

2. Second plea in law, alleging manifest error of assessment. The applicant considers that the decision is vitiated by an error of assessment as regards the effects of the aid measure on competition and on trade between Member States since the reasons which lead the Commission to assert that the effect of the aid measure in question on trade between Member States is purely hypothetical or presumed and that, if such an effect actually exists, it is only marginal, are not robust and in practice guarantee the proliferation of similar ad hoc aid measures, not only in the Tomar region but throughout the country, with the inherent consequences in terms of deterring national investment and investment from other Member States.
3. Third plea in law, alleging infringement of Article 107(1) TFEU, in so far as the Commission (i) failed to examine with the necessary care and objectivity whether the aid in question was liable to affect trade between Member States; (ii) did not take account of the fact that there is no threshold or percentage below which it can be considered *a priori* that trade between Member States is not affected; (iii) did not take account of the fact that the effect on trade between Member States does not depend on the local or regional nature of the services provided or the importance of the area of activity concerned; (iv) did not sufficiently emphasise that where State aid strengthens an undertaking's position vis-à-vis other competing undertakings, it should be considered that the undertakings competing with the recipient undertaking will enjoy less favourable conditions for financing new investments in the State concerned.

Action brought on 22 November 2016 — Netflix International and Netflix v Commission

(Case T-818/16)

(2017/C 030/59)

Language of the case: English

Parties

Applicants: Netflix International BV (Amsterdam, Netherlands) and Netflix, Inc. (Los Gatos, California, United States) (represented by: C. Alberdingk Thijm, S. van Schaik and S. van Velze, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the Commission's decision of 1 September 2016 declaring an amendment to the German act on measures for the promotion of German cinema in its seventh version compatible with the internal market ⁽¹⁾; and
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of the Audiovisual Media Services Directive ⁽²⁾.
 - The Commission violated Article 13 (1) AVMSD in deciding that the German measure is compatible with this article interpreted in light of the proposed amendment.
 - The Commission violated Articles 2 (1), 2 (2) and 3 AVMSD in deciding that the German measure does not impinge the Country of Origin Principle.
2. Second plea in law, alleging a violation of Article 110 TFEU.
 - The Commission violated Article 110 TFEU in finding that the German measure is not discriminatory to on-demand audiovisual media service providers ('VOD providers') established outside Germany but targeting German audiences.

3. Third plea in law, alleging a violation of Article 56 TFEU.
 - The Commission violated Article 56 TFEU in failing to assess whether the German measure infringes the freedom to provide services, which it does.
4. Fourth plea in law, alleging a violation of Article 49 TFEU.
 - The Commission violated Article 49 TFEU in failing to assess whether the German measure infringes the freedom of establishment, which it does.
5. Fifth plea in law, alleging a violation of Article 107 TFEU.
 - The Commission violated Article 107 TFEU in finding that the German measure is a form of State Aid that can be justified by a cultural aim and is compatible with the Internal Market.
6. Sixth plea in law, alleging a violation of essential procedural requirements.
 - The Commission violated essential procedural requirements in failing to meet the standards of motivation as laid down in Article 296(2) TFEU and of the right to good administration as set out in Article 41 of the European Union Charter of Fundamental Rights ('EUCFR').

⁽¹⁾ Commission Decision (EU) 2016/2042 of 1 September 2016 on the aid scheme SA.38418 — 2014/C (ex 2014/N) which Germany is planning to implement for the funding of film production and distribution (notified under document C(2016) 5551) (OJ 2016, L 314, p. 63).

⁽²⁾ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ('AVMSD') (OJ 2010, L 95, p. 1)

Action brought on 25 November 2016 — Celio International v Commission

(Case T-832/16)

(2017/C 030/60)

Language of the case: English

Parties

Applicant: Celio International SA (Brussels, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission's decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium ⁽¹⁾;
- in the alternative, annul Articles 2-4 of the Decision;
- in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an 'excess profit ruling' as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary's tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration; and
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the decision alleges the existence of an aid scheme.