Shortened Version
- without centre profiles and market data -

15th June 2011

The big ecostra
Outlet Centre Handbook Europe 2011
Centre Profiles
Market Data
Operators / Developers / Investors
Experts Essays

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Preliminary Note

Within the scope of the ongoing research activities ecostra analyses the retail markets in Europe. Besides, the market significance of the different retail formats and their conceptual specification, in particular the respective developments of the markets and locations are also in the focus.

Since many years ecostra publishes market surveys which cover the situation and development of Outlet Centres in Europe. These market surveys are updated every three months and are available as free PDF-downloads at the ecostra homepage to everyone interested. In particular internationally active brand manufacturers have used these market surveys to identify suitable locations or projects within the scope of their outlet strategy. Developers, operators and investors have pulled up these surveys to get among other things informations about the competitive development in geographical regions they are active.

In the past, ecostras experiences gained by the market observation as well as from the consultation activity with a huge number of projects all over Europe have already flowed onto a row of professional articles and essays. Now on a special request of different customers – above all from the brand manufacturers as well as the finance services - the knowledge and data on this specific retail market is bundled up in a comprehensive publication:

"The big ecostra Outlet Centre Handbook Europe 2011"

To complement the handbook professional essays were taken up by selected external experts who deal with aspects all around the development and the operation of Outlet Centres. These experts are renowned administrative and economic lawyers, leasing specialists, leading managers of research institutes and institutional investors. The special thanks of the ecostra-team go to these authors, because with their support an interdisciplinary approach at the real estate "Outlet Centre" became possible.

At the core of this handbook are detailed profiles of all Outlet Centres currently operating in Europe. These profiles are structured according to the single European countries. In each case general maps with the Outlet centre locations in the respective European countries as well as selected market data are placed in front. The single centre profiles encompass – as far as known or available - the following details:

- Centre data, such as gross leaseable area (GLA), date of opening, developer, operator, owner etc.

- Construction phases with year of completion and GLA by phase

- Retail and service offer, search as number of outlet stores, occupancy rate, brand selection etc.
• Catchment area potential and footfall (number of visitors by year)

• Contact data, such as address of the Outlet Centre, the centre management and the leasing agency

• Shop-map and photos of the Outlet Centre.

The information in the centre profiles consists either of survey data, gathered by ecostra-employees on site at the time when investigations and consultation duties had to be done, is the result of desk-research or was provided by the operators of the centres especially for this publication. Thus the operators had the possibility to fill in an online-questionnaire in the period between December, 2010 and May, 2011. The collected information was checked by ecostra-employees on plausibility and was complemented or corrected if possible or necessary. Unfortunately, for a few Outlet Centres only rudimentary information was given, with others against it entire and detailed data was available. All informations were collected, put together and processed according to the best of our knowledge. A guarantee for the up-to-dateness and correctness of the information cannot be given by ecostra. Hints, on the necessity to correct specific data and / or additional information to the complement of the profiles is accepted by ecostra at any time with pleasure.

It is our intention to publish this handbook anew at the latest in 2 years – i.e. in 2013 – in an updated and supplemented version. Just as the European market for Outlet Centres is showing a very dynamic development, so the data and the knowledge must be constantly developed and adapted around this relatively new retail format.

Wiesbaden, 15th June 2011

ecostra GmbH

Dr. Joachim Will
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1. Basic Information and Background Data to the European Outlet Centre Market

by Dr. Joachim Will and Thomas Terlinden, ecostra GmbH, Wiesbaden (D), www.ecostra.com

1.1 Definitions and Relevant Descriptions

Outlet Centres constitute the further development of classic factory outlet stores into a modern retail concept. ecostra defines an Outlet Centre as follows:

Outlet Centres are conurbations of many outlet store units within a mutually-planned or a spatially-interrelated complex of buildings with more than 5,000 m² sales area (= approx. 6,000 m² GLA) and with more than 20 outlet stores. There manufacturers and vertically-integrated retailers sell past seasons, factory seconds, surplus stock etc. directly to the consumer, without using retail businesses as (intermediate) distributive channels. All products are sold with a discount to the original high-street price of at least 25%. The coordination, organisation and marketing of an outlet centre is carried out by a centre management. Designer Outlet Centres (DOCs) are Outlet Centres which claim to incorporate an especially high proportion of premium brands; however, the designation “DOC” is often used only for marketing purposes.

A distinction must be made between so-called “Off-Price Centres” and Outlet Centres. At Off-Price Centres, the selling is done not by the manufacturer but through third parties, which constitutes the classic function of retail businesses in the chain of distribution. In the past, the product range consisted of non-regular brand products (e.g. surplus stock, outlet models, end-of-seasons, factory seconds or bankruptcy goods), and was characterized by a frequent change in product range, which was due (among other factors) to the availability of goods. Over the past few years, a distinct trend towards trading up can be observed at Off-Price Centres, which becomes apparent not only due to the improvement in the buildings, store layout and presentation of
goods, but also through better product range planning, with increased high-quality orientation and brand choice.¹

The so-called “Value Centre” represents a further advance in the concept of the Outlet Centre. A Value Centre represents a conceptual mixture of an Outlet Centre and a classic Shopping Centre, while the tenant mix - besides outlet stores - includes various other company types (e.g. power stores, boutiques, supermarkets).² In Value Centres, an average 34% of the gross leasable area is occupied by outlet stores (company stores), and approx. 66% by traditional retail businesses, services and leisure facilities.

In this respect, the appearance of many different potential hybrid forms or interrelated concepts must be taken into consideration in analyzing and evaluating an Outlet Centre.

1.2 Location Criteria

On the one hand, the location requirements of Outlet Centres are partly congruent with that of other large-scale retail businesses (e.g. Shopping Centres) while on the other hand, there are also clear differences. The importance of fundamental location factors like traffic accessibility, visibility, catchment area, purchasing power potential, competitive situation, surface area and layout remains the same. There is a difference between Outlet Centres, which prefer locations at some distance from big cities or metropolitan areas and try to tap the purchasing power of those areas from a distance, and Shopping Centres, which seek locations on the arterial roads directly in the conurbations. Also, in contrast to other large-scale retailing businesses, Outlet Centres do not seek proximity to existing retail agglomerations (though they do seek proximity to Leisure Centres) in order to tap into the flow of customers found there; Outlet Centres are generally situated in "solitary" locations, i.e. with few other retail businesses in the surrounding area. In general, the location requirements of Outlet Centres can be described as follows:³

- Direct conflict with the professional retail trade in bigger cities or conurbations should be avoided, because it is not in the interests of the manufacturers (as po-

tential tenants in an Outlet Centre). Therefore, mainly smaller and middle-sized cities located in the wider area around conurbations are taken into consideration, and the potentials of those conurbations are tapped from a distance.

- Excellent accessibility by car, because obviously the catchment area of an Outlet Centre, compared with those of other retail businesses, extends over much larger distances, and customers are therefore heavily dependent on cars.

- Creation of a sufficient supply of preferably ground-level parking spaces (due to very large number of customers arriving by car).

- Greenfield areas are preferred locations. Due to restrictions in the planning laws, partial-integrated locations are often used too, and in a few cases - even locations in cities, provided that it is possible to fulfill the requirements of accessibility by car, size and configuration of the area; on the other hand, City Centre locations are not usually taken into consideration.

- It must be possible to tap sufficient population potential at a reasonable distance. For some years there was the rule of thumb that a potential of approx. 3 million inhabitants with an at least average purchasing power should live within a driving distance of approx. 1 hour. Due to new experience this figure has to be reduced to a potential of approx. 1.5 million within 1 hours drive.

- Use of the tourist potential of existing leisure facilities at the location itself or in the immediate surroundings, or absorption of the flow of tourists on the traffic axes leading to holidays areas. This is why Outlet Centres seek proximity to very popular tourist facilities (e.g. leisure parks) or to locations with a distinctive tourist positioning.

Only a few of the Outlet Centre locations which have been established in Europe to date actually fulfill all these location criteria simultaneously. While nearly all these locations have good accessibility by car, no important tourist potentials are being tapped by the different locations. In addition, one finds that the assertion often made (particularly by operators or developers) that Outlet Centres must be located directly adjacent, or at least near, to a motorway exit, is nothing more than a myth. Several economically very successful European Outlet Centres are located at quite some distance (approx. 5 to 30 km) from the nearest motorway, thus proving that this need not impair the effectiveness of an Outlet Centre, or at any rate not substantially, provided there are good overall road conditions and a good capacity to take the traffic flow.

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1 For this reason, in the run-up to developing a possible Outlet Centre site, operators check the so-called "retail sensitivity" - above all, through talking to the anchor tenants; if these important tenants express reservations or doubts about a potential location, that location will be ruled out. However, it should be noted that according to the trend in recent years, the retail sensitivity has been decreasing among brand manufacturers, thus enabling the development of Outlet Centre locations closer to big cities or metropolitan areas.

2 This only applied to locations which have no other attractive leisure facilities in the immediately surrounding area, or which do not have any special tourist positioning.
1.3 Catchment Area and Market Penetration

The purchase of goods in Outlet Centres cannot be seen as everyday shopping ("filling the fridge"), but is also substantially characterized by elements of shopping tourism or event shopping, as well as the hunt for bargains. Due to this fact, Outlet Centres can penetrate catchment areas extending over large distances. It is only the willingness of consumers to drive long distances in order to shop in Outlet Centres ("lower distance sensitivity") that makes it possible to establish locations at some distance from conurbations or "in the middle of nowhere". Depending on a particular location, the mix of brands and tenants and the competitive situation, Outlet Centres are able to encompass catchment areas of approx. 90 driving minutes.\(^1\)

The present empirical findings from studies of Outlet Centres in operation also illustrate (even taking into account the range shown in these studies) the following:

- on the one hand, Outlet Centres clearly have a more marked commercial outreach than other types of retail businesses (e.g. Shopping Centres), and accordingly have far larger catchment areas, and
- on the other hand, in order to be economically viable, Outlet Centres are however also dependent on population potentials and, together with these, purchasing power potentials, which must be located within a driving distance of at most approx. 1 hour.

The wide-ranging commercial outreach that is necessary for economic viability will work as a limiting factor on the number of possible Outlet Centres in Europe; in this sense, one can say that (just as in other types of retail businesses) as competitive density increases, the most capable operators in favorable locations will compete successfully against less efficient operators in less favorable locations.

1.4 Specific Features of Design and the Mix of Business Types in Outlet Centres

With regard to the architectural structure of Outlet Centres, 3 main Centre types have developed over the past few years:

- The "Strip Centre". Here, the store units are arranged on a linear pattern, in an L-shape or else in the shape of a horseshoe in or around a parking bay.

---

\(^1\) In some cases, the defined catchment areas encompass up to approx. 120 driving minutes. Nevertheless, the empirical findings (up to now) on the geographic origins of Outlet Centre customers indicate that from approx. 60 driving minutes upwards, customer retention markedly decreases, and is barely perceptible from approx. 90 driving minutes upwards; cf. VOGELS, P. & WILL, J.: op.cit., S. 26; cf. GMA: Die Auswirkungen des Designer Outlet Center (DOC) in Parndorf (Bezirk Neusiedl am See) auf die regionale Einzelhandelsstruktur, die Tourismuswirtschaft und den Arbeitsmarkt. Wien, 2000, S. 53; cf. FURST, D. & KUJATH, H.-J. (Eds.): Raumplanerische Herausforderungen durch Veränderungen in Handel, Logistik und Tourismus. Forschungs- und Sitzungsberichte der Akademie für Raumforschung und Landesplanung. Bd. 222, Hannover; 2004, S. 61f; cf. GMA: Die Auswirkungen des McArthurGlen Designer Outlet Center (DOC) in Parndorf (Bezirk Neusiedl am See) auf die regionale Einzelhandelsstruktur, die Tourismuswirtschaft und den Arbeitsmarkt. Wien, 2005
• The "Mall Centre". This design is characterized by an enclosed mall which may have several floors (but usually a maximum of 2 floors) and resembles a classic Shopping Centre.

• The "Outlet Village". The village style imitates the appearance of an old-fashioned village (or marketplace), while the store units are grouped around smaller, interconnected sections or imitations of village streets. In this connection, elements of regional architecture are usually included in the architectural style.

While the size of the floor space, as well as the mutual planning of an Outlet Centre (architecture, functional concept, etc.) basically correspond to those of other Shopping Centres, one can however already see one important difference in the design of the different types of Outlet Centres. Unlike Shopping Centres, Outlet Centres do not include large-scale retail units (which for themselves have more than 1,000 m² GLA).

In a Shopping Centre, these so-called “anchor” or “magnet” stores are of great importance within the mix of retail businesses, as well as being essential for the effectiveness of the Centre as a whole; in an Outlet Centre, one usually finds only one type of retail business: the outlet store, run by a manufacturer. An Outlet Centre’s attractiveness (to customers) and, with it, its long-range commercial outreach, is based on the so-called “collective pulling power” of the combination of the many store units within the Centre; what is especially important here is the range of brand products and the brand quality and individual premium brands (“top” or “A” brands). The store structure of an Outlet Centre, divided up into smaller units, limits the potential third-party usage of this commercial real estate; however, changing it e.g. into a classic Shopping Centre would require massive reorganization of the existing structure of an Outlet Centre.

A further important factor for the effectiveness of an Outlet Centre (besides location factors) is that the whole sales area, as well as the number of single store units, should have a certain "critical mass". Taking into account all empirical experience up to now, it is to be assumed that this "critical mass" comprises a minimum of approx. 35 - 40 outlet stores and a retail floorspace of at least approx. 8,000 - 9,000 m² (= approx. 10,000 - 11,000 m² GLA).

An Outlet Centre is usually built in several progressive construction phases, whereby the first phase must already possess the "critical mass" specified above. Then, according to the approved size of the total area, as well as the demand from tenants°, further expansion is accomplished in a second, third phase etc.; leisure facilities and catering businesses are then taken increasingly into account in these progressive construction phases.

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° Contrary to an assertion that is often made, the fact that not all store units may yet be occupied by the time an Outlet Centre opens is no indication that there is a lack of tenant demand. An occupancy rate of approx. 70% by the date of opening should be regarded as absolutely normal, because experienced Outlet Centre operators deliberately reserve store units so as to be able to offer these stores to attractive brand manufacturers (as potential tenants) at short notice.
1.5 Specific Features of the Product Range Planning and Pricing in Outlet Centres

Apart from certain divergences specific to different operators and locations, the product range planning of Outlet Centres is largely identical; approx. 60% – 70% of the retail floorspace is occupied by clothing ranges (incl. sportswear), approx. 10% - 20% by shoes and leather goods, while the remaining retail floorspace is mainly occupied by home textiles, china, toys, jewelry, household supplies and cosmetics. In general, there is a noticeable trend towards an expansion of the product range in Outlet Centres and, indeed, the main focus is still on clothing, although other product ranges – for example food\(^1\) – are also being increasingly integrated.

