

**COMMISSION DECISION****of 15 May 2013****on State aid SA.33728(12/C) which Denmark is planning to implement for the financing of a new multiarena in Copenhagen***(notified under document C(2013) 2740)***(Only the English text is authentic)****(Text with EEA relevance)**

(2014/297/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(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 the provision(s) cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) On 7 December 2011, the Danish authorities notified the European Commission a measure for the financing of a new multiarena in Copenhagen following a pre-notification phase. The Commission has received two complaints concerning the proposed measure and on 21 December 2011, the Commission asked the Danish authorities, in the form of a request for information, to clarify the issues brought forward in the complaints. The Danish authorities submitted their reply on 6 February 2012.
- (2) By letter dated 22 March 2012, the Commission informed Denmark that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments from six interested parties. It forwarded them to Denmark, which was given the opportunity to react; its comments were received by letters dated 26 July and 15 August 2012.
- (5) The Danish authorities submitted additional clarifications in December 2012 and January 2013. The selected operator also submitted additional clarifications in January 2013. In addition, the Danish authorities, upon request, clarified issues triggered by a Danish newspaper article regarding the multiarena.
- (6) The Danish authorities have withdrawn the grant from Region Hovedstaden (namely, the Capital Region of Denmark/Capital Region of Copenhagen) from the notification <sup>(3)</sup> by letter dated 6 March 2013.
- (7) The Danish authorities have provided a language waiver and agree that the decision will be adopted in English as the authentic language.

**2. DESCRIPTION OF THE MEASURE**

- (8) The City of Copenhagen plans to build a 'multiarena' of international standard which can provide facilities for music, culture and sport of a high, international level. The multiarena will have a maximum capacity of 15 000 seats.

<sup>(1)</sup> OJ C 152, 30.5.2012, p. 12.

<sup>(2)</sup> Cf. footnote 1.

<sup>(3)</sup> See paragraph 13 in the decision to initiate proceedings, OJ C 152, 30.5.2012, p. 12.

- (9) There are other existing arenas in Copenhagen, primarily intended for football, but the Danish authorities argue that these are not sufficiently flexible and scalable to attract international sports, music and entertainment events to Copenhagen. In particular 'Parken' should be mentioned, an arena in the centre of Copenhagen (home ground of FC Copenhagen and also used for large shows/concerts with up to 45 000 spectators). There are also other arenas nearby, for example, in Malmö, Sweden.
- (10) The main parties (hereafter 'the parties') involved in the multiarena project are the City of Copenhagen and Realdania (a private foundation) <sup>(4)</sup>. Another actor, By & Havn (owned by the City of Copenhagen (55 %) and the Danish State (45 %)) shall provide for free the right to use land on which the multiarena is to be built.
- (11) According to the Danish authorities, it is clear from earlier failed attempts to have an arena built on private initiative alone that no multiarena will be built in Copenhagen unless the project receives public co-financing.

#### 2.1. FUNDING OF THE CONSTRUCTION OF THE ARENA

- (12) The parties will set up a jointly owned 'Arena Company', the purpose of which will be to construct and own the multiarena and to manage the operator agreement (whereas the operation of the multiarena shall be handled by a separate operator as explained below). The actual construction work will be awarded through an open tender.
- (13) The total costs involved in the planning and construction of the multiarena are estimated at about DKK 1 100 million (EUR 148 million) <sup>(5)</sup>. The multiarena project will be financed by equity from the parties combined with external debt financing. Each of the parties will contribute DKK 325 million (EUR 43,7 million) to the capital of the Arena Company (total of DKK 650 million) and own 50 % each. The external financing of DKK 345 million (EUR 46,4 million) will be covered by loans on market terms with a repayment period of 30 years. Elitefacilitetsudvalget <sup>(6)</sup> will also contribute DKK 15 million (EUR 2 million) for the financing of the construction of the multiarena.
- (14) By & Havn shall provide the right to use land on which the multiarena is to be built free of charge for the first 40 years. After 40 years the Arena Company shall pay market rent.

