

Brussels, 21 December 2000

On application by Germany, Commission decides that municipal aid for public swimming pool is not state aid

The European Commission has held that an annual subsidy for the private operator of an open-air swimming pool in Dorsten (North Rhine-Westphalia) does not constitute state aid under the EC Treaty. It has therefore decided that the aid does not have to be notified to it in advance under the aid rules.

Germany had notified the Commission of the annual DM 2 million grant for the swimming pool in order to obtain a Commission ruling on whether the measure had to be notified. At the same time it sought a Commission decision that the measure does not constitute aid within the meaning of the Treaty. This the Commission has now done.

The facts are as follows. The town of Dorsten runs several public swimming pools at a loss. Faced with substantial costs for renovating them and building a new open-air pool, it decided to put the new investment and the running of the pools out to tender in a Community-wide procedure in order to find a private operator to keep the amenity open for the local population. The wide-ranging rights and obligations laid down in the contract between the town and the operator include the obligation on the operator to make the pool available for schools and swimming clubs free of charge and the obligation on the town to make an annual payment of DM 2 million.

The Commission's examination of the case led it to conclude that the measure does not constitute state aid within the meaning of Article 87(1) of the EC Treaty, because it does not affect trade between Member States.¹ In the light of the description of the scheme, the Commission concluded that the amenity is used by the inhabitants of the town and the surrounding area. It held that there was a clear difference between this and aid to promote major theme parks targeted at the national or even international market and advertised far beyond the area where they are located. By its very nature, aid in favour of facilities aimed at attracting international visitors is likely to affect trade between the Member States, whereas in this case the Commission took the view that there was practically no likelihood of intra-Community trade being affected, especially since the catchment area of the swimming pool did not extend to the nearby Netherlands.

Since one of the conditions of Article 87(1) of the EC Treaty is not met, it was not necessary for the purposes of the decision to consider whether the measure fell under any of the others.

¹ Under that article, a measure constitutes state aid only if all four of the following conditions are met: it must be granted by the state or through state resources; it must favour certain undertakings; it must distort competition; and it must affect trade between the Member States.

In its decision the Commission also pointed out explicitly that since this was not state aid within the meaning of Article 87(1) of the EC Treaty, Article 86(2) was not applicable.² This was true even though the aid in the present case is granted in consideration of the operator's obligation to provide a service of general economic interest.

² This provision states that undertakings entrusted with the operation of services of general economic interest are subject to the rules of the Treaty, in particular to the rules on competition, insofar as the application of those rules does not obstruct the performance of the tasks assigned to them.