ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

19 May 2008*

In Case T-144/04,

Télévision française 1 SA (TF1), established in Nanterre (France), represented by J.-P. Hordies and C. Smits, avocats,

applicant,

v

Commission of the European Communities, represented by J. Buendía Sierra, M. Niejhar and C. Giolito, acting as Agents,

defendant,

supported by

French Republic, represented by G. de Bergues, acting as Agent,

intervener,

* Language of the case: French.

APPLICATION for annulment of Decision 2004/838/EC of the Commission of 10 December 2003 on State aid implemented by France for France 2 and France 3 (OJ 2004 L 361, p. 21),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of M. Vilaras (Rapporteur), President, M. Prek and V. Ciucă, Judges,

Registrar: E. Coulon,

makes the following

Order

Factual background to the dispute

1 On 10 March 1993, the applicant, Télévision Française 1 SA ('TF1'), owner of the private television channel TF1, submitted a complaint to the Commission concerning the methods used to finance and operate France 2 and France 3, two French public television channels. The complaint alleged infringements of Article 81 EC, Article 86(1) EC, and Article 87 EC.

2 On 2 February 1996, the applicant brought an action against the Commission for failure to act.

3 In its judgment in Case T-17/96 *TF1* v *Commission* [1999] ECR II-1757, the Court of First Instance declared that the Commission had failed to fulfil its obligations by not adopting a decision regarding the part of the complaint lodged by TF1 concerning state aid.

4 On 27 September 1999, the Commission initiated the formal review procedure laid down in Article 88(2) of the Treaty in respect of the investment grants received by France 2 and France 3 and the capital injections received by France 2 between 1988 and 1994.

5 In Commission Decision 2004/838/EC of 10 December 2003 on State aid implemented by France for France 2 and France 3 (OJ 2004 L 361, p. 21, 'the contested decision'), the Commission decided that '[t]he investment grants paid by France to France 2 and France 3 and the capital injections granted by France to France 2 between 1988 and 1994 constituted State aid compatible with the common market within the meaning of Article 86(2) of the Treaty' (Article 1 of the contested decision). The contested decision does not deal with the television licence fee introduced by Law No 49-1032 of 30 July 1949, which was excluded from the scope of the decision to initiate the formal review procedure (recital 25 of the contested decision).

6 By letter dated 3 February 2004, the Commission sent a copy of the contested decision to the applicant, which was received on 4 February 2004.

Procedure and forms of order sought

7 By application lodged at the Registry of the Court of First Instance by fax on 13 April 2004, the original received at the Registry on 15 April, the applicant brought the present action.

8 On 9 July 2004, the French Republic sought leave to intervene in the current proceedings in support of the claims of the Commission. That request was granted by Order of the President of the Fourth Chamber of the Court of First Instance on 6 September 2004.

9 Following changes made to the composition of the Chambers of the Court of First Instance with effect from 13 September 2004, the Judge-Rapporteur was assigned, as President, to the Fifth Chamber, to which this case was accordingly allocated.

10 The applicant claims that the Court of First Instance should:

— declare the action to be admissible;

— annul the contested decision;

— order the Commission to pay the costs, and make an appropriate order for costs with respect to the French Republic.

11 The Commission, supported by the French Republic, with respect to the admissibility of the action and the question of costs, contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss the action as being clearly without foundation;

— order the applicant to pay the costs.

12 In its reply, the applicant requested the Court to order the Commission to produce a letter that it allegedly sent to the French authorities, and in which it requested them to provide submissions and proposals with a view to amending the legal status of the fee.

Law

13 Under Article 113 of the Rules of Procedure of the Court of First Instance, the Court may at any time, of its own motion, after hearing the parties, in accordance with Article 114(3) and (4), decide whether there exists any absolute bar to proceeding with an action, including bars in consequence of non-compliance with the time limit for bringing the action and breach of Article 44(1) of the Rules of Procedure.

14 In addition, under Article 111 of the Rules of Procedure, where it is clear that the Court of First Instance has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, by reasoned order, without taking further steps in the proceedings, give a decision on the action.

15 In the present case, the Court considers that it has sufficient information, in the form of the documents in the case and the explanations provided by the parties, in order to rule on the present action without initiating the oral procedure or ordering the measure of organisation of procedure sought by the applicant.

Admissibility of the application concerning the time-limit for commencing proceedings

16 The applicant and the Commission agree that the time limit for bringing the action started to run from the moment when the Commission notified the applicant of the contested decision, on 4 February 2004, and that the time limit expired at midnight on 14 April 2004.

17 However, the Commission, noting that the action was lodged by fax on 13 April 2004, followed by the lodging of the original of the request on 15 April 2004, asks the Court to determine whether the mandatory provisions under Article 43(6) of the Rules of Procedure have been complied with.

18 Under the fifth paragraph of Article 230 EC, an action for annulment must be brought within two months of the publication or notification of the contested measure or, in the absence thereof, of the date on which it came to the applicant's knowledge, as the case may be.