#### 2.2. OPERATION AND USE OF THE ARENA:

- (15) The Arena Company will manage the operator agreement, however, the actual operation of the multiarena shall be handled by a separate operator which has been selected in an open and transparent tender procedure <sup>(7)</sup>. The operator will be obliged to ensure that access to the multiarena is open to all users on non-discriminatory conditions at market prices.
- (16) Following the tender procedure, the Danish division of the Live Nation Entertainment group won the right to operate the arena for 30 years. Live Nation Entertainment group is the world's largest live music and entertainment company, and it operates through local companies in each territory.
- (17) The operator is obliged to pay an annual fixed rent of <sup>(\*)</sup>[...] <sup>(8)</sup> for the right to operate the arena (fixed payment irrespective of the number of events hosted) to the Arena Company and a variable rent [...]. In addition, the operator must pay [...] due under the lease and thus the operator effectively pays all variable costs of the arena.

<sup>(4)</sup> Although it seeks to ensure a return on its operations, Realdania is not a profit-maximising business but a philanthropic foundation which describes its mission thus 'to improve quality of life for the common good through the built environment', see [www.realdania.dk](http://www.realdania.dk)

<sup>(5)</sup> The total costs of DKK 1 100 million includes interest on loans and indexation of prices and wages foreseen until 2015.

<sup>(6)</sup> Elitefacilitetsudvalget is a committee with the purpose of upgrading sports facilities to an international standard with the aim of hosting sports events at an international level. It is partly financed by the Danish State.

<sup>(7)</sup> The Danish authorities confirmed that the tender procedure regarding the operator agreement is based on transparent, objective and non-discriminatory conditions and requirements with the relative weight of each of the sub-criteria established in advance, and that price is an important criterion in the overall assessment.

<sup>(\*)</sup> [...]: the information in brackets is covered by the obligation of professional secrecy

<sup>(8)</sup> The annual rent in the first year of the contractual term is the [...] or such other sum as determined by applying a specific formula as set out in the lease agreement (see clause 1.1, annual rent in the first year of the Contractual Term will be the [...] per annum and subsequently the annual rent is revised annually according to the index, see clause 8 of the lease.

- (18) In addition, the Arena Company will have revenues from a car parking and the Danish authorities have ensured that all agreements regarding the car parking have been negotiated and concluded on a commercial basis. It is envisaged that there will be such a connection between the external financing and the rent paid by the operator that the income received can pay the external financing.
- (19) For the first 10 years of operation, the national sports federation DIF <sup>(9)</sup> will also provide an operational grant of DKK 5 million (EUR 672 000) each year. In return DIF will have the right to use the multiarena for international sports championships and other sport events. According to the Danish authorities, DIF shall pay market rent to the operator whenever it uses the arena.

### 2.3. GROUNDS FOR INITIATING THE PROCEDURE

- (20) In the decision to open formal investigations, the Commission found that a selective economic advantage could not be excluded at any level (construction, operation and use) and consequently the project would involve State aid. In addition, the public co-financing of the multiarena would most likely distort, or at least, threaten to distort competition and have an effect on competition and trade between Member States. At that stage, the Commission also had doubts whether the proposed project could be deemed compatible under Article 107(3)(c) of the Treaty, as regards all three levels of possible aid (construction, operation and use).

### 3. COMMENTS FROM INTERESTED PARTIES

- (21) As mentioned, the Commission has received two complaints concerning the proposed measure, which both claim that the multiarena project will distort or threaten to distort competition within the event industry, in particular in the market for the hosting of commercial mid-sized and large live entertainment events, and affect trade between Member States as the operator will be competing with arena operators in other Member States.
- (22) Comments in favour of the multiarena were received from stakeholders in the region of Copenhagen: (i) Sport Event Denmark (non-profit organisation); (ii) Team Danmark (a public self-governing institution responsible for the overall development of Danish Elite Sports); and (iii) Horesta and Wonderful Copenhagen (tourism organisations).
- (23) One of the complainants goes further into the assessment of the project by stating that it would constitute State aid incompatible with the internal market due to its distortive effect on competition between venues for hosting of commercial mid-sized and large live entertainment events (including in neighbouring parts of Sweden and even Germany), which would be aggravated by a vertical foreclosure threat [...]. The complainant also questions the Danish authorities' statement that there will only be a limited overlap with existing facilities and that the multiarena mainly will draw events to Copenhagen that cannot be held in presently existing facilities.
- (24) The other complainant also points out the adverse effects on competition in the event market in the Öresund region, particularly regarding concerts by international artists, and questions also the tender procedure for the operation of the arena.
- (25) Following an article in a Danish newspaper regarding the multiarena, some additional comments were also received.

