



2025/1765

3.9.2025

COMMISSION DECISION (EU) 2025/1765

of 11 April 2025

on the measure State aid SA.53630 (2020/C) – (ex 2019/FC) – Belgium

Alleged aid granted to Ladbrokes in relation to virtual betting

(notified under document C(2025) 2174)

(Only the English text is authentic)

(Text with EEA relevance)

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 and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter of 1 March 2019, the Commission services received a complaint lodged by the undertakings Rocoluc NV and European Amusement Company NV (hereafter respectively referred to as 'Rocoluc' and 'EAC') Belgian sister companies active in the gaming and betting sectors, and on 23 February 2024 another complaint by their sister company V.D.B. Faculty NV ('The Faculty'), also active in the gaming sector with a class II licence (all three sister companies also referred to as 'the complainants').
- (2) The complainants allege grant of State aid by the Belgian authorities through an *ad hoc* 'authorisation' to the Belgian company Ladbrokes (registered as Derby S.A.) to operate virtual betting in Belgium which would have been granted to it without appropriate remuneration (hereafter the 'contested measure'). Ladbrokes, a class IV licence holder, is the (international) brand name under which Derby S.A. a Belgian company specializing in gaming and betting activities and a subsidiary of the multinational betting and gaming company Entain Holdings PLC operates (hereafter for the purposes of this decision all together are referred to as 'Ladbrokes').
- (3) By letter of 2 September 2020, the Commission informed the Belgian authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the contested measure (hereinafter the 'Opening Decision') ⁽¹⁾.
- (4) The Commission decision to initiate the procedure was published in the Official Journal of the European Union. The Commission called on interested parties to submit their comments.
- (5) The Belgian authorities submitted comments on the Opening Decision on 9 October 2020. Rocoluc and EAC submitted comments on the Opening Decision on 18 November 2020. The Commission received comments on the Opening Decision from Ladbrokes on 18 December 2020. The Belgian authorities provided their observations on the third parties' comments on 10 February 2021.

⁽¹⁾ Commission decision of 2 September 2020 in State Aid SA.53630 (2019/FC) – Belgium – Alleged aid granted to Ladbrokes in relation to virtual betting (OJ C 355, 23.10.2020, p. 6).

- (6) On 26 May 2021, following the annulment without preservation of the effects (with effects *ex tunc* as to the date of adoption) of the Royal Decree on ‘games of chance on virtual sporting events in fixed class IV gaming establishments’ dated 4 May 2018 (hereafter the ‘2018 Royal Decree’) ⁽²⁾, the complainants requested the Commission to adopt a corrective opening decision to extend the period of alleged investigated aid.
- (7) On 9 September 2021, Ladbrokes provided a further submission.
- (8) On 28 October 2021, the Commission forwarded to the Belgian authorities the complainants’ and Ladbrokes’ submissions with a request for information, to which the Belgian authorities replied on 30 November 2021.
- (9) On 7 February 2022, the Commission sent a further request for information to the Belgian authorities, to which the Belgian authorities replied on 9 March 2022, 5 March and 22 April 2022.
- (10) On 23 February 2023, the Commission services held a meeting with the complainants. On 9 March 2023, the Commission received an additional submission from the complainants regarding the selective character of the alleged aid. On 23 February 2024, the Commission received a submission by The Faculty, a Belgian company active in the gaming sector, regarding the same contested measure.
- (11) On 8 March 2024, the Commission sent a request for information to the Belgian authorities asking for, *inter alia*, additional clarifications on the factual and legal situation for offline and online virtual betting following the retroactive annulment of the 2018 Royal Decree.
- (12) On 8 March 2024, the Commission informed The Faculty that it registered its submission as general market information. On 14 March 2024, The Faculty sent another letter asking to be qualified as a formal complainant. On 20 March 2024, the Commission sent a second letter to The Faculty asking for additional information on the complaint.
- (13) On 29 April 2024, the complainants Rocoluc and EAC submitted a letter requesting the Commission to act within the meaning of Article 265(2) TFEU.
- (14) On 21 May 2024, the Belgian authorities submitted a reply to the request for information sent by the Commission on 8 March 2024, following a reminder on 3 May 2024.
- (15) On 14 June 2024, the Commission sent additional questions to the Belgian authorities to which the Belgian authorities replied on 19 June 2024. On 20 June 2024 the Commission requested additional clarifications per e-mail, to which the Belgian authorities replied on 28 June 2024.
- (16) On 31 July 2024, following the above-listed information received from the complainants, the alleged beneficiary Ladbrokes and the Belgian authorities, the Commission decided to extend the scope of its in-depth investigation and adopted a Supplementary Opening Decision ⁽³⁾ (hereinafter ‘the Supplementary Opening Decision’).
- (17) The Commission called on interested parties to submit their comments on the findings in the Supplementary Opening Decision, which they provided on 25 November 2024, whereas the Belgian authorities did not provide any comments.
- (18) On 12 November 2024, the Commission services requested further information from Ladbrokes and on 22 November 2024, 9 December 2024 and 21 January 2025, Ladbrokes provided, respectively, its comments on the Supplementary Opening Decision and additional information.

⁽²⁾ ‘Arrêté royal relatif aux jeux de hasard sur des événements sportifs virtuels dans les établissements de jeux de hasard fixes de classe IV’. Published in the Belgian Official Gazette on 9 May 2018.

⁽³⁾ State aid – Belgium – State aid SA.53630 (2019/FC) – Belgium – Alleged aid granted to Ladbrokes in relation to virtual betting – Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ, C/2024/6307, 23.10.2024, ELI: <http://data.europa.eu/eli/C/2024/6307/oj>).

- (19) On 23 January 2025, the Commission forwarded the third parties' comments on the Supplementary Opening Decision to the Belgian authorities. The Belgian authorities replied on 4 February 2025 with no comments.
- (20) The Belgian authorities agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of Council Regulation No 1/1958 ⁽⁴⁾ and to have this decision adopted and notified pursuant to Article 297 TFEU in English.

2. DESCRIPTION OF THE CONTESTED MEASURE

2.1. Subject of the complaint

- (21) The complainants contest a preferential treatment, and an 'exclusive authorisation' which would have been granted by the Belgian authorities to Ladbrokes to offer online and offline virtual betting in Belgium (the contested measure). According to the complainants, that 'authorisation' resulted in Ladbrokes enjoying a *de facto* exclusive right (since 2014) to operate virtual betting in Belgium without an appropriate remuneration.
- (22) The complainants also claim that the 2018 Royal Decree of 4 May 2018 and the judgment of the Council of State ('Conseil d'État', which is the Belgian Supreme Administrative Court) of 7 May 2021 confer a benefit to Ladbrokes which amounts to unlawful State aid from the Belgian State, by way of tolerating Ladbrokes' virtual betting activities while those activities would have been illegal under Belgian law.
- (23) Before describing the legal framework for virtual betting and its evolution in Belgium, the wider context of the legal framework for the gaming sector is addressed first.

2.2. Legal framework on games of chance in Belgium

- (24) The games of chance ('jeux d'hasard') are a broad concept covers both gaming and betting ('paris').
- (25) The sector of games of chance in Belgium has been regulated and organised by the Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players ⁽⁵⁾, as amended by an Act of 10 January 2010 ⁽⁶⁾ (hereinafter the 'Gaming Act'). In addition, numerous implementing acts, Royal decrees (more than 100 to date), implement the provisions of the Gaming Act.
- (26) In Belgium, according to Article 4 § 1 of the Gaming Act, there is a prohibition on games of chance, unless a licence is granted to operate, or an exception from the licence requirement is foreseen. The Gaming Commission grants different types of licences for the operation of games of chance.

2.2.1. Definitions of 'games of chance' in Belgium

- (27) The activities involving 'automatic games of chance' are defined as follows: 'Any game or bet, where a stake of any kind, either the loss of that stake by at least one of the players or bettors, or a profit of any kind for at least one of the players, bettors or organizers of the game or bet and where chance is an even incidental element in the course of the game, the designation of the winner or the determination of the winning size' ⁽⁷⁾.

⁽⁴⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58, ELI: [http://data.europa.eu/eli/reg/1958/1\(1\)/oj](http://data.europa.eu/eli/reg/1958/1(1)/oj)).

⁽⁵⁾ Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players ('Loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs'). Published in the Belgian Official Gazette on 30 December 1999.

⁽⁶⁾ Act of 10 January 2010 modifying the Act of 7 May 1999 as regards the Gaming Commission ('Loi du 10 janvier 2010 modifiant la loi du 7 mai 1999 sur les jeux de hasard, les établissements de jeux de hasard et la protection des joueurs, en ce qui concerne la Commission des jeux de hasard'). Published in the Belgian Official Gazette on 1 February 2010.

⁽⁷⁾ <https://www.commissiondesjeuxdehasard.be/en/node/409>.

- (28) The definition of games of chance (*jeux d'hasard*) covers a wide range of activities. In other words, in games of chance the player bets on the outcome of a game or event that has an uncertain, randomly determined, result that depends on probabilities (e.g. slot machines). Games of chance are a specific subset of games of chance where the outcome is determined entirely or partially by chance. These games do not require skill and involve a random outcome (such as rolling dice, drawing cards, or spinning a wheel).
- (29) Betting, on the other hand, can be regarded as a category of games of chance, which is about predicting the outcome of a future, real event, based on certain criteria (e.g. betting on the outcome of a football match based on the relative strength of the teams). Unlike games of chance, betting may involve an element of skill, as it is based on knowledge and analysis of the event being bet upon.

	Games of chance	Betting
Definition	Games where outcomes are determined by chance.	Predicting outcomes of events and staking money.
Outcome Determinants	Purely or mainly random chance.	Predominantly influenced by chance but may involve skill.
Examples	Roulette, slot machines, lotteries.	Sports betting, horse racing, fixed-odds betting.
Regulation	Strictly regulated as games of chance.	Regulated as a form of game of chance, requiring a betting licence.

- (30) Regarding virtual betting, the Belgian legal framework has evolved. First, the regulatory and legislative framework has changed over time, marked in particular by the 2018 Royal Decree. This led to litigation before national courts, which has resulted to suspensions and annulments of the 2018 Royal Decree, as well as the Framework Notes of the Gaming Commission of 2012 and 2015 (see below in recital 59). Second, the approach by the Gaming Commission evolved, considering virtual betting as falling under the categories of betting or automatic games of chance. This evolving interpretation of virtual betting within different periods reflects its complex nature in the context of Belgian gaming legislation. It is noteworthy that the discussion on how to define and qualify virtual betting is still pending today in Belgium.

2.2.2. *Licences for games of chance and betting*

- (31) The Gaming Act provides for a limited number of types of licences, which allow the operation of certain games of chance and gaming establishments laid down by law. According to Article 25 of the Gaming Act (*'Chapter III – Licences'*) there are nine categories of licences (A, B, C, D, E, F1, F2, G1 and G2) and additional licences (A +, B +, C + and F+).
- (32) There are four classes of gaming establishments in Belgium:
- Class I: for casinos. A casino is a gaming establishment where the operation of games of chance, whether or not automatic, is authorized. Only nine casinos are allowed on the Belgian territory. The Gaming Act lists the territories of the communes/cities where a casino can be operated. A casino operator must hold a class A licence.
 - Class II: for gaming arcades. Gaming arcades are establishments which operate only games of chance authorised by the King of Belgium. The operating rules for the automatic games of chance that can be offered in class II gaming establishments are laid down in a Royal Decree of 8 April 2003. A gaming arcade operator must hold a class B licence and can offer automatic games of chance can be offered mainly by class II establishments with a B licence.

- iii. Class III: drinking establishments, which provide for games of chance and reduced-stakes automatic games of chance. Drinking establishments such as cafés must hold a class C licence.
- iv. Class IV: for betting offices. Class IV gaming establishments are places where operators with an F2 licence are exclusively permitted to accept bets on behalf of an F1 licence holder (the organizer of betting activities). Class IV establishments may also offer automatic games of chances under certain conditions. It is prohibited to accept bets outside a class IV gaming establishment. There are, however, a limited number of exceptions to this prohibition. A class IV gaming establishment can be fixed or mobile. A fixed class IV gaming establishment is a clearly demarcated permanent establishment where bets are offered. A mobile class IV gaming establishment is a temporary establishment, also clearly demarcated, where bets are offered during and at an event, sports game or sports competition. F2 licences may also be granted to newspaper shops, which can offer bets as an ancillary activity. Betting is offered mainly by class IV gaming establishments, and it requires an F1 or F2 licence ⁽⁸⁾.

- (33) The Belgian legislature has set up a closed licensing system. Offering online games of chance and bets requires an online licence (A+ licence for online casinos, B+ licence for online gaming arcades and F1+ licence for online bets).
- (34) In addition, an online licence requires a mandatory physical connection to the Belgian territory. Only those operators licenced to operate in the real world (and holding a principal A, B or F1 licence) can obtain a licence to offer the same games of chance and bets online (an 'additional' A+, B+ or F1+ online licence).

