COMMISSION DECISION

of 2 August 2002

on various measures and the State aid invested by Spain in 'Terra Mítica SA', a theme park near Benidorm (Alicante)

(notified under document number C(2002) 2980)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2003/227/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular to the first paragraph of Article 88(2),

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 7 thereof,

Having regard to the decision of 20 June 2001 [2], by which the Commission initiated the procedure provided for in Article 88(2) of the EC Treaty in relation to aid C 42/01 (ex NN 14/01),

Having called on the parties concerned to put forward their comments, in accordance with the above Article, and having regard to those comments,

Whereas:

PROCEDURE

(1) By letter of 25 August 1997, registered on 28 August, the European Federation of Amusement and Leisure Parks (hereinafter 'the complainant') lodged a complaint with the European Commission concerning the construction in Benidorm (Alicante, Spain) of a theme park which is allegedly receiving considerable State aid, in particular from the Valencia regional administration (*Generalitat Valenciana*), contrary to the provisions of the EC Treaty on State aid.

(2) That letter was followed by 18 other letters sent between 6 February 1998 and 2 May 2000, which contain a number of allegations.

(3) The Commission sent the Spanish authorities seven requests for information between 15 September 1997 and 23 December 1998, seeking clarification of the complainant's allegations. It also wrote four times to the complainant between 19 January 1998 and 23 March 2000.

(4) The Spanish authorities replied in six letters, sent between 15 December 1997 and 10 March 1999.

(5) The Commission also received a letter from the Valencia regional administration dated 2 March 1999 and a letter from the park in question dated 27 October 1999.

(6) It also had several meetings with the complainant, the Spanish authorities and the Valencia regional administration.

(7) On 20 June 2001 the Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty with regard to certain issues raised by the complainant. As regards the complainant's remaining allegations, the Commission concluded that there was no State aid.

(8) The Commission's decision to initiate the procedure provided for in Article 88(2) of the Treaty was published in the *Official Journal of the European Communities* [3]. The Commission called on the parties concerned to put forward their comments.

(9) The Spanish authorities put forward their observations by letter of 3 August 2001, registered on 7 August 2001. After a meeting with the Commission's departments which took place on 14 September 2001, the Spanish authorities added to their observations by letters of 16 November 2001, registered on 20 November 2001, 2 May 2002, registered on 2 May 2002, and 10 June 2002, registered on 13 June 2002.

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 300, 26.10.2001, p. 2.
[3] OJ C 300, 26.10.2001, p. 2.

(10) The European Federation of Amusement and Leisure Parks put forward its comments by letter of 21 November 2001, registered on 22 November 2001.

(11) The Commission forwarded these comments to the Spanish authorities by letter of 6 December 2001.

(12) The Spanish authorities forwarded their observations on these comments by letter of 17 January 2002, registered on 22 January 2002.

DESCRIPTION

(13) The Valencian regional authorities had for a long time expressed the wish for a major theme park to be set up in their region. As no private initiatives were forthcoming at the outset, the regional administration set up a public company ('Parque Temático de Alicante SA'), which took the first steps towards setting up a park. It was this company which acquired the land and carried out the preliminary work. Then a private company ('Terra Mítica SA') was set up, some 15 % of whose capital is held by Parque Temático de Alicante SA. The remaining shareholders are all private (chiefly banks in the region, but also several legal and natural persons) ([4]). When Terra Mítica was set up and later, when it was agreed to inject further capital, Parque Temático de Alicante transferred a package of assets to the new company in exchange for shares in it. The assets consist on the one hand of the land where the park is situated ([5]) and other tangible and intangible assets, such as the Terra Mítica trademark and, on the other, of expenditure on measures carried out by the public company prior to the setting-up of the new private company with a view to the construction of the park.

The Commission's decision of 20 June 2001

(14) In its decision of 20 June 2001 the Commission examined all the complainant's allegations.

(15) It took the view that some of these allegations, concerning the fact that the Valencia regional administration ([6]) had used the form of a public limited company and that land had been purchased at a low cost ([7]), costs associated with the park borne by Parque Temático de Alicante SA ([8]), the failure to respect the private investor principle ([9]), a syndicated loan to Terra Mítica SA ([10]), an additional contribution of ESP 1 000 million ([11]), the costs of recruiting and training staff ([12]), the direct regional aid ([13]) and exemption from municipal taxes on behalf of 'Iberdrola' ([14]) are unfounded.

(16) However, it raised some doubtful points, thereby initiating the procedure provided for in Article 88(2) of the EC Treaty with regard to the following issues:

(a) the funding of the infrastructure required for the park's operation ([15]);

(b) the value of the assets, particularly the land and the 'Terra Mítica' brand, allotted to Terra Mítica SA by Parque Temático de Alicante SA ([16]);

(c) the conditions governing the shareholder's loan of ESP 8 000 million granted to Terra Mítica SA ([17]);

(d) the rebate of municipal taxes granted by the Municipality of Benidorm ([18]);

(e) the possible contribution of ESP 6 000 million to Terra Mítica SA by the Valencian Tourist Board (*Agencia Valenciana de Turismo*) ([19]).

As regards points (a), (b), (c) and (e), the Commission's doubts focus on whether or not Terra Mítica SA enjoys a special advantage and thus on the issue of whether or not State aid has been granted. As far as point (d) is concerned, the Commission took the view that the measure concerned constituted State aid which could be viewed as investment aid, and that it must be examined to determine whether it was compatible with the single market, taking into account the possibility of cumulation with the various other measures in question.

([4]) The major ones are: Caja de Ahorros del Mediterráneo (15 %), Bancaja (10 %), Caja Rural de Valencia (5,827 %), Ediciones Calpe SA (5 %), Mondirber SA (5 %), Lladró Comercial SA (5 %), Crónica Mítica Valenciana (5 %), ATEVAL (5 %) and AUMAR (5 %).

([5]) In practice, only a relatively small part of the land (where the park will be situated, i.e. some 10 % of the land) was transferred to Terra Mítica SA. All the remaining land still belongs to the public company which plans to build hotels, golf courses, etc.

([6]) See recital 49 of the decision.

([7]) See recital 50 of the decision.

([8]) See recital 52 of the decision.

([9]) See recital 53 of the decision.

([10]) See recital 57 of the decision.

([11]) See recital 59 of the decision.

([12]) See recital 61 of the decision.

([13]) See recital 62 of the decision.

([14]) See recital 63 of the decision.

([15]) See recital 51 *in fine* of the decision.

([16]) See recital 56 *in fine* of the decision.

([17]) See recital 58 *in fine* of the decision.

([18]) See recital 60 *in fine* of the decision.

([19]) See recital 64 *in fine* of the decision.

