

Case T-475/04

Bouygues SA and Bouygues Télécom SA

v

Commission of the European Communities

(State aid — Mobile telephony — Amendment of the fees payable by Orange France and SFR for UMTS licences — Decision finding the absence of State aid)

Judgment of the Court of First Instance (Fourth Chamber), 4 July 2007 . . . II - 2100

Summary of the Judgment

1. *State aid — Examination of complaints*
(Art. 87(1) EC)

2. *State aid — Examination by the Commission — Preliminary stage and inter partes stage (Art. 88(2) and (3) EC; European Parliament and Council Directive 97/13)*
3. *Approximation of laws — Telecommunications sector (European Parliament and Council Directive 97/13)*

1. The statement of reasons for a measure does not have to go into all the relevant facts and points of law, as that statement must be assessed with regard to its context and to all the legal rules governing the matter in question. Therefore, although the Commission must provide a complainant with an adequate explanation of the reasons why the facts and points of law put forward in his complaint against State aid have failed to demonstrate the existence of such aid, it is not required to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance. A Commission decision is therefore sufficiently reasoned if it dismisses a complaint against a national measure equalising fees due from operators for the granting of Universal Mobile Telecommunications System (UMTS) licences for lack of one of the cumulative factors defining the concept of State aid within the meaning of Article 87(1) EC, namely the granting of an advantage to the beneficiary, without giving reasons for that dismissal by reference to the other factors defining that concept, and by reason of the fact that the measure in question implements a Community directive and, in

particular, the principle of non-discrimination laid down by that directive.

(see paras 53-55)

2. A decision raising no objections to State aid may be adopted by the Commission at the preliminary examination stage under Article 88(3) EC, without opening the formal investigation stage under Article 88(2) EC, only if the Commission is able to satisfy itself at the end of that preliminary examination, without serious difficulties, that the planned aid is compatible with the common market. The Commission may therefore lawfully adopt a decision at the conclusion of the preliminary examination stage, finding the absence of State aid on the ground that no selective advantage was granted

to certain operators by a national measure reducing the fees due from them for UMTS licences, with a view to aligning the conditions for grant of all licences granted, where the prior granting of their licences did not, owing to accumulated delays in the deployment of the UMTS network, have any adverse effect on an operator holding a licence granted later at a supplementary call for applications, and where the resulting loss of State resources, having regard to the economic value of the licences, relates to an uncertain claim which the State must inevitably abandon given the specific provisions of Community law on telecommunications, which postulate, in Directive 97/13 on a common framework for general authorisations and individual licences in the field of telecommunications services, a principle of equal treatment between operators implying the equivalence, in economic terms, of the fees charged.

(see paras 89-91, 111, 116, 122, 124, 152, 153, 156)

3. Universal Mobile Telecommunications System (UMTS) licences, which authorise economic activities consisting in the provision of mobile telephony services in the wireless spectrum and are interpreted as conferring the right to occupy or use the corresponding public domain, have an economic value that the manager of that domain is bound to take into account when he determines the amount of fees to be paid by the operators involved, and therefore constitute a State resource.

Hence, the exercise of State functions does not preclude the taking into account of economic facts in connection with the management of a scarce public resource such as the radio frequencies constituting the public airwaves, to which a right of access or a right of usage may be granted. Hence, the Member States simultaneously perform the roles of telecommunications regulator and manager of the public assets that constitute the wireless airwaves.

(see paras 100, 101, 104, 105)