



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-449/14 P  
DTS Distribuidora de Televisión Digital v Commission

## **The Court confirms that the financing of the Spanish public television system (RTVE) is compatible with the EU rules regarding State aid**

*The fiscal measures provided for in the new scheme are not an integral part of the aid granted to RTVE*

Corporación de Radio y Televisión Española (RTVE), the Spanish public radio and television broadcasting organisation, enjoyed a dual funding scheme until 2009. It was financed, on the one hand, by revenue from its commercial activities (in particular the sale of advertising space) and, on the other, by payments from the Spanish State as compensation for the fulfillment of its public service mandate.

In September 2009, a Spanish law altered the funding scheme, stipulating that advertising, teleshopping, sponsorship and pay-per-view services would no longer be sources of funding for RTVE. In order to offset the loss of that revenue, several fiscal measures were introduced, including a new tax on the revenues of pay-television operators established in Spain, in order to contribute to RTVE's budget. Moreover, the new law provided that, in the event that the funding sources should prove insufficient to cover the whole of RTVE's costs of fulfilling its public service mandate, the State would be required to make good the shortfall, thus transforming RTVE's dual funding scheme into an almost entirely publicly funded scheme.

By decision of 20 July 2010,<sup>1</sup> the Commission stated that the change to RTVE's funding scheme was compatible with the internal market of the EU and further stated that the new system precluded any overcompensation of RTVE. In that context, the Commission considered that the fiscal measures at issue were not an integral part of the aid scheme instituted in favour of RTVE, and that, consequently, any incompatibility of those fiscal measures with EU law did not affect the assessment of the funding scheme's compatibility with the internal market.

DTS Distribuidora de Televisión Digital, a company operating a digital satellite pay-television service, asked the General Court to annul that decision, arguing that the fiscal measures were an integral part of the aid and that the concept of aid within the meaning of EU law was thus infringed.

By judgment of 11 July 2014,<sup>2</sup> the General Court dismissed DTS's action and DTS brought an appeal before the Court of Justice.

In today's judgment, **the Court dismisses DTS's appeal and confirms the judgment of the General Court.** The Court considers that the General Court did not err in law in finding that the fiscal measures were not part of the aid scheme benefitting RTVE.

The Court recalls that the method of financing, where it is an integral part of an aid scheme, may render the aid scheme incompatible with the internal market. Thus, where a tax specifically intended to finance aid proves to be contrary to EU law, the Commission cannot declare the aid scheme of which the charge forms part to be compatible with the internal market.

<sup>1</sup> Commission Decision 2011/1/EU of 20 July 2010 on the State aid scheme C 38/09 (ex NN 58/09) which Spain is planning to implement for Corporación de Radio y Televisión Española (RTVE) (OJ 2011 L 1, p. 9)

<sup>2</sup> Case: [T-533/10](#) DTS Distribuidora de Televisión Digital v Commission.

In order for a tax to form an integral part of an aid, it must be hypothecated to the aid, in the sense that **the revenue from the levying of the tax must necessarily be allocated to the financing of the aid and have a direct impact on the amount of the aid.**

The Court rejected DTS's line of argument alleging that the fiscal measures directly finance the aid scheme. The Court recalls that the amount of the aid is determined on the basis of the net costs of fulfilling the public service mandate, the revenue from the fiscal measures therefore having no direct impact on the amount or the grant of the aid to RTVE. Therefore, the aid is not directly dependent on revenue from the fiscal measures at issue, with the result that, like the General Court, **the Court finds that there is no hypothecation between the fiscal measures and the aid.** Moreover, the Court notes that part of the revenue from the tax may be used for other purposes. Thus, the surplus from the tax revenues may be reallocated to a reserve fund or the treasury and thus, ultimately, to the general budget of the State. The Court further stipulates that the inapplicability of the fiscal measures in question did not call in to question the aid since the Spanish State must cover any shortfall between RTVE's sources of funding and all of the costs incurred by it in carrying out its public service obligations.

DTS also argues that, since the purpose of the tax on pay-television operators is to finance an aid scheme benefitting RTVE, the obligation to pay that tax causes DTS an additional competitive disadvantage on the markets on which it operates in competition with RTVE, since the latter is not liable to pay such a tax. However, the Court considers that that fact is not sufficient to demonstrate that the tax is an integral part of the aid. It notes in that regard that the question of whether a tax is an integral part of an aid financed by a tax does not depend on the existence of a competitive relationship between the person liable to pay the tax and the beneficiary of the aid, but only on whether that tax is hypothecated to the aid in question. The Court also notes that, in principle, taxes are not subject to the rules on State aid. However, following DTS's line of argument would amount to holding that any tax levied at sectoral level and imposed on undertakings in competition with the beneficiary of the aid financed by the tax falls within the rules on State aid.

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**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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