### 4. COMMENTS FROM DENMARK

- (26) The Danish authorities maintain that the proposed measure does not involve State aid referring to previous Commission practice where, under certain conditions, support for infrastructure might not be interpreted as constituting State aid under Article 107(1) of the Treaty, and that the question of State aid should be assessed separately for each of the several different levels concerned (owner, operator and users).
- (27) The Danish authorities focus their arguments on, in their view, the lack of economic advantage and they claim that none of the parties involved in the project gain a financial advantage, be it directly or indirectly, as a consequence of the public co-financing.

<sup>(9)</sup> DIF is an umbrella organisation for 61 sports federations with totally more than 1,6 million members in approximately 10 700 sports associations. Besides being responsible for both the elite sports and the popular sports DIF constitutes the Danish National Olympic Committee and is thereby responsible for the Danish participation at the Olympic Games.

- (28) If the multiarena project was found to involve State aid, the Danish authorities argue that it should be considered compatible with the internal market under Article 107(3)(c) of the Treaty. They argue that in particular the following should be taken into consideration:
- there is a market failure (the project would not be realised in the absence of public co-funding),
  - the public co-funding is limited to the strictly necessary in order to realise the project,
  - the funding is used exclusively for the establishment (construction) of the facility as the subsequent operation will take place on market terms,
  - the construction of such venues constitutes the embodiment of a typical State responsibility towards the general public, and
  - the multiarena will only to a very limited extent compete for events that would presumably otherwise be held in other venues in Copenhagen because the multiarena will provide different facilities.
- (29) The Danish authorities have also submitted a report, by the independent economic consultant, Copenhagen Economics, of the positive and negative impacts on competition and trade from the multiarena, which in short concludes that the public co-financing carries with it considerable gains in economic welfare and only modestly, or even negligible, anti-competitive effects.
- (30) In addition, the Danish authorities, upon request, clarified issues triggered by a Danish newspaper article regarding the multiarena.

## 5. ASSESSMENT OF THE AID

### 5.1. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TREATY

- (31) According to Article 107(1) of the Treaty, '*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 internal market*'.
- (32) In order to be classified as a State aid, the notified project must thus fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Community trade.
- (33) With regard to the requirement that the measure must be granted through State resources and attributable to the State, this criterion is clearly fulfilled in this case as the City of Copenhagen, as well as other public authorities (see more below) will contribute with a direct grant and provide the land where the arena is to be built. Such public authorities and part of the State and their resources are thereby deemed attributable to the State.
- (34) The State funding of the construction of the multiarena may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the *Leipzig/Halle* airport judgment of the Court of Justice <sup>(10)</sup>, if all the requirements of Article 107(1) are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. In this case, the arena will be used to provide services on a market, hence for an economic activity. Consequently, it needs to be assessed whether there is State aid to the different actors involved in the project.

#### **Construction of the arena**

- (35) The Danish authorities acknowledge that the multiarena project would not be carried out by way of market forces alone and that the public co-financing is necessary for it to be realised as shown by the failed attempt in 2009 to build a multiarena due to lack of necessary funding <sup>(11)</sup>.

<sup>(10)</sup> Judgment of 19 December 2012 in Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

<sup>(11)</sup> In 2009, the City of Copenhagen offered in a tender process a favourable loan to private parties who would build a multiarena. The winning company did not succeed in securing the necessary additional funding and therefore in March 2010, the tender was cancelled.

