



COMMISSION DECISION (EU) 2025/892

of 31 October 2024

on measure SA.56399 and SA.56634 (2021/C) (ex 2020/FC) implemented by France in favour of La Française des Jeux

(notified under document C(2024) 7735)

(Only the French 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 those articles ⁽¹⁾, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 31 January 2020, the Commission received a complaint from the *Association Française du Jeu en Ligne* ('AFJEL') ⁽²⁾ concerning the alleged granting of unlawful State aid to La Française des jeux ('FDJ').
- (2) On 5 March 2020, the Commission received a second complaint on the same subject from the Betting and Gaming Council ('BGC') ⁽³⁾.
- (3) On 26 July 2021, the Commission decided to open the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the alleged aid measure granting secured exclusive rights for 25 years in return for insufficient remuneration ('the opening decision'). It notified France of this decision on 27 July 2021.
- (4) The Commission's opening decision was published in the *Official Journal of the European Union* on 3 December 2021. The Commission invited interested parties to submit their comments on the alleged aid measure.
- (5) France submitted its comments on 3 November 2021. The Commission received written comments from FDJ on 3 January 2022. On 3 January 2022, it also received written comments from BETCLIC entreprises limited ('BETCLIC'), the Union des blessés de la face et de la tête ('UBFT') and the Fédération Nationale André Maginot ('FNAM'). On 12 January 2022, the Commission received written comments from AFJEL and on 18 January 2022, from BGC. On 20 January 2022, the Commission received comments from the European Gaming and Betting Association ('EGBA').
- (6) By letters of 31 January 2022 and 15 February 2022, the Commission forwarded the comments from interested parties on the opening decision to France, giving it the opportunity to respond. The Commission received France's response by letter of 19 April 2022.

⁽¹⁾ OJ C 487, 3.12.2021, p. 13 – Octroi supposé d'aide d'État illégale à la Française des Jeux – Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union.

⁽²⁾ AFJEL is a trade association representing the majority of online sports betting operators licensed in France.

⁽³⁾ BGC represents 90 % of the betting and gaming industry in the United Kingdom. In particular, it represents online gaming operators licensed there.

- (7) By emails dated 23 February 2022, 2 May 2022, 8 July 2022, 10 November 2022, 17 November 2022, 6 January 2023, 8 March 2023, 13 March 2023, 20 March 2023, 28 April 2023, 23 June 2023, 13 September 2023, 29 September 2023, 26 October 2023, 14 December 2023, 22 January 2024, 23 January 2024, 2 February 2024, 12 March 2024, 22 April 2024, 28 April 2024, 16 May 2024, 17 June 2024, 18 September 2024 and 21 October 2024, the representative of AFJEL and BGC provided additional information and held discussions with the Commission on 9 June 2022 and 27 September 2022.
- (8) The Commission received additional information from the French authorities on 17 July and 23 October 2024.
- (9) The Commission held discussions with the French national gambling authority ('ANJ') on 27 October 2022. Further questions were put to ANJ on 12 November 2022, which it replied to on 27 February 2023.

2. DESCRIPTION OF FDJ AND OF THE FRENCH GAMBLING MARKET

2.1. FDJ, the beneficiary of the alleged aid

- (10) FDJ is the leading gaming operator in France and the second largest lottery operator in Europe. It has a network of over 29 000 points of sale in more than 11 000 municipalities and employs almost 3 000 people ⁽⁴⁾.
- (11) In 2023, FDJ reported turnover of EUR 2,621 billion, EBITDA of EUR 656,8 million and net profit of EUR 425,1 million. Its gross gaming revenue was EUR 6,7104 billion ⁽⁵⁾.
- (12) FDJ is the incumbent gambling operator in France. On 9 November 1978, the state granted exclusive rights for organising and operating the national lottery to the Société de la Loterie nationale et du Loto national, which became FDJ in 1991 ⁽⁶⁾. On 1 April 1985, it was granted exclusive rights to operate sports betting (excluding horse racing) ⁽⁷⁾.
- (13) On 12 May 2010, France liberalised the online gambling sector by means of Law No 2010-476. Since that date, the markets for horse-race betting, online sports betting and online poker games have thus been open to competition. FDJ still has a monopoly in the lottery market (prize draws and instant games) and in the market for point-of-sale sports betting (excluding horse racing) ⁽⁸⁾.
- (14) The gambling market in France was reformed on 22 May 2019 (see Section 2.2).
- (15) The regulatory acts giving rise to the granting of the exclusive rights referred to in recital 12 were repealed on 23 June 2020 ⁽⁹⁾.

⁽⁴⁾ This information is available in FDJ's 2023 integrated report: <https://www.fdjunited.com/2024/03/discover-the-2023-edition-of-the-fdj-groups-annual-integrated-report/>.

⁽⁵⁾ FDJ's 2023 consolidated accounts: <https://www.groupefdj.com/publications-et-resultats/>.

⁽⁶⁾ These exclusive rights were granted by Decree No 78-1067 of 9 November 1978 on the organisation and operation of the national lottery and national Loto. The terms and conditions for exercising these rights were specified in an agreement signed on 29 December 1978 between the state and the Société de la Loterie nationale et du Loto national.

⁽⁷⁾ These exclusive rights were granted by Decree No 85-390 of 1 April 1985 on the organisation and operation of the sports Loto. The agreement of 29 December 1978 (see above) was amended to reflect the extended scope of the exclusive rights granted. It was subsequently amended again to provide, inter alia, for: (i) the extension of the scope of the exclusive rights conferred; (ii) a change in the duration of the agreement (initially covering a period of 30 years, the agreement was extended indefinitely by the last amendment of 9 March 2006); (iii) changes relating to the company's winding-up terms, especially as regards compensation if the company ceased to be entrusted by decree with organising and operating games on the basis of exclusive rights.

⁽⁸⁾ See Section 2.2 of the opening decision for a detailed description of the legal framework applicable before the reform of 22 May 2019.

⁽⁹⁾ Decrees No 78-1067 of 9 November 1978 and No 85-390 of 1 April 1985 were repealed on 23 June 2020. The agreement, based on Decrees No 78-1067 of 9 November 1978 and No 85-390 of 1 April 1985, was terminated.

2.2. Gambling reform in France

- (16) On 22 May 2019, the French authorities adopted Law No 2019-486 on business growth and transformation (the 'PACTE Law'), and on 2 October 2019 they adopted Order No 2019-1015 reforming gambling regulation (the '2019 Order'). Several decrees were adopted to supplement these two regulatory acts ⁽¹⁰⁾.
- (17) By means of these acts, France privatised FDJ and reformed gambling regulation.
- (18) The reform of gambling regulation ('the PACTE Law reform') focused on two main elements: (i) the granting of exclusive rights to FDJ for a period of 25 years to operate offline and online lottery games and point-of-sale sports betting in return for remuneration of EUR 380 million ⁽¹¹⁾; and (ii) taxation of sports betting ⁽¹²⁾.

3. OPENING OF THE FORMAL INVESTIGATION PROCEDURE

- (19) As set out in recitals 1 and 2, the Commission received two complaints concerning alleged granting of unlawful State aid to FDJ: one filed on 31 January 2020 by AFJEL and the other on 5 March 2020 by BGC. Both complaints had the same subject-matter ⁽¹³⁾.

