

DECISIONS

COMMISSION DECISION

of 2 May 2013

on State aid SA.33618 (12/C) which Sweden is planning to implement for Uppsala arena

(notified under document C(2013) 2362)

(Only the English text is authentic)

(Text with EEA relevance)

(2013/452/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 ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 7 December 2011, Sweden notified the Commission a measure for a new arena in Uppsala following a pre-notification phase. On 17 January 2012, the Commission sent a request for information. Sweden submitted its reply on 16 February 2012.
- (2) By letter dated 22 March 2012, the Commission informed Sweden that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments from one interested party. It forwarded them to Sweden, which was given the opportunity to react; its comments were received by letter dated 3 August 2012.
- (5) Sweden also submitted additional clarifications in October and November 2012.

- (6) Sweden has provided a language waiver and agrees that the decision will be adopted in English as the authentic language.

2. DESCRIPTION OF THE MEASURE

- (7) The parties involved in the Uppsala arena project are the municipality of Uppsala ⁽³⁾ (hereafter the "municipality"), and three firms which have, or will have upon being set up, private ownership, namely, the Arena Company, the Property Company and the Events Company.
- (8) The Arena Company will manage and coordinate the arena project until the Property Company and Events Company have been formed. The Arena Company is the only company which currently exists. It is owned by the private companies SH Bygg (45 %), Aros Holding (45 %) and the sports club Almtuna IS (10 %).
- (9) The Property Company will build and own the arena. The shareholders of the Property Company will exclusively be private investors. The municipality will set out requirements in order to ensure that the selection of the Property Company is managed objectively and as openly and transparently as possible. The Arena Company will make suggestions to the municipality of possible and eligible investors, and the municipality will be in charge of approving and deciding which investors are selected to form the Property Company in accordance with the listed selection criteria ⁽⁴⁾. The arena project will have a portal website as a means of providing information and communicating with interested parties. Through this portal, interested parties

⁽³⁾ Uppsala is the fourth largest city in Sweden (located approx. 70 km north of Stockholm).

⁽⁴⁾ The selection criteria for the Property Company is listed in the Supplement to Letter of Intent, submitted by Sweden on 29 June 2012; a.o. the candidate should have: experience and knowledge of construction and operating a larger facility for commercial purposes; a high level of professional competence; financial stability and strength; commitment to promote the arena's openness to the public and work actively against discrimination.

⁽¹⁾ OJ C 152, 30.5.2012, p. 18.

⁽²⁾ Cf. footnote 1.

will have the opportunity to express an interest to invest in the Property Company ⁽⁵⁾. However, the municipality will not own any part of the arena nor have any influence over the activities of the Property Company as such, but will, in return for its grant, receive an option to purchase the Property Company.

- (10) The Events Company will be a private undertaking in charge of the operation of the arena. The owner(s) may not be the same as those of the Property Company. The Events Company will be selected by the Property Company in compliance with the requirements set out by the municipality to ensure that the selection of the Events Company is open, transparent and objective and in accordance with the listed selection criteria ⁽⁶⁾.
- (11) In order to meet the current and future need for facilities for sporting and cultural events, the municipality claims, based on the result of studies made ⁽⁷⁾, that a multifunctional facility the size of the arena must be constructed.
- (12) The arena will be designed to cater for several types of sport for example ice hockey, basketball, floor ball, handball and equestrian sports, several types of cultural and entertainment events for example concerts, family shows, TV productions and gala events and various types of meetings for example conferences, company meetings, trade fairs, corporate events. The largest arena room will have capacity to accommodate 8 500 visitors at sport events and 10 000 at other events ⁽⁸⁾. The arena will also house a gym and restaurants.
- (13) Currently there are six arenas and concert halls in Uppsala, four of which are owned by the municipality

⁽⁵⁾ In analogy with the Commission Interpretative Communication on the Community law applicable to contract awards which are not subject or not fully subject to the provisions of the Public Procurement Directives, (OJ C 179, 1.8.2006, p. 2).

⁽⁶⁾ The selection criteria for the Events Company is listed in the Supplement to Letter of Intent, submitted by Sweden on 29 June 2012; a.o. the candidate should have: experience and knowledge of the relevant markets, high level of professional competence and to the events, sports and cultural scene in Uppsala, credible business plan for the operation of the arena including openness to the public and work against discrimination, financial stability and strength and agree to a fair and commercial mix of fixed and result-oriented level of compensation.

