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Subject: SA.36019 (2014/NN) – Belgium
Financing of road infrastructure in the vicinity of a real estate project – Uplace

Sir,

1. PROCEDURE

- (1) By letter of 28 December 2012 (registered on 3 January 2013), the city of Leuven ("the complainant") submitted a complaint alleging that unlawful State aid in the form of the public funding of road infrastructure in the Vilvoorde-Machelen area is granted by the Flemish Region of Belgium to the Uplace Group, a real estate group of companies active in the construction of shopping centres and industrial estates.
- (2) On 25 April 2013, the complaint was forwarded to the Belgian authorities together with a request for information to which a reply was received on 29 May 2013. By letter of 7 August 2013, the Commission informed the complainant of its preliminary assessment that the measure does not constitute State aid because of the general character of the infrastructure which does not provide an exclusive advantage to the alleged beneficiary. On 4 September 2013 the complainant submitted additional arguments, which were forwarded to the Belgian authorities

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on 22 November 2013 with a new request for information. Belgium replied, after an extension of deadline, on 15 January 2014.

- (3) On 16 April 2015, an additional request for information was sent to Belgium. On 30 April 2015, a meeting took place between the Commission services and Belgium at the technical level. The requested information was submitted by Belgium on 18 May 2015.

2. THE PARTIES INVOLVED

- (4) The alleged beneficiary is Uplace, a group of companies (the "Uplace Group" or "Uplace") composed of Ushop NV¹, Uwork NV, Ustay NV, and Utower NV, the project companies or land companies ('special purpose vehicles') that together own 100% of the land, and of Uplace NV and Oak Lane NV, undertakings which will each operate as developer for parts of the project.
- (5) The complainant is the city of Leuven, which argues that the Flemish Region grants illegal State aid to Uplace by funding road connections that benefit only to Uplace, infrastructure which would not have been built in the absence of the Uplace project. The complaint is not directed against the Uplace project as such, but against the public funding of infrastructure measures as described in recital (14) below, to be built outside and around the plot of land where the Uplace project will be developed.

3. DESCRIPTION OF THE MEASURE

3.1 The Vilvoorde-Machelen redevelopment area

- (6) The Vilvoorde-Machelen Redevelopment Area (approximately 250 ha) is located between the R22 / Woluwelaan (E), the boundary of the Brussels Region (S), the ship canal (W) and Vilvoorde city centre (N). Once a densely industrialised zone, the area experienced the shutdown of many businesses over the last decades and laboured under a bad image as it had become run down and suffered from pollution, neglected areas, vacant premises. There are many unused brownfields² in the area.
- (7) Through the '*Strategic action plan for reconversion and employment*' (START)³ approved on 10 December 2004, the Flemish Government intended to boost social and economic development in the area around the Brussels Airport at Zaventem and to send a signal to the local population, potential investors and employees that it wanted to expand the airport into a fully-fledged one which would be an international gateway in Flanders. As part of this, in the period

¹ Initially, Ushop NV was called Ring Airway Park NV.

² A brownfield is defined as a piece of neglected or underused land that is so damaged that structural measures are needed to enable it to be put into use or re-used.

³ "S^Trategisch Actieprogramma voor de Re^Rconversie en T^Tewerkstelling in de l^Luchthavenregio" of 10.12.2004, available at <http://docu.vlaamserand.be/ned/webpage.asp?WebpageId=722> (last checked on 26/08/2015).

between 2004 and 2008, a Master Plan⁴ for a large-scale redevelopment programme for the Vilvoorde-Machelen Area and, in 2007, the Brownfield Covenants Decree⁵ ("the 2007 Decree") have been adopted.

- (8) A package of measures was also approved on 16 December 2011 by the Flemish Government⁶ with the objective of opening up the wider redevelopment area and reinforcing the multimodal accessibility. The objectives of those measures were: (i) to provide more numerous and more efficient access options by public transport (train, tram and bus); (ii) to provide modern and safe infrastructure for vulnerable road users; and (iii) to optimise the through flow of road traffic and the link between Woluwelaan (R22) and the Brussels ring road (R0).
- (9) On the basis of the 2007 Decree, 'brownfield' covenants⁷ can be concluded for projects selected via open and transparent tender procedures that envisage investment in the redevelopment of the brownfield sites of the region. A call for applications to negotiate Brownfield Covenants was published in the Belgian Official Journal on 6 August 2007. The Uplace Group submitted an application in December 2007.
- (10) On 5 June 2009, the *Uplace Machelen Brownfield Covenant* (UMBC) was concluded between the Flemish Government, the Province of Flemish Brabant the city of Machelen, the Flemish waste company OVAM, and the Uplace Group. The UMBC covers the redevelopment of an underused site in a neglected industrial plot of land owned by the Uplace group and located in the Vilvoorde-Machelen redevelopment area. In particular, the UMBC lays down details concerning the construction of a complex of "experience shops" and leisure events facilities by the Uplace Group in the extreme south of the redevelopment area as well as public works planned by different authorities in the area. The UMBC