Observations by the parties concerned

(17) The European Federation of Amusement and Leisure Parks was the only organisation to put forward its observations by the deadline set by the Commission, which it did by letter of 21 November 2001. In its comments, it merely welcomed the Commission decision of 20 June 2001 and underlined the importance of abiding by the principle of fair competition within the Community. In addition to this, it referred to the correspondence sent to the Commission before the decision of 20 June 2001.

Observations by the Spanish authorities

Introduction

(18) In general, the Spanish authorities doubt, first and foremost, the legitimacy of the part played by the European Federation of Amusement and Leisure Parks in this case. They say hardly anything is known about the organisation, the interests that it actually represents, the number and identity of its members, its interest in bringing the case before the Commission, and whether it was serving as a front for the real complainant, who had remained anonymous. The Spanish authorities were also surprised by the volume of correspondence sent by the complainant to the Commission, and believed that the Commission had dealt with the case in a way which served the opaque interests of the complainant, when it was supposed to avoid encouraging the wrongful use of the complaints procedure. Finally, they wondered about the nature of the doubts raised by the Commission, given that the latter had told both them and the complainant on several occasions that it did not consider this to be a case of State aid.

No impact on intra-Community trade

(19) The Spanish authorities take the view that the Commission decision fails to provide sufficient evidence of an impact on intra-Community trade. Nor does it define the geographical market or the product market. In their opinion Terra Mítica should be viewed as a regional park, not as a destination park, firstly because it is not part of a chain of parks under unified management (as in the case of EuroDisney) and does not make use of standard themes derived from the exploitation of assets on other markets, like Universal or Warner, and secondly because people living within a radius of between 150 km and 200 km of the park account for approximately 90 % of primary demand, while the greater part of the remaining 10 % is accounted for by people living in Spain.

The funding of the infrastructure required for the park's operation

(20) According to the Spanish authorities, the complainant's argument to the effect that all the public works carried out and the infrastructure provided by Parque Temático de Alicante SA in implementation of the 'Land use and infrastructure plan' constitute State aid to the park because no such work would have been carried out if there had been no park does not hold water. This argument, they say, amounts to calling into question the power of public authorities to carry out land planning. It is clear, in the view of the Spanish authorities, that as soon as the decision is taken to build a theme park and to establish areas given over to hotels and recreation, the administration must also make provision for the impact of more people and traffic, a rise in population, the environmental impact, and so on, which necessarily means putting in place the infrastructure required for land-planning purposes.

(21) The Spanish authorities deny that the work carried out by Parque Temático de Alicante SA to implement the Land use and infrastructure plan benefited only Terra Mítica SA. Rather, the work concerned was in the public interest and had to do with land planning. They have also pointed out that the park accounts for only 10 % of the land covered by the Land use and infrastructure plan.

(22) The Spanish authorities have provided a list and a detailed description of the work carried out by Parque Temático de Alicante SA in implementation of the Land use and infrastructure plan. The work performed can be summarised as follows:

(a) environmental work: the Spanish authorities explain that the whole area covered by the Land use and infrastructure plan was originally badly degraded, the main reasons for this being a number of forest fires and the presence of an unofficial rubbish tip. The work carried out was therefore aimed mainly at reforesting and rehabilitating the area, preparing the land, dredging river beds to avoid flooding, and so on;

(b) roadworks: the Spanish authorities point out that in view of the increasing number of tourists entering the region around Benidorm, it was already planned to take action to prevent the region's roads from becoming saturated. Moreover, the population of the part of Benidorm nearest to the area covered by the Land use and infrastructure plan and the nearby settlements of La Nucía and Finestrat had risen, and the existing road network was unable to absorb the increase in traffic. The various public administrations concerned reconditioned the roads in

question, in line with their responsibilities: CV-70 was widened, a new toll station was set up on the A7, which provides a second way into Benidorm, and a number of new roads were built (Vía Parque, Avenida del Murtal, Bulevar Central) between Benidorm and the region covered by the Land use and infrastructure plan;

(c) electricity, gas, water and telecommunications infrastructure: as far as the electricity supply is concerned, all Parque Temático de Alicante SA has done is restructure the supply networks in cooperation with the firm that manages the high-tension grid, 'Red Eléctrica Española SA', and the firm that owns the grids, 'Iberdrola'. These grids link together the substations of neighbouring towns and villages. Consequently, activities in this area affect all users. As regards the gas supply infrastructure, no pipes have been laid; the only things that have been installed — outside the park itself — are two gas tanks, a vaporiser and a boiler. As for the water supply, a network has been set up in the areas at risk of forest fires, and pipes for the water supply and to drain off waste water have been laid. In addition to a drinking-water plant, a purification plant has also been built to purify waste water for irrigation. Finally, the telecommunications infrastructure was already in place prior to the Land use and infrastructure plan.

(23) The Spanish authorities take the view that all the work outlined above served to create infrastructure for the population as a whole, and that it was not planned for the sole benefit of the park. They have forwarded a description of all the work carried out and funded by Terra Mítica SA itself, along with copies of the relevant contracts. This work includes all connections to general infrastructure — road links to the park, the upgrading of land, the electricity grid, and networks for the supply of gas and drinking water, networks for putting out fires, communications networks, and networks to drain off waste water. Finally, Terra Mítica SA also bears the costs of consumption of the products circulating through these networks and the connection charges.

Value of the assets (particularly the land and the Terra Mítica trademark) transferred to Terra Mítica SA by Parque Temático de Alicante SA

(24) Firstly, the Spanish authorities note that the Commission decision does not question the expropriation procedure used by Parque Temático de Alicante SA to acquire the land in question. Moreover, the decision states that Parque Temático de Alicante SA did not infringe the principle of the private investor in a market economy. In other words, it cannot be argued that Parque Temático de Alicante SA intended to reduce the value of the assets transferred to Terra Mítica SA.

(25) In any case, the Spanish authorities reaffirm their statement that the two firms which evaluated the assets are independent experts. Moreover, they point out that 'Tasaciones del Mediterraneo' (Tabimed), which, the complainant had suggested, was not an independent firm, was selected not by Terra Mítica SA, but by the person responsible at the Registry of Commerce.

(26) The Spanish authorities also point out that both valuers carried out their valuations within the same legal framework, the purpose of which is to ensure that the share capital is accurately assessed, so that all parties concerned can be sure of the actual value of the non-cash assets transferred to the firm.

(27) As regards the value of the land, the Spanish authorities begin by explaining that the land where the park is situated was acquired by Parque Temático de Alicante SA through expropriation, and that some pieces of land were purchased directly from the owners ([20]). In all cases, the land concerned was rough land which could not be used for building, without any crops. The average price paid was ESP 460/m^2.