⁽⁷⁾ Several surveys have been submitted for example a survey on the needs for facilities for organised sports associations in Uppsala, the result thereof showed that currently only around 70 % of the need for facilities for major sports in Uppsala is met and thus the lack of capacity would correspond to approximately 30 %. Another questionnaire amongst the residents of Uppsala revealed that 37 % of the residents believe that the municipality should invest in sports halls, arenas and stadiums, the second most required investment after bike and walking paths, and that investments in sport events are preferred by 16 %.

⁽⁸⁾ The larger of the two wings of the arena will have capacity to take 2 000 visitors at sports and 3 500 visitors at congresses and concerts. The smaller of the two wings of the arena will have capacity to take around 1 000 visitors at any event and the "conference room" of the arena has room for 10 to 400 visitors.

and two of which are privately owned. In addition, there are other large arenas within 1 to 2 hours distance road from Uppsala, *inter alia* in Stockholm. However, Sweden claims that the present capacity is insufficient to meet the needs for arena space and does not allow the hosting of larger sporting and cultural events and that an alternative means of expansion would be more expensive for the municipality ⁽⁹⁾.

- (14) The municipality's preference would be for the new capacity to be provided by private projects, without public intervention, but this is not feasible.

2.1. Funding of the construction of the arena

- (15) The municipality will be financially involved in two ways first by a direct grant to the building of the arena and second by leasing the land on which it will be built to the Property Company.
- (16) Regarding the grant, the cost of the arena project is estimated at SEK 650 million (or EUR 72 million). The municipality would contribute with a grant of SEK 150 million (or EUR 16,5 million), the rest would be financed mainly by a mix of private capital and loans as follows: the private owners of the Property Company will contribute SEK 75 to 100 million (or EUR 8 to 11 million) and the Property Company will take up loans of between SEK 400 to 425 million (or EUR 44 to 47 million) for which the municipality will not provide any guarantees.
- (17) In return for its funding, the municipality will receive an option ("the option") to buy the arena. The option, which is transferable, may be exercised from year 6 until year 25 from the date it comes into force. In order to exercise this option, the option holder will pay a fee in accordance with the criteria set out in the option agreement. A possible scenario in year 10 has been provided indicating such fee to be SEK 47,3 million (or EUR 5 million). According to Sweden, the net present value of the option is SEK 128 million (or EUR 15 million) in a *pessimistic* case scenario (which would mean that the net value of the municipal grant is SEK 22 million (or EUR 2,6 million)) ⁽¹⁰⁾. According to Sweden, the municipality has no interest in becoming an owner of the arena and the value of the option for the municipality resides in the possibility of selling it on in the future to recoup the funding of the arena.

⁽⁹⁾ For example only maintaining the existing Gränby Ice Rink without any expansion would not be a realistic alternative, because it would not solve the need for new capacity and expanding of Gränby Ice Rink would involve higher costs for the municipality.

⁽¹⁰⁾ The option is drafted in consultation with the financial adviser Copenhagen Economics. In a base scenario the option is valued at SEK 174 million (or EUR 19,6 million), that is to say SEK 24 million more than the grant.

- (18) Regarding the land lease, the arena will be built on public land, which the municipality will lease to the Property Company for a minimum term of 50 years⁽¹¹⁾. The lease will be SEK 50 000 per year (or EUR 5 500). The rent is claimed to be on market terms.

2.2. Operation and Use of the arena

- (19) Upon completion of the construction, the arena will be operated by the Events Company, which will lease the arena from the Property Company and then let it to users.
- (20) One of the conditions for contributing to the funding of the arena is that the municipality has set out requirements for the selection of the Events Company. According to the leasing agreement between the Property Company and the Events Company, the latter will also ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions.
- (21) As clarified by Sweden during the procedure, there will be three main categories of events in the arena: commercial events, sponsored events and events organised by the municipality or others during the time the arena is rented by the municipality. Approximately 90 % of those events will be open to the public, although at varying fee levels, and no less than 95 % of the municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public that is to say around 60 hours per week. The arena is claimed to be multifunctional and open to all with no captive user given predominant use⁽¹²⁾.
- (22) In order to ensure arena time for schools, sports clubs and the general public, as well as for the municipality's own events, the municipality will enter into a lease agreement with the Events Company⁽¹³⁾. The municipality will lease 20 % of the total capacity of the arena.

⁽¹¹⁾ The municipality may not terminate the site leasehold prior to the expiry of 50 years from the date of the lease and thereafter upon the expiry of consecutive 20 year periods.

