

Commission Decision (EU) 2019/2120 of 24 June 2019 on State aid granted by Belgium to JCDecaux Belgium Publicité (SA.33078 (2015/C) (ex 2015/NN)) (notified under document C(2019) 4466) (Only the French and Dutch versions are authentic) (Text with EEA relevance)

- Article 1 The State aid to JCD, in an amount equivalent to...
- Article 2 (1) Belgium shall recover the aid referred to in Article...
- Article 3 (1) The recovery of the aid referred to in Article...
- Article 4 (1) Within two months of the notification of this decision,...
- Article 5 (1) The measures provided for in the Villo agreement constitute...
- Article 6 This decision is addressed to the Kingdom of Belgium.
- Signature

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- (1) OJ C 203, 19.6.2015, p. 12.
- (2) Ibid.
- (3) This decision does not concern the additional complaint by CCB referred to in recital 8; that relates to displays under the 1999 contract, which was outside the scope of the formal investigation procedure (see also recital 69).
- (4) The City of Brussels is the official name of the municipality in the centre of the Brussels Capital Region. The City of Brussels is surrounded by 18 closely integrated municipalities forming a single large administrative entity constituting the Brussels Capital Region. The Brussels Capital Region has a government and a parliament. It is an urban area with a population of about 1 200 000, the parts of which comprise a single unit commonly known as Brussels.
- (5) On payment of a net fixed price per product supplied, fully equipped, installed and operational.
- (6) Those points were included in an amendment to the Villo agreement signed on 9 June 2011.
- (7) The charge is EUR [...] per display per year. The maximum JCD should have paid without the exemption is [...] $8 \text{ m}^2 \text{ displays} \times \text{EUR} [\dots] \text{ per display} = \text{EUR} [50\,000-150\,000]$.
- (8) See recital 82 in the opening decision.
- (9) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).
- (10) Judgment of 29 April 2016 by the Brussels Court of Appeal (9th chamber) in Case 2011/AR/140. The Court of Appeal rejected the argument that there had been a change in the basis (*interversion*) of the entitlement to operate the displays: it found that the change had not been provided for or authorised by the 1984 or 1999 contracts, nor had it been approved by the city after the signature of the 1999 contract.
- (11) The City of Brussels adopted its first regulation on private occupancy of public property for commercial purposes in October 2001; that regulation entered into force in January 2002 (the tax regulation of 17 October 2001, tax on temporary advertising in and on public property), but the Belgian authorities charged tax on the 1999 displays only from the 2009 tax year.
- (12) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5), applicable when the aid was granted.
- (13) Clause 12 of the 1999 contract lays down the formula for the adjustment of rent and states that the contracting authority accepts the adjustment formula (indexation to anniversary date). The clause sets out the basic data for calculation of monthly rent.
- (14) More precisely, Article 5 of the tax regulation of 17 October 2001 provided for exemption from tax for, in particular, ‘notices by the City or bodies set up by, subordinate to or financed by the City’.
- (15) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).
- (16) Judgment of the Court of Justice of 2 September 2010 in Case C-399/08 P, *Commission v Deutsche Post*, ECLI:EU:C:2010:481, paragraph 39, and the case-law cited therein; judgment of the Court of Justice of 21 December 2016 in Case C-524/14 P, *Commission v Hansesstadt Lübeck*, ECLI:EU:C:2016:971, paragraph 40; judgment of the Court of Justice of 21 December 2016 in Joined Cases C-20/15 P and C-21/15 P, *Commission v World Duty Free Group SA and others*, ECLI:EU:C:2016:981, paragraph 53; judgment of the Court of Justice of 20 September 2017 in Case C-300/16 P, *Commission v Frucona Kosice*, ECLI:EU:C:2017:706, paragraph 19.
- (17) Judgment of the General Court of 12 December 1996 in Case T-358/94, *Compagnie nationale Air France v Commission of the European Communities*, ECLI:EU:T:1996:194, paragraph 56.
- (18) Judgment of the Court of Justice of 14 October 1987 in Case C-248/84, *Federal Republic of Germany v Commission of the European Communities*, ECLI:EU:C:1987:437, paragraph 17; judgment of 6 March 2002 in Joined Cases T-92/00 and T-103/00, *Territorio Histórico de Álava — Diputación Foral de Álava and Ramondín, SA and Ramondín Cápsulas SA v Commission of the European Communities*, ECLI:EU:T:2002:61, paragraph 57.

