Commission Decision (EU) 2020/1827 of 26 May 2020 on the measures SA.39990 – (2016/C) (ex 2016/NN) (ex 2014/FC) (ex 2014/CP) – implemented by Belgium for Ducatt NV (notified under document C(2020) 3287) (Only the Dutch and French texts are authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2020/1827

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on the measures SA.39990 – (2016/C) (ex 2016/NN) (ex 2014/FC) (ex 2014/CP) – implemented by Belgium for Ducatt NV

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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) On 28 November 2014, the Commission received a formal complaint submitted by the German glass producer GMB Glasmanufaktur Brandenburg GmbH ('GMB') and its parent company Interfloat Corporation ('Interfloat Group'), registered in Liechtenstein (together 'the complainant'). The complainant alleged that its direct competitor Ducat NV ('Ducatt') had received unlawful State aid that was incompatible with the internal market from the Flemish Region, Belgium.

(2) By letter dated 19 May 2016, the Commission informed Belgium that it had decided to initiate the procedure laid down in the first subparagraph of Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the alleged State aid granted to Ducatt ('the Opening Decision').

(3) The Opening Decision was published in the *Official Journal of the European Union*[2]. The Commission invited interested parties to submit their comments on the measures described in the Opening Decision.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/1827. (See end of Document for details)*

(4) The Belgian authorities submitted their comments on the Opening Decision on 20 June 2016[3] and 19 July 2016.

(5) The Commission received comments from the complainant on 17 June 2016, 18 August 2016, 13 September 2016 and 6 October 2016. It forwarded them to the Belgian authorities, which commented on them by letter dated 23 January 2017.

(6) The Commission requested additional information from Belgium on 30 January 2017, which was submitted by the Belgian authorities on 27 March 2017.

(7) On 14 June 2017, the Belgian authorities informed the Commission of the bankruptcy of Ducatt as of 20 May 2017, following which the Commission met the representatives of Belgium on 23 June 2017.

(8) On 5 July 2017, the Commission met the complainant and its legal representatives.

(9) On 10 July 2017, the Belgian authorities submitted additional information to the Commission, which the latter had requested at the meeting on 23 June 2017.

(10) The Commission requested further information from Belgium on 20 November 2017, 22 June 2018 and 31 January 2020. The Belgian authorities responded on 15 December 2017, 27 August 2018, 4 March and 12 May 2020.

(11) The Commission also requested further information from the receivers of the Ducatt bankruptcy on 18 July 2017, 25 July 2017, 7 and 9 March 2018, 16 May 2018 and 28 January 2019. The receivers replied on 22 July 2017, 6 March 2018, 9 March 2018, 30 March 2018, 30 May 2018 and 29 January 2019.

(12) The Commission also engaged in the following correspondence with the complainant: it received letters from the complainant on 3 April 2018, 2 April 2019 and 26 January 2020, to which it replied respectively on 24 April 2018, 6 May 2019 and 10 February 2020. The Commission also had two telephone conversations with the complainant on 26 July 2018 and 27 March 2019.

(13) On 26 March 2020, the Commission received a letter from the complainant with a formal request to act pursuant to Article 265(2) TFEU.

2. BACKGROUND

2.1. The beneficiary

(14) Ducatt is a spin-off from Emgo NV (‘Emgo’), a 50/50 joint venture between Philips and Osram, which was established in 1966 as a producer of glass bulbs for the production of incandescent lamps and glass tubes for the production of fluorescent lamps. Ducatt was established in November 2010 by the (then) Innovation Manager at Emgo (via Vercundus BVBA) and the (then) Finance & Accounting Manager at Emgo (via ArsiCO BVBA).

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(15) Due to changes in European Union legislation, prohibiting the sale of incandescent lamps from 1 September 2009, Emgo's glass bulb business was split off and merged with Ducatt in January 2011 with the aim of safeguarding jobs and its know-how in the glass manufacturing sector. Ducatt's management aimed to enter the market for glass for solar panels and invested heavily as of 2011 in the necessary machinery.