3.1. Description of the measure covered by the formal investigation procedure

- (20) As a result of the amendments made by the PACTE Law, FDJ had to pay the state remuneration of EUR 380 million to operate offline and online lottery games and point-of-sale sports betting. The principle underlying this remuneration was set out in Article 137(IV)(1) of the PACTE Law, and specified in Article 17 of the 2019 Order (which provided that the amount of the payment was to be set, following assent by the Commission des participations et des transferts (Commission on holdings and transfers), in the specifications required under Article 16).
- (21) To quantify the remuneration of EUR 380 million owed by FDJ (the 'remuneration' or 'fee'), the French authorities used a differential method: they compared the theoretical value of FDJ's future exclusive rights (from 2019 onwards) in two scenarios: before the reform implemented by the PACTE Law (counterfactual pre-PACTE Law scenario) and after the reform (taking into account the actual impact of the PACTE Law).

⁽¹⁰⁾ In particular, Decree No 2019-1060 of 17 October 2019 laying down detailed arrangements for state control over FDJ.

⁽¹¹⁾ See Section 2.3.1 of the opening decision: Article 137 of the PACTE Law provides that exclusive rights are granted for a limited period to FDJ, and the 2019 Order specifies the scope of those rights (Articles 7 and 8 of the Order), sets out the terms under which they are exercised and their duration, i.e. 25 years starting from the publication of the PACTE Law (Article 15 of the Order). Article 3 of Decree No 2019-1060 of 17 October 2019 laying down detailed rules for close state control over FDJ sets at EUR 380 million the remuneration to be paid by FDJ in return for the exclusive rights granted.

An agreement concluded on 17 October 2019 between the state and FDJ specifies the arrangements for exercising the exclusive rights.

⁽¹²⁾ See Section 2.3.2 of the opening decision: Article 138(I), (III) and (IV) of the PACTE Law amended the tax base (gross gaming revenue rather than amount wagered) and the applicable rates for the three specific taxes imposed on sports betting operators in France.

⁽¹³⁾ In addition to the granting of exclusive rights for a period of 25 years for insufficient remuneration (EUR 380 million), the complaints also concerned (i) an explicit and unlimited guarantee that FDJ would not lose its exclusive rights or any licensing even in the event of serious misconduct; and (ii) preferential tax treatment for FDJ for point-of-sale sports betting compared with online operators. Neither measure (the alleged guarantee or the alleged tax advantage) fell within the scope of the opening decision. As regards the alleged guarantee, the Commission noted in the opening decision that it resulted in the exclusive rights granted to FDJ being further secured. This conferred an advantage on FDJ by increasing the value of the exclusive rights, which had to be estimated and taken into account when calculating the remuneration owed for the exclusive rights. The Commission therefore considered it necessary to analyse the securing of the rights when assessing the fee. As regards the alleged tax advantage, the Commission noted that FDJ's tax status had been indirectly factored in when assessing the fee since all financial advantages granted to FDJ had been taken into account in checking the level of remuneration for the exclusive rights.

- (22) According to a detailed financial report by the French authorities dated 13 September 2019, the theoretical value of FDJ's exclusive rights before the reform of those rights by the PACTE Law had been estimated at between EUR [...] * million and EUR [...] million. In the French authorities' opinion, the reform would affect this theoretical value:
- (a) negatively, since the exclusive rights were limited to 25 years, whereas they had previously been granted indefinitely (accounting for a reduction in value estimated in the financial report at between EUR [...] million and EUR [...] million);
 - (b) positively, as the exclusive rights were secured ⁽¹⁴⁾ and the tax framework was more stable ⁽¹⁵⁾ resulting in a less risky business plan than under the previous provisions (accounting for an increase in value estimated in the financial report at between EUR [...] million and EUR [...] million);
 - (c) negatively, given the combined effects of the change in taxation over the course of the business plan and other additional costs incurred by FDJ as a result of the PACTE Law, e.g. counterparty risk insurance and marketing costs (accounting for a reduction in value estimated in the financial report at EUR [...] million).
- (23) The theoretical value of FDJ's exclusive rights after the PACTE Law reform was thus estimated at EUR [...] (potentially varying between EUR [...] and EUR [...] depending on the weighted average cost of capital and the revenue from the exclusive rights).
- (24) The French authorities therefore estimated that the remuneration owed by FDJ for its exclusive rights was between EUR 121 and 748 million ⁽¹⁶⁾, corresponding to the financial impact of the PACTE Law.
- (25) After the Commission on holdings and transfers ('CPT') had given its opinion, the French authorities concluded that FDJ would have to pay remuneration of EUR 380 million, reflecting a fair estimate of the difference between the theoretical value of FDJ's exclusive rights before the reform implemented by the PACTE Law and the theoretical value of those rights after the reform.

3.2. The opening decision

- (26) In the opening decision, the Commission questioned the approach taken by the French authorities (differential method) and whether the fee was consistent with the market price. If that were not the case, FDJ would enjoy a competitive advantage.
- (27) The Commission noted that, in the decision on the Greek operator OPAP ('the OPAP precedent') ⁽¹⁷⁾, it had considered aid to be consistent with the market price provided that the state allowed the right holder only a reasonable return ⁽¹⁸⁾. It had also noted in that decision that discounted cash flow ⁽¹⁹⁾ was an appropriate method for determining reasonable profit.
- (28) In the opening decision, the Commission pointed out that, although the French authorities had used the cash flow method to quantify the remuneration owed by FDJ, they had deviated from the approach followed by the Greek authorities in the OPAP precedent. On the basis of the differential method, they had relied on a comparison between the theoretical value of FDJ's exclusive rights before the PACTE Law reform and the theoretical value of those rights after the reform, whereas the approach taken in the OPAP case had considered future returns generated over the duration of the licence.

(*) Confidential information.

⁽¹⁴⁾ Previously, the regulator could withdraw the benefits of those rights from FDJ at any time whereas they were now granted to FDJ by law and only the legislature could withdraw them.

⁽¹⁵⁾ Public levies were previously fixed annually. As a result, the state frequently amended the public levies on FDJ, thereby creating uncertainty as to its profitability.

⁽¹⁶⁾ Indicative range following the update of FDJ's business plan.

⁽¹⁷⁾ See Commission Decision of 4 January 2013 in case SA.33988 (OJ C 1, 4.1.2013, p. 7), recitals 28-29 and 32, confirmed by the judgment of the General Court of 8 January 2015, *Club Hotel Loutraki and Others v Commission*, T-58/13, ECLI:EU:T:2015:1, and by the judgment of the Court of Justice of 21 December 2016, *Club Hotel Loutraki and Others v Commission*, Case C-131/15 P, ECLI:EU:C:2016:989.

⁽¹⁸⁾ The minimum return necessary to cover operational and capital costs resulting from the exercise of rights plus a reasonable profit.

⁽¹⁹⁾ Discounted cash flow is a method used to estimate the value of an asset or undertaking by discounting expected future cash flows to their present value. It takes into account the time and risk associated with these future flows.

- (29) The Commission questioned whether FDJ retained only a reasonable return after the PACTE Law reform, because the calculation method presented by France kept the pre-reform returns, with no indication whether they themselves were reasonable.
- (30) The Commission also contested the French authorities' position that, owing to continuity in the situation before and after the PACTE Law, the impact of the law's limited number of amendments on the value of the exclusive rights could be assessed using the differential method. The Commission's preliminary view was that FDJ's exclusive rights before the PACTE Law were not secure and could be revoked. On that basis, it doubted that the differential method was justified. The Commission also questioned the plausibility of FDJ's right to compensation on the basis of the no-fault liability of the state if the exclusive rights were revoked in the future.
- (31) Even supposing the differential method were justified, the Commission also questioned the value of the exclusive rights before and after the PACTE Law as estimated by France for that calculation.
- (32) Finally, more generally, the Commission pointed out that remuneration of EUR 380 million seemed low compared with that paid by OPAP for the smaller Greek market and more limited rights.
- (33) The Commission noted in the opening decision that, apart from these doubts about whether there was an advantage, all the other criteria for classification as State aid appeared to be met. The Commission stated that, if the competitive advantage were confirmed and the measure classified as State aid, it had no evidence to conclude that the measure was compatible with the internal market.

