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Press and Information

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Judgment of the Court of First Instance in Case T-442/03

Sociedade Independente de Comunicação, SA (SIC) v Commission

THE COURT ANNULS IN PART THE COMMISSION'S DECISION ON CERTAIN MEASURES BY PORTUGAL IN FAVOUR OF RADIOTELEVISÃO PORTUGUESA

The Commission failed to state reasons for some of its findings and failed in its obligation to undertake a diligent and impartial investigation

Radiotelevisão Portuguesa, SA is a limited liability company with public capital entrusted with providing the Portuguese public television service. Sociedade Independente de Comunicação (SIC) is a commercial television company which runs one of the main private television channels in Portugal.

In November 2001, the Commission, which had received a number of complaints from SIC, decided to initiate the formal investigation procedure pursuant to Article 88(2) EC regarding a number of measures adopted by the Portuguese Republic for the RTP between 1992 and 1998. As a result of that procedure, the Commission decided¹ that certain of the measures constituted State aid compatible with the common market, whilst other measures did not constitute State aid.

In December 2003, SIC brought an action for annulment of that decision before the Court of First Instance.

First, the Court **finds that the Commission failed to state grounds in law for its finding that the tax exemptions granted to RTP on its transformation into a public limited company did not constitute State aid. Consequently, the Court annuls that part of the decision.**

Next, the Court finds that, contrary to what SIC claims, Portugal was not required to organise a competitive tendering prior to the award of the public television service to RTP. The Court finds that the derogation from the prohibition on State aid laid down in Article 86(2) EC does not entail such a requirement. In addition, it does not appear that RPT is a concession holder within the meaning of the Communication on concessions² and, in any event, that communication recognises the specific nature of public service broadcasting. The Court

¹ Commission Decision 2005/406/EC of 15 October 2003 on *ad hoc* measures implemented by Portugal for RTP (OJ 2005 L 142, p. 1).

² Commission's interpretative communication on concessions under Community law (OJ 2000 C 121, p. 2).

points out that **the specific status of public service broadcasting explains and justifies the fact that a Member State cannot be required to have recourse to competitive tendering for the award of a broadcasting service of general non-economic interest (SGEI), at least where it decides to ensure that public service itself through a public company, as in this case.**

The Court examines, next, the monitoring which the Commission carried out pursuant to the derogation from the prohibition on State aid laid down in Article 86(2) EC.

The Court states that **Member States have the power to define broadcasting SGEIs in such a way as to encompass the broadcasting of a wide range of programming, whilst authorising the operator in charge of that SGEI to carry on commercial activities, such as the sale of advertising space.**

With regard to the monitoring of RTP's compliance with its public service remit, the Court points out that **only the Member State is able to assess the public service broadcaster's compliance with the quality standards defined in the public service remit.** The Commission must, **generally, confine itself to finding that there is a mechanism for monitoring at a national level by an independent body.** In the present case, the court finds that the Commission noted the existence of such a mechanism.

With regard to the proportionality of the financing of the public service costs, the Court finds that, in not requiring the Portuguese Republic to disclose certain audit reports for RTP, the Commission failed in its obligation to investigate. The Court states that **the Commission cannot, in view of its duty to undertake a diligent and impartial investigation, omit to require the disclosure of information which appears likely to confirm or to refute other information which is relevant for the examination of the measure at issue, but whose reliability cannot be considered to be sufficiently established.** Therefore, since the Commission did not have available to it information which was sufficiently reliable to determine the public services actually supplied and the cost actually incurred in supplying them, the Court finds that it was unable to proceed subsequently to a meaningful verification of the proportionality of the costs of the public service and was unable to make a valid finding that there had been no overcompensation of the public service costs.

Consequently, the Court also annuls the part of the Commission's decision which states that certain *ad hoc* measures constitute State aid compatible with the common market.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR DE EN ES EL IT PT

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-442/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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