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- (19) Judgment of the Court of Justice of 16 May 2000 in Case C-83/98 P, *France v Ladbroke Racing and Commission*, ECLI:EU:C:2000:248, paragraphs 48 to 51; judgment of the Court of Justice of 14 January 2015 in Case C-518/13, *Eventech*, ECLI:EU:C:2015:9, paragraph 33.
- (20) Judgment of the Court of Justice of 11 July 1996 in Case C-39/94, *Syndicat français de l'Express international (SFEI) and others v La Poste and others*, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999 in Case C-342/96, *Kingdom of Spain v Commission of the European Communities*, ECLI:EU:C:1999:210, paragraph 41.
- (21) Judgment of the Court of Justice of 2 July 1974, in Case C-173/73, *Italian Republic v Commission*, ECLI:EU:C:1974:71, paragraph 13.
- (22) Judgment of the Court of Justice of 8 November 2001 in Case C-143/99, *Adria-Wien Pipeline*, ECLI:EU:C:2001:598; also judgment of the Court of Justice of 14 February 1990 in Case C-301/87, *French Republic v Commission*, ECLI:EU:C:1990:67, paragraph 41.
- (23) Judgment of the Court of Justice of 26 October 2016 in Case C-211/15 P, *Orange v Commission*, ECLI:EU:C:2016:798.
- (24) Judgment of the General Court of 26 February 2015 in Case T-385/12, *Orange v Commission*, ECLI:EU:T:2015:117.
- (25) Opinion of Advocate General Wahl in Case C-211/15 P, 4 February 2016, *Orange v Commission*, ECLI:EU:C:2016:78.
- (26) Judgment of the Court of Justice of 26 October 2016 in Case C-211/15 P, *Orange v Commission*, ECLI:EU:C:2016:798, paragraphs 41 to 44.
- (27) Judgment of the Court of Justice of 26 October 2016 in Case C-211/15 P, *Orange v Commission*, ECLI:EU:C:2016:798, paragraph 44.
- (28) Commission Notice of 19 July 2016 on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1).
- (29) In the agricultural sector, examples of an imposition of a regulatory obligation would be veterinary or food-safety checks and tests that are imposed on agricultural producers. In contrast, checks and tests carried out and financed by public bodies and not required by law to be carried out or financed by the agricultural producers are not considered regulatory obligations imposed on the undertakings. See Commission Decisions of 18 September 2015 on State aid SA.35484, milk quality tests pursuant to the Milk and Fat Law and of 4 April 2016 on State aid SA.35484, general healthcare control activities pursuant to the Milk and Fat Law.
- (30) Judgment of the General Court of 25 March 2015 in Case T-538/11, *Belgium v Commission*, ECLI:EU:T:2015:188, paragraphs 74 to 78.
- (31) For example, if an undertaking receives a subsidy for investment in an assisted area, it cannot be argued that such a subsidy does not mitigate the costs normally included in the budget of the undertaking, since the undertaking would not have made the investment without the subsidy.
- (32) Judgment of the Court of Justice of 8 December 2011 in Case C-81/10 P, *France Télécom v Commission*, ECLI:EU:C:2011:811, paragraphs 43 to 50. That logically applies to the mitigation of costs incurred by an undertaking in replacing the status of its public servants by employee status comparable to that of its competitors, which creates an advantage for the undertaking concerned (there was some uncertainty on that point after the judgment of the General Court of 16 March 2004 in Case T-157/01, *Danske Busvognmænd v Commission*, ECLI:EU:T:2004:76, paragraph 57). On stranded costs, see also the judgment of the General Court of 11 February 2009 in Case T-25/07, *Iride and Iride Energia v Commission*, ECLI:EU:T:2009:33, paragraphs 46 to 56.
- (33) Judgment of the Court of Justice of 27 March 1980 in Case C-61/79, *Amministrazione delle Finanze dello Stato*, ECLI:EU:C:1980:100, paragraphs 29 to 32.
- (34) Judgment of the Court of Justice of 27 September 1988 in Joined Cases C-106/87 to C-120/87, *Asteris AE and others v Greece*, ECLI:EU:C:1988:457, paragraphs 23 and 24.
- (35) Judgment of the General Court of 1 July 2010 in Case T-64/08, *Nuova Terni Industrie Chimiche v Commission*, ECLI:EU:T:2010:270, paragraphs 59 to 63, 140 and 141, finding that while the payment of compensation in the event of expropriation does not confer an advantage, an *ex post* extension of the compensation may constitute State aid.
- (36) Judgment of Brussels Court of Appeal of 29 April 2016 (9th chamber) in Case 2011/AR/140.