⁽¹²⁾ Although the arena will become the home arena for local ice hockey and basketball teams, it has been explained that those associations will not govern the use of the arena.

⁽¹³⁾ In addition to the leasing agreement between the Events Company and the municipality, the latter will also enter into an agreement with the Property Company in order to, a.o. secure municipal and public access to the arena in case the Events Company was to become insolvent or lose its lease agreement with the Property Company. The lease the Property Company will in such cases continue under the same conditions.

The lease will be for 25 years with a rent of SEK 15 million (or EUR 1,7 million) per year⁽¹⁴⁾. Besides the rent paid by the municipality, the arena is estimated to have other rental revenues of SEK [...] (*).

2.3. Grounds for initiating the procedure

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

3. COMMENTS FROM INTERESTED PARTIES

- (24) Following the opening of the formal investigation procedure, comments were only submitted by the Green party, an opposition party in the Uppsala Municipal Council which, in general terms, expressed its disapproval of the project which it considered to be primarily to the benefit of private undertakings.

4. COMMENTS FROM SWEDEN

- (25) Sweden has, for the purpose of the notification, assumed the presence of state aid as they acknowledge that the additional arena capacity will not be provided by market forces but argue that it should be considered compatible under article 107(3)(c) of the Treaty. They argue that in particular the following should be taken into consideration.
- (26) The arena satisfies a well-defined objective of common interest in light of its multifunctional character and present lack of adequate and up-to-date facilities for sports and cultural events in Uppsala. The municipality will be fulfilling its responsibility to the general public by making the arena project possible⁽¹⁵⁾. Available alternatives, investments into the existing infrastructure Gränby Ice Rink would cost more and would still not cover the full capacity shortfall.
- (27) There is a market failure as the required new arena capacity would not be provided without the aid. The

⁽¹⁴⁾ The rent will be reviewed yearly, on the basis of the consumer price index. The municipality will also make a separate agreement with the Property Company to ensure that it will keep access to the arena on the same terms should the Events Company go out of business.

(*) [...]: the information in brackets is covered by the obligation of professional secrecy

⁽¹⁵⁾ According to surveys there is at present a 30 % shortage in the capacity for the type of sports and cultural events that the arena would accommodate.

Swedish sport sector is, unlike the situation in some other Member States, largely non-profit and reliant upon public financial support.

- (28) The public co-funding at 23 % of the total project budget is limited to what is strictly necessary and proportionate in order to realise the project by being limited to the funding gap that is to say the funding that cannot be found on the market. Thus, by investing the "missing" funds the municipality makes the arena project possible since no other market actor is willing to contribute the SEK 150 million (or EUR 16,5 million). The lease that the municipality will pay for 20 % of the arena's capacity will not provide an advantage to the operator compared to market terms, and the site will be leased to the Property Company on terms comparable to those of other undertakings leasing land from the municipality that is dedicated for sports facilities. Sweden has further explained the need of the arena, that is to say the necessary additional capacity cannot be met by private actors or by use of the existing arenas in Uppsala and/or expansion thereof.
- (29) To further ensure that the aid is proportionate, the municipality will receive the option, valued at a base scenario at SEK 174 million (or EUR 19,6 million)⁽¹⁶⁾. The option precludes any over-compensation since the municipality gets the option in return for its contribution which is worth more than the contribution made.
- (30) Sweden has also further clarified the use of the arena and its openness to the public, that is to say, open to the general public for approximately 90 % of the available time and the use of the arena will be ensured on a non-discriminatory basis without favouring any specific undertaking(s) and on market terms.
- (31) The effect on competition and trade between Member States, if any, is limited since the economic activities are mostly local. In addition, the private facilities in the municipality have different profiles and cannot be considered to compete for the same audiences as the arena.

5. ASSESSMENT OF THE AID

5.1. Existence of aid within the meaning of Article 107(1) of the Treaty

- (32) 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".

