

Commission Communication on State aid elements in sales of land and buildings by public authorities

(97/C 209/03)

(Text with EEA relevance)

I. INTRODUCTION

On a number of occasions in recent years the Commission has investigated sales of publicly owned land and buildings in order to establish whether there was an element of State aid in favour of the buyers. The Commission has drawn up general guidance to Member States in order to make its general approach with regard to the problem of State aid through sales of land and buildings by public authorities transparent and to reduce the number of cases it has to examine.

The following guidance to Member States:

- describes a simple procedure that allows Member States to handle sales of land and buildings in a way that automatically precludes the existence of State aid,
- specifies clearly cases of sales of land and buildings that should be notified to the Commission to allow for assessment of whether or not a certain transaction contains aid and, if so, whether or not the aid is compatible with the common market,
- enables the Commission to deal expeditiously with any complaints or submissions from third parties drawing its attention to cases of alleged aid connected to sales of land and buildings.

This guidance takes account of the fact that in most Member States budgetary provisions exist to ensure that public property is in principle not sold below its value. Therefore, the procedural precautions recommended to avoid State aid rules coming into play are formulated in a way that should normally allow Member States to comply with the guidance without changing their domestic procedures.

The guidance concerns only sales of publicly owned land and buildings. It does not concern the public acquisition of land and buildings or the letting or leasing of land and buildings by public authorities. Such transactions may also include State aid elements.

The guidance does not affect specific provisions or practices of Member States intended to promote the quality of and access to private housing.

II. PRINCIPLES

1. Sale through an unconditional bidding procedure

A sale of land and buildings following a sufficiently well-publicized, open and unconditional bidding procedure, comparable to an auction, accepting the best or only bid is *by definition* at market value and consequently does not contain State aid. The fact that a different valuation of the land and buildings existed prior to the bidding procedure, e.g. for accounting purposes or to provide a proposed initial minimum bid, is irrelevant.

- (a) An offer is 'sufficiently well-publicized' when it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate publications and through real-estate agents addressing a broad range of potential buyers, so that it can come to the notice of all potential buyers.

The intended sale of land and buildings, which in view of their high value or other features may attract investors operating on a Europe-wide or international scale, should be announced in publications which have a regular international circulation. Such offers should also be made known through agents addressing clients on a Europe-wide or international scale.

- (b) An offer is 'unconditional' when any buyer, irrespective of whether or not he runs a business or of the nature of his business, is generally free to acquire the land and buildings and to use it for his own purposes. Restrictions may be imposed for the prevention of public nuisance, for reasons of environmental protection or to avoid purely speculative bids. Urban and regional planning restrictions imposed on the owner pursuant to domestic law on the use of the land and buildings do not affect the unconditional nature of an offer.
- (c) If it is a condition of the sale that the future owner is to assume special obligations — other than those arising from general domestic law or decision of the planning authorities or those relating to the general protection and conservation of the environment and to public health —

for the benefit of the public authorities or in the general public interest, the offer is to be regarded as 'unconditional' within the meaning of the above definition only if all potential buyers would have to, and be able to, meet that obligation, irrespective of whether or not they run a business or of the nature of their business.

2. Sale without an unconditional bidding procedure

(a) *Independent expert evaluation*

If public authorities intend not to use the procedure described under 1, an independent evaluation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The market price thus established is the minimum purchase price that can be agreed without granting State aid.

An 'asset valuer' is a person of good repute who:

- has obtained an appropriate degree at a recognized centre of learning or an equivalent academic qualification,
- has suitable experience and is competent in valuing land and buildings in the location and of the category of the asset.

If in any Member State there are not appropriate established academic qualifications, the asset valuer should be a member of a recognized professional body concerned with the valuation of land and buildings and either:

- be appointed by the courts or an authority of equivalent status,
- have as a minimum a recognized certificate of secondary education and sufficient level of training with at least three years post-qualification practical experience in, and with knowledge of, valuing land and buildings in that particular locality.

The valuer should be independent in the carrying out of his tasks, i.e. public authorities should not be entitled to issue orders as regards the result of the valuation. State valuation offices and public officers or employees are to be regarded as independent provided that undue influence on their findings is effectively excluded.

'Market value' means the price at which land and buildings could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale⁽¹⁾.

(b) *Margin*

If, after a reasonable effort to sell the land and buildings at the market value, it is clear that the value set by the valuer cannot be obtained, a divergence of up to 5 % from that value can be deemed to be in line with market conditions. If, after a further reasonable time, it is clear that the land and buildings cannot be sold at the value set by the valuer less this 5 % margin, a new valuation may be carried out which is to take account of the experience gained and of the offers received.

(c) *Special obligations*

Special obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale in the public interest provided that every potential buyer is required, and in principle is able, to fulfil them, irrespective of whether or not he runs a business or of the nature of his business. The economic disadvantage of such obligations should be evaluated separately by independent valuers and may be set off against the purchase price. Obligations whose fulfilment would at least partly be in the buyer's own interest should be evaluated with that fact in mind: there may, for example, be an advantage in terms of advertising, sport or arts sponsorship, image, improvement of the buyer's own environment, or recreational facilities for the buyer's own staff.

The economic burden related to obligations incumbent on all landowners under the ordinary law are not to be discounted from the purchase price (these would include, for example, care and maintenance of the land and buildings as part of the ordinary social obligations of property ownership or the payment of taxes and similar charges).

(d) *Cost to the authorities*

The primary cost to the public authorities of acquiring land and buildings is an indicator for the market value unless a significant period of

⁽¹⁾ Article 49 (2) of Council Directive 91/674/EEC (OJ No L 374, 31. 12. 1991, p. 7).

time elapsed between the purchase and the sale of the land and buildings. In principle, therefore, the market value should not be set below primary costs during a period of at least three years after acquisition unless the independent valuer specifically identified a general decline in market prices for land and buildings in the relevant market.

3. Notification

Member States should consequently notify to the Commission, without prejudice to the *de minimis* rule⁽¹⁾, the following transactions to allow it to establish whether State aid exists and, if so, to assess its compatibility with the common market.

(¹) OJ No C 68, 6. 3. 1996, p. 9.

(a) any sale that was not concluded on the basis of an open and unconditional bidding procedure, accepting the best or only bid; and

(b) any sale that was, in the absence of such procedure, conducted at less than market value as established by independent valuers.

4. Complaints

When the Commission receives a complaint or other submission from third parties alleging that there was a State aid element in an agreement for the sale of land and buildings by public authorities, it will assume that no State aid is involved if the information supplied by the Member State concerned shows that the above principles were observed.