Court of Justice of the European Union: Joined Cases M6 and TF1 v. Commission

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On 1 July 2010 the Court of Justice of the European Union ruled on the question of the compliance of State aid granted by the French State to France Télévisions, a French public company which owns the public service channels France 2, France 3, France 4, France 5, France Ô and RFO, with the rules of the EC Treaty. The aid was intended to cover the costs of public service broadcasting undertaken by France Télévisions in view of the decision of the French authorities, announced initially in 2008, to eliminate advertising on public channels, which would then financially rely on subsidies collected through two new taxes, one on advertising and one on electronic communications (see IRIS 2009-9: 5/4). France notified the European Commission of its plan to provide capital funding of EUR 150 million to France Télévisions. In its decision of 16 July 2008 the Commission found the plan to constitute State aid compliant with EU rules. In response, two French commercial channels, Métropole television (M6) and Télévision française 1 (TF1), competitors of France Télévisions, brought an action before the ECJ seeking the annulment of the Commission's decision.

In its judgement the Court found that the funding in question was in no way intended to finance France Télévisions' commercial activity of selling advertising slots, but, on the contrary, was intended, explicitly and exclusively, to cover the costs of the public service broadcasting undertaken by France Télévisions, a point which, as the Court stressed, is of particular significance; according to the Amsterdam Protocol, the provisions of the EC Treaty are without prejudice to the competence of Member States to fund public service broadcasting insofar as such funding is provided for the purpose of fulfilling the mission of public service and to the extent that this funding does not adversely affect trading conditions and competition within the EU. In addition, under paragraph 71 of the Broadcasting Communication, "it is as a general rule necessary that the amount of public compensation does not exceed the net costs of the public service mission, taking also into account other direct or indirect revenues derived from the public service mission". This conclusion is supported by the fact that, as the Commission had already observed in its decision, the EUR 150 million funding notified by France was significantly less than the costs of the public service broadcasting undertaken by France Télévisions, estimated at EUR 300 millions. According to EU law, a State measure for financing a public service may constitute State aid within the meaning of the Treaty, but nevertheless be compatible with the common market, if it meets the conditions laid down in the Treaty. On the basis of this reasoning,

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the Court decided to dismiss the action against the Commission.

Joined cases T 568/08 et T 573/08, Métropole television and Télévision française 1 v. Commission, 1 July 2010

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