



EUROPEAN COMMISSION

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PUBLIC VERSION

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**Subject: State Aid SA.48856 (2017/NN) – Czech Republic
Alleged aid to Czech providers of advertising space**

Sir,

1. PROCEDURE

- (1) On 2 August 2017, the Commission received a complaint from the company Czech Outdoor s.r.o. ("the Complainant"), which operates in the market for the provision of outdoor advertising space and is the largest operator of outdoor advertisement alongside motorways and 1st class roads in the Czech Republic. The Complainant alleges that, by introducing amendments to the Act No. 13/1997 Coll. on Roads, the Czech authorities would have granted alleged State aid to its competitors.
- (2) By letter dated 13 September 2017, the Commission informed the Complainant of its preliminary assessment that the measure did not amount to State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). The Complainant was given the opportunity to comment thereon.
- (3) The Complainant objected to the Commission's preliminary assessment and submitted further information on 13 October 2017.

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2. THE COMPLAINT

- (4) The complaint concerns alleged State aid relating to the prohibition of outdoor advertising (billboards and similar forms of advertising) alongside motorways and 1st class roads¹ ("the measure") which has been introduced by the Parliament and the Government of the Czech Republic through Act No. 196/2012 Coll. ("Road Act Amendment") revising Act No. 13/1997 Coll. on Roads ("Road Act"). The Road Act Amendment entered into force on 1 September 2017.
- (5) The Complainant alleges that the measure fulfils all cumulative conditions of State aid within the meaning of Article 107(1) TFEU. First, the Complainant considers that the measure is selective. The Complainant claims that the Road Act Amendment allows certain exemptions to the prohibition of outdoor advertising alongside motorways and 1st class roads in the sense that certain advertising equipment situated within the road protection zone², which is an area adjacent to the aforementioned roads which, for safety reasons, has to be left free from any kind of construction or built up hazard, may be permitted³ and authorized, if it serves the promotion of a business premise which must be located within 200 metres of the aforementioned equipment⁴.
- (6) In addition, the prohibition to install and operate advertising space alongside motorways and 1st class roads, introduced by the Road Act Amendment, would favour undertakings active in, for example, the business of placement and operation of advertising space in 2nd or 3rd class roads and urban roads. Such entities, which would be competitors of the Complainant, would not be subject to the prohibition of outdoor advertising and would be able to operate their business as well as strengthen their position.
- (7) Second, according to the Complainant, the measure would involve the transfer of State resources. The Complainant claims that the Road Act Amendment entails a forfeit by the State of resources of approximately EUR 1.37 million per year. The Complainant explained that the advertising equipment is placed on public land and that lease contracts are signed with the advertising operators. The prohibition of outdoor advertising would thus imply that the fees resulting from those lease contracts would no longer be collected.
- (8) Third, the Complainant alleges that the Road Act Amendment also has the effect of distorting competition because a significant portion of customers of the providers of outdoor advertising space on billboards can move to other advertisement media.
- (9) Fourth, the Complainant submits that the prohibition to install and operate advertising boards on motorways and 1st class roads has negative effects on trade

¹ 1st class roads are roads designated for long-distance and international transport and include the so-called expressways. They are similar to motorways in many aspects and serve for fast interstate and international transport. The maximal permitted speed is the same as for the motorways (<http://www.czech.cz/en/Business/How-it-works-here/Infrastructure/Roads-and-motorways-in-the-Czech-Republic-%E2%80%93-catego>).

² As defined within Article 30(2) of Act No. 13/1997 ("Road Act"), as amended by Act No. 196/2012 ("Road Act Amendment").

³ Article 31(2) of Act No. 13/1997 ("Road Act"), as amended by Act No. 196/2012 ("Road Act Amendment").

⁴ Article 31(3) of Act No. 13/1997 ("Road Act"), as amended by Act No. 196/2012 ("Road Act Amendment").

between Member States because its main competitors in the Czech Republic would be undertakings whose parent companies have registered headquarters in other Member States.

