

ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE

1 March 2007*

In Case T-336/04,

TVDanmark A/S, established in Skovlund (Denmark),

Kanal 5 Denmark Ltd, established in Hounslow, Middlesex (United Kingdom),

represented by D. Vandermeersch, K.-U. Karl and H. Peytz, lawyers,

applicants,

supported by

Viasat Broadcasting UK Ltd, established in West Drayton, Middlesex (United Kingdom), represented by S.E. Hjelmberg, lawyer,

intervener,

* Language of the case: English.

v

Commission of the European Communities, represented by N. Khan and M. Niejahr, acting as Agents,

defendant,

supported by

Kingdom of Denmark, represented by J. Molde, acting as Agent, assisted by P. Biering and K. Lundgaard Hansen, lawyers,

TV 2/Danmark A/S, established in Odense (Denmark), represented by O. Koktvedgaard and M. Thorninger, lawyers,

and by

European Broadcasting Union (EBU), established in Grand-Saconnex (Switzerland), represented by A. Cernelutti, lawyer,

interveners,

APPLICATION for partial annulment of Commission Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV 2/Danmark (notified under document number C(2004) 1814) (OJ 2006 L 85, p. 1), as corrected (OJ 2006 L 368, p. 112), in so far as it declares those measures to be compatible, in part, with the common market,

THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

- 1 TV 2/Danmark A/S ('TV2') is a Danish public broadcaster.

- 2 By Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV2 (notified under document number C(2004) 1814) (OJ 2006 L 85, p. 1), as corrected (OJ 2006 L 368, p. 112) ('the contested decision'), the Commission stated that '[t]he aid granted between 1995 and 2002 [by the Kingdom of Denmark] to [TV2] in the form of licence fee resources and the other measures described in this Decision [were] compatible with the common market under Article 86(2) [EC] with the exception of an amount of [Danish Kroner (DKK)] 628.2 million' (see Article 1 of the contested decision).

- 3 By application lodged at the Registry of the Court of First Instance on 13 August 2004, TVDanmark A/S and Kanal 5 Denmark Ltd (hereinafter, respectively, 'TVDanmark' and 'Kanal 5' or, together, 'the applicants') brought an action for the partial annulment of the contested decision, in so far as the latter declared the aid mentioned in the previous paragraph to be compatible, in part, with the common market.
- 4 By document of 18 November 2004, the Kingdom of Denmark applied for leave to intervene in the present case in support of the form of order sought by the Commission. By letters of 2 and 15 December 2004, the Commission and the applicants stated that they had no objection to that application.
- 5 By document of 1 December 2004, TV2 applied for leave to intervene in this case in support of the form of order sought by the Commission. That application was, on 3 December 2004, put in due form. By letters of 18 March 2005, the Commission and the applicants made it known that they had no objection to that application.
- 6 By document of 1 December 2004, Viasat Broadcasting UK Ltd ('Viasat') applied for leave to intervene in this case in support of the form of order sought by the applicants. That application was, on 17 February 2005, put in due form. By letters of 18 March 2005, the Commission and the applicants stated that they had no objection to that application.
- 7 By document of 14 December 2004, the British Broadcasting Corporation ('the BBC') applied for leave to intervene in this case in support of the form of order sought by the Commission. That application was, on 7 January 2005, put in due form. By letter of 18 March 2005, the Commission informed the Court that it had no objection to that application. By document of 18 March 2005, the applicants requested the Court not to grant that application.

