Court of Justice of the European Union: Legality of the “Telecoms Charge” Designed to Offset the Ending of Advertising on Public TV Channels Confirmed

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On 27 June 2013, the CJEU confirmed the legality of the “telecoms charge”, ruling that Directive 2002/20/EC (the so-called Authorisation Directive”) did not restrict member states’ powers to impose non-administrative charges for the provision of electronic communications services. In January 2010, the European Commission opened an infringement procedure against France concerning this charge, which amounts to 0.9% of turnover and was imposed on telecommunications operators by the Law of 5 March 2009 (Article 302 bis KH of the General Tax Code) in order to offset the ending of advertising on public TV channels between 8pm and 6am (see IRIS 2009-9/4). As there was no response from the French authorities, the Commission brought an action for failure to fulfil obligations, before the CJEU in March 2011.

The Commission held that the charge was contrary to Article 12 of Directive 2002/20/EC because it was an administrative charge levied on the basis of factors relating to the operator’s activities or turnover and not on the basis of the actual costs incurred as a result of the authorisation system. Moreover, the Commission went on, that contrary to the Directive’s requirements the charge was not intended to finance the activities of the national regulatory authority. France pointed out in its defence that Article 12 only applied to charges the trigger for which was linked to the authorisation procedure: since the charge at issue did not constitute such a trigger, it did not fall within the scope of that provision and could accordingly not be subject to its requirements. In its judgment, the Court pointed out, firstly, that the administrative charges covered by the Directive represented remuneration and that the only purpose of such charges was to cover the administrative costs incurred in the issue, management, control and enforcement of the general authorisation scheme in the field of electronic communications. Accordingly, a charge the trigger for which was linked to the general authorisation procedure for access to the electronic telecommunications services market constituted an administrative charge within the meaning of the Directive and could be imposed only in accordance with the requirements set out therein. However, the Court found that the trigger for the charge in question was linked neither to the general authorisation procedure for access to the electronic telecommunications services market nor to the grant of a right to use radio frequencies or numbers. Indeed, it went on, that the charge related to the

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operator’s activities, which consisted of providing electronic communications services to end users in France. In these circumstances, it held that the charge concerned did not constitute an administrative charge within the meaning of the Directive and accordingly did not fall within its scope. The Court therefore dismissed the Commission’s action.

Maintaining the charge, which avoids an annual revenue shortfall of nearly 250 million euros, should enable the government to approach the financing of France Télévisions with a lower degree of political urgency. In a joint statement, the Ministers for Culture and for the Economy, Finances and the Budget declared that “(t)he funding of public service broadcasting is therefore secure”.

CJUE (3e ch.), 27 juin 2013 (affaire C 485/11) - Commission européenne c. République française soutenue par Royaume d’Espagne et Hongrie

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30dbd81a7e7aef664e93a3fc8eefeefd5a81.e34KaxiLc3qMb40Rch0SaxuLbNb0?text=&docid=138863&pageIndex=0&doclang=fr&mode=req&dir=&occ=first&part=1&cid=248856

CJEU (3rd Chamber), 27 June 2013 (Case C 485/11) - European Commission v. France, supported by the Kingdom of Spain and by Hungary

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