(28) Subsequently, when these assets were transferred to Terra Mítica SA, it commissioned TINSA to carry out a valuation. Since the increase in capital resulting from the transfer had to be recorded in the Register of Commerce, the person responsible for the Register commissioned a second valuation from another expert ([21]) in accordance with the Spanish Law on limited liability companies. Whilst the complainant had criticised the method used by Tabimed (the initial value method), and not other, more appropriate methods such as the capitalisation of anticipated revenue, TINSA used the latter method, which was finally chosen to determine the value of the land. The difference between the estimates of the value of the land given in the two experts' reports was minimal ([22]). At all events, the value added to the price initially paid for the land, resulting in the price as measured at the time of the transfer to Terra Mítica SA accrued solely to Parque Temático de Alicante SA (a public company).

([20]) In these cases, the price paid was higher because the landowners gave up the reversionary interest.

([21]) Tabimed.

([22]) ESP 1300/m^2 for TINSA and ESP 1062/m^2 for Tabimed.

(29) As regards the value of the Terra Mítica trademark, the Spanish authorities point out that when Tabimed valued the trademark, it had not yet been finally registered. Terra Mítica therefore had no exclusive right to the trademark which could be upheld against third parties. For this reason, Tabimed, which had expressed reservations about including the trademark as an asset, finally agreed to do so, and valued it at the purchase price. It would have been contrary to sound judgment to assign a value to the trademark solely on the basis of its anticipated success, since that depends on how much money is invested in promoting and publicising it. These expenses have been very considerable in the present case, which may account for the rise in the value of the trademark since the purchase. All the costs involved have been defrayed by Terra Mítica SA.

The conditions under which the shareholder's loan was granted to Terra Mítica SA by Parque Temático de Alicante SA

(30) The Spanish authorities have sent copies of the documents relating to the shareholder's loan referred to above and to the syndicated loan contracted by Terra Mítica SA with a group of banks and savings banks ([23]) to enable the Commission to examine whether the shareholder's loan was contracted in accordance with usual practice.

(31) In this connection, the Spanish authorities explain that the shareholder's loan, concluded on 23 December 1998, provides for an interest rate equivalent to the Madrid interbank offered rate (MIBOR) for one year, plus […]* (*) . The syndicated loan was concluded on 15 April 1999 at an interest rate equivalent to the MIBOR for one year, plus […]*. According to the Spanish authorities, what matters is being able to determine whether a private investor would have lent the same sum subject to the same conditions, bearing in mind the information about the project which was available at the time when the shareholder's loan was concluded.

(32) In this connection, it is necessary to check whether the 0,25 % difference between the rates of interest on the two loans makes up for the fact that the shareholder's loan is subordinated to the syndicated loan as regards the application of the guarantees in the event of non-repayment. According to the Spanish authorities, there are three reference parameters which can be used to check whether the rate of interest on the shareholder's loan can be considered to be a 'market' interest rate.

(33) According to the Spanish authorities, a first parameter could be the Commission's reference rate. The Commission notice on the method for setting reference and discount rates ([24]) states that this rate is equal to the five-year interbank swap rate plus 0,75 base points. According to the Spanish authorities, the shareholder's loan was contracted under market conditions as far as this criterion is concerned.

(34) A second parameter could be to examine the difference with respect to the basic rate from the point of view of the return to the lender. The MIBOR rate in December 1998 was approximately 3,20 %. A margin of […]* in addition to this means 47 % of the MIBOR rate. The Spanish authorities calculate that the 0,25 % difference between the shareholder's loan and the syndicated loan amounts to a surplus for Parque Temático de Alicante SA of between ESP 350 million and ESP 500 million by comparison with the return from the syndicated loan, which would represent a reasonable profit.

(35) Thirdly, the project's internal profitability rate, which was estimated at 10 % in December 1998, should be taken into account. On the basis of the information available on the estimated profitability of the project and the prospects of the sector at the time the shareholder's loan was granted, the interest rate envisaged, which must at any rate be lower than the internal profitability rate, was reasonable.

(36) As regards the guarantees, the Spanish authorities take the view that, although the primary guarantees (those relating to the syndicated loan) may be sounder than the secondary guarantees (those relating to the shareholder's loan), what is at stake is not how they compare with each other, but whether the guarantees covering the shareholder's loan are adequate. In this respect, both loans are covered by similar guarantees, such as the limits imposed on Terra Mítica SA with regard to financial management, the debt-to-income ratio or the availability of assets. The Spanish authorities also point out that the debt arising from the shareholder's loan cannot be converted into capital, and that profit-sharing cannot be envisaged as a means of reimbursement, which shows that Parque Temático de Alicante SA intends to have the loan reimbursed at all events. Moreover, the Spanish authorities stress that it is not usual to make loans of this type conditional on the formal establishment of mortgage guarantees, in view of the additional costs which this entails. The usual practice in such cases is to give an irrevocable undertaking to establish guarantees at the lender's request. Such an undertaking exists both for the syndicated loan and the shareholder's loan.

([23]) The Commission had concluded that the syndicated loan did not involve any State aid (see recital 57 of the decision of 20 June 2001).

(*) Business secret: Parts of this text have been withheld to ensure confidentiality; these parts are genoted by square brackets and an asterisk.

([24]) OJ C 273, 9.9.1997, p. 3.

(37) Finally, the Spanish authorities point out that subordinated loans are not unusual in other sectors. They claim, for instance, that the financing structure of Terra Mítica SA is comparable to that of other similar projects, such as 'Port Aventura' or 'Isla Mágica'. In this connection, they have sent the Commission a copy of a report by an independent expert ([25]) which states that it is usual with projects of this type for subordinated loans to accompany the principal loan. According to this report, which includes recent examples of subordinated shareholders' loans, the interest rates on subordinated loans are generally similar to those on principal loans, and sometimes even lower. The report underlines in this connection that shareholders' loans present certain advantages for the shareholders concerned by comparison with the usual benefits which accrue to them (dividends); in the event of liquidation, for example, servicing the subordinated debt is given priority over reimbursing capital; interest is payable even if there are no dividends; shareholders' loans entail lower tax costs than increases or reductions in capital, and so on. As regards the shareholder's loan to Terra Mítica SA, the report concludes, following an analysis of factors such as whether or not a subordinated loan is reasonable within a financial structure like that of the park, the fact that the lender is a shareholder in the project, the size of the principal and subordinated loans in relation to the financial forecasts available to investors, the interest rates applied and the income accruing to the lender, in view of the guarantees covering the subordinated loan, that this transaction may be viewed as normal by comparison with other, similar projects. The report notes that revenue from the subordinated loan is higher than that for other, similar transactions examined during the same period. The transaction could, then, reasonably have been concluded by any investor.

