

Court of First Instance (EC): First Decision on Public Television Subsidies

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On 15 September 1998 the Court of First Instance in Luxembourg delivered its judgement on the Gestevisión Telecinco case. It is the first decision following several applications lodged under Article 175 of the Treaty by private television companies. The TV companies asked the Court to declare that the Commission failed to fulfil its obligations under the EC Treaty by not making a decision on their complaints and by not initiating the procedure of supervision of State aids in application of Article 93 of the same Treaty. The applicant, Gestevisión Telecinco SA, a company incorporated in Madrid, is one of the three private commercial companies in Spain. In March 1992 and November 1993 it lodged two complaints with the Commission, seeking to have declared as incompatible with Article 92 of the EC Treaty (i) the grants that the regional television companies receive from their respective autonomous communities and (ii) the subsidies that the public body RTVE gets from the Spanish State. The Commission never took any decision on the complaints. Upon the applicant's enquiry, it justified the delay by its need to receive information from the authorities of the State concerned and the fact that it had commissioned a firm of consultants to produce a study on the funding of public television companies within the whole Community.

The Court held in favour of the applicant. It stated that, because the Commission has exclusive jurisdiction to assess the compatibility of State aid with the common market, it must conduct a diligent and impartial examination of a complaint alleging aid to be incompatible with the common market. As a consequence, it must act within a reasonable period of time and cannot prolong indefinitely its preliminary investigations into State measures that became subject of a complaint under Article 92 of the EC Treaty. Concerning the complaints in question, the Court found that the Commission had sufficient time to complete the preliminary stage of investigation and, thus, be in a position to make a decision on the aid in question. The justifications adduced by the State were not considered relevant. The Court also disregarded the text of the Protocol on the System of Public Broadcasting annexed to the Amsterdam Treaty of Public Television because the Member States had signed it only just under 19 months after the applicant called the Commission to act. So the Court, while not judging on the compatibility issue, concluded that the Commission violated its duties under the Treaty by not making a decision following the two complaints.

Court of First Instance, Third Chamber. Judgement of 15 September 1998, case T-95/96, Gestelevision Telecinco SA v. Commission of the European Communities.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996TJ0095:EN:PDF>

