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)

COMMISSION DECISION (EU) 2019/2120

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 19 April 2011, recorded as incoming mail on 26 April 2011, the Commission received a complaint lodged by Clear Channel Belgium ('CCB') against the Belgian State concerning the alleged granting of unlawful aid incompatible with the internal market to its competitor, JCDecaux Street Furniture Belgium ('JCD'), formerly JCDecaux Belgium Publicité SA.

(2) On 29 May 2013, the Commission received a second complaint concerning the alleged granting of unlawful aid incompatible with the internal market to JCD. The complainant ('the second complainant') wished its identity to remain confidential.

(3) By letter of 24 March 2015 the Commission notified Belgium of its decision to initiate the procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in regard to the alleged aid measures.

(4) The decision by the Commission to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* on 19 June 2015[2]. The Commission invited the interested parties to submit their comments on the alleged aid measures in question.

(5) Belgium submitted its comments on 21 July 2015. The Commission received written comments from CCB on 16 July 2015, and from the second complainant which has asked for its identity to remain confidential and from JCD on 17 July 2015. The Commission forwarded the interested parties' comments on the opening decision to Belgium by letters of 24 July and 13 August 2015. It received Belgium's comments on these by letter of 2 October 2015.

(6) Additional discussions and exchanges also took place with the Belgian authorities, JCD and CCB. In that connection, the Commission sent a request for information to Belgium and to the interested parties on 15 April 2016. Belgium replied to the request for information on 20 June 2016 and sent subsequent comments on 26 January 2017, 20 February 2017, 20 March 2017 and 23 January 2019.

(7) CCB sent further comments on 1 December 2015, 23 May 2016, 20 September 2016 and 24 March 2017. JCD sent further comments on 12 October 2015, 29 March 2016, 15 July 2016 and 16 May 2017.

(8) The comments submitted by CCB on 16 July 2015 on the Commission decision to initiate the procedure contained an additional complaint against JCD.

2. DESCRIPTION OF COMPLAINTS

2.1. The complainant CCB and the alleged beneficiary of the aid, JCD

(9) CCB and JCD are two of the main players in the outdoor advertising sector in Belgium. The two companies belong to international groups operating in the large and small format outdoor advertising sector.

(10) CCB is a subsidiary of the international group CC Media Holding, which owns Clear Channel Communication Inc., a multinational corporation with its head office in the United States and branches in 28 countries in Europe, the Asia-Pacific Region and Latin America. In Belgium, CCB markets thousands of large and small format advertising displays. It also supplies and manages street furniture and self-service cycle hire schemes.

(11) JCD is the Belgian subsidiary of the French company JCDecaux SA, a global actor in the outdoor advertising sector and the supply, installation and maintenance of street furniture, as well as the supply and management of self-service cycle hire schemes.

(12) The complaint by CCB to which this decision relates concerns the following two aspects[3]. The complaint by the second complainant concerns only the second aspect.

2.2. Advertising displays governed by the 1984 contract

2.2.1. *Context*

(13) The City of Brussels[4] and JCD signed two contracts for the installation of advertising displays in the City of Brussels, one in 1984 and one in 1999. The two contracts were for the installation of street furniture paid for by advertising displays measuring approximately 2 m^2, constituting a medium that could be used for advertising (one or two advertising screens and even six screens for displays with a scrolling system on each side). Small format advertising displays in Belgium are distinctive in that small format panels are usually integrated into street furniture.

(14) The two contracts that are the subject of the complaint have different characteristics, which are described below.

(15) The contract of 16 July 1984 ('the 1984 contract'), for a period of 15 years, provided that JCD would install and could use bus shelter advertisements and street furniture known as 'MUPIs' (with two screens, one reserved for the City of Brussels and the other usable by JCD for advertising) on the following conditions:

(i) the contract did not provide for JCD to make any payment to the City of Brussels for rent, right of occupancy or charges for the panels belonging to JCD, but JCD was to offer the City of Brussels a number of benefits in kind: free provision of waste-paper bins, public toilets and electronic newspapers, display of a general map, a tourist and hotel map and a map of pedestrianised streets in the City of Brussels;

(ii) each display could be used for a period of 15 years, running from its installation at any time throughout the period of the 1984 contract, which was also for 15 years (1984-1999). Accordingly, at the end of the 1984 contract in 1999 a large number of advertising displays governed by the 1984 contract could still be used until the end of their 15-year operating period.

(16) The contract of 14 October 1999 ('the 1999 contract') replaced the 1984 contract following a call for tenders by the City of Brussels for the purchase and installation and the maintenance and management of information, bus shelter and display panel street furniture, part of which could be used for advertising. This was won by JCD.

(17) Although it related to similar furniture to the 1984 contract, the 1999 contract (for a period of 15 years) provided that:

(i) the new street furniture covered by the contract would be owned by the City of Brussels[5] and JCD would pay monthly rent to use it for advertising;

(ii) JCD was to remove all the old street furniture installed under previous contracts between the City of Brussels and JCD. To take account of the furniture governed by the 1984 contract for which the 15-year period was still ongoing, a timetable attached to the 1999 contract ('annex 10') specified the exact dates on which the panels were to be removed (between 1999 and 2010). Annex 10 listed 282 bus shelters and 198 displays that remained subject to the 1984 contract, indicating their positions and removal dates.

2.2.2. *Subject of the complaint*

(18) CCB considers that JCD benefited from incompatible State aid by continuing to use certain displays governed by the 1984 contract after the dismantling date specified in the 1999 contract without paying rent or taxes to the City of Brussels.

2.3. **Villo**

2.3.1. *Context*

(19) In order to provide a form of soft mobility in its area, the Brussels Capital Region decided to set up an automated self-service cycle hire scheme on public property.

(20) For that purpose, the Region issued a call for tenders on 15 March 2008, which was won by JCD on 13 November 2008. On 5 December 2008 the Brussels Capital Region signed a public service concession for operation of the Villo automated cycle hire scheme in the Region ('the Villo agreement') for a total of 15 years (extended by two years in 2011 due to delays in the implementation of the agreement). The agreement provided for:

(i) the installation and management of an automated cycle hire scheme (2 500 bicycles at 200 stations in the initial phase starting on 16 November 2009, to be extended to 5 000 bicycles in a second phase from 2011), for a total period of 15 years (until 2026);

(ii) the management and use of advertising displays to finance the cycle hire scheme in addition to client payments; in that connection, JCD uses advertising displays integrated into bicycle stations as well as separate displays away from those stations (mainly 2 m^2 and also 8 m^2 advertising spaces).

(21) The estimated total turnover from the concession over the whole period is approximately EUR [100-150] million. About [30-40] % of the revenue comes from users and the rest from advertising.

(22) In addition, in the negotiation of the Villo agreement the Region granted JCD certain financial benefits not mentioned in the call for tenders[6]:

(i) exemption from the charge for occupancy of public property in the Brussels Capital Region on 8 m^2 advertising displays; the maximum amount exempted is set at EUR [50 000-150 000] per year[7];

(ii) a hardship clause for regional taxes (neutralisation of changes to regional taxes), on the principle that, if regional taxes increase, JCD can be compensated for the increase; however, that clause has never been applied;

(iii) a price revision clause for municipal taxes (neutralisation of municipal tax increases), on the principle that, if municipal taxes rise above EUR 75/m^2, JCD is to be compensated for the increase; the Belgian authorities originally considered that the compensation provided for by that clause would not exceed EUR [250 000-350 000] per year[8].

2.3.2. *Subject of the complaint*

(23) CCB and the second complainant consider that JCD has benefited from State aid through the financing of the Villo concession.

(24) According to the complainants, all the financing measures (use of advertising displays and additional benefits granted to JCD) constitute State aid.

(25) Furthermore, they argue, the State aid cannot be considered compatible with the internal market on the basis of Union rules on compensation for public service and in particular Commission Decision 2012/21/EU[9] (the '2012 SGEI decision'), in so far as JCD has been very substantially overcompensated (particularly since JCD was allocated too large a number of advertising displays).

3. ASSESSMENT OF THE PART OF THE COMPLAINT CONCERNING ADVERTISING DISPLAYS GOVERNED BY THE 1984 CONTRACT

3.1. Grounds for initiation of procedure

(26) The Commission took the view that, as regards the use of certain advertising displays by JCD in the City of Brussels governed by the 1984 contract, kept in place after their scheduled removal dates (as indicated in annex 10 to the 1999 contract), all the criteria for State aid were met and that the measure accordingly constituted State aid within the meaning of Article 107(1) of the TFEU.

(27) Since none of the conditions required to declare the aid compatible appeared to apply, the Commission decided to initiate the procedure provided for in Article 108(2) of the TFEU.

3.2. Comments submitted by interested parties on the opening decision

(28) The Commission received comments from CCB and JCD, which are summarised below. st

3.2.1. *Comments submitted by CCB*

(29) In reply to the opening decision, CCB states that it agrees with the Commission's view that the use by JCD of advertising displays installed in the City of Brussels under the 1984 contract, and kept in place after their scheduled removal dates without payment of any rent or tax, constitutes State aid within the meaning of Article 107(1) of the TFEU and is incompatible with the internal market.

(30) CCB also states that it agrees with the Commission that there are serious doubts as to the reality and relevance of the compensation mechanism relied on by the Belgian authorities to justify keeping the contested displays in place after their scheduled removal dates. In CCB's opinion, the Belgian authorities have not provided any evidence that that compensation mechanism was formally established before the contested displays were unlawfully kept in place.

(31) CCB stresses that the advantage JCD enjoyed through the use of the 1984 displays after their scheduled removal dates is in excess of EUR 2 150 000, not including interest. CCB bases that on two bailiffs' reports obtained at its request on 3 December 2007 and 21 December 2009, recording the furniture installed under the 1984 contract which was still in place on those dates. CCB also states that the fact that the Belgian authorities themselves are taking as their basis the bailiffs' reports requested by CCB (see section 3.3.2) shows that there was no detailed monitoring of the displays kept in place after the dates initially scheduled and that, in the absence of proof to the contrary from the Belgian authorities, the number of displays to be considered in calculating the advantage conferred on JCD is 86, or 119 advertising screens.

(32) Finally, CCB agrees with the Commission's assessment that from 2002 taxes were payable on the advertising displays irrespective of the original contract. The early removal of a display governed by the 1984 contract did not deprive JCD of any tax saving, because the taxes would in any case have been payable on the displays if they had been kept in place. That renders the argument of an offset between early and late removals inoperative as far as those taxes are concerned. CBB also reiterates its claim that those tax exemptions create major distortions of competition in the Belgian outdoor advertising market and result in a competitive disadvantage, since JCD's competitors, including CCB, have had to pay advertising taxes on the displays they operate in the City of Brussels.

(33) CCB points out that, in a judgment of 29 April 2016, the Brussels Court of Appeal found that JCD had failed to adhere to the removal dates provided for in annex 10 to the special conditions for the 1999 contract and had operated

a number of advertising displays on public property in the City of Brussels for several years without right or title[10]. CCB also points out that the Court rejected the argument put forward by JCD that there was an offset between early and late removals.

(34) CCB considers that the advertising revenue from the commercial operation of the advertising displays kept in place after the removal date specified in annex 10 might also constitute State resources, since the State could have operated those displays itself.

(35) In the comments submitted on 16 July 2015 on the Commission decision to initiate the procedure, CCB lodged an additional complaint against JCD in regard to the taxes JCD had not paid the Belgian State on the displays covered by the 1999 contract.

3.2.2. *Comments submitted by JCD*

(36) In its comments on the opening decision, dated 17 July 2015, JCD points out that the public authority (the City of Brussels) was under an obligation to maintain the economic balance of contracts to which it was party. In order to compensate for the losses of advertising revenue as a result of the early removal of the displays concerned and maintain the economic balance of the 1984 contract, according to JCD, it was logical for the City of Brussels to allow the retention and operation of a number of other displays governed by the 1984 contract after their scheduled removal date. JCD states that the existence of that offset is indisputable and is established by various items of evidence, including many submissions and communications from the City of Brussels in the course of the preliminary investigation.

(37) JCD maintains that the operation of the advertising displays in question was never governed by the 1999 contract and some street furniture had been kept in place in performance of the 1984 contract without any transfer of public resources. Retention of that furniture was neutral from the point of view of State resources, since it compensated for the early removal of other furniture governed by the same contract.

(38) In JCD's view, it follows from the very principle of an offset that the use for advertising of furniture kept in place after its expiry date should be subject to the same rules as had been applicable to displays withdrawn early, i.e. to the 1984 contract.

(39) JCD therefore contests the claim that it enjoyed a selective advantage as a result of a transfer of public resources under contracts lawfully signed with the City of Brussels. JCD considers that it did not save any rent and taxes under the 1999 contract and that the services provided were a public service.

(40) In particular, according to JCD, the exemption from paying rent is due to the compensation mechanism governed by the 1984 contract.