(38) In conclusion, it is claimed that the shareholder's loan contracted by Terra Mítica SA vis-à-vis Parque Temático de Alicante SA was concluded in line with the usual standards.

Rebate on municipal taxes by the municipality of Benidorm ([26])

(39) The Spanish authorities do not examine the issue of whether the granting of a tax rebate by a public authority may imply an element of State aid, although in the present case they deny that it could have affected intra-Community trade. At all events, if this rebate was State aid, it should be declared compatible with the single market, as it represented aid to initial investment. The Spanish authorities stress that the legal basis for the rebate is a general rule applied to all Spanish municipalities.

(40) The Spanish authorities also point out that since Terra Mítica SA was set up, it has paid all the taxes due on its activities.

The possible contribution to Terra Mítica SA of ESP 6 000 million by the Valencia Tourist Agency

(41) Firstly, the Spanish authorities deny the existence of any agreement between the Valencian Tourist Agency and Terra Mítica SA under which the Agency is to 'contribute' ESP 6 000 million to Terra Mítica SA. There is no basis for this information, which seems to have been published by the press.

(42) Rather, the Spanish authorities explain that in April 2001 the Agency and Terra Mítica SA signed a contract covering exploitation rights for publicity purposes and the provision of services, a copy of which was forwarded to the Commission, for the sum of ESP 1 900 million (EUR 11,42 million), including expenses and taxes.

(43) The Spanish authorities take the view that this contract does not contain any elements of State aid, as the price (which is much lower than the supposed contribution referred to in the Commission's decision) consists of payment for certain services carried out under contract by Terra Mítica SA on behalf of the Agency.

(44) According to the Spanish authorities, Terra Mítica SA has, since the outset, defrayed all the expenditure on investment in promoting and publicising the park ([27]). The Valencian Tourist Agency is a public body with legal personality whose purpose is to promote the tourism assets of the Autonomous Community of Valencia, which naturally includes the park as one of the regions' major tourist attractions. The tools which it uses for this purpose are promotion, participation in trade fairs, sponsorship, the use of rights to particular images, the exploitation of images, symbols or trademarks associated with the region, and so on.

([25]) The firm concerned is Ahorro Corporación Financiera, SBV, SA, which is one of Spain's principal financial consultancies. It is a private company in which 42 Spanish savings banks have a share and which has a great deal of experience on the Spanish financial market.

([26]) The rebate was ESP 88 399 400 (EUR 531 291).

([27]) This expenditure totalled […]* in 1998, […]* in 1999 and […]* in 2000.

(45) The Spanish authorities take the view that this contract does not confer any unlawful advantages on Terra Mítica SA, as it respects the principle of the private investor in a market economy. They believe the price paid by the Agency is reasonable in view of what it is getting in return. They acknowledge that establishing what is a reasonable price is not straightforward in this case. In their view, determining the price of particular rights or services means taking account both of their intrinsic value and the interest of the other party in acquiring them. They therefore stress that it is of great importance for the Agency to use the park in advertising to attract tourists to the region; since its inception, the park has been one of the region's major tourist assets and has enabled Valencia to diversify its tourist attractions, which have hitherto been exclusively 'sun and sand'. In any case, the Spanish authorities stress the fact that the contract was concluded for one year and that it is clear that it cannot be tacitly extended. The express agreement of both parties is required for the contract to be renewed, and both parties must also agree on the financial conditions, which would enable adjustments to be made if an imbalance between the parties' obligations were identified.

(46) The Spanish authorities then go on to explain the nature of the two parties' reciprocal obligations. Terra Mítica SA grants the Agency licences for the following activities:

(a) exploiting advertising inside the park. The Agency acquires the exclusive right to run all the park's advertising activities (without prejudice to the rights granted by the park prior to this contract) ([28]). The licence covers the whole of the area inside the park, without making any distinction between the various shopping areas, the entrance, the boundary fences and the car park. This means that the Agency can use and exploit all existing or potential advertising space and develop any advertising activities that it wishes inside the park. These rights are valued at […]*;

(b) making use of pictures of the park. The Agency acquires the right to use and commercially exploit pictures of the park, including the right to reproduce images of any area of the park and any event taking place inside it, whether or not such events are organised by the Agency itself. It has the option of selling these rights to third parties without having to ask the park's permission, provided that this helps in one way or another to promote the Autonomous Community of Valencia. This right is valued at […]*;

(c) exploiting audiovisual productions owned by the park. The Agency can use and commercially exploit such productions. The Spanish authorities state that the park has invested around […]* in audiovisual productions. This right is valued at […]*;

(d) exploiting industrial property rights. The Agency acquires a non-exclusive licence for the exploitation of all the Terra Mítica trademarks owned by the park, as well as a preferential option to acquire the right to exploit other trademarks which the park may acquire. The Spanish authorities state that the Terra Mítica trademark is extremely valuable thanks to efforts made by the park, which invested […]*, particularly in advertising, between 1998 and 2000. The price takes into account, *inter alia*, the cost of creating and developing the trademark, the public's awareness of the trademark ([29]), and the extent to which the park is expected to develop. The Spanish authorities also state that when the cost of this licence was decided, the park's indirect benefits in terms of promotion, as a result of the fact that the Agency had acquired this licence, were correctly taken into account in the price of the licence, in accordance with the contract's stipulations. The Spanish authorities take the view that such licences are common in this sector, and refer to another park by way of illustration. These rights are valued at […]*;

(e) providing certain services to the Agency. The park undertakes to display the logo designated by the Agency inside the park (on the various attractions, in the toilets, at the entrances and in the rest areas) and to use it in all advertising or promotional activities which it carries out (in guidebooks, plans, advertisements via various media, on entrance

([28]) The park had granted non-exclusive licences of a far more limited scope to two other firms […]*. The price of these two contracts was […]* and […]* respectively. Under the first contract the park undertook to incorporate the firm's logo in three of the park's attractions and to display it at the entrances and in the guidebooks, and to make available space for a hoarding inside the park. Under the second contract, the park undertakes, *inter alia*, to display the firm's logo at the entrances, in the guidebooks and on a standing stone. The Spanish authorities stress that these contracts were entered into before the park was opened.

([29]) It is estimated that 96,3 % of people living in the region and approximately 60 % of the Spanish population know the Terra Mítica trademark. No other leisure activity in the region is as well-known.

tickets, etc) ([30]). In addition, the park commits itself to making two buildings inside the park available for the Agency's use (which means a loss of the revenue which could have been raised by using the areas occupied by the buildings) ([31]). This also provides a strategic information point for the Agency, in view of the large number of visitors to the park. The park also undertakes to show the Agency's promotional films on screens inside the park and to hand over a percentage of entrance charges to the Agency ([32]). These services are valued at […]*.