2.2.3. *The role of the Gaming Commission*

- (35) The Gaming Commission ⁽⁹⁾ was established by the Gaming Act of 7 May 1999 as a federal supervisor within the Federal Public Service of Justice (formerly, the Ministry of Justice). Its main task is to ensure channeling to legal gaming, with the primary aim of protecting players. The Gaming Commission's main responsibilities include:
 - providing advice to the Government and Parliament on all matters related to the Gaming Act;
 - granting the licences necessary for the operation of games of chance and betting, as well as ensuring their proactive management;
 - monitoring compliance with the Gaming Act and exercising sanctioning power, which include imposing administrative sanctions (warning, suspension or licence revocation) and administrative fines.

2.3. **Legal framework on virtual betting in Belgium**

2.3.1. *Interpretation of virtual betting as 'betting' by the Gaming Commission*

- (36) Virtual betting is a game of chance, which has taken shape in Belgium since 2011, whereby players can bet on the outcome of a fictional sport event (e.g. a fictional horse race) and where the results are determined by a random number generator.
- (37) Virtual betting combines characteristics of both automatic games of chance and betting. While the outcomes are determined by chance (games of chance), predicting these outcomes may also require some degree of skill (betting).
- (38) The Gaming Act does not provide a definition of virtual betting, nor does it consequently foresee a (special) licence for it. It was only that the Gaming Commission first provided an interpretation on how to categorize virtual betting following its appearance in Belgium in 2011, but their interpretation was later annulled by the Council of State ⁽¹⁰⁾ on the basis that the Gaming Commission thereby acted *ultra vires*.

⁽⁸⁾ Operators with an F2 license can also offer betting outside a class IV gaming establishment under certain conditions.

⁽⁹⁾ <https://www.gamingcommission.be/en>.

⁽¹⁰⁾ Decision 245.497 of 19 September 2019.

- (39) The concept of virtual betting was assessed by the Gaming Commission in three 'Framework Notes' or 'memoranda' (*'omkaderingsnota'* and *'nota'*) dated 12 January 2012 ⁽¹¹⁾, 17 April 2013 ⁽¹²⁾ and 1 July 2015 ⁽¹³⁾. They considered virtual betting to be betting on (virtual) events ⁽¹⁴⁾. Furthermore, all legal and regulatory obligations applicable to betting also applied to virtual (sporting) betting (for example, recording obligation from EUR 1 000, computer protocol, etc.) ⁽¹⁵⁾. Virtual betting was therefore regarded as 'bets' which could be exploited by the holders of the F1, F2 and F1+ licences. It follows that the class F1 licence and class F1+ licence holders were allowed to operate online and offline virtual betting only via class IV gaming establishments.
- (40) The Gaming Commission's views on offline and online virtual betting.
- As to the offline operation of virtual betting, on 12 January 2012 the Gaming Commission examined in its 'Framework note on the possibility of betting on virtual events', 'whether the amended Gaming Act or its implementing regulations contain legal objections to the organization of betting on virtual (sports) events'. The Gaming Commission concluded that 'the organization/offer of betting on virtual (sports) events complies with the provisions of the Gaming Act in so far as such betting is considered to be betting on events'. The Gaming Commission stated, among others, that 'in order to be able to closely monitor this development - which brings additional profitability to the sector in compensation for the investments required as a result of the law on games of chance, its implementing decrees and technical protocols -, [...] each F1 [licence holder] wishing to organize such bets should send a prior request for authorisation ["goedkeuring"] to this end to the secretariat of the [Gaming Commission] [...].'
 - As to online virtual betting, the Gaming Commission issued guidelines on it through its internet group website in 2012. For offering online virtual betting, a mere communication to the Gaming Commission from the class F1+ licence holder was sufficient.
- (41) On 1 July 2015, the Gaming Commission reaffirmed in its 'Framework note on the possibility of setting up bets on virtual events' that there were no legal objections to offering bets on virtual events that the Gaming Commission still considered as bets. On 9 September 2015, the Gaming Commission confirmed the position taken in the Framework note of 1 July 2015. It noted that virtual betting was advantageous for the 'operators' and decided to set up a subcommittee with the aim to 'further analyse' the issue of virtual betting.
- (42) Regarding the regulation of online virtual betting, the subcommittee noted 'first of all, that none of the parties fundamentally objected to the current regulation of online virtual betting by means of the internet group's guidelines on the subject, which allows the present advice to be limited further to the current regulation of offline betting by means of the note of 1 July 2015.' Regarding the regulation of offline virtual betting, the subcommittee, as a policy consideration, advised that offline virtual betting should be regulated by way of a Royal Decree as an automatic game of chance, and no longer as betting, and proposed to suspend the Framework note of 1 July 2015.

⁽¹¹⁾ *'Omkaperingsnota aangaande de mogelijkheid tot het inrichten van weddenschappen op virtuele evenementen'*. The Belgian authorities consider that it is very likely that this framework note was published on the following page: www.gamingcommission.be/opencms/opencms/jhkswb_nl/gamingcommission/besl/wdsch/. It is however not or no longer publicly available there.

⁽¹²⁾ *'Omkaperingsnota aangaande de mogelijkheid tot het inrichten van weddenschappen op virtuele evenementen'*. The Belgian authorities consider that it is very likely that this framework note was published on the following page: www.gamingcommission.be/opencms/opencms/jhkswb_nl/gamingcommission/besl/wdsch/. It is however not or no longer publicly available there.

⁽¹³⁾ *'Nota: Weddenschappen op virtuele evenementen'*. According to the Belgian authorities, this note was published on the following page: www.gamingcommission.be/opencms/opencms/jhkswb_nl/gamingcommission/besl/wdsch/. It is however not or no longer publicly available there.

⁽¹⁴⁾ Framework note of 12 January 2012.

⁽¹⁵⁾ Framework note of 1 July 2015.

2.3.2. Adoption of the first legal framework regulating offline virtual betting as an 'automatic game of chance'

- (43) On 4 May 2018, the Royal Decree on 'games of chance on virtual sporting events in fixed class IV gaming establishments' ⁽¹⁶⁾ (the 2018 Royal Decree) was adopted. It classified virtual betting as an 'automatic game of chance' and allowed only existing class IV operators to offer virtual betting in Belgium. Indeed, pursuant to Article 2 of the 2018 Royal Decree, '[g]ames of chance on virtual sporting events are automatic games of chance where the stakes of a player or several players in several places can be accepted at the same time for a virtual sports event, the existence of which, the odds associated with the event and the chances of winning are determined by a remote server'. Article 3 provided that '[g]ames of chance on virtual sporting events are automatic games of chance authorised in class IV fixed gaming establishments'. Article 4 specified that the number of automatic gaming machines on virtual sports events in class IV fixed gaming establishments is limited to two. Indeed, in light of the Gaming Act ⁽¹⁷⁾, the 2018 Royal Decree implements the conditions under which a maximum of two automatic games of chance offering bets on 'activities similar to those engaged in the betting agency' (i.e. virtual betting games) may be operated in a fixed class IV gaming establishment ⁽¹⁸⁾. According to the 2018 Royal Decree, by explicitly classifying games of chance on virtual sporting events as automatic games of chance in class IV fixed gaming establishments, the essential protection of players is guaranteed. It follows that no authorisation was required to operate virtual betting. Inasmuch as an operator holds a valid F1 or F2 licence and has fixed class IV gaming establishments, the gaming operator can operate a maximum of two virtual betting games in the class IV fixed gaming establishment.
- (44) Virtual betting as described by the 2018 Royal Decree (Article 2) needs 'multiplayer' gaming machines, which allow multiple players to bet in different betting shops at the same time on the same virtual sports event. As of 30 January 2020, there were at least five operators providing offline virtual betting in Belgium, including Ladbrokes.
- (45) The Belgian Council of State retroactively annulled the 2018 Royal Decree on 7 May 2021.

2.4. Classification of licences held by the complainants

- (46) Rocoluc, EAC and The Faculty are linked Belgian companies who also share the same majority owner and the headquarters. Rocoluc is since 2005 owned for 50 % by a physical person and for 50 % by others. EAC is owned in half (50 %) by Rocoluc, and half by others. The Faculty is also headed by the same physical person as a Managing Director since 15 April 2020. The same physical person again owns 99,92 % of the shares in The Faculty.
- (47) Rocoluc and EAC are all class II establishments and held offline B and online B+ licences at the time of the submission of the complaint.

⁽¹⁶⁾ 'Arrêté royal relatif aux jeux de hasard sur des événements sportifs virtuels dans les établissements de jeux de hasard fixes de classe IV'. Published in the Belgian Official Gazette on 9 May 2018.

⁽¹⁷⁾ Article 43/4, paragraph 2, 3rd sentence, 3rd indent of the Gaming Act.

⁽¹⁸⁾ According to Article 43/4, paragraph 2, 3rd sentence, 3rd indent of the Gaming Act, 'Les établissements de jeux de hasard de classe IV sont des lieux exclusivement destinés à engager des paris autorisés conformément à la présente loi pour le compte de titulaires de la licence de classe F1. L'engagement de paris requiert une licence de classe F2.

Hormis les exceptions prévues au § 5, il est interdit d'engager des paris en dehors d'un établissement de jeux de hasard de classe IV.

[...]

§ 2. Les établissements de jeux de hasard de classe IV sont fixes ou mobiles.

Un établissement de jeux de hasard fixe est un établissement permanent, clairement délimité dans l'espace, dans lequel les paris sont exploités.

Un établissement de jeux de hasard fixe a pour destination exclusive l'engagement de paris à l'exception de:

- La vente de journaux spécialisés, de magazines de sport et de gadgets ;
- La vente de boissons non alcoolisées;

- L'exploitation de maximum deux jeux de hasard automatiques qui proposent des paris sur des activités similaires à celles engagées dans l'agence de paris. Le Roi fixe les conditions auxquelles ces jeux de hasard peuvent être exploités'.

- (48) By judgment of 25 June 2024, the Council of State declared unlawful the licences of Rocoluc, namely licences B3892 (offline) and B3892 + (online). The litigation on the validity of these licences is still pending ⁽¹⁹⁾.
- (49) The Faculty is a class III establishment which holds a C licence allowing it to operate a maximum of two automatic gaming machines and a maximum of two machines with reduced stakes in a class III or drinking establishment.

2.5. Classification of licences held by Ladbrokes

- (50) Ladbrokes is a class IV establishment and holds the following licences:
- A class F1 licence, with number FA116428, which was granted by the Gaming Commission on 2 February 2011, which allows the operation of a class IV betting establishment.
 - A class F2 licence, which allows bets to be taken on behalf of the licensee of class F1, in a class IV fixed or mobile gaming establishment. That licence also makes it possible to take bets outside a class IV gaming establishment in the cases referred to in Article 43/4 (1), (5) and (2) of the Gaming Act.
 - An additional class F1+ licence allowing the exploitation of bets via an information society tools ('online') with number FA+116482 granted by the Gaming Commission on 2 April 2014.

2.6. Ad hoc 'authorisations' for virtual betting

- (51) On 9 February 2014, Ladbrokes requested by e-mail the Gaming Commission's view on its plans to proceed with the launch of a new product, betting on virtual sports events (regarding land-based or 'offline' virtual betting, i.e. in betting outlets).
- (52) On 10 February 2014, an official at the Gaming Commission with no power of representation, replied by way of an e-mail to Ladbrokes: 'After internal consultation, I can tell you that your project complies with the Gaming Commission's note on offline virtual betting. I can therefore give you the go-ahead for this'.
- (53) Following another enquiry by e-mail from Ladbrokes dated 5 March 2015 (regarding online virtual betting), the Gaming Commission confirmed by e-mail on the same day that Ladbrokes could operate online virtual betting.
- (54) On 9 September 2015, following reactions received from the sector, the Gaming Commission came to 'new insights' as to the classification of virtual betting and set up a sub-commission to investigate whether legal action was required to regulate virtual betting.
- (55) In addition, Ladbrokes, two other class IV operators, Stanleybet ⁽²⁰⁾ and Sagevas ⁽²¹⁾ submitted requests for an authorisation to offer virtual betting to the Gaming Commission in 2015 and 2016.

⁽¹⁹⁾ The judgment did not formally abrogate the licences since in point 4 of the operative part the Council of State decided to reopen the issue in order to enable the Advocate General (Auditeur Général) to take a position on the Gaming Commission's request to abrogate the license. However, by letter of 16 July 2024, the Gaming Commission withdrew this request, but the Council of State has not formally annulled Rocoluc's licences, yet the above cited judgment has the effects on the invalidity of Rocoluc's licences.

⁽²⁰⁾ Stanleybet Belgium S.A. ('Stanleybet'), the Belgian company, was founded as the international branch of Stanley Leisure plc, a sports betting company founded in 1958 in Belfast, Northern Ireland. In 2005, Stanleybet began its activity in Belgium by offering its products in betting agencies and bookstores. Stanleybet has the license of the Gaming Commission to offer offline betting. Belgian players can also take advantage of 'Live betting' in certain agencies to bet live on the different events. See https://urldefense.com/v3/__https://shops.stanleybet.be/About_us.

