



Press and Information

Court of Justice of the European Union

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Luxembourg, 28 July 2011

Judgment in Case C-403/10 P  
Mediaset SpA v Commission

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**The Court confirms that the Italian subsidies for the purchase of digital terrestrial decoders in 2004 and 2005 constitute State aid which is incompatible with the common market**

*The broadcasters which benefited indirectly from that State aid are obliged to repay amounts corresponding to the advantage obtained thereby*

Under the process of digitisation of television signals commenced in Italy in 2001, digitisation was to have been accomplished and transmission in analogue mode to have ceased definitively by December 2006. The deadline for the cessation of analogue transmission was postponed, on two occasions, until 30 November 2012.

By its 2004 Finance Law, Italy granted a public subsidy of €150 to every user of the broadcasting service who purchased or rented equipment for the reception, free-to-air, of television signals transmitted using digital terrestrial technology (T-DVB/C-DVB). The subsidy ceiling was set at €110 million. While the 2005 Finance Law continued that measure within the same spending limit of €110 million, the subsidy for each digital decoder was reduced to €70.

In order to benefit from the subsidy it was necessary to purchase or rent digital terrestrial TV equipment. Consequently, a consumer who chose digital satellite equipment could not receive the subsidy.

The television companies Centro Europa 7 Srl and Sky Italia filed complaints in respect of those subsidies with the Commission. By a decision adopted in 2007<sup>1</sup>, the Commission effectively held that the subsidies in question constituted State aid in favour of digital terrestrial broadcasters offering pay-TV services and cable pay-TV operators. While stating that the transition from analogue to digital television broadcasting was a common interest objective, the Commission held that the subsidy was not proportionate to the pursuit of that objective and gave rise to distortions of competition. The measure was therefore not 'technologically neutral', as it did not apply to digital satellite decoders<sup>2</sup>. For that reason, the Commission ordered recovery of the aid.

Mediaset then brought an action before the General Court in which it sought the annulment of the Commission decision. In June 2010, however, the General Court<sup>3</sup> dismissed that action and confirmed that the subsidy constituted an economic advantage for terrestrial broadcasters, such as Mediaset, since it had enabled them to consolidate their existing position on the market as compared with that of new competitors.

Mediaset appealed to the Court of Justice, seeking to have the judgment of the General Court set aside.

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<sup>1</sup> Decision 2007/374/EC of 24 January 2007 on State aid C 52/2005 implemented by the Italian Republic for the subsidised purchase of digital decoders (OJ 2007 L 147, p. 1).

<sup>2</sup> By contrast, the 2006 subsidies had been held to be 'technologically neutral' inasmuch as they could be granted for decoders of all digital platforms, that is to say, terrestrial, cable and satellite, provided that they were interactive and interoperable.

<sup>3</sup> Case [T-177/07 Mediaset SpA v Commission](#), (see Press Release [55/10](#)).

The Court states today that, in order to determine whether a measure is selective, it is appropriate to examine whether that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable factual and legal situation. The General Court, it states, was correct to observe that **the subsidies at issue offered an incentive to consumers to purchase a digital terrestrial decoder, while limiting the costs that digital terrestrial television broadcasters had to bear**, and thereby enabled the latter to consolidate their existing position on the market as compared with that of new competitors. Further, the Court confirms that the General Court correctly held that **aid the direct beneficiaries of which are consumers may nonetheless constitute indirect aid to economic operators, such as those broadcasters. The General Court was also correct** to reject Mediaset's argument that the Commission had not demonstrated that there was a link between the subsidy and the broadcasters in question.

**The Court also endorses the reasoning of the General Court that the aspect of selectivity based on technological characteristics** favouring digital terrestrial technology, as compared with satellite technology, **gave rise to a distortion of competition, with the result that the measure at issue is incompatible with the common market.**

The Court then goes on to address the arguments put forward by Mediaset that the Commission decision did not make it possible to establish an adequate methodology for the calculation of the amounts which Mediaset had to repay on the basis of the advantage indirectly obtained, which amounts it was for the national court to determine. According to Mediaset, the General Court erred in law, inter alia by failing to examine whether the principle of legal certainty was applicable in this regard.

The Court confirms, however, that the General Court was correct to hold that **European Union law does not require the Commission to fix the exact amount of aid to be recovered. It is sufficient, on the contrary, if the Commission's decision enables the addressee of that decision to work out itself, without overmuch difficulty, that amount, in accordance with the rules and procedures laid down by national law.**

Lastly, the Court states that the obligation on national authorities to calculate the exact amount of aid to be recovered forms part of the obligation incumbent on the Commission and the Member States to cooperate sincerely in the implementation of European Union rules concerning State aid. Accordingly, the General Court acted correctly in holding that it is for the national court, if a case is brought before it, to rule on the amount of aid to be recovered on the basis of the guidance provided by the Commission on methods for calculating that amount.

Consequently, the Court dismisses Mediaset's appeal.

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Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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