4. COMMENTS FROM INTERESTED PARTIES

- (34) Two interested parties commented on the opening decision in support of the French authorities (FDJ and UBFT/FNAM), while four interested parties confirmed in their comments the doubts expressed by the Commission in the opening decision (EGBA, BGC, AFJEL, BETCLIC).

4.1. **Parties supporting the French authorities**

4.1.1. *FDJ*

- (35) To begin with, FDJ disputed the Commission's assertion that the rights deriving from the PACTE Law constituted new rights and maintained that the post-PACTE Law rights were a continuation of the pre-PACTE Law rights.
- (36) First, FDJ argued that the PACTE Law did not repeal the pre-PACTE Law rights granted to it so as to reassign them. It considered the post-PACTE Law rights to be a continuation of the pre-PACTE Law rights, as confirmed by the parliamentary preparatory report on the PACTE Law, which stated that the exclusive rights were maintained ⁽²⁰⁾. FDJ submitted that it was clear from the impact assessment on the draft law of 18 June 2018 ⁽²¹⁾ that the purpose of the reform was solely to retain close state control over a privatised company and to clarify certain operating arrangements.
- (37) Second, FDJ maintained that the scope of the rights deriving from the PACTE Law remained unchanged, as reflected in parliamentary documents ⁽²²⁾. It maintained that the new regulatory framework set out in the 2019 reform merely clarified and specified the pre-existing arrangements by introducing precise definitions of the games it operated, without changing the scope.
- (38) Third, in response to recital 101 of the opening decision, FDJ argued that the exclusive rights deriving from the PACTE Law did not have new characteristics.

⁽²⁰⁾ Report No 1088 of 15 September 2018 on behalf of the special parliamentary committee entrusted with examining the draft PACTE Law by Mr Barrot, Ms Dubost, Ms Lebec and Mr Sommer, p. 799.

⁽²¹⁾ Impact assessment on the draft law on business growth and transformation, 18 June 2018, p. 440.

⁽²²⁾ See information report by the Economic Affairs Committee on the implementation of Law No 2019-486 of 22 May 2019 on business growth and transformation: https://www.assemblee-nationale.fr/dyn/15/rapports/cion-eco/l15b2619_rapport-information.

- (39) Fourth, it argued that the PACTE Law merely altered the 'legal vehicle' for using exclusive rights in the context of FDJ's privatisation. In other words, the exclusive rights which previously derived from regulatory texts now resulted from legislation.
- (40) Then, FDJ disputed that the pre-PACTE Law rights were not secure.
- (41) First, it noted that French law recognised the principle of acts creating revocable rights which when revoked gave rise to compensation.
- (42) Second, it argued that the pre-PACTE Law rights fell under that category and that FDJ would have been awarded compensation if they had been revoked.
- (43) Third, it submitted that the post-PACTE Law rights were not inalienable and it was possible under that law to withdraw FDJ's exclusive rights.
- (44) Next, FDJ submitted that the remuneration for the exclusive rights under the PACTE Law was no lower than that for OPAP's exclusive rights.
- (45) First, it maintained that EUR 300 million of the EUR 375 million remuneration in the OPAP case was actually a sum paid by OPAP in 2011 as an advance on some of the public levies it owed for 2020-2030 and that only the remaining EUR 75 million should be regarded as the fee for the exclusive rights.
- (46) Second, FDJ argued that it had to pay more in specific public levies ⁽²³⁾ than OPAP (2,5 times more levies for FDJ between 2011 and 2020) and that its net profit was much lower than OPAP's in that period (EUR 1,3 billion for FDJ compared with EUR 2,4 billion for OPAP).
- (47) Lastly, FDJ submitted that, before the PACTE Law, its rights had been of unlimited duration since 2006 and could be withdrawn at that time only if it was compensated by the state.

4.1.2. UBFT/FNAM

- (48) These two associations disputed the Commission's assertion that FDJ's pre-PACTE Law rights were not secure and could be revoked ⁽²⁴⁾. They claimed that the rights could not be called into question suddenly and without compensation. They argued that, on numerous occasions, the exclusive rights had been confirmed by the government (during the 2010 liberalisation) and by the French courts (Council of State and Court of Cassation in 2000 ⁽²⁵⁾, 2007 ⁽²⁶⁾, 2009 ⁽²⁷⁾, 2011 ⁽²⁸⁾ and 2013 ⁽²⁹⁾) and pointed out that in 2017 the Commission had ended the various infringement procedures and complaints concerning gambling.
- (49) The two associations also disputed the Commission's assertion that FDJ would not have been able to claim compensation if the rights had been revoked. In their view, the French courts would have considered the revoking of rights to be of a serious and exceptional nature and thus to give rise to a right to compensation. They noted that there was a precedent where compensation had been granted after the state had revoked exclusive lottery rights ⁽³⁰⁾.

⁽²³⁾ In particular, social security contributions (CSG, CRDS), tax and social levies on sports betting, a sports development levy, VAT, stamp duty.

⁽²⁴⁾ See recital 109 of the opening decision.

⁽²⁵⁾ Council of State, 15 May 2000, *Confédération française des professionnels en jeux automatiques*, No 202666.

⁽²⁶⁾ Council of State, 12 March 2007, *Syndicat des casinos modernes de France*, No 295882.

⁽²⁷⁾ Court of Cassation, Criminal Division, 3 June 2009, No 08-82.941.

⁽²⁸⁾ Council of State, 30 December 2011, *Stanley International Betting Limited*, No 330604.

⁽²⁹⁾ Council of State, 10 July 2013, *Stanley International Betting Limited*, No 357359.

⁽³⁰⁾ In 1975, GIE Prelo, of which UBFT and FNAM formed part, was granted the exclusive right to operate the Loto for 10 years. However, in 1978 the state decided to withdraw GIE Prelo's rights and entrust the Société de la Loterie Nationale et du Loto national ('SLNLN') with operating the national Loto and national lottery. The withdrawal of rights resulted in compensation for the members of GIE Prelo: they were allocated (i) 49 % of the capital for a nominal contribution of EUR [...] million; and (ii) a commission on Loto stakes. According to UBFT and FNAM the former members of GIE Prelo received, adjusting for inflation, approximately EUR [...] million in compensation between 1979 and 2008 for the partial loss of their exclusive rights over the Loto.

- (50) Finally, contrary to the Commission's contention in the opening decision ⁽³¹⁾, they considered that FDJ had paid remuneration to the state for its exclusive rights in the form of taxes and non-tax levies since 1978. FDJ had paid several tens of billions to the state over the 1978-2019 period by way of specific levies on games; the state had made unilateral withdrawals of FRF [...] million in 1983 and FRF [...] million in 1985; from 1988 until 2017, FDJ had paid [...] of its distributable profit to its shareholders, 72 % of which had therefore gone to the state.