- 8 By undated document, registered at the Court Registry on 13 December 2004, the European Broadcasting Union ('the EBU') applied for leave to intervene in this case in support of the form of order sought by the Commission. By letter of 18 March 2005, the Commission stated that it had no objection to that application. By document of 18 March 2005, the applicants requested the Court not to grant that application.
- 9 By letters of 29 December 2004 and 18 March 2005, the applicants applied for confidential treatment of certain particulars in the application with regard to the Kingdom of Denmark, TV2, Viasat, the EBU and the BBC.
- 10 By orders of 15 April 2005 of the President of the Fifth Chamber of the Court of First Instance, the Kingdom of Denmark and TV2 were granted leave to intervene in support of the Commission, and Viasat was granted leave to intervene in support of the applicants.
- 11 By letter of 20 April 2005, the applicants applied for confidential treatment of certain particulars in the defence with regard to the Kingdom of Denmark, TV2, Viasat, the EBU and the BBC.
- 12 By decision of 25 April 2005, notified to the interveners by letter of even date, the Registrar of the Court fixed 11 May 2005 as the date by which the interveners were required to lodge any objections to the applications for confidential treatment relating to the application and to the defence.
- 13 By document of 9 May 2005, the Kingdom of Denmark formulated objections to the applications, made by the applicants with regard to it, for confidential treatment of certain particulars of the application and defence.

- 14 By orders of 10 May 2005 of the President of the Fifth Chamber of the Court, the EBU was granted leave to intervene in support of the Commission and the BBC's application to intervene was dismissed.
- 15 By letter of 27 May 2005, put in proper form on 15 June 2005, the applicants applied for confidential treatment of certain particulars of the reply with regard to the Kingdom of Denmark, TV2, Viasat and the EBU.
- 16 By decision of 17 June 2005, notified to the intervener by letter of even date, the Registrar of the Court fixed 4 July 2005 as the date by which the interveners were required to lodge any objections to that application for confidential treatment relating to the reply.
- 17 By letter of 1 July 2005, registered at the Court Registry on the same day, TV2 raised objections to that application for confidential treatment. In addition, TV2 stated that it adopted the objections formulated by the Kingdom of Denmark in its letter of 9 May 2005, as regards the applications for confidential treatment of the application and of the defence.
- 18 By letter of 8 July 2005, the applicants, replying to the objections formulated by the Kingdom of Denmark in its letter of 9 May 2005, partly abandoned their application for confidential treatment relating to the application, as regards, in particular, the contested decision annexed to that application, and certain passages in the application which were direct copies of information taken from that decision. The applicants maintained their application in regard to all of the other particulars in the application. They also sought leave, if confidentiality were not accorded, to provide only ranges of numerical data.

- 19 By letter of 27 July 2005, the applicants replied to the objections formulated by TV2 in its letter of 1 July 2005 referred to above.
- 20 By letter of 23 September 2005, the applicants lodged, at the Registry's request in the interests of proper form, new non-confidential versions of the application and the annexes thereto.
- 21 Neither the EBU nor Viasat lodged any observations on the applicants' applications for confidential treatment.

The applications for confidential treatment

Subject-matter of the applications and observations of the parties

- 22 In view of the applicants' partial abandonment of their application for confidential treatment of the application (see paragraph 18 above), the applications for confidential treatment, with regard to the application, the defence and the reply, made by the applicants in respect of all the interveners, cover the parts mentioned below:
- on page 13 of the application, in paragraphs 21 and 23, the obscured information relating, according to the applicants, to their market share and losses;

- on page 17 of the application, in paragraph 37, the obscured information relating, according to the applicants, to the share of money estimated for 2000 to 2002;

- on page 19 of the application, in paragraph 40, the obscured information relating, according to the applicants, to the power ratio for 2000 to 2002;

- on page 24 of the application, in paragraph 54, the obscured information relating, according to the applicants, to price estimates;

- on pages 25 and 27 of the application, in paragraphs 60, 61 and 71, the obscured information relating, according to the applicants, to their prices and to the comparisons between their costs and TV2's prices;

- on page 73 of the application, in paragraph 251, the obscured information relating, according to the applicants, to the comparison between their costs and TV2's prices;

- on page 76 in the annexes to the application (page 9 in Annex 2 to the application), the obscured information relating, according to the applicants, to the estimates of barter sale;

- on page 77 in the annexes to the application (page 10 in Annex 2 to the application), the obscured information relating, according to the applicants, to their sales and to the net equity capital of the group;

- on pages 80 and 81 in the annexes to the application (pages 13 and 14 in Annex 2 to the application), the obscured information relating, according to the applicants, to their pricing policy;