The goods on sale in an Outlet Centre primarily consist of:

- products from the year before or the previous season ("past season")
- products with minor faults ("irregular products" or "factory seconds")
- products with more major faults ("damaged")
- products for market testing purposes ("sample")
- products made exclusively for factory sales ("compare at")
- remainders or discontinued models ("discontinued")
- products of over-production ("overrun").

Furthermore, not all the product ranges and not even the main product ranges of the manufacturers are on sale in an Outlet Centre. The composition of the product range is primarily limited by the available sizes, colors etc. and is therefore characterized by a high degree of randomness. To this extent, the product range structure in an Outlet Centre is neither broad nor deep. This specific sales policy of the tenants in an Outlet Centre is mainly communicated via signs displayed in the outlet stores. However, in this regard one must point out that there is a definite bending of this sales concept at various Outlet Centres and at different Outlet Centre locations, where not only this season’s products but also (in individual segments) a broad and deep product range structure is on sale; i.e. while there are some manufacturers (as tenants in Outlet Centres) as well as some Outlet Centre operators who adhere to a strict outlet sales policy, there are other Outlet Centres where the borderlines with other forms of retail business are extremely blurred.

All products are offered with price reductions of at least 25% - 30% off the high-street prices; this price reduction is fixed in the leasing contract and must be adhered to by the tenant. At the same time, all goods are labeled with the (recommended) high-street prices and the "outlet prices", in order to make the price gap clear to the customer. These price reductions form the core of an Outlet Centre’s marketing concept (continuing brand discount); here too, practical experience (in, among other

\(^1\) However, this involves specific product ranges, such as regional food specialities, chocolate, delicatessen or the like.
places, Europe) shows that at least in the case of single manufacturers (as tenants) or outlet stores, there is no real price gap compared to other suppliers in the traditional retail trade.¹

1.6 The Brand Character and the Presentation of Product Ranges in Outlet Centres

To begin with, we can say that the presentation of product ranges in the single outlet stores of an Outlet Centre is carried out in two different ways:

- Within the scope of so-called "brand roofs", i.e. within an outlet store the products of only one brand or one manufacturer are displayed and sold. Accordingly, the trading name (name and logo) as well as the store layout of that particular outlet store reflects the corporate identity of the brand.

- Within the scope of so-called "assortment roofs", i.e. products of one kind (e.g. shoes) of different brands or manufacturers are displayed and sold within an outlet store under a name that is not linked with a brand (e.g. Designer Shoes).

Nearly all Outlet Centres or operators of Outlet Centres claim to offer many brand products for sale. By definition brand articles are goods

"(...) with a special sign characteristic for these goods or services and with an expression of a certain general marketing concept; brand articles display the following features: uniform presentation, constant or improved quality, trademark, intensive consumer advertising at the point of sale too, high name recognition and widespread appearance on the sales market. The trademark gives information about the origin of a product and thus contributes to its differentiation and profile. From the consumer's point of view, the branded commodity facilitates the identification and appraisal of a product."²

With regard to price level and market positioning, branded articles can be differentiated into A, B or C brands, or strong, medium strong and weak brands. However, in appraising the brand character, brand dynamism has to be taken into account (e.g. displacement of "old" brands by "young" brands, polarization and life cycle of brands).³

While so-called “designer brands” or “premium brands”, as A brands, encompass several different, though numerically few, manufacturers (e.g. Versace, Armani, Gucci, Prada, Escada and Boss), the exact classification of most other brands in the categories A, B or C is connected with certain problems, both with regard to persistent brand

¹ Thanks to suitable shopping volumes, particularly larger chain retailers achieve more favorable shopping conditions which are then passed on to the customers, even outside clearance sale periods. Consumer confidence in receiving more value for less money constitutes the essential positioning feature of Outlet Centres: in this respect, the fact that in certain cases there is no real price gap is a highly problematic one for Outlet Centres.

² IFH: op.cit., S. 73

³ cf. TIETZ, B.: Der Handelsbetrieb. Grundlagen der Unternehmenspolitik, Munich, 1993, p. 313
dynamism, as well as to the (in part) highly specific target groups of a brand. The image which a brand has for a particular consumer is also heavily dependent on the perception or life style of the individual in question.

In general, it can definitely be said that "up to now, very few operators have succeeded in leasing an Outlet Centre almost exclusively to manufacturers or brands from the premium segment."\(^1\) In addition, one finds not only manufacturer brands, but also – to an increasing extent – retailer brands in Outlet Centres. Moreover, the designation of a shopping complex as a "Designer Outlet Centre" (DOC) often gives no hint of the actual number of premium brands, and must rather be seen as a marketing strategy. In practice, a total of five qualitatively distinct types of Outlet Centres have developed.\(^2\)

- "Upper level schemes": with a high percentage of designer brands as tenants of the outlet stores, while at the same time leisure facilities are of relatively low relevance there. Presentation occurs almost exclusively within the scope of "brand roofs"
- "Upper / middle schemes": comparable to "upper level schemes", but without a similarly high percentage of designer brands
- "Middle ground schemes": facilities with a well-balanced mix of A, B and C brands, as well as retailer brands, but only a few designer brands, while at the same time great importance is given to leisure facilities. The scope of presentation is about equally divided between "brand roofs" and "assortment roofs".
- "Middle / lower schemes": facilities which already clearly tend in the direction of an off-price Centre concept. Product presentation takes place only in very small quantities, within the scope of "brand roofs"
- "Lower schemes": with a high percentage of "discount retailers" i.e. which can therefore already actually be classified as Off-Price Centres. Presentation takes place almost exclusively within the scope of "assortment roofs".

Overall there is a direct correlation between brand quality and brand image, and an Outlet Centre’s attractiveness to customers, in the sense that the higher the number of A-brands presented in an Outlet Centre, the greater its long-range commercial outreach. In this respect, it is not the total leasable area of an Outlet Centre and even less the mix of business sectors within the Outlet Centre which (assuming a certain "critical mass" and suitable location factors) determine the attractiveness and geographic outreach of an Outlet Centre, but above all the (factory sales) product range with its A-brands. An Outlet Centre’s attractiveness to customers decreases according to the quality grades of the specific types of Outlet Centre, whereby "upper level schemes" enjoy the greatest geographic outreach, while the "lower schemes" are only

\(^1\) VOGELS, P. & WILL, J.: op.cit., p. 19
able to penetrate a very limited catchment area which more or less corresponds to that of the junk market.

1.7 The Development of the European Outlet Centre Market

Starting in the USA, the first Outlet Centres were established in France in 1984 and in Great Britain in 1988. Nowadays, Outlet Centres operate in almost all Western European countries. Even in Eastern Europe Outlet Centres are becoming successively part of the retail landscape.

Based on experience in the USA, the first attempts to establish this distribution format in Great Britain were predominantly initiated by manufacturing companies. Nevertheless, the real impetus for Outlet Centres only began in the years 1995/96, when operators’ companies from the USA (including McArthurGlen Realty and SD Malkin Properties) entered the British market. Today, there are 37 Outlet Centres operating in Great Britain, with a total sales area of approx. 549,830 m², so this form of distribution has already spread relatively fast in relation to the British market of approx. 62.0 million inhabitants. Despite the already high density, Outlet Centre development in Great Britain has not come to an end, and further Outlet Centre projects are currently under construction or in planning stage, though the number of centres in total is decreasing since years. Hence the British market is already showing clear signs of saturation, and competition between the Outlet Centre locations has clearly increased in severity. Some casualties have already been observed in the British outlet sector.¹

Besides Great Britain, the Outlet Centre system of distribution has already been established in other European countries too - above all in Italy, Spain and France.² Overall, it is becoming clear that what are to some extent marked differences in Europe are apparent through the number and competitive density of Outlet Centres. As well as natural affinities (e.g. common language) which may have supported the market entry of, above all, US operators, and the market potentials (population, purchasing power etc.) which have certainly played some role in this uneven development, the varying degrees of restrictiveness of the planning laws in different countries have also had a great influence.

In June 2011, there are a total of 139 Outlet Centres operating in Europe, with a total retail floor space of approx. 2,191,330 m². The eight year long term review shows a slow although continuous increase of the quantity of Outlet Centres by approx. 78 % from 2003 on. The amount of retail floor space has considerably risen in equal measure by approx. 117 % within the past eight years. With it, the expansionary trend of the previous years has not only continued, but has also accelerated still further.

¹ According to ecostras’ information, these were the “Loch Lomond Factory Outlet” in Alexandria (Scotland), the “Freeport Scotland Outlet” in Westwood (Scotland), the “Freeport Designer Outlet West Calder” in West Calder, the “Freeport Morsea Outlet Village” in Hornsea (East Yorkshire), the “City Quays” in Dundee (Scotland), the “Rolling Stock” in Haydock and “The Galleries” in Aldershot (Hampshire).

² Cf. on the development of Outlet Centres in France the essay of Caroline Lamy (magdus) in this handbook.
Tab. 1: Location Data, Figures and Trends of Factory Outlet Centres in Europe in 2011

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of Sites</th>
<th>Total Retail Floor-space in m²</th>
<th>Total Retail Floor-space in m² per Centre</th>
<th>Retail Floor-space in m² per 1.000 Inhabitants</th>
<th>Number of Planned Locations</th>
<th>Medium-Term Trend (²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>36</td>
<td>37</td>
<td>438,530</td>
<td>549,830</td>
<td>12,180</td>
<td>14,860</td>
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<td>Italy</td>
<td>4</td>
<td>23</td>
<td>74,700</td>
<td>459,300</td>
<td>18,680</td>
<td>19,970</td>
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<tr>
<td>Spain</td>
<td>9</td>
<td>16</td>
<td>93,850</td>
<td>203,300</td>
<td>10,430</td>
<td>12,710</td>
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<td>France</td>
<td>12</td>
<td>15</td>
<td>198,400</td>
<td>209,700</td>
<td>16,530</td>
<td>13,980</td>
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<td>6</td>
<td>31,230</td>
<td>85,600</td>
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<td>20,965</td>
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<td>18,000</td>
<td>32,650</td>
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<tr>
<td>Total</td>
<td>78</td>
<td>139</td>
<td>1,008,380</td>
<td>2,191,330</td>
<td>12,930</td>
<td>15,765</td>
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</tbody>
</table>

(¹) Decending order according to number of centres in operation
(²) Classification of the medium-term trend in the development of the numbers of FOC locations and the size of the retail floor space of FOC in the respective countries from ↑ (rapidly growing) to ↓ (rapidly declining)

Source: ecostra, June 2011

1.8 The Best Performing Outlet Centres in Europe

In 2008 ecostra in cooperation with CB Richard Ellis have made an analysis on the performance of Outlet Centres in Europe for the first time.¹ Altogether the results are based mainly on a questionnaire of tenants in these Outlet Centres, who had to evaluate the performance of their outlet store in the relevant centre in comparison to their outlet stores in other Outlet Centres. In 2009 and 2010 an update of the study was made.

accomplished. Today this survey is already an industry standard as is updated every year. Table 2 shows the Top 20 of the best performing Outlet Centres in Europe 2010.

<table>
<thead>
<tr>
<th>Rank</th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
<th>Name</th>
<th>Location (Country)</th>
<th>Operator</th>
<th>Average grade*</th>
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<tr>
<td>1</td>
<td>5</td>
<td>1</td>
<td></td>
<td>Bicester Village Outlet Shopping</td>
<td>Bicester (United Kingdom)</td>
<td>Value Retail</td>
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<td>2</td>
<td>5</td>
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<td>Seravalle (Italy)</td>
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<td>2**</td>
<td>10**</td>
<td>***</td>
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<td>Ellesmere Port (United Kingdom)</td>
<td>McArthurGlen</td>
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<td>11</td>
<td></td>
<td>Roermond Designer Outlet Center</td>
<td>Roermond (Netherlands)</td>
<td>McArthurGlen</td>
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<td>5</td>
<td>7**</td>
<td>10</td>
<td></td>
<td>McArthurGlen Castel Romano</td>
<td>Castel Romano (Italy)</td>
<td>McArthurGlen</td>
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<tr>
<td>6</td>
<td>14</td>
<td>9</td>
<td></td>
<td>Designer Outlet Parndorf</td>
<td>Parndorf (Austria)</td>
<td>McArthurGlen</td>
<td>2.24</td>
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<tr>
<td>7</td>
<td></td>
<td>13**</td>
<td></td>
<td>Ingolstadt Village</td>
<td>Ingolstadt (Germany)</td>
<td>Value Retail</td>
<td>2.25</td>
</tr>
<tr>
<td>8</td>
<td>12**</td>
<td>7</td>
<td></td>
<td>Wertheim Village</td>
<td>Wertheim (Germany)</td>
<td>Value Retail</td>
<td>2.28</td>
</tr>
<tr>
<td>9</td>
<td>***</td>
<td>***</td>
<td></td>
<td>Vicolungo Outlets</td>
<td>Vicolungo (Italy)</td>
<td>Neinver</td>
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<td>10</td>
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<td>4</td>
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<td>La Roca Company Stores</td>
<td>La Roca (Spain)</td>
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<td>11**</td>
<td>***</td>
<td></td>
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<td>A l’Usine</td>
<td>Roubaix (France)</td>
<td>Unibail Rodamco</td>
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<td>11**</td>
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<td>Park Avenue Fashion Outlet</td>
<td>Bilbao (Spain)</td>
<td>Jones Lang LaSalle</td>
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<td>12</td>
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<td>Las Rozas Village</td>
<td>Las Rozas (Spain)</td>
<td>Value Retail</td>
<td>2.38</td>
</tr>
<tr>
<td>17**</td>
<td>20</td>
<td>***</td>
<td></td>
<td>Castel Guelfo Outlet</td>
<td>Castel Guelfo di Bologna (Italy)</td>
<td>Neinver</td>
<td>2.50</td>
</tr>
<tr>
<td>17**</td>
<td>24</td>
<td>13**</td>
<td></td>
<td>Fashion District Valmontone</td>
<td>Valmontone (Italy)</td>
<td>Fashion District</td>
<td>2.50</td>
</tr>
<tr>
<td>19</td>
<td>21</td>
<td>15</td>
<td></td>
<td>Foxtown Factory Stores Mendrisio</td>
<td>Mendrisio (Italy)</td>
<td>Studio Silvio Tarchini</td>
<td>2.53</td>
</tr>
<tr>
<td>20</td>
<td>7**</td>
<td>10</td>
<td></td>
<td>Fidenza Outlet Village</td>
<td>Fidenza (Italy)</td>
<td>Value Retail</td>
<td>2.60</td>
</tr>
</tbody>
</table>

* Average grade is compiled from the responses of brand manufacturers to the performance of their store in the relevant Outlet Centre compared to those in other Outlet Centres between 1 (= much better) and 5 (= much worse)

** an identical average grade has resulted in a double assignment of the rank

*** Outlet Centre was not evaluated in 2008 or 2009 or could not be rated because of less than 3 evaluations

Source: CB Richard Ellis & ecostra (Hrsg.): Factory Outlet Centre Performance – European Report 2010 (Update of the Survey)
Top 10 FOC-Operators in Europe 2011
- ranking is based on the amount of the overall FOC sales area in europe -

Source: ecostra; status: June 2011
Average Retail Sales Area of an Outlet Centre in Europe of the Top 10 Operators 2011
- in m² -

Source: ecostra; Status: June 2011
The Number of the Factory Outlet Centers currently in Operation in Europe 2011

Legend
Number of FOC that is currently in operation

Number of FOC that is currently in operation
The Number of the Factory Outlet Centers currently at Planning Stage in Europe 2011

Legend
Number of FOC that is currently at planning stage

Number of FOC that is currently at planning stage
Factory Outlet Center Sales Area in sqm per 1,000 Inhabitants in Europe 2011

Legend
Sales Area in sqm per 1,000 Inhabitants
- < 1.0 sqm
- 1.1 - 2.0 sqm
- 2.1 - 3.0 sqm
- 3.1 - 3.7 sqm
- 3.8 - 4.0 sqm
- 4.1 - 5.1 sqm
- 5.2 - 6.0 sqm
- 6.1 - 8.0 sqm
- > 8.1 sqm
2. From Factory Outlet Centres to Outlet “Villages”: 25 Years Development and still numerous growth forecasts in France ...

by Caroline Lamy, magdus - European Factory Outlet Centres Observatory, Troyes (F), www.magdus.com

In Europe, France is one of the rare historic outlet markets which still offer numerous growth forecasts. The numerous projects listed on the territory testify of the market attractiveness.