⁴ http://rsv.vlaanderen.be/Portals/121/documents/projecten/22%20Reconversie%20Vilvoorde-Machelen/200807_Vilvoorde-Machelen_Strategisch%20Masterplan.pdf (last checked on 26/08/2015).

⁵ The Decree on Brownfield Covenants of the Flemish Parliament of 30 March 2007 is complemented by several implementation acts: Decision of the Flemish Government of 7 September 2007 concerning information duties in the context of Brownfield Covenants; Decision of the Flemish Government of 19 July 2007 regulating the objections to public utility easements for the creation of a Brownfield project; Decision of the Flemish Government of 9 November 2007 concerning the form of the certificate to obtain free registration under a Brownfield project that is the subject of a Brownfield Covenant.

⁶ VR 2011 1612 DOC.1352/1, under the general heading 'Flanking Policy for the "Flemish Strategic Area" around Brussels'.

⁷ A Brownfield Covenant is a civil law agreement between the Flemish Government and the actors and planning coordinators (public authorities involved in the project in connection with spatial planning, granting permits, land remediation, and so on) involved in a Brownfield project. Rules of the Belgian Civil Code govern the compliance and enforcement of the brownfield covenant and their termination.

was amended on 21 May 2010 and on 13 February 2015. A coordinated version⁸ was also attached to the Second Addendum of 13 February 2015⁹.

3.2 The Uplace project

- (11) The Uplace project, which is separate from the object of the complaint, is planned to be developed on land of around 190.000 m² owned by the Uplace group and located in the direct vicinity of the Brussels Ring (R0) in Machelen (between Beaulieustraat and Nieuwbrugstraat, and between Rittwegerlaan and Woluwelaan (R22). Article 2(4) of the UMBC describes Uplace as a mixed urban project that will create an experience destination for the following uses covering the following areas:
- 27,000 m² leisure space for lease, including restaurants and cafes;
 - 20,000 m² space for lease for one or more hotels;
 - 55,000 m² retail space to include innovative Belgian brands, concept shops and shops selling brands that are new to the Belgian market;
 - 50,000 m² public space such as plazas, streets, squares and recreational spaces; and
 - 40,000 m² office spaces for lease, of which a floor area will be in a landmark tower on the Vilvoorde viaduct and the rest, will be spread throughout the project area.
- (12) All works – including infrastructure works – to be undertaken on the private land are financed by the Uplace group.

3.3 Infrastructure works in the vicinity of the Uplace site

- (13) Because the site for the Uplace project and the wider area were not adequately connected to the public roads network, the 2009 UMBC defined works needed for infrastructure meant to connect the site and open up the area to the wider environment of the Vilvoorde-Machelen area. In 2009, a *Mobility Agreement in Principle* on public access works (MAP) was also concluded between the UBMC parties. The MAP laid down details regarding access to the Uplace project site from R22 / Woluwelaan and Beaulieustraat, described the works needed for relaying R22 / Woluwelaan, for completing the link between R0-R22 and highway E19 and for building pedestrian infrastructure, which were further agreed in 2010, in a *Project Partnership Agreement* (PPA).

⁸ The coordinated version can be found here: (link last checked on 9.9.2015) http://www.agentschapondernemen.be/sites/default/files/documenten/35_gecoördineerde_versie_van_convenant.pdf.

⁹ The 2nd addendum can be found here: (link last checked on 9.9.2015) http://www.agentschapondernemen.be/sites/default/files/documenten/35_addendum_2.pdf.