- on pages 82 and 83 in the annexes to the application (pages 15 and 16 in Annex 2 to the application), the obscured information in rows 1 to 5 and 7 in Table 5 and in rows 1, 3 and 4 in Table 6 concerning, according to the applicants, their revenue and costs, and the obscured information in footnote No 46 relating, according to the applicants, to their pricing policy and costs;

- on page 84 in the annexes to the application (page 17 in Annex 2 to the application), the obscured information relating, according to the applicants, to their pricing policy, to the comparisons between their costs and TV2's prices and to the capital injected by their parent company;

- on page 87 in the annexes to the application (Annex 1 to Annex 2 to the application), all the figures in the table designated by the applicants as a 'Specification of key figures from Statutory Accounts';

- on page 89 in the annexes to the application (Annex 2 to Annex 2 to the application), all the figures in the table;

- on page 134 in the annexes to the application (Annex 4 to the application), the entire content of Section B1a;

- on page 367 in the annexes to the application (Annex 7 to Annex 4 to the application), all the amounts in the table relating, according to the applicants, to the income of SBS Broadcasting Danmark A/S and of TvDanmark Ltd for 1997 to 2000 and to the 2001 draft budget;

- on page 489 in the annexes to the application (page 4 in Annex 5 to the application), the obscured proper names;

- on page 490 in the annexes to the application (page 5 in Annex 5 to the application), the obscured amounts in rows 1, 3, 4 and 5 of Figure 3 relating, according to the applicants, to their costs;

- on pages 491 and 492 in the annexes to the application (pages 6 and 7 in Annex 5 to the application), the content of Section III entitled 'Explanation of TVDanmark's losses';

- on page 494 in the annexes to the application (page 9 in Annex 5 to the application), the obscured information relating, according to the applicants, to their rebates;

- on page 495 in the annexes to the application (page 10 in Annex 5 to the application), the obscured content of footnote No 8;

- on pages 510 to 512 in the annexes to the application (pages 8 to 10 in Annex 1 to Annex 5 to the application), the obscured information in the table and text, and in the table relating, according to the applicants, to their prices and costs;

- on pages 514 and 515 in the annexes to the application (Annex 2 to Annex 5 to the application), certain proper names;

- on pages 530 to 538 in the annexes to the application (Annex 5 to Annex 5 to the application), all the information;

- on pages 540 and 541 in the annexes to the application (Annex 6 to Annex 5 of the application), all the information;

- on pages 608 and 609 in the annexes to the application (pages 3 and 4 of Annex 12 to Annex 5 to the application), the obscured information relating, according to the applicants, to their prices and costs;

- on pages 613, 614, 616 and 618 in the annexes to the application (pages 3, 4, 6 and 8 of Annex 6 to the application), the obscured information relating, according to the applicants, to sources of confidential information and to their prices;

- on page 636 in the annexes to the application (Annex 4 to Annex 6 to the application), the obscured proper names and data;

- on page 741 in the annexes to the application (Annex 7 to Annex 6 to the application), the obscured amounts relating, according to the applicants, to TVDanmark's gross turnover between 1995 and 2002;

- on page 745 in the annexes to the application (Annex 9 to Annex 6 to the application), the obscured amounts relating, according to the applicants, to their prices and costs;

- on pages 748 and 749 in the annexes to the application (pages 2 and 3 of Annex 10 to Annex 6 to the application), the obscured data in rows 1, 3 to 5 and 7 to 10 in the table relating, according to the applicants, to their prices and costs;

- on pages 752 and 753 in the annexes to the application (pages 2 and 3 in Annex 11 to Annex 6 to the application), the obscured data in rows 1, 3 to 5 and 7 to 10 in the table relating, according to the applicants, to their prices and costs;

- on pages 756 and 757 in the annexes to the application (Annex 12 to Annex 6 to the application), the obscured data in rows 2 and 3 in Table 2, rows 2 and 3 in Table 4 and rows 1, 3 and 4 in Table 6 relating, according to the applicants, to their prices and costs;

- on page 19 of the defence, the obscured information in footnote No 55;