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- (37) Judgment of the Court of Justice of 15 December 2005 in Case C-66/02, *Italy v Commission*, ECLI:EU:C:2005:768, paragraph 94.
- (38) Judgment of the General Court of 6 February 2016 in Case T-385/12, *Orange v Commission*, ECLI:EU:T:2015:117.
- (39) Judgment of the Court of Justice of 17 September 1980 in Case C-730/79, *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209, paragraph 11, and judgment of the General Court of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, *Alzetta Mauro and others v Commission of the European Communities*, ECLI:EU:T:2000:151, paragraph 80.
- (40) Judgment of the Court of Justice of 23 January 2019 in Case C-387/17, *Fallimento Traghetti del Mediterraneo*, ECLI:EU:C:2019:51, paragraph 40.
- (41) Judgment of the General Court of 4 April 2001 in Case T-288/97, *Regione autonoma Friuli-Venezia Giulia v Commission*, ECLI:EU:T:1999:125, paragraph 41.
- (42) Judgment of the Court of Justice of 8 September 2011 in Case C-279/08 P, *Commission v Netherlands*, ECLI:EU:C:2011:551, paragraph 131.
- (43) See, to that effect, the judgment of the Court of Justice of 8 May 2013 in Joined Cases C-197/11 and C-203/11, *Eric Libert and others v Gouvernement flamand* and *All Projects & Developments NV and others v Vlaamse regering*, ECLI:EU:C:2013:288.
- (44) For example, the call for tenders issued by the Brussels Capital Region on 15 March 2008 for the Villo concession was published in the *Official Journal of the European Union*.
- (45) The 10-year limitation period prohibits any recovery before 15 September 2001.
- (46) The amount of incompatible aid in regard to tax is to be calculated on the basis of Articles 3, 4 and 5 of the regulation of 17 October 2001, Articles 4 to 7 of the regulation of 18 December 2006 and Articles 4, 5 and 6 of the tax regulations of 17 December 2007, 15 December 2008, 9 November 2009, 20 December 2010 and 5 December 2011.
- (47) Those dates are indicated in annex 10.
- (48) Judgment of Brussels Court of Appeal of 29 April 2016 (9th chamber) in Case 2011/AR/140.
- (49) Tax regulations of 17 December 2007, 15 December 2008, 9 November 2009, 20 December 2010 and 5 December 2011. Article 2 of those regulations provided that ‘the advertising displays referred to in this regulation are advertising displays, temporary advertising displays, advertising vehicles and advertising stands’. The calculation of the tax was regulated in Articles 4 to 6. More precisely, according to Article 4, ‘Tax on advertising displays’:
- (a) ‘the rate of tax on advertising displays shall be EUR 150 per financial year per m².
- (b) §1. The rate of tax on advertising displays designed exclusively for advertising for cultural, social and sporting purposes and similar advertising including advertising for films, artistic creations and announcements of fairs, conferences, exhibitions and circuses shall be EUR 50 per financial year per m².
 §2. However, when over 1/7 of the visible advertising area is used for commercial information, names or logos, advertising displays designed exclusively for advertising for cultural, social and sporting purposes and similar advertising including advertising for films, artistic creations and announcements of fairs, conferences and exhibitions shall be taxed at the rate specified in paragraph (a) of this article.
- (c) The tax shall be payable for the whole financial year, irrespective of the date of installation or dismantling of the advertising display in question.’
- According to Article 5, Tax on temporary advertising displays ...
- According to Article 6, Provisions common to Articles 4 and 5:
- (a) ‘the tax shall be payable for each advertising display.
- (b) §1. For the tax calculation, any fraction of a m² shall be counted as a full m².
 §2. Notwithstanding §1, for advertising displays of less than 4 m², taxation shall be by tranche or fraction of 0,25 m² at the fixed rate divided by 4.
- (c) For advertising displays with several screens the tax rate shall be multiplied by the number of screens.
 a. For advertising displays with a system allowing the succession or scrolling of several advertisements on the same screen, the tax rate shall be doubled.
- (d) When the size of the advertising displays differs from the visible advertising area, the tax shall be calculated on the basis of the visible advertising area.’
- (50) Article 5 provided that, inter alia, ‘notices by the City or bodies set up by, subordinate to or financed by the City’ were exempt from the tax laid down in that regulation. As stated in the comments by

