



EUROPEAN COMMISSION

Competition DG

State Aid: Cohesion, R&D&I and Enforcement

Regional aid

Brussels, 19/02/2009*D/50701
COMP/H1/ET/AT/SVH/is D(2009) 175

Permanent Representation of Ireland to
the European Union
Rue Froissart 89-93
B-1040 Brussels

Subject: State aid N 660/2008 – Ireland – LIP – Hotel Capital Allowances in
respect of the Ritz Carlton, Powerscourt, Co. Wicklow

Dear Madam/Sir,

By electronic notification registered 19 December 2008 at the Commission (SANI 1856), the Irish authorities notified their intention to grant regional aid under the Guidelines on national regional aid 2007-2013 (hereinafter: "RAG")¹ to Ritz Carlton for an investment project in Powerscourt Demesne, Powerscourt, Co. Wicklow in the South and East Region of Ireland.

After an initial examination, the Commission has found the notification to be seriously incomplete in that the following information is missing.

**1. THE APPLICATION OF THE RAG 2007-2013 TO THE INVESTMENT PROJECT
IN QUESTION**

The present notification concerns a regional aid for the large investment project which is subject to individual notification requirement and the rules stipulated in the section 4.3 ("*Aid for large investment projects*") of the RAG 2007-2013.

The services of the Commission draw the attention of the Irish authorities to paragraph 63 and footnote 58 of the RAG 2007-2013 which says that "*individually notifiable investment projects will be assessed in accordance with the rules in force at the time of the notification*". At the time of the notification in question (19 December 2008) the RAG 2007-2013 are to be considered as "the rules in force at the time of the notification".

¹ OJ C 54, 04.03.2006, p. 13.

Please specify the name of the case and the case number in all correspondence.

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In this regard DG Competition observes that the investment project in question is located in Powerscourt, County Wicklow which is in the Mid East Sub Region of Ireland. According to the Irish regional aid map 2007-2013², the latter region is *not* eligible for national regional aid for the period 2007-2013. Consequently no regional aid can be granted for investment projects located in this region.

In the notification the Irish authorities indicate that the legal basis of the notified aid is the existing automatic capital allowances depreciation aid scheme No. N 232/2006 (ex No. N 832/2000)³. In the Commission's decision concerning N 232/2006 (cf. section 3 of the Commission decision) it is said that under the scheme in question "the legal right to receive the aid will be fully conferred to the beneficiary by the end of December 2006 (i.e. before the expiry date of the 1998 guidelines on national regional aid)". According to this Commission decision, a final level of tax relief in respect of each project had to be fully determined by 31 December 2006 (cf. section 3 of the Commission decision N 232/2006). Thus, in accordance with this Commission's decision, the final level of tax relief in respect of the notified project had to be determined by the end of December 2006. Accordingly, the notification of the regional investment aid exceeding the threshold for individual notification should have been submitted to the Commission before 31 December 2006 in accordance with the rules in force at the time.

- (1) In this regard the Irish authorities are requested to provide their comments on the above observations and explain why the present notification was submitted to the Commission in December 2008.

2. BENEFICIARIES OF THE NOTIFIED AID

According to the Commission's decision in the case N 232/2006 (ex No. N 832/2000), "beneficiaries under the scheme are large companies".

In the notification and in the documents submitted with the notification, the Irish authorities indicate that the aid beneficiaries are a large number of individuals together with a small number of corporate entities sharing ownership of the hotel (hereinafter: "investors"). According to the provided information in the notification, [REDACTED]

With regards to the beneficiaries and in the context of the questions presented below, the services of the Commission draw the attention of the Irish authorities to *the Commission's decision of 20 May 2008 on State aid implemented by France for building the cruise vessel Le Levant*⁴.

² Commission decision of 24 October 2006 in case N 374/2006 – Irish regional aid map 2007-2013, OJ C 29, 01.12.2006, p. 11.

³ Commission decision of 31 May 2006 in case N 232/2006 – Transitional arrangements concerning Capital Allowances Depreciation Regime for Hotels in Ireland (ex N832/2000), OJ C 204, 26.08.2006, p. 3.

⁴ State aid case No. C 74/1999 (ex- NN 65/1999), OJ L 252, 20.9.2008, p. 17: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:252:0017:0034:EN:PDF>

- (2) Please confirm whether DG Competition understands correctly that [REDACTED] in the present case. Please inform how these beneficiaries comply with the requirement of the approved aid scheme N 232/2006 (ex N 832/2000), which says that beneficiaries under the scheme can be only large companies.
- (3) In the notification it is said that the hotel is owned by [REDACTED] separate entities. What is the legal form of this joint-ownership? Does the structure of the joint-ownership allow the investors be effectively involved in the operation of the hotel? Is the investors' activity limited to an equity holding aimed at making a return, with no real participation in the hotel's operation? The Irish authorities are requested to provide a copy of the joint ownership articles of association/agreement.
- (4) Please describe in more detail the hotel operator [REDACTED]. According to the information provided in the notification, [REDACTED]
- (5) Please give details about the terms and conditions of [REDACTED] management agreement with the Ritz Carlton Hotel Group. The Irish authorities are requested to provide a copy of the management agreement.
- (6) Please provide details about the terms and conditions of the leasing agreement between the investors (owners of the hotel) and the hotel operator [REDACTED], in particular:
- (a) What do the investors and [REDACTED] get as a return?
 - (b) Is it foreseen in the agreement that [REDACTED] can become an owner of the hotel at the end of the period of the operation of the hotel?
 - (c) Could it be considered that the tax benefit is partially transferred to [REDACTED], for instance, through a reduction in the rent charged during the operating period?
 - (d) The Irish authorities are requested to provide a copy of the leasing agreement.
- (7) Please indicate who bears the sole responsibility for the commercial activity of the hotel. Do the investors run any real risks in respect of the hotel's operating results?
- (8) Please provide details on the management mandate/operating activities of [REDACTED], in particular whether [REDACTED] is responsible for all aspects of operating the hotel and has all the necessary powers, so that the investors cannot interfere in its operation in any way:
- (a) Is [REDACTED] responsible for technical and commercial management of the hotel?
 - (b) Has [REDACTED] full powers with regards to the staff recruitment and management?

- (c) Has [REDACTED] full powers to manage the joint-ownership's property and business and can carry out all tasks relating to administration, including laying-up (terminate operation) of the hotel?
- (d) Is [REDACTED] authorized to conclude all the contracts and commercial transactions?

Without this information, the Commission is unable to define its position on the proposed measure. Consequently, the period of two months within which it is required to take a decision will only start after the information is received. This information should reach the Commission within 20 working days of the date of the receipt of this letter.

We also remind the Irish authorities of the instrument of a *pre-notification* for regional aid to large investment projects (cf. Commission's letter of 2006 inviting the Member States to use a pre-notification in case of planned regional aid for large investment projects). In view of the complexity and volume of notifications for regional aid to large investment projects, DG Competition believes that a pre-notification meeting between the Member State concerned and DG Competition proves to be very helpful. The pre-notification instrument offers a possibility to provide guidance to the Member States on the scope of information to be submitted in the formal notification phase, so as to ensure that the notification form will be complete from the outset. Thus we invite the Irish authorities to use systematically the instrument of the pre-notification for future cases.

Yours faithfully,

signed

Robert HANKIN
Head of Unit