4.2. **Parties considering the doubts expressed in the opening decision to be well founded**

4.2.1. *EGBA*

- (51) Relying on the OPAP precedent, EGBA submitted that the remuneration paid by FDJ in return for the exclusive rights was insufficient.
- (52) EGBA noted that the remuneration payable by FDJ was significantly lower than the net present value of the exclusive rights, leaving it a return in excess of reasonable profit. EGBA maintained that the method used by the French authorities to set the remuneration owed (differential method) and their estimates (value of pre- and post-PACTE rights) were incorrect.
- (53) It considered that all the doubts expressed by the Commission in the opening decision and referred to in recitals 26-32 of this decision were well founded.

4.2.2. *AFJEL/BGC*

- (54) AFJEL and BGC contended that the EUR 380 million remuneration payable by FDJ for the exclusive rights over a period of 25 years (2019-2044) was insufficient.
- (55) AFJEL and BGC maintained their assertion that the EUR 380 million remuneration was not in line with the market price. First, they submitted that the method used to calculate the fee was incorrect as it was contrary to the OPAP precedent. They disputed the French authorities' argument that FDJ's post-PACTE Law rights were a continuation of its pre-PACTE Law rights and did not constitute new rights: in their view, the PACTE Law introduced a new legal framework involving major changes to the pre-PACTE Law arrangements. They also maintained that the remuneration should be calculated taking into account all unlawful aid received over the 2010-2019 period. Second, they stated that FDJ had no right to compensation if the exclusive rights were withdrawn. Third, they argued that the remuneration had not been correctly estimated as the French authorities had been wrong to assume that the reform could have a negative impact on FDJ. In fact, the exclusive rights it could use and the resulting revenue had been secured and confirmed and their scope extended, and it enjoyed a more advantageous tax regime. Fourth, they argued that France had not put a value on the extended scope of the gaming opportunities offered to FDJ under the post-PACTE Law exclusive rights.

4.2.3. *BETCLIC*

- (56) In its comments, BETCLIC informed the Commission of ongoing actions before the Council of State seeking to challenge the decrees adopted on the basis of the 2019 Order (see recital 16 of this decision).
- (57) BETCLIC forwarded to the Commission the applications lodged with the Council of State, in which, relying on the OPAP precedent, it had maintained that the remuneration paid by FDJ in return for the exclusive rights was insufficient.

⁽³¹⁾ See recital 98 of the opening decision.

5. COMMENTS FROM THE FRENCH AUTHORITIES

- (58) The French authorities replied on 26 May 2020 to the Commission's letters of 25 February 2020 and 13 March 2020. They submitted comments on 3 November 2021 on the opening decision of 26 July 2021 and sent additional comments on 22 April 2022.
- (59) First, the French authorities argued that the PACTE Law did not revoke the rights and assign new ones but amended the legal framework for the rights already held by FDJ. In their view, (i) the right holder (FDJ), the legal nature of the exclusive rights and their scope remained unchanged; (ii) only the duration of the rights had been shortened (from an unlimited duration to 25 years); and (iii) the legal framework, in particular as regards the tax regime and creation of a regulatory authority, had been tightened up and the scope of the rights clarified in the PACTE Law. The French authorities relied on a general analysis of the PACTE Law, informed by parliamentary documents⁽³²⁾ and the positions of the Council of State⁽³³⁾, on the timetable for entry into force of the various amendments to the exclusive rights, which had taken place on different dates, and on the interpretation of CPT's assent to the financial consideration owed by FDJ under the PACTE Law⁽³⁴⁾.
- (60) Second, as regards the remuneration for the exclusive rights, the French authorities took the view that it had not been underestimated by calculating FDJ's financial consideration using the differential method.
- (61) They noted that the method for estimating the consideration was not comparable to that in the OPAP precedent, since FDJ had enjoyed exclusive rights for an indefinite period before the PACTE Law. Moreover, it had not been granted new exclusive rights, but its existing rights had been secured and limited in time. In addition, they considered that the value of FDJ's secured exclusive rights had been taken into account in calculating the financial consideration.
- (62) Third, the French authorities maintained that, under the differential method, the theoretical value of the post-PACTE Law rights had not been underestimated since the law had not given FDJ an opportunity to develop new games.
- (63) The French authorities maintained that the fee had been independently estimated by CPT following a multi-criteria approach using objective methods on the basis of reports drawn up by banks advising the French state.
- (64) Fourth, the French authorities pointed out that, although no remuneration had formally been paid under State aid law before the PACTE Law, from the time of its creation FDJ had made substantial payments to the state through a levy on amounts wagered.
- (65) They also maintained that the FDJ case could not be compared to the OPAP case, which had involved new rights being granted and rights about to expire being extended, whereas in the FDJ case France had merely used the PACTE Law to amend rights continuously granted to FDJ. They also maintained that the EUR 380 million remuneration was comparable to that accepted by the Commission in the OPAP precedent. The French authorities calculated that, in proportion to the respective gross gaming revenue of FDJ and OPAP⁽³⁵⁾, the fees charged to each operator were similar, if not very similar.
- (66) Fifth, the French authorities maintained that the measure in question did not affect competition since FDJ, as an operator enjoying exclusive rights, had a legal monopoly, which meant there was no competition on the market or for the market. Moreover, the French authorities argued that the financial advantage for FDJ resulting from the granting of exclusive rights was not likely to make it more difficult for operators from other Member States to enter the French market since they did not compete with the games offered by FDJ under exclusive rights.

⁽³²⁾ See parliamentary reports No 1088 of 15 September 2018 on behalf of the special parliamentary committee entrusted with examining the draft PACTE Law and No 254 on behalf of the special Senate committee entrusted with examining the draft PACTE Law.

⁽³³⁾ Council of State opinions No 394599 and No 395021, 14 June 2018.

⁽³⁴⁾ See Commission on holdings and transfers opinion No 2019-A.C.-1 of 7 October 2019.

⁽³⁵⁾ The French authorities calculated that OPAP's exclusive rights were in effect valued at only EUR 75 million, which was around 4,8 % of its gross gaming revenue in 2018 or 0,48 % per year of the concession, whereas the EUR 380 million for securing FDJ's exclusive rights corresponded to 7,4 % of its gross gaming revenue in 2018 or 0,3 % per year of the concession.

- (67) Sixth, in a memo dated 15 April 2022, the French authorities pointed out that the securing of FDJ's exclusive rights by the PACTE Law had not made the rights irrevocable, since the legislature retained the power to revoke them before they expired. In addition, Law No 2010-476 of 12 May 2010, as amended by the 2019 Order, had already laid down a mechanism for the regulator to suspend or withdraw FDJ's gaming licences for failure to comply with the approved terms for operating games and a mechanism for the Minister for the Budget to suspend or ban operation of a game on public policy grounds. These mechanisms applied to all games operated by FDJ under its exclusive rights. The positive impact of securing rights under the PACTE Law consisted in moving from exclusive rights previously assigned by decree for an indefinite period to exclusive rights provided for by law for a maximum period of 25 years (resulting in a reduced risk premium as part of FDJ's capital costs) and in the establishment of a more stable tax framework. This impact had been taken into account in CPT's estimate of the remuneration owed by FDJ. In addition, the French authorities pointed out that, in their view, the existing controls on the games offered by FDJ had been considerably tightened up by the reform and that the scope of its exclusive rights had been more strictly defined as a result of the PACTE Law ⁽³⁶⁾.
- (68) Lastly, the French authorities informed the Commission of Council of State decisions Nos 436434, 436450, 436814, 436822, 436866, 436439, 436441 and 436449 of 14 April 2023 dismissing all of the complainants' applications ⁽³⁷⁾ and reaffirming in particular that FDJ's exclusive rights had been continuous before and after the PACTE Law. In the French authorities' view, this endorsed their approach of calculating the remuneration for the exclusive rights using the differential method.

