

Pleas in law and main arguments

The action is brought against the decision of the Commission of 19 June 2013, on State aid SA.28599 (C 23/2010) (ex NN 36/010, ex CP 163/2009) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha). That decision found that that aid was partly incompatible with the internal market and therefore ordered that it be recovered.

In support of the action, the applicant relies on five 11 pleas in law.

1. First plea: infringement of Article 107(1) TFEU, in the absence, in the present case, of any economic advantage granted to an entity engaged in an economic activity, of selectivity of that measure and of distortion of competition.
2. Second plea: infringement of Article 106(2) TFEU, and Article 107(3)(c) TFEU, given that it has not been established that the principle of technological neutrality was breached.
3. Third plea: infringement of the procedure in State aid cases, having regard, in the present case, to its excessive duration, to the failure to take into account evidence that was presented, as well as lack of consistency and objectivity during the appraisal.
4. The fourth plea, in the alternative: infringement of the principles of legal certainty, equality, proportionality and subsidiarity, and absence of the obligation to recover the resulting aid, in so far as Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1) waives that recovery requirement where the general principles of European Union law have been disregarded.
5. Fifth plea, likewise in the alternative: breach of the right to information, enshrined in the Charter of Fundamental Rights of the European Union, and of the lack of a requirement to recover the resulting aid.

Action brought on 30 August 2013 — Comunidad Autónoma del País Vasco and Itelazpi v Commission

(Case T-462/13)

(2013/C 304/42)

Language of the case: Spanish

Parties

Applicants: Comunidad Autónoma del País Vasco (Spain) and Itelazpi SA (Bizkaia, Spain) (represented by: J. Buendía Sierra, A. Lamadrid de Pablo, M. Muñoz de Juan and N. Ruiz García, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare admissible and well-founded the grounds of annulment relied on in support of the present action;
- annul the contested decision, in particular Article 1, in so far as it finds that there is a State aid incompatible with the internal market;
- consequently, annul the recovery orders provided for in Articles 3 and 4 of the decision; and
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The decision contested in the present case is the same as that at issue in Case T-461/13, *Spain v Commission*.

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging an error of law in classifying the process of digitalisation as State aid.
 - The applicants claim, in that regard, that the Commission carried out an incorrect analysis of Article 171(1) TFEU, having regard in particular to the case-law in *Altmark* concerning Services of General Economic Interests (SGEI), and that it was therefore wrong to conclude that there was State aid in the present case.
 - They add, in that context, that the measures examined in the contested decision were intended solely to ensure transmission of the digital television signal in the so-called 'Zone II' area (part of the territory that is not served by commercial operators and in which the population, in the absence of intervention by public authorities, would be deprived of access to television).
 - Moreover, the applicants observe that the principle of 'technological neutrality' may not lead to depriving the Member States of the discretion conferred on them by the Treaties to organise the provision of SGEIs.
 - In any event, the national authorities have favoured terrestrial technology over satellite technology in Zone II because that option was clearly more logical, economical and effective, taking into account the pre-existing analogue terrestrial network, funded by public funds, which already covered Zone II.

2. Second plea in law, alleging an error of law when assessing the compatibility of the aid

— In the alternative, should it be found that there is a State aid, the applicants argue that that aid should be considered compatible with the internal market in accordance with Articles 106(2) and Article 107(3)(c) TFEU.

3. Third plea in law, alleging an error on the part of the Commission when assessing the existing aid.

— In that regard, the applicants argue, also in the alternative, that in any event, the aid granted in the present case should be regarded as an existing aid. Given that a public television network already existed, it was in fact a simple modification and updating of that network, without any change in its function.

Action brought on 30 August 2013 — Comunidad Autónoma de Galicia v Commission

(Case T-463/13)

(2013/C 304/43)

Language of the case: Spanish

Parties

Applicant: Comunidad Autónoma de Galicia (Santiago de Compostela, Spain) (represented by: M. Lorenzo Outón, P. Egerique Mosquera, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision by holding that the measures implemented in the Comunidad Autónoma de Galicia (Autonomous Community of Galicia) did not constitute unlawful State aid;

— in the alternative, in the event that the first head of claim is dismissed, annul the contested decision in order to conclude that RETEGAL is not a direct or an indirect beneficiary of unlawful State aid; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The decision contested in the present case is the same as that in Case T-461/13 *Spain v Commission*, and Case T-462/13 *Comunidad Autónoma del País Vasco and Itelazpi v Commission*.

The pleas in law and main arguments are similar to those relied on in those cases.

The applicant claims, in particular, that:

1. The Commission erred in law in concluding that there was State aid within the meaning of Article 107(1) TFEU.

2. The Commission infringed Article 106(2) TFEU in considering that the measures at issue are incompatible with the internal market.

3. The Commission infringed Article 107(3)(c) TFEU, since it acknowledges, in the contested decision, that there is a structural deficiency in the public sector in question and that the public intervention at issue pursues an objective of public interest, but that it nevertheless describes the measure as State aid incompatible with the internal market on the ground that the principle of technological neutrality has been infringed.

4. The Commission committed an error of assessment in taking the view that unlawful State aid had been paid to RETEGAL, an instrument of the Autonomous Community of Galicia, in so far as that instrument limited itself to buying and installing equipment financed by the public funds in question, with a view to their subsequent use by the municipalities, so that those municipalities can provide the public broadcasting service in rural and remote areas and thus compensate for the market failure that existed in those areas.

Action brought on 30 August 2013 — Retegal v Commission

(Case T-464/13)

(2013/C 304/44)

Language of the case: Spanish

Parties

Applicant: Redes de Telecomunicación Galegas Retegal, SA (Retegal) (Santiago de Compostela, Spain) (represented by: F. García Martínez y B. Pérez Conde, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision by holding that the measures implemented in the Comunidad Autónoma de Galicia (Autonomous Community of Galicia) did not constitute unlawful State aid;