19 It is clear from the wording of this provision that the criterion of the date on which the applicant became aware of the measure as the start of the period for bringing an action is subsidiary to the criteria of publication or notification of the measure (see the Order of the Court of First Instance T-426/04 *Tramarin* v *Commission* ECR II-4765, paragraph 48 and case-law cited).

20 In addition, with regard to measures which, in accordance with the established practice of the institution concerned, are published in the *Official Journal of the European Union*, although such publication is not a condition of their applicability, the Court of Justice and the Court of First Instance have recognised that the criterion of the day on which a measure came to the knowledge of an applicant was not applicable and that it was the date of publication which marked the starting point of the period prescribed for instituting proceedings. In those circumstances, the third parties involved can legitimately expect the decision in question to be published (see Order of the Court of First Instance *Tramarin* v *Commission*, paragraph 19 above, paragraph 49, and the cited case-law).

21 In the present case, in implementation of the obligation imposed on it under Article 26(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1), the Commission published the contested decision in the *Official Journal of the European Union* on 8 December 2004.

22 It is, therefore, in accordance with the provisions of Article 102(1) of the Rules of Procedure, 'from the end of the 14th day after publication thereof in the *Official Journal of the European Union*,' that is to say from midnight on 22 December 2004, and not, as both the applicant and the Commission wrongly consider, from the date the contested decision was communicated to the applicant, that the time limit for bringing the action began to run. That being the case, and in accordance with the combined provisions of the fifth paragraph of Article 230 EC, and Articles 101 and 102(2) of the Rules of Procedure, the time limit for bringing the action expired on Friday 4 March 2005 at midnight.

23 In the present case, the applicant initiated the action on 13 April 2004, that is to say, several months before even the date from which the time limit for bringing the action began to run. The present action is, therefore, admissible insofar as it was initiated within the requisite time limit

Admissibility of the application with respect to Article 44(1) of the Rules of Procedure and its clearly unfounded nature

24 Without raising an objection of inadmissibility under Article 114 of the Rules of Procedure, the Commission, supported by the French Republic, contends that the action is inadmissible in its entirety as being in breach of the conditions in Article 44(1) of the Rules of Procedure. In the alternative, the Commission contends that those of the applicant's claims which it seeks to respond to on their merits are clearly without foundation.

25 The applicant submits that its action is admissible. As with the requirement that reasons for acts of the institutions be stated, the requirement to provide details of an action is eased where the act is within a known legal context. As it is, the application is only the foreseeable consequence of a difference of opinion between the applicant and the Commission during the administrative procedure. The application could, thus, be drafted summarily, since the Commission could not fail to be aware of the pleas contained therein, even impliedly, and since it has, in any event, submitted a defence on the merits of the case. The Applicant argues that the Commission is inferring a lack of pleas from its alleged misunderstanding of the pleas relied on. By so doing, it construes the scope of the test of admissibility of an action too extensively.

26 The Court points out at the outset that the inadmissibility claimed in the present case does not relate to an inaccuracy in the action with regard to the identification of the contested decision, or to the expression of the forms of order sought by the action. On the contrary, it is not disputed that the contested decision is clearly identified in the application and that the latter expressly seeks to have this decision annulled and that the Commission be ordered to pay the costs.

27 Inadmissibility is claimed against each of the heads of claim in the action, since none of the heads of claim contained or seemingly contained in the application satisfy the requirements of clarity and precision contained in Article 44(1) of the Rules of Procedure. It is, therefore, with respect to each of the heads of claim, where necessary in consolidated pleas, that the question of admissibility needs to be considered.

28 In this respect, it should be remembered that, under Article 44(1)(c) of the Rules of Procedure, an application must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on.

29 According to consistent case law, this indication must be sufficiently clear and precise so as to allow the defendant to prepare its defence and the Court to decide the case, if necessary, without other supporting information. In order to ensure legal certainty and sound administration of justice, it is necessary, for an action to be admissible, that the basic matters of fact and law relied on appear coherently and intelligibly in the text of the application itself. Whilst specific points in this text can be supported and supplemented by references to specific passages in the documents attached, a general reference to other documents, even those annexed to the application, cannot compensate for the lack of essential elements in the application. It is not for the Court of First Instance to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (see the order of the Court of First Instance in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 21; the judgments of the Court of First Instance *Limburgse Vinyl Maatschappij and Others* v *Commission*, cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 [1999] ECR II-931, paragraph 39, together with the case law cited, and Case T-209/01 *Honeywell* v *Commission* [2005] ECR II-5527, paragraphs 55 to 57, together with the case law cited).

30 It is apparent from the above observations that, in reviewing the compliance of the application with the requirements of Article 44(1) of the Rules of Procedure, the contents of the reply are, by definition, not relevant. In particular, the admissibility, permitted by case law (see, in particular, the judgments of the Court of First Instance in Cases T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 125 and T-14/96 *BAI* v *Commission* [1999] ECR II-139, paragraph 66) of pleas and arguments put forward in the reply as amplifications of pleas in the application cannot be raised with the aim of compensating for a failure, arising during the initiation of the action, to comply with the requirements of Article 44(1) of the Rules of Procedure, without rendering the latter provision devoid of purpose.