6. ASSESSMENT OF THE MEASURE

- (69) In accordance with Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), 'any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (70) It follows that, for a measure to be classified as State aid within the meaning of Article 107(1) TFEU, it must fulfil the following cumulative conditions:
- (a) the measure in question must be granted through state resources and be imputable to the state;
 - (b) the measure must confer an economic advantage on its beneficiary or beneficiaries;
 - (c) that advantage must be selective; and
 - (d) the measure in question must distort or threaten to distort competition and be liable to affect trade between Member States.

6.1. Existence of State aid

6.1.1. Concepts of undertaking and economic activity

- (71) In accordance with settled case-law, 'the concept of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed' ⁽³⁸⁾. The classification of a particular entity as an undertaking thus depends entirely on the nature of its activities. The Court of Justice has held that 'any activity consisting in offering goods and services on a given market is an economic activity' ⁽³⁹⁾.

⁽³⁶⁾ According to the French authorities, the pre-PACTE Law rules had not laid down any provisions on the maximum number of lottery games that could be operated by FDJ, whereas the PACTE Law had: 140 lottery games in total with a ceiling of 40 offline games and 100 online games (see Article D.322-14 of the Internal Security Code).

⁽³⁷⁾ With the exception of the application relating to the amount of the fee, on which the Council of State decided to stay proceedings pending the Commission's decision.

⁽³⁸⁾ Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74.

⁽³⁹⁾ See judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraph 7; judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 75.

(72) In return for payment, FDJ provides lottery games (prize draws and instant games) and a sports betting service (excluding horse racing) on the gambling market (in that connection, see Section 2.1 of this Decision).

(73) FDJ is therefore an undertaking that carries out an economic activity within the meaning of Article 107(1) TFEU.

6.1.2. *Use of state resources and imputability of the measures to the state*

(74) In accordance with Article 107(1) TFEU, only measures granted by the state or through state resources are liable to constitute State aid. The granting of an advantage directly or indirectly through state resources and the imputability of such a measure to the state are two separate conditions, both of which have to be met to establish the existence of State aid ⁽⁴⁰⁾.

(75) As regards the criterion concerning the imputability of the measure to the state, the Commission notes that the reform of exclusive rights was introduced by means of the PACTE Law, the 2019 Order and Implementing Decree No 2019-1060 of 17 October 2019 ⁽⁴¹⁾. Therefore, the measure is imputable to the state, as it introduced the legal acts in question.

(76) As regards the criterion concerning state resources, it should be noted that, when granting special rights, the state can act as a regulator and legitimately decide not to maximise the revenues which could otherwise have been achieved, without this being caught by State aid rules, subject to the proviso that all the operators concerned are treated in line with the principle of non-discrimination, and that there is an inherent link between achieving the regulatory purpose and the foregoing of revenue ⁽⁴²⁾. In such cases, the selection process must be based on criteria established in advance in a transparent and non-discriminatory manner ⁽⁴³⁾. In such a scenario, the rightholders would not be in receipt of State aid within the meaning of Article 107(1) TFEU. However, it is clear that these conditions were not in place in the case in question. Moreover, the granting of an exclusive right is by its very nature discriminatory, such that the above-mentioned conditions cannot be fulfilled. It is not necessary for there to be a positive transfer of funds in order to find that state resources are involved. Foregoing revenue which would otherwise have accrued to the state constitutes a transfer of state resources ⁽⁴⁴⁾.

(77) Consequently, the measure in question is imputable to the French state and was granted through state resources.

⁽⁴⁰⁾ See, for instance, judgment of the Court of Justice of 16 May 2002, *France v Commission* (Stardust), C-482/99, ECLI:EU:C:2002:294, paragraph 24; judgment of the General Court of 5 April 2006, *Deutsche Bahn AG v Commission*, T-351/02, ECLI:EU:T:2006:104, paragraph 103.

⁽⁴¹⁾ In that connection, see recitals 16 to 18 of this Decision.

⁽⁴²⁾ See to that effect the Commission Decision of 20 July 2004 on State aid NN 42/2004 – France – Modification of payments due from Orange and SFR for UMTS licences (OJ C 275, 8.11.2005, p. 3), recitals 28, 29 and 30, upheld by the Union courts (judgment of the General Court of 4 July 2007, *Bouygues SA v Commission*, T-475/04, ECLI:EU:T:2007:196, paragraphs 108 to 111 and 123, and judgment of the Court of Justice of 2 April 2009, *Bouygues and Bouygues Télécom v Commission*, C-431/07 P, ECLI:EU:C:2009:223, paragraphs 94 to 98 and 125). In that case, as regards the granting of UMTS radio spectrum licences, the state simultaneously performed the roles of telecommunications regulator and manager of these public resources and pursued the regulatory objectives set out in Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunication services (OJ L 117, 7.5.1997, p. 15). The Union Courts confirmed that, in such a situation, the awarding of licences without maximising the revenues which could have been achieved did not involve the granting of State aid, given that the measures in question were justified by the regulatory objectives set out in Directive 97/13/EC and complied with the principle of non-discrimination. In contrast, in its judgment of 8 September 2011 in *Commission v Netherlands*, C-279/08 P, ECLI:EU:C:2011:551, paragraphs 88 et seq., the Court of Justice did not identify regulatory reasons that would have justified the award without consideration of freely tradeable emission rights. See also the judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraphs 46 et seq.

⁽⁴³⁾ See judgment of the General Court of 4 July 2007, *Bouygues SA v Commission*, T-475/04, ECLI:EU:T:2007:196, paragraph 104.

⁽⁴⁴⁾ Judgment of the Court of Justice of 16 May 2000, *France v Ladbroke Racing Ltd and Commission*, C-83/98 P, ECLI:EU:C:2000:248, paragraphs 48 to 51.

6.1.3. *Selectivity*

- (78) In order to be considered State aid, a measure must be selective, in other words it must favour 'certain undertakings or the production of certain goods' within the meaning of Article 107(1) TFEU.
- (79) The measure covered by this Decision (the granting of exclusive rights to FDJ for 25 years subject to the payment of EUR 380 million in remuneration) concerns FDJ only.
- (80) As this is individual aid, it is assumed to be selective. In any event, FDJ is the sole beneficiary of the exclusive rights to operate offline and online lottery games and point-of-sale sports betting.

6.1.4. *Distortion of competition and effect on trade*

- (81) A measure granted by the state is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ⁽⁴⁵⁾. For all practical purposes, a distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist when the state grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽⁴⁶⁾.
- (82) The Commission notes that the online gambling sector (online horse-race betting, sports betting and poker games) has been open to competition since Law No 2010-476 of 12 May 2010 entered into force. FDJ competes on the market for online sports betting (excluding horse racing). Therefore, any financial advantage relating to the granting of exclusive rights is liable to strengthen FDJ's competitive position vis-à-vis other competing undertakings, particularly on the online sports betting market.
- (83) In that connection, the French authorities argued that the measure was not liable to strengthen FDJ's competitive position vis-à-vis other competing undertakings.
- (84) The French authorities maintain that (i) FDJ has a legal monopoly for the activities under consideration, meaning there is no competition on the market or for the market; and (ii) that the activities carried out by FDJ under its exclusive rights constitute relevant markets distinct from other gambling activities that are subject to competition (online horse-race betting, sports betting and poker games).
- (85) Incidentally, since its inception, nothing has prevented FDJ from being active in other EU Member States on markets open to competition or from competing with other operators for exclusive rights in other Member States. Indeed, FDJ is active in several countries aside from France (for example, in 2023, it acquired Premier Lotteries Ireland, which holds the exclusive rights to operate the Irish national lottery until 2034). It is also active on several markets for services aside from those covered by exclusive rights, such as online sports betting.
- (86) Thus, the measure is liable to distort competition in the gambling sector, in particular on the lotteries and sports betting market.
- (87) As regards the criterion of affecting trade, it is settled case-law that it is not necessary to establish that the aid has an actual effect on trade between Member States; rather, the aid's potential to affect such trade must be examined ⁽⁴⁷⁾. In the present case, by liberalising the online gambling sector, Law No 2010-476 of 12 May 2010 allowed operators from other Member States to enter the French market. Accordingly, the financial advantage enjoyed by FDJ by virtue of it being granted exclusive rights is liable to make market entry more difficult for those operators and to affect trade between Member States.