2.1 Definition

Factory outlet retailing has long been considered a marginal type of distribution until it gradually became an established feature of modern distribution, thanks to a new retail concept imported from the United States – Factory Outlet Centres. Born in the 1970s, this concept appeared in France in the early 1980s, before being exported to other European countries from the beginning of the 1990s onwards. These specialized shopping malls are made up of outlet stores selling their goods which are unmarketable on the traditional market (stocks from previous seasons, defective and end-of-line products, etc.) at discounts between 30% and 70%. Unlike in the United States, the French outlet centres do not count a mixed offer (outlet and traditional retail). In France, the outlet centres’ size varies considerably from a centre to another one but the average size is about 15 000 m².

2.2 From Factory Outlet Centres to Outlet “Villages”

To begin with, Factory Outlet Centres consisted only in selling unsold articles, but the retail concept has evolved since the mid-1990s. The progressive orientation of the concept towards “fun shopping” has considerably strengthened the Factory Outlet Centres tourist dimension. Four centres generations can be distinguished (cf. Figure 1). This typology, which brings to light the qualitative evolution of the concept, is based on four criteria: the centres marketing strategy, their architecture, their location as well as their customer base. All European countries did not experience these four generations of centres – only France has actually experienced the first generation.
### Evolution of the concept in France: from Factory Outlet Centres to outlet villages

<table>
<thead>
<tr>
<th>1st generation centres</th>
<th>Appeared in 1983</th>
<th>2nd generation centres</th>
<th>Appeared in 1993</th>
<th>3rd generation centres</th>
<th>Appeared end 1990’s</th>
<th>4th generation centres</th>
<th>In the pipeline</th>
</tr>
</thead>
</table>
| **Marketing strategy** | • Little involvement of developers in business management  
  • Heterogeneous offer  
  • Lack of transparency on product origin  
  • Low brand visibility  
  • Random price reductions  
  • No “ancillary” services  
  • Advertising based on word-of-mouth | • Heavy involvement of developers in business management  
  • More rigorous brand selection (average-to-high-end)  
  • Promotion of the brands  
  • Regulated price reductions  
  • Relatively limited service offer  
  • Media advertising | • Improved brand selection  
  • Increased brand promotion  
  • Improved shopping comfort  
  • Efforts to develop customer loyalty in a highly competitive market | • High-end and luxury brands  
  • Fun shopping  
  • Theme centres  
  • Improved service offer |
| **Architecture** | • Warehouse look  
  • Stark interior layout and furnishing | • Stylish architecture  
  • Layout of retail units identical to “traditional” shops | • “Village” look  
  • Higher concern for architecture and quality of space | • “Village” look |
| **Location** | • Manufacturing cities  
  • Large metropolitan areas | • Manufacturing cities  
  • Large metropolitan areas | • Tourist areas or areas located on the path of tourist flows  
  • Large metropolitan areas | • Tourist areas or areas located on the path of tourist flows  
  • Large metropolitan areas |
| **Visitors** | • Primarily local customers | • Primarily local customers  
  • Larger catchment area | • Primarily tourists | • Primarily tourists |

Source: magdus – European Factory Outlet Centres Observatory

### 2.2.1 1980’s: a first generation marked by a dramatic restructuring

In Europe, the outlet concept appeared in France with the opening of two centres called “ADIS” in Troyes (Eastern France) in 1983 and “L’Usine” in Roubaix (Northern France) in May 1984. At this time, the success of this new retail concept drew the attention of numerous property developers who saw an opportunity to widen their activity thanks to this market, in which they identified great potential for growth. The concept development reached its peak in 1988; there were twenty one centres in France. This first wave of settlement was poorly managed and ended in numerous failures. Out of these 21 centres, 17 closed or were reconverted less than two years later. Several factors contribute to explain this restructuring, in particular the lack of professionalism of a great majority of developers, which turned out to be a handicap for the centres sustainability.

1Source: magdus
2.2.2 Beginning of the 1990’s: a second generation which marked the concept renewal

Following the restructuring of the outlet sector at the end of 1980s, a new centres generation appeared in France in the early 1990s. This process was initiated by a small number of specialized French (Concepts & Distribution) and international (McArthurGlen, Value Retail) developers. This sector professionalization was characterized by a more rigorous management. To make sure that customers would return, several guarantees were given regarding the quality of the offer. The tenants of the retail units had to make a commitment to developers to offer customers price reductions between 30% and 70%. This concern for transparency was matched by the decision to offer middle-to up-market branded goods. In France, during the 1990s, developers have preferred to open centres in cities which, like Roubaix and Troyes, had a rich past in the textile industry and a strong tradition of factory shops.

2.2.3 End of the 1990’s: a third generation characterized by a village architecture inspired by the theme parks Main Streets

The centres upsaling is reflected in the upper range evolution of the offer. It also shows in the architectural language adopted by these centres as well as in the conception and fitting of the shops. For the latter, the minimalist treatment has disappeared to the benefit of a more sophisticated decorum, cultivating a certain resemblance with the “traditional” shops. As for the centres, the concern is both to break with the image of the first outlet generation (warehouses) and, for each of them, to distinguish itself from its competitors. The village architecture, inspired by the Main Street of theme parks, and the name “village”, currently fashionable in Europe, testify to the deliberate staging of these centres.

2.2.4 2000’s: a fourth generation characterized by the “fun shopping” trend

Following the example of other retail concepts, outlet centres have recently bet on fun shopping. The purpose is to convert the shopping space into a leisure space, or even a “life centre”. If the phenomenon still remains moderate in France, it is most significant in the United Kingdom. Many centres are equipped with leisure facilities – multiplexes, night clubs, bowling alleys, etc. The presence of these infrastructures allows
outlet centres to widen their customer base, to develop customer loyalty, to increase the length of customer visits (in the expectation that it will increase their average basket), to project a festive and friendly image, to strengthen their tourist dimension and to distance themselves from their competitors. The “La Vallée Village” centre located near the theme park Disneyland Paris, has recently opened a gallery of contemporary art, allowing it to increase its cultural dimension and to claim to belong to this fourth generation.

2.3 Outlet centres in France: facts, figures & trends

Factory shops adjoining production sites have existed since the 1930s, but the modern outlet concept did not emerge until 1974, in the United States and around ten years later in France. The sector did not begin to become truly professional until the beginning of the 1990’s, with the French developer Concepts & Distribution and the British groups McArthurGlen and Value Retail.

The European market is currently dominated by five countries: the United Kingdom, Italy, Spain, France and Portugal. The French market lost its second leader rank in the middle of the 2000’s, has lagged behind the dynamic markets such as Italy and Spain because of its stringent planning laws, allied with strong opposition from the traditional retail sector - which sees factory outlet malls as a threat to their business.
Outlet market evolution in France between 1993 and 2009

<table>
<thead>
<tr>
<th>Year</th>
<th>1993</th>
<th>1997</th>
<th>2002</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centres</td>
<td>7</td>
<td>12</td>
<td>17</td>
<td>19</td>
<td>20</td>
<td>21</td>
</tr>
<tr>
<td>Sales area (sqm)</td>
<td>123 000</td>
<td>152 000</td>
<td>216 000</td>
<td>251 000</td>
<td>266 000</td>
<td>285 000</td>
</tr>
<tr>
<td>Estimation turnover (Millions € incl. VAT)</td>
<td>320</td>
<td>426</td>
<td>635</td>
<td>766</td>
<td>800</td>
<td>870</td>
</tr>
</tbody>
</table>

Source: magdus – European Factory Outlet Centres Observatory

Since the beginning of 2000s, the sector has been marked by an openings slowing down despite a significant number of projects. Nevertheless, the number of existing centres exceeds the forecasts made in the 1990s. Indeed, several outlet experts agreed to say that the French market was not big enough to welcome more than 15 centres.

FOC in France - March 2011

| Number of centres | 21 |
| Selling area (sqm) | 285.000 |
| Number of retail units | 1 500 |
| Authorized projects (sqm) | 210 000 |
| Projects being studied (sqm) | 250 000 |
| Estimation turnover (Millions € incl. VAT) | 900 |
| Estimation employees number | 6 000 |
| Estimation consumers number (in millions) | 8 |

Source: magdus – European Factory Outlet Centres Observatory

In March, 2011, France counts twenty one centres, representing a global sales area of 285 000 m². Today, the sector weighs less than 4 % of the clothing market in France.
The outlet centres' setting-up analysis on the territory shows a strong centres concentration in half North part of the country, in particular within three big poles which concentrate 80% of the commercial floor dedicated to this market: Ile-de-France and Nord-Pas-de-Calais regions and the Troyes city. This last one presents the peculiarity to display as the European outlet capital with 85,000 sqm dedicated to the sector. If the centres created in the 1990s were mostly localized in the industrial tradition cities, the recent centres and the projects are implanted today preferentially in tourist zones or benefiting from major tourist flows as well as in suburb of the big towns.

In this context, the half South part of the country instigates recently the developers' greed, and made today figures of an "El Dorado" as give evidence of it numerous projects. The setting up of these projects should contribute to a partial rebalancing of the centres on the territory.

<table>
<thead>
<tr>
<th>France: key dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1930’s</td>
</tr>
<tr>
<td>1983</td>
</tr>
<tr>
<td>1988</td>
</tr>
<tr>
<td>1992</td>
</tr>
<tr>
<td>1993</td>
</tr>
<tr>
<td>1995</td>
</tr>
<tr>
<td>2000</td>
</tr>
<tr>
<td>2008</td>
</tr>
</tbody>
</table>

Source: magdus – European Factory Outlet Centres Observatory

In France, the Concepts & Distribution group dominates the outlet market with nine centres and works at present on several projects (like in Montpellier, Colmar etc.). The Unibail-Rodamco group, specialized in the retail real estate, has recently developed its activity in the outlet sector. It manages three outlet centres and develops new projects (in Le Havre in particular). The McArthurGlen group, the current leader of the European outlet market, manages two centres in Troyes and in Roubaix. Finally, the group Value Retail which accounts nine outlet villages in Europe, opened in 2000 the “La Vallée Village” centre, near the theme park Disneyland Paris.

<table>
<thead>
<tr>
<th>Leaders in France (March 2011)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developers</td>
</tr>
<tr>
<td>Concepts &amp; Distribution</td>
</tr>
<tr>
<td>Unibail-Rodamco</td>
</tr>
<tr>
<td>McArthurGlen</td>
</tr>
<tr>
<td>Value Retail</td>
</tr>
</tbody>
</table>

Source: magdus – European Factory Outlet Centres Observatory

The outlet sector in France as well in Europe is marked by an increase and a diversification of its actors. The success of the outlet concept draws the attention of new operators, developers, investors, marketers, brands representatives who see an opportunity to widen their activity thanks to a market offering an attractive potential of
growth. National & international developers have recently appeared in the French outlet market like Advantail, MAB Development and Neinver. Several “opportunist” local operators work in order to open their own outlet centre, like in Normandy (Boulleville) and in Troyes (due to open in 2011). And an increasing number of investors such as ING Real Estate, Corio, Aew Europe and Resolution Property have also targeted the French outlet market. Finally, some dynamic brands like Desigual, Le Creuset, Odlo, Arena and Zadig & Voltaire have appeared or performed very well in France.

2.4 Forecasts

Today, we count more than twenty projects in France (accepted, exercising an appeal in CNAC or to the study) concerning a sales area of more than 350,000 m². If the opportunities of growth remain still numerous, in particular in the Southern France as well as in Western France, the difficulties bound to the opening authorizations remain strong, as gives evidence of it the significant number of abandoned projects in the past 10 years. The projects are today more qualitative than in the past with international attractive brands, sustainable architecture, five stars services (personal shopper, valet, shuttle, tax refund, etc.) in order to target retail tourists with strong purchase power. All the projects will not thus be opened: the outlet sector is complex and requires a real professionalism (in particular a good knowledge of the outlet concept and its specificities, the brands mix, etc.). Moreover, towards the increase of the projects number (and thus the spaces to be leased) it is the brands representatives who decide on the opening of a project. After that, the customers make the retail success of centres which have to offer an original, an attractive and a renewed offer, a qualitative architecture, a strong purchase comfort and present a festive dimension and synergies with other equipments (optional) to answer to their expectations.

Outlet projects in France – March 2011

Source: magdus – European Factory Outlet Centres Observatory
In France like in Europe, outlet centres are an unfailing success and the outlet market has excellent growth prospects. The future of this concept is all the more promising in a gloomy economic context, since the centres constitute “fallback values” for consumers. The future of shopping tourism in France and Europe will mostly depend on these facilities which tend to strengthen their tourist dimension (and thus their attractiveness) through “fun shopping” and special events. Nevertheless, if the outlet centres success in France like Europe is significant, the players have to pay attention to the risk of banalization, because these centres success rests mostly on their scarcity. Besides, brands at discount prices are and will always remain the basis of the centres craze. For certain players in the sector, too radical departure from the original marketing strategy (clearance sales) could generate confusion among consumers. Besides the loyalty to the original concept, developers will have to be different from their competitors, to innovate to surprise their customers, to be reactive to answer to their expectations, to communicate like brands (like Value Retail group with its “Chic Outlet Shopping villages” network and more recently like Neinver with the label “The Style Outlets”) and maybe to build partnerships, in order to see their centres successful.