(14) On 17 July 2015 the *Mobility Implementation Covenant* (MIC) replaced the previous MAP and PPA and updated the provisions related to the financial contribution of Uplace to the infrastructure works, laying down more into detail all the works to be done in the vicinity of Uplace. More precisely, the works will consist in three groups of measures, as laid down in Article 1 of the MIC:

- a) Redesigning and upgrading of Woluwelaan (R22)¹⁰ and access to the project:
- completion and putting into service of the slip roads between R0-R22 and E19 to optimise the through flow of road traffic in the area and the link between R22 / Woluwelaan and the Brussels ring road (R0), included in subproject 1 (deelproject 1) as described in MIC;
 - relaying of R22 / Woluwelaan taking into account vulnerable road users but also facilitating smooth flow of traffic and public transport (dedicated bus and/or tram lane), included in subproject 2 (deelproject 2) as described in MIC ;
 - relaying of the intersection between R22 / Woluwelaan and N21 (Haachtsesteenweg), included in subproject 3 (deelproject 3) as described in MIC;
 - relaying of the intersection between the R22 / Woluwelaan and Kerklaan in Machelen, included in subproject 4 (deelproject 4) as described in MIC.
- b) Adapting surrounding streets and footpaths to promote traffic flow and address slow traffic and to increase the proportion of journeys made on public transport for the benefit of vulnerable road users and the wider environment¹¹:
- by relaying streets in the vicinity of the project site (Beaulieustraat, Rittwegerlaan, Nieuwbrugstraat, Nijverheidsstraat and Kerklaan);
 - by constructing a junction to facilitate the smooth flow of in-coming and out-going traffic between the project site and the surrounding streets;
 - by laying of footpaths¹²:
 - 1) from the project site to the new railway station¹³, and
 - 2) from the project site to the centre of Machelen.

¹⁰ Described more into detail in Articles 1.3 and 2.1-2.3 of the MIC.

¹¹ Described and elaborated upon in Articles 1.1, 2.6 and 3 of the MIC.

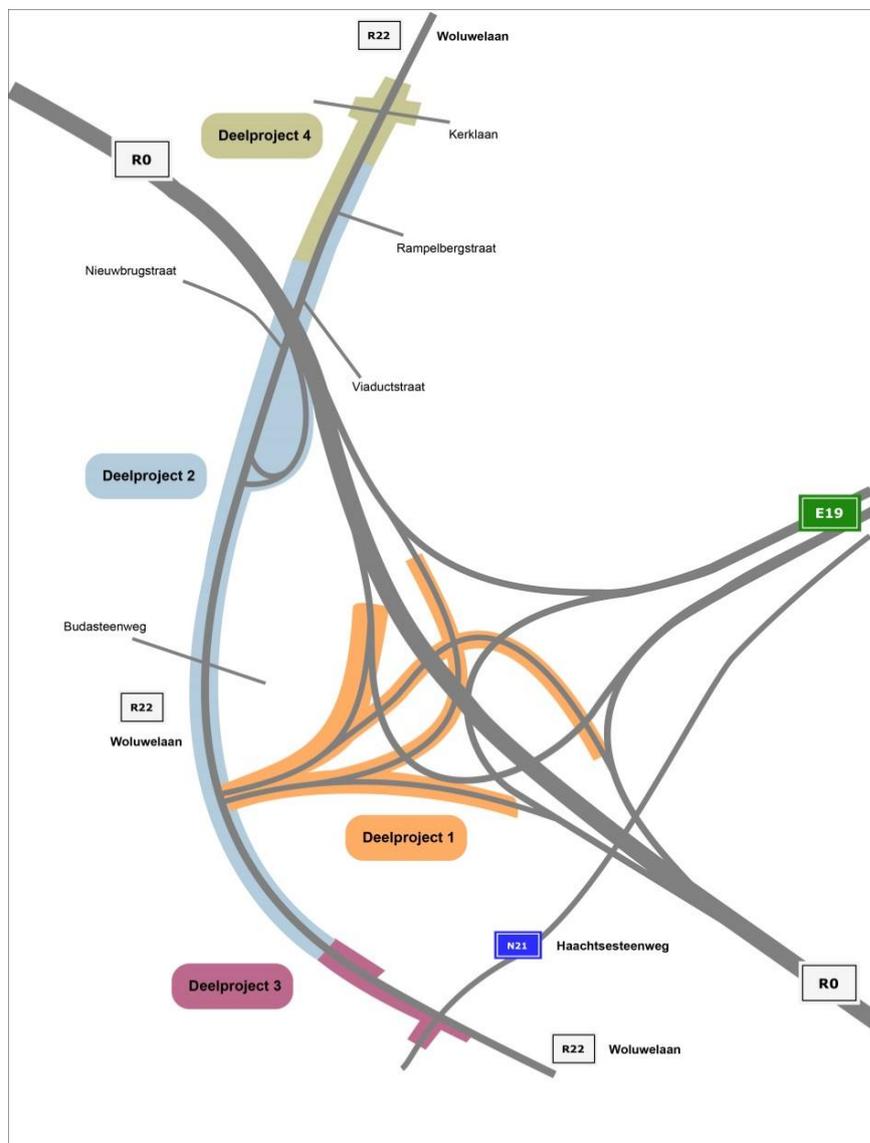
¹² See Article 3.1 MIC firstly, this consists in laying, where necessary, a footpath on Rittwegerlaan between Nieuwbrugstraat and Kerklaan and, secondly, in laying part of the footpath on Kerklaan between Rittwegerlaan and Woluwelaan as part of the broader relaying of Kerklaan through the City of Machelen.

