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

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/2120. (See end of Document for details)*

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.

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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.