- (36) With regards to the requirement that the measure must be granted through State resources and attributable to the State, this criterion is clearly fulfilled regarding the financing by the City of Copenhagen and the granting of land from By & Havn (owned by the City of Copenhagen and the Danish State). The City of Copenhagen and the Danish State clearly constitute public authorities using resources belonging and/or controlled by the State.
- (37) Also the grant (for the construction of the multiarena) from Elitefacilitetsudvalget (a committee with the purpose of upgrading sports facilities to an international standard with the aim of hosting sports events at an international level), which is admittedly at least partly financed by the Danish State, constitute State resources. The statutes of Elitefacilitetsudvalget are determined by the Ministry of Culture, which also has performance contract with Elitefacilitetsudvalget during the funding period. Thus, with regard to the financing it receives from the Danish State, which in turn it would use/grant in fulfilment of its tasks, its interventions are deemed attributable to the State.
- (38) The State contribution for the construction of the arena, including the granting of land and the grant from Elitefacilitetsudvalget, gives an economic advantage to the Arena Company (the owner of the multiarena), as it is necessary for the construction of the arena that would not have been built on market terms. As the funds involved are obviously State resources and the decision to make the grant is imputable to the State, all other criteria of State aid are met (see hereafter the examination of distortion of competition and effect on intra-community trade between Member States). Consequently, the State contribution thus constitutes State aid to the Arena Company.
- (39) However, with regard to the grants from DIF, the Danish authorities argue that these payments are not State resources. DIF receives a large part of its income from annual grants from the Danish State (from the proceeds from the Danish Gambling market) but also from other (non-public) sources. In accordance with DIF's rules, the governing bodies are elected without any influence from public authorities and without influencing the individual decision adopted by DIF's governing bodies. Thus, neither the Danish State nor any other public body has any influence on the decision adopted by DIF. Moreover, the annual amount to be paid by DIF is a payment for the right to reserve the arena for specific uses that are in DIF's own interest in accordance with DIF's own decision to enter into an agreement to pay for the right to reserve the arena. Consequently, in accordance with the view of the Danish authorities, the payments by DIF cannot be imputed to the State and thus not considered as aid in the sense of Article 107(1) of the Treaty.

### Operation of the arena

- (40) The operation of the arena has been tendered out, according to the Danish authorities, taking full account of the principles of EU Public Procurement rules and the operator has been selected in an open, transparent and non-discriminatory tender procedure in which the price (financial and commercial terms) was given a relative weight of approximately 75 %. All interested parties had an equal opportunity to bid for the operator contract and the contract has been awarded to the bidder handing the best offer.
- (41) The tender was launched in April 2011 and was widely advertised <sup>(12)</sup>. The project also hosted a Project Open Day in Copenhagen for all interested parties.
- (42) An Information Memorandum and pre-qualification questionnaire ('PQQ') were issued to all interested parties <sup>(13)</sup>. All parties submitting PQQ responses satisfied the Project Partners' requirements and were thus invited to advance to Stage 1 of the procurement competition in June 2011. Three Stage 1 tenders were submitted and two bidders were short listed for Stage 2 and later submitted bids. The evaluation of these two bids led to the contract with Danish Venue Enterprise (part of Live Nation Entertainment) <sup>(14)</sup>. The evaluation included the strength of the financial offer, legal terms, facilities requirements, services and deliverability and risk. Both bids were strong, but the selected operator scored higher in most of the categories, and in particular, it offered a fixed lease that was significantly higher than the other bidder's.
- (43) The selected operator will pay rent consisting of an annual fixed rent of [...] and a variable rent [...]. The operator must also pay [...] due under the lease and thus the operator effectively pays all variable costs as part of

<sup>(12)</sup> The procedure began with announcements in leading international and Danish media: The New York Times, The Times, Børsen, Licitation, Byggeriets Dagblad, Berlingske Tidende and Politiken.

<sup>(13)</sup> Prospective local operators such as Tivoli, Bella Center, Malmö Arena and Parken were all invited to participate, however they all declined to participate in the competition.