2.5 Focus on Troyes: “European outlet capital”

For the last twenty years or so, factory shops have contributed to the fame and tourist success of the city of Troyes in France, which is the “European capital of factory outlet shops”. Despite increasing competition in the French factory outlet sector, Troyes remains the undisputed reference both for consumers and professionals of the sector. The three centres in Troyes benefit from an extremely vast customer catchment area, covering the northeast quarter of the country, and attract 5 million visitors every year.

Economic and tourist actors acknowledge that FOCs are an opportunity for the economic and tourist development of a territory. The indirect economic benefits of customers’ visits to the centres are estimated at 50 million euros (not including the turnover of the centres).
### Key dates of factory shops in Troyes

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1936</td>
<td>The first French factory shop opens in Troyes</td>
</tr>
<tr>
<td>1983</td>
<td>The first European FOC opens in Troyes (ADIS)</td>
</tr>
<tr>
<td>1993</td>
<td>The “Marques Avenue” centre opens in Troyes</td>
</tr>
<tr>
<td>1995</td>
<td>The “McArthurGlen” centre opens in Troyes</td>
</tr>
<tr>
<td>2010</td>
<td>Public spaces refitting in “Marques Avenue” centre</td>
</tr>
<tr>
<td>2011</td>
<td>A fourth outlet centre is due to open next McArthurGlen one</td>
</tr>
</tbody>
</table>

### Key figures of factory shops in Troyes (2008)

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales area (m²)</td>
<td>85,000</td>
</tr>
<tr>
<td>Centres</td>
<td>3</td>
</tr>
<tr>
<td>Shops</td>
<td>300</td>
</tr>
<tr>
<td>Jobs</td>
<td>1,200</td>
</tr>
<tr>
<td>Estimated annual turnover</td>
<td>€250 M (including €155 M in non-sales periods)</td>
</tr>
</tbody>
</table>

### Visitor characteristics according to geographical origin (2008)

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Local visitors</th>
<th>FOC tourists</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons per group</td>
<td>2.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Drawing up of a budget</td>
<td>Yes: 22%</td>
<td>Yes: 32%</td>
</tr>
<tr>
<td>Annual frequency of visits</td>
<td>66% of local visitors come more than 5 times per year</td>
<td>2.6 visits by year</td>
</tr>
<tr>
<td>Average basket per consumer</td>
<td>€ 69</td>
<td>€ 217</td>
</tr>
<tr>
<td>Duration of the stay</td>
<td>-</td>
<td>One day: 58% (55% in 1998)</td>
</tr>
<tr>
<td>More than one day: 24% (12% in 1998)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Estimation of the economic benefits of customers’ visits to FOCs for the Troyes area (2008)

<table>
<thead>
<tr>
<th>Types of effects</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct</td>
<td>€ 250 M</td>
</tr>
<tr>
<td>Indirect</td>
<td>€ 50 M (half of which spent in hotels, restaurants &amp; cafés)</td>
</tr>
</tbody>
</table>

Source: magdus – European Factory Outlet Centres Observatory
3. Why Brands need Outlets

by Kristofer Juergensen, 1A Outlet GmbH, Heroldsberg (D),
www.1AOutlet.de

Factory Outlet Centers (FOCs) have been one of the shopping destinations with nearly continuously growing sales over the last years. More and more manufacturers of branded product, mainly apparel, footwear and accessories, recognize the opportunity presented by this in Europe relatively new category of stores. But why do brands need the factory outlet stores?

3.1 Unsold merchandise and product live cycles

Every retail business suffers from unsold merchandise at the end of the original product’s shelf live. In food retailing it usually results in throwing the product away as the “best before” date will have expired. For apparel in particular, the product might still be sellable at the end of a season, however, if unsold the product then quickly becomes unfashionable. So selling the merchandise in a regular shop is not the ideal solution, especially since the space on the racks shall now be devoted to fresh product.

Factory Outlet Centers differ in one very important aspect from regular shopping malls: The companies running the shops in FOCs are usually the brand manufacturers themselves and not the traditional retailers. Whilst malls across Europe are now dominated by the large chains and vertical retailers, the outlet stores are nearly always run directly by manufacturers like Polo Ralph Lauren, Tommy Hilfiger, NIKE or PUMA. Only in very rare occasions the outlet stores are run by partners and not the brands, but then availability of appropriate outlet product may become an issue.

Factory outlet stores started as actually what the name implies: Stores for overproduction, B-grades or returned goods close to a factory of the branded products. The factories have moved to the Far East a while ago, however, the need to sell the obsolete merchandise increased with the growing business. Even with the factories now being located far from the core retail markets of Western Europe or North America, the factory stores remained close to the headquarters of the brands. The purchasing power is much higher there than close to the factories, and most of the merchandise
is still sold in the core markets rather than in the developing countries. So the need for outlet stores especially for returned goods is higher in Europe and North America. For b-grades and over production, it’s simply a matter where you could generate the highest sales per item – in the developing countries in the Far East or in the core markets – and it is easy to answer that question.

3.2 Challenges of the supply chain

Verticalization is maybe the most dominant trend in the apparel industry in the last years. Brands started with their first mono-brand flagship stores and a very large number of brands are now successful vertical retailers. But every retail business creates much more unsold product than traditional wholesale business.

In the ideal wholesale business, the retailer places his order with the brand prior to the brand ordering the production of the merchandise in their factories, being it in their own factories or third party owned ones. This timing is not always possible if production capacity is a scarce resource, raw material needs to be blocked upfront or if it as simple as that the retailer is waiting until the very last minute to place his order. Returns from retailers to the manufacturer are not very common, but what would you do if your largest customers threatened not to order from you in the next season if you did not take back a certain share of his unsold merchandise?

In addition to the wholesale business’s needs for a valve for the old product, there are and will always be issues in the supply chain that create a need for an outlet store: late deliveries that the retail customer does not accept, b-quality product not to be sold at the regular price, excess production to fill the minimum requirements of a factory or excess raw material that was ordered but not used. Every company strives to optimize the supply chain, and many have been successful to reduce the amount of obsolete stock.

However, with the above mentioned trend of the manufacturers to vertically integrate the next step of the value chain, the retailing, the amount of old merchandise that needs to be sold through additional channels is exponentially increasing. Brands want to directly interact with their consumers, have to cope with the downturn of the traditional fashion retailer and want to control the environment in which their product is being sold to the consumers. Especially the latter may create an issue: Do you want red price tags in your flagship stores, or would you rather take the unsold product out and bring fresh product in? Many brands do both: Sale at the end of the season, but during the season price reductions shall be avoided. This is only possible if you have a valve for the product – the factory outlet stores.
3.3 Controlled distribution and profitability

In addition to company owned stores in high street or mall locations, many brands increase their presence at the point of sale through so called controlled space with their wholesale partners. Whilst shop-in-shops usually only improve the brand’s presentation through branded furniture, posters etc., concessions are a retail-like business model: The merchandise is owned by the brands until it leaves the store through the cash register. Unsold product is returned to the manufacturer.

To sum up, the change of the environment from a traditional wholesale business towards a vertically more integrated supply chain results in a growing need for the manufacturers to find an appropriate and as profitable as possible solution for their unsold product.

Brands have many options to handle their old product. Some actually destroy it – a European luggage manufacturer does not sell any item off price, b-grade product never leaves his factory. This keeps the brand desirable, but is unrealistic to achieve (and very expensive) for the more accessible, non-luxury brands. An easy way to sell large amounts of old product is through bulk sales to the so called gray market, but it will be hard for the brand to control the environment in which the product will eventually be sold to the consumer. Having a container of branded polo shirts end up at a hypermarket chain is something that every premium brand wants to avoid. Special end-of-season sales to retailers who then offer a special discount to their consumers are commonly used by the retailers to draw additional footfall into their stores, and with the special offer they may be able to maintain their gross margin. However, a manufacturer does not want their customers to reduce their order for the next season in anticipation of a special bargain at the end of it. So this tool to reduce obsolete stock cannot be used to sell large amounts of product. Off-price sales through the own regular store network can also only be used to a certain extent since otherwise the consumer would learn to wait for the special price in the high street shops.

The highest price per item of old stock can usually be generated in a factory outlet store. And if it is company owned, the brand has the full control over the presentation of the product to the consumer. In addition, a relatively large amount of product can be sold through a professionally run factory outlet store network. For these reasons, and in combination with other means to sell their out-of-season stock, many brands consider factory outlet stores the ideal way to clean their warehouses.

3.4 Outlets: An additional channel in the distribution concept

The multi-channel strategy of successful brands that have decided to become more vertical and integrate therefore another step in the value chain now contains one more element: Factory outlet stores. And for many retailers, factory outlet stores are even more profitable than regular full price stores.
4. Challenges of Outlet Design in Europe

by Peter Gamble, Holder Mathias Architects, London (GB),
www.holdermathias.com

Clients seek architects with an established track record to avoid re-inventing the wheel, but working across Europe does not come without its challenges. Here, Peter Gamble, managing director of UK architects Holder Mathias, looks at these issues and how to best overcome them. The most fundamental challenge associated with designing outlet retail in continental Europe is communicating the nature of the model because, although it is an emerging sector, it is still not well understood in Europe.

4.1 The challenge of understanding the difference

Establishing the difference between outlet and full price retailing is the first challenge. Without this first step it is impossible to hold a sensible debate about the real scale of the threat to existing local and regional retailers. The impact of outlet retailing is therefore often misunderstood at the outset as local chambers of commerce and planning authorities assume that it will suck customers out of adjacent town centres. The real effect is entirely different; because outlets draw customers who make infrequent but planned visits from such a large catchment area their retail impact is effectively dissipated. Those communities that have successfully embraced them find that they draw people into their areas and provide significant employment benefits.

Source: Holder Mathias Architects

Peter Gamble is Managing Director of Holder Mathias Architects. Over the past 13 years he has developed an expertise in designer outlet retailing in Europe, leading teams responsible for over 30 schemes and 7 completed projects.
Outlet retailing doesn’t always pose the same threat to conventional town centres as out-of-town retailing does. In some cases, outlets can be used as a form of regeneration for town centres. For example, Wolfsburg has an outlet on the edge of the town centre near its railway station which has helped town centre retailers, while our designer outlet scheme in Brennero in northern Italy has also boosted the regeneration of the town. While this would not be the case for all areas, there are instances where outlets can work in tandem with conventional town shopping centres. Using experience to give examples of existing schemes and demonstrating the way they have contributed to the local economy is an important tool.

4.2 The challenge of the planning consent

Achieving planning consent is probably the most significant challenge in the early stages of a project. Generally it is more difficult to secure planning consent in countries in western Europe compared to those in central and eastern Europe. For example, the system in France is very protective leading to examples such as our project in Bellegarde sur Valserine for a 19,000m² outlet being involved in protracted appeal processes. Conversely One Fashion Outlet, our scheme outside Bratislava, received enthusiastic support of the local authorities as a driver for the local economy and consent was secured within nine months.

This can largely be put down to the existence in western European countries of well organised chambers of commerce representing vested interests together with complex planning processes flowing from the rigorous interpretation of European Union Law. The planning systems in France and Germany also allow objections from competitors which inevitably make the process more complex and challenging.

4.3 The challenge of meeting the requirements of global brands...

Outlet retailing is a European phenomenon; the tenants are global brands who have a clear view of what works for them. Outlet developers have to satisfy their requirements to attract them. Holder Mathias has been appointed on many occasions to redesign schemes prepared by local architects that do not work for the particular requirements of outlet retailing.
As a discount retail model outlets are acutely sensitive to construction costs. Part of the skill that distinguishes the specialist is the ability to direct high quality design towards creating attractive places for people to shop and relax within the tight cost parameters required to make schemes viable for developers.

4.4 …and those of the developer / investor

The performance of an outlet centre is driven by turnover rents leading to much more intensive asset management than, perhaps hitherto, has been seen in conventional retailing. The impact of design on the performance on outlet centres can be significant although it is often evident by failure in operational design. Good design is a hygiene factor…you notice if it is not there.

Source: Holder Mathias Architects

The value of the centre is underpinned by how well designed it is, and a well-designed centre can make it a saleable asset for the developer. The investor then secures a solid income stream and return on investment. It is true then, that architecture can help contribute to increased sales and can create outlet retailing opportunities in challenging conditions.

The centre needs to be designed with a robust concept that allows for change but always retains its character. This is one of the main reasons why contemporary design is important because, as well as being likely to be embraced by younger customers, it absorbs change better than heavily themed centres.

4.5 The challenge to combine skills

It is essential working abroad to find a good local partner. Successful schemes are delivered by the combination of specialist skills of practices like Holder Mathias with the technical ability of a local partner. This can be another challenge. Most architects consider that, given a clear brief, they can design to satisfy a clients needs and it will often take some time to develop a trusting working relationship where the local practice comes to understand the value that the specialist brings.

Outlet retailing is a very small world and reputation spreads. It’s important to establish a reputation as a practice that can meet a client’s needs, deliver projects that
sympathise with the cultural surroundings of an overseas country, and work well with local developers and architects.

4.6 Conclusion

There is great potential for outlet retailing in Europe. In relation to the UK and America, Europe has relatively few outlets per head of population. In addition, over the next few years, an increasing number of outlet centres will be remodelled, either to renew and modernise older outlets, or to respond to competition as new outlets are developed. This emerging market will create a number of opportunities for architects, but those who succeed will be the practices that best respond to the specific and specialist challenges presented by this particular form of retailing.

Source: Holder Mathias Architects
5. Outlet Centres under German Planning and Building Law

by Prof. Dr. Christoph Moench and Dr. Jan Hennig, Gleiss Lutz Attorneys, Berlin (D), www.gleisslutz.com

Compared with neighbouring European countries, there are only a few Factory Outlet Centres (FOC) in Germany. An important reason for this lies in the high hurdles in terms of planning law which apply for such large-area retail facilities in Germany. Requirements vary from location to location. Anyone who wishes to successfully plan and realize an FOC project should make himself familiar with the details of these requirements and know how they are to be approached in practice, how they can be influenced, or how in individual cases they can be deviated from.

At first sight, the matter is simple: Anyone who wishes to construct and operate an FOC requires a building permit (Baugenehmigung). The competent authority will only issue this permit if the FOC is permissible under planning law. As a rule, the municipality in which the FOC site lies must have drawn up a land-use plan (Bebauungsplan) for the FOC. So the municipality must usually – ideally in close cooperation with the investor – create the planning right. In this respect, the municipality is not free to do as it likes. Firstly, it must adjust its own planning to the relevant planning provisions of the federal state and the region, which take precedence. And secondly, it must observe the legal provisions of the Federal Building Code (Baugesetzbuch – BauGB), of the Land Use Ordinance (Baunutzungsverordnung – BauNVO) and other legal requirements, in particular the municipality must identify and consider all interests affected and balance them fairly in its assessment (Abwägung).