⁽²¹⁾ Sagevas S.A. ('Sagevas') is a company registered in Belgium under number BE 832 457 166 and licensed by the Belgian Gaming Commission under number FA1 16764. It is a class IV operator offering online sports betting and operates in Belgium under the trademark betFIRST, see <https://betfirst.dhnet.be/en/support/about-us/>

- (56) Specifically, on 28 October 2015, Stanleybet requested ‘authorisation’ to operate virtual betting. The Gaming Commission replied that given the recent establishment of the sub-commission, it would only deal with the request once the results of the activities of the sub-commission were known. Stanleybet submitted a second request on 17 June 2016. The Gaming Commission replied initially the submitted file was incomplete. Then, because of a planned meeting on virtual betting announced for next month, it replied on 3 November 2016 that a regulatory initiative on virtual betting was being discussed.
- (57) In 2016, another operator Sagevas also wrote to the Gaming Commission on 23 August 2016. Its request was considered by the Gaming Commission to be incomplete. Later, on 3 November 2016, the same day as to Stanleybet, the Gaming Commission replied to Sagevas along the same line as to Stanleybet that a regulatory initiative on virtual betting was being discussed.
- (58) In a report dated January 2016 ⁽²²⁾, the sub-commission recommended the creation of a specific legal framework for offline virtual betting and the suspension of the Framework note of 1 July 2015. It also recommended the suspension of the ‘authorisation’ granted to Ladbrokes, to take effect as of 1 April 2016, in order to provide for a transitional period in line with usual administrative practices ⁽²³⁾.
- (59) On 13 January 2016, following the advice of the sub-commission on the need to adapt the regulatory framework, the Gaming Commission adopted a first transitional decision ⁽²⁴⁾, whereby it suspended the 2015 Framework note effectively as from 1 June 2016, along the interpretation of the existing rules in the Gaming Act provided to Ladbrokes (the so-called ‘authorisation’). In its decision to do so, the Gaming Commission stated that ‘the current regulation on virtual offline betting, by means of the note of 1 July 2015, does not provide an adequate Framework for such games.’
- (60) On 1 June 2016 ⁽²⁵⁾ and on 2 January 2017 ⁽²⁶⁾, the Gaming Commission adopted two other transitional decisions delaying the suspension of the Framework note and of Ladbrokes’ right to operate virtual betting until 30 June 2017 ‘for reasons of legal certainty’.

2.7. Suspension of the ‘authorisations’ for virtual betting

- (61) On 31 May 2017, the Dutch-speaking Court of First Instance of Brussels ⁽²⁷⁾ handed down an interlocutory judgment against the Belgian State, at the request of the complainants. The court considered that virtual betting had *prima facie* the characteristics of both betting and automatic games of chance, without, however, defining virtual betting as falling with certainty under one of these two categories. Subject to a decision on the merits of the case or to the setting-up of a regulatory framework for virtual betting, the court ordered the Belgian State to suspend the ‘authorisation’ granted to Ladbrokes. The Belgian State lodged an appeal against that judgment, which had no suspensory effect. In order to comply with this judgment, the Gaming Commission decided to stop postponing the suspension of the Note of 1 July 2015, which was thus suspended on 1 July 2017.

⁽²²⁾ ‘Avis de la Sous-commission concernant la réglementation souhaitée des “paris virtuels” tant en ligne que hors ligne’.

⁽²³⁾ The extract from the report: ‘Le Sous-commission conseille de prévoir une période transitoire raisonnable avant de suspendre la note compte tenu de l’approbation d’exploitation de ces jeux accordée précédemment aux agences de paris. Le terme habituel de 60 jours prévu pour les actes juridiques administratifs semble également approprié comme période de transition minimale dans ce cadre. La Sous-commission recommande donc de suspendre la note du 1er juillet 2015 en ce qui concerne l’exploitation des paris virtuels dans les agences de paris et l’approbation délivrée à Ladbrokes, à compter du 1er avril 2016 jusqu’à ce que les modifications nécessaires aient été apportées aux arrêtés royaux et protocoles techniques correspondants pour les différentes catégories d’établissements de jeux.’

⁽²⁴⁾ ‘Nota: Beslissing van de Kansspelcommissie betreffende “virtuele weddenschappen” (13 januari 2016)’.

⁽²⁵⁾ ‘Beslissing van de Kansspelcommissie betreffende “virtuele weddenschappen” de dato 1 juni 2016’.

⁽²⁶⁾ The reference comes from the minutes of a meeting of the Gaming Commission of 2 January 2017, which indicate: ‘Décision: La décision du 13 janvier 2016 est suspendue jusqu’au 30/06/2017 et aucune nouvelle autorisation d’exploiter ne sera mise à l’agenda: il n’y a pas d’objections.’ It was also indicated on the website of the Gaming Commission: 2.1.2017: ‘Note paris virtuels - Au cours de la réunion extraordinaire de la Commission des jeux de hasard d.d. 2 janvier 2017 on a décidé de prolonger la note d.d. 13/01/2016 concernant les paris virtuels jusqu’à 30/06/2017.’

⁽²⁷⁾ *Nederlandstalige rechtbank van eerste aanleg Brussel, kamer 26, AR 2017/1272/A., 1/Rocoluc 2/ European Amusement Company tegen de Belgische Staat.*

- (62) As a result, no operator, including Ladbrokes, was permitted to provide virtual betting in Belgium.
- (63) Notwithstanding that suspension, Ladbrokes did not stop offering virtual betting in its betting outlets. As a result, several gaming operators brought legal proceedings against Ladbrokes to ensure that it would refrain from operating virtual betting machines ⁽²⁸⁾.
- (64) In a judgment of 19 September 2019, the Council of State ruled that, through the Framework Note of 1 July 2015, the Gaming Commission 'allowed, without being empowered, the organisation of [virtual betting], while the Act of 7 May 1999 did not allow it.' Therefore, the Council of State annulled the three Framework Notes of 12 January 2012, 17 April 2013 and 1 July 2015 and the transitional decision of 2 January 2017, which according to the Council prolonged the effects of the note of 1 July 2015 and in which explicit reference is made to the fact that no request for the operation of virtual betting can be put on the agenda of the Gaming Commission.

2.8. Preliminary findings in the Opening Decision and the Supplementary Opening Decision

2.8.1. Preliminary findings in the Opening Decision

- (65) Based on the information provided by the complainants, Ladbrokes and the Belgian authorities, in the Opening Decision the Commission assessed the allegations as to a possible aid to Ladbrokes for the alleged exclusive right to operate virtual betting services in Belgium.
- (66) The Opening Decision was based on the information at the disposal of the Commission at the moment of its adoption, as provided by the Belgian authorities and third parties. The Commission took the preliminary view that the contested measure may constitute State aid, since it may:
- confer Ladbrokes an advantage granted from State resources in the form of a *de facto* exclusive right to provide virtual betting in Belgium without paying adequate consideration for that right,
 - be selective, since the contested measure applied only to Ladbrokes,
 - be imputable to Belgium, since the authorisation granted to Ladbrokes as well as the Framework Note on the basis of which that authorisation was granted were adopted by the Gaming Commission, a public body.
 - be liable to distort competition and affect trade between Member States, since the aid in question is operating aid that strengthens Ladbrokes' position as compared to its competitors and gaming is a liberalised, competitive market, with several operators besides Ladbrokes, such as the complainants, active in Belgium, and with Ladbrokes active in several other Member States.
- (67) On that basis, the Commission preliminarily concluded that Ladbrokes would have enjoyed a *de facto* exclusive right without paying any specific (licence) fee to provide virtual betting in Belgium during a certain period between 10 February 2014 (i.e. e-mail granting authorisation to operate to Ladbrokes) and 4 May 2018 (i.e. adoption of the 2018 Royal Decree regulating the offline virtual betting and the establishments allowed to operate).

⁽²⁸⁾ Proceeding lodged on 7 August 2017 before the Brussels Commercial Court. In its judgment of 28 March 2018 (A/17/03428), the Court ordered Ladbrokes to refrain from operating virtual betting machines starting from the 3rd day following notification of the judgment, under penalty of a periodic payment of EUR 10 000 per day of delay.

(68) It is noteworthy that some of the facts described in the Opening Decision changed after the adoption of that decision. Following proceedings lodged at national level by the complainants, on 7 May 2021 the Belgian Council of State retroactively annulled the 2018 Royal Decree ⁽²⁹⁾. It found that:

- the conditions for operating automatic games of chance on virtual sports events set out in the 2018 Royal Decree were incomplete. Therefore, by allowing, through the transitional regime established by Articles 19 and 20 of the 2018 Royal Decree ⁽³⁰⁾, the operation of Gaming on virtual sports events while all the conditions for its operation had not yet been established, the 2018 Royal Decree violated Article 43/4, § 2, paragraph 3, of the Gaming Act;
- no sufficient legal basis allows the King to delegate to the Gaming Commission the power to adopt a protocol (provided for by Article 15 of the 2018 Royal Decree) ⁽³¹⁾ containing regulatory standards, whether they pertain to detailed or technical matters. Since the annulment of Article 15 alone would result in a revision of the 2018 Royal Decree, as it would leave it in effect without requiring all the operating conditions that the King deems necessary, it was necessary to annul the entire 2018 Royal Decree.

2.8.2. Preliminary findings in the Supplementary Opening Decision

- (69) Following the annulment of the 2018 Royal Decree, the complainants and the Belgian authorities submitted further comments and information described in chapters 3 and 4 below. On that basis, the Commission adopted a Supplementary Opening Decision.
- (70) The initial preliminary view of the Commission was that Ladbrokes possibly benefitted from a *de facto* exclusive right and therefore aid at earliest from 10 February 2014 and at latest until 4 May 2018. The Commission amended this preliminary view by extending the possible duration of the measure in the Supplementary Opening Decision until today.
- (71) The Commission found that it would need to investigate whether the implications of the transitional measure included in Articles 19 and 20 of the 2018 Royal Decree preferentially advantaged Ladbrokes, as it was the only operator who could continue exploiting the virtual betting terminals it was operating before the adoption of the 2018 Royal Decree, without having to bring these games into conformity with the protocol to be adopted by the Gaming Commission pursuant to Article 15 of the 2018 Royal Decree (recital 39 of the Supplementary Opening Decision).
- (72) Therefore, the Commission's amended provisional conclusion was that Ladbrokes possibly enjoyed a *de facto* exclusive right to provide virtual betting in Belgium during a period starting on 10 February 2014 at the earliest (recital 49 of the Supplementary Opening Decision).

⁽²⁹⁾ Belgian Council of State, judgment n. 250.535 of 7 May 2021.

⁽³⁰⁾ Article 19 of the 2018 Royal Decree provides 'Dans un délai de deux mois à compter de l'entrée en vigueur du présent arrêté, le titulaire de licence de classe F2 communique à la Commission des jeux de hasard le nombre d'appareils automatiques de jeux de hasard sur des événements sportifs virtuels qu'il exploite'.

Article 20 of the 2018 Royal Decree provides 'Après l'adoption, par la Commission des jeux de hasard, du protocole visé à l'article 15, alinéa 2, le titulaire de licence de classe F2 dispose d'un délai de trois mois pour se conformer audit protocole'.

According to the Belgian Council of State, the purpose of these two provisions is to allow the holder of a class F2 license to resume the operation of Gaming machines on virtual sports events that they were operating as soon as the 2018 Royal Decree comes into force, and to only be required to bring their Gaming machines into compliance with the protocol (under Article 15) to be adopted by the Gaming Commission three months after its adoption.

⁽³¹⁾ Article 15 of the 2018 Royal Decree provides that: 'Les protocoles de contrôle technique des jeux de hasard automatiques destinés à l'exploitation des établissements de jeux de hasard de classe IV et les protocoles en matière de règles de surveillance et de contrôle des jeux de hasard dans les établissements de jeux de hasard de classe IV, et les sites où des paris sont acceptés au sens de l'article 43/4, § 5, de la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs, en particulier moyennant un système informatique approprié, s'appliquent aux jeux de hasard sur des événements sportifs virtuels'.

La Commission des jeux de hasard émet un protocole concernant les spécifications techniques nécessaires pour les jeux de hasard sur des événements sportifs virtuels.

Le protocole contient les informations suivantes: [...]'

- (73) It is noteworthy that both in the Opening Decision (recital 60) and the Supplementary Opening Decision (recital 42), the Commission found that the Belgian authorities have not offered any grounds in support of declaring that the contested measure could be compatible with the internal market. Nor did the Commission have any indication that that measure, if it would constitute State aid, could be considered compatible with the internal market.

3. COMMENTS FROM THIRD PARTIES ON THE OPENING AND SUPPLEMENTARY OPENING DECISIONS

3.1. Comments from the complainants

- (74) The complainants Rocoluc and EAC submitted their comments on the Opening Decision on 18 November 2020, while their sister company The Faculty sent its complaint on 23 February 2024. The summary of all three complaints as well as their subsequent additional comments and information provided in the investigation is set out below.