Each of these services to the Agency has been objectively valued and, it is maintained, has an economic basis, although an overall price was negotiated in the end. As stated above, the price of ESP 1 900 million includes all the costs involved, plus taxes. Thus, in order to calculate the net amount which Terra Mítica SA could actually collect in practice, all the costs defrayed by the firm and the taxes payable should be deducted from this price. The Spanish authorities estimate that the real net value is approximately ESP 1 600 million (EUR 9,62 million).

Compatibility with the common market of the measures analysed

(47) If the Commission were to take the view that these measures constitute State aid, the Spanish authorities believe they would be compatible with the Treaty, in accordance with Article 87(3)(a) thereof.

(48) In this context, the Spanish authorities would point out that at the time when the measures under consideration were implemented, the region of Valencia was fully eligible for regional aid, in accordance with Article 87(3)(a) of the Treaty. Specifically, the maximum aid intensity for the province of Alicante, where the park is situated, was 50 % of the net grant equivalent over the period 1995 to 1999. Moreover, the whole region of Valencia continues to be eligible for regional aid in the succeeding period (2000 to 2006), in accordance with Article 87(3)(a) of the Treaty, the maximum level for the province of Alicante being 40 % of the net grant equivalent.

(49) The Spanish authorities recognise that if one or more of the measures analysed constituted State aid, it would be ad hoc aid. However, in this case the aid would be justified in view of its contribution to the long-term development of the region and because it has no impact on competition conditions and trade flows between the Member States.

(50) Although the Spanish authorities take the view that the Community multisectoral guidelines on regional aid to major investment projects ([33]) are not applicable in this case, it would be useful to analyse the case in the light of the evaluation criteria set out down in the guidelines, that is, the impact on competition, the effect on employment and the regional impact. For instance, any aid provided would contribute to the region's long-term socioeconomic development, particularly through the creation, directly and indirectly, of large numbers of jobs ([34]), without having a negative impact on competition, since the market concerned has no excess capacity ([35]) and the jobs thus created will not increase a large market share.

(51) If it were considered that aid had been granted in the present case, it would be aid to initial investment in setting up a new establishment within the meaning of points 4.4 f.f. of the guidelines on national regional aid ([36]): such aid would relate to new immovable assets (land, installations and buildings), the investment would be maintained for a minimum of five years and the beneficiary would have funded more than 25 % ([37]).

(52) Finally, even if it were decided that all the measures in question count as State aid, they would easily fall within the maximum intensity allowed for investment aid (50 % of the net grant equivalent applicable at the time), even if the other regional aid already granted is taken into account ([38]).

Comments by the Spanish authorities on the observations made by interested parties

(53) The Spanish authorities have stated that they have given a comprehensive response to all the issues raised by the complainant and that they therefore have nothing further to say in reply to the comments made by the European Federation of Amusement and Leisure Parks.

([30]) The Agency's logo features in or on the following: guidebooks, plans, entrance tickets, motorbikes, flags, hoardings, wheelchairs, trolleys, posters, bins and signs to the park.

([31]) On the basis of a comparison with the sales volumes of nearby buildings, it is estimated that the sales volumes of these buildings could be around […]* between January and July 2001, which would mean an annual turnover of […]*.

([32]) The value of […]* entrance tickets was transferred in the period up to September 2001, which represents a net value of over […]*.

([33]) OJ C 107, 7.4.1998, p. 7.

([34]) 1 847 jobs were created directly in 2001.

([35]) The Spanish authorities point out that the theme park market is practically new in Spain and that it is developing fast; demand is expected to increase by around 10 % per year.

([36]) OJ C 74, 10.3.1998, p. 4.

([37]) Point 4.2 of the guidelines.

([38]) See recital 62 of the Commission decision of 20 June 2001.

ASSESSMENT

(54) Firstly, the claims made by the Spanish authorities (referred to in recital 18) call for a brief response. In accordance with case-law in the field of State aid, the Commission is required to investigate all the complaints laid before it, although this does not mean that an appeal by the complainant in question against the Commission decision on the complaint is necessarily admissible. Moreover, under Article 10(1) of Regulation (EC) 659/1999 with regard to the State aid procedure, the Commission is obliged to examine all information concerning a presumed case of unlawful aid, whatever the source of such information. In the case under scrutiny, the Commission takes the view that it should respond to the European Federation of Amusement and Leisure Parks as such, and that there is no reason to pre-judge whether or not it is acting as a front for a complainant wishing to conceal his or her identity. As to the letters previously sent by the Commission's departments to the Spanish authorities and the complainant, it is clear that they did not set out a final decision, but a provisional position on the part of the Commission's departments.

(55) Article 87(1) of the Treaty states that, save as otherwise provided in 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 provision of certain goods shall, in so far as it affects trade between Member States, be deemed incompatible with the single market. A measure is thus deemed to be State aid if it meets four criteria: (a) it confers an advantage; (b) this advantage is conferred by means of State funding; (c) the measure distorts or threatens to distort competition, thereby affecting trade between the Member States; and (d) the measure concerned is selective, favouring particular companies.

(56) The Commission must therefore analyse the various measures referred to in recital 16, in respect of which it initiated the procedure provided for in Article 88(2) of the Treaty, in the light of the four criteria referred to in recital 55.

(57) In its decision to initiate the above-mentioned procedure, the Commission had already noted that, as far as most of the measures were concerned, its doubts centred on whether or not State aid was at issue. As regards the complainant's allegations about the municipal tax rebate granted by the Benidorm local authorities, the Commission took the view at this stage that that this was an instance of State aid and that it should be examined to see whether it was compatible with the common market.

No impact on intra-Community trade

(58) Nonetheless, the Spanish authorities have replied to the Commission's initial assessment that the measures being examined under the present procedure have an impact on intra-Community trade. Since this is one of the elements needed to determine whether State aid is present, this issue has to be decided first and foremost.

(59) In this context, the Spanish authorities take the view that Terra Mítica must be classed as a regional park rather than as a destination park, firstly because it is not part of a large chain of parks under unified management, as is the case with EuroDisney, and it is not based on a standard theme based on the use of assets in other markets, as with Universal or Warner, and secondly because people living within a radius of between 150 km and 200 km of the park account for almost 90 % of primary demand, while people resident in Spain account for most of the remaining 10 %.

