

# **1 NN 30/2009 – Ireland – MSF 2002 – Hotel capital allowances in respect of Ritz Carlton**

## **Questions to the Irish authorities following the meeting of 3 September 2009**

### **1. BENEFICIARIES OF THE AID**

Although it is clear from the submission of the Irish authorities that the Investors (and not Carrylane) will avail themselves of the capital allowance, it cannot be excluded at this stage that part of the advantage resulting from the allowance is passed on to Carrylane. This is certainly the case regarding the buy-back agreement in place between the Exhort Co-ownership and Carrylane, but there might be other aspects through which some of the benefit accrues actually to Carrylane.

Please clarify the following:

1. Please provide a step-by-step description of the project from its inception until the opening of the hotel (i.e. who initiated the project? was it Carrylane who started building the hotel and sought to involve third party investors to get the necessary financing or did the investors contract Carrylane to build the hotel on their behalf? Did the financial contribution of the investors precede the signing of the investor lease agreements? etc.)

2. It appears that some of the beneficiaries were involved from the outset and contributed towards the *construction* of the hotel whereas other investors stepped in at a later stage and acquired *ownership* in the hotel. In this respect, do the eligible costs specified by the Irish authorities refer to the construction costs or the costs of acquiring the ownership (the two are not necessarily the same). Please indicate the figures for construction costs, costs of acquiring ownership and the eligible costs.

3. Did the price of acquiring ownership by the Investors potentially take into account the fact that the Investors will be eligible for the capital allowance (i.e. did this price contain a premium through which part of the benefit resulting from the capital allowance was transferred to Carrylane) or did it simply cover the construction costs?

4. As not all the Investors were present at the time the investment started back in 2005, who covered the remaining part of the construction costs? Was it Carrylane?

5. In their draft reply of 25 August 2009 the Irish authorities indicated that Carrylane agreed to construct the hotel on behalf of the Investors on trading account as a property developer and not for its own use and retention on capital account as a hotel operator. In case the Investors ordered the construction of the hotel and paid for the construction (thus becoming the owners), why was there a need for the long-term ( years) investor leases between Carrylane and the Investors (in which Carrylane seems to act as the owner of the Hotel)?

6. In what way are the investor lease agreements related to the expenditure incurred by the investors when contributing towards the construction/acquiring ownership in the hotel?



[REDACTED]

14. Ireland specified that Carrylane has entered into a management agreement with Ritz-Carlton Hotel Company employing Ritz-Carlton as hotel manager. It was indicated that Ritz-Carlton is paid an arms length fee for its management operations.

Could you

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provide more details about this fee? How is it established and why can it be considered arms length? Is it a fixed fee or performance related remuneration?

## **2. AMOUNT AND INTENSITY OF THE AID**

15.

[REDACTED]

16.

[REDACTED]

[REDACTED]

## **3. MARKET ANALYSIS**

17. In order to substantiate Ireland's position that the relevant geographic market in this case should be the EEA, please explain what the main attraction of the area is, capable of drawing visitors from all over the EEA (in the Atlantica case referred to by Ireland, for instance, there was a theme park)

18. Please provide information on the country of origin of the guests since the opening of the hotel in 2007 and their percentage share in the total.

19. Please provide more detail about Treasury Holdings being the passive landlord of two hotels in Dublin. What does passive landlord mean? Which are the hotels in question?

20. Regarding the question of the relevant product market, it seems that the data provided by Ireland include all types of accommodation. However, the Commission services consider at this stage that not all hotels in the EEA/Ireland are a real substitute. According to the hotel website, the Ritz-Carlton Powerscourt is a *'luxury hotel showcasing Palladian-style architecture and offering guests a host of amenities. Two championship-calibre golf courses on the grounds, a 30,000-square-foot luxury spa and a Gordon Ramsay signature restaurant are among this Ireland luxury hotel's distinctive attractions.'* Thus Ritz-Carlton Powerscourt is arguably best suited for guests looking for remoteness and proximity to nature and specific amenities rather than city travellers.

**a.** In light of this, please provide arguments as to which types of hotel could be considered close substitutes for Ritz-Carlton Powerscourt and submit new data enabling the calculation of market share and capacity increase pursuant to p. 24 (a) and (b) of the Multisectoral Framework 2002 on this possibly narrower market.