This article begins by describing the restrictions of state-level and regional planning. Following this, we will show what further rules the municipalities must obey in creating the planning right for an FOC and what instruments are typically available to them. We will then outline how FOCs can be approved and what strategic decisions the investor can take in the ap-
proval procedure. Finally, we will look at the possibilities of legal action which are relevant to the opportunities and risks in FOC development.

5.1 Provision of spatial planning (Raumordnung)

On the two upper levels of the German planning hierarchy, state-level and regional planning set provisions for urban land use planning (Bauleitplanung) on the level of the municipality. The institution responsible for planning on the state level draws up a plan for the whole federal state;[1] the institution responsible for planning on the regional level does the same for each individual region. Both are restricted to regulating such matters as will have repercussions beyond the limits of the individual municipality, which means that the planning must be justified by interests extending across municipalities. Given their large catchment areas, FOCs generally fall into this category.

It comes as no surprise, then, that all state-level development plans and regional plans in Germany restrict the locating of FOCs. Provisions on the location of large-area retail in general or FOCs in particular are especially strict when they are formulated as an “objective of spatial planning” (Ziel der Raumordnung – sec. 1 (4) Federal Building Code, sec. 3 (1) no. 2 Spatial Planning Act (Raumordnungsgesetz – ROG)), i.e. as binding provisions which the municipality cannot override in its own assessment when drawing up the land-use plan. Should the institutions responsible for spatial planning restrict themselves to formulating a mere “principle of spatial planning” (Grundsatz der Raumordnung), the municipality must only take these provisions into account in its assessment, i.e. it can decide to subordinate these principles to other interests considered to be more important.

5.1.1 Land use planning instruments for the regulation of large-area retail

In the praxis of spatial planning, the following four instruments have emerged in the regulation of large-area retail facilities (i.e. facilities with a sales area of more than 800 m²):

- **Concentration requirement** (Konzentrationsgebot): retail facilities of particular sizes are assigned to particular cities of particular sizes. Large-area retail is sometimes completely excluded in smaller municipalities.

  Example: “[…] Large-area retail facilities […] may as a rule only be designated, constructed or expanded in regional, secondary or subcentres.”[2]

- **Congruency requirement** (Kongruenzgebot): this regulation restricts the catchment area of a retail project to a certain area assigned to the municipality

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1 So-called “state-level development plan” – the terminology varies.
2 Baden-Württemberg state-level development plan 2002, sec. 3.3.7 sentence 1.
(Verflechtungsraum). The regulation is often interpreted as meaning that a retail facility may only generate a maximum of 30% of its turnover from areas outside the area assigned to the municipality.

Example: "Sales areas and ranges of goods of large retail projects must correspond to the supply function of and area assigned to the respective central location".\(^1\)

With their large catchment area FOCs typically do not comply with the congruency requirement.

- **Prohibition on impairment** (Beeinträchtigungsverbot): retail facilities may not substantially impair the supply structures of neighbouring municipalities and/or of the respective municipality where the outlet is to be located.

Example: "By locating and expanding large-area retail facilities neither the supply functions of the integrated areas of the municipality in terms of town planning nor those of the supply areas [...] of neighbouring central localities may be substantially impaired".\(^2\)

- **Integration requirement** (Integrationsgebot): large-area retail facilities are only permissible in "integrated areas", i.e. inner-city areas. Some regulations differentiate between retail facilities for the sale of goods relevant to central areas and such for goods not relevant to urban centres which are also permissible outside the integrated areas.

Example: "Large retail projects should primarily be designated, constructed or expanded in areas integrated into town planning. For goods and ranges of goods not relevant to urban centres, peripheral town-planning areas can also be considered".\(^3\)

As FOCs are regularly situated on “greenfield” (or undeveloped) sites they are usually precluded by the integration requirement. The only exceptions to this are FOCs in inner city or peripheral town-planning areas, which are relatively unusual.

5.1.2 Special rules for Factory Outlet Centres

Several state-level development plans and regional plans contain special provisions for FOC. It is often the case that the general requirements which apply to all large-area retail facilities are further restricted for this special form of retail. The Berlin-Brandenburg 2009 state-level development plan for example provides that:

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1. Lower Saxony state-level land use programme 2008, sec. 2.3 no. 03 sentence 1.
2. Rheinland-Pfalz state-level development programme IV 2008, sec. 3.2.3 no. 60 sentence 1.
3. Baden-Württemberg state-level development plan 2002, sec. 3.3.7.2 sentences 2 and 3.
"Centres for manufacturers’ direct sales with a sales area of more than 5,000 m² are only permissible in the city area of Berlin and in the regional urban centres".¹

The Nordhessen 2009 regional plan formulates even more restrictively:

"New forms of distribution in retail, e.g. centres for manufacturers’ direct sales are to be assessed in the same way as retailing operations. In the planning region of Nordhessen, locating such large-area operations with ranges of goods relevant to urban centres is only permissible in the inner cities of the regional urban centres".²

The example of North Rhine-Westphalia reveals the legal limits of these rules. There, sec. 24a of the state-level development programme stipulated that FOCs with more than 5,000 m² sales area were only permissible in cities with more than 100,000 inhabitants. The State Constitutional Court has ruled that this regulation is arbitrary and that it disproportionately restricts municipal planning.³ The provision is therefore null and void.

Several state-level development plans simply state that the general requirements for large-area retail facilities apply to FOCs.⁴ In a few cases there are even privileges for particular types of FOC (e.g. in Lower Saxony for a touristic FOC in the Lüneburg Heath).

5.1.3 Legal limits and recent court rulings

How far such provisions in state-level and regional planning restrict the municipality in its urban land use planning for an FOC – as strictly binding objectives of spatial planning – and how far they pose an obstacle to planning an FOC must be evaluated in each specific individual case. Not everything which plans designate as an objective of spatial planning turns out to actually be an objective. According to the ruling of the Federal Administrative Court, the strict binding effect only comes into force if the legal requirements of the Spatial Planning Act are fulfilled.⁵ The objectives of spatial planning must be sufficiently determined and conclusively assessed. There are several examples in court rulings for spatial planning stipulations which, in contrast to their express designations, were understood not as (strictly binding) objectives but as basic (non-binding) principles of spatial planning.

¹ Berlin-Brandenburg state-level development plan 2009, sec. 4.7 (4).
² Nordhessen regional plan 2009, sec. 3.1.3 objective 5.
⁴ E.g. Lower Saxony spatial planning programme 2008, sec. 2.3 no. 03 sentence 9.
⁵ Federal Administrative Court, judgement of 18.09.2003 – 4 CN 20.02.
Constitutional limits
Spatial planning restrictions on large-area retail may not restrict the constitutionally guaranteed municipal planning competence without sufficient cause or disproportionately. The Federal Administrative Court requires that municipalities must have substantial latitude for their own urban land use planning.\(^1\) In 2009 the Constitutional Court of North Rhine-Westphalia declared a concentration requirement for FOCs in state-level planning to be unconstitutional.\(^2\) The Higher Administrative Court of Schleswig-Holstein expressed (justified) doubt as to the binding nature of an integration requirement.\(^3\) Other courts have meanwhile held other regulatory instruments to be compatible with municipal planning competence, such as rules on a concentration requirement,\(^4\) congruency requirement\(^5\) and prohibition on impairment.\(^6\) Whether a regulatory instrument is compatible with the municipal planning competence depends on the details of the specific state-level development plan or regional plan.

Protection of retail through European law
Spatial planning restrictions on large-area retail must conform to European Union law. In particular, they must be compatible with European freedom of establishment. This guarantees citizens of other EU Member States the right to establish themselves in Germany free of discrimination and protects them against disproportionate restrictions on that establishment. The regulatory instruments described above restrict – indirectly – freedom of establishment. Thus, they must be justified by overriding reasons in the public interest and may not go beyond what is necessary to achieve the legitimate objective pursued in each case.

It is doubtful whether all state-level and regional planning variations of the regulatory instruments sufficiently conform to these requirements. The debate was recently fuelled by a judgement of the European Court of Justice in which the Court ruled that several Spanish rules on retail regulation were contrary to European law.\(^7\) It is important to note, however, that the European Court of Justice did not hold restrictions on the location and size of large-area retail (for reasons of environmental protection and spatial planning) to be unlawful in principle. Instead, the Court decided in this specific case that the Kingdom of Spain had not sufficiently demonstrated why particular regulations were necessary to reach the objectives aimed at. Furthermore, the Court emphasized that Member States may not use such provisions to pursue economic objectives (economic needs test). Therefore, care must be taken when transferring the findings of the judgement to German spatial planning law. Several regula-

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1 Federal Administrative Court, decision of 20.08.1992 – 4 NB 20.91.
2 Constitutional Court of North Rhine-Westphalia, judgement of 26.08.2009 – 18/08 – FOC Ochtrup, cf. 5.1.2 above.
3 Higher Administrative Court of Schleswig-Holstein, judgement of 22.04.2010 – 1 KN 19/09 – FOC Neumünster.
4 Federal Administrative Court, judgement of 17.09.2003 – 4 C 14.01 – Gewerbepark Mühlheim-Kärlich; decision of 08.03.2006 – 4 B 75/05 – FOC Soltau.
6 Higher Administrative Court of Rheinland-Pfalz, judgements of 15.11.2010 – 1 C 10320/09 and 1 C 10403/10 – FOC Montabaur.
7 European Court of Justice, judgement of 24.03.2011, C-400/08 – COM /./ Spain.
tions on prohibitions of impairment and concentration requirements, and perhaps congruency requirements as well, might well be unobjectionable in terms of European law. Other regulations may be inapplicable because they infringe on the European freedom of establishment. Municipalities engaged in planning thus receive additional latitude in planning FOCs.

5.1.4 Procedural issues

Spatial planning procedure (Raumordnungsverfahren)
In order to clarify whether a municipality’s plan for an FOC is compatible with all applicable objectives of spatial planning, a spatial planning procedure has to be carried out. The procedure is set out in the law of each federal state. Both the municipalities engaged in planning as well as the FOC investors can usually apply for a spatial planning procedure with the competent spatial planning authority. In the spatial planning procedure the planning is then examined with regard to all issues relevant to spatial planning, i.e. issues with implications beyond the municipality. Authorities and other public institutions are extensively involved. Beside compatibility with the retail-specific requirements detailed above, effects on traffic and environmental aspects are examined. The procedure ends with a “spatial planning evaluation”. Even if the spatial planning evaluation is not legally binding,1 in practice, the municipality and the investor will most likely follow it to a large extent.

Procedure for deviation from objectives (Zielabweichungsverfahren)
Should binding spatial planning objectives stand in the way of a project, these can be overcome in a “procedure for deviation from objectives” by way of exception. In this procedure, which is set out in the law of each federal state, the spatial planning authority can permit deviation from objectives in an individual case if these are justifiable in terms of spatial planning and do not affect the basic outline of the planning. These prerequisites are usually only met in non-typical constellations. The result of the procedure is binding and is what is termed an “administrative action” (Verwaltungsakt).2 This means that a municipality cannot override a negative decision in its town-planning assessment. Instead, should the municipality disagree with the decision, it must take legal action against it.

5.2 Urban land use planning (Bauleitplanung)

FOCs usually require a land-use plan (Bebauungsplan). Although in individual cases large-area retail facilities may also be permissible in unplanned areas (unplanned inner city areas according to sec. 34 Federal Building Code), the municipality must as a rule draw up a land-use plan. The Federal Administrative Court has emphasized that shopping centres – and this includes FOCs – are as a rule prone to impair neighbour-

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1 The spatial planning evaluation enjoys the status of an expert opinion from the competent spatial planning authority. It is thus highly authoritative in professional terms.

2 Federal Administrative Court, judgement of 05.11.2009 – 4 C 3.09 – FOC Montabaur.
ing municipalities in such a substantial way that they may not be permissible unless the neighbouring municipality is involved in the formal planning process.\footnote{Federal Administrative Court, judgement of 01.08.2002 – 4 C 5.01 – FOC Zweibrücken.}

In terms of planning law, FOCs are only permitted in what are termed core areas (Kerngebiete – particular, designated inner city areas) and special areas determined for FOCs (Sondergebiete). The municipality engaged in planning for an FOC is not free in drawing up the land-use plan, but is instead subject to numerous legal requirements. In practice, an FOC investor has a strong interest in closely following the process of drawing up the land-use plan and actively shaping it, in order to prevent mistakes. For mistakes in urban land-use planning can affect the validity of the building permit which is based on the land-use plan.

5.2.1 Restrictions on sales area and structuring of areas of merchandise

In drawing up the land-use plan the municipality must exactly determine and take account of all effects which the FOC will have. In this respect it is necessary that the municipality describes the FOC in the provisions of the land-use plan. Common tools for description are restrictions on the maximum sales area as well as stipulations on the structuring of the areas of merchandise and on the goods on offer. Over the past few years, the rulings of administrative courts have clarified the legal framework.

**What is covered by the German sales area (Verkaufsfläche)?**

The uses and leasing possibilities a land-use plan may open up and the permissible size of an FOC depends to a large extent on the term "sales area". This term is an autonomous term of German planning law and not to be confused with other values such as the gross leaseable area. The GLA is much larger than the sales area, on average by 30 to 35%. This is why 10,000 m² of German “sales area” roughly correspond to a GLA of 13,000 m². According to the court rulings of the Federal Administrative Court, the sales area is the total area accessible to the customer which is used for the purpose of displaying and selling the goods. This includes display and open spaces, corridors accessible to customers, cashdesk areas, the cash office, the outer cash office as well as any porches.\footnote{Federal Administrative Court, judgement of 24.11.2005 – 4 C 10.04.} The sales area does **not include storage rooms**, offices, social rooms and staffrooms, toilets or rooms for preparation of goods which are neither accessible nor visible to customers. Nor does the sales area include spaces for **services, catering / gastronomy** and uses such as supervision of children or parking spaces. It is important to note that not only roofed spaces belong to the sales area but also open spaces insofar as they are used for the display or sale of goods.
Restrictions on sales area and goods

The municipality engaged in planning can restrict the maximum permissible sales area in the land-use plan. Such a restriction is permissible according to the Federal Administrative Court as long as it refers to the specific project (i.e. the individual FOC) and does not apply in sum for several (theoretically) permissible retail projects in a zone.¹

Land-use plans for FOC typically contain upper limits on total sales areas, and frequently also contain further upper limits on sales areas for individual areas of merchandise (clothing, shoes / leather goods, sports goods, home textiles, etc.). The court rulings have approved such limitations on sales areas in a large number of cases.² All restrictions and limitations must be clearly defined in the land-use plan. The delineation of merchandise must correspond with the definition made in the market assessment underlying the land-use plan.

