

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 2004

concerning the acquisition of land belonging to Aircraft Services Lemwerder by the municipality of Lemwerder

(notified under document number C(2004) 4748)

(Only the German text is authentic)

(Text with EEA relevance)

(2005/664/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 on the European Economic Area, and in particular Article 62(1)(a) thereof,

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

Whereas:

I. PROCEDURE

- (1) The Commission has received a complaint concerning a land transaction between the municipality of Lemwerder and Aircraft Services Lemwerder (hereinafter ASL). According to the complaint, the acquisition contained an aid element in favour of ASL. The Commission requested information from Germany by letter of 30 January 2003. Germany replied by letter of 18 March 2003.
- (2) By decision of 17 September 2003, the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty in respect of the notified measure. The case was registered under number C 56/2003. The decision was communicated to Germany by letter of 18 September 2003 and was published in the *Official Journal of the European Union* ⁽²⁾. The Commission did not receive any comments from third parties.
- (3) The German authorities commented on the Commission decision by letters of 14 and 18 November 2003. The Commission requested further information by letters of 13 January and 10 May 2004. Germany replied by letters of 13 February and 31 August 2004. A meeting between representatives of the Commission and of Germany and the person who made a property valuation that had been submitted took place on 13 October 2004. Following the meeting, Germany sent additional information by letter of 23 November 2004.

⁽¹⁾ OJ C 293, 3.12.2003, p. 5.

⁽²⁾ See footnote 1.

II. MEASURE

1. Recipient

- (4) ASL (in Lemwerder, Lower Saxony, near Bremen) provides services, such as aircraft maintenance. In 2002/2003 it had around 700 employees and a turnover of EUR 53,4 million. Until 1993 it formed part of Deutsche Aerospace AG (DASA). When DASA wanted to close it down, the Land of Lower Saxony took measures to secure ASL's survival. These measures were approved by the Commission by Decision 97/753/EC of 12 March 1997 concerning State aid for Aircraft Services Lemwerder (ASL) ⁽³⁾. On 1 January 2004 EADS acquired a majority holding of 51 % in the company. Since then, ASL has been undergoing a restructuring process. Civil aircraft maintenance activities will be discontinued. In future, repair and maintenance work on military aircraft components (Transall C-160, Tornado) and the assembly of military components (Eurofighter, A400M) will be carried out there. The workforce in 2006 is planned to total 210 employees ⁽⁴⁾.

2. Description of the measure

- (5) The municipality bought land that ASL Lemwerder did not need. According to Germany, the price included a volume discount.

Date	Land	Surface area (m ²)	Price/m ² (DEM/EUR)	Total price (DEM/EUR)
28.6.2000	West and central sites	241 643 (97 828 and 143 815)	[...] (*)/[...]	[...]/[...]
16.8.2001	South site	37 328	1,50/0,77	55 992/28 628

(*) Confidential.

- (6) Developing the 'west' site involved a total cost of EUR 1 355 040. For several reasons, it was assumed that the cost for the 'central' site would be some 10 % lower.
- (7) The municipality assumed that, after putting in place the necessary infrastructure, it would be able to sell the 'west' and 'central' sites for DEM [...] /m² (EUR [...] /m²). This is a relatively high value, reflecting the quality of the sites: next to ASL's landing strip, direct link to the rail network and access to ASL's port facilities on the Weser. In 1999 and 2002 land was sold for the same price in the neighbouring area of Edenbüttel, although access by rail, air and river was more difficult. Germany provided two further valuations for land to the north of ASL that was reckoned to have a comparable value.
- (8) For developing the 'west' site, the municipality received aid of EUR 562 200, with 50 % co-financing under the ERDF Objective 2. It contributed from its own resources an amount of EUR 132 125. The proceeds from the sale was put at EUR [...].
- (9) The municipality and the Lower Saxony Development Agency (NILEG) are looking primarily to the aerospace industry but have not imposed any restriction as regards potential buyers. In 2000 the property market collapsed. Since the second half of 2002 demand for this type of land has picked up but, so far, no land has been sold.