- (10) Finally, the Complainant also alleges that the US company A.C.E. Media Ventures Inc. and its subsidiary Czech A.C.E. Management, which is its closest competitor in the operation of outdoor advertising alongside motorways and 1st class roads, may "most likely" receive State aid from the Czech authorities on the basis of compensation for the inability to provide outdoor advertisement space on billboards under a bilateral investment agreement between the U.S.A. and the Czech Republic. According to the Complainant, there are currently arbitration proceedings ongoing between the U.S.A. and the Czech Republic concerning this claim for compensation under the bilateral investment agreement. If the Czech Republic loses the arbitration procedure, A.C.E. Media Ventures Inc. would be entitled to compensation while the Complainant would not be entitled to such compensation even though the Road Act Amendment has the same effect on its business as on A.C.E. Media Ventures Inc.'s. For the Complainant, this payment would grant an economic advantage involving State resources to A.C.E. Media Ventures Inc., and therefore amount to State aid.

3. ASSESSMENT OF THE MEASURE

- (11) According to Article 107(1) TFEU, State aid is any aid granted by a Member State 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, in so far as it affects trade between Member States.
- (12) The conditions laid down by that provision for a finding of State aid are cumulative. Accordingly, a State measure constitutes State aid if the following four cumulative conditions are met:
- i. The measure is financed through State resources.
 - ii. The measure gives a selective economic advantage to an undertaking.
 - iii. The measure distorts or threatens to distort competition.
 - iv. The measure affects trade between Member States.

3.1. The prohibition to install outdoor advertisement equipment

- (13) Pursuant to Article 107(1) TFEU, a measure may constitute State aid only if the cumulative conditions described above are met. The Commission is of the view that in the present case at least two of those conditions are not met. In particular, contrary to the claims of the Complainant, the measure is not selective and does not involve a transfer of State resources.
- (14) First, the Commission notes that for a measure to be selective it must favour 'certain undertakings or the production of certain goods'. Hence, not all support measures amount to State aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. Measures of purely general application which do not favour certain undertakings or the production of certain goods do not fall within the scope of Article 107(1) TFEU.

- (15) It follows from the Road Act Amendment that the general principle governing the prohibition of placement of advertising boards alongside motorways and 1st class roads is to improve road safety and that the prohibition applies to all advertising providers. Therefore, the measure appears to be of a general regulatory nature concerning the safety of the citizens.
- (16) There is one exemption to the prohibition set out in the Road Act Amendment⁵. Pursuant to Articles 31(2) and 31(3) of the Road Act as amended by the Road Act Amendment, upon granting of authorization from the relevant authorities, advertising equipment could be situated within the road protection zone if it serves to draw attention to an establishment whose premises must be located within 200 metres of the aforementioned equipment.
- (17) However, the Complainant did not submit any evidence showing that the exemption mentioned above would apply only to its competitors, thus excluding the Complainant. Rather, the Commission understands that the exemption allows all outdoor advertising providers to install advertisement equipment within the provided 200 metres radius in a non-selective manner, as long as the conditions for the exemption to apply are met.
- (18) As such, based on the submissions of the Complainant, the Commission considers that the prohibition to place and operate advertising boards alongside motorways and 1st class roads is a measure which applies to all undertaking active in the aforementioned business activities and hence not a selective measure.
- (19) In addition to the above, the Commission would like to underline that State aid rules do not apply when there is no transfer of State resources⁶. In the case at hand, the Commission concludes that the Road Act Amendment does not entail the transfer of State resources in any way to any undertaking. It rather constitutes a general regulatory measure limiting the possibilities for advertisement companies to locate outdoor advertisement equipment in certain locations with the aim of increasing road safety.
- (20) In this respect, the Commission observes that when the State acts as a regulator, it can decide legitimately not to maximise the revenues which could otherwise have been achieved, without falling under the scope of State aid rules, provided that all the operators concerned are treated equally, and that there is an inherent link between achieving the regulatory purpose and the foregoing of revenue.
- (21) In this regard the Court of Justice has consistently ruled⁷ that a negative indirect effect on State revenues stemming from regulatory measures does not constitute a transfer of State resources (including a forfeit of State resources), where it is an inherent feature of the measure.
- (22) For example, a derogation from employment law provisions altering the framework for contractual relations between undertakings and employees does

⁵ See footnotes 3 and 4 above.