<sup>(14)</sup> Live Nation Entertainment group is the world's largest live music and entertainment company. Its activities consist primarily of show promotion, venue management and operation and provision of ticketing services. Live Nation Entertainment operates its business through local operating companies in each territory. In Denmark, the business is run through Live Nation Denmark ApS.

the lease, including maintenance costs. The lease is concluded for a term of [...] years (all bids had to be for at least 25 years and the operator has explained that long term contracts from 20-30 years are not unusual in this business).

- (44) While these arrangements minimise the advantage to the selected operator to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator of this new arena cannot be excluded. However, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.

#### **Use of the arena**

- (45) According to the lease agreement, the operator has to make the multiarena available to a variety of user groups and for a variety of activities (with emphasis on live entertainment, culture and sport) and cannot award preferential treatment to any certain type of activities to ensure the multifunctional use of the arena. To ensure that users shall be charged on market terms, the lease agreement states that 'the rates charged for use shall always be at the market rates reasonably obtainable in the open market for that particular use' <sup>(15)</sup>. The arena time may also not be preponderantly assigned to certain 'dedicated' users. Thus, the arena is multifunctional and open to all with no captive user.
- (46) The lease agreement furthermore states that the rates charged for use shall be at the market rates reasonably obtainable in the open market for that particular use. Moreover, the operator is a private company with a need to cover his costs and indeed to make profits, and it is free to set the prices on a commercial basis and cannot discriminate between users.
- (47) The renting of the arena may constitute aid for the users, if the users can be considered undertakings within the meaning of Article 107 of the Treaty and if the rent they pay is below the rent for the use of comparable infrastructure under normal market conditions. Non-professional users do not qualify as undertakings within the meaning of Article 107 of the Treaty. In this case though, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.

#### **Effect on competition and trade between Member States**

- (48) The arena is planned as a multi-purpose arena for many types of events (music, culture and sport) of a high, international level. As the market for organising this type of international events is open to competition between venue providers and event organisers, the effect on competition and trade between Member States can be assumed, taking into account the location of the planned multiarena (very close to southern Sweden by car or train) and that other arenas exist both in Copenhagen and in nearby cities (including other Member States).
- (49) Moreover, the General Court has, in its Order concerning the Ahoy complex in the Netherlands, held that there was no reason to limit the market to the territory of that Member State <sup>(16)</sup>. As in the opening decision, the Commission therefore considers that aid to the arena distorts competition and effects trade between Member States.

#### **5.2. COMPATIBILITY**

- (50) The Danish authorities argued that if the measure was found to constitute State aid, this should be declared compatible under Article 107(3)(c) of the Treaty. In order for a proposed measure to be found compatible with the internal market under this derogation, the Commission examines whether it pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition.
- (51) With regard to the achievement of a policy objective of common interest, it is noted that the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered as a State responsibility, particularly in light of the Amsterdam Declaration on Sport

<sup>(15)</sup> In this respect, although possible benefits for any party that is a frequent or repeated user or hirer of the arena or for any party that is a sponsor or commercial partner of the arena may be offered, such benefits are offered for example, [...] and must be provided to all comparable users of the arena on transparent, equal and non-discriminatory terms and thus do not mean that any specific users can receive a favourable treatment.

<sup>(16)</sup> Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v Commission*, Order of the General Court of 26 January 2012, paragraph 45.

and Article 165 of the Treaty, 'The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function'.