- on page 20 of the defence, in paragraph 39.2, the obscured part of that paragraph, including footnotes Nos 59, 60 and 61;

- on page 21 of the defence, in paragraph 40, the obscured part of that paragraph;

- on page 25 of the defence, in paragraph 50.2, the obscured part of that paragraph, including footnote No 79;

- on page 55 in the annexes to the defence (on page iv of Annex B.4 to the defence), the obscured part of Table 1;

- on page 56 in the annexes to the defence (on page v of Annex B.4 to the defence), the obscured part of Figure 1;

- on page 85 in the annexes to the defence (on page 28 of Annex B.4 to the defence), the obscured part of Table 5;

- on page 86 in the annexes to the defence (on page 29 of Annex B.4 to the defence), the obscured part of Figure 10;

- on page 92 in the annexes to the defence (on page 35 of Annex B.4 to the defence), the obscured part of Figure 12;

- on page 93 in the annexes to the defence (on page 36 of Annex B.4 to the defence), the obscured parts of Figures 13 and 14;

- on page 94 in the annexes to the defence (on page 37 of Annex B.4 to the defence), the obscured part of Figure 15;

- on page 23 of the reply, in paragraph 66, the obscured part of that paragraph;

- on page 24 of the reply, in paragraph 67, the two obscured parts of that paragraph;

- on page 28 of the reply, in paragraph 84, the obscured part of that paragraph.

23 The applicants assert that all of the information in the application in respect of which confidential treatment is sought consists of commercially sensitive information and business secrets, the disclosure of which would severely harm the applicants' competitive interests or those of their parent company SBS Broadcasting.

24 As regards the application for confidential treatment of an individual's name (on page 514 in the annexes to the application), it arises from that individual's request and could not affect the ability of the Kingdom of Denmark or the other interveners to defend their interests.

25 So far as concerns the passages of the defence in respect of which confidential treatment is sought, the applicants assert that these relate to information in respect of which they have already requested confidential treatment in the application and that their removal would have no effect on the interveners' ability to defend their interests.

- 26 Likewise, the passages in the reply covered by the application for confidential treatment contain confidential information relating to the applicants' prices, market shares and other commercially sensitive information, and disclosure of those passages would severely harm their interests or those of their parent company SBS Broadcasting.
- 27 The applicants point out that television broadcasting is a relatively small sector in Denmark, with few players whose relative competitive position does not change from one year to the next. The confidential information in the reply is, therefore, contrary to TV2's submission, not of purely historic interest.
- 28 Finally, the applicants assert that, since TV2 did not raise, within the prescribed period, any objections to the applications for confidential treatment of the passages in the application and in the defence, that intervener cannot be allowed, in its opposition to the application for confidential treatment of the reply, to dispute the confidentiality of passages in the application or defence and which was already covered in the applications for confidential treatment of those documents. Three of the four confidential passages in the reply are already covered by the applications for confidential treatment of the application and of the defence. They are the passages in paragraphs 66, 67 (first obscured part of that paragraph) and 84 of the reply.
- 29 The Kingdom of Denmark raises objections to the applications for confidential treatment of passages in the application and in the defence.
- 30 As regards the application and apart from an objection based on the fact that the contested decision, certain material in which is covered by the applications for confidential treatment, has been published, an objection which led the applicants

partly to abandon their applications for confidential treatment (see paragraph 18 above), the Kingdom of Denmark submits that it is difficult to see what actual harm could result from the disclosure of certain information, such as names.

31 More generally, the Kingdom of Denmark submits that the obscurments by the applicants in the application were made without real regard to their necessity. At the very least, no such analysis would appear to have been made.

32 As regards the allegedly confidential information contained in the defence, it is impossible to know what information has been obscured and thus kept secret. For that reason alone, the Kingdom of Denmark objects to those obscurments, particularly as the Commission's defence has, as a result, become completely incomprehensible on those various paragraphs, which indeed appear to be crucial to the case.

