



Press and Information

Court of Justice of the European Union

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Judgment in Case C-132/19 P  
Groupe Canal + v Commission

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**The Court of Justice annuls a Commission decision making binding the commitments offered by a company in order to preserve competition on the markets**

*The fact that it is possible, for the contracting partners of a company which has made commitments not to comply with certain contractual clauses, to bring proceedings before the national court cannot remedy the effects of the Commission decision which made those commitments binding over the contractual rights of those contracting partners*

Paramount Pictures International Ltd and its parent company, Viacom Inc. (together referred to as 'Paramount') concluded licensing agreements on audio-visual content with the main pay-TV broadcasters of the European Union, including Sky UK Ltd and Sky plc (together referred to as 'Sky') and Groupe Canal + SA.

On 13 January 2014, the European Commission opened an investigation into possible restrictions affecting the provision of pay-TV services under the licensing agreements in question, in order to assess the compatibility of those restrictions with Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA). On 23 July 2015, that investigation led the Commission to send Paramount a statement of objections concerning certain clauses in the licensing agreements which Paramount had concluded with Sky. In the present case, there are two related clauses, the first of which was intended to exclude or limit Sky's ability to respond favourably to unsolicited requests from consumers resident in the EEA but outside the United Kingdom and Ireland, for the purposes of the provision of television distribution services, while the second required Paramount to insert a clause into the agreements which it concluded with broadcasters established in the EEA but outside the United Kingdom, containing a similar prohibition in respect of those broadcasters in relation to such requests from consumers residing in the United Kingdom or in Ireland. In that regard, the Commission was of the view that the agreements which, through such clauses, led to absolute territorial exclusivity, were capable of constituting a restriction of competition 'as their object' within the meaning of Article 101 TFEU and Article 53 of the EEA Agreement, in so far as they restored the partitions of national markets and frustrated the Treaty's objective of establishing a single market. By letter of 4 December 2015, the Commission communicated that assessment, together with a preliminary view, to Groupe Canal + in the latter's capacity as an interested third party.

For its part, Paramount offered commitments in order to address the concerns raised by the Commission. In that regard, Paramount stated that it was prepared, inter alia, no longer to comply with or act in order to enforce the clauses leading to the broadcasters' absolute territorial protection. Those clauses are in the licensing agreements concluded between Paramount and those broadcasters.

After receiving observations from other interested third parties, including Groupe Canal +, the Commission, by decision of 26 July 2016<sup>1</sup> ('the decision at issue'), accepted the commitments offered and made them binding, as provided for in Article 9 of Regulation No 1/2003.<sup>2</sup> Paramount

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<sup>1</sup> Decision of the Commission of 26 July 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40023 – Cross-border access to pay-TV)

<sup>2</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

then notified Groupe Canal + of the terms of the commitments which had been made binding, and of the implications of those commitments, in the present case Paramount's intention no longer to ensure compliance with the absolute territorial exclusivity granted to Groupe Canal + on the French market. Taking the view that those commitments, entered into in proceedings involving only the Commission and Paramount, cannot be relied on against Groupe Canal +, the latter brought an action before the General Court of the European Union seeking annulment of the decision at issue, which was dismissed by judgment of the General Court of 12 December 2018.<sup>3</sup> In its judgment of 9 December 2020, the Court of Justice finds, however, that the General Court erred in law in its assessment of the proportionality of the adverse effects on the interests of third parties resulting from the decision at issue. Consequently, upholding the form of order sought in the appeal brought by Groupe Canal +, the Court sets aside the judgment under appeal and, giving final judgment in the matter, annuls the decision at issue. In that context, the Court provides new clarification concerning the relationship between the respective prerogatives of the Commission and the national courts in the implementation of EU competition rules.

### Findings of the Court of Justice

In the first place, the Court of Justice holds that the General Court was entitled to reject the plea in law alleging misuse of powers, which sought, in essence, to show that the Commission, by adopting the decision at issue, circumvented the legislative process relating to the issue of geo-blocking. In that regard, the Court of Justice agrees in particular with the General Court's observation that, so long as the legislative process relating to the issue of geo-blocking has not resulted in the adoption of a legislative text, that process is without prejudice to the powers conferred on the Commission by Article 101 TFEU and Regulation No 1/2003. In the present case, it is common ground that the decision at issue was adopted under such powers, prior to the completion of the legislative process in question.

