Court of Justice of the European Union: DTS v. European Commission

IRIS 2017-1:1/2

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 10 November 2016, the Court of Justice of the European Union (CJEU) delivered its judgment in DTS v. European Commission, on whether the financing of the Spanish public broadcaster RTVE is compatible with EU rules on state aid. At issue were amendments introduced under Law No 8/2009 on the funding of RTVE (Ley 8/2009 de financiación de la Corporación de Radio y Televisión Española), which provided that advertising, teleshopping, sponsorship and pay-per-view services would no longer be sources of funding for RTVE. Instead, the only commercial revenue that would be available would be income which RTVE derived from the provision of services to third parties and from sales of its own productions. In order to offset RTVE's loss of funding, Law No 8/2009 introduced a new tax of 1.5% on the revenues of pay-television operators established in Spain, and a new tax on the revenues of telecommunications services operators established in Spain. In addition, if the funding proved insufficient to cover the whole of RTVE's costs of fulfilling its public service mandate, the State would be required to make good the shortfall, "thus transforming RTVE's dual funding scheme into an almost entirely publicly funded scheme."

In 2010, the European Commission adopted a decision (2011/1/EU), declaring that the change to RTVE's funding under Law No 8/2009 was compatible with the internal market, and that the new system precluded any overcompensation of RTVE. In that context, the Commission considered that the fiscal measures at issue were not an integral part of the aid scheme instituted in favour of RTVE, and therefore, any incompatibility of those fiscal measures with EU law did not affect the assessment of the funding scheme's compatibility with the internal market.

A company operating a digital satellite pay-television service in Spain (DTS) asked the General Court to annul the Commission's decision. However, in 2014, the General Court dismissed the application. DTS appealed to the CJEU, which had now upheld the judgment of the General Court. First, the Court reiterated that in order for a tax to form an integral part of an aid, it must be "hypothecated" to the aid, "in the sense that the revenue from the levying of the tax must necessarily be allocated to the financing of the aid and have a direct impact on the amount of the aid." In this regard, the Court recalled that the amount of aid is determined on the basis of the net costs of fulfilling the public service mandate, the revenue from the fiscal measures therefore having no direct impact on the amount or the

© European Audiovisual Observatory (Council of Europe) 2026

grant of the aid to RTVE. Thus, the Court held there was no “hypothecation between the fiscal measures and the aid”, because the amount of the aid is not directly dependent on revenue from the fiscal measures at issue.

Moreover, the Court rejected DTS’s argument that “the obligation to pay that tax causes DTS an additional competitive disadvantage on the markets on which it operates in competition with RTVE, since the latter is not liable to pay such a tax.” The Court held that the question of whether a tax is an integral part of an aid financed by a tax does not depend on the existence of a competitive relationship between the person liable to pay the tax and the beneficiary of the aid, but only on whether that tax is hypothecated to the aid in question. Finally, the Court stated that “in principle, taxes are not subject to the rules on State aid”, and accepting DTS’s argument would mean “any tax levied at sectoral level and imposed on undertakings in competition with the beneficiary of the aid financed by the tax falls within the rules on State aid.”

Judgment of the Court (First Chamber) in Case C-449/14 P DTS Distribuidora de Televisión Digital SA v. European Commission, 10 November 2016

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5373843393c3b4958a4c183b690d3e859.e34KaxiLc3qMb40Rch0SaxyKb3v0?text=&docid=185254&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=454912

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026