European Commission: Invitation to Submit Comments Pursuant to Article 88(2) of the EC Treaty

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In 1999, Bavaria Film GmbH (Bavaria) and the Bayerische Landesanstalt für Aufbaufinanzierung (Bavarian authority for construction finance - LfA) founded Bayerische Filmhallen GmbH (BFH) for the purpose of building a new film studio. The LfA held 70% of the shares and Bavaria 30%. Building the film studio cost EUR 6.9 million, which was entirely financed out of public funds provided by the LfA.

The European Commission assumed that the LfA's holding in BFH and the outright grant provided for the building work constituted state aid within the meaning of Art. 87(1) of the EC Treaty. It concluded that, as a result of these selective measures, Bavaria was able to continue and extend its activities in Germany and abroad, as well as to strengthen its market position. The aid was therefore likely to distort competition in the audiovisual industry. It was likely to affect trade between member states within the meaning of Art. 87(1) of the EC Treaty.

The Commission also expressed objections concerning the necessity and justification of the measures. Since the money had been used to fund Bavaria's core activities, the LfA's involvement was not justified by the public interest. Bavaria could have financed the investment using its own funds, without state subsidies.

In the light of these concerns, the Commission concluded that there were doubts as to the compatibility of the LfA's holding with the common market. The Commission also questioned the compatibility of the grant with the common market, especially since the Land of Bavaria was not eligible for the regional derogation described in Art. 87(3)(a) of the EC Treaty, which would allow the granting of investment aid such as that in question.

For the aforementioned reasons, the Commission invited the German authorities to submit their comments within one month, in accordance with the procedure set out in Art. 88(2) of the EC Treaty.

Commission invitation to submit comments (OJ of 17 October 2003, C 249/02)

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