- (33) In order to be classified as state aid, the notified project must fulfill the following cumulative conditions: first, the measure must be granted through State resources; second, it has to confer an economic advantage to undertakings; third, this advantage must be selective and distort or threaten to distort competition and fourth, the measure must affect intra-Community trade.
- (34) With regard to the requirement that the measure must be granted through State resources and must be attributable to the State, this criterion is clearly fulfilled in this case as the municipality of Uppsala itself will contribute with a direct grant, pay rent for use of the arena and provide the land where the arena is to be built. Municipalities, like Uppsala, are public authorities and part of the State and their resources are thereby deemed attributable to the State.
- (35) The municipality funding of the construction of the arena 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⁽¹⁷⁾, if all the requirements of Article 107 (1) of the Treaty 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

- (36) Sweden has acknowledged that the municipality had initially hoped that private investors would finance the realisation of the arena, but it is not feasible to carry out the project without public funding. Consequently, the SEK 150 million grant for the construction of the arena gives an economic advantage to its owner, the Property Company, 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 municipality, all other criteria of State aid are met see hereafter the examination of distortion of competition and effect on trade between Member States and the grant thus constitutes state aid to the Property Company.

⁽¹⁶⁾ In a negative scenario the option is valued at SEK 128 million (or EUR 15 million) which would mean that the net present value of the municipal grant is SEK 22 million (or EUR 2,6 million).

⁽¹⁷⁾ Judgment of 19 December 2012 in Case C-288/11, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

- (37) Concerning the site leasehold, Sweden has provided evidence of comparable rent levels for other sports facilities in Uppsala⁽¹⁸⁾. Therefore it cannot be demonstrated that the terms of the lease would contain additional aid to the Property Company.

Operation of the arena

- (38) The arena will be operated by the Events Company, which will lease the arena from the Property Company. Both the Property Company and the Events Company will be private companies. During the procedure, Sweden has further clarified the terms and conditions for the selection of the Property Company and the Events Company, as well as the primary terms and conditions of the lease agreement between the Property Company and the Events Company⁽¹⁹⁾. Regarding the selection of the Property Company, the municipality will be in charge of approving and deciding which candidates are selected to form the Property Company, however, the municipality will not be involved in the commercial operations of the Property Company. The Property Company will select the Events Company, which will be a private undertaking not linked to the Property Company.

- (39) As regards the lease fee that the Events Company will pay to the Property Company, Sweden has explained that it will consist of the following elements: (i) a fixed rent that corresponds to the rent paid by the municipality to the Events Company for its lease of 20 % of the arena's capacity; (ii), a fixed fee that corresponds to the payment from a name sponsor; (iii) a fixed rent, based upon actual cost that covers operating expenses and depreciation of equipment; and (iv) a variable rent that is calculated as a percentage of the net turnover of the Events Company, with a minimum level to be agreed between the parties. In other words, the lease will – above a certain minimum that follows from the above – be set freely between the two private undertakings. Sweden has also clarified that the municipality will not have a right to be directly involved in the negotiations between the Property Company and the Events Company as regards the lease agreement and will not in any way influence the commercial terms and conditions agreed upon by those two independent, private, undertakings.

- (40) With regards to the lease agreement between the municipality and the Events Company for the use of 20 % of the total arena capacity, it shall be for 25 years with a rent of SEK 15 million per year (or EUR 1.7 million). Sweden has declared that: (i) the municipality will pay an hourly rent that is 40 to 50 % lower than the rent that the Events Company will pay the Property Company for their use of the arena (ii) the difference between the

rent that the municipality and the Events Company pays will increase over time; and (iii) the Events Company will charge market rents to other users.

- (41) While these arrangements minimise the advantage to the Events Company to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator of this new arena within the market for operating such facilities 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

- (42) As mentioned above, the Events Company is a private undertaking. Regarding the use of the arena, the Events Company has to ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions. Approximately 90 % of all events will be open to the public, although at varying fee levels, and no less than 95 % of the municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public that is to say around 60 hours per week). Thus, the arena is multifunctional and open to all with no captive professional user.
- (43) In this case, the municipality will be an essential customer and the arena will to a large extent be used by the local ice-hockey and basketball teams, which will have the arena as their home arena. The ice-hockey team's activities, as well as the basketball teams', are predominantly at the amateur level, and the best team of the ice-hockey association plays in the second highest ice-hockey division.

- (44) 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. Sweden committed furthermore to apply a market oriented fee. However, in the absence of any clarification on how that fee will be calculated, an advantage cannot be entirely excluded.

Effect on competition and trade between Member States

- (45) Even if most of the activities which are to be carried out in the arena are of local character, the arena will have the capacity to host large or mid-size international events as well, and thus an effect on competition and trade between Member States cannot be excluded. Although, according to the municipality, it is highly unlikely that more than a few, if any, of the events that will take place

⁽¹⁸⁾ An example of a comparable site leasehold interest agreement regarding a tennis facility in Gränby has been provided, for which the rent is SEK 52 000 per year.

