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CMS 214360
22 November 2013

DESTINATION MANAGEMENT ORGANISATIONS IN ENGLAND

PUBLIC FUNDING FOR TOURISM AND STATE AID RULES

Following complaints to the European Commission about the use of public funds by UK tourism authorities to support tourism websites, I am writing to regional and local tourism authorities to remind them that this funding is subject to state aid rules.

Regional and local tourism websites in the UK are of course operated by a number of different independent organisations, comprising different mixes of public and private management at various levels outside the control of central Government. As such, the UK Government does not have direct control over these individual websites. However, we have agreed with the Commission that we would write to tourism authorities - public, private and public-private partnership organisations - to remind those organisations in receipt of public funds of their obligations to comply with state aid rules when applying those funds. If your organisation is not in receipt of public funds, please ignore this letter.

The state aid regulations form part of the body of EU competition law, which is enforced by the European Commission. State aid refers to forms of assistance granted by the state or through state resources to selected undertakings which have the potential to distort competition and to affect trade between Member States of the European Union. In this context, an undertaking is any entity which sells goods or services within the European single market. Put simply, where public funding is being used to provide financial benefit (of any kind) to a company, charity or other entity which is carrying out economic activity, it is necessary to consider whether such support constitutes state aid.



Although state aid can be given legally if it is approved by the Commission, any aid which does not have Commission approval is potentially illegal under the state aid rules. Legal cover should therefore be sought for any funding which could potentially be aid before the funding is granted. While the process for gaining Commission approval varies, the state aid regulations are guided by the principle that aid should only be given to remedy identified market failures, or where it contributes to the common interest and where the benefits of the intervention outweigh any potential distortion of competition.

If the Commission discovers aid which has been granted without approval, they may order that the funding be stopped to allow them to investigate. If the aid already granted is found not to be compatible, the consequences can be severe: the Commission can rule the aid subject to recovery, with interest, from the date granted. The Government is obliged to recover illegal aid if ordered to do so by the Commission even if the recovery of aid means that recipient companies go bankrupt. Companies can also take the Government or granting authority to court for damages against illegal aid. There can be severe reputational damage to the public authorities concerned.

In conclusion, any existing activity which is likely to breach state aid rules should be stopped immediately. If you are unsure about whether a particular activity constitutes aid, you should consult the guidance on state aid provided by the Department for Business, Innovation and Skills in the first instance: <http://www.bis.gov.uk/policies/europe/state-aid>.

I would ask you to review your existing activity and confirm to me by 31 March if you have any concerns that your activities are not compatible with the state aid rules.

Agreement between the UK Government and the Commission

The UK has agreed with the Commission to communicate to you the substance of our discussions with them during their investigation of the complaints, and the terms of the agreement reached between the UK and the Commission at the conclusion of that investigation. The different elements of this agreement are outlined in turn below.

1. Commercial activity

The UK has agreed with the Commission that UK tourism authorities financed wholly or partly by public funds (including via financial assistance and operational support provided through any participation in joint ventures and/or other forms of commercial partnership) must not carry out or finance any commercial activity which is not undertaken primarily (or at all) to carry out the UK authorities' public purpose of providing tourist information and promoting the country, region or area and which does or may compete with activities carried out by private sector organizations in the tourist industry, including booking facilities, buying and selling holidays and holiday accommodation, and advertising.

The provision of accommodation booking facilities online was of particular concern to complainants addressing themselves to the Commission. The UK Government has agreed with the Commission that providing an accommodation booking tool on a website financed wholly or partly by public funds is an example of the type of commercial activity which does not carry out the UK authorities' public purpose and which may compete with activities carried out by private sector organisations.

Tourism authorities should take care where activities carried out in the course of their public function could potentially be seen to advertise one or more commercial products over and above other commercial products, in a way which is not part of that function. For example, activities should be aimed at providing information about local accommodation in a neutral way, rather than advertising an individual hotel.

In seeking and choosing commercial organisations as cooperative partners in the sectors of national, regional or thematic promotions tourism authorities should not use selection criteria which are biased towards certain organisations in the sector in question.

2. *De Minimis* aid

I would remind tourism authorities of the need for careful analysis of the *de minimis* regulation (Regulation (EC) No 1998/2006) to ensure that all the regulation's requirements are complied with fully. In particular, authorities should examine carefully the definition of what constitutes a separate undertaking for the purposes of their application for funding. More guidance can be found here:
<http://www.bis.gov.uk/policies/europe/state-aid/de-minimis-aid-regulations>.

3. Disposal of assets

Where authorities withdraw existing initiatives financed wholly or partly by public funds, and would like to dispose of the associated assets accordingly, tourism authorities will need to ensure that any such disposal takes place in accordance with state aid rules. All assets should therefore be disposed of at the market rate, to ensure that the undertaking purchasing the asset is not gaining an unfair advantage over its competitors as a result of the public investment. This would also require compliance with value for money principles. The general principles for determining an appropriate market rate can be found in the Commission's communication on the disposal of public land and buildings, which can be applied by analogy to other types of assets:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:209:0003:0005:EN:PDF>.

4. Quality assurance schemes for accommodation and online accommodation listing

Finally, the UK Government has agreed with the Commission that it would clarify that there should be no link between participation in a given quality assurance scheme for accommodation providers and the listing of an accommodation provider on a website financed wholly or partly by public funds. For example, the listing of an accommodation provider must not be conditional upon them having participated in a given scheme, nor should the fee for participation in a quality assurance scheme being run on commercial terms include listing on an authority's website for no fee or for a reduced fee. To summarise, properties may still be listed online, provided that there is no link between the provision of the listing service and participation in any quality assurance scheme.

Finally, please note that any stakeholder with concerns about the activities of a publicly-funded tourism authority that cannot be resolved with the tourism authority concerned should contact the team responsible for tourism in the Department for Culture, Media and Sport.

I appreciate that this is a complex issue. That is why I have asked Visit England to set up series of workshops to take colleagues through the implications of this letter and to provide on hand support and guidance from our legal advice team on State Aid issues. The details of this workshop are attached, and I would encourage you or your representative to attend, if at all possible.



Helen Grant MP
Minister for Sport, Tourism and Equalities