⁽⁴⁵⁾ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, 730/79, ECLI:EU:C:1980:209, paragraph 11. Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraph 80.

⁽⁴⁶⁾ Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraphs 141 to 147; judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, ECLI:EU:C:2003:415.

⁽⁴⁷⁾ Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 65; judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11 and C-203/11, ECLI:EU:C:2013:288, paragraph 76.

- (88) In conclusion, the Commission considers that the measure distorts or is liable to distort competition and affect trade between Member States.

6.1.5. *Existence of an economic advantage*

- (89) To assess whether a state measure constitutes aid to an undertaking under Article 107(1) TFEU, it must be determined whether the undertaking in question enjoys an economic advantage enabling it to avoid costs that would otherwise have been borne out of its own financial resources or whether it enjoys an advantage which it would not have received under normal market conditions, that is to say, in the absence of state intervention ⁽⁴⁸⁾.
- (90) With respect to the granting of exclusive rights, there is an advantage if the remuneration paid by the beneficiary is insufficient to be considered in line with the market price ⁽⁴⁹⁾.
- (91) In the opening decision, the Commission questioned the approach taken by the French authorities to quantify the amount of the remuneration (differential method) and expressed its doubts as to whether the amount of EUR 380 million was consistent with the market price ⁽⁵⁰⁾. Thus, in that Decision the Commission noted that the remuneration paid for the exclusive rights conferred appeared to be substantially lower than what could be regarded as a market price, which would confer an advantage on FDJ.

6.1.5.1. *Methodology for calculating the remuneration*

6.1.5.1.1. *Justification for using the differential method to calculate the compensation for 2019 to 2044*

- (92) In the opening decision, the Commission took the preliminary view that the rights FDJ was granted under the PACTE Law were new rights owing to the change in the legal framework and the new characteristics of the exclusive rights deriving from the reform (in particular the duration of the rights, the remuneration due and the securing of the rights ⁽⁵¹⁾).
- (93) In the opening decision, the arguments put forward by the French authorities based on the assertion that the rights were a continuation of existing rights were deemed invalid by the Commission. It concluded that the system of exclusive rights that existed prior to the PACTE Law had been substantially affected and amended by the PACTE Law, such that the post-PACTE law system of exclusive rights constituted new aid.
- (94) The Commission notes that, as indicated by the French authorities following the launch of the formal procedure, FDJ's exclusive rights existed prior to the introduction of the PACTE Law. These rights derived from laws that predated the PACTE Law, specifically the Decrees of 9 November 1978 and 1 April 1985. While these decrees were repealed after the PACTE Law was adopted (and thus at a time when the PACTE Law was already the legal vehicle for the rights), the exclusive rights themselves were only amended, not revoked. The French authorities also stated that the earlier rights had 'real economic substance' in that FDJ would in principle have been entitled to compensation if those rights had been revoked. In that connection, the Commission notes that under both the old legal framework (in place prior to the PACTE Law) and the new legal framework (resulting from the PACTE Law), FDJ's exclusive

⁽⁴⁸⁾ Judgment of 11 July 1996, C-39/94, *Syndicat français de l'Express international (SFEL) and others v La Poste and others*, ECLI:EU:C:1996:285, paragraphs 60 and 61; judgment of 29 April 1999, C-342/96, *Kingdom of Spain v Commission of the European Communities*, ECLI:EU:C:1999:210, paragraph 41.

⁽⁴⁹⁾ Judgment of the Court of Justice of 22 May 2003, *Connect Austria Gesellschaft für Telekommunikation GmbH v Telekom-Control-Kommission, and Mobilkom Austria AG*, C-462/99, ECLI:EU:C:2003:297, paragraphs 92 and 93. judgment of the General Court of 4 July 2007, *Bouygues and Bouygues Télécom SA v Commission*, T-475/04, ECLI:EU:T:2007:196, paragraphs 101, 104, 105 and 111.

⁽⁵⁰⁾ Please refer to recitals 98 to 113 of the opening decision for a detailed explanation.

⁽⁵¹⁾ It was determined that new characteristics were found to exist: (i) the duration of the rights (previously granted for an unspecified duration, they were now granted for a period of 25 years); (ii) the existence of remuneration to be paid to the state (although previously granted without remuneration being due, Decree No 2019-1060 of 17 October 2019 established an amount of EUR 380 million as remuneration for the exclusive rights); (iii) the reduced risk of the state changing the tax framework and the scope of the rights conferred (compared with the previous situation, the reform secured the exclusive rights and stabilised the tax framework).

rights could and can still be lawfully withdrawn (subject to different arrangements). As a result, the fact that the PACTE Law secured FDJ's rights does not constitute a change in the nature of those rights. Similarly, as indicated by the French authorities, the PACTE Law did not alter the main characteristics of the rights. The Law merely brought about a change in the conditions under which those rights could be exercised, in the context of FDJ's privatisation, by amending the tax framework, specifying the duration of the rights, defining more precisely which games fell within the scope of the exclusive rights, and setting up a regulatory authority ⁽⁵²⁾.

- (95) The Commission notes that this assessment was confirmed by the Council of State in its decisions of 14 April 2023 (see recital 68) ⁽⁵³⁾. The latter also took the view that the games that FDJ was allowed to operate under exclusive rights as permitted by the PACTE Law were set out clearly and in detail, meaning that FDJ would not have been able to develop, under its monopoly, games in the gambling and betting segments that were open to competition ⁽⁵⁴⁾. The idea that 'the exclusive rights awarded to FDJ for an unlimited duration had been terminated and a new licence granted to FDJ' was considered by CPT to be a 'theoretical scenario and not the one set out in the PACTE Law'. CPT also confirmed that the PACTE Law merely amended FDJ's exclusive rights.

6.1.5.1.2. Application of the differential method to calculate the remuneration to be paid by FDJ

- (96) Although the Commission considers the differential method to be justified, in light of the doubts raised in the opening decision (see recitals 26 to 32), the question remains whether the use of this method by the French authorities precludes the existence of an advantage for FDJ.
- (97) In the opening decision, the Commission expressed doubts regarding the calculations carried out by the French authorities when using the differential method. These doubts concerned: (i) the theoretical value of future rights taking into account the impact of the PACTE Law (factual scenario) ⁽⁵⁵⁾; (ii) the theoretical value of future rights without taking into account the impact of the PACTE Law (counterfactual scenario – methods 1 and 2) ⁽⁵⁶⁾; and (iii) the possibility of FDJ obtaining compensation on the grounds of the state's no-fault liability (alternative counterfactual scenario – method 3).
- (98) In order to calculate the fee when the PACTE law was adopted, the French authorities first estimated the value of the post-PACTE Law business plan (factual scenario) using the calculated net present value (NPV) of future exclusive rights. This latter calculation was based on the latest business plan for the activities carried out under exclusive rights, which was used to value FDJ in the context of its planned flotation on the stock market. The Commission notes that the post-PACTE Law business plan was devised in a realistic manner and that it is in line with the reality of the market, since it is based on financial projections drawn up using assessments of FDJ's activity from eight financial institutions ⁽⁵⁷⁾. Moreover, the regulatory and legal parameters underpinning the plan apply for the entire duration of the exclusive rights, including the specific tax arrangements for the games deriving from the PACTE Law itself.