(60) The Commission does not share the views of the Spanish authorities. The fact that Terra Mítica is not part of a chain of parks under unified management, like EuroDisney, does not prevent it from being large enough to affect trade, as the Commission has judged in various previous decisions ([39]). Moreover, the Commission takes the view that, contrary to the claims of the Spanish authorities, the park does have a specific theme (ancient Mediterranean civilisations), which means that it can be viewed as similar to other parks such as those referred to by the Spanish authorities. Finally, even if people living in the region around the park do account for most of primary demand, the documentation forwarded by the Spanish authorities concerning links between Terra Mítica SA and the Valencian Tourist Agency shows that the park has maintained an active policy of attracting visitors from abroad. Moreover, the park's own publicity materials clearly show how to get there from a number of major European cities. Finally, the park clearly adds to the attractions of the Benidorm area, which is visited by a very large number of tourists, including many from other EU countries, by diversifying the activities on offer.

([39]) See Cases N 640/99 France (OJ C 284, 7.10.2000, p. 4); N 132/99 Italy (OJ C 162, 10.6.2000, p. 23); N 785/99 Italy (OJ C 382, 18.11.2000, p. 22); N 582/99 Italy (OJ C 40, 12.2.2000, p. 2); N 229/01 Italy (OJ C 330, 24.11.2001, p. 2).

(61) The Commission therefore confirms the assessment set out in its decision to initiate proceedings; it considers that the measures under scrutiny may affect trade between Member States.

Funding the infrastructure necessary for the park's operation

(62) In its decision of 20 June 2001, the Commission had expressed doubts as to the part played by the Valencia regional administration in funding infrastructure which, possibly, ought to have been the responsibility of Terra Mítica SA.

(63) The documentation forwarded by the Spanish authorities shows that, under the Land use and infrastructure plan, the whole of the area in which the park is located has been developed and subjected to infrastructure work.

(64) In this context, the Commission takes the view that public powers can, as the Spanish authorities state, carry out work to develop their land. They can, for instance, fund infrastructure which will benefit the population as a whole. Moreover, the Commission considers that the reason for which such infrastructure is set up is indifferent, provided that it is done in the interests of the local community as a whole. However, if such infrastructure of services will serve the needs of a private company only, that company is responsible for funding them. This follows from the fact that, where State aid is concerned, the Commission's remit is to analyse the impact of the measures concerned in practice, rather than the objectives pursued. In the present case, the Commission therefore takes the view that, even if the Land use and infrastructure plan had been adopted solely in connection with plans to build a theme park, what matters is to analyse which construction projects or infrastructure are of benefit to the community as a whole (including the park) and which are of use to the park only. It is only the latter which should be funded by the park.

(65) In the light of the detailed explanations provided by the Spanish authorities, the Commission believes the general infrastructure could have been publicly funded. It considers that this infrastructure is useful to all natural or legal persons resident in the area. Moreover, it notes that the work was carried out before Terra Mítica SA was set up. It also considers that, although the increase in traffic may be due to the park, the roadworks carried out affect everyone living in the area. The same applies to work carried out on electrical, gas, water and telecommunications infrastructure. This is true despite the fact that the park may have brought about an increase in traffic in the area or increased the use of electricity, gas, water or telecommunications infrastructure.

(66) The Commission has also noted, having examined the documentation forwarded by the Spanish authorities, that Terra Mítica SA funded all the infrastructure work carried out inside the park and all the connections with general infrastructure. It has not been able to determine whether there is other infrastructure which should have been funded by Terra Mítica SA because it is used exclusively by that firm.

(67) In view of the above, the Commission considers that Terra Mítica SA has not received any aid in this area. It thus concludes that there has been no State aid to fund infrastructure required for the operation of the park.

Value of the assets transferred to Terra Mítica SA by Parque Temático de Alicante SA and, in particular, of the land and the Terra Mítica trademark

(68) First and foremost, the Commission reiterates that it does not doubt the independence of the experts who valued the assets transferred by Parque Temático de Alicante SA to Terra Mítica SA, as there is no indication whatsoever that the public authorities influenced the experts in their work ([40]). The Commission also notes that Terra Mítica SA played no part in the selection of Tabimed as an expert. It recalls that the purpose of initiating the present procedure was to ensure that the value assigned to the assets transferred to Terra Mítica SA corresponded to their true value at the time of transfer.

(69) As regards the value of the land, the Commission points out, first and foremost, that of the two values established by the two experts, the higher value (established by TINSA) was finally chosen (ESP 1 300 ESP/m^2). It also notes that, as the Spanish authorities recalled, the method used by TINSA was the one which the complainant viewed as most appropriate for assessing assets of this type.

(70) The Commission has not found any evidence in support of the price which the complainant suggested as the

([40]) See the sixth paragraph of recital 56 of the Commission's decision of 20 June 2001.

local market price ([41]). It believes that the value of land had to take account of its use, i.e. the fact that the land in question was to be used to build a theme park. It would thus be inappropriate to assign it a price comparable to that of land intended for residential purposes. In the absence of any other information, the assessment method used by TINSA (capitalisation of expected income) seems entirely appropriate in this case.

(71) In view of the above and on the basis of its research, the Commission considers that it has no information suggesting that the value assigned to the land was not its real value. It notes, moreover, that the way in which the sale price was established is in accordance with section II(2)(a) of the Commission communication on State aid elements in sales of land and buildings by public authorities ([42]).

(72) The Commission considers that the value which should be assigned to the Terra Mítica trademark is its real value at the time of transfer. It notes that the trademark had not yet been finally registered when the transfer took place. However, the value of such an asset clearly depends on the extension of the rights inherently associated with it. Third parties cannot be prevented from using a trademark unless it is registered. Under these circumstances, the Commission shares the views of the Spanish authorities on the matter, considering that the value assigned by the expert to the trademark (the purchase price only) reflected the value of the asset at the time of transfer and is thus in line with the principle of prudence. Moreover, the complainant has not provided any evidence in support of his allegations as to the trademark's value.

(73) In view of the above, the Commission considers that Terra Mítica SA has not enjoyed any particular advantage in this respect. Since a firm must enjoy such an advantage if it is to be deemed to be in receipt of State aid, the Commission concludes that no State aid was provided to increase the value of the assets transferred to Terra Mítica SA by Parque Temático de Alicante SA, notably as regards the value of land and the Terra Mítica trademark.

Conditions governing the shareholder's loan granted to Terra Mítica SA by Parque Temático de Alicante SA

(74) As in the previous case, the Commission has to analyse whether the shareholder's loan was granted by Parque Temático de Alicante SA to Terra Mítica SA under conditions similar to those applying to a private shareholder. It therefore has to take into account the circumstances applying at the time when the loan was contracted.