3.1.1. Comments on the exclusivity by Ladbrokes

- (75) In their submission of 18 November 2020, the complainants Rocoluc and EAC submitted that both Ladbrokes and the Belgian State had been acting to preserve Ladbrokes's unlawful right to operate virtual betting and to dissuade Rocoluc and EAC from taking action against that unlawful situation.
- (76) Rocoluc and EAC claim that the 2018 Royal Decree does not allow class IV operators to lawfully offer virtual betting in Belgium. Accordingly, the 2018 Royal Decree cannot be considered as having put an end to the unlawful State aid. Rocoluc and EAC also provide additional information with regard to the amount of unlawful State aid that the Commission should order the Belgian authorities to recover from Ladbrokes.
- (77) In its complaint of 23 February 2024, The Faculty nonetheless points out that, unlike the complaint submitted by Rocoluc and EAC, its complaint is specifically targeted at the aid linked to the offering of the so-called 'offline' or 'land-based' virtual betting games in Ladbrokes' betting offices. In addition, The Faculty notes that as an operator of a class III gaming establishment, it cannot be active online and, therefore, has not been negatively affected by the offering of virtual betting games via Ladbrokes' website(s).
- (78) According to the complainants, Ladbrokes obtained an *ad hoc* authorisation outside of the legal framework by means of two e-mails from the Gaming Commission dated 10 February 2014 (for offline virtual betting in Ladbrokes' betting offices) and 5 March of 2015 (for online virtual betting on Ladbrokes' website).
- (79) In the complainants' view, the alleged aid at issue involves State resources because the *ad hoc* authorisation in favour of Ladbrokes has been granted free of charge. Hence, the Belgian authorities waived their right to a significant part of State revenues and granted an economic advantage to Ladbrokes. As to the imputability of the alleged aid, the complainants underline that the Gaming Commission is an administrative public authority established within the Federal Public Service for Justice and thus falls under the responsibility of the Minister of Justice.
- (80) The complainants bring forward that the exclusive right and the corresponding alleged State aid in relation to the offline virtual betting games was granted on 10 February 2014 because the unlawful Framework Notes of the Gaming Commission were specifically designed to allow Ladbrokes to exclusively operate virtual betting. Accordingly, the basic error of the Gaming Commission was not the refusal to withdraw Ladbrokes' *ad hoc* authorisation in January 2016 but the initial granting of the authorisation in February 2014.
- (81) Moreover, in relation to the end date of the aid, the complainants underline that following the annulment of the 2018 Royal Decree by means of the judgment of the Council of State of 7 May 2021, the 2018 Royal Decree must be regarded as non-existent and cannot be considered as an act allowing the exploitation of virtual betting in Belgium. This also means that the date of 4 May 2018, on which the annulled 2018 Royal Decree was adopted, is no longer relevant to assess the duration of the alleged State aid granted to Ladbrokes.

- (82) In that context, the complainants argue that the judgment of the Council of State would confirm that Ladbrokes has in fact benefited from a selective aid measure until at least 7 May 2021 for offline virtual betting. In their view, the Council of State stated that the sole purpose of the transitional measure laid down in Article 19 of the 2018 Royal Decree was to allow the F2 licence holder, meaning Ladbrokes, to resume the exploitation of the virtual betting terminals it was operating before the adoption of the 2018 Royal Decree and not to have to bring these games into conformity with the protocol to be adopted by the Gaming Commission pursuant to Article 15 of the 2018 Royal Decree.
- (83) Accordingly, except for Ladbrokes that benefitted from the aforementioned transitional measure, the 2018 Royal Decree stated that no virtual betting could be offered, awaiting the adoption of the protocol. Therefore, in the complainants' view, the 2018 Royal Decree merely formalised Ladbrokes' *de facto* monopoly. However, they inform that this position would not have been accepted by the Belgian Council of State. The Council took the view that the transitional measure allowing Ladbrokes to offer virtual betting games before virtual betting has been finally legally regulated with the adoption of the legal act, which will lay down the necessary conditions of virtual betting (among others where it can be offered), would not be in line with the Gaming Act.
- (84) The Faculty also argues that several gaming operators have successfully brought proceedings against the Belgian State and/or Ladbrokes. It cites a judgment of 28 March 2018 in which the Brussels Commercial Court decided in favour of the Belgian professional federation of pub owners (*La Fédération des cafés de Belgique* ASBL) and ordered Ladbrokes to cease its offline virtual betting activities. According to The Faculty, this judgment was later confirmed by the Court of Appeal by means of a judgment of 9 August 2019.

3.1.2. *Comments on the applicable framework on virtual betting in Belgium*

- (85) Firstly, as regards the applicable legal framework, Rocoluc and EAC underline that virtual betting is a 'hybrid' game of chance that is at the interference between betting and automatic games of chance. In that context, they cite the statement of the submission by the Belgian authorities according to which it is '*not easy to classify* [this hybrid product] *within the existing legal Framework of the Gaming Act*'.
- (86) They reiterate that the alleged exclusive right granted to Ladbrokes was manifestly unlawful under Belgian law as it was based on an erroneous qualification of virtual betting.
- (87) Secondly, they argue that the doubts cast by the Belgian authorities as to the legal value of the Framework Notes adopted by the Gaming Commission (recital 49 of the Opening Decision) are particularly appropriate. In particular, they point out that in the context of the ongoing proceedings before the national courts, the Belgian authorities have unequivocally confirmed that the authorisation granted to Ladbrokes to operate virtual betting in Belgium was not a 'traditional' gaming licence but an 'ad hoc' authorisation and that virtual betting is an activity 'not regulated by the Gaming Act'. In their view, this statement clearly refutes the reasoning that Ladbrokes' authorisation to offer virtual betting was based on and formed part of the national reference system on betting. In addition, they underline that the doubts expressed by the Belgian authorities cannot be reconcile with the fact that the Gaming Commission imposed a temporary suspension of Ladbrokes' licence for not ceasing to provide virtual betting after 1 July 2017. They also argue that in a judgment of 19 September 2019, the Council of State ruled that the Gaming Act would not allow the organisation of virtual betting and therefore annulled the Framework Notes.
- (88) Thirdly, they note that the questions as to the publicity of the Framework Notes referred to in the Opening Decision, footnotes 5 to 7 and recital 49 have already been settled in the context of the annulment proceedings against these Framework Notes before the Belgian Council of State. In the context of these proceedings, Rocoluc would have demonstrated that the initial Framework Notes dated 12 January 2012 and 17 April 2013 have not been made public but were only communicated to Rocoluc on 14 April 2017 in the context of the legal proceedings against the Belgian State. Allegedly, the Gaming Commission did not question these findings. The Council of State accordingly decided that Rocoluc could extend its action to these Framework Notes.

- (89) Fourthly, they put forward that even though the 2018 Royal Decree was adopted in an attempt to remediate the illegal character of virtual betting, the Gaming Commission had still not adopted the protocol with 'the necessary technical requirements on games of chance on virtual sporting events' provided in Article 15 of the 2018 Royal Decree.

3.1.3. *Comments on the national legal proceedings in relation to virtual betting*

- (90) In this context, Rocoluc and EAC argue that contrary to what the Commission seems to suggest (recital 21 of the Opening Decision), the national legal proceedings on the legality of the Framework Notes were not linked to the effective suspension of the Framework Notes and of Ladbrokes' *ad hoc* authorisation to operate virtual betting on 1 July 2017. They also inform on Stanleybet's damages claim file against the Belgian State on 14 December 2016, following which the Court ordered the Belgian State to compensate Stanleybet for the damages suffered.
- (91) The complainants also informed the Commission services that on 28 March 2017, Rocoluc and EAC also initiated damages claim against the Belgian authorities. The proceedings would still be pending due to backlog at the Brussels Court of Appeal.
- (92) Further, they explain that the appeal brought by Ladbrokes against the cease and-desist order of 15 February 2018 is still pending before the Brussels Court of Appeal. The Brussels Court of Appeal did however render a judgment to Ladbrokes' appeal against the decision of the Brussels Commercial Court of 28 March 2018. In its judgment of 9 August 2019, the Court of Appeal rejected Ladbrokes appeal and confirmed the previous order issued against Ladbrokes to cease virtual betting activities. Rocoluc and EAC have however been informed that Fédération des Cafés de Belgique ASBL ⁽³²⁾ (hereinafter, 'FedCaf') and the Belgian authorities would have concluded an agreement whereby the latter would refrain from taking further action against Ladbrokes.
- (93) Finally, Rocoluc reiterates its position that the 2018 Royal Decree ignores the hybrid character of virtual betting and that the transitional provision laid down in Article 19 of the 2018 Royal Decree illegitimately rewards Ladbrokes for not having halted the illegal exploitation of virtual betting in due time and guarantees that Ladbrokes can further benefit from its *ad hoc* authorisation.

3.1.4. *Comments on the duration of the alleged State aid to Ladbrokes*

- (94) Rocoluc and EAC consider that the exclusive right and the corresponding alleged State aid granted to Ladbrokes would have been granted on 10 February 2014. They recall that, from the very beginning, the Framework Notes, which they consider to be unlawful, were designed to allow Ladbrokes to exclusively operate virtual betting in Belgium. The Framework Notes of 2012 and 2013 would have been adopted following a request from Ladbrokes and not made public. It was only with the announcement in September 2015 in relation to the setting-up of a special sub-commission that other gaming operators were informed about the unlawful Framework on virtual betting.
- (95) In the complainants' view, once the other operators were informed about the possibilities to offer virtual betting, the Gaming Commission denied other operators to operate virtual betting. In particular, according to the complainants, Stanleybet's request for authorisation submitted on 28 October 2015 remained unanswered, whereas on 10 February 2014 and 5 March 2015 Ladbrokes had received a confirmation to provide land-based and online virtual betting in less than one day. They claim there is no objective justification for this different treatment.
- (96) In response to the Commission's finding that the exclusive right ended on 4 May 2018, at the latest, or 1 July 2017, at the earliest (recital 55 of the Opening Decision), Rocoluc and EAC consider that the date of 4 May 2018 (i.e. the date of the adoption of the 2018 Royal Decree) has not put an end to the preferential treatment of Ladbrokes and can therefore not be considered as the date on which Ladbrokes would no longer have benefitted from unlawful State aid.

⁽³²⁾ FedCaf Belgium is a non-profit organisation, founded on 1 June 2011. FedCaf Belgium is an organisation that defends the interests of Belgian coffee shop owners. See: <http://www.fedcaf.be>.

- (97) In addition, they reiterate that the Gaming Commission did not adopt the protocol provided in Article 15 of the 2018 Royal Decree with 'the necessary technical requirements on games of chance on virtual sporting events', meaning that any operation of virtual betting was to be considered as unlawful until then. In the absence of general, clear and transparent criteria, the Belgian authorities necessarily would have a wide margin of discretion when authorising and controlling virtual betting in Belgium. As a result, even if Ladbrokes is currently no longer the only operator offering virtual betting in Belgium, the Belgian State's tolerance towards virtual betting services offered by one (or several) operators would still constitute a selective State aid granted to that (those) operator(s).

3.1.5. *Comments on the amount of aid*

- (98) Rocoluc and EAC consider that the Commission would be in a position to exactly identify the amount of aid received by Ladbrokes and therefore invite the Commission to determine itself the amount of the aid and the interest to be recovered by the Belgian authorities.
- (99) The complainants provide a table with estimations on the aid that Ladbrokes allegedly received based on the 2017 gross gaming revenue in Ladbrokes' betting offices. The complainants argue that reference can be made to the consideration paid by the National Lottery in exchange for the exclusive right to operate lottery games.

3.1.6. *Comments on the retroactive annulment of the 2018 Royal Decree in 2021*

- (100) After the adoption of the Opening Decision, on 26 May 2021 the Commission received further submissions from the complainants, informing the Commission that on 7 May 2021 the 2018 Royal Decree has been retroactively annulled (meaning that it should be considered as non-existent) and it cannot be considered as having put an end to the alleged aid granted to Ladbrokes.
- (101) As regards the duration of the alleged aid, the complainants consider that, following the judgment of the Council of State of 7 May 2021, the 2018 Royal Decree would be regarded as non-existent in Belgian law and can therefore not be considered as an act allowing the exploitation of virtual betting in Belgium. This also means that the date of 4 May 2018, on which the annulled 2018 Royal Decree was adopted, is no longer relevant to assess the duration of the alleged State aid granted to Ladbrokes.
- (102) In addition, the complainants put forward that the aforementioned judgment of the Council of State would confirm that Ladbrokes has benefited from a selective aid measure until at least 7 May 2021. In their view, the Belgian authorities would still tolerate Ladbrokes' virtual betting activities while those activities are illegal under Belgian law.
- (103) The complainants consider that the Council of State's judgment of 7 May 2021 would confirm that the sole purpose of the transitional measure laid down in Article 19 of the 2018 Royal Decree was to allow 'the F2 licence holder' ⁽³³⁾, meaning Ladbrokes, to resume the exploitation of the virtual betting terminals it was operating before the adoption of the 2018 Royal Decree and not to have to bring these games into conformity with the protocol to be adopted by the Gaming Commission pursuant to Article 15 of the 2018 Royal Decree.