Furthermore, land-use plans for FOCs regularly stipulate that in the FOC only trademark goods may be offered for sale which fall into at least one of the following categories:

- seconds (goods with minor defects),
- end-of-range models (products no longer produced or whose production is being phased out),
- models of a previous season (goods which no longer conform to the manufacturer’s current collection),
- remainders (goods returned by retailers or which despite an order by a retailer were not delivered to it or which it did not accept),
- goods for market testing (goods which do not yet belong to any collection delivered to retail and which serve to test new trends, innovations, developments or effects on their marketability),
- surplus production (goods which owing to a misjudgement of the market development or retail orders were produced beyond the demands of retail).

The German administrative courts have approved such requirements regarding characteristics of goods in land-use plans which set out special areas for FOCs. They have emphasized that municipalities engaged in planning in the sector of large-area retail may take account of the economic context, may delineate various types of retail and formulate corresponding requirements, insofar as the various kinds of use may have effects relevant to town planning.³

¹ Federal Administrative Court, judgement of 03.04.2008 – 4 CN 3.07; decision of 11.11.2009 – 4 BN 63.09.
² Federal Administrative Court, decision of 09.02.2011 – 4 BN 43.10 – FOC Neumünster; Higher Administrative Court of Rheinland-Pfalz, judgements of 15.11.2010 – 1 C 10320/09 and 1 C 10403/10 – FOC Montabaur; Higher Administrative Court of Lower Saxony, decision of 18.02.2011 – 1 ME 252/10 – FOC Soltau.
³ Federal Administrative Court, decision of 09.02.2011 – 4 BN 43.10 – FOC Neumünster.
5.2.2 Effects on supply structures, market assessments

In drawing up the land-use plan for a FOC (as well as for other shopping centres) the municipality engaged in planning must pay special attention to the effects of the project on the supply structure in its catchment area – both with regard to the municipality where the FOC is to be located as well as with regard to neighbouring municipalities. On the one hand, this is due to the prohibition on impairment (see 5.1.1 above) in terms of spatial planning law. On the other hand, land-use plans must be harmonized between municipalities (sec. 2 (2) Federal Building Code). This means that a municipality may not plan a project at the expense of and without regard to the interests of a neighbouring municipality.

In this context, it needs to be determined what effects the planned FOC will have on the supply structures in the catchment area. To this end, a market assessment is usually necessary. In assessment practice a tried and trusted procedure is to calculate to what extent turnover from other areas will be diverted into the project. Figures on redistribution of turnover and the drain on purchasing power provide an indication as to whether and to what extent impairment of supply structures is to be feared.¹

It is important to note that pure decreases in the turnover of individual businesses are irrelevant for the urban land-use planning assessment. Nor do considerations of steering the economy play a role in German planning law. In drawing up land-use plans for FOCs the sole matter of concern is whether the FOC will impair the ability to function of a municipality (inner city or decentralized supply areas) to such an extent that its supply function for the population in the surrounding area is endangered, or that retailing operations are impaired to such an extent that this would have negative effects on town planning.

Harmful effects are generally supposed to occur from a roughly 10% redistribution of turnover on. This threshold of tolerance is also drawn on in the court rulings of administrative courts,² although not as a rigid threshold but more as a rule of thumb. In the specific case redistribution of turnover under 10% may also have considerable harmful effects relevant to town planning, for example when central areas have already been considerably damaged previously. Vice versa, higher redistribution of turnover may be acceptable and the municipality where the FOC is to be located may relegate negative effects to other more substantial interests in its planning assessment. However, in every case this assumes that the municipality is aware of these effects and takes a decision which is not disproportionate to the weight of interests affected. In practice, what frequently matters here is the correct substantiation of the assessment and of the land-use plan.

² Cf. for example Higher Administrative Court of North Rhine-Westphalia, judgement of 06.05.2005 – 10 D 145/04.NE – CentrO; Higher Administrative Court of Rheinland-Pfalz, judgements of 15.11.2010 – 1 C 10320/09 and 1 C 10403/10 – FOC Montabaur.
5.2.3 Town planning contracts

When planning an FOC, it has become standard practice to conclude town planning contracts (Städtebauliche Verträge) between the municipality and the investor before drawing up the land-use plan. Typically, in such contracts the parties agree on the key elements of the project. These include sales areas and ranges of goods as well as the requirements as to the FOC-specific characteristics of goods. Sometimes these provisions are fortified by contractual penalties. In addition, depending on the specific circumstances of the case and the site, FOC investors can undertake to adopt further measures (e.g. regarding site development, environmental protection, traffic, promotion of retail, tourism, etc.).

In their rulings, administrative courts have frequently upheld such contracts.¹ To this end one must distinguish between two types of provisions: Where under town planning contracts investors undertake to adopt further measures not included in the land-use plan, the municipality can and must factor this in and base its planning assessment thereon.² Where the provisions of the land-use plan are backed up by a town planning contract, this helps to ensure that the FOC is realized as planned. These provisions apply in addition to the construction planning requirements, which are included in the building permit and can already be asserted by means of construction supervision.

Recently, spatial planning contracts (Raumordnerische Verträge) have been concluded in connection with some FOC developments. This means that in addition to the investor and the municipality in which the FOC is to be built, the spatial planning authority is also party to the contract.³ On the whole it should be stated that, in the past, the conclusion of contracts in support of FOC developments has significantly contributed to ensuring that FOC are realized as planned and to promoting their acceptance.

² Town planning contracts generally only deal with relevant town planning issues. In particular, duties can be imposed on investors, in order to mitigate possible negative effects of the planned FOC (or to generate positive effects). In contrast, provisions without a sufficient connection with the planned project and town planning law would be unlawful.
³ The subject matter of spatial planning contracts is limited to spatial planning law. As a result, such contracts may only govern matters with a regional (not a merely local) dimension.
### 5.3 Building permit and preliminary building permit

#### 5.3.1 Building permit

To set up and operate an FOC a **building permit** is required. The building permit is issued according to the law of the relevant federal state.

**Comprehensive regulation of the building permit**

In the building permit the **permissibility** of the project according to the building and planning law regulations is established, as well as its permissibility – with a few exceptions – according to all other public-law regulations. Besides **planning law**, the **building regulations (Bauordnungsrecht)** are also checked. These include provisions on fire protection and escape routes, the technical requirements for the safety of the project and the statics, thermal and sound insulation, special regulations for work and common rooms, etc. The building permit also covers provisions made in other laws – for example on occupational safety and food law. It also encompasses traffic infrastructure provisions, but not, however, any necessary building measures for the (public) roadway; these require a separate permit in terms of road law (**Straßenrecht**), which as a rule is accompanied by an agreement with the road authority (**Straßenbehörde**) on how the building measures will be implemented and how the costs will be borne. The **concentration** of checking most relevant laws is in the interest of the developer. As a rule, the developer need deal only with the building permit authority. The building permit regulates solely whether the project is compatible with **public law**; it does not take into account the **private rights** of other parties (which could arise for example from ownership of the property, rights of way, etc.). The building permit allows the building and all other adjacent structures to be **constructed** and **operated**. A separate operational permit for the FOC is not necessary, in particular it is not necessary to obtain a commercial-law licence specific to the site for retail operations.

A building permit is also necessary for **significant changes** to a project. Changes are significant, for example, which expand the total useable floor area or the sales areas, intervene in the statics, or concern fire protection. A change in the range of goods originally permitted usually is also a significant change. Such an **amended building permit (Änderungsgenehmigung)** is subject to the same principles as the initial building permit. The altered project (including the existing building and uses) has to be comprehensively checked.\(^2\)

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1. In each federal state an individual state building code (**Landesbauordnung, LBO**) applies, which contains differing provisions with regard to competence, organisation of construction administration and the approval procedure.

2. This was recently decided by the Federal Administrative Court with special reference to the expansion of large-area retail facilities (decision of 12.02.2009 – 4 B 3/09).
Ancillary provisions of the building permit
As a rule, numerous “ancillary provisions” are appended to the building permit. These are requirements and conditions which contain binding provisions just as the building permit does and become legally binding if they are not disputed in good time within a period of a month. They can be far-reaching and lead to costly measures in construction and operation of the project. They should, therefore, be checked for their legality. However, such ancillary provisions are only permissible if they are expressly permitted or are intended to ensure that the legal prerequisites for the permit will also be met. The ancillary provisions mostly concern issues relating to fire protection as well as thermal and sound insulation, the building materials or the safety of the building, the traffic provisions or the operating times; furthermore, ancillary provisions ensure adherence to the stipulations of the land-use plan (for example in relation to the greening of the building or questions relating to the range of goods). Discussing the planned catalogue of ancillary provisions with the permit authority is recommended before the building permit is issued, with the aim of limiting ancillary provisions to those that are expedient and financially practical. Frequently, the permit authority has scope for action which should be employed at an early stage.

Legal character of the building permit
If the public-law provisions to be checked by the building permit authority have been fulfilled, then a legal claim exists to the issuance of the permit. The building permit is what is termed an “administrative action in rem” (dinglicher Verwaltungsakt), which refers to the property irrespective of ownership and the developer’s subjective prerequisites. The building permit can therefore be transferred to a legal successor unproblematically. This can take place at the sale of the development site before development begins. Should a developed property be sold, then the building permit automatically transfers together with the building. As an administrative action the building permit is to be served to the developer and as a rule also to the neighbours. One month following service the permit becomes legally binding. From this point on it becomes essentially unalterable and can no longer be disputed by legal means, at least not by addressees on whom it was served. This applies to the building permit as well as to the appended ancillary provisions. As soon as the building permit has been served to the developer, construction may begin. This also applies as a matter of principle if legal objections have been raised against the building permit by third parties. In this case, however, waiting for a (preliminary) court clarification in what are termed “expedited relief proceedings” (Eilrechtschutzverfahren) is recommended.

1 Beside the formally binding requirements and conditions there are also “remarks” which simply inform the developer of particular legal provisions.

2 In some federal states a “certificate of release of construction” (Baufreigabe) is necessary beforehand. In this procedure the authority checks whether any conditions and ancillary provisions have been fulfilled, in particular whether the stress analysis is available.

3 See IV.4.
Duration of validity of building permit
According to the various federal state laws, the building permit is valid as a rule for three years. If no use is made of the building permit within this period, it expires. It is sufficient that construction should have begun within this period. The duration of validity of the building permit may be extended upon application, insofar as the project continues to harmonize with substantive building law. Once the building has been built on the basis of the building permit, the building permit is permanently valid, for an unlimited period. Should the use of the building be given up, the building permit continues to be valid until either the use is permanently given up or the building is removed.

Procedure and competence
The procedure for issuance of the building permit derives from the state building code (Landesbauordnung) locally applicable in each case. Quite different provisions may apply here, for example with regard to the participation of neighbours and the scope of checking. State-level law also regulates which authority is competent for the issuance of the permit. According to the size of the municipality in which the project is to be built, different authorities are competent. In smaller municipalities it is mostly the administrative district (Landkreis) which is competent, in larger cities a municipal authority. Even if the district is competent, the municipality is involved in the procedure. In any event, timely coordination of the project with the municipality and the permit authority is recommended.

5.3.2 Preliminary and partial building permit

Partial building permit (Teilbaugenehmigung)
If a building permit has been applied for and the approval procedure becomes drawn out in terms of time, the developer may apply for a partial building permit for certain individual construction phases (frequently for underground construction). The partial building permit can be readily issued if it is clear that the project as a whole is approvable.

Preliminary building permit (Bauvorbescheid)
An important institution is that of what is termed a preliminary building permit. Before a comprehensive and costly building application is made including statics, the developer may apply (in the form of what is termed a preliminary enquiry (Voranfrage)) for a binding decision on particular legal questions either under dispute or open to interpretation. Basic questions on whether a property may be built on are frequently cleared up in this way. If legal disputes with neighbours or neighbouring municipalities can be expected, then the open legal questions can also be clarified by means of an action against the preliminary permit. The advantage of this is that – depending on the outcome of the procedure – either the detailed building application can be waived completely, or the results of the procedure can be immediately worked into the application. The preliminary building permit is binding for the approval procedure, and hence provides the developer with a secure position with regards to the decisive questions.
5.4 Legal protection and proceedings

5.4.1 General, duration, costs

According to German procedural law, legal protection before the courts exists both for the developer as well as for the neighbourhood. Actions by associations or interest groups, too, are becoming more and more institutionalized and regulated. Owing to the legal risks associated with this, all procedures (urban land-use planning (Bauleitplanung), the building permit etc.) must be carried out with the greatest of care. In its own interest, the developer should ensure that the authority does not make any errors which could assist a neighbour in bringing a successful action. The length of legal proceedings can vary greatly: in proceedings in the main action (Hauptsacheverfahren), each instance lasts on average from one to one-and-a-half years; in what are termed expedited proceedings (Eilverfahren), each instance lasts between four and six months on average. At some courts and in badly conducted cases the proceedings can last considerably longer, vice versa they can also be correspondingly shortened. Duration is one aspect which the investor must consider. Another is the costs. The court costs are reasonable. They amount to only a few thousandths of the total investment. Lawyers’ costs are usually assessed according to the time expended and are hard to calculate (though they tend to be low compared with British and American standards). What is important to note is that as a rule the prevailing party only recovers a part of its lawyers’ costs from the losing party (these costs are calculated according to a table on the basis of the total investment, not according to how much time is expended). It should also be noted that the prevailing party does not receive any damages from the losing party, not even if the project has been considerably delayed.

5.4.2 Legal protection of developer / owner of property

Action for issuance of permit

If the building permit is unfairly withheld from the developer, the latter can contend for the building permit via an action to compel the performance of the building permit (Verpflichtungsklage) before the competent administrative court (Verwaltungsgericht). Likewise, the developer can also legally defend itself against ancillary provisions of the building permit. Appeals can normally be made against the decision of the administrative court. In the second instance, it is the higher administrative court (Oberverwaltungsgericht)\(^1\) which decides. Only in special circumstances may the losing party file an appeal with the Federal Administrative Court (Bundesverwaltungsgericht).

Action against building permits issued to third parties

The owner of the property may also defend itself against unlawful building permits issued to third parties by turning to the courts, but only to a very limited extent.\(^2\) Every

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\(^1\) A separate higher administrative court exists for each federal state, with the exception of Berlin and Brandenburg, which share a higher administrative court.

\(^2\) The action may only be filed within one month of the building permit being served. After this, actions are no longer permissible.
action requires that the plaintiff’s own rights have been infringed upon. German law does not provide for collective actions. So the plaintiff must demonstrate that a particular legal provision was violated which served its own particular protection, giving the plaintiff its own rights. This is the case, for example, if a building is to be constructed on a neighbouring property in breach of minimum space regulations (Grenzabstand). Or if another project impedes the realization of the developer’s own project in terms of development or traffic issues. No legal protection exists with regards to competing projects. German building law is neutral concerning competition. The owner of the property cannot defend itself against approval of an FOC which is being constructed in close proximity to its own project.