(16) In addition to the two founding companies, Vercundus BVBA and ArsiCO BVBA, Ducatt is or has been co-owned to various degrees by the following legal entities: Limburgse Reconversie Maatschappij ('LRM'), Participatie Maatschappij Vlaanderen ('PMV'), Capricorn Cleantech Fund ('CCF'), Quest for Growth ('QFG'), Belfius, VF Capital ('VFC'), VMF and Aro. In addition, parts of the shares of the company were, for some time, held by a natural person, namely […][(4)].

2.2. The complaint

(17) The complainant is a producer of glass for solar panels and a direct competitor of the alleged aid beneficiary Ducatt. The complainant alleges that Ducatt received around EUR 70 million of unlawful State aid incompatible with the internal market from the State-owned bank Belfius and LRM and PMV, which are two investment companies owned by the Flemish Region.

(18) According to the complainant, the alleged aid took the form of loans granted and capital increases performed at non-market conditions dating back to Ducatt's establishment in 2011. They were used to set up the company and start up its production and continuously to cover its losses.

3. DESCRIPTION OF THE MEASURES AND CONTENT OF THE OPENING DECISION

(19) The Commission opened the formal investigation procedure to assess whether the following measures in favour of Ducatt constituted State aid within the meaning of Article 107(1) TFEU and, if so, if they were compatible with the internal market.

3.1. Capital increases

(20) The Opening Decision expressed doubts as to whether the following capital increases subscribed by LRM and PMV amounting to EUR […] were granted on market terms:

(a) EUR […] from a capital increase on 28 February 2014 by LRM (EUR […]) and PMV (EUR […]);

(b) EUR […] from a capital increase on 4 July 2014 by LRM (EUR […]) and PMV (EUR […]);

(c) EUR […] of loans which were subsequently converted into equity:

(i) EUR […] of loans (interest of […] %) granted on 21 December 2012 by LRM (EUR […]) and PMV (EUR […]) which were converted into equity with interest on 5 December 2013 ('loan 4');

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(ii) EUR […] of loans (interest of […] %) granted on 27 September 2013 by LRM (EUR […]) and PMV (EUR […]) which were converted into equity on 13 December 2013 ('loan 5');

(iii) EUR […] of loans (interest of […] %) granted on 28 November 2013 by LRM which were converted into equity on 28 February 2014 ('loan 6');

(iv) EUR […] of loans (interest of […] %) granted on 16 December 2013 by LRM (EUR […]) and PMV (EUR […]) which were converted into equity on 28 February 2014 ('loan 7');

(v) EUR […] from the EUR […] bridging loan granted in mid-September 2015 by LRM (part of 'loan 13');

(d) EUR […] due to stock warrants, exercised on:

(i) EUR […] on 30 September 2014 by LRM (EUR […]) and PMV (EUR […]);

(ii) EUR […] on 27 October 2014 by LRM (EUR […]) and PMV (EUR […]);

(iii) EUR […] on 28 November 2014 by LRM;

(iv) EUR […] on 28 January 2015 by LRM.

3.2. **Loans**

(21) The Opening Decision expressed doubts as to whether, in addition to the loans converted to equity as stated in recital (20) above, the following loans granted by LRM and PMV amounting to EUR […] were granted on market terms:

(a) EUR […] bridging loan on 10 and 19 February 2014 by LRM repaid on 28 February 2014 ('loan 8' and 'loan 9');

(b) EUR […] loan on 16 May 2014 by LRM (EUR […]) and PMV (EUR […]) ('loan 10');

(c) EUR […] loan on 29 April 2015 by LRM ('loan 11');

(d) EUR […] bridging loan granted during July and August 2015 by LRM ('loan 12');

(e) EUR […] bridging loan granted in the middle of September 2015 by LRM (part of 'loan 13').

3.3. **Recapitalisation round of November 2015**

(22) The Opening Decision furthermore expressed doubts as to whether the capital increase and restructuring of shareholder loans of November 2015 were carried out on market terms. This included, on the one hand, the capital increase subscribed by LRM