3.1.7. *The complainants' arguments for an extension of the Opening Decision*

- (104) In the meeting held with the Commission services on 23 February 2023, the complainants EAC and Rocoluc reiterated the request for a corrective opening decision extending the duration of the alleged aid. In particular, they claimed that the retroactive annulment of the 2018 Royal Decree constitutes a substantial change. Accordingly, the relevant investigated period should be extended: (i) until 7 May 2021 for offline virtual betting, since no operators are allowed to operate nor actually operate offline virtual betting after this date, and (ii) indefinitely for online virtual betting, because even though it is currently not allowed, Ladbrokes is still offering online virtual betting.

⁽³³⁾ The complainants consider that with the use of singular means Ladbrokes was the sole addressee of the transitional measure.

- (105) According to the complainants, the annulment of the 2018 Royal Decree, which only regulated offline virtual betting, must be considered as having the same implications for online virtual betting. However, despite the 2018 Royal Decree being annulled, Ladbrokes was still offering online virtual betting.
- (106) On 23 February 2024 the Commission received a submission from The Faculty, which holds a class III with a licence C. The submission concerns the same contested measure but exclusively relating to the alleged aid linked to the offering of offline virtual betting games in Ladbrokes' betting offices. Indeed, The Faculty argued that as an operator of a class III gaming establishment, it cannot be active online and, therefore, has not been negatively affected by the offering of virtual betting games via Ladbrokes' website(s).

3.1.8. *Comments on the Supplementary Opening Decision*

- (107) As a preliminary comment, Rocoluc and EAC point to a material error in the Supplementary Opening Decision Commission recitals 8 and 24, wrongly stating that the complainants and the Commission would have held a meeting on 23 February 2023 instead on 16 February 2023.
- (108) Second, as regards the definition of virtual betting, Rocoluc and EAC refer to their complaint of 1 March 2019 where they explained that virtual betting concerns a 'hybrid' product that takes place at the interface between real betting and automatic games of chance. Although the Belgian authorities would have explicitly confirmed that virtual betting is indeed a hybrid product, they would in fact always have denied the hybrid character of virtual betting.
- (109) According to the complainants, in the context of the Framework Notes of the Gaming Commission, virtual betting was wrongfully equated with real betting, whereas in the 2018 Royal Decree it was (re)qualified as an automatic game of chance.
- (110) Third, Rocoluc and EAC reiterate their comments in relation to the assessment of the duration of the unlawful State aid granted to Ladbrokes by referring to their submission of 18 November 2020.
- (111) In this context, Rocoluc and EAC underlined that the alleged 'uncertainty' in relation to the legal framework applicable to virtual betting is solely fuelled by the Belgian State (see recitals 58-60).
- (112) As for online virtual betting, Rocoluc and EAC recall that, under Article 43/8 of the Gaming Act, so-called supplementary A+, B+ or F1+ licences for online games of chance can only be granted for the operation of games of the same nature as those offered in the real world. They argue that in view of this provision, the Belgian State has previously held that Ladbrokes' ad hoc authorisation for online virtual betting was linked to its authorisation for offline virtual betting. Accordingly, in so far as Ladbrokes would have been the only operator to have obtained an *ad hoc* authorisation for the operation of virtual betting in its betting offices by the Belgian authorities, it would also be the only operator that could provide online virtual betting and the only operator that would actually have received an unlawful *ad hoc* authorisation for online virtual betting by e-mail of 5 March 2015. This preferential treatment would have logically persisted under the 2018 Royal Decree. Afterwards, despite the annulment of the 2018 Royal Decree, Ladbrokes is still offering online virtual betting. Consequently, Ladbrokes would still benefit from unlawful State aid with regard to online virtual betting.

3.2. **Comments from Ladbrokes**

- (113) In its submission dated 18 December 2020, Ladbrokes provides comments on the Opening Decision. In the additional submissions of 22 November 2024, 9 December 2024 and 21 January 2025, it provided further comments.

3.2.1. *Comments on the complainants lacking the status of interested parties*

- (114) Ladbrokes reports that the Council of State, by judgment of 25 June 2024 ⁽³⁴⁾ declared unlawful the licences of Rocoluc, namely licences B3892 (offline) and B3892 + (online). In its view, the Council of State could only annul the abovementioned licences with retroactive effect.
- (115) Therefore, according to Ladbrokes, Rocoluc would no longer have an interest in the present proceedings, since it is not and cannot be active in the gaming sector under Belgian law. Rocoluc could therefore not be regarded as a complainant active in the gaming sector, or at least as a legitimate competitor of Ladbrokes. Hence it would not be an 'interested party' within the meaning of Article 24(2) of Council Regulation (EU) 2015/1589 ⁽³⁵⁾.

3.2.2. *Comments on the licences held by Ladbrokes*

- (116) Ladbrokes stresses that it held and still holds all required classes of licences granted by the Gaming Commission, meaning F1, F1+ and several class F2 licences, allowing it to accept bets and to organize and offer bets in Belgium, both online and offline. In addition, Ladbrokes informs that at the time there were thirty-five F1 licence holders in Belgium.

3.2.3. *Comments on the legal framework of virtual betting in Belgium*

- (117) As to the online virtual betting, in Ladbrokes' view, a notification to the Gaming Commission from the class F1+ licence holder was sufficient. Ladbrokes states that this explains why in February 2014 a Gaming Commission, official with no power of representation confirmed by way of a short e-mail that Ladbrokes could start offline betting on virtual events and asked for further reporting on the activity.
- (118) Ladbrokes also states that for the same reason on 5 March 2015, again a Gaming Commission official with no power of representation confirmed to Ladbrokes, by way of a short e-mail, that it could offer virtual bets online via its website.
- (119) Ladbrokes puts forward that the Gaming Commission would not be competent to change the applicable regulation by means of a Royal Decree, which can only be proposed and countersigned by the competent Minister.
- (120) Ladbrokes explained that on 1 June 2016, the Gaming Commission changed its position. The Gaming Commission (i) confirmed that class F1 licence holders may file a new application to offer virtual betting, subject to the conditions set out in the earlier Note of 1 July 2015; (ii) decided to suspend the Framework Note of 1 July 2015 and the granted approvals as from the entry into force of the 2018 Royal Decree, and (iii) as long as this entry into force was expected on 1 January 2017, decided to postpone the date of the suspension of the said Note until 1 January 2017.
- (121) On 2 January 2017, the Gaming Commission postponed again the entry into force of the suspension of the Note of 1 July 2015, this time to 30 June 2017.
- (122) The Gaming Commission also decided that 'no new authorisation to operate will be put on the agenda'. Ladbrokes informs that on 27 July 2018 the Gaming Commission sanctioned Ladbrokes by a decision, which suspended Ladbrokes' FA116428 licence and the FA + 116428 licence for a period of one day, on 3 September 2018.
- (123) Ladbrokes further claims that the question of the lawfulness of the operation of virtual betting as 'betting' remains open. In its view, the argument that it would indeed be 'betting', the exploitation of which is covered by the F1, F2 and F1 + licences, would retain all its merits. But the question would still be pending before the national court, which has not yet ruled on the matter.

⁽³⁴⁾ Judgment No 260.246.

⁽³⁵⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>).

3.2.4. Comments on the absence of an 'authorisation' with valid licences required for operating virtual betting

- (124) As a preliminary observation, Ladbrokes refers to the Opening Decision in which the Commission states that 'the exercise of Ladbrokes' *de facto* exclusive right had begun: 'not earlier than 10 February 2014, the date on which the Belgian Gaming Commission (...) granted Ladbrokes, by e-mail, the right to operate virtual offline betting (recital 53 of the Opening Decision) (...)'.
- (125) Ladbrokes argues that this sentence is factually incorrect, in two respects. First, the Gaming Commission would not have granted Ladbrokes any rights. It only confirmed that the licences already held by Ladbrokes allowed the exploitation of virtual betting. Second, the e-mail message of the Gaming Commission on 10 February 2014 does not refer to exclusivity. While Ladbrokes, as the holder of licences F1, F1+ and F2, had the possibility to offer virtual betting, the same applied to the other holders of such valid licences. The fact that no other F1 licensee asked the Gaming Commission to operate virtual betting does not provide for exclusive rights to Ladbrokes.
- (126) Further, Ladbrokes notes that the Gaming Commission is only authorized to deliver specific classes of licences to operate games of chance / betting in conformity with the Gaming Act. The Gaming Commission is not allowed by the Gaming Act to enact guidance with a binding effect of general application. Ladbrokes explained that it requested guidance from the Gaming Commission about a planned new activity, betting on virtual events, as early as 2011, as this is good practice in a regulated industry.
- (127) Since virtual betting was considered to be betting and all legal and regulatory obligations applicable to betting are declared applicable to virtual betting, no specific licence or authorisation had to be provided for their exploitation. The exploitation of virtual betting was already covered by licences F1, F2 and F1 +. The Gaming Commission therefore did not grant Ladbrokes a licence for virtual betting.
- (128) The e-mails sent by the Gaming Commission on 10 February 2014 and on 5 March 2015, were a confirmation that Ladbrokes could operate because it held the relevant licences. At any case, these e-mails, sent by a Gaming Commission's official with no power of representation, could not be considered as a formal authorisation as they are neither foreseen within the framework of the Gaming Act, nor do they have any other legal basis. At most they could be seen as a mere recognition by the Gaming Commission that the envisaged activity was within the scope of the F1 licence already held by Ladbrokes and was therefore legal.

3.2.5. Comments on no intention to give exclusivity to Ladbrokes

- (129) Ladbrokes puts forward that with the aforementioned confirmative e-mails the Gaming Commission had no intention to grant Ladbrokes an exclusivity of any kind. In its view, an exclusivity would run counter to the Belgian authorities' policy aim of 'channelling'. With the exception of the *Loterie Nationale* (a company entirely held by the Belgian State), the Belgian authorities would strive to satisfy customers' demands by having a multiplicity of regulated operators competing for that demand. Moreover, Ladbrokes refers to the Framework Notes of the Gaming Commission confirming the legality of betting on virtual events for every holder of an F1 Licence dated 12 January 2012, 17 April 2013 and 1 July 2015. All these operators could have started a virtual betting activity, none did at the time, presumably because of the size of the investments and the business risk.
- (130) Moreover, as from 13 January 2016 (date of the decision to suspend the Framework Note of 1 July 2015), the 'authorisation' of Ladbrokes was suspended. Accordingly, Ladbrokes was supposed to effectively stop offering virtual betting from 1 June 2016, which date was later modified to 30 June 2017. Ladbrokes argues in that context that it had to operate under the uncertainty of having to stop at any time. There could therefore be no clearer confirmation that Ladbrokes was not granted any exclusivity.

- (131) Ladbrokes pointed out that in 2015 and in 2016, two competitors, i.e. Stanleybet and Sagevas, choose to ask for such an 'authorisation' i.e. announced that they would offer virtual betting. According to Ladbrokes, the request filed by Stanleybet was deemed to be incomplete by the Gaming Commission. As for Sagevas, it made it public that it would operate the virtual betting without any 'authorisation' from the Gaming Commission knowing that there would be no control. In Ladbroke's view, the Gaming Commission expressly reported this declaration in its note of 2 January 2017, without announcing that there would be no enforcement actions. The mere fact that these requests were filed would show that all class F1 licence holders fully understood that the operation of virtual betting was open to all class F1 licence holders and that no operators considered that Ladbrokes was granted exclusive rights.
- (132) In addition, Tiercé Ladbrokes SA, an Entain's subsidiary in Belgium, as Ladbrokes is, also started offering virtual betting in the bet shops it operated at the same time than Ladbrokes did. Tiercé Ladbrokes did not receive any 'authorisation' from the Gaming Commission. Tiercé Ladbrokes is a different legal entity and given the formality that characterizes the sector-specific regulation (if an 'authorisation' or licence is awarded, it is always to a specific legal entity), this fact also shows that Ladbrokes was not granted any exclusivity.
- (133) Ladbrokes further clarifies that contrary to the Commission's preliminary findings (recital 54 of the Opening Decision), it is only in January 2017 that the Gaming Commission reversed its policy and decided not to grant any new 'authorisation', since the government was preparing a Royal Decree setting up conditions governing virtual betting.
- (134) Ladbrokes sustains that from a legal viewpoint, the decision of the Gaming Commission to stop granting 'authorisations' for virtual betting had no legal consequence. Namely, the 'authorisations' that the Gaming Commission suspended were only foreseen by the Gaming Commission's as interpretative guidance, but they had no binding value, since in any event the Gaming Commission cannot adopt mandatory and enforceable rules of general application.
- (135) Therefore, despite this change of policy, holders of class F1 licences could have proposed virtual betting to their customers under the scope of such licences. They could have fended off possible legal challenges with the argument that they were entitled to propose betting on virtual events, as was the Gaming Commission's own view until 2016, by the mere combination of their existing licence and Article 4 of the Gaming Act. That is exactly what Ladbrokes did as from 1 July 2017. It pursued the operation of virtual betting under the benefit of its F licences alone. Sagevas declared in 2016-2017 it would also operate virtual betting without any authorisation from the Gaming Commission. The exact reason why it did not do so in the end is not known to Ladbrokes.
- (136) Here again, the fact that competitors did not start virtual betting operations after January 2017 is a consequence:
- of the Gaming Commission's decision not to assess any new application for 'authorisation', pending the adoption of the 2018 Royal Decree (that everybody thought imminent, which was ultimately proved to be wrong), and,
 - of the decision of these two operators not to challenge this change of policy or to operate the activity under the benefit of their licence alone.

