



General Court of the European Union

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Judgments in Cases T-461/13 (Spain v Commission); T-462/13 (Comunidad Autónoma del País Vasco and Itelazpi v Commission); and Joined Cases T-463/13 and T-464/13 (Comunidad Autónoma de Galicia v Commission and Retegal v Commission); and in Cases T-465/13 (Comunidad Autónoma de Cataluña and CTTI v Commission); T-487/13 (Navarra de Servicios y Tecnologías v Commission); and T-541/13 (Abertis Telecom and Retevisión I v Commission)

Press and Information

The General Court confirms the Commission's decision ordering the recovery of State aid granted by Spain to the operators of the terrestrial television platform

The measures adopted by the Spanish authorities did not respect the principle of technological neutrality

The digitisation of broadcasting in the EU has been encouraged by the Commission since 2002 because it has significant advantages over analogue broadcasting. This digitisation can be carried out technically via terrestrial, satellite or cable platforms or through broadband Internet access.

Between 2005 and 2009 the Spanish authorities adopted a series of measures aimed at facilitating the transition from analogue to digital television. The national broadcasters were required to cover 96% of the population in the case of the private sector and 98% of the population in the case of the public sector in their respective territories. To manage the digitisation the Spanish authorities divided Spanish territory into three distinct Areas (I, II and III).¹ The object was to reach 98% coverage of the Spanish population by the digital terrestrial television service ('DTT') which equates to the percentage covered by analogue television in 2007. Since the coverage obligations set for the DTT risked not reaching this level in Area II it was necessary to ensure television coverage in that Area. The Spanish authorities therefore made public funding available to support the process of terrestrial digitisation in that Area.²

In June 2013 the Commission, following a complaint from SES Astra (a European satellite operator), adopted a decision³ by which it declared that the aid accorded to the operators of the terrestrial television platform for the deployment, maintenance and operation of the digital terrestrial television network in Area II to be unlawful and incompatible with the internal market in the whole of Spain, with the exception of the Autonomous Community of Castille-La Mancha.⁴ In the same decision the Commission ordered the recovery of the aid from the recipients.

¹ In Area I, which comprises 96% of the Spanish population and was considered commercially viable, the cost of the transition to digital was supported by public and private broadcasters; in Area II, which comprises remote and less-urbanised areas and represents 2.5% of the Spanish population, the broadcasters, in the absence of a commercial interest, did not invest in the digitisation, which caused the Spanish authorities to put in place public funding; in Area III, covering 1.5% of the Spanish population, the topography excluded terrestrial digital transmission so the choice was taken to use a satellite platform.

² In total, between 2008 and 2009, almost €163 million from the central budget, partly in the form of soft loans, was granted by the Spanish authorities to the Autonomous Communities, and around €60 million from the budgets of the six Autonomous Communities concerned, was invested in extending the coverage in Area II. In addition the municipalities funded an extension of around €3.5 million. Finally the amount of funds allocated for the operation and maintenance of the network for the years from 2007 to 2009 amounted to at least €32.7 million.

³ Commission Decision 2014/489/EU on State aid SA.28599 (C 23/10 (ex NN 36/10, ex CP 163/09)) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (outside Castilla-La Mancha) (OJ 2014 L 217, p. 52) (see Press Release of the Commission).

⁴ The deployment in this Autonomous Community was the subject-matter of a decision of the European Commission of 1 October 2014 on State aid SA.27408 (C 24/2010) (ex NN 37/2010, ex CP 19/2009) implemented by the authorities of Castile-La Mancha for the deployment of digital terrestrial television in remote and less urbanised areas in Castile-La

Spain, the Autonomous Communities of the Basque Country, Galicia and Catalonia, as well as a number of digital terrestrial television operators, requested the General Court to annul the Commission's decision.

By today's judgment the General Court dismisses all the actions and confirms the Commission's decision.

The General Court finds, first of all, that the Commission did not err in holding that, in the absence of a clear definition of the operation of a terrestrial network as a public service, the measures should be qualified as State aid. According to case-law,⁵ for an intervention by the State to be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. The General Court adds that at no point were the Spanish authorities able to determine which public service obligations were entrusted to the DTT network operators or able to prove it.

Secondly, according to the General Court, **the Commission was correct in holding that the measures at issue could not be considered as State aid compatible with the internal market, in particular since they did not respect the principle of technological neutrality.** In that regard the General Court holds that the Commission did not commit any manifest error of assessment in finding that no study presented by the Spanish authorities was capable of justifying the choice of the terrestrial platform since these studies did not provide sufficient evidence of its superiority when compared to a satellite platform.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments ([T-461/13](#), [T-462/13](#), [T-463/13](#) and [T-464/13](#), [T-465/13](#), [T-487/13](#), [T-541/13](#)) are published on the CURIA website on the day of delivery

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Mancha (OJ 2014 C 335, p 8) (see Press Release of the Commission). This decision was challenged in four cases before the General Court ([T-808/14](#), Spain v Commission; [T-36/15](#), Hispasat v Commission; [T-37/15](#), Abertis Telecom Terrestre v Commission; and [T-38/15](#), Telecom Castilla-La Mancha v Commission).

⁵ Case: [C-280/00](#) Altmark Trans and Regierungspräsidium Magdeburg, see Press Release [No 64/03](#).