- (52) In addition to sport events, the arena will also be used for cultural events (concerts, shows), and as such contribute to the promotion of cultural diversity in the light of Article 167(4) of the Treaty. In addition, it will contribute to overall welfare through an increased supply of cultural offerings and some positive impact on economic growth and employment.
- (53) As the arena will ensure the general public's increased access and practice to sport and culture, particularly considering the arena's multifunctional character and lack of capacity and/or adequate other facilities for sports and cultural events in Copenhagen, the City of Copenhagen will be fulfilling its responsibility to the general public by making the arena project possible and thereby attracting additional cultural, musical and sports events to Copenhagen. The realisation of the arena must therefore be regarded as satisfying policy objectives of common interest.
- (54) During the procedure, the Danish authorities have withdrawn the grant from Region Hovedstaden from the notification. Concerning the necessity and proportionality of the proposed measure, the Danish authorities have also during the procedure demonstrated the need of the multiarena's additional capacity and that there is both a lack of capacity in existing arenas and that existing arenas would be inappropriate for certain types of events (for example the other existing arenas in Copenhagen are either not sufficiently flexible or scalable to attract international sports, music and entertainment events to Copenhagen). Hence, the new multiarena would only to a very limited extent compete for events that would presumably otherwise be held in other venues in Copenhagen because the multiarena will provide different facilities and stage a range of new events which currently cannot take place in Copenhagen, thus increasing the number of events as explained in more detail below.
- (55) Although other arenas exist both in Copenhagen and in nearby cities (including other Member States), the Commission considers that Denmark has shown the lack of capacity, at least for certain types of events, and confirmed that the new arena will become a complement rather than substitute for the existing arenas. The Danish authorities have also explained that the new arena is likely to lead to an overall increase in the supply of cultural, musical and sports events rather than to a mere substitution of venues.
- (56) The multiarena will be used for large scale indoor cultural, musical and sports events. Its flexible facilities will be suitable for sport events, championships, concerts, shows, cultural events, congresses, exhibitions etc. with a capacity of 12 500 for sport events, and 15 000 for music events. Football matches cannot be held there.
- (57) Other existing venues in Copenhagen are primarily Parken, the national football stadium in the centre of Copenhagen (home ground of FC Copenhagen and also used for large shows/concerts with a capacity of around 45 000-50 000 spectators) and Forum Copenhagen (an indoor venue) located in Copenhagen mainly used for conventions and exhibitions.
- (58) Parken is primarily a football stadium and as such not in competition with the new indoor multiarena which does not have the capacity to host football matches. To a lesser extent Parken also hosts concerts, however considering its capacity it mainly attracts large stadium tours performing for audiences often between 40 000-50 000 spectators. It can also be transformed into a heated indoor arena, nevertheless it is mostly used for football matches. Based on past programme, Parken hosted 19 concerts from 2007 to 2011 with best estimates of around 34 000 for those 19 concerts. Thus, it is reasonable to conclude that concerts held at Parken on average have more than twice as many spectators as the maximum capacity planned for the multiarena. Moreover, according to Live Nation Denmark, [...] touring concerts are planned to visit Parken in 2013, out of which [...] are dedicated stadium tours which perform for very large audiences, often 40 000-50 000 spectators which far exceed the capacity of the multiarena. Stadium tours are unlikely to include arenas in their tour schedules because of the lower potential for ticket sales and performing multiple times in an arena as a substitute for a single stadium performance is also not attractive.
- (59) The other existing venue in the centre of Copenhagen is Forum, an older concert and exhibition (indoor) venue. For concerts Forum can host 8 500 seated, or 10 000 standing spectators, and many events which are well-suited for Forum would be less attractive for the new multiarena because the capacity of the arena would be too

poorly utilised. The physical characteristics also differ as Forum was constructed in the 1920s, with in essence a vast floor space, which is well-suited for conventions and exhibitions where audience needs to move around and less suited for concerts and especially sport events.

