



Press and Information

General Court of the European Union

**PRESS RELEASE No 130/13**

Luxembourg, 16 October 2013

Judgment in Case T-275/11

Télévision française 1 (TF1) v Commission

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**The General Court confirms the validity of the Commission Decision according to which the long-term funding mechanism of France Télévisions constitutes State aid compatible with the internal market**

Within the context of the reform of public broadcasting, France has since 2009 been progressively phasing out advertising on the six public channels of France Télévisions (France 2, France 3, France 4, France 5, France Ô et Outre-Mer 1ère) between 20:00 and 06:00. By way of compensation, France entered credits amounting to €450 million intended for France Télévisions into the general State budget for 2009. In addition, national legislation<sup>1</sup> has been amended to introduce two new taxes: one on advertisements<sup>2</sup> and the other on electronic communications<sup>3</sup>.

France notified the Commission on 23 January 2009 of its intention to provide a budgetary grant of €450 million in favour of France Télévisions. On 25 May 2009 it extended the subject-matter of that notification by including the permanent, multiannual public financing mechanism in favour of France Télévisions for 2010-2012.

In its decision of 20 July 2010 the Commission first held that the multiannual financing mechanism of France Télévisions<sup>4</sup> constituted State aid, the compatibility of which with the internal market had to be examined. Without doubting the public service mission of France Télévisions, the Commission initially held that the method for calculating the annual subsidy allocated to France Télévisions seemed proportional in terms of its broadcasting communication<sup>5</sup> in the light of three facts: (i) France states that the amount of the subsidy was determined before each financial year on the basis of the net public service costs of France Télévisions; (ii) those statements were supported by the indicative projections of public resources, revenue and public service costs for 2010 to 2012; (iii) that calculation method was consistent with France's commitment that the public resources allocated to France Télévisions will not exceed the net cost of performing the public service obligations entrusted to the latter. The Commission went on to hold that the public financing of the public service mission was sufficiently transparent, given that, first, the control mechanisms laid down by the relevant French provisions were consistent with the requirements of transparency in terms of its broadcasting communication, secondly, the effectiveness of those mechanisms was also apparent from the annual reports concerning France Télévisions certified by the auditors who had determined that there had been no overcompensation and, thirdly, France had given commitments designed to prevent any risk of overcompensation. The Commission further noted that France had also made a commitment to provide it with an annual report until 2013, the year in which the reform of public broadcasting would be completed, which would allow

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<sup>1</sup> French tax code

<sup>2</sup> The tax on advertising messages is payable by all television services established in France.

<sup>3</sup> The tax on electronic communications is payable by all electronic telecommunications operators which provide a service in France and which have been the subject of a prior declaration to the French regulator ARCEP.

<sup>4</sup> In respect of the *budgetary grant* voted for 2009, the Commission held, in the same year, that that budgetary grant was compatible with the internal market. The Commission Decision was the subject of a challenge to the General Court of the European Union brought by TF1, M6 and Canal+ which contested that Decision. By judgment of 10 July 2012 the General Court rejected the application (T-520/09).

<sup>5</sup> Commission communication of 2 July 2009 on the application of State aid rules to public service broadcasting (OJ 2009 C 257, p. 1).

the Commission to check and closely follow the implementation of the reform and the commitments entered into by France. Finally, the Commission held that no hypothecation could be established between the aid in question and the new taxes, so that those new taxes did not have to be included in the examination of the compatibility of the aid with the internal market.

TF1 brought the present action before the General Court of the European Union with a view to obtaining annulment of the Commission Decision.

**In its judgment delivered today, the General Court rejects all the arguments put forward by TF1 and therefore dismisses its action.**

The General Court notes, in particular, that, contrary to what was claimed by TF1, **the Commission**, supported by France and Spain, **did not err in finding that no hypothecation could be established under French legislation between the new taxes and the aid granted to France Télévisions**. Therefore, in the absence of such a hypothecation, the Commission was right to hold that those taxes did not form an integral part of the aid and therefore did not constitute one of its conditions. Consequently the Commission was entitled to exclude those taxes from the examination of the compatibility of the aid with the internal market.

Just as the new taxes do not constitute the conditions of the aid, the Commission did not err in failing to examine, within the framework of the present proceedings, their compatibility with the provisions of Union law. As the Commission also observed, this determination is without prejudice to their compatibility, as distinct measures, with Union law. The Commission subsequently initiated proceedings for failure to fulfil obligations<sup>6</sup> against France as regards the compatibility of one of the two new taxes, namely the tax on electronic communications, with the Directive on the authorisation of electronic communications networks and service<sup>7</sup>.

The General Court also finds that **the Commission Decision is sufficiently well-founded and clearly and comprehensively shows the reasoning on which it based its finding that there was not in the present case a risk of overcompensation of the net costs of the public service mission of France Télévisions**.

Finally, the General Court finds that the Commission did not err in law by not taking into account the economic efficiency of France Télévisions in the performance of its public service mission when examining the compatibility of the aid in question with the internal market.

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**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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<sup>6</sup> Case [C-485/11](#) *Commission v France*, see also Press Release No [78/13](#). The Court held that Directive 2002/20/EC (Authorisation Directive) did not preclude the special tax imposed in France on electronic communications operators.

<sup>7</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21).