3.2.6. Evidence on competition in the virtual betting market

- (137) Ladbrokes claims that it effectively faced competition. It provided information, gathered from written pleadings and web searches, with regard to virtual betting services.
- (a) Online virtual betting
- (138) Ladbrokes claims that online activity represents significant competition to Ladbrokes' offline activity, acknowledged by the Commission in its Decision for Online Gaming in the Danish Gaming Duties Act ⁽³⁶⁾ in which the Commission concluded that 'online and land-based casinos should be perceived as legally and factually comparable. As both online and land-based gaming pose the same risks, the notified measure addresses both online and land-based gaming'.

⁽³⁶⁾ Commission Decision 2012/140/EU of 20 September 2011 on the measure No C 35/10 (ex N 302/10) which Denmark is planning to implement in the form of duties for Online Gaming in the Danish Gaming Duties Act (OJ L 68, 7.3.2012, p. 3, ELI: [http://data.europa.eu/eli/dec/2012/140\(1\)/oj](http://data.europa.eu/eli/dec/2012/140(1)/oj)).

(139) Ladbrokes submits factual evidence on the existence of several operators offering virtual betting online. In particular, its submission includes screenshots of the websites operated by several betting operators in Belgium. There was an offer by the operator BetFirst.be, which provided different kinds of virtual betting for events such as sports and other events in December 2014. Other evidence shows the screenshots of the online offer for virtual betting events of several other operators:

- the website Circus ⁽³⁷⁾ offered 'Virtual Sports Events', with a clear indication of virtual betting under 'sports betting', as a clear counterpart of 'live betting'.
- the website Golden Vegas ⁽³⁸⁾ offered virtual betting.
- the website Bingoal! ⁽³⁹⁾ offered as well 'virtueel' in Dutch in the form of 'virtual football', 'virtual horse racing', 'virtual tennis' and 'virtual dog running'.
- the website 36win ⁽⁴⁰⁾ offered 'virtual'.

(b) Offline virtual betting

(140) Ladbrokes provides copies of several tickets for virtual sports betting bought for different amounts and which gained different amounts at the physical offices of another operator Stanleybet in April, September, and October 2019. It is visible from the copies that the tickets were issued by Stanleybet in Belgium and have different serial numbers, while all of them are issued for virtual sports (betting).

(141) Ladbrokes also provided the photographs of different screens taken in the offices of Stanleybet. The screens show that the betting took place in April 2019 in one of Stanleybet's offices in Belgium. They also clearly show that the game played was virtual sports betting.

3.2.7. *Subsidiary arguments concerning the 'de facto' exclusivity as regards the duration of the alleged aid*

(142) Ladbrokes argues in the alternative, assuming that Ladbrokes was granted an exclusivity (*quod non*), that the period during which Ladbrokes could enjoy this was shorter than the Commission states, as Ladbrokes faced several legal challenges to its activity. This is because the Gaming Commission only decided to suspend the analysis of the 'authorisation' requests of competitors on 2 January 2017

(143) As the 'authorisation' granted to Ladbrokes itself was also suspended with effect on 1 July 2017, there can also be no 'exclusivity' granted by the Belgian authorities to Ladbrokes after that date. The fact that the Belgian State did not initiate legal proceedings against Ladbrokes after 1 July 2017 in order to have the activity stopped does not amount to the granting of an 'exclusivity' with a market value.

(144) Ladbrokes informs that it stopped offering virtual betting on 30 March 2018, to comply with an injunction of the Brussels Commercial Court requested by *Fédération des cafés de Belgique*, which was served.

(145) Finally, Ladbrokes also puts forward that there would be no reason to extend the period of the alleged aid measures (see recitals 38-40 in the Supplementary Opening Decision).

⁽³⁷⁾ www.circus.be.

⁽³⁸⁾ www.goldenvegas.be.

⁽³⁹⁾ www.bingoal.be.

⁽⁴⁰⁾ www.36win.be.

3.2.8. Subsidiary arguments concerning the 'de facto' exclusivity as regards the alleged aid amount

- (146) In the alternative, even assuming that Ladbrokes was granted an exclusivity (*quod non*), the profit generated by this would be significantly lower than what the Commission stated in the Opening Decision (footnote 26). Ladbrokes provides the following gross profit figures for offline and online virtual betting for the period January to June 2017:

- (a) the gross profit figures of the offline virtual betting activity of Ladbrokes SA from January to June 2017:

LADBROKES	JAN – JUN 2017	JAN	FEB	MAR	APR	MAY	JUN
GGR	10 391 808	1 771 459	1 664 138	1 820 429	1 358 982	1 733 687	2 043 114
Tax	- 1 558 771	- 265 719	- 249 621	- 273 064	- 203 847	- 260 053	- 306 467
Revenue Share	- 556 384	- 91 688	- 86 095	- 94 288	- 70 394	- 89 536	- 124 383
Commission	- 1 141 556	- 172 630	- 162 831	- 171 484	- 207 163	- 233 776	- 193 672
Gross Profit	7 135 096	1 241 423	1 165 591	1 281 592	877 578	1 150 321	1 418 592

- (b) the gross profit figures for online virtual betting on the website Ladbrokes.be, from January to June 2017:

	JAN-JUN 2017	JAN	FEB	MAR	APR	MAY	JUN
GGR	182 539	33 875	21 435	18 199	38 204	35 075	35 750
Tax	- 20 079	- 3 726	- 2 358	- 2 002	- 4 202	- 3 858	- 3 932
Commission	- 11 044	- 2 049	- 1 297	- 1 101	- 2 311	- 2 122	- 2 163
Gross Profit	151 416	28 099	17 781	15 096	31 691	29 095	29 654

- (147) Ladbrokes argues that these actual figures are markedly lower than the EUR 34 600 000 quoted in Footnote 26 of the Opening Decision. In its view, even assuming that Ladbrokes enjoyed (i) an exclusivity (ii) worth compensating (both elements being not established), it would be incorrect in law and fact to assume that the market value of such exclusivity would be superior to the generated profits. Such a reasoning would otherwise imply that an operator would be ready to carry out the activity at a (very significant) loss.
- (148) As to the application of the redistribution rate of the *Loterie Nationale*, it is unjustified, as the *Loterie Nationale* is a public institution whose aim is to share all its profits with the Belgian State.

4. COMMENTS FROM THE BELGIAN AUTHORITIES

- (149) The Belgian authorities submitted observations related to the legal framework governing virtual betting in Belgium and the absence of State aid. In their submissions, the Belgian authorities maintain that there was no State aid granted to Ladbrokes with regard to virtual betting because neither a legal framework existed that would have required a special licence for virtual betting, nor would the Gaming Commission have issued or have the mandate to issue a legally binding authorisation for it.

4.1. Comments on the legal framework on gaming in Belgium

- (150) The Belgian authorities explain that it is the Gaming Act which defines the types of licences to operate games of chance. The rules are further elaborated through various Royal Decrees. The Gaming Commission implements these rules within the scope of its competencies. The Gaming Commission can control compliance with the law and decide for instance to initiate sanctions proceedings against a licence holder, but only within the framework of the law and its implementing decrees. The Gaming Commission cannot create new licences or introduce new conditions for obtaining a licence ⁽⁴¹⁾. It could however advise the stakeholders on the interpretation of the law.
- (151) As to the licence required for a betting shop, the Belgian authorities clarify that the operation of a class IV gaming establishment requires both a licence F1 and F2.
- (152) According to the Belgian authorities, there can be vertical integration between the betting shop and the betting operator, meaning that an undertaking or group of undertakings can hold both F1 and F2 licences. However, an F2 licence holder may also be entirely unrelated from the F1 betting operator whose betting products it sells. In addition to proper betting shops (i.e. class IV gaming establishments), press shops can also acquire an F2 licence and sell certain betting products (albeit under different rules) in their press shop.
- (153) Furthermore, the Belgian authorities state that under the law on games of chance in Belgium, there is no definition as such for the word 'gaming'. Gaming can be reformulated as participating in games of chance. However, the law provides a definition for 'games of chance' meaning any game whereby a stake is played, whatever its nature, which leads to the loss of this stake by at least one of the players, or to any type of gain for at least one of the players or organisers of the game, and whereby chance influences the game, the winners of the game or the size of the game, even if only in a secondary manner.
- (154) Moreover, the Belgian authorities clarify that a 'bet' is defined as a game of chance whereby each player enters a stake and whereby gain, or loss does not result from an act of the players, but from the outcome of an uncertain event that materialises without intervention by the players.
- (155) The Belgian authorities state that there is no one overall (automatic) 'gaming' market. A distinction should be made between different establishment classes. First, the concept of 'automatic games of chance' is used to refer to games of chance played on a machine, which is most notably done in gaming establishments of class I (casinos) and class II (gaming halls), but also, to a more limited extent, in other venues i.e. establishments of class III (bars) and of class IV (betting shops). The automatic gaming products offered in class I establishments (e.g. slots) are different from those offered in class II establishments (e.g. automatic dice games) and are subject to different regulations. This difference is even more substantial when comparing the machines in class I or class II establishments with those in class III or IV establishments.
- (156) Finally, given the significant moral, religious and cultural differences between the different Member States and the lack of European harmonization in the gaming sector, each Member State remains free to determine its own gaming policy and the restrictions which it deems necessary to protect its own public interest. The only requirement imposed by EU law would be that such restrictions are (i) proportionate in that they are suitable for achieving the objective or objectives invoked by the Member State concerned, and do not go beyond what is necessary to achieve those objectives, and (ii) are applied without discrimination. Restrictions would normally satisfy the proportionality test if they fit in a coherent and systematic gaming policy.

⁽⁴¹⁾ According to Articles 6 and 7 of the Gaming Act, only the King is entitled, by a decree taken in the Council of Ministers, to establish the types of licences and their related requirements to operate games of chance.

4.2. Comments on the absence of exclusive rights granted to Ladbrokes

- (157) According to the Belgian authorities, the framework notes issued by the Gaming Commission are not of a binding nature. They serve the purpose of monitoring the evolution of virtual betting on the Belgian market. This view was embedded in the second Framework Note of 17 April 2013 which recognised virtual betting as a betting game of chance allowed under the Gaming Act by stating: 'To be able to monitor this evolution – [...] – closely, it would be preferable that every F1 [licence holder] that wants to offer these bets directs a preliminary request for authorisation to the Gaming Commission'.
- (158) With the so-called 'authorisation', the Gaming Commission committed towards Ladbrokes that it would not regard its virtual betting product as contrary to the Gaming Act and it would not enforce the law as prohibiting virtual betting. The 'authorisations' in question granted by the Gaming Commission to Ladbrokes must be regarded as confirmations on the interpretation of the product presented by Ladbrokes to the Gaming Commission under applicable laws. The Belgian authorities also state that the 'authorisation' as such was not required. They point out that it simply does not even exist in the relevant legal framework.
- (159) The Belgian authorities pointed out the informal nature of the 'authorisation', a mere e-mail by a person from the secretariat that did not have the power to represent the Gaming Commission. This shows that such 'authorisation' cannot in any event be regarded as a formal requirement or a formal decision adopted by the Gaming Commission.
- (160) Since such 'authorisation' does not establish any right for Ladbrokes, but only informs Ladbrokes that the virtual betting it intends to offer is a game of chance that the Belgian law allows any F1-licence holder to offer on the Belgian market, no advantage was conferred on Ladbrokes. Any operator could have sent an 'authorisation' request to the Gaming Commission at the time Ladbrokes did and it would have received the same informal interpretation.
- (161) The Belgian authorities further provide information on the views taken by the Gaming Commission on two other requests received from class IV operators. Concerning Stanleybet's request of 28 October 2015, the Gaming Commission informed Stanleybet about a newly established sub-commission and that it would only deal with the request once the results of the activities of the sub-commission were known. Another request by Stanleybet of 17 June 2016 was initially refused on the grounds of an incomplete file and later on the grounds of ongoing discussions on a regulatory initiative concerning virtual betting. As to another request by Sagevas on 23 August 2016, its request was not dealt by the Gaming Commission for the same reasons as for Stanleybet, initially due to an incomplete file, then on 3 November 2016 because a legislative initiative on virtual betting was ongoing.
- (162) The Belgian authorities consider that the complainants knew that the Framework Notes on virtual betting could not legally create a framework under which the Gaming Commission would grant a proper authorisation to one licence holder and deny it to another, if these operators were both in the same situation.
- (163) More generally, no operators could have reasonably believed that the Framework Notes created a proper and enforceable legal requirement to obtain some sort of *ad hoc* 'virtual betting licence'.
- (164) The Belgian authorities also explain that it was not more difficult for others than for Ladbrokes to start operating virtual betting products of the same nature in their class IV gaming establishments with the relevant licences F1 and F2. In their view, it cannot be asserted that the Gaming Commission would have implemented a different enforcement policy towards Ladbrokes than towards other virtual betting operators. The Gaming Commission could therefore not be regarded selective in its enforcement of the Gaming Act because only Ladbrokes went ahead and operated virtual betting under the general rules of the Gaming Act.
- (165) Furthermore, the Belgian authorities note that the Council of State annulled the Gaming Commission's Framework Notes because it disagreed with the Gaming Commission's interpretation of the Gaming Act in those Notes. The Council of State took the view that 'the [Gaming Commission] did not just create a framework for the organization of bets on virtual events authorized by the law, but rather allowed, without having the proper competence to do so, the organization of this type of betting whereas it is not allowed under the law of 7 May 1999 [on games of chance]'.