(41) As regards the exemption from taxes, the position of the City of Brussels in not charging taxes for street furniture contracts only — in contrast to advertising displays — is entirely consistent with the need to maintain the economic balance of the contracts, since neither the displays governed by the 1984 contract nor those governed by the 1999 contract were taxable, irrespective of the adoption of a tax regulation by the City of Brussels in 2002.

(42) According to JCD, the City of Brussels adopted an initial tax regulation for temporary advertising in and on public property only for the 2002 financial year (the tax regulation of 17 October 2001), whereas the 1984 contract expired in 1999. Consequently that tax would not have applied to the use of displays under the 1984 contract for advertising even if extended in the 2002 financial year and thereafter. JCD contends that the non-taxation of those displays cannot constitute a selective advantage for the contractor, because it reflects a general principle that has not resulted in more favourable treatment for JCD compared with any undertaking in a similar situation, and cannot therefore be considered State aid.

(43) Furthermore, on the theoretical assumption that the contract did become taxable the conditions of the 1984 contract should have been revised, as the contract provided.

(44) In JCD's view the use of the displays under the 1999 contract for advertising was not subject to payment of an advertising tax either. The advertising tax regulation adopted by the City of Brussels in 2002 did not apply, since JCD was already paying a monthly rent to use them as an advertising medium, which was the only charge on the use of the displays for advertising under the 1999 contract. Furthermore, the tax regulation expressly exempts City of Brussels advertising displays and hence the displays under the 1999 contract.

(45) In support of those arguments, JCD submits to the Commission two judgments of 4 November 2016, in which the French-speaking Court of First Instance in Brussels found that JCD was not liable for municipal advertising tax for the advertising displays installed in the City and owned by the City of Brussels under the contract awarded to JCD on 14 October 1999. The judgments then ordered repayment of the sums paid for the financial years 2009 to 2012.

(46) JCD contends that, if the compensation mechanism described above created a potential imbalance in JCD's favour, that hypothetical imbalance could not have strengthened JCD's competitive position compared with its competitors on the relevant markets, since it was minimal.

(47) In particular the hypothetical imbalance could not, in JCD's view, have made it more difficult for undertakings established in other Member States to penetrate those markets. JCD also points out that the Commission has already expressed the view that certain measures had effects only at local level and therefore did not affect trade between Member States.

3.3. Comments submitted by Belgium

3.3.1. *Comments by Belgium on the opening decision*

(48) The Belgian authorities recognise that JCD continued to use certain panels governed by the 1984 contract after the dismantling date specified in the 1999 contract, as laid down in annex 10. JCD did not pay rent or tax to the City of Brussels for those advertising displays, unlike the panels governed by the 1999 contract, for which rent was paid from the start of the contract and taxes were also charged, but only from 2009[11]. That situation lasted until August 2011, when the last displays were dismantled.

(49) The Belgian authorities do not dispute that the measures are imputable to them and more particularly to the City of Brussels. They explain that they agreed to the displays governed by the 1984 contract being kept in place after the date stipulated in annex 10 in order to maintain the balance of the contract with JCD, because other displays had been removed early at the request of the City of Brussels with a view to the installation of other types of furniture preferred for mainly aesthetic reasons and more specifically new art nouveau type street furniture.

(50) The Belgian authorities take the view that that early removal resulted in a loss for JCD, which had given up displays for which no rent or tax was payable until the date specified in annex 10 for their removal, and that, to offset that loss, it was acceptable for other displays to be kept in place for longer than scheduled and for no rent or tax to be charged on those displays.

(51) The Belgian authorities acknowledge that JCD enjoyed an economic advantage overall, but only because of an imbalance between the number of displays removed early (before their scheduled removal date) and the number kept in place after the removal date stipulated in annex 10. Article 4.5 of the agreement signed between the City of Brussels and JCD in 1984 provided that the display and bus shelter media were to be exempt from rent, right of occupancy and charges. According to the Belgian authorities, the exemption has to be assessed in light of the fact that, at the time the agreement was signed, the City of Brussels had not adopted any regulations taxing advertising media.

(52) The Belgian authorities maintain that JCD has, firstly, waived a saving on rent and taxes by agreeing to remove displays early and, secondly, saved rent and taxes by keeping displays in place after the scheduled removal dates. When the difference is calculated between the savings lost by JCD as a result of the early removals and the additional savings made by keeping displays in place longer than specified in annex 10, according to the Belgian authorities, JCD enjoyed an overall financial advantage of not more than EUR [100 000-150 000] between December 1999 and 2011.

(53) In that connection, the Belgian authorities argue that the measure easily fell within Commission Regulation (EC) No 1998/2006[12] (‘the 2006 *de minimis*

regulation'), which establishes that certain small amounts of aid (less than EUR 200 000 over a period of three tax years) are deemed not to affect trade between Member States and therefore not to meet all the criteria of Article 107(1) TFEU.

(54) The Belgian authorities also provide clarification on certain claims by CCB mentioned in the opening decision. Firstly, the basic estimate of 86 displays given by CCB is incorrect, since CCB's bailiff's reports (see recital 31) show 80 displays. Furthermore, CCB incorrectly described certain displays as bus shelters when they were information panels for the city. Secondly, CCB indexes the estimated amount of rent incorrectly, since according to the City of Brussels the rent should be indexed to the contract anniversary date[13]. Thirdly, there are errors in the estimated amount of taxes payable by JCD as indicated by CCB.

3.3.2. *Comments by Belgium on the comments of the interested parties*

(55) In their written comments of 2 October 2015, the Belgian authorities state that the non-recovery by the City of Brussels of taxes payable by JCD under the 1999 contract when legal proceedings were under way is not an advantage conferred by the City of Brussels but results from the application of Belgian law and judgments by Belgian courts, according to which a municipal authority is prevented from distraint or recovery of the part of a tax exceeding what is indisputably payable. When an action such as that brought by JCD relates to the whole of the tax, distraint or recovery are impossible. That situation does not mean that a party liable for tax which brings legal proceedings is exempt from the tax, as CCB contends. Furthermore, from an accounting point of view the taxes, even if disputed, must be included as an operating charge. Therefore no State aid can arise out of the non-recovery by the City of Brussels of taxes charged to JCD which are the subject of legal proceedings.

(56) In their written comments of 20 June 2016, in reply to the questions from the Commission in its letter of 15 April 2016, the Belgian authorities confirm that the City of Brussels started to tax the advertising displays installed under the contract awarded on 14 October 1999 only from the 2009 tax year. However, in the tax regulation of 17 October 2001 on temporary advertising in and on public property, the City of Brussels had introduced a tax on temporary advertising in and on public property and had provided for tax exemption only for its own notices[14]. The Belgian authorities state that the tax regulations on advertising displays entered into force for the first time on 1 January 2002, so that no tax was payable for 2001, and that those tax regulations applied to the displays under the 1999 contract.

(57) They also explain that the City of Brussels did not charge the amounts of those taxes for the 2002 to 2008 tax years because the City initially considered that the displays installed under the 1999 contract, which belonged to it and

were operated by JCD, were not taxable in accordance with the tax exemption provided for in Article 5 of the tax regulation of 17 October 2001, which related exclusively to the City of Brussels's own notices. Furthermore, an exemption specifically for advertising displays of the City of Brussels or bodies set up by, subordinate to or financed by the City had been introduced in the tax regulation of 18 December 2006 and successive tax regulations.

(58) The first charges were made on 29 July 2011, for the 2009 tax year. According to Article 6 of the law of 24 December 1996, since repealed by an order of 3 April 2014, tax could not be made retroactive for more than three years from 1 January of the tax year.

(59) The Belgian authorities state that the City of Brussels has decided no longer to apply the exemption, taking the view that to exempt advertising displays solely on the grounds that they belonged to the City of Brussels when it was not the operator was unfair to operators of other advertising displays. In the opinion of the City of Brussels, although it could actually be justified in exempting advertising displays used for its own purposes or those of bodies which it had set up or which were subordinate to it, exemption was not justified when they were operated by a third party and in particular a commercial undertaking active in the outdoor advertising sector.

(60) The exemption provided for in the tax regulation was designed to avoid the City having to tax itself, which would not have earned it any extra revenue and would have added to the administrative work of its finance department, when the aim of any tax regulation is for the taxing authority to obtain extra financial resources. However, as stated in the comments from the Belgian authorities on 20 February 2017 in answer to the Commission's supplementary questions of 14 February 2017, the City of Brussels never operated the advertising displays itself. They were always operated through third parties. The only advertising displays belonging to the City of Brussels were those under the public contract awarded to JCD on 14 October 1999. When the 1999 contract expired, a new call for tenders was issued and was won by CCB, which is now the successful tenderer. Under the present contract CCB pays rent for the advertising displays as well as the applicable taxes.

(61) The Belgian authorities state that operators who use their own displays pay only the taxes due and that the rent for use of the advertising displays is added to the taxes when the displays belong to the City of Brussels. That rent in no way replaces the taxes levied on such displays. The rent is a consideration for the right to operate the displays belonging to the City of Brussels. If no rent were paid, operators would be able to use City of Brussels displays free of charge when the City had had to pay the cost of acquiring them. It is therefore logical that they should have to pay rent. On the other hand, operators not using City of Brussels displays have to pay the whole cost of the investment in manufacturing or purchasing advertising displays.

(62) The Belgian authorities explain that, in two judgments on 4 November 2016, the French-speaking Court of First Instance in Brussels found that, according to Article 9 of the tax regulations for 2009-2012, JCD was not liable for municipal advertising tax for the advertising displays installed in the City of Brussels that belonged to the City of Brussels under the contract awarded to JCD on 14 October 1999. The judgments then ordered repayment of the sums paid for the financial years 2009 to 2012.

(63) The Belgian authorities also confirm that the City of Brussels appealed against the two judgments of 4 November 2016, relating respectively to the tax years 2009-2010 and the tax years 2011-2012. In the appeal proceedings, the City of Brussels argued that the Court's interpretation of Article 9 of the tax regulation as allowing JCD's exemption raised the question of its compatibility with Articles 106 and 107 TFEU.

(64) On the other hand, the City of Brussels did not charge the taxes payable on the advertising displays governed by the 1984 contract which had been kept in place after the scheduled removal date.

(65) The Belgian authorities state that they are unable to indicate the amount of unpaid rent and taxes on the displays kept in place after the removal date specified in annex 10 for the period 1 January 2002 to 21 August 2010.

3.4. **Assessment of measures**

3.4.1. *Displays governed by the 1984 contract: subject of this decision*

(66) The Commission's assessment relates only to the retention of the 1984 displays after the expiry of their period of operation and does not concern the 1984 contract itself. That is justified particularly by the fact that, according to Article 17 of Council Regulation (EU) 2015/1589[(15)], the Commission may not recover aid after a limitation period of 10 years.

(67) The displays installed under the 1984 contract could be installed up to the end of the period of validity of the 1984 contract (i.e. until 1999) and could be used for 15 years (i.e. possibly until 2014). Any aid provided via those displays by the 1984 contract, assuming that all the conditions of Article 107(1) were fulfilled, could therefore have been granted only at the time when JCD was authorised by the Brussels authorities to install the display in question and hence before 1999, the year the contract expired. Thus any aid to JCD would have been granted more than 10 years before the Commission's first request to the Belgian authorities for information, which was on 15 September 2011.

(68) On the other hand, as regards the displays governed by the 1984 contract kept in place without payment of rent and taxes after the date specified in annex 10 to the 1999 contract, any aid to JCD under those circumstances would have been granted at the time the Brussels authorities (tacitly) authorised non-compliance with the schedule specified in that annex. The Commission's

assessment below relates only to the extent to which keeping the displays governed by the 1984 contract in place after the date specified in annex 10 may have involved State aid to JCD obtained after 15 September 2001 (i.e. within the limitation period referred to in Article 17 of Regulation (EU) 2015/1589).

(69) Nor does the decision concern an assessment of the classification as State aid of the exemption from taxes payable to the Belgian State by JCD on displays under the 1999 contract, which was outside the scope of the opening decision.

3.4.2. *State aid within the meaning of Article 107(1) TFEU*

(70) According to Article 107(1) of the TFEU, aid granted by States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the internal market in so far as it affects trade between Member States.

(71) According to settled case-law, classification as aid within the meaning of Article 107(1) TFEU requires that all the conditions referred to by that provision be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must give a selective economic advantage to its beneficiary; (iii) it must distort or threaten to distort competition; and (iv) it must be likely to affect trade between Member States[16].

3.4.2.1. *Imputability and State resources*

(72) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU, it must be granted by the State or through State resources. State resources comprise all public sector resources[17], including the resources of intra-State bodies (decentralised, federal, regional or other)[18].

(73) Advantages conferred directly or indirectly through State resources may be considered aid within the meaning of Article 107(1) TFEU. The presence of a State resource may take a negative form, where there is a loss of revenue for the public authorities. According to settled case-law, waiving resources that should in principle have been paid to the State budget constitutes a transfer of State resources. Similarly, measures which mitigate the charges which are normally included in the budget of an undertaking may constitute State resources[19].

