European Court of First Instance: TF1 Case against the Commission

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Christina Angelopoulos
Institute for Information Law (IViR), University of Amsterdam

In 1993, Télévision française 1 SA, owners of the private French television network TF1, lodged a complaint with the European Commission alleging, inter alia, that the repayment of the audiovisual licence fee by France to the French public service broadcasters, France 2 and France 3, constituted illegal state aid. On 10 December 2003, the Commission issued Decision 2004/838/EC, dismissing TF1's claim, concluding that the financing scheme was indeed compatible with the rules of the common market, according to Article 86(2) EC Treaty (see IRIS 2004-2: 4), and including a number of recommendations directed at the French government. The French authorities responded to the document with a number of commitments intended to ensure compatibility with Community state aid legislation. On 20 April 2005, the Commission issued Decision C(2005)1166 final, confirming that the commitments made by France satisfied its recommendations and closing the procedure.

Subsequently, TF1 brought an action before the European Court of First Instance seeking the annulment of the Commission's final decision, however, in May 2008, the Court found the case to be inadmissible, due to lack of the clarity and precision required under Article 44(1) of the Rules of Procedure. In October 2008, TF1, claiming new legal circumstances, brought a second action against the Commission. In a judgment delivered on 11 March 2009, the Court, in essence, confirmed the Commission's 2005 decision.

TF1 rested its case on five main points, each of which was examined and rejected in turn by the Court: First, the Court found no violation of the rights of the defence nor was there a breach of the procedure for the examination of aid. It then proceeded to analyse whether the judgment of the Court of Justice in the Altmark case of 24 July 2003 had been correctly interpreted by the Commission and applied to the case at hand and found that to be the case. Finally, the Court confirmed that the Commission did not fail to fulfil its obligation to provide a statement of reasons nor did it find that the commitments undertaken by France to guarantee the compatibility of the audiovisual licence fee with the common market were insufficient.

Particularly as concerns the interpretation of the Altmark case, it is worth mentioning that, according to standard ECJ case law, for a measure to constitute

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state aid, all preconditions set out in Article 87(1) EC Treaty must be met, i.e. there must (a) be an intervention by the State or through State resources; (b) the intervention must be liable to affect trade between Member States; (c) it must confer an advantage on the recipient and (d) it must distort or threaten to distort competition. The Court then, expounding on the third of these requirements, explained that a state measure will escape classification as state aid within the meaning of Article 87, only if all the following circumstances (referred to by the Court as “the Altmark conditions”) occur:

(1) the recipient undertaking must actually have public service obligations to discharge and those obligations must have been clearly defined (“first Altmark condition”);

(2) the parameters on the basis of which the compensation is calculated must have been established in advance in an objective and transparent manner (“second Altmark condition”);

(3) the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit (“third Altmark condition”);

(4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately equipped, so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations (“fourth Altmark condition”).

The Court noted that the Altmark conditions concern only the question of the classification of a state measure as state aid. The assessment of the compatibility of a state aid measure with the common market is a separate issue, regulated under Article 86(2) EC Treaty.

Case T 354/05, Télévision française 1 SA (TF1) v. Commission of the European Communities (11 March 2009)

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