33 The Kingdom of Denmark therefore asks the Court to dismiss the applicants' application for confidential treatment in its entirety or, at the very least, that a new time-limit be fixed within which the applicants must provide a revised and well-founded application, it being understood that the applicants must then state clearly what type of information they wish to obscure.

34 In so far as the Court considers the obscurment of certain information to be justified, a range corresponding to the figures in question should, at least, be indicated. That range should be sufficiently narrow to enable the Kingdom of Denmark to submit observations on the views put forward by the applicants.

- 35 TV2 states that it concurs with the Kingdom of Denmark's objections to the application for confidential treatment of certain material in the application and in the defence.
- 36 TV2 raises, in addition, objections to the applications for confidential treatment of passages in the reply. Thus, it submits, the applicants have advanced no specific justification for the confidential treatment of the suppressed information. Their application for confidential treatment refers, on the contrary, in a general way to categories of information. The applicants have not demonstrated that disclosure of that information would cause harm to themselves or to their parent company.
- 37 TV2 suspects, on the basis of the limited information presented by the applicants, that the information obscured relates to historical data.
- 38 Should the Court decide that certain figures which the applicants wish to keep confidential should not be disclosed, they should be replaced by sufficiently narrow ranges.

Findings of the President

- 39 Article 116(2) of the Rules of Procedure of the Court of First Instance provides:

'If an intervention for which application has been made within the period of six weeks prescribed by Article 115(1) is allowed, the intervener shall receive a copy of

every document served on the parties. The President may, however, on application by one of the parties, omit secret or confidential documents.’

40 That provision lays down the principle that a copy of every document served on the parties must be served on the interveners. It is only by way of derogation therefrom that the second sentence of Article 116(2) permits certain documents to be treated as confidential, thereby exempting them from the requirement that copies be served on the interveners (order of the President of the Second Chamber (Extended Composition) of the Court of 3 July 1998 in Case T-143/96 *Volkswagen and Volkswagen Sachsen v Commission*, not published in the ECR, paragraph 15; order of the President of the Third Chamber (Extended Composition) of the Court of 13 January 2005 in Case T-266/02 *Deutsche Post v Commission*, not published in the ECR, paragraph 19; and order of the President of the Third Chamber of the Court of 24 January 2006 in Case T-417/05 *Endesa v Commission*, not published in the ECR, paragraph 14).

41 For the purpose of determining the conditions under which confidential treatment may be given to certain matters, it is necessary, in respect of each document on the file or passage in a procedural document for which confidential treatment is sought, to balance the applicant’s legitimate concern to prevent substantial damage to its business interests and the interveners’ equally legitimate concern to have the necessary information for the purposes of being fully in a position to assert their rights and state their case before the Community Courts (orders of the Court in Case T-30/89 *Hilti v Commission* [1990] ECR II-163, published in extracts, paragraph 11, and of the President of the First Chamber of the Court of 5 August 2003 in Case T-168/01 *Glaxo Wellcome v Commission*, not published in the ECR, paragraph 35; orders in *Deutsche Post v Commission*, cited in paragraph 40 above, paragraph 20; *Endesa v Commission*, cited in paragraph 40 above, paragraph 15; and of the President of the Fifth Chamber of the Court of 15 June 2006 in Case T-271/03 *Deutsche Telekom v Commission* [2006] ECR II-1747, paragraph 10).