(75) Firstly, the Commission notes that the shareholder's loan was contracted on 23 December 1998, that is, near to the date of the syndicated loan (contracted on 15 April 1999). Now, as laid down in its decision of 20 June 2001, the Commission considers that the syndicated loan was contracted under market conditions, as the lenders are 25 commercial financial bodies ([43]) (10 private banks and 15 savings banks), all of which had significant shares. It has not uncovered any evidence to suggest that public authorities were behind the decision taken by the financial bodies, whichever they are, to take a share in the loan (see Case 482/99 *Frabce* v *Commission* 'Stardust' of 16 May 2002). Finally, according to the information forwarded to the Commission by the Member State concerned, the syndicated loan was not underwritten by any guarantee by the public authorities. The Commission can therefore use the conditions applicable to the syndicated loan to analyse the shareholder's loan. It also notes that the use of the funding formula chosen by Terra Mítica SA (a shareholder's loan subordinated to a principal loan) is not unusual for projects of this type and that in such cases the interest rate on the subordinated shareholder's loan, for identical reimbursement conditions, is comparable to and sometimes even lower than the interest rates on the principal loans.

(76) In this connection, the interest rate on the shareholder's loan […]* is higher than the interest rate on the syndicated loan […]*, a loan granted by commercial institutions which was not underwritten by the public authorities, and must therefore be considered as a market interest rate. Moreover, the interest rate on the shareholder's loan is higher than the rates applied to other shareholder's loans granted by private shareholders for similar projects.

(77) The Commission also notes that the interest rate on the shareholder's loan at the time it was granted is comparable to the reference rate applicable at the time. Moreover, the issue of the relative rank of the two loans, that is, the fact that the shareholder's loan was subordinated to the other one and therefore ran a greater risk if the project were to fail, must be seen in relation to the two loans as a percentage of the total investment. The Commission would point out here that the syndicated loan accounts for approximately [30 % to 40 %]* of the total investment, while the subordinated

([41]) ESP 2 000/m^2 for land which cannot be used for residential purposes and ESP 5 000/m^2 for land which can, see the third paragraph of recital 56 of the Commission's decision of 20 June 2001.

([42]) OJ C 209, 10.7.1997, p. 3.

([43]) See recital 57 of the decision of 20 June 2001.

loan represents approximately [10 % to 20 %]*. Finally, it notes that all of the lenders took their decisions on the basis of a pre-established financial plan which showed that the project was viable.

(78) The Commission therefore takes the view that the shareholder's loan granted to Terra Mítica SA does not involve any particular advantage. Since the existence of an advantage which would benefit a particular firm is a necessary condition for identifying State aid, the Commission concludes that there has been no State aid as regards the conditions under which the shareholder's loan was granted to Terra Mítica SA by Parque Temático de Alicante SA.

Municipal tax rebate provided by the Benidorm local authorities

(79) The Commission considers it proven — and the Spanish authorities have not replied on the matter — that Terra Mítica SA has benefited, thanks to a decision by the Benidorm local authorities, from a 95 % rebate on the municipal tax on buildings, installations and infrastructure, which represents the sum of ESP 88 399 400 (EUR 531 291).

(80) The Commission believes that this rebate must be classed as State aid within the meaning of Article 87(1) of the Treaty. After all, the rebate constitutes an advantage vis-à-vis other firms which would like to start work of this kind. In addition, the advantage gained was clearly conferred using State funds, and this is an example of a selective measure. Finally, as indicated in recital 61, the Commission does not share the view of the Spanish authorities, in that it believes that the measure may possibly affect intra-Community trade. Moreover, the Commission considers that the fact that the legal basis on which the rebate was granted is a universal rule ([44]) applicable to all Spanish municipalities does not mean that the present case does not involve aid, given the considerable margin for discretion which each municipality has. It also considers that the fact that Terra Mítica SA has paid all its other taxes is irrelevant to the case.

(81) The Commission therefore concludes that the tax rebate constitutes State aid to Terra Mítica SA of ESP 88 399 400 (EUR 531 291). In recitals 91 to 100, it will analyse whether this measure can be considered to be compatible with the single market.

The possible contribution to the value of ESP 6 000 million by the Valencian Tourist Agency

(82) Firstly, the Commission notes that the Spanish authorities have formally denied the existence of the contribution referred to in the decision of 20 June 2001. The Spanish authorities attribute the claim concerning the contribution to unfounded press reports. The Commission also notes that it has not discovered anything which might back up the claim. It therefore concludes that there is no such contribution.

(83) The Commission also notes that the Spanish authorities recognise the existence of a contract between the Valencian Tourist Agency and Terra Mítica SA on a licence granting rights to exploit advertising and provide services, a copy of which the Commission has received. Under this contract, the Agency pays ESP 1 900 million (EUR 11,42 million) for certain facilities provided by Terra Mítica SA.

(84) In view of the nature of the public bodies dependent on the Valencia regional government, the Commission takes the view that the existence of State aid to Terra Mítica SA cannot be excluded, if it transpires that the price paid by the agency is excessive by comparison with the services obtained in return.

(85) In this context, the Commission notes that under the contract in question, Terra Mítica SA grants the Agency a number of licences to exploit advertising relating to the park, images of the park, audiovisual productions owned by the park, the Terra Mítica trademark and other services, including the use of premises inside the park and takings from entrance tickets to the park.

(86) In the Commission's view, the possibility cannot be ruled out *a priori* that certain aspects of the contract, considered in isolation, could suggest the existence of aid to Terra Mítica SA. This applies particularly to the granting of industrial property rights, which gives the park an advantage in that the fact that the Agency has the right to use the Terra Mítica trademark and does so in activities to promote the region, means in practice that the park is promoted and paid for the privilege. The same could apply to the right to exploit images of

([44]) The legal base is Article 104(2) of Law 39/1988 of 28 December 1988 on local public finance, as amended by Article 18(28) of Law 50/1998 of 28 December 1998, on measures relating to tax, administrative matters and social order.

the park and the right to exploit audiovisual productions owned by it, as the exercise of these rights can also constitute publicity for the park. However, in its assessment the Commission cannot ignore the fact that these benefits to the park have been taken into account, in theory, in setting the overall contractual price ([45]).

(87) On the other hand, the Commission also notes that the contract stipulates a number of services which are by no means negligible to be provided to the Agency by the park. In particular, it notes that the price […]* payable for the exploitation by the Agency of the exclusive licence covering the park's internal advertising potential, which includes over 60 attractions and associated services and plenty of opportunities to set up publicity hoardings, seems more favourable to the Agency if compared with the prices paid by the two private companies for non-exclusive licences that are far more limited in scope […]* for three sets of premises and a hoarding, and […]* for one set of premises, in addition to takings from entrance tickets and guidebooks in both cases). Moreover, the price of services rendered to the Agency seems low, taking into account the fact that the loss of earnings resulting from the non-use of the area occupied by the two sets of premises and the distribution of free entrance tickets is as much as […]*. This indicates that the contract provides for reciprocal benefits to both contracting parties and is thus balanced as a whole, as shown by the fact that there is an overall price for services as a whole. It should also be noted that the revenue actually received by the park is lower than that mentioned in the contract, bearing in mind that taxes and all specific costs have to be deducted from the takings.