¹³ The railway station currently located further south, is planned to be relocated to Kerklaan.

c) Public transport measures¹⁴:

- regulated public bus service between Vilvoorde IC station, the project site and the national airport in Zaventem;
- construction of the planned GEN station on Kerklaan and operation of a regulated public service from there;
- provision of the necessary infrastructure and the guarantee of a regulated public service by means of a ring tram on the Jette-Vilvoorde-National Airport route.

(15) The four subprojects referred to above related to the infrastructure works planned for the Vilvoorde-Machelen redevelopment area are represented in the plan below:



(16) Among the measures described in recital (14) above, Article 1.4 MIC labels certain works – which all take place on the section of R22/Woluwelaan concerned

¹⁴ Described in Articles 1.2 and 4 of the MIC.

by subproject 2 – as "project-specific". These works, labelled as project specific in the MIC, will form an integral part of the public domain in so far as they are situated on or above the public domain that is up to the boundary of the developer's private plot. The so-called project specific works are:

- a) Measures belonging to subproject 2:
 - multilevel access from and to the project site via bridge K3 over R22;
 - multilevel crossing of bridge K3 where the cycle path is taken through the K4 cycle tunnel;
 - multilevel exit from the project site via tunnel K5 to R22 (including acceleration lane(s) on to the R22/R0 complex);
 - bus stop, which will later become a tram stop, provided in both directions at the entrance to the project site;
 - b) footpath from the project site to the planned GEN station on Kerklaan;
 - c) footpath connecting Machelen village centre with the site.
- (17) All road works planned in the vicinity of Uplace as part of subproject 1, 3 and 4 as well as all the works planned as part of subproject 2 which are not labelled as project-specific in the MIC, are referred therein as general infrastructure works or, with regards to Uplace, as not project specific. This terminological distinction is the one used by the parties to the UMBC and MIC themselves.

3.4 Uplace Group's contribution to the financing of the road infrastructure

- (18) According to the Belgian authorities, project developers are in principle responsible for the access from their project site to the public road network and liable for the costs associated with the works for such connections. In some cases, in particular for sizeable projects, changes have to be made to the road network to prevent queues from forming or to avoid unsafe situations for cyclists and pedestrians. Such adaptations do not benefit only the project but have a positive effect also on the general traffic situation in the local area and the Flemish Region created a framework through which the government can bear a proportion of these costs by way of grants awarded to local communities and/or costs reimbursements for the developers. If no specific arrangements are made, the developer remains liable for the costs associated with connecting their project site to the public road network.
- (19) The Decrees concerning Mobility Covenants, of 20 April 2001¹⁵ as well as the Ministerial Order of 21 December 2001¹⁶ have introduced optional arrangements

¹⁵ The Decree of 20 April 2001 concerning mobility covenants can be found here: <http://www.mobielvlaanderen.be/overheden/artikel.php?nav=9&id=61> (link last checked on 9.9.2015)

¹⁶ The Ministerial Order of 21 December 2001 concerning mobility covenants established specific model arrangements to regulate the construction or upgrading of access infrastructure and the elaboration of accompanying measures. The 2007 version of the order – as amended several times – can be found in the Belgian official gazette of 5/4/2007, p.19311, can be found here (link last checked on 9.9.2015):

regarding the implementation of the mobility policy, stipulating that the region can cover – up to a maximum proportion¹⁷– part of the costs triggered by the changes that must be done to the road network in relation to projects of regional importance. All parties involved in such projects were encouraged to sign an agreement – based on the so-called module 14 model covenant – to arrange the mobility aspects of their projects. Those model arrangements remained optional until 25 January 2013 when compulsory procedures¹⁸ were adopted in respect of the process to be followed regarding mobility agreements. As at the time, the compulsory rules did not apply yet, the parties to the UMBC chose to agree on the mobility arrangements made in respect of the Uplace project through the 2009 Mobility Agreement in Principle.