⁽¹⁹⁾ See Supplement to Letter of Intent dated 29 June 2012.

in the arena will be of such an interest to persons living in neighbouring countries that they would be willing to travel hundreds of kilometers to Uppsala in order to attend the events and thus it would be unlikely that events taking place in the arena would compete with arenas in nearby countries.

- (46) However, the General Court has held, in its Order concerning the Ahoy complex in the Netherlands, that there was no reason to limit the market for use of this type of facilities to the territory of that Member State⁽²⁰⁾. As in the opening decision, the Commission therefore considers that aid to the arena has the potential to affect competition and trade between Member States.

5.2. Compatibility

- (47) Sweden 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.

- (48) 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 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".

- (49) As the arena will ensure the general public's access and practice of sport and culture, particularly considering the arena's multifunctional character and lack of capacity and/or adequate and up-to-date facilities for sports and cultural events in Uppsala, the municipality will be fulfilling its responsibility to the general public by making the arena project possible. The realisation of the arena must therefore be regarded as satisfying policy objectives of common interest.

- (50) Concerning the necessity and proportionality of the proposed measure, Sweden has demonstrated the need

of additional arena capacity. With only 70 % of the need for facilities for major sports in Uppsala being satisfied⁽²¹⁾ and with Uppsala's population growing at a relatively high rate, there is an urgent and pressing need for additional arena capacity in Uppsala. Sweden has further explained that the need of the arena cannot be met fully by private actors alone. One reason is the characteristic of the Swedish sports movement, amongst others not-for-profit and based on voluntary leadership and work, and dependent on public financial support. Sweden has further explained that the existing arenas are also inappropriate for certain types of events etc for example larger sports and cultural events and that the privately owned facilities typically arrange only smaller types of events. The existing facilities have become outdated and do not meet the modern requirements of the public anymore. The Gränby Ice Rink was built in 1974, and in order to improve it to modern standards, it would, according to Sweden, require such a big change that in practice it would amount to building a whole new arena and the site where it is located is too small to make that possible. E.g. the adjacent bandy facility would be affected and another problem with the site is that it is not able cope with transportation, evacuation and safety of visitors and players, while other activities are going on in other facilities nearby.

- (51) In addition, with the new arena constructed, the existing arenas including Gränby Ice Rink will still be used. The new arena with its multiarena character will be used both for large sports and cultural events which currently cannot take place in Uppsala, as a complement to the existing arenas, while the existing arenas will continue functioning mainly in the same way as they currently do. With the new arena, larger sports events that currently take place at Gränby Ice Rink for example ice-hockey games in the second highest division can be moved to more suitable facilities in the new arena with higher capacity. It is expected that around 60 % of the ice-hockey will gradually be moved from Gränby Ice Rink to the new arena, which will free around 3 045 hours per year at Gränby Ice Rink for school and student spots and leisure sports for the general public.

- (52) There are also no practicable alternatives to the construction of the new arena. Maintaining the existing arena of Gränby Ice Rink without any expansion of capacity, would not be a realistic alternative to the arena because it would not solve the need for new capacity, and expanding the capacity of Gränby Ice Rink, would not satisfy the need for facilities to host larger events. With the new arena constructed, the existing arenas including Gränby Ice Rink will still require repairs and need to be re-equipped.

⁽²⁰⁾ Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v. the European Commission*, Order of the General Court of 26/01/2012, paragraph 45.

⁽²¹⁾ Based on surveys carried out, see also footnote 7.