In the second place, the Court of Justice holds that it was also on adequate grounds and without any error of law that the General Court rejected the arguments of Groupe Canal + seeking to demonstrate that the relevant clauses were lawful in the light of Article 101(1) TFEU and that there was therefore no basis for the concerns which gave rise to the decision at issue. In so far as the licensing agreements in question contained clauses designed to eliminate the cross-border provision of broadcasting services for the audio-visual content concerned and, to that end, conferred on broadcasters absolute territorial protection guaranteed by reciprocal obligations, the General Court was entitled to find that such clauses are, without prejudice to any decision definitively finding the existence or absence of an infringement of Article 101(1) TFEU following a thorough examination, such as to give rise to competition concerns for the Commission. In the same vein, the Court of Justice emphasises the preliminary nature of the assessment of the anticompetitive nature of the conduct at issue in the context of a decision adopted under Article 9 of Regulation No 1/2003. Consequently, the General Court was also correct to hold that Article 101(3) TFEU is applicable only if an infringement of Article 101(1) TFEU has first been found, thereby concluding that it was not for it, in the context of the review of the lawfulness of such a decision, to rule on complaints based on the conditions for the application of Article 101(3) TFEU.

In the third place, the Court of Justice concurs with the General Court's finding that the relevant clauses could validly raise competition concerns for the Commission as regards the whole of the EEA, without the Commission being under an obligation to analyse the relevant national markets one by one. In so far as the relevant clauses were intended to partition national markets, the General Court rightly pointed out that such agreements could jeopardise the proper functioning of the single market, thereby counteracting one of the principal objectives of the European Union, irrespective of the prevailing situation in the national markets.

In the fourth place, the Court of Justice examines the complaint alleging that the General Court erred in law, in particular in the light of the principle of proportionality, in its assessment of the effect of the decision at issue on the contractual rights of third parties such as Groupe Canal +.

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<sup>3</sup> Judgment of 12 December 2018, *Groupe Canal + v Commission*, [T-873/16](#).

The Court of Justice points out, at the outset, that, in the context of Article 9 of Regulation 1/2003, the Commission is required to verify commitments offered, not only from the perspective of whether they are appropriate to address its competition concerns, but also with regard to the effect of the commitments on the interests of third parties, so that those third parties' rights are not rendered meaningless. However, as the General Court itself observed, the Commission's decision to make binding an operator's commitment not to apply certain contractual clauses vis-à-vis its contracting partner, such as Groupe Canal +, which had only the status of interested third party, when that contracting party did not consent to it, constitutes an interference with the contractual freedom of that contracting partner and goes beyond the provisions of Article 9 of Regulation No 1/2003.

In that context, the Court of Justice considers that the General Court could not refer such contracting partners to the national courts in order to have their contractual rights enforced without infringing the provisions of Article 16 of Regulation No 1/2003, which prohibit those courts from adopting decisions running counter to an earlier Commission decision on the matter. A decision of a national court requiring an operator to breach its commitments which have been made binding by a Commission decision would clearly run counter to that decision. In addition, given that the second sentence of Article 16(1) of Regulation No 1/2003 requires national courts to avoid giving decisions which conflict with a decision contemplated by the Commission for the application, inter alia, of Article 101 TFEU, the General Court also erred in law by holding that a national court could declare the relevant clauses compatible with Article 101 TFEU, even though the Commission could still, under Article 9(2) of Regulation No 1/2003, reopen the proceedings and, as it had initially envisaged, adopt a decision containing a formal finding that there had been an infringement.

Consequently, the Court of Justice concludes that **the judgment under appeal is vitiated by an error of law as regards the assessment of the proportionality of the decision at issue in relation to the adverse effects on the interests of third parties, with the result that the judgment under appeal must be set aside.**

Taking the view that the state of the proceedings permits final judgment to be given, the Court examines, lastly, the plea for annulment alleging infringement of the principle of proportionality. Drawing the consequences of the grounds for setting aside the judgment under appeal, **the Court notes the essential character, in the scheme of the licensing agreements in question, of the obligations intended to ensure the territorial exclusivity granted to the broadcasters which are affected by the commitments made binding by the decision at issue.** The Court reaches the conclusion that, **by adopting the decision at issue, the Commission rendered the contractual rights of the third parties meaningless, including the contractual rights of Groupe Canal + vis-à-vis Paramount, and thereby infringed the principle of proportionality,** with the result that the decision at issue must be annulled.

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**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 judgment is published on the CURIA website on the day of delivery.

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