- (20) Under the provisions of the initial UMBC and the 2009 MAP, a fixed investment from the developer was agreed which – based on the information available at the time – was sufficient to cover the full cost of certain so-called project-specific infrastructure measures. The maximum contribution to be made by the Uplace Group for these project-specific measures amounted to EUR 11.61 million (inclusive of 21% VAT), being 90 % of their total contribution of EUR 12.90 million. The remaining 10% (EUR 1.29 million) was for the footpaths between the project site and the new Kerklaan railway station, and the centre of Machelen.
- (21) After further elaboration of the measures in 2013, it turned out that this amount no longer covered all of the costs, though it did cover their major part. An additional analysis was done which resulted in the production of the MIC, (see recital (14) and (16) above). The MIC clarified all the various matters related to the infrastructure works and provided updated and detailed estimates for their costs. Article 1.4 and Article 5 of the MIC clarifies that the Uplace Group undertakes to bear the full cost of the "project-specific" measures as identified in the MIC, regardless of what they actually cost when they are completed. Based on a detailed estimate, the cost of the project-specific measures was estimated on the date of signing the MIC at EUR 14 052 430 (incl. 21 % VAT). It was agreed that the Uplace Group would cover these costs in full even if they turn out to be higher when the interventions are actually implemented. In addition, the 1,29 million fixed contribution for the footpaths remains¹⁹.

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007022232&table_name=wet.

¹⁷ According to Article 1.1 of module 14 covenant, the region can cover up to 40% of the cost for constructing new access infrastructure and up to 60 % of the costs for upgrading the existing infrastructure.

¹⁸ According to Article 45(1) of the Decree of the Flemish Government of 25 January 2013 (Belgian Official Journal, 27 February 2013), the region can cover only up to 40% of the cost of constructing new access infrastructure from the edge of the project zone in question to the junction with the road maintained by the region, and only up to 60% of the cost of redesigning and upgrading existing access infrastructure from the edge of the project zone in question to the junction with the road maintained by the region.

¹⁹ The total estimated contribution – fixed and variable – by the Uplace Group according to the MIC amounts to EUR 15 342 430.

4. THE COMPLAINT

- (22) The complainant argues that the Flemish Region grants illegal State aid to the Uplace Group by funding works for building new access roads and upgrading existing infrastructure which would not have been built in the absence of Uplace. According to the complaint, access to the project from the Woluwelaan/R22 (building the bridge K3 and the tunnel K5), relaying the Woluwelaan/R22, laying down the footpaths, building a pedestrian bridge (bridge K4), completing the R0-R22 link with E19 and building access to the project site from the Beaulieustraat, benefit only to the Uplace Group. The funding involves the use of State resources because the Flemish government covers most of the infrastructure costs and provides an economic advantage which benefits exclusively to the Uplace Group.
- (23) In reply to the preliminary assessment made by the Commission services in the letter dated 7 August 2013, the complainant argued that the infrastructure works, and more specifically the construction of the bridge over R22 (K3 and K4) and of the tunnel to the southern part of R22 (K5) are carried out only to absorb the traffic that the Uplace project will generate. It was also argued that since required permits have not become final and enforceable by 31 December 2011 as provided by Article 5.1.5 of the UMBC²⁰, the commitment by the Uplace Group to contribute EUR 12.9 million is no longer binding and, in any case, it would not cover the overall cost of the connections to the public road network²¹.
- (24) In addition, the complainant emphasised that the Decree of 20 April 2001 concerning mobility covenants, and especially the Ministerial Order of 20 December 2001 containing the model 14 covenant was not complied with since the rules regarding the financial contribution to be made by private civil society actors whose activities generate significant traffic flows were not respected.