Imputability

(74) The Belgian authorities do not dispute that the measure is imputable to them and more particularly to the City of Brussels. They explain that they agreed to the displays governed by the 1984 contract being kept in place after the date stipulated in annex 10 in order to maintain the balance of the contract with JCD, because other displays had been removed early at the request of the City of Brussels with a view to the installation of other types of furniture preferred for mainly aesthetic reasons (see recital 49).

State resources

(75) The Belgian authorities also recognise that keeping the displays in place after the date specified in annex 10 caused a loss of revenue to the City of Brussels in terms of the rent and taxes not charged on the displays that would otherwise have been replaced by displays under the 1992 contract, for which rent and taxes would have been payable.

(76) It is therefore not disputed that JCD's retention of the 1984 displays after the dates specified in annex 10 is imputable to the Belgian State, and that State resources were forfeited as a result. However, the Commission and the Belgian State take a different view of the classification of those State resources, i.e. the amount of rent and taxes waived by the City of Brussels (see section 3.4.5).

(77) Accordingly, the Commission considers that this measure constitutes a transfer of State resources within the scope of Article 107(1) TFEU.

(78) As indicated in recital 34, in its written comments CCB expresses the view that advertising revenue from the commercial operation of advertising displays kept in place after the removal date stipulated in annex 10 might also constitute State resources, since the State could operate those displays itself.

(79) The Commission considers, firstly, that the advertising revenue received by JCD clearly does not constitute State resources, because the advertising revenue comes from private contracts between JCD and its clients in which the State is in no way involved.

(80) Moreover, the City of Brussels cannot be held to be waiving State resources simply because it is not itself engaging in a particular economic activity. Such an approach to State resources would be extremely broad and would prevent the State from authorising activities in its territory without first verifying that it could not perform the activity itself.

(81) Furthermore, even if it were theoretically possible for a public authority to engage in a particular economic activity, that is clearly not its main function and in it does not in principle have the necessary know-how, skills or technical resources. It might, for example, be remarked in the present case that advertising contracts are generally countrywide. The City of Brussels would not have the means to negotiate such contracts since it has authority only over the panels it owns in the City of Brussels. Any ability to generate revenue from those panels would therefore bear no comparison to that of JCD.

3.4.2.2. *Existence of an economic advantage*

(82) An advantage caught by Article 107(1) TFEU is any economic advantage that an undertaking would not have obtained in normal market conditions, i.e. without State intervention[20]. Only the effect of the measure on the undertaking is relevant, not the reason for the State intervention or its purpose[21].

(83) According to the Court of Justice, an advantage exists when the financial situation of an undertaking is improved by the intervention of the State. Hence not only a positive benefit but also all State intervention that, in various forms, mitigates the charges normally included in the budget of an undertaking constitutes an advantage[22].

(84) In the present instance, from 1999 onward and as the authorisations based on the 1984 contract expired, JCD continued to use advertising displays in the City of Brussels without paying rent or taxes for their operation, when according to the 1999 contract the displays should have been removed and, likewise under the 1999 contract, rent and taxes would have been payable for the operation of new advertising displays replacing them.

(85) The Belgian authorities acknowledge that JCD enjoyed an economic advantage overall, but only because of an imbalance between the number of displays removed early, before their scheduled removal date, and the number kept in place after the removal date stipulated in annex 10. Even if the Commission were to share that view, which it does not, the presence of an advantage would in any event be clear.

(86) The Commission notes, firstly, that the Belgian authorities accept in principle that an advantage exists: they merely contest the scale of the advantage.

(87) Furthermore, the Belgian authorities consider the measure to be compensation awarded to JCD to offset the disadvantage resulting from the early withdrawal of a number of displays. On that point, the Commission refers to the judgment in *Orange* v *Commission*[23], in which the Court of Justice upheld the opinion of the General Court[24] and the Advocate General[25] that even a reduction in charges granted to an undertaking, with the cancellation of additional charges as a result of a derogation that did not apply to competing undertakings, constituted State aid[26]. The only compensation involving a transfer of public resources which is not classified as State aid is compensation for a public service awarded in accordance with the *Altmark* case-law[27].

(88) The 1984 and the 1999 contracts are purely commercial contracts and their provisions do not entrust JCD with a public service responsibility. Thus the *Altmark* case-law regarding payment for the supply of a public service is not applicable.

(89) It therefore seems that, on that basis, the compensation referred to by the Belgian authorities, even assuming it is actually designed to offset the disadvantage related to a potential obligation to withdraw certain displays ahead of schedule, necessarily confers an advantage on JCD. The conclusion is all the more sound in the present case in that it is hard to believe that JCD suffered from a structural disadvantage, since it agreed to remove the displays on its own initiative, and, furthermore, the Belgian authorities themselves

recognise that the compensation in question went beyond what was required by the alleged disadvantage.

(90) That argument is also consistent with paragraph 69 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union ('Notice on the notion of State aid')[28], which emphasises that 'Costs arising from regulatory obligations imposed by the State[29] can in principle be considered to relate to the inherent costs of the economic activity, so that any compensation for these costs confers an advantage on the undertaking[30]. This means that the existence of an advantage is in principle not excluded by the fact that the benefit does not go beyond compensation for a cost stemming from the imposition of a regulatory obligation. The same applies to relief for costs that the undertaking would not have incurred had there been no incentive stemming from the State measure because without this incentive it would have structured its activities differently[31]. The existence of an advantage is also not excluded if a measure compensates charges of a different nature that are unconnected with that measure[32].'

(91) In the present case it is not actually possible to equate the early replacement of the 1984 displays to a regulatory obligation, since JCD agreed to remove them on its own initiative, but it follows from paragraph 69 of the Notice on the notion of State aid that, if the removal of the displays had resulted from a regulatory obligation, the compensation of that early replacement would have conferred an advantage.

(92) It should also be noted that paragraph 71 of the Notice on the notion of State aid states that 'The existence of an advantage is excluded in the case of a reimbursement of illegally levied taxes[33], an obligation for the national authorities to compensate for damage they have caused to certain undertakings[34] or the payment of compensation for an expropriation[35]'.

(93) However, neither of those two situations applies in this case. There is no indication that the Belgian authorities caused JCD a loss for which they would have been obliged to compensate. JCD agreed to remove some of the 1984 displays on its own initiative, and it is reasonable to assume that it agreed because overall that gave it an advantage.

(94) Finally, the Commission will examine whether such compensation can be deemed normal behaviour on the part of a market operator, which might exclude the possibility of an advantage. However, the City of Brussels cannot be considered to have acted as a market operator in this instance. It has been established that the alleged compensation agreement was not formalised or monitored (which, moreover, explains why, according to the Belgian authorities themselves, there is a discrepancy between the number of displays removed and those replaced early). The Commission has not been presented with evidence of any kind of negotiation between the City of Brussels and JCD

on that point. There is no evidence of an evaluation by the City of Brussels of the actual loss incurred by JCD as a result of the early replacement of certain displays governed by the 1984 contract compared with the profit earned from keeping in place other displays, which were, moreover, completely amortised under the same contract (the cost of those panels, including JCD's margin, can be reasonably supposed to have been met in full from their operation during the legal duration of the 1984 contract). In view of the complete absence of an evaluation, a contract or monitoring, the behaviour of the City of Brussels cannot be considered to comply with the principle of a private market economy operator.

(95) The Commission's argument regarding the presence of an advantage was confirmed by the judgment of the Brussels Court of Appeal of 29 April 2016[(36)], in which the Court rejected JCD's appeal and upheld the judgment of the Brussels Court of First Instance of 13 December 2010.. More precisely, the Court confirmed that JCD had failed to adhere to the removal dates specified in annex 10 to the 1999 contract and that it had therefore used a number of advertising displays on public property in the City of Brussels without right or title. JCD had thus objectively acted unlawfully, contrary to honest market practice, since the use in its network of advertising displays that should not or should no longer be there gave JCD an unlawful competitive advantage that could divert advertisers from its competitor, CCB. The Court ordered the cessation of those unlawful practices and held that the dismantling of the advertising displays operated without right or title was necessary for the cessation of the unlawful practice.

(96) Accordingly, the Commission is of the opinion that the retention and operation of a number of advertising displays governed by the 1984 contract by JCD in the City of Brussels between 1999 and 2011, after the removal date specified in annex 10 to the 1999 contract, without paying any rent or tax, had the effect of reducing the costs that JCD would normally have incurred in the pursuit of its business and constitutes an economic advantage.

3.4.2.3. *Selectivity*

(97) In order to be considered State aid a measure must be selective, in other words it must favour certain undertakings or certain products within the meaning of Article 107(1) TFEU[(37)]. Accordingly, only measures selectively favouring undertakings are covered by the concept of aid.

(98) Firstly, it may be noted that the Belgian authorities do not dispute that the measure (the retention of the 1984 displays without paying rent or taxes after the expiry of the operating period specified for them in annex 10) is selective.

(99) The Belgian authorities have explained that the measure is compensation awarded to JCD to offset the early removal of some displays; such a measure is by its nature an individual measure, and in that context selectivity can normally be presumed once there is an economic advantage (see

section 3.4.2.2). In the absence of any indication to the contrary, that presumption applies in this case and is enough for the measure to be considered selective.

(100) It is also worth noting that it cannot be considered that the measure was not selective purely because JCD was in a unique legal and factual situation given that, as the only undertaking that had displays governed by the 1994 contract at its disposal, it was the only undertaking able to benefit from the measure.

(101) In the *Orange* judgment cited above, the Court of Justice upheld the view of the General Court that 'the test requiring a comparison of the beneficiary with other operators in a comparable factual and legal situation in the light of the aim pursued by the measure in question is based on, and justified by, the assessment of whether measures of potentially general application are selective and that test is therefore irrelevant where, as in the present case, it would amount to assessing the selective nature of an ad hoc measure which concerns just one undertaking[38]'.

(102) It is clear in the present case that the retention of the displays was an ad hoc measure with no general application, and therefore it is clearly selective.

3.4.2.4. *Distortion of competition and effects on trade between Member States*

(103) Public aid to undertakings constitutes State aid within the meaning of Article 107(1) TFEU only if it 'distorts or threatens to distort competition' and only 'in so far as it affects trade between Member States'.

Distortion of competition

(104) An aid measure granted by a State is considered to distort or threaten to distort competition when it is likely to strengthen the competitive position of its beneficiary by comparison with its competitors[39].

(105) For intervention by the State or through State resources to be capable of affecting trade between Member States and distorting or threatening to distort competition, it is sufficient that there should be effective competition in the market concerned at the time the aid measure is put into effect[40]. Competition is therefore presumed to have been distorted when the State grants a financial advantage to an undertaking in a liberalised sector in which competition exists or could exist.

(106) Since JCD operates in a market, the small format advertising display market, in which various undertakings compete, the grant or benefit of an aid measure favouring one of the players present has effects that could potentially distort competition.

Effects on trade between Member States

(107) According to the case-law of the Union courts, any aid granted to an undertaking operating in the internal market is capable of affecting trade between Member States[41].

(108) It is settled case-law that the Commission is not required to carry out an economic assessment of the markets concerned, the market share of the beneficiaries of the aid, the position of competing undertakings or trade between Member States[(42)]. In the case of State aid granted unlawfully, the Commission is not required to demonstrate the real effect it has had on competition and trade.

(109) The measure in question favouring JCD (the retention of advertising displays without payment of rent or taxes after the dates specified in annex 10) strengthens its position on the advertising displays market in the Brussels Capital Region and makes it more difficult for undertakings established in other Member States to penetrate that market[(43)]. Furthermore, both JCD and CCB operate in other European Union Member States[(44)]. It is also important to stress that advertisers are often international groups operating in a number of countries and that in some cases advertising campaigns themselves have an international dimension.

(110) Hence the measure is capable of affecting trade between Member States.

(111) However, it should be noted that, whilst recognising the existence of an advantage to JCD, the Belgian authorities consider that it is possible to rely on the 2006 *de minimis* regulation.

(112) Their argument is based on a calculation of the value of the advantage taking account of the arrangement to offset displays removed late against displays removed early.

(113) The Belgian authorities consider (see recitals 51 and 52) that JCD did enjoy an economic advantage overall, but only because of an imbalance between the number of displays removed early, before their scheduled removal date, and the number kept in place after the removal dates specified in annex 10. From their point of view, on the basis of an offsetting mechanism agreed between the parties, JCD on the one hand waived a saving on rent and taxes by agreeing to withdraw displays early and on the other hand saved on rent and taxes through the retention of displays after the scheduled removal date.

(114) When the difference is calculated between the savings lost by JCD due to the early removals and the additional savings made by keeping the displays in place for longer than specified in annex 10, according to the Belgian authorities, JCD enjoyed an overall financial advantage of not more than EUR [100 000-150 000] between December 1999 and 2011.

(115) Since they believe that the advantage conferred on JCD cannot exceed EUR [100 000-150 000], the Belgian authorities argue that the measure easily falls within the scope of the 2006 *de minimis* regulation.