- (60) Hence, the new multiarena, Forum and Parken differ significantly with respect to capacity and flexibility and consequently the three venues are substitutes only to a limited degree. Due to such different characteristics, the competitive effect of the new multiarena on existing venues in Copenhagen, and the attractiveness of hosting events in those, is likely to be limited.
- (61) The existing venues with characteristics similar to the new multiarena are rather Malmö Arena in Sweden and Jyske Bank Boxen in Herning, Jutland, Denmark (a couple of hundred kilometres from Copenhagen). According to the Danish authorities, the managing director at the latter sees rather new opportunities to attract major events to Denmark through cooperation with the new multiarena.
- (62) Regarding the competitive effect of the new multiarena on the Malmö Arena, the following was taken into account. Although Malmö is geographically close, it is situated in a different country separated by water and to be crossed by way of a toll bridge. Malmö Arena is a multipurpose arena (although it was designed to be primarily a sports arena) with a capacity of 13 000 spectators for sport events and around 15 500 for concerts, which is similar to the Copenhagen new multiarena.
- (63) However, with respect to the events at Malmö Arena, based on 2012 and 2013 programming, a significant share of the events held, or to be held, there has a Swedish or local focus. Firstly, Malmö Arena is the home arena for the local ice-hockey team with approximately 25 games every year. Secondly, past programming (autumn 2012), shows that most concerts and shows hosted at Malmö Arena are targeted at a Swedish audience, which is also shown by the fact that on the Danish version of its website, only a very limited list of events is advertised (that is to say four out of the 14 events for the 2012 autumn programme with similar figures). In turn, three out of those four events advertised on the Danish site were part of a concert tour including also Danish venues. This shows also that promoters do not necessarily perceive a venue in Copenhagen as a substitute for Malmö Arena, on the contrary, it might well be desirable to play in both cities.
- (64) The 2013 programming also shows similar characteristics with 48 events scheduled, and out of these 6 shows/concerts are advertised on the Danish version of the Malmö Arena website (out of these one show is also scheduled to perform in Copenhagen, two of the concerts have already performed in Copenhagen at the initial part of their respective tours, and another one of these shows is the Eurovision Song Contest which will in all circumstances be held in Sweden because Sweden won the contest in 2012). In addition, ticket sales for Live Nation Entertainment events at Malmö arena show that the share of Danes attending international touring concerts in Malmö is low.
- (65) Therefore, considering that Malmö arena is located in another country with certain inherent obstacles including a toll bridge, different language, currency and cultural differences together with the captive user of Malmö Arena and the fact that many events have a distinct local or Swedish focus, most activities hosted by Malmö Arena are very unlikely to take place in a non-Swedish venue and thus only very small share of the events would potentially be exposed to competition from the new Copenhagen multiarena. Hence, the risk of Malmö Arena losing, or competing for, events to the new Copenhagen multiarena must be considered rather small and thus the competitive effect of the new multiarena is likely to be limited on the Malmö Arena as well.
- (66) On the contrary, according to the Danish authorities, the new multiarena is expected to lead to new events which would not otherwise be attracted to Copenhagen or the region, which may also benefit for example, Parken, Jyske Bank Boxen and Malmö arena. Large scale sports events such as world championship competitions in swimming, ice-hockey and handball typically require multiple venues and with the new multiarena, Denmark and the region is likely to be a much stronger candidate for such sports events through co-hosting or for other events which may only be commercially viable, or for other reasons (for example, different catchment areas) to play in two Danish venues.
- (67) The selected operator, Live Nation Denmark, has further confirmed that it will continue to use other venues in the area for its events taking into account both the client's needs for a specific type of venue and its own needs to make the shows financially viable and can thus not favour its own venues. An example is that Live Nation is one of the primary providers of content to London's O<sub>2</sub> Arena, although the venue is operated by another

operator. In its capacity as a venue operator, the selected operator, also relies on its venue being used for the maximum number of days possible to generate revenue and as such it has every incentive to make its venues available to other event promoters. According to the operating contract, the operator may also not refuse other promoters' access to the multiarena and is obligated to make it available to a variety of users at market rate without favouring any specific undertaking.