(88) Finally, the Commission notes that the contract runs for one year only and that the possibility of automatically renewing it is ruled out unless an explicit agreement is reached by both parties, both of which are entirely free to renegotiate the price and thus to adjust it in line with experience. Although this clause shows that the two parties involved are concerned, given the complexity of the conditions obtaining, not to permanently establish any particular situation or to create unjustified sources of revenue, but intend, rather, to adjust their contractual links in line with their mutual commercial interests, it does leave open the issue of whether aid might come into play if the contract were renewed or extended.

(89) In view of the above, the Commission cannot take the view that the contract was concluded under conditions which would have been unacceptable to a private operator acting within the normal framework of a market economy.

([45]) Clause 6(6) of the contract.

(90) It therefore considers that by concluding this contract with the Valencian Tourist Agency, Terra Mítica SA has not benefited from any special advantages. Since the existence of an advantage to a firm is a necessary condition for the identification of State aid, the Commission concludes that there is no State aid involved here.

Compatibility of aid with the single market

(91) In the light of the above considerations, the Commission has identified only one measure, out of all those subject to the present procedure, which fulfils the necessary conditions to be deemed an instance of State aid within the meaning of Article 87(1) of the Treaty. That measure is the rebate on the municipal tax applicable to building, installations and infrastructural work granted by the Benidorm local authorities. In what follows, the Commission will analyse to what extent the measure is compatible with the common market.

(92) Firstly, the Commission notes that the aid was not granted within the framework of an aid regime authorised by itself. The legal framework of the tax rebate granted under Spanish law is extremely vague and much is left to the discretion of the local authorities. The measure thus constitutes ad hoc aid. In accordance with point 2(3) of the abovementioned guidelines on regional aid to major investment projects, the Commission generally takes an unfavourable view of such aid. At all events, there is a need to ensure a balance between the distortion of competition caused by aid and the advantages of aid in promoting the development of a less favoured region ([46]). However, the extent to which aid confers advantages can vary according to which exemption is applied; it is more harmful to competition in the situations referred to in Article 87(3)(a) of the Treaty than in those described under Article 87(3)(c) ([47]).

(93) In this context, the Commission notes that the region where the park is situated is an area receiving aid in accordance with Article 87(3)(a of the Treaty. It therefore takes the view that the aid could be declared compatible with the Treaty, in accordance with the derogation provided for in Article 87(3)(a), if the unfavourable view referred to above could be overcome and it could be demonstrated that the aid in question makes an effective contribution to the development of a disadvantaged region.

([46]) See point 2(2) of the guidelines on regional aid to major investment projects.

([47]) Ibid.

(94) In this context, the Commission considers that the aid provided constitutes initial investment aid, as the building of the park (which would normally be subject to the appropriate tax) corresponds to the definition given in the first paragraph of point 4.4 of the guidelines on regional aid to major investment projects.

(95) Moreover, it notes that the beneficiary's contribution to the funding of the project greatly exceeds the 25 % stipulated in the first paragraph of point 4.2 of the guidelines on regional aid to major investment projects. It also notes that the request for aid must have been presented before the implementation of the project got under way, as stipulated in the third paragraph of point 4.2 of the guidelines, since it was essential to obtain the taxable licence before starting the work.

(96) In addition, the Commission believes that it is clear in the present case that investment will be maintained for at least five years, as stipulated in point 4.10 of the guidelines.

(97) The Commission notes that the intensity of the aid granted is very low. It amounts to ESP 88 399 400 out of a total investment estimated at ESP 52 000 million, which puts the gross intensity at under 0,2 %. Consequently, even if this aid is taken together with the other forms of regional aid granted by the central authorities to the same project (ESP 2 426,7 million, which represents an intensity of approximately 7 % gross) ([48]), it is still far below the regional aid ceiling. Moreover, the regional aid granted (under Law 50/1985 on regional incentives), even if taken together with the tax rebate, is far less than what the park could have obtained under the regional aid scheme in place.

(98) In addition, the Commission believes that this project makes a significant contribution to the development of a disadvantaged region. The project has created a large number of jobs directly (1 847 in 2001) and it is to be hoped that many more will by created indirectly, given the dynamising impact which such projects can have on the region as a whole. This also helps to diversify the type of tourism available in the region.

(99) Finally, the Commission believes that this small amount of aid cannot affect trade in a way liable to harm the common interest, bearing in mind that while the park's impact at Community level is such as to affect trade, it is nonetheless limited, as indicated by the Spanish authorities (the park is not part of a chain, and its customers are mainly local and Spanish) in recital 19.

(100) In view of the above, the Commission takes the view that the municipal tax rebate on building, installations and other works, granted by the Benidorm local authorities to Terra Mítica SA, may be declared compatible with the single market under Article 87(a)(3) of the Treaty.

CONCLUSION

(101) In view of the above, the Commission concludes that the measures analysed relating to the funding of the infrastructure needed for the operation of the park, the value of the assets (notably the land and the Terra Mítica trademark) transferred to Terra Mítica SA by Parque Temático de Alicante SA, the conditions governing the shareholder's loan granted to Terra Mítica SA, and the contract between the Valencian Tourist Agency and Terra Mítica SA do not constitute State aid within the meaning of Article 87(1) of the Treaty.

(102) The Commission also concludes that the rebate on the municipal tax on building, installations and other work granted by the Benidorm local authorities to Terra Mítica SA constitutes a case of State aid within the meaning of Article 87(1) of the Treaty. It notes that the Kingdom of Spain granted this aid unlawfully, in contravention of Article 88(3) of the Treaty. However, the aid may be declared compatible with the Treaty, pursuant to Article 87(3)(a) thereof,

HAS ADOPTED THIS DECISION:

Article 1

The measures relating to the funding of the infrastructure necessary for the operation of the Terra Mítica SA theme park, the value of the assets (notably the land and the Terra Mítica trademark) transferred to Terra Mítica SA by Parque Temático de Alicante SA, the conditions governing the shareholder's loan granted to Terra Mítica SA, and the contract between the

([48]) See recital 62 of the decision of 20 June 2001.

Valencian Tourist Agency and Terra Mítica SA do not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 2

The State aid granted by the Benidorm local authorities in the form of a rebate on the municipal tax on building, installations and other work to Terra Mítica SA, which totalled ESP 88 399 400 (EUR 531 291) is compatible with the Treaty, in accordance with Article 87(3)(a) thereof.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 2 August 2002.

For the Commission

Mario MONTI

Member of the Commission