Preliminary proceedings before an administrative court
Before an action is brought, what is termed a protest procedure (Widerspruchsverfahren) must be implemented out of court. The developer must file an appeal against the decision which it feels encumbered by, which – as a rule, dependent on the federal state – a different authority to the original authority then decides upon. There frequently exists the possibility of coming to an out-of-court agreement. A protest procedure usually does not last longer than three months. After three months the developer may file an action.

5.4.3 Actions of third parties against the building permit

Actions of private third parties
The same (see above 2.2) applies here: the third party may only defend itself against the building permit for an FOC before a court if it can demonstrate that this building permit infringes upon the third party’s own rights. Opposing actions are thus only possible to a very limited extent. These actions must usually derive from the immediate area of effect and, for example, assert that impermissible emissions of hazardous substances or noise result from the project. The question of which regulations are protective of third party rights in this respect (besides the minimum space provisions already mentioned) must be checked in each individual case. Some parts of the provisions of the land-use plan (Bebauungsplan) are also protective of third-party rights. Competitor actions do not stand a chance of success.

Actions by municipalities and environmental organisations
In practice, neighbouring municipalities often bring actions against an (FOC) project. Such an action must be taken more seriously. It can stand a chance of success if the neighbouring municipality is able to plead that the prohibition on impairment presented above has been infringed upon at the municipality’s expense. The municipality may also assert that its own specific plans have been impaired, as well as particular protective stipulations in the regional and state-level development plan. The action may further stand a chance of success if it can demonstrate the invalidity of the land-use plan underlying the building permit. For the building permit would then have been issued without the municipality’s legally required participation in a procedure for draw-
ing up an effective land-use plan. Many of the details here are in dispute. We will not explore them further here.¹

Only under very specific conditions may environmental organisations bring an action against a project which has been approved, in particular if the federal state law allows them their own right to bring an action (which has only infrequently been the case to date).

5.4.4 Expedited relief

By law, the building permit can be enforced immediately, such that the developer can begin the project, even if it has been attacked by a third party with an objection or an action. If such an attack takes place, it is usual that before the legal proceedings in the main matter what are termed expedited proceedings (Eilverfahren) are slotted in. For otherwise the risk would exist that after the project has been started the neighbour would effect a decision prohibiting further construction for years until the action in the main matter had been decided. In simplified terms, an expedited proceeding is initiated on the application of the neighbour or neighbouring municipality.

In this proceeding, the administrative court considers in what is termed a summary procedure (summarisches Verfahren) whether the building permit is expected to infringe upon the plaintiff’s own rights. In addition, the interests of both sides are assessed: the interest of the developer in rapid implementation of the project, and the interest of the plaintiff in stopping the project. What frequently happens in the proceedings is that the legal positions are discussed in a very firm fashion because the administrative court is aware that it is taking a decision with far-reaching consequences if it gives the green light to carrying out a project.² Appeals can be made against the court’s decision in the first instance; the higher administrative court decides on this.

The expedited proceedings last on average between four and six months for each instance. If the higher administrative court has confirmed the immediate enforceability of the building permit and thus allowed construction work to continue, the plaintiff may pursue the proceedings in the main matter (the proceedings bringing the action). However, in this case the developer can readily construct the project. In practice, it is inconceivable that such a building constructed on the authority of the higher administrative court would later be removed, even if the court in the proceedings on the main matter could theoretically decide otherwise; such a case has yet to take place anywhere in Germany.³ Therefore, as a rule a final decision is taken in the ex-

¹ See for example the decisions of the Higher Administrative Court of Rheinland-Pfalz in the matter of FOC Montabaur (judgments of 15.11.2010 – 1 C 10320/09 and 1 C 10403/10), the Higher Administrative Court of Schleswig-Holstein in the matter of FOC Neumünster (Judgement of 22.04.2010 – 1 KN 19/09) and of the Higher Administrative Court of Lower Saxony in the matter of FOC Soltau (decision of 18.02.2011 – 1 ME 252/10).

² In this respect we refer by way of example to the expedited proceedings on the FOC Soltau, Higher Administrative Court of Lüneburg, decision of 18.02.2011 – 1 ME 252/10 –, confirming that the building permit for FOC Soltau may be enforced immediately.

³ Recently the Higher Administrative Court of Saxony (decision of 22.11.2010 – 1 B 167/10 – FOC Wiedemar) confirmed the immediate enforceability of a building permit for an FOC in the neighbourhood of Leipzig without making a firm statement on the legality of the building permit, just by balancing the diverging interests.
pedited proceedings as to whether a project may be built. This view is shared by banks providing finance.

5.4.5 Judicial review proceedings (Normenkontrollverfahren)

Underlying the building permit for an FOC is usually a land-use plan, as we have detailed here. The land-use plan is a legal norm, against which a separate legal remedy is possible. According to Sec. 47 Rules of the Administrative Courts (VwGO), judicial review proceedings can be initiated at the competent higher administrative court. The permissibility of the application\(^1\) requires that the applicant asserts that its own rights have been infringed upon; in this respect, the same applies as in the third party’s or neighbour’s action for a rescission. Since municipalities possess a wide variety of rights in urban land-use planning (Bauleitplanung) (in part through state-level and regional planning as well), judicial review proceedings initiated by neighbouring municipalities in particular are by no means infrequent. If the application for judicial review is permissible, the land-use plan is comprehensively checked for its formal and substantive legality.

Owing to the complexity of the procedure for drawing up the land-use plan and the assessment underlying every land-use plan, such judicial review proceedings do need to be taken seriously. For this reason, special care in the procedure for drawing up a plan is imperative. Should the court come to the conclusion that the land-use plan is flawed, it will declare the plan invalid. Certain defects can be remedied by the municipality in a supplementary procedure, Sec. 214 (4) Federal Building Code. Depending on the facts in question, a new land-use plan may be drawn up; but this is very costly in terms of time. The invalidity of the land-use plan results usually in the unlawfulness of the building permit. This unlawfulness can, however, only be asserted in a separate action brought against the building permit (see above 5.4.3), insofar as the period for bringing the action has not expired.

5.5 Outlook

The legal requirements for planning and approval of FOCs in Germany are complex, and the procedures for approval and legal review can be lengthy. Nevertheless, FOC projects can be successfully realized in Germany today. For this to happen, the investor must be thoroughly familiar with the legal framework of the specific site in question, and should also endeavour to contact and cooperate with the competent authorities – the municipality where the outlet is to be located, and the relevant authorities for spatial planning and building permits – at an early stage. Thus, the lengthy procedures can be shortened substantially. If the investor makes use of the possibilities of exerting influence on the planning and approval procedure, as described in this arti-

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\(^1\) The application is only permissible within a year of the land-use plan coming into effect, Sec. 47 (2) Rules of the Administrative Courts. Thereafter, the land-use plan can no longer be directly attacked in court. Nevertheless, the administrative courts do incidentally check the land-use plan’s legality in proceedings permissibly brought by third parties; in the event that they discover a significant error, they may not apply the land-use plan.
cle, and follows the procedure in an active way such that any mistakes can be discovered or avoided at an early stage, then the risks of legal proceedings against the FOC project can be minimized. Once the German courts have confirmed an FOC project, the investor enjoys a high measure of certainty regarding planning and investment. It can be assumed that over the next few years a number of projects will be successfully realized in what remains an "under-served" FOC market in Germany.
6. Special Characteristics of Legal Due Diligence in the Case of Factory Outlet Centers

by Dr. Gerold Jaeger, Clifford Chance Attorneys, Frankfurt am Main (D), www.cliffordchance.com

The due diligence or legal review usually conducted in connection with real estate transactions normally comprises an examination of the existing right(s) to the property sites and/or the properties already constructed. As part of this, the respective purchase agreements, leases, and rental contracts, permits and contracts under public law, as well as the ownership situation together with the authorizations and encumbrances entered in Land Register Sections II and III for the property are of special interest in particular.

6.1 Functions and Types of Due Diligence

The term “due diligence” or legal review originates from the Anglo-American legal sphere. The term literally expresses the concept of “the care and attention required in business dealings”. This concept describes the standard of conduct that is comparable to the standard of care existing in German law as set forth in Sec. 276, paragraph 2 of the German Civil Code (BGB). The standard of care takes its cue here from one that is normally to be applied by the management of a company when undertaking business operations.

Due diligence is important above all for identifying the potential risks and weak points of a piece of real estate. The buyer in particular is given the opportunity for the first time of informing itself comprehensively with respect to the property on the basis of the data material. This process allows any obstacles to the transaction to be identified early on. When it no longer appears possible to eliminate these obstacles, the sale can then be cancelled in the early stages, thus saving on costs.

The additional function of due diligence of providing a solid basis for evaluation is no less important. This is because the specific financial performance of the real estate can usually only be ascertained based on the data material made available by the seller. And it is precisely the financial performance that is for the most part crucial for the decision to purchase.
Moreover, due diligence serves to limit risks and secure evidence. A comprehensive review of the real estate has an effect in particular on the contractual stipulation of warranties. For instance, the risks discovered during a comprehensive review are reflected directly in the purchase price, whereas in the case of a smaller volume of data, the buyer will have an increased interest in detailed warranties and representations. This evidentiary function exists precisely in connection with post-contractual liability disputes and in particular with respect to the question of whether the buyer knew of particular defects at the point at which the contract was executed.

When it comes to due diligence, a whole host of various types of investigations and reviews are conceivable. Priorities can be set differently depending on the given situation. Normally, the legally relevant aspects are systematically registered and evaluated ("legal due diligence"). In the area of real estate in particular, the review often also includes issues specific to the environment ("environmental due diligence"). But the tax situation and financial management conditions may also become the focus of attention. In the case of a share deal, moreover, the general situation as this pertains to corporate law also needs to be reviewed.

Additionally, a distinction is generally drawn between whether the due diligence is to be conducted by the seller ("sell-side due diligence") or the buyer ("buy-side due diligence").

### 6.2 Special Characteristics in the Case of Factory Outlet Centers

The special characteristics of a due diligence in the case of the sale of a factory outlet center are inevitably derived from the specific characteristics of the underlying strategy.

The attractiveness of a factory outlet center is fundamentally determined by the various tenants and the range of products they offer. Usually this results in the concentration of a rather large number of brand-name item manufacturers, which in turn creates an increased requirement for space. Because of these factors, the area from which customers are drawn extends significantly beyond that of a standard shopping center, which is why the vast majority of customers will travel there by car. In this regard, the operator has an interest in a finding a non-centralized location with good accessibility.

For the investors in a factory outlet center, all of the factors that can influence the rental income to be gained from the property are of course significant. It is often the case that leases for space in a factory outlet center do not stipulate fixed rent amounts but instead a combination of minimum rent and rent based on sales volume. In such cases, the profitability of the acquisition has a significant connection with the success of the individual tenants. Consequently, the attractiveness of the center as a whole as well as the assured continuation of the center's strategy are of considerable importance.
6.3 Focal points of elevated significance

In this context, the following aspects in particular deserve special consideration in connection with the performance of the due diligence in order to identify and limit risks as well as to evaluate the property as a whole:

6.3.1 Permissibility under public law

General requirements
First, the planned or, as the case may be, existing factory outlet center must be permissible in accordance with building laws. Under planning law, factory outlet centers are classed as shopping centers pursuant to Sec. 11, paragraph 3, sentence 1, no. 1 of the Building Use Ordinance (BauNVO) and are therefore only permitted in so-called “core zones” (in German: Kerngebiet, a zone set aside for commercial and business enterprises) and special zones set aside specifically for such uses. Pursuant to Secs. 15 and 17 of the Regional Planning Act (ROG) in conjunction with Sec. 1, no. 19 of the Regional Planning Ordinance (RoV), a regional planning procedure is to be held for the construction of shopping centers in connection with the identification as a special zone by way of a development plan when the particular project is significant for planning in the region and also significant outside of the local area.

Concerns of neighboring municipalities
Furthermore, the construction of a factory outlet center affects not only the retail trade of the municipality undertaking the planning but because of the size and the area from which customers are drawn, most likely the adjacent municipalities as well. For this reason it is important to ensure that the urban land use plans have been coordinated with the neighboring municipalities as intended by Sec. 2, paragraph 2, sentence 1 of the Building Code (BauGB). Otherwise, a neighboring municipality could assert its right to joint coordination before the courts, thereby jeopardizing a development plan that has already been drawn up and with it, the permissibility of the factory outlet center.

Project-based development plan
The creation of a project-based development plan pursuant to Sec. 12 of the Building Code would also be one possibility. However, this requires an implementation agreement to be entered into by way of which the developer is obligated to carry out the project and the utility and infrastructure connections by a particular deadline and is also made responsible for the costs of the planning and the connections. When the project-based development plan is then enacted accordingly, the resulting outcome is an obligation on the part of the developer to implement the project.

Restrictions on product ranges offered
When a building permit is granted, it is important to note whether it specifies particular product ranges in particular lines of business or whether a corresponding exclusion of particular product ranges has been specified. In some cases, a corresponding
commitment is also specified – exclusively or supplementally – above and beyond the building permit in an urban planning agreement between the developer and the municipality. If in this situation there is a project-based development plan, the implementation agreement must be referred to in this regard.

**Ensuring the permit situation under public law**

Insofar as official permits are required for the construction and operation of a factory outlet center – as a rule this will mean a building permit, although other permits such as those pertaining to water law and environmental protection law and the like can also come into play – in addition to the – utterly essential – determination of whether all of the required permits have been granted in general, the due diligence must also provide an assessment of the validity of these permits and their likelihood of remaining in force, because the operation of the entire property will stand or fall based on this information.

In this connection, all permits must also be examined for unusual stipulations, conditions, or directives regarding the provision of security interests. In the case of amendments made at a later date, the chains of amendments must be as comprehensible as possible in terms of not containing any gaps.

Additionally, a relevant risk with regard to the final legal force and legality of, for instance, the building permit is often a deal breaker.

As a rule, the legal situation as this concerns permits is difficult to ascertain with certainty. Various factors may be relevant with respect to the final legal force of, for instance, building permits. Additionally, even where a rather long period of time has passed since a permit was granted, before construction has even begun, the owner of a neighboring property site, for instance, who is bothered by the center could still possibly file an objection or legal challenge against the building permit if the neighbor had not been notified of the permit and only learns of it at a later date due to the construction work or the like. In this connection, those conducting the review must keep an eye out for any agreements with neighboring property owners.

Consequently, due diligence here can thus usually provide only an estimation of the risk that is relevant as regards which type of warranties and rescission options etc. should be stipulated in the purchase agreement.

6.3.2 **Leases**

The profit from a factory outlet center is essentially determined based on the rental income. At the same time, such a property typically has a large number of tenants. Insofar as these are companies with corresponding market power, the leases will deviate more or less from the standard lease that the previous developer most likely will have drawn up. This means that special attention must be paid to the leases in particular.
Because of potential stipulations under public law in connection with restrictive building permits or urban planning agreements, it is also a good idea to adapt the private leases accordingly. The landlord should therefore ensure that restrictions applicable to the factory outlet center under public law are also imposed on the tenants.

