

Court of Justice of the European Union: Ruling on State Aid in the Case of the “Ciudad de la Luz” in Spain

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On 3 July 2014, the General Court of the Court of Justice of the European Union confirmed that the decision of the Government of the Spanish region of Valencia (“Comunitat Valenciana”) consisting of a series of investments with regards to the project named “Ciudad de la Luz” (City of the Light) is incompatible with EU law. This project includes the creation and exploitation of new cinema studios and a school of cinema near the city of Alicante. The Court validates the decision adopted in May of 2012 by the European Commission, which declared such measures as being a State aid contrary to article 108 of the Treaty on the Functioning of the European Union and therefore were incompatible with the internal market.

The Court considers that the Commission made a good assessment about the nature of the national investments under analysis through a proper application of the well-known criteria of the diligent investor. Both the Commission and the Court concludes that the national authorities did not sufficiently justify that a private investor would have reasonably decided to make the injection of capital under scrutiny.

The most interesting part of the decision refers to the applicability of the exception contained in article 107, paragraph 3 (d) of the Treaty. According to this provision, State aid aimed to promote culture and heritage conservation is deemed compatible with the internal market inasmuch as such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.

The Court confirms that the Spanish authorities were not able to justify that the activities of the City of the Light were of a cultural nature, against the opinion of the Commission, which found them to be purely commercial. In this sense, the Court finds it clear that the objective of the project - as clearly declared by the Spanish authorities - was to compete with big international cinema studios within an already existing highly competitive market. In addition to this, the Spanish authorities are neither able to mention or identify a market deficiency to be addressed by the project in question, particularly vis-à-vis the local Valencian audiovisual market, nor can they present any analysis to determine which is the most appropriate measure to be eventually implemented in such a case, according to the principles of necessity, proportionality and adequacy. Moreover, the Court also stresses the fact that the Spanish authorities have not been able to

prove that the movies - and other audiovisual products, including commercial ads-produced by the studios had been subjected to any pre-established cultural criteria or requisites, thus confirming the impossibility to apply the cultural exception.

Arrêt du Tribunal (septième chambre), Royaume d'Espagne, Ciudad de la Luz, SAU et Sociedad Proyectos Temáticos de la Comunidad Valenciana, SAU contre Commission européenne, Affaires jointes T-319/12 et T-321/12, 3 juillet 2014

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Judgment of the General Court (Seventh Chamber), Kingdom of Spain, Ciudad de la Luz, SAU and Sociedad Proyectos Temáticos de la Comunidad Valenciana, SAU v European Commission, Joined cases T-319/12 and T-321/12, 3 July 2014