(116) It is important to note at this stage that in fact two *de minimis* regulations are relevant to the period in question:

(a) Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ('the 2001 *de minimis* regulation'), valid from February 2001 to 31 December 2006, provides that certain small amounts of aid are deemed not to have an effect on trade between Member States and therefore not to meet all the criteria of Article 107(1) TFEU; the threshold is EUR 100 000 over three tax years;

(b) the 2006 *de minimis* regulation, valid from 1 January 2007 to 31 December 2013, likewise provides that certain small amounts of aid are deemed not to have an effect on trade between Member States and therefore not to meet all the criteria of Article 107(1) TFEU; here the threshold is EUR 200 000 over three tax years.

(117) Firstly, as explained in section 3.4.2.2, the Commission takes the view that the advantage exceeds that considered by the Belgian authorities, since the calculation of the advantage needs to take account of all rent and taxes not paid by JCD on the advertising displays kept in place after the scheduled removal date. The Commission does not have a precise valuation of the entire advantage conferred on JCD, since the Belgian authorities have refused to provide that information, but in any event the amount of aid granted to JCD exceeds EUR 200 000. Therefore the *de minimi*s regulations are not applicable and the Commission cannot accept the Belgian authorities' argument.

(118) Even if one of the *de minimis* regulations were to be applicable (*quod non*), the monitoring requirements laid down in Article 3 of the 2001 *de minimis* regulation and Article 3 of the 2006 *de minimis* regulation are in any event not met. Initially the Belgian authorities did not consider the arrangement to be *de minimis* aid, and therefore they did not take any of the steps provided for by the regulations.

(119) Nor does the measure comply with the transparency requirements laid down in Article 2(4) of the 2006 *de minimis* regulation, which provides: 'This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without need to undertake a risk assessment ('transparent aid')'. In the present case, the Belgian authorities have produced no document that might indicate the existence of a calculation made before the aid was granted, or even of specific monitoring of the balance between early and late removals on the basis of which they arrived at an aid amount of EUR [100 000-150 000].

(120) Accordingly, the aid in question cannot fall within the scope of the *de minimis* regulation.

(121) In conclusion, the Commission considers that the measure is capable of affecting trade between Member States.

3.4.2.5. *Conclusion*

(122) In view of the foregoing, the Commission concludes that the retention of the displays governed by the 1984 contract after their scheduled removal date meant that JCD was granted State aid consisting of two components, rent and taxes.

3.4.3. *Lawfulness of the aid*

(123) The Commission notes that the measure referred to in this part of the complaint, which constitutes State aid within the meaning of Article 107(1) TFEU, was not notified in accordance with Article 108(3) TFEU.

(124) Since the Belgian authorities provided no grounds for exemption from notification, the measure is therefore unlawful.

3.4.4. *Compatibility with the internal market*

(125) In so far as the operation by JCD of certain advertising displays in the City of Brussels governed by the 1984 contract after their scheduled removal date (indicated in annex 10 to the 1999 contract) involves the existence of State aid within the meaning of Article 107(1) TFEU, it has to be determined whether the aid can be considered compatible with the internal market.

(126) State aid measures can be considered compatible with the internal market on the basis of the derogations provided for in Article 106(2) and Article 107(2) and (3) TFEU. However, the Belgian authorities have adduced no arguments that those derogations apply in the present case.

(127) The Commission points out, firstly, that it is for the Member State to show that aid is compatible with the internal market. However, the Belgian authorities have not put forward any argument to show that the measures in question are compatible. The derogations provided for in Article 107(2) TFEU and Article 107(3)(a) to (d) TFEU do not apply in this instance, since the measure in question is not justified by any objectives specified by those provisions.

(128) Finally, the 1984 and 1999 contracts are purely commercial contracts and their provisions do not entrust JCD with any public service responsibility. Therefore the derogation provided for in Article 107(2) TFEU, which relates to payments for the provision of a public service, is not applicable.

(129) The Commission is therefore of the opinion that the retention of the displays governed by the 1984 contract after the removal date specified in annex 10 to the 1999 contract, without payment of rent or tax, had the effect of reducing the costs JCD would normally have incurred in the conduct of its business and that it must therefore be considered operating aid that is incompatible with the internal market.

(130) In view of the foregoing, the Commission considers that JCD has received unlawful aid that is incompatible with the internal market within the meaning of Article 107(1) TFEU through the retention of the displays governed by the

1984 contract after the removal date specified in annex 10 to the 1999 contract without payment of rent or tax. That aid is to be recovered in so far as its recovery is not time-barred under Article 17 of Regulation (EU) 2015/1589.

3.4.5. *Amount of the incompatible aid*

(131) The general principle that will be applied to calculate the amount of the incompatible aid is to estimate the amount of rent and taxes the City should have collected without the measure.

(132) The Commission considers that the amount of the incompatible aid should be calculated for each display governed by the 1984 contract kept in place after 15 September 2001[(45)], taking as the reference the rent due under the 1999 contract and the taxes generally applicable to advertising displays[(46)] between the original date specified for removal[(47)] (if the original date was after 15 September 2001) or 15 September 2001 (if the original date was before 15 September 2001) and the date on which removal actually took place.

(133) As indicated in recitals 111 to 114, the Belgian authorities have come to the conclusion that the amount of any aid awarded to JCD is EUR [100 000-150 000], by offsetting displays governed by the 1984 contract kept in place until later against displays removed early. The calculation by the Belgian authorities is based on bailiff's reports obtained by CCB on 3 December 2007 and 21 December 2009. The Belgian authorities consider that those bailiff's reports showed that in 2007 the number of advertising screens corresponding to the displays that had been dismantled before the removal date specified in annex 10 exceeded the number of screens corresponding to the displays kept in place after the removal date specified in annex 10. The argue that only the bailiff's report obtained by CCB on 21 December 2009 showed that the balance had shifted in favour of JCD. The Belgian authorities consider, therefore, that even if some advantage may have been conferred on JCD in the performance of the contract, the quantification of that advantage can be limited to the financial years 2007 to 2011 without risk of favouring JCD.

(134) As explained in section 3.4.2.2, the Commission is of the opinion that the argument put forward by the Belgian authorities on the basis of an offsetting mechanism is unfounded and that the advantage conferred on JCD corresponds to all the savings made by the undertaking by continuing to use the displays governed by the 1984 contract instead of replacing them with displays complying with the 1999 contract.

(135) The Commission's argument on that point was also confirmed by the judgment of the Brussels Court of Appeal of 29 April 2016[(48)], in which the Court held that JCD had failed to adhere to the removal dates specified in annex 10 to the 1999 contract and that it had therefore used a number of advertising displays on public property in the City of Brussels without right or title. The Court ordered the cessation of those unlawful practices and held

that the dismantling of the advertising displays operated without right or title was necessary for the cessation of the unlawful practice

(136) More specifically, the Court of Appeal rejected the idea of an offsetting mechanism as relied on by the Belgian authorities, according to which street furniture was retained after its scheduled removal date in exchange for the early replacement of other furniture, since such a mechanism was not provided for or authorised by the 1984 contract. The Court of Appeal confirmed that there was no evidence to indicate that after the signature of the 1999 contract JCD was expressly authorised to make a change in the basis (*interversion*) of the advertising displays. The Court rejected the appeal before it and upheld the judgment given on 13 December 2010 by the French-speaking Court of First Instance in Brussels. It confirmed that JCD, as the operator of advertising displays on public property in the City of Brussels without right or title, had objectively acted unlawfully, contrary to honest market practice, since the use in its network of advertising displays that should not or should no longer be there gave JCD an unlawful competitive advantage that could divert advertisers from its competitor, CCB.

(137) Accordingly, the Commission considers that the incompatible amount of aid should be calculated solely on the basis of the rent and taxes not collected on the displays kept in place until later, without any offsetting mechanism. To that end, the Belgian authorities must take into consideration, for each of the displays in question and each relevant period, the rent and taxes arising from the tax regulations for 2001 and after for a display of the same size.

(138) The tax regulation of 17 October 2001 on temporary advertising in and on public property introduced a tax on temporary advertisements in and on public property for the financial years 2002 to 2006. The City of Brussels has also adopted the tax regulation of 18 December 2006, which imposed the same tax for the 2007 financial year. From the 2008 tax year the City of Brussels introduced a specific tax on advertising displays[(49)].

(139) The Commission considers that the tax regulations for advertising displays should have applied automatically to displays governed by the 1984 contract kept in place until later, and that the tax exemption provided for by those tax regulations for the 1984 displays kept in place until later derogates from the reference system.

(140) It should be noted that the City of Brussels initially considered, pursuant to a tax exemption for City of Brussels advertisements[(50)] provided for by the tax regulation of 17 October 2001, that the displays that were installed under the 1999 contract and belonged to it were not taxable, which might appear to contradict the view expressed by the Commission in recital 139. An exemption provision relating specifically to advertising displays in the City of Brussels was in fact introduced subsequently in Article 9 of the tax regulation of 17

December 2007, and successively in the tax regulations of 15 December 2008, 9 November 2009, 20 December 2010 and 5 December 2011[51].

(141) However, the Belgian authorities also indicated that the City of Brussels ultimately concluded that to exempt advertising displays from tax solely because they belonged to the City of Brussels, when it did not operate them, was unfair to operators of other advertising displays. It therefore decided to tax the displays governed by the 1999 contract, and the first charges were made on 29 July 2011, relating to the 2009 tax year. The Belgian authorities explain that, pursuant to Article 6 of the law of 24 December 1996, since repealed by an order of 3 April 2014, tax could not be made retroactive for more than three years from 1 January of the tax year.

(142) In light of the argument put forward by the Belgian authorities, the Commission considers that taxes on advertising displays would normally apply to the displays governed by the 1999 contract and that there was therefore no conflict with its view that the 1984 displays kept in place until later should also be taxed.

(143) The Commission notes, on that point, that the two judgments delivered on 4 November 2016 by the French-speaking Court of First Instance in Brussels, which found that JCD was not liable for municipal advertising tax on advertising displays belonging to the City under the contract awarded to JCD on 14 October 1999, did not consider the question of compliance with the State aid rules.

(144) The calculation of the amount of rent and taxes saved by JCD does not present any particular difficulties, and the Belgian authorities made a partial calculation in their *de minimis* argument (see recitals 52 and 53). However, the Belgian authorities have not given the Commission an estimate of the total amount of aid despite the Commission's repeated requests. CCB, on the other hand, has provided an estimate of the amount of aid to be recovered, which totals approximately EUR 2 million.

4. ASSESSMENT OF THE PART OF THE COMPLAINT CONCERNING VILLO

4.1. Grounds for initiation of the procedure

(145) In the opening decision, the Commission expressed the view that the additional measures relating to the operation by JCD of the Villo public service concession in the Brussels Capital Region (exemption from certain fees or neutralisation of certain municipal and regional taxes, see recital 22) met all the criteria for State aid and accordingly constituted State aid within the meaning of Article 107(1) TFEU.

(146) In particular, the argument put forward by the Belgian authorities that the measures could escape such classification on the basis of the *Altmark* judgment, since JCD had been selected through a transparent call for tenders, did not appear to apply in this instance, given that the additional measures

were not part of the call for tenders but were granted after the call for tenders, when the Villo agreement was negotiated. According to the Belgian authorities, the additional measures total a maximum of about EUR [400 000-500 000] per year (see recital 22).

(147) Furthermore, the Commission expressed serious doubts as to the compatibility of the additional measures with Commission Decision 2005/842/EC ('the 2005 SGEI decision')[52] and the 2012 SGEI decision relied on by the Belgian authorities. In particular, the Commission doubted that the monitoring of the concession carried out by the Belgian authorities (which monitored the costs of the operation but not the revenue in detail) were sufficient to avoid any overcompensation. The Commission also had doubts as to the precise arrangements for allocating advertising revenue from contracts negotiated nationally by JCD to the Villo concession as applied in JCD's cost accounting.

(148) For all the above reasons, the Commission decided to initiate the procedure provided for in Article 108(2) TFEU in respect of the measure concerned, and called upon the Belgian authorities and any interested parties to submit any relevant information and comments on the measure.

4.2. **Comments submitted by interested parties on the opening decision**

(149) The Commission has received comments from several interested parties (CCB, JCD and a third interested party wishing to remain anonymous), which are summarised below.

4.2.1. *Comments submitted by CCB*

(150) The Commission received comments from CCB by letter of 16 July 2015.

(151) CCB takes the view that JCD received State aid to operate the Villo concession and puts forward arguments especially regarding the criteria of State resources and advantage conferred.

4.2.1.1. *State resources*

(152) By granting JCD the right to occupy and use public property for advertising purposes without payment (see recitals 19 to 22), the Belgian authorities have waived public revenue and conferred an economic advantage on JCD that constitutes State aid[53].

4.2.1.2. *Advantage*

(153) CCB contends that the compensation awarded to JCD does not satisfy any of the tests established by the *Altmark* judgment.