⁽⁵²⁾ In that connection, the Commission also noted that it seemed credible to assume that FDJ would receive compensation if these rights were withdrawn, particularly in the light of the Loto precedent set out by UBFT in recital 49. Although the potential level of such compensation is particularly difficult to assess, the Commission accepts that it could exceed the specific compensation for the transfer of assets required to make use of those rights, as provided for in the agreement of 29 December 1978 to which it referred in the opening decision.

⁽⁵³⁾ See the Council of State decisions of 14 April 2023, Nos 436434 and 436439. The Council of State did not rule on the potential existence of State aid and stayed the proceedings pending the Commission's final decision on that point. Meanwhile, the public rapporteur at the Council of State considered that the method used to calculate the fee was justified and did not identify any manifest errors of assessment with respect to the calculation.

⁽⁵⁴⁾ Decision No 436439, paragraph 21: 'Articles L.322-8 to L.322-9-3 of the Internal Security Code, in the wording taken from the Order, set out in a clear and detailed manner the various games, and the categories and ranges thereof, that fall under the exclusive rights conferred on the undertaking LFDJ; moreover, the above correspond to the scope of the games that LFDJ was already authorised to operate under the provisions in place before the Law of 22 May 2019 entered into force'.

⁽⁵⁵⁾ The value of the post-PACTE Law rights was estimated at between EUR [...] and EUR [...], depending on the weighted average cost of capital and revenue from the exclusive rights.

⁽⁵⁶⁾ The pre-PACTE Law value of future rights was estimated at between EUR [...] and EUR [...].

⁽⁵⁷⁾ Citi, CM-CIC, BNP Paribas Exane, Goldman Sachs, HSBC, Kepler, Oddo BHF and Société Générale.

- (99) Second, the French authorities calculated the NPV of future exclusive rights on the basis of the pre-PACTE Law business plan using three methods and 11 different scenarios, each of which varied in line with assumptions regarding the rate of commission, i.e. the share of bets accruing to FDJ after the deduction of the specific public levies on gambling – and thus ultimately FDJ's remuneration – (method 1), the weighted average cost of capital ('WACC') (method 2), and the compensation the state would have owed if the exclusive rights had been revoked in 2019 (method 3). Although expressly requested by CPT, method 3 was used only to supplement methods 1 and 2.
- (100) Applying the discounted cash flow (DCF) technique at the weighted average cost of capital (WACC), estimated at around 7 %, method 1 (the 'using the business plan' method) assessed the difference in the value of FDJ's exclusive rights on the basis of the pre- and post-PACTE Law business plans ⁽⁵⁸⁾ impacted by several negative scenarios caused by potential adverse changes to the regulatory and tax framework in the absence of the PACTE Law.
- (101) The second business plan (pre-PACTE Law, counterfactual business plan) was drawn up in two stages.
- (a) Its initial basis was FDJ's business plan (taking into account the changes brought about by the PACTE Law). This was then corrected to cancel out the various effects of the PACTE Law (in particular those concerning taxation and duration) so as to return to the original tax and regulatory framework.
 - (b) Next, this business plan was used as the basis for different scenarios reflecting the negative impact of a series of decisions that the state could potentially have taken concerning changes to public levies or gambling licensing policy.
- (102) Three scenarios are a continuation of decisions that have actually affected the undertaking in the past, such as decisions to reduce the undertaking's remuneration or not to authorise new forms of gambling. A further three scenarios were drawn up on the basis of statistics to determine which scenarios were the most likely to occur. The six different scenarios are summarised in the table below.

Table 1

Method 1 – Description of the six scenarios

Scenarios	Description
1(a)	Various scenarios were considered involving a fall in the undertaking's rate of commission by return to player (RTP) range. In each scenario, taxes were raised to different levels in line with changes that had had an impact on the undertaking in the past in order to simulate measures that the state could have introduced under the framework in place before the PACTE Law.
1(b)	
1(c)	
2(a)	For each scenario, 500 simulations were run at random showing how FDJ's rate of commission might evolve based on three hypotheses regarding the annual probability of FDJ's remuneration falling.
2(b)	
2(c)	

- (103) The Commission accepts that these six scenarios are based on estimation methods that are relevant for calculating the fee in the present case.
- (104) Moreover, the Commission acknowledges that it is inherently difficult to predict how FDJ's rate of commission would evolve over a long period ⁽⁵⁹⁾ of time, as that is a regulatory variable subject to policy decisions.

⁽⁵⁸⁾ The assessment of the pre-PACTE Law business plan covered an indefinite period to take account of the fact that, under the previous legal framework, the exclusive rights were, in theory, granted in perpetuity.

⁽⁵⁹⁾ Although historical data show a decrease in the rate of commission from 2016 to 2019 and from 1997 to 2006, it is difficult to make any comparisons for the second period owing to the reform.

- (105) Method 2 (the ‘using the WACC’ method) sought to give an approximate calculation of the difference in value brought about by a discount rate spread (assuming the business plan remained the same). Like method 1, it sets out to quantify the impact of securing FDJ’s exclusive rights and the tax framework, but takes a different approach (a higher WACC reflects a higher level of risk corresponding to a less stable and predictable tax and regulatory framework). The discount rate spread is calculated by comparing the WACC of undertakings operating in the same sector but with different levels of security as regards their regulatory framework. A discount rate was applied to the pre-PACTE Law business plan⁽⁶⁰⁾ using a WACC that reflected a risk premium compared with the WACC used when discounting the post-PACTE Law business plan. The risk premium was estimated in two ways. Scenario 1 used the difference between the beta values of the lottery companies ([...]) on the one hand and the beta values of the online gambling and sports betting companies ([...]) on the other, it being noted that the latter are assumed to have a higher risk profile (sector open to competition) than the former (some of which have monopolies). Scenarios 2 and 3 used the difference in the WACC values published by analysts researching European energy suppliers or utility companies, looking at the ‘unregulated’ utility companies ([...]) on the one hand, and companies considered to be regulated and operating mainly in the field of energy distribution and transport on the other, it being noted that the latter are assumed to have a significantly lower risk profile. All the figures obtained for the various scenarios using this method applied to the business plans give an estimate of the amount of the fee.
- (106) The Commission considers that method 2 is also relevant for calculating the approximate value of the fee. Moreover, while various WACC assumptions (see recital 105) were considered, in the Commission’s view it was reasonable for the French authorities to focus on [...] as comparators for the purpose of calculating FDJ’s WACC, given their similarities to FDJ. The comparison with undertakings active in the energy sector is also relevant, since the distinction between energy suppliers and companies that are primarily active in the field of distribution and transport is similar, in terms of risk profile, to the comparison between online gambling and sports betting operators and lottery companies.
- (107) Method 3, the ‘supplementary’ method requested by CPT, simulated the consequences of a theoretical scenario in which the state and the legislature decided to terminate FDJ’s exclusive rights subject to the payment of compensation and subsequently to grant FDJ an operating licence for 25 years (which was not what the legislature decided to do when voting on the PACTE Law). The amount of the fee is calculated as the difference between the value of the licence (combined value of the discounted cash flows over 25 years and estimated on the basis of FDJ’s post-PACTE Law business plan) and the amount of compensation paid to FDJ on the grounds of the state’s no-fault liability, which equates to the value of the pre-PACTE Law business plan (the combined value of the cash flows discounted at the same WACC of approximately 7 % in perpetuity, incorporating the pre-PACTE Law tax framework and simulating a worsening tax landscape to reflect tax uncertainty), multiplied by a compensatory discount.
- (108) The Commission wishes to emphasise that it is very difficult to take a view on the soundness of the hypothesis whereby FDJ would suffer a loss and receive compensation for having its exclusive, and non-time-limited, rights revoked. Although the French authorities provided evidence indicating that, in theory, FDJ could have been entitled to compensation, the amount of such compensation would have been very difficult to assess, particularly owing to the difficulty of assessing how much of the ‘harm’ caused could be regarded as ‘abnormal’ (recital 108 of the opening decision).
- (109) After analysing the calculation of the fee, the French authorities thus produced ranges of figures, the averages of which are as follows: for method 1, EUR [...] million; for method 2, EUR [...] million; and for the supplementary method, EUR [...] million.
- (110) In the light of the above factors, CPT stated that it had examined the impact factors put forward and the various methods submitted by the French authorities, and indicated that its own assessment had resulted in a figure of EUR 380 million by way of a fee. The French authorities were unable to say with certainty which parameters had been used by CPT to arrive at the figure of EUR 380 million, but France pointed out that the average of the average figures⁽⁶¹⁾ produced using the different valuation approaches was EUR 377 million, and that this was therefore close to the calculated amount of the fee.

