

Firstly, the City of Prague – as the alleged provider of the aid in question – considers it appropriate to comment on the complaint and subsequent request for clarification submitted by *Technologie hlavního města Prahy, a.s.*, registered office: Dělnická 213/12, company ID: 256 72 541 (hereinafter ‘THMP’), as regards the transport of City of Prague property to the abovementioned companies, on the basis of a contract entered into by THMP on behalf of the City of Prague and BigBoard Prague, registered office: Na strži 2097/63, 140 00 Prague 4 – Krč, company ID: 24226491. This section of the text is therefore intended as a *de facto* reply to the European Commission’s Question 2 concerning the conclusion of contracts.

The abovementioned contract was entered into for a ‘transitional period’, defined therein as ‘the time period over which the City of Prague intends to substantially revise the commercial and contractual terms of the leasing of advertising space on public lighting facilities owned by the City of Prague’. The contractual relationship was short-term in nature, running from 15 July 2019 to 31 December 2019.

The lease related to areas already used by BigBoard Prague.

The project for leasing advertising space was published on the official notice board of the Magistrate of the City of Prague under ref. no TMP-1999/2019 from 13 to 28 February 2019.

Advertising space was leased in accordance with Resolution No 1588 of Prague City Council of 27 June 2017 laying down rules for placing advertising space on columns and masts in public areas of the City of Prague.

THMP entered into the contract in question on behalf of the City of Prague on the basis of the ‘Contract for the commercial use of advertising space within the public lighting system of the City of Prague’, ref. no INO/35/04/002774/2017, of 4 May 2018.

The complainant makes a link with Regulation No 20/2020 of the City of Prague of 2 December 2020 (hereinafter ‘the new Regulation’), amending Regulation No 26/2005 of the City of Prague with effect from 1 October 2021 and bringing in a ban on advertising off premises at publicly accessible locations – in light of the above, however, the City of Prague does not find that the contract entered into and the entry into force of the new Regulation tally chronologically, thus eliminating the suspicion of unlawful aid in this case.

As the City of Prague is also aware, advertising on selected public lighting masts has been subject to public tender since 1 January 2020. THMP has been responsible for administering such leases on behalf for the City of Prague for a long time, in the context of overall management of the public lighting system. The rules for public tenders are available at <https://www.thmp.cz/jak-sizaridit/pronajem-reklamnich-ploch> [in Czech]. As a result of the public tender, BigBoard Prague was not granted any advertising space (neither was JCDecaux s.r.o.).

Any pre-existing contracts still in force after the entry into force of the new Regulation are already at the exit-mechanism stage. Those contracts were entered into under the aegis of the then Department of Business Activities of the City of Prague in accordance with Resolution No 1214 of Prague City Council of 16 August 2005, as amended, by which the Prague City Council entrusted the Magistrate of the City of Prague, in a separate capacity in accordance with Section 68(2)(c) of Act No 131/2000 on the City of Prague, as amended (hereinafter ‘the City of Prague Act’), with selected tasks which Section 81(2) of the City of Prague Act requires the Magistrate of the City of Prague to perform. These tasks specifically included drawing up and entering into, on behalf of the City of Prague, contracts relating to the management of the property of the City of Prague, with explicit reference to lease agreements. In view of the considerable period of time having elapsed between application and

conclusion of some of the lease contracts in question, it should also be noted that the documentation relating to the conclusion of certain relevant contracts has already been destroyed in accordance in accordance with Act No 499/2004 on archiving and document filing and amending certain acts, as amended. After publication of the project on the official notice board of the City of Prague, certain amendments to the contracts in question were adopted, in accordance with the City of Prague Act and on the basis of the relevant resolutions approved by Prague City Council.

The City of Prague is not aware of any such contract having been entered into after the entry into force of the new Regulation.

It is therefore clear from these observations why the City of Prague rejects the accusation that it actively favours certain specific entities by transferring City of Prague property in combination with the new Regulation.

The City of Prague also considers it appropriate to refute the claim that certain operators could be placed at an advantage as a result of the new Regulation allegedly placing certain others at a disadvantage.

In the view of the City of Prague, the crucial point is whether a given regulation or any other City of Prague act – in combination with the amended Regulation – creates some sort of imaginary impermeable barrier and prevents a given group of competitors from entering and participating in the advertising market, thereby placing one supposed group of competitors at an advantage over another group or excluding one group from competition.

The City of Prague considers that that is not the case. All potential competitors in the outdoor advertising market enjoy a level playing field under the Regulation in question (and also under the Prague Building Regulations, which cover advertising by means of other communication media). Nobody is in any way excluded under the Construction Act from the possibility of using equipment to disseminate advertising (provided that they meet the conditions laid down therein and in the Prague Building Regulations). Similarly, the Regulation prohibits anybody from disseminating advertising by means of hoardings within a given territory. There are general criteria applied equally to all competitors, with no scope for arbitrary action on the part of the City of Prague – the City of Prague considers this to be an essential fact of the case. Judgment Pl. ÚS 56/10¹ of the Constitutional Court states that any regulation should be neutral and non-discriminatory vis-à-vis the specific persons to whom it applies. All competitors wishing to operate on the outdoor advertising market have the same opportunity to do so, provided they meet the conditions laid down in the Building Regulations (and non-negotiable elements of discrimination against particular operators).

In summary, the City of the Prague considers that neither the new Regulation (which basically extends the territorial scope of the Regulation in force for over 15 years to cover the City of Prague) nor the transfer of City of Prague property for use – alone or in combination – confers any advantage on certain entities or disadvantages on others.

The City of Prague's answer to the European Commission's Question 2 is therefore 'no'. Extending the territorial scope of the Regulation restricting the dissemination of advertising in public areas to other areas of the City of Prague (which is, as indicated above, the essence of the amendment) does not entail a transfer of State resources. The only possible burden on the State budget or potential loss of revenue resides in the fact that those who used to make a profit from placing advertisements in places

¹ This Judgment concerns an application for annulment of the Order of general application No 1/2010 of the City of Františkovy Lázně on safeguarding local public order issues in the field of limiting gambling.

where it is no longer possible as a result of the amendment may post worse economic results and thus pay less income tax. It is, however, clear from the content of the complaint (point 1, i.e. the part relating to the characteristics of the alleged State aid) that the complainant does indeed refer to the budget of the City of Prague. The same reply can be given in this case, too. In exchange for the cultivation of public spaces, the City of Prague generally waives part of its income in the sense described above, in the form of a share of income tax revenue. However, such 'losses' do not constitute an advantage for other operators in the sense of State aid and distortion of competition, as the ban on disseminating certain types of advertising laid down in the Regulation, as stated above, affects all operators equally.