- 42 In addition, the first subparagraph of Article 5(4) of the Instructions to the Registrar of the Court of First Instance of 3 March 1994 (OJ 1994 L 78, p. 32), as most recently amended on 5 June 2002 (OJ 2002 L 160, p. 1), provides that an application by a party for certain matters or certain documents on the file to be treated confidentially must specify the confidential matters or passages and explain why each matter or passage concerned is confidential. The Practice Directions of the Court of First Instance of 14 March 2002 (OJ 2002 L 87, p. 48), specify, in their turn, that an application for confidential treatment which is inadequately detailed will not be considered and that an application must accurately identify the particulars or passages to be excluded and briefly state the reasons for which each of those particulars or passages is regarded as confidential (Section VIII(2) and (3) of the Practice Directions).
- 43 It follows that an application for confidential treatment which is insufficiently detailed as to the particulars it covers will be dismissed.
- 44 It also follows that account will be taken of the succinctness of the reasons provided in support of an application for confidential treatment in situations where it is not sufficiently clear from the examination of the particulars covered by the application that they are confidential (see, to that effect, the order in *Endesa v Commission*, cited in paragraph 40 above, paragraph 18). Such consideration is, in the interests of the proper administration of justice, a fortiori necessary in cases where the confidential treatment sought concerns a substantial amount of information (see, to that effect, the order in *Deutsche Post v Commission*, cited in paragraph 40 above, paragraph 23).
- 45 It is, finally, appropriate to observe that the interveners' opposition to the confidentiality sought must relate to specific matters which have been obscured in the procedural documents and state the reasons for which confidentiality with regard to those matters should be refused. Accordingly, an application for confidential treatment must be upheld in so far as it concerns matters which have not been disputed, or not disputed expressly and in detail (order in *Deutsche Post v*

Commission, cited in paragraph 41 above, paragraphs 12, 14 and 15; see also, to that effect, orders of the President of the Third Chamber of the Court of 15 October 2002 in Case T-203/01 *Michelin v Commission*, not published in the ECR, paragraph 10; of the President of the Third Chamber of the Court of 5 February 2003 in Case T-287/01 *Bioelettrica v Commission*, not published in the ECR, paragraph 12; of the President of the Fourth Chamber of the Court in Case T-383/03 *Hynix Semiconductor v Council* [2005] ECR II-621, paragraphs 36 and 83; and of the President of the Third Chamber (Extended Composition) of the Court in Case T-289/03 *BLUPA and Others v Commission* [2005] ECR II-741, paragraph 11).

The applications for confidential treatment against which the interveners lodged no objections

⁴⁶ Neither Viasat nor the EBU has raised any objection to the applicants' requests for confidential treatment. The Kingdom of Denmark, for its part, raised no objection to the application for confidential treatment relating to the reply. Finally, TV2 raised no objection, within the prescribed period, to the applications for confidential treatment relating to the application and to the defence. In fact, it was only in its letter of 1 July 2005, that is, after the prescribed period had expired, that TV2, without, moreover, setting out any independent argument, stated that it concurred with the Kingdom of Denmark's objections in that regard (see paragraphs 12 and 17 above).

⁴⁷ It follows that, in compliance with the case-law cited in paragraph 45 above, the applications for confidential treatment relating to the application, to the defence and to the reply, must, as regards Viasat and the EBU, be upheld. As regards the Kingdom of Denmark, the application for confidential treatment relating to the reply must be upheld in its entirety. Finally, as regards TV2, the applications for confidential treatment relating to the application and to the defence must be upheld in their entirety.

The applications for confidential treatment against which the interveners did lodge objections

48 The Kingdom of Denmark lodged objections against the applications for confidential treatment relating to the application and to the defence, and TV2 lodged objections to the application for confidential treatment relating to the reply.

— The admissibility of TV2's opposition to the application for confidential treatment relating to the reply

49 So far as concerns the applicants' argument that the objections raised by TV2 in regard to three of the four allegedly confidential passages in the reply are inadmissible, on the ground that those matters were already the subject, at the stage of the application and defence, of applications for confidential treatment which TV2 did not oppose within the period prescribed, this must be rejected.

50 An intervener cannot be deprived, so long as it complies with the time-limit laid down for that purpose by the Court, of the right to oppose an application for confidential treatment of passages in a procedural document on the ground that it did not challenge the confidentiality of those matters within the prescribed period when they were pleaded at an earlier stage of the proceedings. In the present case, it is common ground that TV2 objected, within the prescribed period, to the application for confidential treatment relating to the reply (see paragraphs 16 and 17 above).