- (166) Further, the Belgian authorities disagree that the 'authorisation' given to Ladbrokes could be suspended since it did not produce any legal effects in the first place. Nevertheless, on 13 January 2016, the Gaming Commission adopted its decision to suspend the application of its 2015 Framework Note and the 'authorisation' granted to Ladbrokes effective as of 1 June 2016. As a consequence, Ladbrokes was allowed a five-month transitional period to wind down its virtual betting operations. The Gaming Commission took this advised minimal transition period and decided on a two-month longer transitional period until the suspension of Ladbrokes' 'authorisation' would take effect. To this end, it relied on the fact that Ladbrokes already offered virtual betting since 2014. Therefore, account should be taken of Ladbrokes' investment in virtual betting and the period during which Ladbrokes had already offered virtual betting.
- (167) In any event, on 4 May 2018 the Royal Decree came into force. In the submission of 21 February 2021, the Belgian authorities explicitly confirmed there would multiple F1 licence holders in Belgium offering virtual betting in their class IV fixed gaming establishments under the conditions of the Royal Decree of 4 May 2018. Some of there were SRL Bingo Bet, Derby (Ladbrokes), Stanleybet and Wedwinkel-bettica.
- (168) With regard to the retroactive annulment of the 2018 Royal Decree, the Belgian authorities consider that it does not have an impact on the duration of the alleged measure. Notwithstanding the fact that the 2018 Royal Decree should be considered to have never existed in Belgian law, this does not mean that the conditions for unlawful State aid would be fulfilled. The criteria in the now annulled 2018 Royal Decree were applied without discrimination to all valid F1 and F2 licence holders who aimed to offer virtual betting. They did not selectively benefit certain undertakings compared to others.
- (169) The Belgian authorities submitted distinct positions on the 2018 Royal Decree and its retroactive annulment. They put forward that multiple operators on the Belgian market would now offer virtual betting under the conditions set out by the 2018 Royal Decree. Furthermore, the Belgian authorities submitted that class IV gaming establishments (betting shops) are now allowed to offer virtual betting. Indeed, virtual betting as it was described by the 2018 Royal Decree (Article 2) needs 'multiplayer' gaming machines, which allow multiple players to bet in different betting shops at the same time on the same virtual sport event. It is considered for virtual betting to be of sufficiently similar nature as 'monoplayer' betting machines and is therefore allowed under the F1 and F1+ licence. In other words, virtual betting is considered as more akin to machine gaming than actual sports betting, so it is logical that F1+ licence holders that offer land-based 'monoplayer' gaming machines are allowed to operate online virtual betting.

4.3. Subsidiary comments on the calculation of possible aid amount

- (170) As a subsidiary argument, on the benchmark for the calculation of possible aid amount, the Belgian authorities consider that the treatment of the *Loterie Nationale*, referred to in the Opening Decision ⁽⁴³⁾, is not comparable to that of Ladbrokes. According to national law, the *Loterie Nationale* is responsible for organising the public lotteries for the public benefit and under the control of its minister while being obliged to actively inform the public about gaming and betting addiction and to cooperate actively with governments and other actors to provide an active and coordinated prevention policy in particular as regards addiction. All profits are dedicated for this purpose and other humanitarian projects. The profits are not allocated to the Belgian national budget but reinvested in the *Loterie Nationale* to continue serving its public service obligations. The price that the *Loterie Nationale* pays for its legal monopoly represents a completely different situation from the one where a Member State grants exclusive rights and decides not to maximize the revenues which could have otherwise been achieved from those grants.
- (171) Moreover, the *Loterie Nationale*'s exclusive right existed even before the creation of European Union. The National Lottery has several public service obligations and has no right to any profits since the Belgian State is entitled to receive all profits. The Belgian authorities further note that the State maximizes the possible revenue from the National Lottery's monopoly, i.e. the whole profits of the *Loterie Nationale*. Even if the *Loterie Nationale* were an appropriate benchmark, which it is not, the actual revenue for the State from granting such exclusive right would be the totality of the *Loterie Nationale*'s profits.

⁽⁴³⁾ Footnote 26.

5. ASSESSMENT OF THE MEASURE

- (172) The subject of this decision is the alleged unlawful aid by the complainants pursuant to Article 24(2) of Regulation (EU) 2015/1589. In order to qualify as unlawful State aid, the measure should be granted without the approval by the Commission.
- (173) Furthermore, for a measure to be categorised as State aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective, in that it favours certain undertakings or the production of certain goods. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States. If at least one of the four cumulative criteria is not met, the measure does not constitute State aid.

5.1. Rocoluc, EAC and The Faculty as interested parties

- (174) The Commission considers that the interest of The Faculty may be potentially affected by the alleged measure, since it operates in the same or similar markets in games of chance as Rocoluc and EAC, whose interests may also be affected by the alleged measure, as also indicated in the Opening Decision. The Commission therefore considers The Faculty, Rocoluc and EAC as interested parties within the meaning of Article 1(h) and as complainants within the meaning of Article 24(2) of Regulation (EU) 2015/1589. The argument brought forward by Ladbrokes that the complainant Rocoluc would lack the status of interested party (recitals 114-115) does not detract from that conclusion ⁽⁴³⁾.

5.2. Absence of a measure conferring a legal right

- (175) According to the complainants, the measure consists in the rights granted to Ladbrokes for the provision of virtual betting services on the Belgian market. The complainants consider that these rights would constitute unlawful State aid granted by the Gaming Commission through e-mails from an unauthorised official of 9 February 2014 and 5 March 2015.
- (176) The Regulation (EU) 2015/1589 defines 'unlawful aid' as 'new aid put into effect in contravention of Article 108(3) TFEU'. It requires that a measure needs to be put into effect by the Member State to be regarded as an unlawful aid. However, neither the Framework Notes (section 2.3.1) nor the aforementioned e-mails sent to Ladbrokes (section 2.6.) can be regarded as a granting act granting exclusive rights to Ladbrokes.

5.2.1. Framework Notes on virtual betting adopted by the Gaming Commission

- (177) Ladbrokes was the first operator that planned a virtual betting activity in Belgian authorities in 2011 (recital 126). When Ladbrokes decided to offer the service of virtual betting in Belgium, the Gaming Act did not include specific reference to either online or offline virtual betting under the system of licences for games of chance.
- (178) Therefore, the Gaming Commission identified a need for interpretation on how to categorize virtual betting. On 12 January 2012, it issued its first Framework Note entitled 'Betting on Virtual Events' (recital 39). This Framework Note did not expressly distinguish between online and offline virtual betting, but the Belgian authorities confirmed it effectively concerned offline virtual betting (recital 169).
- (179) The purpose of the 2012 Framework Note was to examine whether the amended Gaming Act or its enforcement orders contained legal objections to the organization of betting on virtual (sporting) events. The Gaming Commission concluded: 'From a legal point of view, the organization / offer of bets on virtual (sporting) events is in accordance with the provisions of the Gaming Act insofar as this type of betting is considered to be bets on events. Indeed, the result is not known, and the event concerns an uncertain fact, thanks to the "random number generator". Considering that bets on virtual (sporting) events are bets on events means that this type of betting can only take place in class IV fixed gaming establishments. [...]'

⁽⁴³⁾ See, to that effect, Judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, ECLI:EU:C:2015:609, paragraph 77.

5.2.2. Licences relevant for virtual betting in Belgium

- (180) As a preliminary comment, when it comes to rules on virtual betting, as explained in recital 28, the Commission notes that the concept of ‘automatic games of chance’ is used to refer to games of chance played on a machine, which is most notably done in gaming establishments of class I (casinos) and class II (gaming halls), but also, albeit to a more limited extent, in other venues i.e. establishments of class III (bars) and class IV (betting shops).
- (181) As confirmed by Belgian authorities (recital 169), class IV gaming establishments (operated with licences F1, F1+ and F2) always maintained the possibility to offer *monoplayer* gaming machines to their customers. This was already provided in the Royal Decree of 22 December 2010 on the operating rules of automatic games of chance authorised in class IV gaming establishments ⁽⁴⁴⁾.
- (182) The Gaming Act sets out the different types of licences and which type of gaming can be offered under these licences, and under what conditions. The rules were further elaborated through various Royal Decrees.
- (183) According to Article 25 of the Gaming Act, the operation of a betting shop, which is a class IV gaming establishment, requires both a licence F1 and F2. The licence F1 is required to organise betting (i.e. create betting products for sale to players) whereas the licence F2 is required to take bets from players (i.e. directly sell the betting products to consumers). A betting shop (class IV establishment) must hold an F2 licence to take bets on behalf of a betting operator (with licence F1).
- (184) Upon verification of the licences held by Ladbrokes, the Commission notes that Ladbrokes held a class F1 licence, which allows the operation of a betting establishment, a class F2 licence, which allows bets to be taken on behalf of the licensee of class F1, in a class IV fixed or mobile betting establishment and also enables Ladbrokes to take bets outside a class IV gaming establishment in the cases referred to in Article 43/4 (1), (5) and (2) of the Gaming Act, and an additional class F1 + licence allowing the exploitation of bets via information society tools, meaning online. As to the complainants’ argument on discrimination of class II operators when it comes to virtual betting, the Commission notes the position taken by the Gaming Commission to limit the activity of virtual betting only to class IV operators. This restriction is in line with the reasoning provided by the 2018 Royal Decree, which emphasizes that it would be indispensable for the protections of players to allow this new game of chance to be offered only by class IV establishments (recital 43).
- (185) The Commission also notes the information provided by the Belgian authorities that Ladbrokes was not the only operator on the Belgian market to hold the relevant licenses F1 and F1+ to operate virtual betting (recital 167). Yet, Ladbrokes’ predominance is apparent it can be attributed to the fact that Ladbrokes was a first operator to introduce and start offering virtual betting service in Belgium (recitals 126- 128). This early start and being a first of a kind brought to Ladbrokes a ‘first mover’ advantage. Other operators slowly followed the suit and showed interest in virtual betting in 2015 and 2016. Then the market for virtual betting grew, yet the regulatory setting that had to be provided by the State has been behind that development (recital 59).

5.2.3. Absence of a granting act through the ‘authorisations’ for virtual betting

- (186) According to the Union courts, State aid must be regarded as being ‘granted’ within the meaning of Article 107(1) TFEU on the date on which the right to receive it is conferred on the beneficiary under the applicable national legislation ⁽⁴⁵⁾, i.e. the national law must foresee effects for such an act to be enforceable under national law.

⁽⁴⁴⁾ Article 1 of Royal Decree of 22 December 2010 (‘Arrêté royal établissant la liste des jeux de hasard automatiques dont l’exploitation est autorisée dans les établissements de jeux de hasard de classe IV’) : ‘Dans les établissements de jeux de hasard fixes de classe IV, les seuls jeux de hasard automatiques autorisés en vertu de l’article 43/4, § 2, alinéa 3, de la loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs sont ceux permettant au joueur de parier sur la réalisation d’un événement virtuel: il s’agit de machines individuelles, mono-joueur, basées sur le pari à la cote’.

⁽⁴⁵⁾ Judgment of 28 February 2024, Scandlines Danmark and Scandlines Deutschland / Commission, T- 390/20, ECLI:EU:T:2024:126, para. 45; judgment of 25 January 2022, Commission v European Food and Others, C-638/19 P, ECLI:EU:C:2022:50, paragraph 115.

