General Court: Funding for France Télévisions Validated

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On 16 October 2013, the General Court of the European Union validated the funding mechanism for France Télévisions set up by 2009 legislation reforming the public-sector audiovisual scene to compensate for the abolition of advertising on the public-sector group's channels after 8 pm. The compensation took the form of an annual budget subsidy and two taxes, one on advertising spots, and the other on electronic communications. In a decision on 20 July 2010, the European Commission found that the State aid in the form of a budget subsidy for France Télévisions was compatible with the requirements of the internal market, in accordance with Article 106 (2) of the TFEU. The company TF1 contested the decision, and appealed to the General Court of the EU for its cancellation, raising three arguments in support of its appeal. Firstly, the applicant held that the Commission had wrongly interpreted the connection between the new taxes and the funding of France Télévisions. After closely-detailed examination, the Court found that the Commission had not been wrong in believing that no constraining connection could be established under French regulations between the new taxes and the aid granted to France Télévisions. In the absence of any such connection, the Commission was right to believe that the taxes were not an integral part of the aid and therefore did not constitute part of the mechanism. TF1 also held that, as a result of the new taxes, the funding mechanism would be contrary to Articles 49, 56 and 110 of the TFEU and to the rules of derived law. The Court rejected this argument also since, because the new taxes did not form part of the mechanism of the aid measure at issue, the Commission was not required to appreciate their compatibility with European Union law as part of its examination of the measure. As the Commission had emphasised in the disputed decision, its appreciation did not take into consideration the matter of the compatibility of the taxes, taken as separate measures, with European Union law. Indeed France is currently the subject of infringement proceedings regarding the compatibility of the tax on electronic communications with Article 12 of Directive 2002/20/EC on the authorisation of electronic communications networks and services. TF1's final argument in support of its appeal was that there was a risk of over-compensation in the mechanism for funding France Télévisions, but the Court, recalling the Commission's mention of the possibility of such a risk in the justification for its decision, felt that the Commission had expressed "clearly and comprehensibly" in its appreciation that there was no risk of over-compensation in the present case. TF1 also claimed that it was unable to contest the decision since it did not have at its disposal the documents on which the Commission had based its considerations, but the Court did not allow the request for these documents to be produced. The applicant also criticised the Commission’s analysis, which it claimed did not take account of France Télévisions’ economic efficiency in carrying out its public-service mission: compensation that was not strictly intended to remunerate the performance of public-service missions but rather to smooth over the effects of bad management would reinforce France Télévisions’ market position and thereby distort competition in a way that was contrary to the interests of the Union. The Court nevertheless recalled that the economic efficiency of an undertaking in carrying out its public-service mission could not be used as an argument to contest the Commission’s appreciation of the compatibility of State aid with the internal market. The Court found that the Commission had not committed any legal error in its decision, and rejected the appeal brought by TF1 in its entirety. This judgment comes just as the French Parliament has decided, by voting in legislation on the independence of the public-sector audiovisual scene, to maintain daytime advertising after 2015 (see IRIS 2013-10/23).

Arrêt du Tribunal de l'Union européenne (troisième chambre) du 16 octobre 2013, affaire T-275/11

http://curia.europa.eu/juris/document/document.jsf?text=&docid=143083&pageIndex=0&doclang=fr&mode=lst&dir=&occ=first&part=1&cid=96593

Judgment of the General Court of the European Union (third chamber) of 16 October 2013, case no. T-275/11