51 TV2's opposition to the application for confidential treatment relating to the reply is therefore admissible.

— The merits of the applications for confidential treatment

- 52 The applications for confidential treatment lodged by the applicants relating to the application, to the defence and to the reply, in so far as they are opposed, respectively, by the Kingdom of Denmark and by TV2, must therefore be examined.
- 53 In that regard, in the first place, although those applications for confidential treatment cover a substantial number of passages in the parties' pleadings, the reasons advanced by the applicants in support of the applications are stated in overall, general terms. The applicants limit themselves, in essence, to stating that the allegedly confidential information constitutes business secrets the disclosure of which is liable to harm their commercial interests or those of their parent company. They give no reasons, even brief ones, dealing with each passage covered by the applications for confidential treatment.
- 54 In those circumstances, and in accordance with the case-law cited in paragraph 44 above, account will be taken of the succinctness of the reasons set out by the applicants in support of their applications for confidential treatment.
- 55 In the second place, it appears that the applicants, in their applications for confidential treatment, refer to certain information relating to the years 1998 to 2002, accompanied, on occasion, by estimates for the year 2003, concerning their overall costs and the sale prices of their advertising slots. That information is produced in order to establish that TV2 was selling its advertising slots at prices lower than those which an economic operator in a market situation, in this case TVDanmark, would have had to charge to cover its costs (see paragraph 189 of the application). According to the applicants, that practice was made possible by the public financing which TV2 received beyond what was necessary for it to fulfil its public service obligations. Those data were also produced in the context of the challenge by the applicants to the Commission's implementation, in the contested

decision, of the test of ‘maximising advertising revenue’ (see Recitals 137 to 161 to the contested decision), a test by which the Commission sought to determine whether or not TV2 had attempted to maximise its advertising revenue during the period of the investigation (see the third and fourth pleas in law in the application, particularly paragraphs 223 and 239 to 265 of the application).

- 56 While it is true that data relating to the costs and results of economic operators and the prices they charge may, possibly, constitute business secrets, it is nonetheless true that the data in question cover periods, essentially, at least four years ago. In those circumstances, having regard to the relatively historic nature of those data, the President finds, in this case, that it has not been established, irrespective of what the applicants maintain, that their disclosure is likely to harm substantially their current commercial interests.
- 57 In any event, the disclosure of those data, as they are and therefore not replaced with ranges, seems to be necessary to enable the interveners opposing the applications for confidential treatment to assert their rights and state their case before the Community Courts.
- 58 For the sake of completeness, it must be stated, on the basis of cross-checks made between the various allegedly confidential data, that, first, some of those data appear, in fact, in the contested decision (see, in particular, the percentages obscured on pages 24 (paragraph 54) and 25 (paragraph 60) of the application, and on page 80 (first and second obscurements) in the annexes to the application, percentages which appear in Recitals 43 and 143 to the contested decision). Secondly, certain data obscured in particular places in the pleadings are not obscured in other places in those pleadings (see, in particular, certain matters (a) on page 25 (paragraph 61) of the application, (b) on page 89, (c) on page 491, (d) on page 492, (e) on page 614 (second and third obscurements) in the annexes to the application, and (f) on page 25 (paragraph 50.2 and footnote No 79) of the defence, which also appear, unobscured, respectively, (a) on page 28 (paragraph 84) of the reply, (b) and (c) on

page 11 (paragraph 23.3) of the rejoinder, (d) on page 11 (paragraph 23.2) of the rejoinder, (e) on page 613 (first sentence in second indent) in the annexes to the application and (f) on pages 526 to 528 in those annexes). Thirdly, certain allegedly confidential information is apparent, in fact, either from the simple observation of the televised advertising market (see, in particular, the information obscured on pages 13 (paragraph 21), 17 and 19 of the application) or from a cross-check between such observation and non-confidential information (see, in particular, page 80 (bottom obscurement) in the annexes to the application), or again from the accounts of the applicants or of other companies in their group (see, in particular, the information obscured on pages 84 (third subparagraph), 87, 89, 367, 530 to 541 in the annexes to the application), accounts in respect of which it is in no way denied that they were published and certain data which are in any event known to third parties (see the table, allegedly confidential but emanating in fact from TV2, which appears on page 745 in the annexes to the application). Finally, the President notes that certain requests for confidentiality refer, en bloc, to entire paragraphs of text or tables, with no appropriate supporting reasons or precise identification of the information eligible, within those paragraphs or tables, for confidential treatment (see, for example, on pages 492 and 530 to 541 in the annexes to the application).