5. THE VIEW OF THE BELGIAN AUTHORITIES

- (25) In contrast, Belgium pointed out that no selective advantage is conferred to the Uplace Group because most of the road infrastructure works concerned are of a general nature and do not benefit exclusively Uplace but the whole region Vilvoorde-Machelen. The Belgian authorities explained that this area is confronted with heavy traffic and roads saturation, and one of the purposes of the infrastructure measures is to link the region to the main road network system increasing traffic fluidity, and improving overall mobility in the wider region.

²⁰ Article 5 of the 2009 UMBC as amended in 2010 was further amended on 13 February 2015 when the mobility parts were laid down in the Mobility Implementation Covenant of 17 July 2015.

²¹ The MIC clarified that the Uplace Group will cover all real costs of construction, the limited previously negotiated predefined financial commitment was dropped in 2015 in the MIC.

- (26) Also other projects²², not only Uplace, will benefit from the connection to the roads system. The infrastructure will be accessible and used free of charge by anyone, in a non-discriminatory manner, serving the residents of Machelen and Vilvoorde, the businesses within the region, and also the many users from the wider area and other parts of Belgium.
- (27) Belgium also underlined that the infrastructure project is not a public-private partnership (PPP). The road connections are general and involve an exercise within the public policy remit of the Flemish region through which mobility and traffic safety are improved, including after the expected development of new economic activities in the area.
- (28) Furthermore, the location of the Uplace project is within the broader area where the Flemish Government wishes to bring about redevelopment and address severe mobility issues such as a lack of public transport accessibility and traffic congestion. This action to support the redevelopment of the area was already identified as necessary in the START programme and the Master Plan mentioned in recital (7) above.
- (29) Even though part of the infrastructure, designed to provide direct access to the Uplace site, is labelled project-specific in the MIC, it also aspires to open up the area and to facilitate the smooth flow of traffic that is not going to Uplace. The implementation of these infrastructure measures will ensure that – given the provision of multilevel intersections with Woluwelaan (R22) – there will be as little conflict as possible with through traffic on Woluwelaan (R22), with respect to motor vehicles, bicycles and public transport. These engineering structures will facilitate a smoother and safer flow of traffic for all users of Woluwelaan (R22). The term ‘project-specific’, as used in the replies of the Belgian authorities with reference to measures K3, K4 and K5, should therefore be read with this qualification in mind.
- (30) The costs for the infrastructure works designed for the wider redevelopment area will be borne by the Flemish Region (AWV) for the regional highways, by De Lijn for the specific public transport infrastructure (installation of bus/tram lane), by the City of Machelen for the local roads (landscaping, provision of pedestrians paths, bus stops, intercepted local roads), by Water-link for the installation of separate drainage system, and by the Uplace Group who will bear the full cost for all the project-specific works described in recital (16) above, as laid down in Article 1.4 and Article 5 of the MIC.
- (31) As regards the regulation of the mobility aspects of the project, the Belgian authorities underlined that the arrangements for implementing mobility policy based on the Decree of 20 April 2001 on Mobility Covenants and the Ministerial Order on Mobility Agreements of 21 December 2001 were optional, the Flemish

²² Such as Vilvoorde Water site, Jan Portaels general hospital, Vilvoorde Station surroundings, and Machelen Kerklaan.

Region being under no obligation to opt for a mobility agreement; instead of the module 14 model covenant the parties interested in the Uplace project signed the *Mobility Agreement in Principle* (MAP) and the *Mobility Project Partnership Agreement* (PPA), which were replaced in 2015 by the MIC. Belgium also stressed the fact that the compulsory rules introduced by the Decree of the Flemish Government of 25 January 2013 only applied to projects initiated after 1 March 2013 and did not apply to the Uplace project.

6. ASSESSMENT OF THE MEASURE

6.1 Scope of the decision

- (32) The Commission observes that the complaint does not address the financing of the Uplace project as such (works carried on private land owned by the Uplace Group) but State aid allegedly granted through the financing of infrastructure works on public land in the direct vicinity of the project site. It also observes that according to the contractual arrangements between the Uplace Group and the public authorities concerned, all infrastructure works to be undertaken on the private land are financed by the Uplace Group. Therefore, the present State aid decision only addresses the public road infrastructure works carried out in the vicinity of the Uplace site and connecting the site and the wider area to the general road network.