- (68) Consequently, the Commission considers that Denmark has shown the need of additional capacity in Copenhagen and that the new multiarena will both complement existing arenas with additional capacity and increase the types of events which can take place in Copenhagen, and thereby considerably benefit the general public's access to such events in the area. The overlap between the existing venues in the region and the new multiarena must also be regarded as limited and thus the risk that the new entry would lead to the exit of an existing venue in the region is unlikely as the new multiarena is rather a complement than a substitute for the existing arenas. The risk of vertical foreclosure, as well as incentives to distort competition by setting anti-competitively low prices, also appears highly unlikely. Concerning any possible vertical foreclosure, as also mentioned above, the operator of the multiarena is contractually obligated to ensure equal access and does not have the opportunity to refuse other promoters' access to the arena and such behaviour would also sacrifice its own financial viability.
- (69) In the absence of public co-financing the project would not be realised, as without the State contribution there will not be enough funds to finance the multiarena project as admitted by the Danish authorities and supported by the previous attempts made by the City of Copenhagen to have the arena built. Plans have existed for a decade, and the City of Copenhagen would have welcomed any private investor who would have undertaken to construct the multiarena on market terms alone, but no such investor has come forward, as shown for example by the 2009 attempt as described above.
- (70) The State contribution is limited to the funding gap, that is to say, the funding that cannot be found on the market, and such contribution of DKK 325 million (EUR 43,7 million) corresponds to around 30 % of total costs involved in the planning and construction of the multiarena. In return, the State will own 50 % of the Arena Company, the company set up to construct and own the multiarena and to manage the operator agreement, however, as explained above, the operation of the multiarena shall be handled by a separate operator.
- (71) Regarding possible alternatives to the multiarena, such as a smaller arena or a less costly arena with the same capacity, those would not meet the desired objectives of the project. A smaller arena would not meet the lack of a venue with the planned capacity and flexibility as the multiarena. The new multiarena thus fills a gap which would remain open if a smaller arena with less capacity was built instead. It is also likely that the effects on competition would be greater with a smaller arena since the differentiation from existing venues would be more moderate.
- (72) With regards to a cheaper and less accomplished arena, it should be noted that the financing from Realdania depends on high architectural aspirations for the arena. The City of Copenhagen also holds high architectural and aesthetic aspirations for the new developments in the area where the arena is to be built. Moreover, the site for the arena is placed in what is planned to become a residential area which imposes specific costly requirements on design and soundproofing.
- (73) It has thus been demonstrated, that the State's commitment to the project is essential for its realisation. The public co-financing of the multiarena is also necessary, as without the State's contribution there will not be enough funds to finance the multiarena project. Based on the above, the State contribution has also been ensured to be limited to the strictly necessary.
- (74) In any case, both the selection procedure of the operator and the lease agreement, together with the other above reasons, ensure that the necessity and proportionality requirements would be fulfilled.
- (75) Regarding the use of the multiarena, it has also been shown to be on a non-discriminatory basis without favouring any specific undertaking(s). Thus, the arena is multifunctional and open to all with no captive user.
- (76) Hence, the new arena will both complement existing arenas with additional capacity and increase the types of events which can take place in Copenhagen. Thus, the aid must be considered well-targeted and justified

- (77) From the above reasons, it has been demonstrated that the State's involvement in the multiarena project is both necessary, proportionate and does not cause undue distortion of competition and that possible spillover of that aid to the operator and users would also be compatible with the internal market.

## 6. CONCLUSION

- (78) The State's contribution for the construction of the Copenhagen multiarena constitutes State aid to the Arena Company, and possibly to the operator and the users of the multiarena. The public co-financing of the multiarena has been demonstrated to be both necessary and proportionate to realise the project, as well as sufficiently open to all on non-discriminatory terms without favouring any specific undertaking(s). The outcome of the balancing test is thus positive.
- (79) The Commission therefore finds that the financing of the multiarena is compatible with the internal market under Article 107(3)(c) of the Treaty.
- (80) The Commission notes that Denmark has agreed that the decision shall be adopted in English as the authentic language,

HAS ADOPTED THIS DECISION:

### *Article 1*

The measures which Denmark is planning to implement for the Copenhagen multiarena, consisting of the DKK 325 million participation from the City of Copenhagen, the DKK 15 million grant from Elitefacilitetsudvalget, and the right to use the land on which the multiarena is to be built free of charge for 40 years, are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union. Implementation of those measures is accordingly authorised.

### *Article 2*

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 15 May 2013.

*For the Commission*  
Joaquín ALMUNIA  
*Vice-President*

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