- (53) Consequently, even if other arenas exist both directly in the areas and in nearby cities/countries, the Commission considers that Sweden has shown that the need of additional capacity in Uppsala cannot be met only by the use or expansion of the existing arenas in Uppsala. The new arena will become a complement, ensuring an effective use of the arena capacity in Uppsala, rather than a substitute for the existing arenas, in particular Gränby Ice Rink, as well as a host for larger sports and cultural events for which there are currently no appropriate venues in Uppsala.
- (54) Sweden has also explained that if the municipality had not taken an interest in this project the private parties would have settled for a different arena with more focus on commercial activities to the detriment of sporting activities and in general the general public. According to Sweden, discussions with banks and private investors have revealed that they are not willing to cover the entire financial risk that the project involves. The total investment cost of SEK 650 million (or EUR 72 million) is financed by three parts: loans, direct private investments and municipal investment. In order to ensure enough solidity in the company, the part financed by loans cannot be too large and the rest must be financed directly by investors. Due to the structure and risk/return of the project, the private investors are only willing to invest around SEK 75 to 100 million (or EUR 8 to 11 million), leaving SEK 150 million (or EUR 16,5 million) to be financed by the municipality. With such an investment by the municipality, the initial solidity will be above 35 % and will also remain above 30 % for the project⁽²²⁾. The amount of SEK 150 million (or EUR 16,5 million) also corresponds to around 23 % of the nominal total investment. All private letters of intent from banks and private investors are contingent on the municipality investing SEK 150 million (or EUR 16,5 million). An investment of such an amount from the municipality is thus necessary to realise the project and to achieve the public benefits thereof. It has thus been demonstrated, that the municipality's commitment to the project is essential. The public co-financing of the arena is also necessary, as without the municipality's contribution there will not be enough funds to finance the arena project. Based on the above, the municipal contribution has also been ensured to be limited to the strictly necessary.
- (55) In return for its contribution, the municipality's option to buy the arena is valued in a pessimistic scenario to SEK 128 million (or EUR 15 million), which means that the net value of the municipal capital contribution is at most
- SEK 22 million (or EUR 2,6 million) in a negative scenario. However, the municipality estimates that the value of the option almost certainly exceeds the investment cost.
- (56) In any case, both the selection procedure of the operator and its agreement with the Property Company, together with the other above reasons, ensure that the necessity and proportionality requirements would be fulfilled.
- (57) Regarding the municipality's use of the arena, 20 % of the total possible use of the arena amounting to 3 285 hours per year, Sweden has committed that no less than 95 % of the Municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public around 3 121 hours per year, approximately 60 hours per week. Consequently, in terms of openness to the general public, the new arena will not only add 3 285 hours of capacity due to the municipality's rent agreement for the new arena, but also add available time of 3 045 hour per year at Gränby ice rink (see recital 51).
- (58) Hence, the new arena will both complement existing arenas with additional capacity and increase the types of events, both sports and cultural, which can take place in Uppsala, and considerably benefit amateur sports and the general public in Uppsala. Thus, the aid must thus be considered well-targeted and the public co-financing thereof justified
- (59) In addition, considering the location of the arena and that most of the activities which are to be carried out in the arena are of local character, the effect on competition and trade between Member States is limited, although, as described above, cannot be completely excluded.
- (60) From the above reasons, it has been demonstrated that the municipality's involvement in the arena project is both necessary, proportionate and does not cause undue distortion of competition, and that possible aid to the Events Company and users would also be compatible with the internal market.
- (61) As the project is still in phase 1 pending the Commission's approval, it is only following such an approval that the project will evolve and the Property Company and the Events Company will be formed. Thus, Sweden has committed that:

⁽²²⁾ Calculations on solidity in the Property Company dependent on the initial investment from the municipality by Copenhagen Economics. Sweden has also explained that banks are generally hesitant to loan funds to projects with solidity lower than 30 %.

- (i) the Letter of Intent and supplement to Letter of Intent between the municipality and the Arena Company shall be implemented ⁽²³⁾;
- (ii) no less than 95 % of the municipality's rented time in the arena shall be used for school and student sports, non-profit associations, and leisure sport for the general public;
- (iii) Sweden shall submit the relevant agreements that are entered into as a result of the Letter of Intent to the Commission (the agreement between the municipality and the Property Company, the agreement between the Property Company and the Events Company and the lease agreement between the municipality and the Events Company); and
- (iv) Sweden shall submit annual reports on the implementation of the aid measure, in particular with regards to point 2 above, for the period up to the end of year 2020 to the Commission.

6. CONCLUSION

- (62) The municipality's grant for the construction of the arena constitutes state aid to the Property Company, and possibly to the Events Company and the users of the arena. The public co-financing of the Uppsala arena 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 positive.

- (63) The Commission therefore finds that the Uppsala arena project is compatible with the internal market in accordance with Article 107(3)(c) of the Treaty.
- (64) The Commission notes that Sweden has agreed that the decision shall be adopted in English as the authentic language.

HAS ADOPTED THIS DECISION:

Article 1

The measure which Sweden is planning to implement for the Uppsala arena, amounting to SEK 150 million is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union. Implementation of the measure amounting to SEK 150 million is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 2 May 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽²³⁾ As submitted to the Commission by Sweden as Appendix 6 to the Notification and as supplemented by Appendix 1 to the submission of 29 June 2012.