First Altmark test

(154) CCB is of the opinion that the operation of the Villo service does not constitute a public service task involving the supply of services which, if it were considering its own commercial interest, an undertaking would not assume or

would not assume to the same extent or under the same conditions[54]; CCB refers to a number of other European cities in which automated cycle hire services are already satisfactorily provided on commercial terms[55].

Second Altmark test

(155) It is apparent from the specifications that essential aspects such as the length of the concession, the financial arrangements for the service and the contribution to the financing of the service by the contracting authority were defined very vaguely[56] and that the specifications did not therefore establish the main parameters of the system for financing the service clearly and transparently.

Third Altmark test

(156) CCB takes the view that there was no scrutiny, either *ex ante* or *ex post*, of the extent of the advantages conferred on JCD for the Villo concession and that the precise financial impact of the tax exemptions allowed to JCD remain unknown. Hence it cannot be guaranteed that there was no overcompensation.

Fourth Altmark test

(157) CCB notes that JCD was awarded the Villo concession after a negotiated procedure with prior publication, which can be considered sufficient to satisfy the fourth *Altmark* test only in exceptional cases. In CCB's opinion, since additional measures relating to essential aspects of the concession (such as exemption from municipal taxes) were decided on after the call for tenders, it cannot be concluded that such a call for tenders allows selection of the operator providing the service of general economic interest at the lowest cost.

4.2.1.3. *Compatibility*

(158) CCB contests the Commission's conclusion in the opening decision that the compatibility of the measures should be assessed in light of the 2012 SGEI decision.

Applicability of the 2012 SGEI decision

(159) CCB argues that the compensation awarded to JCD for operation of the Villo concession is in the order of several tens of millions of euros per year, hence above the annual EUR 15 million threshold determining the applicability of the 2012 SGEI decision[57]. In particular, CCB considers that, in addition to the advertising revenue, the prices paid by users and the exemptions from taxes and charges, account also has to be taken of the advantages enjoyed by JCD due to the exemption from paying for the occupancy and use of public property for advertising purposes.

Compliance with the conditions of the 2012 SGEI decision

(160) In addition, CCB contends that several conditions laid down in the 2012 SGEI decision have not been met in this instance.

(161) Entrustment: CCB disputes that the entrustment requirements set out in Article 4 of the 2012 SGEI have been fulfilled. Firstly, the order of 25 November 2010 governing the operation of the public Villo service was issued

approximately two years after the Villo concession was awarded[58]. Secondly, the Villo agreement was extended to 17 years 4 months, even though in the agreement the duration was set at 15 years. CCB disputes that that duration was justified by the scale of investment required, as stated in recital 99 of the opening decision. CCB notes that, according to JCD's annual accounts, the costs for the bicycles provided under the Villo system are amortised at a rate of 20 % per year and hence they were fully amortised five years after their installation.

(162) Compensation: the description of the compensation mechanism and the parameters for calculation, control and revision of the compensation is inadequate. In that connection, as regards the allocation of advertising revenue, CCB considers it essential for the Belgian authorities to take account of the gross rating point (GRP)[59] for Villo advertising screens, and not the average revenue generated by all screens operated by JCD in its networks. As regards the costs to be taken into account when calculating the compensation, CCB emphasises that, according to Article 5 of the 2012 SGEI decision, these are only the 'costs incurred in operating the service of general economic interest', a definition that excludes any costs relating to the installation and operation of advertising displays.

(163) Control of overcompensation: as indicated above (see recital 156), CCB considers that there is no control of the absence of overcompensation for JCD in the operation of the Villo concession. Moreover, according to CCB's calculations, JCD has been substantially overcompensated.

4.2.1.4. *Amounts of compensation*

(164) CCB contests the amounts resulting from exemption from municipal taxes as mentioned in the opening decision. It contends that the exemptions increased substantially once the Villo concession was fully operational from 2014, totalling at least EUR 650 000 per year, i.e. well above the proposed maximum of EUR [250 000-350 000] per year (see recital 22).

(165) Furthermore, CCB is of the opinion that the use of advertising displays free of charge in itself constitutes State aid. It considers that the value of each advertisement should be quantified and, referring to its own contract with the City of Antwerp, concludes that JCD's exemption from any payment is equivalent to aid of nearly EUR 8 million per year.

4.2.2. *Comments submitted by the second complainant*

(166) The Commission received comments from an anonymous third party on 17 July 2015. That party also emphasises that the Villo agreement grants JCD State aid.

(167) In particular, the anonymous third party disputes that the tests of the *Altmark* judgment are satisfied in the present case, since the parameters of the compensation were not established clearly and transparently beforehand.

Furthermore, no control system was put in place to avoid overcompensation, which precludes possible compatibility on the basis of the 2012 SGEI decision.

(168) Finally, the anonymous third party 'firmly' disputes the view of the Belgian authorities that there is an allocation formula as powerful as the GRP for the allocation of advertising revenue to Villo advertisements (see recital 196).

4.2.3. *Comments submitted by JCD*

(169) JCD forwarded its comments on the Commission's opening decision by letter of 17 July 2015.

4.2.3.1. *Existence of State aid*

(170) JCD maintains that the Villo agreement is financed exclusively by private resources and does not confer any economic advantage on it. Therefore the Villo agreement does not include State aid. The only public resources involved in this instance result from the exemption from regional charges and the price revision clauses in the agreements signed with municipalities. In JCD's view, those measures should be classed as compensation for a public service covered by the *Altmark* principles. In particular, JCD adduces the following arguments:

First Altmark test

(171) According to the order governing the operation of the service provided under the Villo agreement, the service comprises 'the organisation of an automated cycle hire scheme for personal transport throughout the Brussels Capital Region'. In JCD's view, the requirements for this service essentially involve setting up a cycle hire network continuously accessible to the whole population, for an attractive payment, and laying down obligations for maintenance of the network, for example availability in the relevant area and replacement of bicycles with defects. Thus JCD considers that compliance with the criterion of performance of public service obligations 'does not present any difficulty in this instance'.

Second Altmark test

(172) JCD stresses that the requirement to define the parameters of the compensation beforehand does not mean that the compensation is to be calculated by a specific formula. JCD argues that the main parameters for the financing system were in fact listed objectively and transparently in the specifications, which provide, inter alia:

(i) that the concession holder is liable for the operating risk;

(ii) that the contracting authority prefers a tender not requiring any financial contribution from the Region; and

(iii) that in no circumstances will the Region make a fixed recurring financial contribution.

(173) JCD also takes the view that the way in which the exemption from regional charges operates allows its amount to be calculated precisely beforehand by multiplying the fixed amount of the charge by the number of displays installed.

(174) As regards the price revision clauses, their financial impact is known beforehand, since they are designed to offset the increase in municipal taxes, irrespective of the fact that it was naturally impossible to predict future changes in those taxes.

Third Altmark test

(175) JCD maintains that there can be no overcompensation, because:

(i) exemption from the charge for the occupancy of regional property for advertising purposes was granted as a consideration for its acceptance of a more substantial loss arising from the reduction in the number of advertising displays that could be installed under the Villo agreement;

(ii) the price revision clauses signed with the municipalities were designed solely to safeguard the balance of the contract initially established in the Villo agreement, with a very limited financial impact: less than EUR [0-50 000] for the 2013 financial year and less than EUR [0-50 000] for the 2014 financial year;

(iii) the clause to neutralise changes in regional taxes is a standard clause that has never been implemented;

(iv) the Villo agreement is strictly monitored by the Belgian authorities; the number of advertising displays that can be installed under the concession is defined precisely by the Villo agreement, which lays down strict requirements for the operation of the system; JCD is required to provide the Region's authorities with information on the implementation of the agreement; the agreement places an obligation on JCD to submit an annual report to the management committee on the system use data; every three years the management committee draws up a report on the technical and technological condition of the bicycle fleet; the order governing the operation of the service provided under the Villo agreement provides for an annual review by the Regional Government and Parliament of the performance of the concession contract; furthermore, according to Article 21 of the Villo agreement, failure by JCD to comply with the legislation in force and the ethical rules for advertising is subject to a penalty of EUR 4 000 per day;

(v) the Villo agreement is unprofitable.

Fourth Altmark test

(176) JCD submits that the call for tenders leading to the signature of the Villo agreement was indeed open, transparent and non-discriminatory, and that there is no doubt that the Region chose the bidder capable of providing the public service at the lowest cost to the community, since, even taking account of the additional measures adopted after the award procedure, JCD's tender was still by far the most advantageous.

4.2.3.2. *Compatibility*

(177) If the Commission should decide that the exemption from regional charges and the price revision clauses constitute State aid, JCD argues that they are compatible with the internal market on the basis of the 2012 SGEI decision.

Applicability of the 2012 SGEI decision

(178) Article 2(1)(a) of the 2012 SGEI decision limits its scope to aid not exceeding EUR 15 million annually. JCD notes that compensation for a public service is defined as any advantage granted from public funds and that advertising revenue and payments by users cannot therefore be taken into account in applying that provision. Accordingly, JCD considers that the annual amount of aid alleged in this instance is well below that threshold and therefore falls within the scope of the decision.

Compliance with the conditions of the 2012 SGEI decision

(179) JCD is of the opinion that the Villo agreement complies with the provisions of the 2012 SGEI decision and adduces the following arguments.

(180) Entrustment: JCD refers to recital 73 of the opening decision, which states that the public service obligations on the concession operator are set out in the Villo agreement and in the order of 25 November 2010 adopted by the Regional Parliament.

(181) As regards the duration of the entrustment, JCD considers the 15-year period justified given the scale of the investment required. The installation of stations and the supply of bicycles require substantial investment, while the Villo agreement restricts the number of advertising displays that can be installed and the indexing of user prices. Furthermore JCD notes that the 2005 SGEI decision, which was applicable at the time the Villo agreement was signed, contained no provisions on the duration of the concession.

(182) JCD does not consider that it was necessary in this case for the entrustment to lay down recovery arrangements for any overcompensation, since any risk of overcompensation was eliminated as soon as the Villo agreement was signed, in particular because the contract was awarded on the basis of an open, transparent and non-discriminatory call for tenders.

(183) Compensation: JCD submits that, in so far as the operation of the concession has been unprofitable up to now, there can have been no overcompensation. It is therefore not necessary to calculate JCD's operating margin to determine

whether it can be considered reasonable and hence it is not necessary to ensure that the reference value used to determine the absence of overcompensation is not overestimated.

(184) As regards the allocation of advertising revenue under the Villo agreement, JCD states that it values the displays installed according to population covered, audience performance and number of screens, without taking account of the contractual origin of the screens, and having regard to the competitive situation and their location in a strategically important city. It does not consider it appropriate to assess the real value solely on the basis of the GRP, as CCB claims (see recital 162), since advertisers looking for countrywide coverage are not interested in a screen sold on its own, even with a very high GRP.

(185) Control of overcompensation: JCD considers that the operational checks provided for in the Villo agreement (see recital 175(iv)) do indeed ensure that there is no overcompensation.

4.2.3.3. *Amount of compensation*

(186) As regards the exemption from the charge for occupancy of regional public property, JCD explains that, in the negotiations prior to the conclusion of the Villo agreement, JCD agreed to reduce the number of advertising displays proposed in its tender for installation under the public service concession.

(187) The number of separate 2 m^2 displays and the number of 8 m^2 displays were reduced by 25 units. In exchange, the Region allowed JCD exemption from the charge for the occupancy of regional public property by 8 m^2 displays installed under the Villo agreement.

(188) That exemption totals not more than EUR [50 000-150 000] per year (see recital 22).

(189) As regards the neutralisation of changes to municipal taxes, JCD explains that the financial impact is in fact very limited. It depends both on the charging of the taxes concerned and the invoicing by JCD. In practice the charges reinvoiced by JCD in application of the price revision clauses totalled less than EUR [0-50 000] per year up to 2017.

4.3. **Comments submitted by Belgium**

4.3.1. *Comments submitted by Belgium on the opening decision*

(190) The Belgian authorities sent their comments on the opening decision by letter of 21 May 2015.

4.3.1.1. *Existence of State aid*

(191) The Belgian authorities confirm their initial view that the measures provided for in the Villo agreement signed with JCD satisfy all the tests of the *Altmark* judgment and that those measures consequently do not constitute State aid.

(192) In particular they submit the following arguments.

First Altmark test

(193) By promoting an ecological means of transport that offers a response to mobility problems in Brussels, the Belgian authorities consider that the availability to the public of an automated cycle hire scheme indisputably pursues objectives of general interest.

Second Altmark test

(194) The Belgian authorities consider that the specifications on the basis of which JCD and CCB drew up their detailed tenders set out the main parameters of the financing system:

(i) all the scheme's revenue to be from private sources;

(ii) no direct subsidy or direct compensation for losses from the concession; and

(iii) the entire operating risk to be borne by the concessionaire.

Third Altmark test

(195) Firstly, the Belgian authorities take the view that the concession was awarded on the basis of an open, transparent and non-discriminatory competitive invitation and it can therefore be assumed that there was no overcompensation. In so far as the Region had expressly ruled out payment of a direct subsidy in exchange for the concession, the open, transparent and non-discriminatory character of the procedure necessarily excluded any risk of overcompensation.

