European Court of First Instance: Ruling on Government Aid to RTP

IRIS 2008-8:1/2

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On 26 June 2008, the European Court of First Instance ruled that Articles 1 and 2 of Commission Decision 2005/406/EC of 15 October 2003 on ad hoc measures implemented by Portugal for RTP should be annulled. The Commission's decision had considered that government measures in favour of RTP, the Public Service Broadcaster, developed in the late 1990s had been under the scope of Public Service and did not constitute state aid.

The court has found that (67) "the Commission – since it did not examine whether, despite its selective nature, the exemption from notarial charges did not constitute State aid on the ground that the recourse to a legislative instrument which entailed that exemption was not chosen with the aim of enabling public undertakings to escape those charges, but was merely part of the logic of the Portuguese legal system – failed to state grounds in law for its finding to the effect that the exemption from notarial charges did not constitute State aid". Furthermore, it found that (254) "the Commission, in not requiring the Portuguese Republic to disclose the contractual external audit reports, failed to fulfil its obligation to undertake a diligent and impartial investigation". That being the case (255) "the Commission failed to place itself in a position in which it had information which was sufficiently reliable available to it to determine the public services actually supplied and the costs actually incurred in supplying them. In the absence of such information, the Commission was unable to proceed subsequently to a meaningful verification of the proportionality of the costs of the public services and was unable to make a valid finding that there had been no overcompensation of the public service costs".

This decision results from an action brought on 31 December 2003 by SIC (*Sociedade Independente de Comunicação, S.A.*) against the Commission of the European Communities. According to the applicant, the authorisation of the official registration without notarial deed of RTP's transformation into a public limited company accorded an advantage to RTP which was denied to other economic operators in the market.

Decision of the ECJ of 26 June 2008, Case T-442/03 SIC – Sociedade Independente de Comunicação, SA v Commission of the European

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Commission decision of 15 October 2003 on ad hoc measures implemented by Portugal for RTP (2005/406/EC)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:142:0001:0025:EN:PDF

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