Court of Justice of the European Union: Netherlands and Nederlandse Omroep Stichting v. Commission

IRIS 2011-2:1/2

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On 16 December 2010 the General Court of the European Union handed down a decision in an action for annulment brought by the Netherlands and the Nederlandse Omroep Stichting (Dutch Broadcasting Foundation - NOS), a public service broadcaster, regarding state aid for the latter.

The NOS has a double role in Dutch public service broadcasting . Besides its duty as a public service broadcaster, its management board (operating under the name of Publieke Omroep - PO) also has the responsibility for coordinating the entire public service broadcasting system. In both of these two functions the NOS's main source of funding are annual State payments. Since 1994, it has also received ad hoc payments.

After receiving complaints by several Dutch commercial broadcasters, the Commission initiated an investigation regarding the funding of public service broadcasters in the Netherlands. It concluded in Decision 2008/136/EC that several ad hoc payments made by the Netherlands to the NOS constituted State aid. The Commission in addition considered these payments to be new aid, of which the Commission should have been notified. The Commission found that ad hoc State aid granted to the NOS in its capacity as the PO for its public service mission in the Netherlands public service broadcasting system was incompatible with the common market and had to be recovered from the NOS by the Netherlands. The amount decided upon for recovery was EUR 76.327 million, plus interest.

The NOS and the Netherlands argued before the Court that categorising the ad hoc funding as State aid and as new aid was incorrect. These arguments were mainly based on the assertion that the NOS should not be regarded as an undertaking. The General Court rejected these arguments on the basis that its role as a PO, despite providing it with a task of public interest, does in fact establish it as an undertaking subject to competition laws.

Joined cases T-231/06 and T-237/06, Netherlands and Nederlandse Omroep Stichting v. Commission, 16 December 2010

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