(196) Secondly, the financial measures provided for by the concession did not result in any overcompensation by JCD. The Belgian authorities consider that:

(i) JCD's exemption from charges for occupancy of public property in the Region, totalling not more than EUR [50 000-150 000] per year, covered only a small part of the total operating costs for the concession, equal to [0-5] % of those costs in 2012;

(ii) neutralisation of any future changes in regional taxes (see recital 22) is a standard clause in long-term concession agreements, justified particularly by the Region's entitlement to raise its own taxes and the fact that no compensation is provided for in the event of losses from the operation of the concession; taxes and regional charges were not increased in this instance and therefore the neutralisation clause has never been applied;

(iii) the price revision clauses in bipartite agreements signed with local authorities (see recital 22) merely provide for an independent corrective to balance the contract and in no way affect the level of local tax, which the local authorities

remain free to revise; as indicated in recital 82 of the opening decision, the neutralisation is equivalent to a maximum of between EUR [50 000-100 000] and EUR [250 000-350 000], depending on the comparison rate used;

(iv) for the allocation of advertising revenue, JCD applies a valuation coefficient to each contract corresponding to the added value for average revenue per screen, a methodology that is in line with current practice in the field; and

(v) the concession agreement is systematically monitored: firstly, a management committee[(60)] and a support committee, to which JCD reports annually on the operation of the scheme, are responsible for monitoring the performance of the agreement; and secondly, the order of 25 November 2010 provides for annual scrutiny of the implementation of the concession agreement by the Government and Parliament of the Brussels Capital Region.

Fourth Altmark test

(197) In the opinion of the Belgian authorities, the Villo concession was awarded to JCD by an open, transparent and non-discriminatory procedure. The financial measures added after the call for tenders (see recital 22) were designed merely to offset the reduction in the anticipated advertising revenue and to safeguard the balance of the contract for the future.

4.3.1.2. *Compatibility*

(198) If the measures provided for in the Villo agreement do constitute State aid, the Belgian authorities take the view that they can be considered compatible with the internal market on the basis of Article 107(3)(c) of the Treaty, given that:

(i) by promoting an ecological means of transport as an alternative to cars, the supply of self-service bicycles constitutes a well-defined objective in the interest of the community;

(ii) the financing of the concession almost entirely from private funds is appropriate and proportional, and has an incentive effect; and

(iii) the distortions of competition and the effects on trade are limited, since the concession results from an effective and transparent competitive procedure of purely local application.

4.3.2. *Comments submitted by Belgium on the comments of interested parties*

(199) The Belgian authorities sent their comments on the comments of interested parties by letter of 2 October 2015.

(200) The Belgian authorities reject the arguments put forward by the complainants. They contend that the measures provided for by the Villo agreement satisfy all the tests of the *Altmark* judgment and consequently do not constitute State aid. In the alternative, the Belgian authorities take the view that the measures are compatible with the internal market on the basis of:

(i) Article 107(3)(c) of the Treaty; and

(ii) the 2012 SGEI decision.

4.3.2.1. *Existence of State aid*

(201) CCB maintains that the Brussels Capital Region conferred on JCD the right to occupy and use public property for advertising purposes without any charge; the Belgian authorities reject that claim, and submit that the consideration for the use of the advertising displays is the provision of the cycle hire public service, as specified in the call for tenders.

(202) Furthermore, the Belgian authorities uphold the view they stated in their letter of 21 May 2015 that the *Altmark* tests are satisfied in this case (see recitals 191 to 197). They put forward further arguments on the first two tests of the *Altmark* judgment (see recitals 203 to 204).

First Altmark test

(203) According to the Belgian authorities, CCB's claim that a cycle hire service similar to the Villo system is already provided in other European cities without having been expressly classified as a service of general economic interest is not relevant in this case. They say that the concept of a service of general economic interest is a relative notion that depends on circumstances. In this instance the Brussels Capital Region has to deal with particularly heavy vehicular traffic, calling for the adoption of ambitious and effective measures. In the example of the city of Antwerp cited, the Belgian authorities submit that the operator concerned (CCB) receives a direct subsidy.

Second Altmark test

(204) The Belgian authorities consider that if a method of financing a public service had to be defined precisely as soon as the contract notice appeared, a competitive procedure would be pointless, since bidders would have no margin of manoeuvre. The Belgian authorities maintain their view that the specifications set out the parameters for financing the service objectively and transparently (see recital 194).

4.3.2.2. *Compatibility*

Applicability of the 2012 SGEI decision

(205) Although there is no valuation of any aid that the Belgian authorities accept, they consider that the total amount of the alleged aid is in any case well below EUR 15 million, since the purely private revenue (such as advertising revenue) must not be included in the calculation of the aid. Accordingly, the Belgian authorities are of the opinion that the annual amount of the alleged aid does fall within the scope of the 2012 SGEI decision.

Compliance with the conditions of the 2012 SGEI decision

(206) According to the Belgian authorities the extension of the concession period (see recital 161) aligns the period of the first phase with that of the second phase (see recital 20). The alignment is justified for two reasons: the longer than expected duration of the various procedures required, the wish to align the two phases in the interests of good management, the need to compensate for a reduction in the number of advertising displays, and the wish to provide a service to the public for an adequate length of time.

(207) The Belgian authorities take the view that the Villo concession was awarded to JCD with a clear and explicit entrustment act which defines the parameters of the compensation and enables any overcompensation to be avoided (see recitals 193 to 197).

Article 107(3)(c) TFEU

(208) The Belgian authorities maintain the view expressed in their letter of 21 May 2015 (see recital 198) that the measures provided for can be considered compatible with the internal market on the basis of Article 107(3)(c) TFEU, since:

(i) the supply of self-service bicycles constitutes a well-defined objective in the interest of the community;

(ii) the agreement is designed as an appropriate and proportional instrument, and has an incentive effect;

(iii) the distortions of competition and the effects on trade are limited.

4.4. **Additional comments submitted by interested parties**

4.4.1. *Additional comments submitted by CCB*

(209) According to CCB, the costs incurred by JCD in implementing the Villo agreement are significantly lower than those declared initially and therefore lower than those cited by the Belgian authorities to demonstrate that there is no overcompensation:

(i) JCD benefited from a reduction in the number of bicycles to be put into service, from 5 000 to 4 500;

(ii) JCD may have made a substantial saving from the amendment to the Villo agreement, which reduces the number of cycle stations to be installed from 400 to 360;

(iii) the number of journeys recorded by Villo was 150 000 lower in 2015 than in 2014.

(210) CCB has calculated the advertising revenue earned by JCD from implementing the Villo agreement, identifying the advertising displays by their installation date and position, then calculating the number of advertising screens operated by JCD, and finally applying JCD's official rates for

its Brussels network and the standard payments in the sector for outside advertising on displays of this type. According to those calculations, JCD has considerably underestimated the advertising revenue.

(211) CCB concludes that JCD was allowed overcompensation of EUR 27,3 million between May 2009 and February 2017.

(212) Since there is no monitoring to ensure the absence of overcompensation (see recital 163), CCB is of the opinion that a control system should be put in place in order to check annually whether the concession holder has been overcompensated and to correct the overcompensation identified if necessary. The check should be carried out by an independent third party.

(213) CCB considers, furthermore, that the absence of overcompensation should be assessed on the basis of a reasonable profit calculated in relation to the costs of the service of general economic interest and not in relation to the revenue generated.

4.4.2. *Additional comments submitted by JCD*

(214) As regards the use of the GRP to determine the advertising revenue generated by the Villo agreement (see recitals 162 and 184), JCD states that this is was in fact one of the criteria it uses to determine the value of advertising networks. However, JCD considers that the theoretical GRP index of advertising displays is not an adequate method of valuing the displays under a contract. JCD values the displays installed under each contract by reference to an average revenue per screen, calculated on a countrywide basis, to which it applies a correction coefficient based on various factors, notably the GRP of the screens and the location of the displays in a city of strategic importance to advertisers, as well as the varying degree of advertising pressure from one city to another and the competition situation.

(215) While stressing the limited relevance of the GRP, JCD notes that a comparison of GRP and the price per screen between its largest national network and its largest Brussels network results in premiums of [10-20] % and [20-30] % respectively, similar to the correction coefficient for the screens operated under the Villo agreement, which is [20-30] %.

(216) As regards the costs incurred in implementing the Villo agreement, JCD considers that the figures obtained by CCB are not correct, owing to:

(i) the fact that CCB's method takes no account of the investments required for the installation of the necessary infrastructures at the start of the concession;

(ii) the use by CCB of an annual cost per bicycle of EUR 1 450, a figure taken from JCD's tender and thus based on estimates.

(217) JCD does not recognise the amounts cited by CCB for the neutralisation of municipal taxes (see recital 164). According to JCD, the difference between CCB's estimated figures and the actual amounts is due to:

(i) the use of incorrect rates: contrary to CCB's calculations, only a few municipalities apply a tax rate on advertising displays of more than EUR 75 per scrolling m^2 per year;

(ii) application of the mechanism to municipalities that are not involved: CCB seems to have applied the revision mechanism to the municipalities of Etterbeek, Schaerbeek and Saint-Josse, when the bilateral agreements with those municipalities do not incorporate that clause;

(iii) automatic application of the mechanism: in practice JCD receives sums due under the revision mechanism only after it has invoiced the municipalities for the charge; some time can elapse between the installation and use of the advertising displays and the time at which the sums are collected in accordance with the revision clauses.

(218) As regards the amount of advertising revenue, CCB underestimates JCD's discount; the discount rate is around [60-70] %, not 40 %. When the correct rate is applied, the advertising revenue is considerably lower the estimates given by CCB, at just over half.

(219) JCD also disputes the figure given by CCB for the operation of the advertising displays free of charge (see recital 165). According to JCD, CCB disregards the fact that the operation of the advertising displays provided for by the Villo concession is inseparable from the provision of the cycle hire public service: the advertising revenue is intended to finance the public service.

(220) JCD considers that the use of the advertising displays is taken into account in the financing of the Villo concession, since it operates the Villo displays in exchange for the substantial costs generated by the provision of the cycle hire public service.

4.5. **Additional comments submitted by Belgium**

(221) In regard to the duration of the Villo agreement (see recital 161), the Belgian authorities also argue that the 2005 SGEI decision, which was applicable when the agreement was signed, did not lay down any provisions on the period for which the public service was to be provided (see recital 181). Furthermore, the Belgian authorities consider that the extension of the Villo concession period was justified, for three reasons:

(i) circumstances beyond the control of the parties had delayed the implementation of the agreement;

(ii) the wish to align the two phases of the Villo agreement: the phases, whilst started at different times, were originally scheduled to last 15 years; in practice

that would have resulted in two separate expiry dates for phase 1 and phase 2 (as indicated in the preamble to the amendment); and

(iii) the number of street furniture advertisements operated by JCD had been reduced as a result of the amendment to the Villo agreement.

4.6. **Second amendment to the Villo agreement**

(222) The Government of the Brussels Capital Region and JCD signed an amendment to the Villo agreement on 29 March 2018. The amendment was added in order to allow more accurate and regular monitoring of the absence of overcompensation.

(223) The amendment states that the results of JCD's separate cost accounting will be forwarded to the Region. The results will show the revenue from the Villo concession, broken down into revenue from user payments, advertising revenue, exemption from the regional charge and neutralisation of municipal tax increases, and the costs of the concession broken down into operating costs, management costs and amortisation of the investments related to the Villo service.

(224) The amendment states that every year the statutory auditor (*commissaire aux comptes*) responsible for checking JCD's annual accounts is to verify that the accounting separation principles applied by JCD comply with the 2012 SGEI decision. After verification by the statutory auditor the results of the separate accounting are to be sent to the independent auditor (*réviseur*).

(225) Every year the independent auditor will verify that the ratio of the cumulative annual operating results (EBIT) divided by the cumulative annual costs (since 2009) related to the operation of the Villo concession is not above the threshold of [10-20] %[61]. If it exceeds the threshold, and to the extent that it does so, the amount of the regional charge from which JCD is exempt, plus the amount resulting from the impact of the measures related to municipal taxes, will be paid retroactively in full or in part for the previous year.

(226) The amendment also states that the statutory auditor is to establish that there is no overcompensation for the 2009-2017 period using that method, and to draw up a compilation report for the management committee. The report was to be drawn up as soon as possible after the signature of the amendment.

4.7. **Assessment of measures before the second amendment**

(227) In its assessment, the Commission will distinguish between the period before the amendment (see recital 222) and the period after the amendment.

4.7.1. *State aid within the meaning of Article 107(1) TFEU*

(228) The criteria for determining the existence of State aid are set out in recitals 70 to 71. Recitals 229 to 249 assess whether those criteria are met in respect of each of the measures: the exemption from regional charges for occupancy

of public property, the neutralisation of the municipal tax increase, and the regional taxes hardship clause (see recital 22).