⁽³⁾ OJ L 306, 11.11.1997, p. 18.

⁽⁴⁾ www.eads.net

III. REASONS FOR INITIATING THE PROCEDURE

- (10) In its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty, the Commission doubted whether the price paid by the municipality corresponded to the market price. The land was sold as bare land, and ASL or any private or public buyer would have to invest a substantial amount in order to be able to sell it as developed land. In the absence of a valuation of the bare land, the Commission made an estimate by subtracting the cost of development from the value of the developed land, taking into account the expected delay in selling the land in plots, the financial cost of the project and the land required for infrastructure. This estimate suggests that the value of the undeveloped land is significantly below the price paid by the municipality. In addition, the Commission doubted whether a private investor would have started developing the land at all, taking into account also the overall market situation in the direct vicinity of ASL. Furthermore, it was doubted whether a private investor would have received similar aid to that received by the municipality. As Germany has not provided any justification for the acquisition of the 'south' site, this transaction could constitute a further aid element.
- (11) The Commission doubted whether possible aid in the land transactions would be compatible with the common market. There are, for example, no investment or restructuring conditions attached to the land sale and, according to Germany, the company was not in difficulties. Decision 97/753/EC had approved the aid on condition that the authorities did not grant ad hoc aid for a period of five years. Any aid for the land transactions would, however, have been granted during this five year period.

IV. COMMENTS FROM GERMANY

- (12) For Germany, the appropriate starting point for the market value of the bare land would be the value of comparable plots of bare land that took account of the locational and infrastructure links. A new land valuation of the bare land was submitted. It was based on a direct comparison with other plots of bare land within a radius of 80 km and took account of the differing quality of the plots. The expert visited the land in question and the other plots, taking particular account of the infrastructure links that could be developed. He arrived at a value of EUR [...] per m². Since this is higher than the price paid by the municipality, there could be no aid. In Germany's view, there is no need to take into account any delays in reselling the plots of land, the costs of development and aid.
- (13) The public authorities, furthermore, have long term considerations when it comes to developing industrial land, such as tax revenue from companies setting up there. The State aid rules would make it impossible for municipalities to achieve such objectives if they had to sell at a specific price. In addition, municipalities could, it is true, organise a bidding procedure when they wish to sell land but not when they wish to acquire a plot of land that fits into their development plan. The seller could here find itself in a very favourable negotiating position. A transaction under such conditions would not depend on aid being granted to the seller.
- (14) It was also claimed that the estimate by the Commission was flawed. A private investor, for example, is not subject to the same rules as a municipality. Under Section 127 *et seq.* of the Federal Building Code (*Baugesetzbuch*), municipalities have to bear at least 10 % of eligible development costs. In addition, the costs of ordnance disposal were unforeseen. Consequently, at the time of the purchase, such costs could not influence the price. Moreover, the Commission communication on State aid elements in sales of land and buildings by public authorities ⁽⁵⁾ (the communication) does not require additional infrastructure costs to be included in the valuation. In addition, it allows a higher price (e.g. with a 5 % tolerance rule) if certain conditions are met.

⁽⁵⁾ OJ C 209, 10.7.1997, p. 3.

- (15) Whether a private investor would have developed the land is irrelevant here. The development of land is a public task and ranks as a service of general economic interest. A municipality develops land only if, as in the present case, it expects sufficient demand. The Lower Saxony Economic Research Institute had predicted bottlenecks in the supply of land. The innovative restructuring of the entire area, from the link with the new Weser tunnel and the planned coastal motorway to the envisaged deep water port in Wilhelmshaven, has boosted the demand for business sites. The Lower Saxony Investment and Promotion Agency also explained that the sites in question were, therefore, particularly valuable and that the municipality would be missing out on a 'unique selling point' if it did not buy the land. And so it recommended that the municipality buy the land, especially as this would enable it to exploit the entire area between the Bahnhof Altenesch industrial estate and the ASL site.
- (16) As regards acquisition of the 'south' site, Germany notes that this plot is a necessary component of the overall plan as it will serve as the replacement and exchange area for the infrastructure to develop the 'central' site.