- 59 In light of all of the foregoing, and after examination of each of the various passages covered by the applications for confidential treatment of the application, of the defence and of the reply, the President decides, as regards, first of all, the applications for confidential treatment relating to the application and to the defence with regard to the Kingdom of the Denmark (the only intervener which opposed them), that confidentiality must be refused so far as concerns the information obscured on pages 13, 17, 19, 24, 25, 27 and 73 of the application, on pages 77, 80 to 84, 87 to 89, 134, 367, 490 to 492, 510 to 512, 530 to 541, 608, 609, 613 (except for the first obscurement), 614, 616, 636 (except for the first, second and fourth obscurments), 741 and 745 to 757 in the annexes to the application, on pages 19, 20 (except for the percentage before the reference to footnote No 60, as well as the percentages in that footnote), 21 and 25 of the defence and, finally, on pages 55, 56 and 85 to 94 in the annexes to the defence. As regards, next, the application for confidential treatment relating to the reply with regard to TV2 (the only intervener which opposed it), confidentiality must be refused so far as concerns the information

obscured on pages 23, 24 and 28 of the reply. Since that information constitutes the entirety of the information covered by the application for confidential treatment relating to the reply, it follows that, in practice, the application for confidential treatment of the reply with regard to TV2 is dismissed in its entirety.

60 By contrast, the applications must be upheld for confidential treatment of the application and of the defence with regard to the Kingdom of Denmark as regards, first, certain data relating to the breakdown of barter sales between national and regional sales, secondly, certain information relating to names and, thirdly, detailed information relating to certain rules and procedures covering the granting of rebates by the applicants. That is the information referred to on pages 76, 489, 494, 495, 514, 515, 613 (first obscurement), 618, 636 (first, second and fourth obscurments) in the annexes to the application, and on page 20 of the defence (only the percentage preceding the reference to footnote No 60, as well as the percentages in that footnote).

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

- 1. With regard to the European Broadcasting Union and Viasat Broadcasting UK Ltd, the applications for confidential treatment relating to the application, to the defence and to the reply are upheld in their entirety;**

2. **With regard to the Kingdom of Denmark, the application for confidential treatment relating to the reply is upheld in its entirety; in addition, the applications are upheld for confidential treatment relating to the application and to the defence, as regards the following passages referred to in those applications: the information obscured on pages 76, 489, 494, 495, 514, 515, 613 (first obscurement), 618 and 636 (first, second and fourth obscurements) in the annexes to the application, and on page 20 of the defence (only the percentage preceding the reference to footnote No 60, as well as the percentages in that footnote);**

3. **With regard to the Kingdom of Denmark, the applications for confidential treatment relating to the application and to the defence are dismissed in so far as they refer to the information obscured on pages 13, 17, 19, 24, 25, 27 and 73 of the application, on pages 77, 80 to 84, 87 to 89, 134, 367, 490 to 492, 510 to 512, 530 to 541, 608, 609, 613 (except for the first obscurement), 614, 616, 636 (except for the first, second and fourth obscurements), 741 and 745 to 757 in the annexes to the application, on pages 19, 20 (except for the percentage preceding the reference to footnote No 60, as well as the percentages in that footnote), 21 and 25 of the defence and, finally, on pages 55, 56 and 85 to 94 in the annexes to the defence;**

4. **With regard to TV 2/Danmark A/S, the applications for confidential treatment relating to the application and to the defence are upheld in their entirety;**

5. **With regard to TV 2/Danmark A/S, the application for confidential treatment relating to the reply is dismissed in its entirety;**

6. **Non-confidential versions of the application and of the defence, containing the passages referred to in paragraph 3, shall be served, respectively, by the applicants and by the Commission, within a period to be fixed by the Registrar of the Court of First Instance;**

7. The costs are reserved.

Luxembourg, 1 March 2007.

E. Coulon

Registrar

M. Vilaras

President