4.7.1.1. *Imputability and State resources*

(229) The criteria for determining imputability and the existence of State resources are set out in recitals 72 and 73.

Imputability

(230) It is not contested that the Brussels Capital Region awarded the Villo concession and that the Region introduced the additional measures after the concession was granted (see recitals 19 to 22). The contested measures are thus imputable to the State.

State resources

(231) The loss of revenue to the Brussels Capital Region and the various municipalities it comprises which is associated with the contested measures is revenue forgone by the public authorities and hence constitutes State resources transferred to JCD.

(232) The State resources in question are, specifically, (i) the loss resulting from exemption from the charge for occupancy of public property in the Brussels Capital Region for 8 m^2 advertising displays, totalling up to EUR [50 000-150 000] per year; (ii) the loss of revenue arising from the neutralisation of any change to regional taxes, equal to the amount resulting from that increase; and (iii) the loss of revenue arising from the neutralisation of any change to municipal taxes, equal to the amount resulting from that increase and totalling up to EUR [250 000-350 000] per year (see recital 22).

(233) The Villo cycle hire scheme is also financed by the management and use of advertising displays and by customer payments. Advertising revenue and payments from users of the concession are purely private resources and cannot be classed as State resources.

(234) The Commission is of the opinion that the advertising revenue received by JCD clearly does not constitute State resources, because the revenue is derived from private contracts between JCD and its clients in which the State has no involvement.

(235) Furthermore, it cannot be assumed that when the Brussels Capital Region does not itself engage in an economic activity it is necessarily waiving State resources. Such an approach to State resources would be extremely broad and would prevent the State from authorising activities in its territory without first establishing that it could not carry out the activity itself.

4.7.1.2. *Existence of an economic advantage*

(236) The criteria for determining whether a selective economic advantage is conferred are set out in recitals 82 and 83.

(237) In the present case, the exemption from regional charges and the neutralisation of the increase in municipal charges enable JCD not to incur costs that it would normally have had to bear out of its own financial resources, and therefore do indeed give it an advantage.

(238) However, the Belgian authorities take the view that the additional measures should be regarded as compensation for a public service covered by the case-law in the *Altmark* judgment.

(239) In the *Altmark* judgment, the Court of Justice of the European Union stated that compensation granted through State resources for costs relating to the supply of a service of general economic interest do not constitute an advantage if all of four conditions are satisfied[(62)]:

(i) the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;

(ii) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;

(iii) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations; and

(iv) where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided, would have incurred in discharging those obligations.

(240) As regards the second *Altmark* test, the Commission notes that the financial impact for the Brussels Capital Region of the additional measures provided for in the agreement only after the invitation to tender, and in particular a measure such as the increase in municipal charges, was unknown at the time the measure was granted, since it depended entirely on future variations in municipal charges. In the absence of a limit on the maximum financial impact of the measure, the Commission does not consider it fully transparent.

(241) With regard to the third *Altmark* test, it was not verified beforehand, at the time the additional measures under examination were granted, that the compensation received by JCD while the concession was in operation would not exceed what was necessary to cover all or part of the costs generated by the performance of the obligations arising from it, taking account of the relevant revenue and a reasonable profit for the performance of those obligations.

(242) Finally, with reference to the fourth *Altmark* test, the Commission is of the opinion that given that certain measures were added after the call for tenders it is not clear that the objective of the call for tenders from the point of view of the *Altmark* judgment, which is to select the operator capable of providing the service at the lowest cost to the community, can be considered to have been achieved. If not all the compensation measures are incorporated into a call for tenders it is difficult to conclude that the call makes it possible to select the operator providing the service of general economic interest at the lowest cost, even if the call for tenders procedure is in itself transparent.

(243) For the reasons explained in recitals 240 to 242, the Commission does not consider that the *Altmark* tests have been satisfied in this instance, and concludes that the additional transfers of State resources decided on after the call for tenders do confer an economic advantage on JCD.

(244) As for the calculation of the amount of the advantage, the Belgian authorities initially estimated that the neutralisation of municipal taxes would be equivalent to no more than about EUR [50 000-100 000] per year. However, that calculation allowed for the fact that local authorities generally apply a lower tax rate to public services than commercial operators, which have to pay a higher standard rate. The Belgian authorities consider that the only advantage conferred is the difference between the more favourable tax level granted to public services generally and the level of taxes actually applied to JCD under the Villo concession. The Commission, on the other hand, considers that the advantage actually conferred on JCD is equivalent to the difference between the standard rate and the rate applied to JCD, which, according to the initial calculations by the Belgian authorities, may total up to EUR [250 000-350 000] per year[(63)].

(245) In all, JCD enjoys an advantage of up to EUR [400 000-500 000] per year (EUR [50 000-150 000] from the exemption from the charge for occupancy of public property in the Brussels Capital Region and EUR [250 000-350 000] from the application of the price revision clause for municipal taxes, see recital 22.

4.7.1.3. *Selectivity*

(246) The criteria for assessing the selectivity of a measure are set out in recital 97.

(247) Since the contested measures constitute individual aid measures, the identification of the economic advantage (see recitals 236 to 245) is sufficient to support the presumption that they are selective[(64)]. In the absence of any indication to the contrary, that presumption applies here and is enough for the measures to be declared selective.

4.7.1.4. *Distortion of competition and effects on trade between Member States*

(248) For the same reasons as are set out in recitals 103 to 121, the additional measures allowed to JCD for the Villo concession have effects that could potentially distort competition and trade between Member States.

4.7.1.5. *Conclusion on the existence of aid*

(249) In light of the foregoing, the Commission takes the view that in respect of the additional measures related to the operation of the public Villo service concession by JCD in the Brussels Capital Region all of the criteria for State aid are met, and those measures accordingly constitute State aid within the meaning of Article 107(1) TFEU.

4.7.2. *Lawfulness of the aid*

(250) The Commission notes that the additional measures referred to in this part of the complaint, which constitute State aid within the meaning of Article 107(1) TFEU, were not notified in accordance with Article 108(3) TFEU.

(251) However, the Belgian authorities consider that, although they constitute State aid, they are compensation for a public service which is compatible with the internal market under the SGEI decision applicable at the material time (at the time the measures were granted, the text in force was the 2005 SGEI decision, which was later replaced by the 2012 SGEI decision). Both texts provide for an exemption from notification for measures that comply with their tests of compatibility[(65)].

(252) In order for the measures to be regarded as compatible, it is sufficient for them to meet the conditions laid down in the 2005 SGEI decision, which was applicable when they were granted. Compatibility with the 2005 SGEI decision is assessed below.

4.7.3. *Compatibility of the aid on the basis of the 2005 SGEI decision*

4.7.3.1. *Scope*

(253) The 2005 SGEI decision applies only to services that can be classed as services of general economic interest. According to the case-law, in the absence of sectoral rules on that issue at Union level, Member States have wide discretion to decide which services may be classed as services of general economic interest. The Commission's role is to ensure that there are no manifest errors.

(254) In this instance the Commission does not consider that there was a manifest error, in so far as the service meets a public need that would not be met in the same way without State intervention (for example, the amount paid by users is not sufficient to cover the costs of the service). It is also worth noting that the Belgian Constitutional Court has considered the issue and confirmed that the Villo automated cycle hire scheme is a public service[(66)].

(255) According to Article 2(1)(a), the 2005 SGEI decision applies to State aid in the form of compensation for a public service of less than EUR 30 million per year, granted to undertakings with an average annual turnover before tax, all activities included, of less than EUR 100 million during the two financial years preceding that in which the service of general economic interest was assigned.

(256) The total amount of aid granted to JCD in the form of exemption from the charge for occupancy of public property and neutralisation of municipal tax increases is well below the threshold of EUR 30 million per year; according to the estimates of the Belgian authorities it does not exceed EUR [400 000-500 000] per year (see recital 245). Furthermore, annual turnover was significantly less than EUR 100 million in the period 2006-2007. Hence the 2005 SGEI decision is applicable on that basis.

4.7.3.2. *Compliance with conditions*

(257) Article 4 of the 2005 SGEI decision stipulates that 'responsibility for operation of the service of general economic interest shall be entrusted to the undertaking concerned by way of one or more official acts, the form of which may be determined by each Member State. The act or acts shall specify, in particular … the arrangements for avoiding and repaying any overcompensation.'

(258) A clear and explicit description of the arrangements for recovering and avoiding overcompensation was included in JCD's entrustment act only from 29 March 2018, when the second amendment to the Villo agreement was adopted (see recitals 222 to 226). Consequently the Commission is of the opinion that that condition of the 2005 SGEI decision was not met, and that the aid in question is not compatible with the internal market on the basis of the 2005 SGEI decision.

4.7.4. *Compatibility of the aid on the basis of the 2012 SGEI decision*

4.7.4.1. *Scope*

(259) Article 10(b) of the 2012 SGEI decision provides that 'any aid put into effect before the entry into force of this Decision that was not compatible with the internal market nor exempted from the notification requirement in accordance with Decision 2005/842/EC but fulfils the conditions laid down in this Decision shall be compatible with the internal market and exempt from the requirement of prior notification'. In view of the foregoing, the Commission therefore considers that the aid should be assessed in the light of the 2012 SGEI decision.

(260) As explained in recitals 253 and 254, the Commission does not consider that there has been any manifest error in the definition of the service of general economic interest. According to Article 2(1)(a), the 2012 SGEI decision

applies to State aid in the form of public service compensation of not more than EUR 15 million per year. The Belgian authorities estimate the total amount of aid granted to JCD to be well below that threshold (see recital 245). Hence the 2012 SGEI decision is applicable on that basis.

4.7.4.2. *Compliance with conditions*

(261) Article 4 of the 2012 SGEI decision (like Article 4 of the 2005 SGEI decision) stipulates that 'Operation of the service of general economic interest shall be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. The act or acts shall include, in particular: the arrangements for avoiding and recovering any overcompensation.'

(262) As explained in recital 258, the Commission considers that that condition of the SGEI decision is not met, and the aid in question is consequently not compatible with the internal market on the basis of the 2012 SGEI decision.

4.7.5. *Compatibility of the aid on the basis of the 2012 SGEI framework*

4.7.5.1. *Scope*

(263) According to paragraph 7 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 ('the 2012 SGEI framework')[67], 'The principles set out in this Communication apply to public service compensation only in so far as it constitutes State aid not covered by [the 2012 SGEI decision]'. The Commission therefore considers that the aid should be assessed in the light of the 2012 SGEI framework.

(264) According to paragraph 69 of the 2012 SGEI framework, 'The Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date'. The 2012 SGEI framework is therefore applicable from the start of the Villo concession.

4.7.5.2. *Compliance with conditions*

(265) The Commission will verify that the aid is compatible with the conditions laid down in section 2 of the 2012 SGEI framework, with due regard to the fact that, according to paragraph 61 of the framework, 'The principles set out in paragraphs 14, 19, 20, 24, 39, 51 to 59 and 60(a) do not apply to aid which meets the conditions laid down in Article 2(1) of [the 2012 SGEI decision].' As shown above (see recital 260), the aid in this case meets those conditions.

Genuine service of general economic interest

(266) According to paragraph 12 of the 2012 SGEI framework, 'The aid must be granted for a genuine … service of general economic interest as referred to in Article 106(2) of the Treaty.' The Commission considers the implementation

of the Villo agreement to be a genuine service of general economic interest (see recitals 253 to 254).

Need for an entrustment act specifying the public service obligations and the methods of calculating compensation

(267) According to paragraph 15 of the 2012 SGEI framework, 'Responsibility for the operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State.' According to paragraph 16, the act must include, in particular, the content and duration of the public service obligations; the undertaking responsible and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking; the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.

(268) The Belgian authorities defined the Villo concession as a public service concession in the Villo agreement. Furthermore, on 25 November 2010 the Regional Parliament adopted an order on the operation of the public Villo service.

(269) The Villo agreement defines the public service as 'the provision of an automated cycle hire scheme for the whole of the Brussels Capital Region, at the concessionaire's expense and risk, under the authority of the Government and subject to minimum conditions laid down by the latter'. It sets out the public service obligations on the concession operator. The act describes the nature, geographical scope and operation of the service. It also describes the pricing system applicable to users.

(270) Duration of entrustment act: the duration of the concession was set at 15 years and was extended by 2 years and 4 months (see recital 161) by an amendment to the concession on 9 June 2011. That duration is justified by the scale of the investment required. This is illustrated in particular by the fact that JCD incurred considerable financial losses and started to earn profits only from 2016 (see Table 1 below).

(271) Compensation parameters: the parameters of the compensation in the aid measures in question (the additional measures) are clearly defined in the Villo agreement.

(272) **Verification of the absence of overcompensation**: the establishment of checks on the absence of overcompensation is a condition for compatibility under both the 2012 SGEI decision (see Article 4(e)) and the 2012 SGEI framework (see paragraph 16(e)). The Commission has concluded in recital 262 that the requirement in Article 4(e) of the 2012 SGEI decision was not met in this instance. However, the checks carried out by the audit firm KPMG show that there was no actual overcompensation in the period 2009-2017 (see Table 1 below).

