Court of Justice of the European Union: Case Mediaset SpA v. European Commission

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In its judgment of 28 July 2011 the Court of Justice of the European Union dismissed an appeal by Mediaset SpA, a digital terrestrial programme broadcaster, against a judgment of the General Court of 15 June 2010 in Case T-177/07. The judgment reaffirmed that subsidies granted to consumers in Italy for the purchase of certain digital terrestrial television decoders should be qualified as unlawful State aid, as the subsidy was favouring Mediaset's terrestrial programme over its rivals' satellite programmes.

According to Italian legislation, transmissions in analogue TV broadcasting mode should have ceased before December 2006. In 2004 and 2005 the Italian government granted a subsidy of EUR 150 to consumers purchasing a certain type of digital terrestrial television decoder (the T-DVB decoders). This subsidy was intended promote the transition from analogue to digital broadcasting. Since then, the deadline for the cessation of analogue broadcasting has been postponed twice, first until 2008 and subsequently until November 2012.

On 3 May 2005 Sky Italia filed a complaint with the European Commission against the subsidy measure, claiming that it constituted unlawful State aid. In 2007 the Commission adopted a decision concluding that the subsidy (as concerns 2004 and 2005) indeed constituted unlawful State aid within the meaning of Art. 107 TFEU (ex Article 87(1) TEC). The Commission found that none of the derogations provided for in Art. 107(3) TFEU were applicable to the subsidy measure at issue, as the measure was not technologically neutral, since it only applied to terrestrial broadcasters and to cable pay-TV operators, but not to digital satellite broadcasters. Furthermore, the measure was found not to be proportionate to the pursuit of the objective of the transition of analogue to digital television broadcasting and would amount to a distortion of competition. The Commission declared the subsidy measure to be incompatible with the common market and unlawful State aid.

Mediaset brought an action before the General Court in May 2007, seeking the annulment of the Commission's decision. However, the General Court rejected the Mediaset's pleas, agreeing with the European Commission that the subsidy granted cannot be considered to be technologically neutral and that therefore the aid granted was selective and conferred an economic advantage. The General Court also stated that there was no breach of the principle of legal certainty, as

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no provision requires the Commission to fix the exact amount of the aid to be recovered. It is up to the national court to rule on the amount of State aid that the Commission had ordered to be recovered, if necessary after referring a question to the Court of Justice for a preliminary ruling.

Case C-430/10 P, Mediaset SpA v. European Commission, Judgment of the Court of Justice of the European Union (Third Chamber) of 28 July 2011

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