



Court of Justice of the European Union

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Judgments in Joined Cases C-66/16 P Comunidad Autónoma del País Vasco and Itelazpi v Commission, C-67/16 P Comunidad Autónoma de Cataluña and CTTI v Commission, C-68/16 P Navarra de Servicios y Tecnologías v Commission and C-69/16 P Cellnex Telecom and Retevisión I v Commission and in Cases C-70/16 P Comunidad Autónoma de Galicia and Retegal v Commission and C-81/16 P Spain v Commission

Press and Information

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

The Commission's decision is not supported by an adequate statement of reasons

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. In order to manage the digitisation, the Spanish authorities divided Spanish territory into three distinct Areas (I, II and III).¹ The objective 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 DTT risked not reaching this level in Area II it was necessary to ensure television coverage 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 the aid granted 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 Castile-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 16 Autonomous Communities concerned was invested in extending the coverage in Area II. In addition the municipalities funded an extension of around €3.5 million. Lastly, 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 IP-13-566 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 Mancha (OJ 2014 C 335, p 8) (see Press Release IP-14-1066 of the Commission). That decision was challenged in four cases [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). The judgment in Joined Cases T-37/15 and

Spain, the Autonomous Communities of the Basque Country, of Galicia and of Catalonia, as well as a number of digital terrestrial television operators, requested the General Court to annul the Commission's decision. By judgments of 26 November 2015, the General Court dismissed all the actions and confirmed the Commission's decision.⁵ The General Court considered, inter alia, that the measures adopted by the Spanish authorities did not respect the principle of technological neutrality.

Spain, the Autonomous Communities and the aforementioned digital terrestrial television operators brought appeals before the Court of Justice seeking to have the judgments of the General Court set aside.

By today's judgments, the Court of Justice dismisses the appeals in Joined Cases C-66/16 P *Comunidad Autónoma del País Vasco and Itelazpi v Commission*, C-67/16 P *Comunidad Autónoma de Cataluña and CTTI v Commission*, C-68/16 P *Navarra de Servicios y Tecnologías v Commission* and C-69/16 P *Cellnex Telecom and Retevisión I v Commission* and in Case C-81/16 P *Spain v Commission*.

However, on the basis of a ground of appeal put forward by the Autonomous Community of Galicia and the operator Retegal, the Court – in its judgment in Case C-70/16 P *Comunidad Autónoma de Galicia and Retegal v Commission* – annuls the Commission's decision because it is not supported by an adequate statement of reasons.

The Autonomous Community of Galicia and Retegal take issue with the General Court for confirming the Commission's analysis concerning the selectivity of the measure at issue, arguing that the Commission's statement of reasons in that connection is inadequate. The Court of Justice notes in that regard that **EU law prohibits selective aid**, that is to say aid that, under a particular legal regime, favours certain undertakings or the production of certain goods over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation. It adds that **the examination of the condition relating to the selectivity of an aid measure must be supported by sufficient reasons to allow, in particular, full judicial review of the question whether the situation of the operators benefiting from the measure is comparable with that of the operators excluded from it.**

The Court of Justice observes that, in its judgment, the General Court considered that the Commission's statement of reasons in that connection indicated that the measure in question benefited only the broadcasting sector and that, within that sector, the measure in question applied only to undertakings active on the terrestrial platform market. The Court of Justice points out that neither the Commission's decision nor the General Court's judgment contains any indication of the reasons why (1) undertakings active in the broadcasting sector should be regarded as being in a factual and legal situation comparable to that of undertakings active in other sectors and (2) undertakings using terrestrial technology should be regarded as being in a factual and legal situation comparable to that of undertakings using other technologies.

The Commission argues that no reasoning was necessary in that connection, because the selectivity condition is automatically satisfied if a measure applies exclusively to a specific economic sector or to undertakings in a particular geographic area. The Court notes in that regard that **a measure which benefits only one economic sector or some of the undertakings in that sector is not necessarily selective.** It is selective only if, within the context of a particular legal regime, it has the effect of conferring an advantage on certain undertakings over others, in a different sector or the same sector, which are, in the light of the objective pursued by that regime, in a comparable factual and legal situation.

T-38/15 and the judgment in Case T-808/14 are the subject of appeals pending before the Court ([C-91/17 P](#), [C-92/17 P](#) and [C-114/17 P](#)).

⁵ Case [T-462/13](#) *Comunidad Autónoma del País Vasco and Itelazpi v Commission*, [T-465/13](#) *Comunidad Autónoma de Cataluña and CTTI v Commission*, Case [T-487/13](#) *Navarra de Servicios y Tecnologías v Commission*, Case [T-541/13](#) *Abertis Telecom and Retevisión I v Commission*, Joined Cases [T-463/13](#) and [T-464/13](#) *Comunidad Autónoma de Galicia and Retegal v Commission* and Case [T-461/13](#) *Spain v Commission* see Press Release No. [141/15](#).

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments in Joined Cases [C-66/16 P](#), [C-67/16 P](#), [C-68/16 P](#) & [C-69/16 P](#) and in Case [C-70/16 P](#) and Case [C-81/16 P](#) are published on the CURIA website on the day of delivery.

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