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- the Belgian authorities of 20 February 2017, in answer to the supplementary questions from the Commission of 14 February 2017, the City of Brussels never operated the advertising displays itself. They were always operated by third parties. The only displays belonging to the City of Brussels are those governed by the public contract awarded on 14 October 1999, which was renewed on expiry. The present successful tenderer, CCB, pays rent for the advertising displays as well as the applicable taxes.
- (51) Article 9 of the tax regulation of 17 December 2007 expressly exempts ‘advertising displays of the City or bodies set up by or subordinate to the City’.
 - (52) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67).
 - (53) See paragraph 33 of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).
 - (54) Ibid., paragraph 47.
 - (55) Barcelona and Antwerp are cited as examples.
 - (56) For example, as regards financing the specifications state that the contracting authority is ‘open to different financial approaches’.
 - (57) See Article 2(a) of the 2012 SGEI decision.
 - (58) Order of 25 November 2010 governing the operation of an automated cycle hire public service, published in the *Moniteur belge* on 7 December 2010, Article 2.
 - (59) The GRP is an index determining the commercial value of an advertising screen according to its capacity to reach as many consumers as possible and the frequency of visual contacts between the screen and the target consumer.
 - (60) The management committee is set up by Article 6 of the Villo agreement and is composed equally of at least two members appointed by the Minister for Mobility from the Brussels mobility department and at least two members appointed by JCD.
 - (61) Corresponding to a standard ratio of [10-20] % on revenue.
 - (62) Judgment of the Court of Justice in Case C-280/00, *Altmark Trans and Regierungspräsidium Magdeburg*, ECLI:EU:C:2003:415, paragraphs 87 to 95.
 - (63) See recital 82 of the opening decision.
 - (64) Judgment of the Court of Justice of 4 June 2005 in Case C-15/14 P, *Commission v MOL*, ECLI:EU:C:2015:362, paragraph 60; judgment of the Court of Justice of 30 June 2006 in Case C-270/15 P, *Kingdom of Belgium v Commission*, ECLI:EU:C:2016:489, paragraph 49; judgment of the General Court of 13 December 2017 in Case T-314/15, *Hellenic Republic v Commission*, ECLI:EU:T:2017:903, paragraph 79.
 - (65) See Article 3 of the 2005 SGEI decision and of the 2012 SGEI decision.
 - (66) See judgment 68/2012 of the Belgian Constitutional Court of 31 May 2012.
 - (67) OJ C 8, 11.1.2012, p. 4.
 - (68) On that point, see in particular the decision of 25 January 2012 in Case SA.14588 and the decision of 10 July 2018 in Case SA.37977.
 - (69) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).
 - (70) See also recital 109 of the opening decision.
 - (71) Judgment of the Court of Justice of 12 July 1973 in Case C-70/72, *Commission v Germany*, ECLI:EU:C:1973:87, paragraph 13.
 - (72) Judgment of the Court of Justice of 21 March 1990 in Case C-142/87, *Belgium v Commission*, ECLI:EU:C:1990:125, paragraph 66.

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- (73) Judgment of the Court of Justice of 17 June 1999 in Case C-75/97, *Belgium v Commission*, ECLI:EU:C:1999:311, paragraphs 64 and 65.
- (74) Judgment of the Court of Justice of 12 February 2008 in Case C-199/06, *CELF and Ministre de la Culture et de la Communication ('CELF I')*, ECLI:EU:C:2009:79.

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