6.2 Presence of State aid within the meaning of Article 107(1) TFEU

- (33) Pursuant to Article 107(1) of the TFEU, *"save as otherwise provided in the Treaties, 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (34) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an economic advantage on a recipient undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.
- (35) Moreover, the State aid rules generally only apply when the beneficiary of the aid is an undertaking, that is, any entity that is providing goods or services on the market and hence carries out an economic activity. According to the case-law, the construction of an infrastructure that is meant to be commercially exploited also constitutes an economic activity.²³

²³ Joined Cases T-443/08 and T-455/08 *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission* EU:T:2011:117, confirmed by the Court of Justice on appeal in Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission* EU:C:2012:821.

- (36) The construction of infrastructure used for activities that the State carries out in the exercise of its public powers and which is not commercially exploited is in principle excluded from the application of State aid rules. The activity of providing adequate and safe road connections which are not commercially exploited but used by the society as a whole in a free and non-discriminatory manner falls within the public remit of the state, being thus exempted from State aid control.²⁴
- (37) The road infrastructure works in the present case relate to the public road network and links between the project site and the public road network. That network and those links are accessible to all for free; hence they are not commercially exploited.

6.2.1 Presence of a selective economic advantage and of State resources

- (38) In circumstances such as those observed in the present case, a selective advantage in respect of infrastructure works realized and financed through State resources that are not commercially exploited could be envisaged in two situations:
- if the rules normally applicable to the project impose on project developers to bear part of the costs of the general road works, then there can be a selective advantage if the developer pays less than legally required.
 - if the infrastructure is not of a general character but serves only one or a limited number of undertakings known in advance and if it is tailored to their needs in such a way that the undertaking(s) should normally have borne the costs of the infrastructure themselves.
- (39) It must therefore be established whether the infrastructure is bespoke, i.e. designed to suit only the needs of a certain predefined end-user (beneficiary), known at the start of the works²⁵. If the infrastructure serves various uses or users which are not established in an exhaustive manner in advance, then its development is general.

The financing of the "project-specific" works

- (40) As regards the infrastructure referred to in recital (16) above (labelled as "project-specific" in the MIC) and included in the measures enumerated in recital (14), the

²⁴ In Commission Decision of 27 March 2014 on State aid SA.36346 – Germany – GRW land development scheme for industrial and commercial use, the Commission found that the activity of ensuring that land is connected to utilities (water, gas, sewage and electricity) and transport networks (rail and roads) by municipalities is not an economic activity but part of the public tasks of the State, namely the provision and supervision of land in line with local urban and spatial development plans.

²⁵ The concepts of bespoke and speculative development were first defined in paragraph 24 of Commission Decision of 22 December 1999 on aid scheme C 39/99 (ex E 2/97) United Kingdom, English Partnerships (EP) under the partnerships investment programme (PIP), OJ of 20.06.2000, L 145/27: "*bespoke development* appears if the development was designed to suit the needs of an end user known at the moment the development works were undertaken".

Commission notes that they will be fully paid by the Uplace Group. Furthermore, also the cost sharing proportions referred to in recital (20) above regarding the construction and upgrade of infrastructure from the edge of a project zone to the junction with the road maintained by the region (maximum 60% borne by the region) are also respected since the Uplace Group covers all the costs for the works carried out from the border of their project zone to the public roads.

- (41) Consequently, it is clear that the Belgian authorities have not granted Uplace any advantage funded through State resources and is therefore not involving State aid within the meaning of Article 107(1) TFEU.

The financing of the other works

- (42) By contrast, the funding of the road infrastructure works made in the vicinity of Uplace, described in recital (14) (other than the "project-specific" works) does involve State resources. The Flemish Region is funding the construction of the regional highways and the City of Machelen is paying for the local roads.

- (43) However, these works are carried out on the public domain outside the borders of the site of the private project, accessible for free, and serving objectives of general interest. They are not designed to – and in effect do not – benefit Uplace exclusively. The owners of the land, where the infrastructure will be built, are the Flemish Region for R22 /Woluwelaan and R0, and the City of Machelen for the local roads²⁶. The Commission also observes that the Vilvoorde-Machelen Master Plan²⁷ already calls for the provision of more numerous and more efficient access options by public transport (train, tram and bus), of modern and safe infrastructure for vulnerable road users, for the optimisation of the through flow of road traffic and of the link between Woluwelaan (R22) and the Brussels ring road (R0)²⁸. Furthermore, the roads concerned are under the responsibility and administration of the Flemish Region; they are regulated and separate from the Uplace project, of general nature, freely accessible and not economically exploited.

