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Press and Information

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Judgment of the Court of First Instance in Case T-354/05

Télévision française 1 SA (TF1) v Commission of the European Communities

THE COMMISSION'S DECISION THAT THE FRENCH AUDIOVISUAL LICENCE FEE SYSTEM CONSTITUTES STATE AID COMPATIBLE WITH THE COMMON MARKET IS VALID

The Commission did not commit an error of assessment in finding that the commitments made by France corresponded to the appropriate measures formulated by it

On 10 March 1993, the Commission received a complaint from the commercial broadcaster *Télévision Française 1 SA* ('TF1'), in which TF1 submitted, inter alia, that the repayment of the audiovisual licence fee by France to the public television channels France 2 and France 3 constituted State aid incompatible with the common market.

On 10 December 2003, the Commission indicated to the French Government that changes to the audiovisual licence fee system had to be made in order to ensure its compatibility with the Community rules applicable to State aid, and sent that Government a recommendation proposing the adoption of appropriate measures. That recommendation proposed that a certain number of requirements should be introduced concerning, essentially, the proportionality of the compensation payable by the State as compared with the cost of the public service and the performance by the public service broadcasters of their commercial activities under market conditions.

By decision of 20 April 2005¹ the Commission found that the commitments made by France satisfied its recommendations. It decided to close the procedure but stated that that decision did not prejudice its power to keep under constant review all existing systems of aid provided for by the Treaty.

TF1, however, challenges that analysis. It brought an action before the Court of First Instance seeking annulment of the Commission's decision.

In the judgment delivered today the Court confirms, in essence, the Commission's decision.

¹ Decision C(2005) 1166 final, of 20 April 2005 on aid granted to France Télévisions [Aid E 10/2005 (ex C60/1999) – France Audiovisual licence fee] notified on 21 April 2005 by the Commission to the French authorities.

The classification of the measure as State aid and the examination of its compatibility with the common market

The Court states, in essence, that **the issue of the classification of a measure as State aid within the meaning of Article 87(1) EC must be clearly distinguished from the issue of the assessment of the compatibility of that aid with the common market.**

In its **judgment in Almark**², the Court recalled that, for a measure to constitute State aid, first, there must be an intervention by the State or through State resources, second, the intervention must be liable to affect trade between Member States, third, it must confer an advantage on the recipient and, fourth, it must distort or threaten to distort competition.

As regards the third condition, relating to the existence of an advantage, the Court observed that, in so far as a State measure must be regarded as compensation representing consideration for services supplied by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the State measure does not have the effect of putting those undertakings in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 87(1) EC.

The Court added, however, that, **in order for such compensation to escape classification as State aid in a particular case, four cumulative conditions ('the Almark conditions') must be satisfied:** (1) the recipient undertaking must actually have public service obligations to discharge and those obligations must have been clearly defined; (2) the parameters on the basis of which the compensation is calculated must have been established in advance in an objective and transparent manner; (3) the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit; (4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

The Court states that **the sole purpose of the Almark conditions is the classification of the measure concerned as State aid and that those conditions do not concern the question of the compatibility of the State aid with the common market under Article 86(2) EC.**

The Court holds that the Commission did not commit an error of law in applying the Almark conditions.

The scope of the commitments made by France to guarantee the compatibility of the audiovisual licence fee with the common market

The first commitment is intended to address the Commission's concern relating to the over-compensation of the net public service costs. France has made a commitment that the financial resources that it proposes to allocate to France Télévision are to cover only the cost of performance of the public service obligations, that any profits are to be reinvested in full in the activities of the public channels, and are to be taken into account in drawing up the budget for the following financial year. Furthermore, the French authorities will include in the relevant national rules, in the next two years, the principle that there is to be no over-compensation in respect of public service costs.

The second undertaking is intended to address the Commission's concern relating to the commercial conduct of the public channels. France has undertaken to organise an annual review,

² Case C-280/00 *Almark Trans GmbH* [2003] ECR I-7747.

by an independent audit body whose report is to be sent to the Parliament, of compliance by the public channels with their duty to carry on their commercial activities under market conditions.

The Court finds that those commitments correspond exactly to the Commission's recommendations and that those recommendations were not incorrect. Consequently, the Commission was correct to hold that the licence fee system was compatible with the common market.

Furthermore, since the Commission did not fail to fulfil its obligation to give a statement of reasons and complied with the procedure for the examination of aid, the Court confirms that the Commission's decision is well founded.

Accordingly, the action brought by TF1 is dismissed.

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: DE, EN, EL, ES, FR, 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-354/05>

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

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