Table 1

Verification of the absence of overcompensation

	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Advertising revenue 2 m² displays	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Revenue from use of mudguards	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Advertising revenue 8 m² displays	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Revenue from users	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Revenue reinvoicing taxes 2 m²	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Revenue reinvoicing taxes 8 m²	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total revenue (A)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Regional charge	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Revenue price revision clause	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total public service compensation (B)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Display taxes	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Direct operating costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Management costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Amortisation	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total costs (C)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating result (D) = (A) + (B) − (C)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Profitability (E) = (D)/(C)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(273) CCB has submitted several comments on the verification of the absence of overcompensation.

(274) Firstly, CCB does not consider that the costs relating to the installation and use of the advertising displays can be taken into account in calculating the compensation awarded to JCD (see recital 162). Furthermore, CCB considers that the use without charge of public property for advertising (as it terms the exemption from the charge for occupancy of municipal public property) should be quantified in relation to the value of the advertising displays (see recital 165).

(275) The Commission is of the opinion that the advertising displays must be taken into account in verifying overcompensation. The Commission will do so by taking account of the revenue and costs actually generated by the displays. There is no need here to refer to a valuation of the screens, which itself would depend on the revenue and costs that such displays might generate (see Table 1 above). If the operational value of the advertising displays exceeds what is necessary to bear the costs resulting from the implementation of the Villo concession, the imbalance arrived at by this calculation must lead to a finding that there is overcompensation.

(276) CCB disputes the amount of aid generated by the exemption from municipal taxes (see recital 164). JCD has identified several errors in CCB's calculations (see recital 217). Nevertheless, the Commission notes that, even if the amount of aid were considered to be EUR 650 000 a year, as stated by CCB, the public service task would still be unprofitable overall in the period 2009-2017.

(277) As regards CCB's claim that the costs incurred by JCD in the implementation of the Villo agreement were significantly lower than initially declared (see

recital 209), it need only be pointed out that the verification of the absence of overcompensation is based on the actual costs incurred by JCD and not on projections or estimates.

(278) The Commission concludes that JCD was not overcompensated for the provision of the Villo service of general economic interest between 2009 and 2017.

(279) In the Commission's view, the existence of a mechanism to monitor the absence of overcompensation is in reality indispensable only in order to declare aid compatible on the basis of the 2012 SGEI decision, where the State is responsible for monitoring the absence of overcompensation, or to declare aid compatible under the 2012 SGEI framework, for notified measures, in so far as the monitoring mechanism provides the basis on which the Commission eliminates the possibility of future overcompensation and the Commission does not carry out any checks *ex post*. When the Commission does indeed verify the absence of overcompensation *ex post*, that formal criterion loses its point, which is to prevent potential overcompensation. If the Commission carries out *ex post* checks, any overcompensation found must be recovered regardless of whether any monitoring has taken place, and, conversely, the absence of overcompensation is sufficient to satisfy the relevant compatibility requirements of the 2012 SGEI framework.

(280) In that case the Commission considers that when there has been no overcompensation, incomplete supervision by the Member State in the past is of limited significance, because the aim of the condition, which is the absence of overcompensation, has in fact been achieved. It should be noted that in those cases where the Commission has taken a negative decision and ordered the recovery of public service compensation (where there was no manifest error in the definition of the public service), the aid to be recovered was confined to the overcompensation calculated by the Commission, regardless of the quality of the supervision put in place by the Member State[68]. In all those cases the monitoring of overcompensation by the Member State was either non-existent or faulty (hence the presence of overcompensation). In such circumstances the alternative would have been to require recovery of all the public service compensation awarded to the public service operator even though the operator had in fact provided the public service, solely on the basis of the lack of a satisfactory monitoring system, irrespective of the actual amount of overcompensation.

(281) In the abstract that approach could even lead to the recovery of all public service compensation awarded to an operator when there had been no overcompensation at all. In the Commission's view, that alternative would be contrary to the principles of the TFEU on the essential roles of services of general economic interest in the European Union, and in particular Article 14 TFEU, which provides that the Union is to take care that services of general economic interest operate on the basis of principles and conditions,

particularly economic and financial conditions, which enable them to fulfil their missions.

(282) The Commission is therefore of the opinion that the requirement of verification of the absence of overcompensation may be considered to have been satisfied in this instance.

Compliance with Commission Directive 2006/111/EC[69]

(283) Pursuant to paragraph 18 of the 2012 SGEI framework, 'Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC'.

(284) As regards accounting separation, there was some uncertainty as to JCD's cost accounting, particularly in relation to the way in which revenue generated by nationally negotiated contracts was allocated to displays that are part of the Villo concession (see recital 184). Following the adoption of the second amendment to the Villo agreement (see section 4.6), the statutory auditor will check the accounting separation principles applied by JCD each year. Such checks have also been carried out for the whole of the previous period (2009-2017), and following the explanations by the Belgian authorities and JCD (see recitals 196, 214 and 215) the Commission takes the view that the cost accounting system complies with the requirements of Directive 2006/111/EC and that the check on the absence of overcompensation (see Table 1 above) was carried out on the basis of appropriate accounting separation.

Absence of overcompensation

(285) Pursuant to paragraph 49 of the 2012 SGEI framework, 'Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with this the requirements set out in this section'.

(286) As explained in recital 272, JCD was not overcompensated for the previous period.

Conclusion

(287) In light of the foregoing, the Commission concludes that the aid measures granted to JCD under the Villo agreement are compatible with the internal market on the basis of the 201 SGEI framework for the period of the Villo concession before the adoption of the second amendment, i.e. 5 December 2008 to 29 March 2018.

4.8. **Assessment of the measures after the second amendment**

4.8.1. *State aid within the meaning of Article 107(1) TFEU*

(288) Since the second amendment does not alter the measures granted to JCD under the Villo agreement, the Commission's assessment of the existence of State aid (see recitals 229 to 249) remains unchanged.

4.8.2. *Compatibility of the aid on the basis of the 2012 SGEI decision*

(289) The second amendment corrects the defects identified in the previous entrustment act (see recital 262) by adding a clear and explicit description of the arrangements for recovering and avoiding any overcompensation.

(290) Article 6 of the 2012 SGEI decision states that 'Member States shall ensure that … the undertaking does not receive compensation in excess of the amount determined in accordance with Article 5 [amount of compensation not exceeding what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit]. They shall provide evidence upon request from the Commission. They shall carry out regular checks, or ensure that such checks are carried out, at least every 3 years during the period of entrustment and at the end of that period.'

(291) Article 6 also states that 'Where an undertaking has received compensation in excess of the amount determined in accordance with Article 5, the Member State shall require the undertaking concerned to repay any overcompensation received.'

(292) The second amendment stipulates that an independent auditor is to check every year that the amount of compensation does not exceed what is necessary for the performance of the public service, including a reasonable profit. If it does exceed that amount, and to the extent that it does so, JCD is to pay the excess amount retroactively (see recital 225).

(293) For the reasons explained in recitals 289 to 292, the Commission concludes that the aid measures granted to JCD under the Villo agreement are compatible with the internal market on the basis of the 2012 SGEI decision with effect from the adoption of the second amendment.

(294) It should be noted that that verification is based on the comparison of a profit on costs with a reference margin of [10-20] %, corresponding to a standard margin on revenue of [10-20] % considered reasonable on the basis of discussions with CCB and JCD[70]. A margin on costs was preferred to a margin on revenue in order to take account of CCB's comments (see recital 213).

5. RECOVERY OF INCOMPATIBLE AID RELATED TO ADVERTISING DISPLAYS GOVERNED BY THE 1984 CONTRACT

(295) In accordance with the TFEU, when the Commission finds that aid is incompatible with the internal market, it has power to decide that the Member State concerned must abolish or alter it[71]. Similarly, the European Union courts have ruled, in settled case-law, that the obligation on a Member State

to abolish aid deemed by the Commission to be incompatible with the internal market is aimed at re-establishing the previously existing situation[72].

(296) The Union courts have taken the view that that objective has been achieved when the beneficiary has repaid the unlawfully granted amounts of aid. With that repayment, the recipient forfeits the advantage it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored[73].

(297) In accordance with that case-law, Article 16(1) of Regulation (EU) 2015/1589 provides that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.

(298) Accordingly, since the measures in question were implemented in breach of Article 108(3) TFEU and are deemed to be unlawful and incompatible aid, they must be recovered in order to restore the situation existing on the market before they were granted. The recovery must cover the period from the time at which the aid was made available to the beneficiary to its actual recovery, in accordance with the method set out in recitals 131 to 141. The amounts to be recovered must generate interest until they are actually recovered.

6. SUMMARY OF CONCLUSIONS

6.1. Advertising displays governed by the 1984 contract

(299) The Commission is of the opinion that, as regards the use by JCD of certain advertising displays installed in the City of Brussels governed by the 1984 contract and kept in place after the removal date specified in annex 10 to the 1999 contract without payment of rent or tax, all the criteria for State aid are met, and that measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

(300) As regards the lawfulness of the aid measure, the Commission finds that the measure referred to in this part of the complaint, which constitutes State aid within the meaning of Article 107(1) TFEU, was not notified pursuant to Article 108(3) TFEU, and has been implemented. It therefore constitutes unlawful aid.

(301) The Commission also considers that that aid is incompatible with the internal market, and it should therefore be recovered, including principal and interest, in accordance with the *CELF* case-law of the Court of Justice[74].

6.2. Villo

(302) The Commission considers that the measures provided for in the Villo agreement constitute State aid on the basis of Article 107(1) TFEU.

(303) The measures provided for in the Villo agreement are nevertheless compatible with the internal market on the basis of Article 106(2) TFEU.

(304) In regard to the period from the start of the concession on 5 December 2008 to the signature of the second amendment on 29 March 2018 (see section 4.6), the Commission considers that the measures provided meet the conditions of the 2012 SGEI framework (see section 4.7). They are therefore not to be recovered, although they are unlawful aid in that they were not notified in accordance with Article 108(3) TFEU.

(305) In regard to the period from the date of signature of the second amendment to the end of the concession on 16 September 2026, the Commission considers that the conditions of the 2012 SGEI decision have been met, subject to strict compliance with the conditions laid down in that amendment (see section 4.8),

HAS ADOPTED THIS DECISION:

Article 1

The State aid to JCD, in an amount equivalent to the rent and taxes not paid on the advertising displays installed in the City of Brussels governed by the 1984 contract and kept in place after the removal date specified in annex 10 to the 1999 contract, granted by Belgium unlawfully between 15 September 2001 and 21 August 2010 in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

Article 2

1 Belgium shall recover the aid referred to in Article 1 from the beneficiary.

2 The sums to be recovered shall generate interest from the date on which they were made available to the beneficiary until their actual recovery.

3 The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004[(75)].

Article 3

1 The recovery of the aid referred to in Article 1 shall be immediate and effective.

2 Belgium shall ensure that this decision is implemented within four months of the date of its notification.

Article 4

1 Within two months of the notification of this decision, Belgium shall forward the following information to the Commission:

a the total amount (principal and interest) to be recovered from the beneficiary;

b a detailed description of the measures already taken and planned in order to comply with this decision;

c the documents showing that the beneficiary has been given notice to repay the aid.

2 Belgium shall keep the Commission informed of the progress of the national measures taken in implementation of this decision until the aid referred to in Article 1 has been recovered in full. It shall immediately submit, on simple request from the Commission, information on the measures already taken and planned to comply with this decision. It shall also provide detailed information on the amounts of aid and the interest already recovered from the beneficiary.

Article 5

1 The measures provided for in the Villo agreement constitute State aid on the basis of Article 107(1) of the Treaty on the Functioning of the European Union.

2 In regard to the period from 5 December 2008, when the Villo agreement was signed, to 29 March 2018, when the second amendment to the Villo agreement was signed, the measures provided for in the Villo agreement meet the conditions of the 2012 SGEI framework[(76)] and are compatible with the internal market. That aid is unlawful since it was not notified in accordance with Article 108(3) TFEU.

3 In regard to the period from 29 March 2018, when the second amendment was signed, to 26 September 2026, the end of the concession, the measures provided for in the Villo agreement meet the conditions of the 2012 SGEI decision[(77)] and are compatible with the internal market subject to strict compliance with the conditions laid down in the second amendment to the Villo agreement.

Article 6

This decision is addressed to the Kingdom of Belgium.

Done at Brussels, 24 June 2019.

For the Commission

Margrethe VESTAGER

Member of the Commission

(**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 m^2 displays × EUR […] per display = 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 *Hansestadt 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.

(**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.

(**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 m^2.

(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 m^2.

§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 m^2 shall be counted as a full m^2.

§2. Notwithstanding §1, for advertising displays of less than 4 m^2, taxation shall be by tranche or fraction of 0,25 m^2 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

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.

(**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.

(**75**) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

(**76**) 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).

(**77**) 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).