



Press and Information

General Court of the European Union
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Judgment in Case T-177/07
Mediaset SpA v European Commission

The Italian subsidy granted for the purchase or rental of digital terrestrial decoders constitutes State aid and must be recovered

The measure is not technologically neutral and confers an indirect advantage on digital terrestrial broadcasters to the detriment of satellite broadcasters

In the context of the digital switchover of television signals, which began in Italy in 2001, with November 2012 as the statutory deadline by which switchover had to be accomplished, the 2004 Finance Law made provision for a State subsidy of €150 to be granted to every user who purchased or rented equipment for the reception of TV signals transmitted using digital terrestrial technology. In 2005, that aid was refinanced, but the subsidy was reduced to €70. The spending limit of the subsidy for each year was €110 million.

Following complaints filed by satellite broadcasters (including Centro Europa 7 Srl and Sky Italia Srl), the Commission initiated a formal investigation procedure and, in 2007¹, found that the subsidy constituted State aid to digital terrestrial broadcasters offering pay-TV services – in particular, pay-per-view services – and digital cable pay-TV operators. The Commission took the view that, even though the transition from analogue to digital TV broadcasting was a common interest objective, the subsidy was disproportionate and did not prevent unnecessary distortions of competition: since the measure at issue did not apply to digital satellite decoders, it was not technologically neutral. The decision ordered Italy to recover the aid from the beneficiaries, together with interest.

Mediaset SpA, a digital terrestrial programmes broadcaster, brought the present action seeking to have that decision annulled².

In its judgment delivered today, the Court dismisses the action in its entirety.

First, the Court confirms that the measure enabled cable operators and digital terrestrial broadcasters, such as Mediaset, to benefit, as compared with satellite broadcasters, from an advantage. In order to be entitled to the subsidy it was necessary to purchase or rent equipment for the reception of digital terrestrial TV signals, with the result that a consumer who opted for equipment exclusively for the reception of digital satellite TV signals could not benefit from it. Consequently, the subsidy did not meet the requirement of technological neutrality. Furthermore, the measure created an incentive for consumers to switch from the analogue to the digital terrestrial mode and, at the same time, enabled digital terrestrial broadcasters to consolidate their position on the market in terms of brand image and customer retention. The automatic price reduction prompted by the subsidy was also liable to affect the choice of consumers mindful of costs.

Secondly, the Court holds that the measure, of which the direct beneficiaries were the final consumers, constituted an indirect advantage for operators on the digital TV market, such as Mediaset. The Treaty prohibits State aid without drawing a distinction as to whether the related

¹ Decision 2007/374/EC on State aid C 52/2005 (ex NN 88/2005, ex CP 101/2004) implemented by the Italian Republic for the subsidised purchase of digital decoders (OJ 2007 L 147, p. 1).

² See also the cases brought by Telecom Italia Media and Fastweb (Cases [T-96/07](#) and [T-88/07](#)), which have been removed from the register.

advantages are granted directly or indirectly. Furthermore, the case-law has acknowledged that an advantage granted directly to certain natural or legal persons who are not necessarily undertakings may constitute an indirect advantage, hence State aid, for other natural or legal persons who are undertakings.

Thirdly, the Court holds that the selective nature of the measure resulted in a distortion of competition between digital terrestrial broadcasters and satellite broadcasters. Even though all the satellite broadcasters could have benefited from the measure by offering 'hybrid' decoders (which are both terrestrial and satellite), that would have exposed them to extra costs to pass on to consumers in the selling price.

Mediaset claimed that the aim of the subsidy was to address a market failure where, owing to a problem of coordination between operators, there was a barrier to the development of digital broadcasting. In that regard, the Court considers that, by driving incumbent broadcasters to develop new commercial strategies, the mandatory nature of the date laid down for switchover was enough to resolve that problem and the subsidy was therefore unnecessary. **In any event, even if the measure had been necessary and proportionate to the objective of addressing the market failures, the fact remains that such a factor could not have justified the exclusion of satellite broadcasters from the benefit of that measure.**

Furthermore, Mediaset maintained that it legitimately believed that the measure was consistent with the Commission's policy of promoting the digital broadcasting system, described in a Communication of 2004³, which defined direct subsidies to consumers as measures capable of providing an incentive for the purchase of interactive and interoperable decoders. In that regard, the Court points out that the Communication expressly stated that subsidies had to be technologically neutral; that they had to be notified to the Commission; and that they had to comply with the rules on State aid. Consequently, **a diligent business operator should have known not only that the measure at issue was not technologically neutral, but also that it had not been notified to or authorised by the Commission.**

Lastly, Mediaset claimed that there had been a breach of the principle of legal certainty stemming from the difficulty, if not impossibility, of establishing – for the purpose of calculating the sums to recover – the number of additional viewers who acquired pay-TV services and from the difficulty of quantifying the aid and the interest on that aid. The Court points out that **no provision requires the Commission, when ordering the recovery of aid, to fix the exact amount to be recovered. The recovery of aid which has been declared incompatible with the common market is to be carried out in accordance with the rules and procedures laid down by national law and it is for the national court, if a case is brought before it, to rule on the amount.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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³ Communication COM(2004) 541 final of 30 July 2004 on interoperability of digital interactive TV services.