- (44) From the information provided by the Belgian authorities it follows that the road infrastructure works are designed to give priority to public transport, and can be accessed in a non-discriminatory manner by all users, such as (but not only) inhabitants and businesses operating in the Vilvoorde-Machelen region. They do not only improve public transport access to the Uplace site but they open up the redevelopment area of Vilvoorde-Machelen and respond to a need to address traffic congestion and pollution concerns as well as road security issues already encountered in the region, while adapting the road network to accommodate the additional traffic expected to be generated by the urban development planned in the Master Plan referred to in recital (7) above (thus including, but not only, the additional traffic created by Uplace). The measures are intended to guarantee a

²⁶ Beaulieustraat, Nieuwbrugstraat and Rittwegerlaan.

²⁷ See footnote 4 and recital (7) above.

²⁸ See recital (7) above.

maximum and unimpeded flow of traffic on R22/Woluwelaan, which is in the interest of mobility for the wider region Vilvoorde-Machelen, and to increase the proportion of journeys made on public transport in the area.

- (45) The Commission also observes that there are no general rules in Belgium according to which project developers should bear part of the costs on general infrastructure.
- (46) Furthermore, it is noted that the infrastructure enumerated in recital (14) above with the exception of the one mentioned in recital (16), would be built anyway in the absence of the Uplace project. No selective economic advantage is therefore granted to Uplace through the financing by the authorities of the infrastructure works enumerated in recital (14), since they are not benefiting only to one specific undertaking known in advance.
- (47) This is consistent with previous case practice of the Commission and more recent decisions²⁹. Similar assessment was confirmed as well by the Court of Justice of the EU in *Matra v Commission*, where a Commission decision was upheld regarding infrastructure works relating to road connections to a plant for multi-purpose vehicles³⁰. It is established case-law that only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the State intervention³¹.

6.2.2 Conclusion

- (48) As indicated above, the Uplace Group will cover the full cost of the construction and financing of the infrastructure works identified as project-specific in the MIC and referred to in recital (16) above. Uplace therefore does not receive any advantage granted through State resources and this measure consequently falls outside the scope of Article 107(1) TFEU.

²⁹ Commission Decisions: of 20.07.1999, OJ 2000 L 137/1, para. 2 – Sangalli; OJ 2001 C37/44 – Valmont Nederland; OJ C 1999, 253/4, 11 – Lenzing Lycocell; OJ 1999 C 108/2 – Port of Ancona; OJ 1994 C 369/6- Fritz Egger; Commission Decision in C 20/94 (NN 27/94) concerning State aid for the development of the site occupied by Kimberly Clark Industries, OJ C/283, 27.10.1995, and Commission Decision of 12.07.2000 on State aid granted by France to Scott Paper SA Kimberly Clark, paragraphs 152-153, OJ L/12, 15.01.2002, p.1. Commission Decision 2003/227/EC of 2 August 2002, on various measures and the State aid invested by Spain in "Terra Mítica SA", a theme park near Benidorm (Alicante), paragraphs 62-67, OJ L/ 91, 8.4.2003, p. 23. The Commission also concluded that the various infrastructure projects financed through State resources in the newly extended industrial park where the new Propapier plant is situated were found not to be exclusively dedicated to the paper mill but to be open to all potential customers on equal terms. They were therefore general infrastructure measures and did not constitute selective advantages in favour of Propapier. Commission Decision of 1.10.2014 in SA 36147 - Alleged infrastructure aid for Propapier PM2, published on 10.12.2014, recitals 151, 153, and 155.

³⁰ Case C-225/91 *Matra SA v Commission of the European Communities* [1993] ECR I-3203, paragraph 29.

³¹ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13.

- (49) As regards the other works planned in the vicinity of the Uplace project site mentioned in recital (14), they appear to be of a general nature and therefore are not liable to confer any specific advantage to the Uplace Group.
- (50) In the absence of a selective advantage conferred through State resources, the cumulative conditions of State aid within the meaning of Article 107(1) TFEU are not fulfilled. As a consequence, the infrastructure works described in in recital (14) and (16) above do not constitute State aid to Uplace.

7. CONCLUSION

- (51) The Commission has accordingly decided that the construction and financing of the infrastructure works described in the complaint and referred to in recital (14) and (16) above do not constitute State aid to Uplace in the sense of Article 107(1) of the 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 <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Directorate-General for Competition
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B-1049 Brussels
Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Margrethe VESTAGER
Member of the Commission