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Press and Information

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Judgment of the Court of First Instance in Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04

TV2/Danmark A/S, Danemark, Viasat Broadcasting UK Ltd, SBS TV A/S and SBS Danish Television Ltd v Commission

THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION'S DECISION REGARDING AID GRANTED BY DENMARK TO TV2

The decision is vitiated by an inadequate statement of reasons, the cause of that inadequacy being the Commission's breach of its own obligation to examine issues which nevertheless have a direct bearing on the question whether State aid was granted

In 2000, the commercial broadcaster SBS sent the Commission a complaint regarding the State financing of TV 2/Danmark (TV2), the Danish public broadcaster. TV2 was financed partly through licence fees, but also through advertising revenue. In 2003, TV2 was replaced by TV 2/Danmark A/S (TV2 A/S).

In 2004, following a formal investigation procedure, the Commission decided¹ that the aid granted by Denmark to TV2 between 1995 and 2002 in the form of licence fee resources and other measures was compatible with the common market with the exception of an amount of DKK 628.2 million (approximately EUR 84 million). The Commission ordered Denmark to recover that sum from TV2 A/S, together with interest.

TV2 A/S and Denmark brought actions before the Court of First Instance for annulment of the Commission's decision, while SBS and Viasat, a commercial broadcaster, brought actions before the Court of First Instance for annulment of the part of the decision that found the aid granted to be compatible with the common market.

The Court of First Instance rejects the plea raised by SBS and Viasat that the Commission should not have found the definition of TV2's public service obligations acceptable in the light of the notion of a service of general economic interest (SGEI). The Court holds that SBS and Viasat have failed to show that the Commission erred in finding that it was not manifestly wrong to

¹ Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV2/Danmark (OJ 2006 L 85, p. 1; corrigendum in OJ 2006 L 368, p. 112).

define the broadcasting SGEI provided by TV2 in broad and qualitative terms and that that definition could therefore be accepted.

The Court of First Instance rejects the plea raised by TV2 A/S and Denmark that the decision should be annulled on the ground that their rights of defence were infringed. The Court holds that the parties are wrong to claim that the Commission failed to express itself clearly in the decision initiating the formal investigation procedure or that the Commission went beyond the scope of the examination as defined in that decision.

The Court of First Instance rejects, in so far as it concerns licence fee revenue, the plea raised by TV2 A/S and Denmark alleging that the licence fee revenue and the advertising revenue transferred to TV2 via the TV2 Fund were wrongly classified as State resources. The Court considers licence fee revenue to be State resources. By contrast, the plea is upheld in so far as it concerns advertising revenue, because the Commission failed to fulfil its obligation to state its reasons for *de facto* taking that revenue into account as State resources.

The Court of First Instance upholds the complaint raised by TV A/S and Denmark in several of their pleas that the decision is based on an inadequate statement of reasons, in that the conditions under which Denmark provided funding to TV2 were clearly not adequately examined, with the result that the Commission erred in making a finding of State aid.

First, there is nothing in the contested decision to prove that the Commission was correct in asserting that the overcompensation that TV2 was found to have received was not the result of a build-up of reserves carried out in a transparent and carefully considered manner with the specific aim of guaranteeing the provision of the public service despite fluctuations in advertising revenue, but simply the result of an uncontrolled accumulation of capital.

The failure to provide an adequate statement of reasons in that regard amounts to an infringement of essential procedural requirements. That failure to provide an adequate statement of reasons is attributable in turn to the Commission's failure to examine seriously, during the formal investigation procedure, the actual conditions which, during the period under investigation, governed the setting of the amount of licence fee income payable to TV2.

Secondly, the Commission's assertion that the Danish authorities did not regularly check the level of the accumulated reserves is an unsubstantiated claim which was expressly disputed by Denmark during the formal investigation procedure. Moreover, the contested decision itself contains information which undermines that allegation.

Thirdly, the Commission's assertion that the example from the year 1999 showed that TV2 never actually needed to draw on its reserves cannot give rise to a finding that there was State aid.

The Court of First Instance annulled the Commission's decision without examining the other pleas in these cases.

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: DA, EN, FR

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-309/04>

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

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