- (187) In the case at hand, as explained in recital 35, the role of the Gaming Commission is to control compliance with the law within the framework of the Belgian law and its implementing decrees. The Gaming Commission, while being part of the Belgian public administration, has an advisory role and the task to implement the existing regulation in the gaming sector adopted by the Belgian legislator.
- (188) As stated in the Gaming Act, which defines the competences of the Gaming Commission (see recital 35), the Gaming Commission does not have the power to create new rights to operators for gaming and betting operations. When it issues licences it must stay within the scope of the competences given to it by the Gaming Act and it cannot create new categories of licences (recital 150). The Framework Notes issued by the Gaming Commission (see recital 39) cannot be regarded as legal bases to legally authorise a gaming or betting activity. Moreover, these Framework Notes were annulled by the Council of State in 2019 (recital 64).
- (189) Moreover, as mentioned in recital 40, the Gaming Commission explained in the Framework Note of 2012 that ‘in order to be able to closely monitor the development (...) it is preferable that each F1 [operator] wishing to organize such bets sends a prior request for authorisation for this purpose to the secretariat of the Gaming Commission’.
- (190) As to the meaning of an ‘authorisation’, the wording in the 2012 Framework Note indicates that the operators were not compelled or required, but rather encouraged (‘it is preferable’) to request a specific authorisation to operate virtual betting offline. Specifically, the Gaming Commission did not refer to any provision of the Gaming Act as a basis for its ‘preference’ expressed in the note (‘it is preferable’, ‘in order to be able to closely monitor this development’). In fact, later the ‘authorisations’ were annulled by the Council of State based on the arguments of *ultra vires* doctrine (recital 38).
- (191) The Commission takes the view that the e-mails were a mere confirmation that it could be considered that Ladbrokes, as a class IV establishment, was holding the relevant licences to operate virtual betting. In view of the interpretation given by the Gaming Commission, all class IV establishments with the relevant licence were entitled to provide virtual betting as it was covered by these licences (see recitals 40-41). Therefore, Ladbrokes, as an operator of class IV F1, F2 and F1+ licences, was considered eligible to operate virtual betting without requiring any additional approval or a new licence by the Belgian authorities.
- (192) Any class IV operator could have in principle send an ‘authorisation’ request to the Gaming Commission at around the same time as Ladbrokes did, and it would then most probably have received the same interpretation. This possibility was however not foreseen for other classes, including the class II operators like the complainants, as they were not deemed to be eligible for the operation of virtual betting. The Commission notes that none of the complainants were establishments of class IV with the relevant licences and they did not submit such a request to the Gaming Commission.
- (193) Moreover, it was only at a later stage that Stanleybet and Sagevas made their request for interpretation. The legal reflection had however evolved in the meanwhile. The Gaming Commission did not want first to deal with the request because of incomplete files. Subsequently, it did not want to provide an interpretation because of an ongoing regulatory initiative on virtual betting (see recital 161). The rejection of these two more recent requests made cannot be regarded as the refusal to grant rights to this operator.
- (194) In this context, the Commission concurs with the Belgian authorities’ view (see recital 162) that no operators would have reasonably believed that the Framework Notes would create an enforceable right to obtain an *ad hoc* and specific virtual betting licence that would have been granted only to Ladbroke.
- (195) In view of the foregoing considerations, the Commission concludes that given that the Gaming Act did not require a special licence to be approved by the Gaming Commission for virtual betting, and that the Framework Note of 2012 did not require any specific authorisation, the administrative communication granting ‘authorisations’ did not produce a legal effect to the extent that such effect would be tantamount to a licence. Ladbrokes, as an operator of class IV F1, F2 and F1+ licences, was considered eligible to operate virtual betting without requiring any additional approval or a new licence by the Belgian authorities. Therefore, it can be concluded that the e-mail replies sent by the Gaming Commission to Ladbrokes did not confer a legally enforceable right on Ladbrokes. Hence, the e-mails cannot be qualified as a granting act within the meaning of State aid law.

5.3. Absence of a measure having the effects of granting exclusive rights

5.3.1. No effects of exclusivity in the market for online virtual betting

- (196) According to well-established case-law, Article 107 TFEU defines a State aid measure by reference to its effects. It is therefore relevant to assess the effects on the market of the alleged measure ⁽⁴⁶⁾.
- (197) As regards online virtual betting, the facts show that the e-mails sent by the Gaming Commission did not produce the effect vis-à-vis other operators of granting exclusive rights to Ladbrokes, which could be assimilated to the effects of State aid.
- (198) As mentioned in recital 192, all operators of class IV with F1, F2 and F1+ licences were allowed to operate virtual betting without any additional approval or licence by the Belgian authorities.
- (199) Ladbrokes submitted screenshots of the websites operated by different betting companies offering online virtual betting at certain periods of time (recital 201). This shows that other operators, such as Circus ⁽⁴⁷⁾, Golden Vegas ⁽⁴⁸⁾ or Bingoal ⁽⁴⁹⁾, 36win ⁽⁵⁰⁾, along with Ladbrokes, provided online virtual betting.
- (200) Based on the information available, it appears that the Gaming Commission did not impose a sanction or undertake an enforcement action against these operators of online virtual betting. It also did not impose a prohibition on Ladbrokes, but temporarily suspended its licence for one day (recital 122).
- (201) Moreover, the Belgian authorities confirmed that the retroactive annulment of the 2018 Royal Decree by the 7 May 2021 ruling of the Belgian Council of State only concerned offline virtual betting (class IV gaming establishments). The annulment had no impact on online virtual betting as several operators continued to offer it afterwards (recital 167).
- (202) Based on the evidence available, it can be concluded that the e-mails sent by the Gaming Commission did not produce effects that could be assimilated to State aid vis-à-vis other operators of granting exclusive rights on online virtual betting to Ladbrokes.

5.3.2. No effects of exclusivity in the market for offline virtual betting

(a) No effective exclusivity based on the interpretation given by the Gaming Commission

- (203) As expressly confirmed by the Belgian authorities, from 10 February 2014 until 1 July 2017, all class IV fixed betting establishments with licences F1 and F2 were legally allowed to operate offline virtual betting. The Belgian authorities pointed out that only Ladbrokes did so, even though all operators of a class IV fixed betting establishment with the appropriate valid licence could have provided offline virtual betting (see recital 192).
- (204) The operator Sagevas made it public that it would operate virtual betting without any 'authorisation' from the Gaming Commission. The Gaming Commission expressly reported this declaration in its note of 2 January 2017, without announcing any enforcement actions.
- (205) It is further noteworthy that Tiercé Ladbrokes SA, which is a Entain's subsidiary and Ladbrokes's sister entity in Belgium, also started offering virtual betting in the bet shops it operated at the same time that Ladbrokes did. Tiercé Ladbrokes did not receive any 'authorisation'. Tiercé Ladbrokes is a different legal entity from Ladbrokes. Given the formality that characterizes the sector-specific regulation, meaning that an 'authorisation' or a licence is awarded to a specific legal entity ⁽⁵¹⁾, this shows that Ladbrokes was not alone in offering virtual betting.

⁽⁴⁶⁾ See Judgment of the Court of Justice of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, ECLI:EU:C:2008:757, paragraphs 85 and 89 and the case-law cited; Judgment of the Court of Justice of 8 September 2011, *Commission v Netherlands*, C-279/08 P, ECLI:EU:C:2011:551, paragraphs 51; Judgment of the Court of Justice of 15 November 2011, *Commission and Spain v Government of Gibraltar and United Kingdom*, Joined Cases C-106/09 P and C-107/09 P, ECLI:EU:C:2011:732, paragraph 87.

⁽⁴⁷⁾ <https://www.circus-sport.be/en>.

⁽⁴⁸⁾ <https://www.goldenvegas-sport.be/en>.

⁽⁴⁹⁾ <https://www.bingoal.be/fr>.

⁽⁵⁰⁾ <https://www.36win.be/en>.

⁽⁵¹⁾ Details on the application form for a licence: <https://www.gamingcommission.be/en/operators/licences/betting-licence-f1-f2-f1>.

- (206) Even though the position of the Gaming Commission evolved in the direction that virtual betting would not be a form of betting, and it therefore no longer advised that it could be offered in class IV gaming establishments (with licences F1 and F2), all class IV fixed betting establishments with the relevant licence were legally allowed to operate virtual betting.
- (207) As of 1 July 2017, the Gaming Commission suspended its 'authorisation' granted to Ladbrokes in 2014. However, Ladbrokes continued offering virtual betting even after 1 July 2017, based on its view that it would be lawful to do so for all operators based on the licence F alone.
- (208) The Belgian authorities did not take any legal action to enforce those "suspensions" or to initiate legal proceedings against Ladbrokes after 1 July 2017.
- (209) The available facts as stated already in recital 31 of the Supplementary Opening Decision ⁽⁵²⁾ show that some other operators (Bingoal/PMU, Betcenter Stanleybet and Sagevas) offered or intended to offer offline virtual betting.
- (210) In the light of these facts, the Commission concludes that the e-mails sent by the Gaming Commission did not produce effects vis-à-vis other operators of granting exclusive rights on offline virtual betting to Ladbrokes, which could be assimilated to the effects of State aid.

(b) No exclusivity on offline virtual betting based on the 2018 Royal Decree

- (211) Ladbrokes finally stopped offering virtual betting on 28 March 2018 due to an injunction of the Brussels Commercial Court requested by FedCaf in view of the suspension of the Framework note on 1 July 2017.
- (212) In any event, on 4 May 2018, the 2018 Royal Decree came into force. According to the Belgian authorities, from the adoption of the 2018 Royal Decree until the annulment of all three Framework Notes by the Council of State in 2019 (recital 64), class IV fixed betting establishments with the appropriate valid licence could offer offline virtual betting. Effectively, as already mentioned above (recital 167) several of them did so, in particular SRL Bingo Bet, Derby (Ladbrokes), Stanleybet and Wedwinkel-Bettica. These same operators offered offline virtual betting in the period from the same judgment of the Council of State of 19 September 2019 when the Council ruled that virtual betting would not be in line with the Gaming Act (recital 140) until the retroactive annulment of the 2018 Royal Decree.
- (213) The Commission therefore concludes that the 2018 Royal Decree did not confer an exclusive right to Ladbrokes.
- (214) It is finally noteworthy that, from the annulment of the 2018 Royal Decree on 7 May 2021 onwards, offline virtual betting has not been allowed and there is no operator offering it in Belgium, as confirmed by the Belgian authorities.

5.4. No foregone State resources in the alleged measure since 2014 to date

- (215) The complainants argue that by failing to impose a fee for virtual betting services offered by Ladbrokes, the Belgian authorities favoured Ladbrokes by granting it a preferential treatment, hence a selective advantage (see recital 21). In doing so, the Belgian authorities would have foregone State resources.
- (216) However, all class IV establishments with the relevant licence were in principle allowed to offer both offline and online virtual betting (recital 192). The Commission notes that the Gaming Commission, or any other Belgian public authority for that matter, did not exempt Ladbrokes from a fee and did not release Ladbrokes from the obligation to pay a fee that would have been due. Instead, it appears from the Belgian authorities' interpretation of the Gaming Act that there is no obligation for the operators to pay special fees for virtual betting.

⁽⁵²⁾ 'Indeed, the Belgian authorities clarified the *de jure* and *de facto* situation from 10 February 2014 onwards. In particular, they described that from 4 May 2018 until 7 May 2021 all class IV fixed betting establishments were allowed to operate virtual betting and that Wedwinkel – Bettica, Bingo Bet – bet 90 (until 12 March 2020), Derby (Ladbrokes), and Stanleybet were actually operating virtual betting.'

- (217) It is further noteworthy that there was no obligation for class IV establishments to hold, let alone to pay for a licence special to operating virtual betting, so that not imposing a licence fee for virtual betting is merely the consequence of the non-existence of special rules on virtual betting in the Gaming Act.
- (218) The Commission further notes that with the adoption of the 2018 Royal Decree, offline virtual betting became regulated, but no special fee was foreseen for it. In fact, when the regulator acted by adopting the 2018 Royal Decree, it adopted a regulation which prescribed conditions for all eligible operators and did not forgo revenues for not requiring a special fee for operating virtual betting by Ladbrokes.
- (219) Therefore, the Commission concludes that the Belgian State did not waive, nor forego, any resources which should have been paid by Ladbrokes for operating virtual betting since 2014. Hence, there is no link between the alleged exclusive right of Ladbrokes and a burden on the State budget through the non-imposition of fees.

5.5. Conclusion

- (220) In conclusion, the Commission finds that:
- the informal e-mail replies sent by an employee at the Gaming Commission to Ladbrokes do not qualify as a granting act within the meaning of Article 107 (1) TFEU (see section 5.2.);
 - the e-mails sent by the Gaming Commission did not produce effects vis-à-vis other operators of granting exclusive rights on virtual betting to Ladbrokes, which could be assimilated to the effects of State aid within the meaning of Article 107 (1) TFEU (see section 5.3.);
 - the Belgian State did not waive, nor forego, any resources which should have been paid by Ladbrokes for operating virtual betting since 2014 (see section 5.4.).
- (221) The Commission therefore concludes that no unlawful State aid has been granted by Belgium to Ladbrokes within the meaning of Article 107 (1) TFEU in the absence of (i) a granting act, (ii) any exclusive rights which could be assimilated to it, and (iii) the forgoing of State resources.

6. CONCLUSION

- (222) In the light of the above, the Commission concludes that the measure does not constitute State aid within the meaning of Article 107(1) TFEU.

HAS ADOPTED THE DECISION

Article 1

The Kingdom of Belgium has not provided to Ladbrokes unlawful aid in the form of exclusive rights on virtual betting as of 10 February 2014. The alleged measure does not qualify as State aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 11 April 2025.

For the Commission
Teresa RIBERA
Executive Vice-President