⁽⁶⁰⁾ The assessment of the pre-PACTE Law business plan covered an indefinite period to take account of the fact that, under the previous legal framework, the exclusive rights were, in theory, granted in perpetuity.

⁽⁶¹⁾ The average of the averages is calculated as follows: [...].

- (111) The Commission asked France to develop an alternative method (method 4) to calculate the fee based on a theoretical alternative scenario, given its concern regarding the duration of the exclusive rights in the absence of the PACTE Law (counterfactual scenario) under methods 1, 2 and 3. In the opening decision (recitals 106 and 107), the Commission expressed doubts as to the reasonableness of the underlying assumption in the counterfactual scenario whereby FDJ would have been able to make use of its rights indefinitely subject to the same terms.
- (112) Method 4 is based on a revised timeframe for the exclusive rights in the counterfactual scenario and, as a result, on adjustments to the rates of commission over time, details of which are given in the following paragraphs.
- (113) Under method 4, there is a 25-year limit on the pre-PACTE Law conditions for the exclusive rights. This is more conservative than the hypothesis used in the three original methods, which assume that, in the absence of the PACTE Law, FDJ would have continued to use all its exclusive rights without any time limit and on identical terms.
- (114) In the Commission's view, it is not certain whether, even if the PACTE Law had not been adopted, FDJ would have been able to use its exclusive rights indefinitely under the pre-PACTE Law framework, in particular because the regulatory framework had been adjusted regularly in the past and because, when introducing the PACTE Law, France did indeed decide to limit the duration of the exclusive rights (to 25 years) when the majority of FDJ's capital was transferred to the private sector. Method 4 allows for this uncertainty to be taken into account by introducing into the counterfactual scenario – in the absence of the PACTE Law and with FDJ not privatised – the assumption that its exclusive rights would still have ended after 25 years. In view of economic developments (such as the emergence of online gambling operators following the 2010 liberalisation), the Commission considers that a duration of 25 years is more realistic than an unspecified timeframe. This can be regarded as conservative given that, by 2019, the exclusive rights had been in place since the 1970s, i.e. for more than 40 years.
- (115) Against this background, method 4 is based on a counterfactual scenario with a set duration of 25 years. This mitigates the first negative impact of the PACTE Law on the value of the exclusive rights, an impact which was taken into consideration by the French authorities in methods 1, 2 and 3 (see recital 22(a)), in line with the doubts expressed by the Commission in recitals 106 and 107 of the opening decision.
- (116) This scenario is clearly more conservative than the scenarios developed by CPT on the basis of methods 1, 2 and 3, given the cessation of positive cash flows after 25 years.
- (117) However, method 4 includes a further adjustment, namely a change in the remuneration (rate of commission) received by FDJ in the pre-PACTE Law scenario. At the Commission's request, the French authorities sent adjusted parameters for the rate of commission considering the theoretical scenario of a 25-year duration for the exclusive rights.
- (118) In a situation where the exclusive rights were liable to end sooner (after 25 years instead of an unlimited duration), FDJ would bear a comparatively greater financial risk since it would have less time to generate returns. In those circumstances, it could be argued that the rates of commission (and thus FDJ's remuneration) would fall by less than they would in a situation where the rights were set to continue indefinitely.
- (119) The changes to the rates are based on the projected increase in the amounts wagered, as forecast in the business plan used to calculate the fee⁽⁶²⁾. To that end, the French authorities referred to the assumptions used in the other methods, adjusting the frequency at which the rates of commission are reduced to take account of the knowledge that the exclusive rights would end after 25 years.
- (120) The Commission considers that basing its counterfactual scenario in the absence of the PACTE Law on an assumption that the rights would be time-limited (in other words, taking the view that FDJ would have continued to benefit from the pre-PACTE Law conditions, but only for 25 years i.e. until 2044) is a conservative approach to determining the absence of aid.

⁽⁶²⁾ In the past, the Budget Minister regularly amended FDJ's rates of commission (by category of game from 1997 to 2016, and then by RTP range from 2016). Aside from responding to wider economic developments, these amendments also mirrored changes in the amount wagered by players.

- (121) The Commission considers that there are grounds for assuming that the rates of commission would not be reduced as significantly in the time-limited scenario, given that the rights are limited to 25 years in the pre-PACTE Law business plan. Indeed, the Commission considers the duration of the rights and the level of remuneration to be conceptually linked, and this factor influences both the remuneration and profitability of FDJ. Moreover, the Commission notes that France changed only the frequency of the rate reductions, and that this was in line with the projected increase in the amounts wagered and the adjustments made prior to the introduction of the PACTE Law.
- (122) The assumptions underpinning method 4 give a value of EUR [...] for the rights in the counterfactual scenario (in the absence of the PACTE Law).
- (123) Since the value of the rights in the factual scenario (post-PACTE Law) is EUR [...], under method 4 the amount of the fee comes to EUR 477 million, which is EUR 97 million higher than the EUR 380 million calculated by CPT.

6.1.5.1.3. Conclusion

- (124) In conclusion, the fee calculated using method 4 comes to EUR 477 million, which is EUR 97 million higher than the remuneration calculated by CPT (EUR 380 million).
- (125) In order to ensure that no aid is involved, the Commission notes that France has undertaken to increase the fee by EUR 97 million compared with the remuneration calculated by CPT.

7. CONCLUSIONS

- (126) The Commission concludes that the granting of exclusive rights to FDJ under the PACTE Law did not confer an economic advantage on La Française des Jeux.
- (127) Therefore, the measure does not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measure implemented by the French Republic in favour of La Française des Jeux, increased by EUR 97 million, does not constitute 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 French Republic.

Done at Brussels, 31 October 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President