European Commission - Press release

State aid: Commission opens in-depth investigation into the Netherlands' tax treatment of Inter IKEA

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The European Commission has opened an in-depth investigation into the Netherlands' tax treatment of Inter IKEA, one of the two groups operating the IKEA business.

The Commission has concerns that two Dutch tax rulings may have allowed Inter IKEA to pay less tax and given them an unfair advantage over other companies, in breach of EU State aid rules.

Commissioner Margrethe **Vestager** in charge of competition policy said: "*All companies, big or small, multinational or not, should pay their fair share of tax. Member States cannot let selected companies pay less tax by allowing them to artificially shift their profits elsewhere. We will now carefully investigate the Netherlands' tax treatment of Inter IKEA*."

In the early 1980s, the IKEA business model changed into a franchising model. Since then, it has been the Inter IKEA group that operates the franchise business of IKEA, using the "IKEA franchise concept". What this means more concretely is that Inter IKEA does not own the IKEA shops. All IKEA shops worldwide pay a franchise fee of 3% of their turnover to Inter IKEA Systems, a subsidiary of Inter IKEA group in the Netherlands. In return, the IKEA shops are entitled to use inter alia the IKEA trademark, and receive know-how to operate andexploit the IKEA franchise concept.

Thus, Inter IKEA Systems in the Netherlands records all revenue from IKEA franchise fees worldwide collected from the IKEA shops. The Commission's investigation concerns the tax treatment of Inter IKEA Systems in the Netherlands since 2006. Our preliminary inquiries indicate that two tax rulings, granted by the Dutch tax authorities in 2006 and 2011, have significantly reduced Inter IKEA Systems' taxable profits in the Netherlands.

The Commission has concerns that the two tax rulings may have given Inter IKEA Systems an unfair advantage compared to other companies subject to the same national taxation rules in the Netherlands. This would breach EU State aid rules.

Between 2006-2011 (the 2006 tax ruling)

The 2006 tax ruling endorsed a method to calculate an **annual licence fee** to be paid by **Inter IKEA Systems** in the Netherlands to another company of the Inter IKEA group called **I.I. Holding**, based in Luxembourg.

At that time, I.I. Holding held certain intellectual property rights required for the IKEA franchise concept. These were licensed exclusively to Inter IKEA Systems. Inter IKEA Systems used these intellectual property rights to create and develop the IKEA franchise concept. In other words, it developed, enhanced and maintained the intellectual property rights. Inter IKEA Systems also managed the franchise contracts and collected the franchise fees from IKEA shops worldwide.

The annual licence fee paid by Inter IKEA Systems to I.I. Holding, as endorsed by the 2006 tax ruling, made up a significant part of Inter IKEA Systems' revenue.

As a result, a significant part of Inter IKEA Systems' franchise profits were shifted from Inter IKEA Systems to I.I. Holding in Luxembourg, where they remained untaxed. This is because I.I. Holding was part of a special tax scheme, as a result of which it was exempt from corporate taxation in Luxembourg.

After 2011 (the 2011 tax ruling)

In July 2006, the Commission concluded that the Luxembourg special tax scheme was illegal under EU State aid rules, and required the scheme to be fully repealed by 31 December 2010. No illegal aid needed to be recovered from I.I. Holding because the scheme was granted under a Luxembourg law from 1929, predating the EC Treaty. This is a historical element of the case and not part of the investigation opened today. However, as a result of the Commission decision I.I. Holding would have had to start paying corporate taxes in Luxembourg from 2011.

In 2011, Inter IKEA changed the way it was structured. As a result, the 2006 tax ruling was no longer applicable:

Inter IKEA Systems bought the intellectual property rights formerly held by I.I. Holding. To finance this acquisition, Inter IKEA Systems received an intercompany loan from its parent company in Liechtenstein.

