European Commission: TV2 Has to Pay Back Excess State Compensation

IRIS 2004-7:1/4

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On 5 April 2000, the Danish commercial television broadcasting company TvDanmark brought a complaint before the EU Commission alleging that the financing scheme of the Danish State, applied during the period 1995-2002, in favour of the Danish public company TV2 had to be regarded as State aid contrary to Article 87(1) of the Amsterdam EC Treaty, not subject to the derogations laid down in Articles 87(2) and (3) of the Treaty.

The Danish broadcaster TV2 is a State-owned limited company, operating on national level under the name "TV2/DANMARK A/S". The company assumes public service obligations. In exchange, TV2 is entitled to be compensated by the State for carrying out these activities. The broadcaster has been converted into a limited company according to the Act no. 438 of 10 June 2003 on TV2/DANMARK A/S adopted pursuant to the Media Agreement 2002-06 (see IRIS 2003-7: 8). This broadcasting company has the authority according to the radio- og fjernsynsloven (Radio- and TV Broadcasting Act) no. 1052 of 17 December 2002 section 38a (see IRIS 2003-2: 7) to exercise public service activities.

The complainant alleged that the measures for financing TV2 had given this broadcasting company certain advantages that relieved it from charges normally borne from its budget. As the competitors, the commercial broadcasters, did not receive the same funds, the measures distorted competition. Furthermore, trade between Member States seemed to be affected as TvDanmark which did not receive the same funds but had to assume certain public service obligations on Danish territory and TV2/DANMARK A/S were competitors in the EU internal market and on the international markets.

On 21 January 2003, the Commission notified Denmark of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the measures by which the State had financed the activities of TV2, and invited the Danish State to comment thereon (see OJ C 59/2 of 14 March 2003, Aid C 2/03 (ex NN 22/02) (2003/C 59/02) and IRIS 2003-2: 3).

These measures concerned licence fee resources, transfers of funds, corporation tax exemption, interest and instalment-free loans, State guarantee for operating loans, free transmission frequency with national coverage and the benefit of

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must-carry status. Having carried out its investigation, the Commission on 19 May 2004 ordered TV2/DANMARK A/S to reimburse approximately DKK 628.2 million (EUR 84.4 million) plus interest of the State aid on the grounds mentioned below.

The licence fee with reference to judgment C-83/98 France/Ladbroke Racing v. Commission, European Court Reports (ECR) 2000 I, p. 3271 as well as the transfers of funds, the corporation tax exemption, the interest and instalment-free loans and the State guarantee for operating loans were regarded as State resources.

The advertising and similar activities, which TV2 had permission to engage in under section 38c of the Radioand TV Broadcasting Act, could not be considered as part of the public service activities according to the opinion of the Commission. However, the must-carry status of TV2 and the free transmission frequency with national coverage were not found to be unduly advantageous.

The Commission considered the State aid measures as selective and as distorting competition contrary to the rules laid down in Article 87(1) EC Treaty. They did not compensate the net surplus costs for services of general economic interest and did not fulfil all the conditions for exemption established by the EC Court Altmark judgment (C 280/00, ECR 2003 I, p. 7747).

Furthermore, the Commission considered that trade between Member States was affected as television advertising crosses national borders and as TV2 itself operated on the international market through the European Broadcasting Union and the Eurovision system. Even though the public service activities were duly entrusted to TV2, the State aid measures were also considered contrary to Article 86(2) EC Treaty as the net costs of the public service obligations were overcompensated and the market was distorted by measures which were unnecessary for the accomplishment of the public service obligations, such as measures depressing advertising prices. It was also found that the Danish State did not behave like a market investor when it decided to reinvest the annual amounts of the excess compensation into TV2.

Therefore, the Order laid down that TV2/DANMARK A/S had to pay back the State aid in the amount of DKK 628.2 million (EUR 84.4 million) as the formal investigation had shown that the amount received by TV2/DANMARK A/S during the period 1995-2002 had exceeded the cost of fulfilling its public service mission and was not necessary for the accomplishment of TV2's public service obligations.

Kommissionens beslutning af 19.5.2004 C 2/2003 (ex NN 22/2002) om Danmarks foranstaltninger til fordel for TV2/DANMARK

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Commission decision of 19 May 2004 C 2/2003 (ex NN 22/2002) on the measures of Denmark in favour of TV2/DANMARK)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006D0217:20060323:EN:PDF

"Commission orders Danish public broadcaster TV2 to pay back excess compensation for public service tasks", Press Release of the European Commission IP/04/666 of 19 May 2004

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/666&format=HTML&aged=1&language=EN&guiLanguage=fr

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