⁶ Judgment of 24 January 1978 in Case C-82/77, *Van Tiggele*, EU:C:1978:10, paras 23-25.

⁷ Judgment of 13 March 2001 in Case C-379/98, *PreussenElektra*, ECLI:EU:C:2001:160, para 62.

not constitute a transfer of State resources, despite the fact that it may reduce social security contributions or taxes payable to the State⁸.

- (23) In the present case, the prohibition introduced in the Road Act Amendment applies, as explained above, equally to all operators. The regulatory purpose of that amendment, namely to increase road safety, is intended to be achieved through the limitation of advertisements on the side of motorways and 1st class roads. The foregone revenues, in the form of foregone fees from lease (resulting from the fact that there will be less contracts entered into by the State with advertisement companies for the lease of land on which the advertisement equipment is placed), is inherently linked with the purpose of increasing road safety by limiting advertisements next to certain types of roads. The Commission therefore concludes that the Czech Republic, when introducing the prohibition of outdoor advertising in the Road Amendment Act, acted as a regulator pursuing a legitimate public objective.
- (24) Therefore, the Commission is of the view that, in this case, the measure at stake does not involve the transfer or the forfeit of State resources in the meaning of Article 107(1) TFEU.
- (25) On the basis of the above, since the conditions set out in Article 107(1) TFEU are cumulative, the measure does not constitute State aid.
- (26) This decision does not prejudice possible proceedings pursuant to Article 258 TFEU on the compliance of the measure with the fundamental freedoms laid down in the Treaty, notably the freedom of establishment and the free provision of services as guaranteed by Articles 49 and 56 of the Treaty.

3.2. Alleged compensation to competitors

- (27) As mentioned in recital (10), the Complainant also alleges that the company A.C.E. Media Ventures Inc., and its subsidiary Czech A.C.E. Management, may "most likely" receive State aid from the Czech authorities because of arbitration litigation between the U.S.A. and the Czech Republic.
- (28) However, as acknowledged by the Complainant⁹ no compensation has been paid out to date.
- (29) Furthermore, the Complainant explained that neither A.C.E. Media Ventures Inc. nor its CEO have filed a motion to commence arbitration proceedings so far.¹⁰
- (30) In view of the above, since the measure complained about is merely hypothetical at this stage, the Commission considers that this claim of alleged State aid is unfounded.

⁸ Judgment of 17 March 1993 in Joined Cases C-72/91 and C-73/91, *Sloman Neptun Schiffahrts*, ECLI:EU:C:1993:97, paras 20 and 21. See also Judgment of 7 May 1998 in Joined Cases C-52/97, C-53/97 and C-54/97 *Viscido et al.*, ECLI:EU:C:1998:209, paras 13 and 14., and Judgment of 30 November 1993 in Case C-189/91 *Kirsammer-Hack*, ECLI:EU:C:1993:907, paras 17 and 18, on the fact that the non-application of certain provisions of employment law does not constitute a transfer of State resources.

⁹ Complaint of 2 August 2017, point (a), page 12

¹⁰ Letter from the Ministry of Finance no. MFF----13359/2017/10-4/1115 IK of 4 May 2017 (Annex 14 to the Complaint of 2 August 2017).

4. CONCLUSION

- (31) The Commission concludes that the measure complained about does not constitute State aid within the meaning of Article 107(1) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission