 October 2005 to the Municipal Executive and of 30 November 2005 to Den Nya Vålfården, Lidl confirmed that its SEK 6,6 million bid still stood and that it would be interested in participating in any tender for the land;
 - During the whole investigation procedure, the Swedish authorities never questioned the credibility of Lidl's bid;
 - Lidl is a well known international company competing directly with Konsum in the food and groceries retail market. Lidl had been opening outlets in Sweden since 2003 in a strategic move to profit from the growing demand for and market share of the hard discount segment in the FMCG sector in the Nordic countries. Thus, it can reasonably be assumed that it was indeed interested in the land sold to Konsum.
- (58) The Commission considers that Lidl's credible and binding bid, which was higher than the price of the land as estimated by the updated evaluation, is a better indicator of the market value of the land, since it reflects how much the market was willing to pay for the land at the date of the sale.
- (59) Even if the expert evaluation had been carried out in accordance with the Communication, i.e. an evaluation of the actual plot of land that was to be sold carried out just before the sale and on the basis of generally accepted evaluation standards, this evaluation would only be a second best instrument to determine the market price of the land, in the absence of real price offers. From the moment that a credible and binding bid is submitted and provided that this bid is directly comparable to and higher than the price estimate according to the evaluation, the former must be preferred. The bid establishes a real market price and should be considered as a better proxy for the foregone State resources than an expert evaluation.
- (60) Thus, the Commission concludes that there was a loss of State resources, amounting to the difference between the bid put forward by Lidl and the actual sale price (SEK 4,6 million, around EUR 0,5 million).
- 1.2. *Economic advantage*
- (61) If a public tender had been conducted, the price of the land would have reached at least the amount offered by Lidl and Konsum would have had to pay at least this price for the land. Thus, the Commission considers that, in the case at hand, the land sale conferred a selective economic advantage to Konsum equal to the difference between Lidl's bid and the actual sale price.
- 1.3. *Distortion of competition and effect on trade between Member States* ⁽¹¹⁾
- (62) Both the complainant and the aid beneficiary are active in the FMCG sector. This sector can be further split into four sub-sectors: soft discount, hard discount, hypermarkets and supermarkets/service shops/shops at petrol stations. In 2005, the market shares of these sub-sectors were: supermarkets — 68,4 %; hypermarkets — 16,4 %; soft discount — 11,5 %; and hard discount — 3,7 %. The consumer cooperative market share of the FMCG sector was 16,2 % in the same year.
- (63) The Swedish wholesale and retail food market is dominated by four groups: ICA Ahold, Axfood AB, Coop Norden and BergendahlsGruppen AB, accounting for about 80 % of the commodity retail market ⁽¹²⁾.
- (64) The Swedish retail food industry has long been characterised by stable structures and a low degree of internationalisation. However, this picture began to change in 1999 when the Dutch retail food giant Ahold took over a 50 % stake in Sweden's leading retailer ICA. Subsequently, there has been a wave of consolidations among the Nordic retailers and the companies are becoming more Nordic than domestic in their perspective.
- (65) The general trend has been an increase in the sales volumes by hypermarkets and large supermarkets, while small and medium-sized stores have lagged behind.
- (66) Discount stores have been gaining market share. Between 1990 and 2002, discount stores increased their share of total sales from 3 % to 13 %. In response to this trend, the Nordic retailers have been opening up their own discount units and increasing the number of products sold under their own label.

⁽¹¹⁾ Source of data in this section: Annual report of Kooperativa Förbundet for 2005 and 'Finland, retail food sector, 2003 report' by the Global Agriculture Information Network.

⁽¹²⁾ Data refers to 2002 but is not expected to have changed significantly since.

(67) During the formal investigation procedure, the Commission confirmed its initial assessment that the measure distorted competition and had the potential to affect trade between Member States.

(68) Competition was affected through the distortion of asset allocation between competing firms. The food and groceries retail market is mainly of a local or regional character. However, by occupying a place in the market which affected an entry strategy of a foreign competitor, the measure had the potential to affect trade between Member States.

(69) Also, the aid reinforced the financial position of an undertaking with international activities. According to the case law of the Court⁽¹³⁾ 'when State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid (judgment in Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, paragraph 11). For that purpose, it is not necessary for the beneficiary undertaking itself to export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State (judgment in Case 102/87 *France v Commission* [1988] ECR 4067, paragraph 19).'

