[FR] French State Ordered to Pay Back Television Services Tax Paid by TF1

IRIS 2012-4:1/24

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The French national press has just published a judgment delivered by the administrative court in July 2011 in a case in which the national channel TF1 was claiming the repayment of the tax on television services it had paid between June 2004 and April 2006 on the basis of Article 302 bis KB of the General Tax Code, according to which “there shall be instituted a tax payable by every operator of a television service received in France (…) which, in the course of the previous calendar year, has programmed one or more cinematographic works eligible for aid from the special allocation account (…) entitled ‘Financial support for the cinematographic and audiovisual industries’ …”. TF1 claimed that the aid to the audiovisual and cinematographic sector financed by this tax during this period was illegal because it had not been notified to the European Commission before being implemented, as required by Article 88 of the Treaty establishing the European Community (currently Article 108 of the Treaty on the Functioning of the European Union (TFEU)). In its judgment, the administrative court in Montreuil noted that the application in respect of most of the contested period was already out of time. However, it upheld the application in respect of the period from 1 December 2005 to 31 March 2006. In this respect, the court noted that, in accordance with Article 87(1) of the EC Treaty, except as waived in the Treaty, aid granted by the States that was likely to distort competition by favouring certain companies or certain productions was incompatible with the common market. The European Commission and the member states examine the aid schemes in existence in each State on a permanent basis. The Commission must be notified of plans to introduce such aid sufficiently in advance to allow it to present its observations (Article 88(3) of the EC Treaty, currently Article 108(3) of the TFEU). In the present case, however, the court noted that the proceeds of the tax at issue were intended to finance the national centre for cinematography and animated images (Centre National de la Cinématographie et de l’image animée - CNC), which was responsible for allocating aid to the cinematographic and television sectors. Thus the tax, which formed an integral part of the French aid scheme managed by the CNC, was likely to affect intra-Community trade, and consequently constituted State aid falling within the scope of application of Article 87(1) of the EC Treaty. As a result, the French State could not institute the tax at issue before the Commission had been notified and before the Commission had pronounced on its compatibility with the common market, which had not been the case for the period under consideration. The State will therefore have to pay back

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to the channel the amount corresponding to the period from 1 December 2005 to 31 March 2006. The judgment does not mention a specific figure, but the amount referred to in the press is EUR 30 million. The French State is thought to have entered an appeal against the judgment.

Tribunal administratif de Montreuil (1re ch.), 12 juillet 2011 - SA TF1

Administrative court of Montreuil (1st chamber), 12 July 2011 - TF1 S.A.

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