The Dutch authorities then issued a **second tax ruling in 2011**, which endorsed the price paid by Inter IKEA Systems for the acquisition of the intellectual property. It also endorsed the interest to be paid under the intercompany loan to the parent company in Liechtenstein, and the deduction of these interest payments from Inter IKEA Systems' taxable profits in the Netherlands.

As a result of the interest payments, a significant part of Inter IKEA Systems' franchise profits after 2011 was shifted to its parent in Liechtenstein.

The Commission's investigation

The Commission considers at this stage that the treatment endorsed in the two tax rulings may have resulted in tax benefits in favour of Inter IKEA Systems, which are not available to other companies subject to the same national taxation rules in the Netherlands.

The role of EU State aid control is to ensure that Member States do not give selected companies a better tax treatment than others, via tax rulings or otherwise. More specifically, transactions between companies in a corporate group must be priced in a way that reflects economic reality. This means that the payments between two companies in the same group should be in line with arrangements that take place under comparable conditions between independent companies (so-called "**arm's length principle**").

The Commission will now investigate Inter IKEA Systems' tax treatment under both tax rulings:

- The Commission will assess whether the annual licence fee paid by Inter IKEA Systems to I.I. Holding, endorsed in the **2006 tax ruling**, reflects economic reality. In particular, it will assess if the level of the annual licence fee reflects Inter IKEA Systems' contribution to the franchise business;
- The Commission will also assess whether the price Inter IKEA Systems agreed for the acquisition of the intellectual property rights and consequently the interest paid for the intercompany loan, endorsed in the **2011 tax ruling**, reflect economic reality. In particular, the Commission will assess if the acquisition price adequately reflects the contribution made by Inter IKEA Systems to the value of the franchise business, and the level of interest deducted from Inter IKEA Systems' tax base in the Netherlands.

The opening of an in-depth investigation gives the Netherlands and interested third parties an opportunity to submit comments. It does not prejudge the outcome of the investigation.

Background on the investigation and Inter IKEA

The Commission first requested information in April 2016 on the tax rulings granted by the Netherlands to the Inter IKEA group following press allegations of a potential advantageous tax treatment and the report published by the Greens/ELA group of the European Parliament.

In the early 1980s, the IKEA business was split into two independent groups: Inter IKEA and INGKA.

- The IKEA shops were transferred to INGKA, which also today owns most IKEA stores worldwide.
- Inter IKEA received the proprietary rights developed until that date, including the IKEA trademarks, trade names and the copyrights. Inter IKEA group is still the owner of the intellectual property concerning the IKEA business and is in charge of the exploitation of the business through a franchise model.

Background on the Commission's State aid investigations on tax

Tax rulings as such are not a problem under EU State aid rules, if they simply confirm that tax arrangements between companies within the same group comply with the relevant tax legislation. However, tax rulings that confer a selective tax advantage to specific companies can distort competition within the EU's Single Market, in breach of EU State aid rules.

Since June 2013, the Commission has been investigating individual tax rulings of Member States under EU State aid rules. It extended this information inquiry to all Member States in December 2014. In October 2015, the Commission concluded that Luxembourg and the Netherlands had granted selective tax advantages to Fiat and Starbucks, respectively.In January 2016, the Commission concluded that selective tax advantages granted by Belgium to at least 35 multinationals, mainly from the EU, under its "excess profit" tax scheme are illegal under EU State aid rules. In August 2016, the Commission concluded that Ireland granted undue tax benefits of up to €13 billion to Apple. In October 2017, the Commission concluded that Luxembourg granted undue tax benefits of up to €250 million to Amazon. The Commission also has two ongoing in-depth investigations concerning tax rulings issued by Luxembourg in favour of Mc Donald's and Engie (formerly GDF Suez),and one concerning a tax scheme for multinationals in the United Kingdom.

The non-confidential versions of the decision will be made available under the case number SA.46470 in the State aid register on the Commission's competition websiteonce any confidentiality issues have been resolved. New publications of State aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

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