1.4. Conclusion

(70) The measure constitutes State aid, within the meaning of Article 87(1) of the EC Treaty.

2. Compatibility

(71) In its decision to open the formal investigation procedure, the Commission indicated that, if the presence of State aid were to be confirmed, there seemed to be no basis for declaring the measure compatible with the Treaty⁽¹⁴⁾. In particular, the land sale could not be considered as a compatible investment aid under the Guidelines on national regional aid⁽¹⁵⁾. Rather, it constitutes operating aid which, according to point 4.15 of those Guidelines, is not allowed in assisted areas under Article 87(3)(c) of the EC Treaty⁽¹⁶⁾. The Commission also confirms its initial conclusion that there are no alternative legal grounds for exempting the aid from the general prohibition principle.

⁽¹³⁾ See, for example, paragraph 40 of the Judgment of the Court of 14 September 1994, *Kingdom of Spain v Commission of the European Communities*, Joined Cases C-278/92, C-279/92 and C-280/92.

⁽¹⁴⁾ See paragraphs 29-32 of the decision to open the formal investigation procedure.

⁽¹⁵⁾ OJ C 74, 10.3.1998, p. 9.

⁽¹⁶⁾ In this respect see, in particular, paragraphs 30 and 31 of the decision to open the formal investigation procedure.

(72) Even if the distortion of competition seems to be rather local in nature and the effect on trade may be fairly limited, Sweden did not provide any evidence of objectives of common interest being addressed by the aid. Rather, the Swedish authorities concentrated their arguments on the existence of state aid and did not provide any compatibility arguments.

(73) This preliminary conclusion is therefore confirmed.

3. Recovery

(74) Since the measure was implemented without prior notification to the Commission and is incompatible with State aid rules, the Swedish authorities are required to recover the aid from the beneficiary.

(75) It should be recalled, in this context, that the purpose of recovery is to restore the situation existing prior to the granting of the aid. This is achieved once the unlawful and incompatible aid is repaid by the recipient, who thereby forfeits the advantage which he enjoyed over his competitors in the market. The amount to be recovered should be such as to eliminate the economic advantage given to the beneficiary.

(76) Since the aid to Konsum is equal to the difference between Lidl's bid and the actual sale price — SEK 4,6 million (around EUR 0,5 million) — this is the aid amount to be recovered.

(77) Therefore, the Swedish authorities are required to recover from Konsum an amount of SEK 4,6 million plus the recovery interest, calculated according to Article 9 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁷⁾. Interest shall be payable from the date the unlawful aid was put at the disposal of Konsum until the date effective recovery takes place.

VII. CONCLUSION

(78) The Commission finds that Sweden has unlawfully implemented, in breach of Article 88(3) of the EC Treaty, the sale of land in question. The Commission considers that such a measure, which constitutes pure operating aid, is not eligible for any derogation under the EC treaty, and is therefore incompatible with the common market. Therefore, the aid has to be recovered,

⁽¹⁷⁾ OJ L 140, 30.4.2004, p. 1, as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The State aid, amounting to SEK 4,6 million, unlawfully granted by Sweden, in breach of Article 88(3) of the Treaty, to Konsum Jämtland Ekonomisk Förening is incompatible with the common market.

Article 2

1. Sweden shall recover from the beneficiary the aid referred to in Article 1.

2. The sum to be recovered shall bear interest for the entire period running from the date on which it was put at the disposal of the beneficiary until its actual recovery.

3. The interest shall be calculated as capitalised interest in conformity with Chapter V of Commission Regulation (EC) No 794/2004.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. Sweden shall ensure that this Decision is implemented within four months of the date of its notification.

Article 4

1. Within two months of the notification of this Decision, Sweden shall submit the following information to the Commission:

(a) The total amount (principal and recovery interest) to be recovered from the beneficiary;

(b) A detailed description of the measures already taken and planned to comply with this decision;

(c) Documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Sweden shall keep the Commission informed about the progress of the national measures taken to implement the recovery of the aid referred to in Article 1 until it has been completed. It shall immediately submit, at the Commission's request, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 5

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 30 January 2008.

For the Commission

Neelie KROES

Member of the Commission