

ANNEX 2



EUROPEAN COMMISSION

Competition DG

Markets and cases II: Information, Communication and Media
State aidBrussels, 20.11.2013
COMP/C4/AR/md – D*2013/115408

**Subject: SA.36401 (2013/CP, ex- SA.33604 (2011/CP)) – United Kingdom
Olympic Stadium – West Ham United FC**

Dear Sir,

I refer to your complaint to the Commission of 24.03.2013 concerning alleged State aid to West Ham United Football Club (WHU), our letter to you of 20.08.2013 explaining the preliminary view of DG Competition that the measure objected to does not constitute state aid and your email of 26.09.2013 (with attachment) in which you provide further comments.

As explained in our letter of 20.08.2013 and its attachments, WHU has been selected as anchor concessionaire of the stadium (which remains public property) following an open, fair and non-discriminatory bidding process, in which four bids were submitted. The conversion works regarding the stadium are also agreed in the framework of the open selection procedure. Acting as a private market operator would have, LLDC¹ moreover negotiated a commercial deal with WHU going beyond what was originally offered during the bidding process.

WHU therefore pays a market price for the use of the Stadium. Furthermore, the Stadium infrastructure will operate as a multifunctional facility, open for community use and benefits and also hosting other events, such as athletics championships, concerts and the like.

On that basis, we came to the preliminary conclusion that the measure objected to *a priori* does not constitute aid under Article 107(1) TFEU.

In your submission of 26.09.2013, you do not contest the selection of WHU following an open, fair and non-discriminatory bidding process, but you repeat that WHU is a professional football

¹ London Legacy Development Corporation, a public sector not-for-profit organisation.

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

club and therefore in a market competing with other football clubs and that the question must thus be asked whether it has been given State financial assistance (state aid) which will negatively affect competing business. In this context you refer to an increased capacity by 54% for WHU and you hold that WHU will have to aggressively pursue new customers because there is no demand for this increased capacity. You consider that a bank might refuse to provide funding for such an ambitious capacity increase. Your submission further concentrates on the costs/value of the Olympic Stadium and the costs of a similar stadium that does not benefit from state funding and you elaborate on potential damage to competitors as a result of the state funding.

It should, however, be noted that the fact that WHU received state funding that (potentially) affects competitors does not in itself constitute evidence of the existence of state aid in the sense of Article 107(1) TFEU.

According to Article 107 (1) TFEU, *“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”*. It follows that in order for a support measure to be qualified as State aid, it has to be granted out of State resources, confer a selective economic advantage to undertakings, and it has to be capable to distort competition and affect trade between Member States

Hence, as explained in our letter of 20.08.2013 and its attachments, according to our information, WHU has been selected as anchor concessionaire following an open, fair and non-discriminatory bidding process in which it was the highest ranked bidder. Therefore, the state has acted as a market economy investor in granting the concession to WHU and WHU pays a market price for this concession. Hence, it does not benefit from a selective economic advantage in the sense of Article 107 (1) TFEU. One of the necessary conditions for the existence of state aid not being fulfilled, the state funding to the benefit of WHU does not constitute state aid, even if the selection of WHU as anchor concessionaire could potentially affect competitors.

Therefore, on the basis of the information at our disposal, we do not have any evidence of state aid in this file and do not envisage pursuing the matter further. We however thank you for bringing this to our attention.

Yours faithfully



Wouter Pieké
Head of Unit