V. ASSESSMENT

Existence of State aid

- (17) Article 87(1) of the EC Treaty provides that '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 common market'. In this case, it has to be ascertained whether the land transaction has favoured ASL in a selective manner. This would be the case if the municipality had paid a price above the market value.
- (18) The Commission agrees with Germany that the relevant market price is the price for the bare land. The method of calculating the value of the bare land by deducting the development costs from the value of the developed land is a standby method should a more direct valuation not be available. Consequently, the Commission has assessed carefully the new valuation of the bare land submitted by Germany.
- (19) If public authorities wish to buy a specific plot of land, they must deal with the owner. Organising an unconditional bidding procedure is not a solution. Although the principles in Section II.1 of the communication regarding sale through an unconditional bidding procedure are not applicable in the present case, those in Section II.2 can be applied to a certain extent.
- (20) The report was drafted by an independent expert in conformity with point II.2(a) of the communication. No orders were given to the expert and his independence was guaranteed by his public appointment and swearing in. For the rest, he is active as a certified expert on behalf of the Commission and the Court of Justice of the European Communities. He is particularly competent in valuing land in the area concerned. Although the valuation is dated 6 November 2003, i.e. after the sale, it can be accepted in the context of this procedure. The Commission considers that the method applied by the expert, which takes account of the value of other plots and of the differing quality, is appropriate. It assessed the report in detail, and in particular the size and nature of the plots that were used in the comparison, the way in which potential contamination was taken into account, the independent nature of the expert, the meaning of specific references to infrastructure links, the type of soil, and the method used for calculating the final result. The prices of the relevant plots range from EUR 16 to EUR 36 per m². The Commission notes that the calculation of the final result of EUR [...] per m² was perhaps not entirely correct but, in any event, alternative calculations would give a higher value. On the basis of this assessment, the Commission comes to the conclusion that the value of EUR [...] per m² may be taken as a rough indication of the market value of the bare land at the time of the sale. In any event, on the basis of the valuation, the Commission can rule out the possibility that the market value is lower than the actual price for which the land was sold, i.e. EUR [...] per m².

- (21) The Commission notes that in the present case the municipality did not buy the land in the interests of ASL but intended to develop and sell the land in accordance with its integrated planning and on the basis of wider policy considerations (see recital 15). This is illustrated by the ERDF grant (see recital 8). The choice of precisely this land belonging to ASL is consistent with the political considerations and is attributable to its unique infrastructure links, as confirmed by the Lower Saxony Investment and Promotion Agency.
- (22) The Commission acknowledges that, for this price, a private developer would not be able to buy the bare land, to develop it, to provide the required infrastructure and to sell the developed land at a profit. Some of the arguments put forward by Germany, e.g. the legal framework applicable to municipalities, may explain this. A further assessment is, however, not necessary since, given the basic conditions of this case, the two conclusions referred to above, firstly that the municipality did not buy the land at a price above the market price and secondly that it did not buy the land in the interests of ASL but in accordance with its integrated planning and on the basis of wider political considerations, are sufficient for it to be stated that no specific advantage was conferred on ASL. The remaining doubts expressed in the Commission decision initiating the procedure are no longer relevant.
- (23) As regards the acquisition of the 'south' site, the Commission can accept Germany's arguments. Moreover, any aid in this connection would, under no circumstances, exceed the *de minimis* threshold of EUR 100 000.

VI. CONCLUSION

- (24) The Commission concludes that the municipality of Lemwerder acquired ASL's land at a price that was not above the market price. Accordingly, no advantage was conferred on the seller and thus no State aid within the meaning of Article 87(1) of the EC Treaty was granted,

HAS ADOPTED THIS DECISION:

Article 1

The land transaction between the municipality of Lemwerder and Aircraft Services Lemwerder does not contain any elements of State aid pursuant to Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 December 2004.

For the Commission
Neelie KROES
Member of the Commission