The buyer in particular will have a considerable interest in the financial profitability of the factory outlet center. From the buyer’s perspective, the precise formulation of the individual leases is therefore of particular significance.

Typical aspects in the leases are, for instance, the precise definition of the merchandise to be sold, the obligation to maintain sufficient stock on hand, or the restriction of use to the sale of the specified merchandise.

Additionally, the existence and formulation of termination rights on the part of the landlord (in the case of breach of contract, failure to reach a particular minimum sales volume after a start-up phase, etc.) has relevance in terms of actual practice for the preservation of the center’s strategy.

Furthermore, terms concerning an obligation on the part of the individual stores to operate during particular hours appear to be a good idea, as does the refusal to offer protection from competing businesses, since in most cases the same lines of business are operating within a factory outlet center. At the same time, depending on the location and specific layout of the center, it may make sense to impose a ban on the tenants from operating other factory outlet stores within a defined radius of proximity from the factory outlet center. The existence or lack of such contractual provisions is important to the decision to enter into the transaction.

No matter what, the parties need to be aware that a contractually stipulated pricing discount is prohibited pursuant to Sec. 14 of the Law Against Restraints on Competition (GWB). Any such provision would therefore be null and void pursuant to Sec. 134 of the German Civil Code. However, as a rule, an indication in the lease that the customers at factory outlet centers regularly expect prices that are significantly lower than standard sales prices is permissible. An obligation on the part of the tenant to depict the discounts it provides in comparison to the manufacturer’s suggested retail price as well as a right on the part of the landlord to conduct reviews in terms of actual adherence to these discounts as reported is also held to be permissible in some cases.

6.4 **Summary**

A legal due diligence for a factory outlet center – whether pursued from the seller’s or from the buyer’s perspective; or whether such is in relation to a share deal or an asset deal – does not vary significantly from a review conducted for a standard real estate due diligence. Nevertheless, due to restrictions of such special real estate under public law, the main emphases are shifted a little more toward issues of compliance under
public law. Complete certainty is also scarcely to be achieved in this respect, which is why when drawing up the purchase contract, the contractual formulation concerning how the risks ascertained by the due diligence are dealt with is attributed with elevated significance for factory outlet centers in particular.

DEGI acquires a factory outlet centre in Tuscany (DE/IT)
Thursday 29 June 2006

DEGI Deutsche Gesellschaft für Immobilienfonds mbH has purchased the Valdichiana Outlet Village between Florence and Rome for DEGI INTERNATIONAL fund by a share deal. The investment volume totals approximately €88.5 million; the seller is the Italian project development company Gruppo Stilo (Percassi), which will continue to handle management and letting of the centre.

The property is situated about 30 kilometres south of Arezzo – directly on the A1 Milan-Rome motorway, and close to the Siena-Pergusa highway. The total floor space, currently measuring 17,540 m², has all been let to prestigious international and national branded-goods vendors. The shopping centre's architecture is attractive and contemporary; promenades, plus some small piazzas, contribute some typical elements of Tuscan townscapes. The centre's catchment area includes almost four million people. Jones Lang LaSalle and DLA Piper Rudnick have acted as the sole advisers to DEGI on the above transaction.

NEHVER acquires Zwillbrocker Outlet from Kenmore Property and Recap for €11.0 mn. (DE)
Monday 9 November 2009

Nebver, a medium-sized European real estate company in development, investment and asset management, acquired the Zwillbrocker Designer Outlet from Kenmore Property Group and Recap, for a total consideration of €11.0 million. Following the acquisition, it will never be held in the investment portfolio of "Your European Retail Property Fund", one of the company's European real estate funds.

The Zwillbrocker Designer Outlet is one of the most successful designer outlet centres in Germany. Located in the heart of the Rhine-Herne district, the property is an ideal location for both shopping and leisure. The property consists of more than 100 shops of top European and international brands, offering a total of 35,000 m² of retail and leisure space. It is divided into four sections: Designer Outlet, Fashion Outlet, Outlet City and Outlet Park.

The property offers a unique combination of retail and leisure spaces, making it an ideal destination for shoppers and tourists alike. The property is managed by the experienced team of Kenmore Property Group and Recap, ensuring a high level of service and a positive shopping experience for visitors.

Corio acquires factory outlet development in France (FR)
Monday 1 March 2010

Corio acquired 75% of the shares of the factory outlet development Moulin de Nailleux in the Toulouse region for €44 million, at a net yield of 8.4%, for the first phase. The remainder of the shares is owned by the development company COGEP (local developer). Corio has the possibility to acquire the remaining 25% of the shares at market value after 5 years. Phase one of the project is expected to open in 2011. The project will be part of Corio's fixed committed pipeline.

Total gross leasable area (GLA) (for phase one and two) will be 30,900 m². At completion of both phases Moulin de Nailleux will have 125 shops and 1,800 parking spaces. Phase one will be 7,080 shops on a GLA of 22,100 m². When the first phase has been proven to be successful, the second phase of 8,800 m² will be carried out.

Selected transactions of Outlet Centres
Source: Real Estate Publishers (www.europe-re.com), ING Real Estate, ecostra-compilation
7. Outlet Centres. An attractive asset class for investors?

by David Williams, Henderson Global Investors, London (GB),
www.henderson.com/property

Henderson launched its European Outlet Mall Fund ("EOMF") in February 2004 at a time when outlets where deemed to be risky and not on the radar of institutional investors. We saw that there was a sub-sector of the outlet market that had quality assets and with the right manager and level of asset management investment would produce sufficient long term risk adjusted returns for institutional investors. This sub-sector was a sign that outlets had started to move away from their factory past and had the potential to be prime grade real estate. Both Henderson and McArthurGlen believed that EOMF would deliver its targets and both co-invested to put 'money where their mouths were'.

7.1 Common vision and high aims

EOMF has created a portfolio of prime outlets located close to some of the largest cities in Europe. In McArthurGlen, our partner, we have a developer and property manager who has the same vision as Henderson. Our raison d’être is to exceed the expectations of our investors and customers and to be proud of all the outlets owned by EOMF.

In the past the turnover element of the rent was seen by investors and banks as high risk. This was probably because they hadn't experienced such lease structures before. It is apparent now that more people see turnover leases as an opportunity. They cement the partnership between the owner, manager and tenant.

We succeeded in convincing institutional investors to invest in this sub-sector with around €170 million of equity raised at launch acquiring circa €340 million of assets. Since the launch of EOMF we have had three further equity raises bringing the total equity raised to €650 million from 39 institutional investors. The portfolio value as at 31 December 2010 stands at close to €1.5 billion. The main target return for EOMF is to deliver a 13% IRR on equity over its life. Even after the recent economic downturn EOMF has delivered that since inception to 31 December 2010.
7.2 The success formula

Prime outlets must be dominant in their catchment. The catchment within a 60 minute drive time is key. It must be large enough to support the outlet and the customer must be able to get there and park as hassle free as possible. On average customers only visit an outlet less than four times per year. They therefore must not have too much choice of destination otherwise footfall will become very unpredictable and unstable. Prime outlets must not stay still and investors in them have to understand that. Successful schemes require continual investment in the brand offer and mix, marketing and commercialisation. A prime outlet is a destination shop. Disappointed customers are difficult to bring back. Customers should be excited not only by what they've experienced on their previous visits but also by their expectation of change and enhancement.

7.3 Premium yields and the lack of transactions

In the investment world outlets continue to demand a premium yield to full price shopping schemes. However the strong performance of prime outlets during the recent recession has narrowed this premium. Due to the lack of transactional evidence the yield gap is based mainly on sentiment. My view is that prime outlets will, under 'normal' market conditions, transact at yields close to 6% in the sentimental range of 6 to 6.5%. Outlets are sought by Fund managers of not only outlet Funds but retail and balanced Funds. The sale of Troyes by EOMF was a good example of this. Banks have also reduced their risk premium for prime outlets. I expect little difference now between the cost and availability of debt, all things being equal, for a prime outlet and its full price relative. This further supports a narrowing of the yield premium.

7.4 Undersupply of outlets in many European countries

Outlets today still present similar opportunities for investors as they did back in 2004. There is still an under supply of outlet space per capita across most of continental Europe. However it is becoming more difficult not only to find the right location for a new outlet but to also gain all the necessary permissions to build one.

Lack of understanding of the impact of outlets by local authorities will probably mean supply should in the main not grow significantly in the medium term.

Since the launch of EOMF many tenants, the brands, have increased their exposure to outlets. This distribution channel is a profit centre for them and is an area they have added serious resource to. The retail world sees the launch of many new and exciting brands on a regular basis which become global very quickly. These brands as well as those still with no outlet channel will help prime outlets to continue to provide an exciting and varied offer for its customers.
7.5 The challenging road to the building permit

Outlets have received some bad press in the past. This has been driven in part by high street retailers with the help of politicians looking for votes. It is the duty of outlet owners, developers, managers and brands to promote the benefits of an outlet to the local community. Outlets bring new footfall into an area that will benefit local business. They generate jobs and can provide excellent training in good retailing. The outlets in the portfolio of EOMF also look to invest in local community projects and charities.

In some countries, where it is easier to get planning permission I hope outlet developers do not build on top of competing schemes. This will not benefit customers nor the brands but will add to the distrust of outlets. There have been examples of outlets being built within metres of each other. Both were probably not as successful as they could have been if they had co-operated.

7.6 The future of outlet centres in Europe

The recession widened the appeal of outlets as some people had less to spend but didn't want to forgo quality. Now this customer has discovered outlets it is likely they will continue to use them in the future even when prosperity returns.

There is still a balancing act between attracting new outlet customers without upsetting the full price stores. Outlets need to stay just under the radar. In contrast to full price there is some debate whether an outlet customer will tell others about the discounted designer label they have just bought. I think there is still that inclination of holding ones cards close to ones chest.

Outlets will not appeal to everyone. Younger people for example are generally not excited by outlets. They want the latest fashion but not necessarily the quality. Prime outlets though are here to stay. Their proven benefits to local communities, customers and brands will keep them around for a long time. Perhaps one day we will start calling them what they are: Designer Outlet Centres.
8. Austria

Austria is located in the heart of Europe and has common borders with eight countries: Germany, Switzerland, Liechtenstein, Italy, Slovenia, Hungary, Slovakia and the Czech Republic. Due to the Alps the Austrian topography is characterized by a highly mountainous terrain which correspondingly determines the specific structure of settlement. The capital city is Vienna. Austria is one of the richest countries in Europe according to the income and purchasing power per capita.

Country Profile for Austria

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Area</strong></td>
<td>83,872 km²</td>
</tr>
<tr>
<td><strong>Population</strong></td>
<td>8,375,290</td>
</tr>
<tr>
<td><strong>Population Density</strong></td>
<td>100 Inhabitants / km²</td>
</tr>
<tr>
<td><strong>Development of Population</strong></td>
<td></td>
</tr>
<tr>
<td>2000 – 2005</td>
<td>+ 2.5 %</td>
</tr>
<tr>
<td>2005 – 2010</td>
<td>+ 2.1 %</td>
</tr>
<tr>
<td>2000 – 2010</td>
<td>+ 4.7 %</td>
</tr>
<tr>
<td><strong>Development of Population (Projection)</strong></td>
<td></td>
</tr>
<tr>
<td>2010 – 2015</td>
<td>+ 2.3 %</td>
</tr>
<tr>
<td>2010 – 2020</td>
<td>+ 4.2 %</td>
</tr>
<tr>
<td><strong>Total in 2020</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Purchasing Power for Retail Goods p.c. in €</strong></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>5,742</td>
</tr>
<tr>
<td><strong>Retail Market Volume in bn €</strong></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>48.1</td>
</tr>
<tr>
<td><strong>Shadow Economy (in % of GDP)</strong></td>
<td></td>
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<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td>8.0 %</td>
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</table>

Development of Selected Socio-Economic Indicators for Austria 2000 – 2010

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Gross Domestic Product (GDP) in bn €</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Domestic Product per Capita in €</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Average Wage in € per Month</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inflation Rate in % (HICP)**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in Consumer Spending of Private Households in % (in real terms against previous year)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment Rate in %</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Household Size</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motorisation Rate (Cars per 1,000 Inhabitants)</td>
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<td></td>
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</tr>
</tbody>
</table>

* = 2009, data of 2010 not available  
** = Harmonised Indices of Consumer Prices

Source: eurostat, Germany Trade & Invest, Institut für angewandte Wirtschaftsforschung (IAW), OECD, ecostra
Designer Outlet Parndorf  
Designer Outlet Straße 1  
A-7111 Parndorf  
Austria  
www.designer-outlet-parndorf.at

### Centre Data

<table>
<thead>
<tr>
<th>Type of the Centre:</th>
<th>Micro-Location:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Gross Leasable Area:</th>
<th>Distance to Next Motorway Exit:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Parking Spaces:</td>
</tr>
<tr>
<td></td>
<td>• at Ground Level</td>
</tr>
<tr>
<td></td>
<td>• in a Car Park</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Retail Sales Area:</th>
<th>Date of Opening:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Operator:</td>
</tr>
<tr>
<td></td>
<td>Owner(s):</td>
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</table>

### Construction Phases (Year of Completion)

<table>
<thead>
<tr>
<th>Phase</th>
<th>Gross Leasable Area (GLA) per Phase</th>
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</thead>
<tbody>
<tr>
<td>I</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td></td>
</tr>
<tr>
<td>Future Extension Plans:</td>
<td></td>
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</table>

### Retail and Service Offer

<table>
<thead>
<tr>
<th>Total Number of Outlet Stores:</th>
<th>Brand Selection (Company Stores)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>•</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Units with Services (e.g. Bank):</th>
<th>•</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units for Eating &amp; Drinking:</td>
<td>•</td>
</tr>
<tr>
<td>Units for Tourist Information:</td>
<td>•</td>
</tr>
<tr>
<td>Total Number of Units:</td>
<td>•</td>
</tr>
<tr>
<td>Occupancy Rate:</td>
<td>•</td>
</tr>
</tbody>
</table>

### Catchment Area Potential

<table>
<thead>
<tr>
<th>Up to 30 Car-driving Minutes:</th>
<th>2005:</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 to 60 Car-driving Minutes:</td>
<td>2006:</td>
</tr>
<tr>
<td>61 to 90 Car-driving Minutes:</td>
<td>2007:</td>
</tr>
<tr>
<td>Total:</td>
<td>2008:</td>
</tr>
<tr>
<td></td>
<td>2009:</td>
</tr>
<tr>
<td></td>
<td>2010:</td>
</tr>
<tr>
<td></td>
<td>•</td>
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### Contact

<table>
<thead>
<tr>
<th>Address Outlet Center:</th>
<th>Address Centre Management:</th>
<th>Address Leasing Agency:</th>
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</thead>
</table>
All center profiles (incl. center data) are only available in the full version of this report!
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Web: www.henderson.com/property