31 Furthermore, with respect to the applicant's reference to the requirement for a statement of reasons for Community measures, it should be pointed out that whilst, in the case of a measure adopted by an institution, the requirement to state reasons

in the measure may indeed be eased where the addressee is familiar with the background to its adoption (see, in this regard, the judgments of the Court 125/80 *Arning* v *Commission* [1981] ECR 2539, paragraph 13, and C-116/88 and C-149/88 *Hecq* v *Commission* [1990] ECR I-599, paragraph 26; the judgment of the Court of First Instance T-123/95 *B* v *Parliament* [1997] ECR I-A-245 and II-697, paragraph 51), this possibility of easing the requirement to state reasons may not be applied by analogy to the requirements of sufficient clarity and precision of applications lodged with the Community judicature. These requirements are necessary, in particular, for the benefit of the Community judicature, which has no prior knowledge of the case brought before it. Furthermore, in the interests of ensuring legal certainty with respect to defining the terms of the legal argument, and the sound administration of justice, presumed familiarity with the file on the part of the institution which drafted the measure cannot be taken into consideration as a ground for waiving the requirements of Article 44(1) of the Rules of Procedure.

32 It is in the light of the above considerations that the pleas in the application should be examined.

33 The application formally includes two pleas for annulment. The first plea is based on the incorrect statement of reasons in the contested decision and on a breach of Community law; in particular, of Article 86(2) EC and the provisions on state aids. The second plea is based on a breach of the provisions of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ 1980 L 195, p. 35), as amended by Commission Directive 93/84/EEC of 30 September 1993 (OJ 1993 L 254, p. 16), and of the Protocol on the system of public broadcasting in the Member States (OJ 1997 C 340, p. 109, 'Amsterdam Protocol'), annexed to the EC Treaty by the Treaty of Amsterdam.

The first plea

34 This plea concerns paragraphs 32 to 41 of the application. Paragraphs 32 to 37 of the application, in any event, merely describe the Commission's analysis, in which the Commission was of the opinion that the roles entrusted to France 2 and France

3 constituted services of general economic interest ('SGEI') within the meaning of Article 86(2) EC.

35 The description of the first head of claim put forward within the context of the present plea begins at paragraph 38 of the application. In the first line of this paragraph, the applicant 'contends…that the Commission's analysis fails to take several essential factors into consideration, which should have led to a completely different conclusion.

36 The Court observes that, in spite of this initial opinion, which seems to indicate that the applicant disputes that the roles of France 2 and France 3 could, in themselves, constitute SGEI, there is nothing after paragraph 38 of the application to that effect. The applicant in no way substantiates that possible argument, and completely fails to refer to the opinions expressed by the Commission with respect to the roles of France 2 and France 3 in recitals 69 to 75 of the contested decision.

37 After paragraph 38 of the application, it seems that the applicant's complaint against the Commission is really that it did not take into consideration an alleged similarity 'in all material respects', between: (1) the roles entrusted to France 2 and France 3 in their contract documents; and (2) the obligations imposed on the applicant in its own contract documents. The applicant appears to be arguing that this alleged similarity 'in all material respects' should have led the Commission to conclude that the roles of France 2 and France 3 did not constitute SGEI.

38 Nevertheless, the applicant puts forward this head of claim without even any vague mention of the roles and obligations contained in the contract documents it relies on. In particular, it in no way specifies whether the alleged nature that it complains of concerns types of programmes broadcast, possible qualitative requirements concerning programming in a general sense or other types of obligation.

39 The Court, consequently, considers that the applicant's head of claim, as submitted in the application, lacks the basic clarity and precision required by Article 44(1) of the

Rules of Procedure in order to ensure legal certainty and the sound administration of justice.

40 The Court observes, in any event, that, although this head of claim could be regarded as admissible under Article 44(1) of the Rules of Procedure, it should be dismissed as clearly unfounded, as no evidence has been produced in support of it.

41 In the annex to the application, the applicant submitted neither the contract documents of France 2 and France 3, nor even its own contract documents. As for the submission, at the reply stage, of a comparative analysis of these contract documents carried out by the applicant, it should be observed that such a submission, the lateness of which has in no way been validly justified, is inadmissible under Article 48(1) of the Rules of Procedure. Moreover, and for the sake of completeness, this comparative analysis proved, from the outset, to be irrelevant, since it relates to a period after the month of July 1996, whereas the period of inquiry covered by the contested decision is from 1988 to 1994.

42 It is apparent from the above considerations that the applicant's first head of claim, concerning the classification as SGEI of the roles entrusted to France 2 and France 3, should be dismissed as inadmissible under Article 44(1) of the Rules of Procedure and, in any event, as being clearly without foundation.

43 In the first subparagraph of paragraph 39, the applicant declares, in what is presented as a second head of claim, that it disputes the analysis and the claims of the Commission with respect to the assessment, in accordance with the principle of proportionality, of the financial compensation granted by the French Republic to its public channels.

44 However, nothing in the following sub-paragraphs of that paragraph 39 makes it clear precisely what the applicant disputes in the analysis and the Commission's claims.

45 The second, sixth and seventh sub-paragraphs of that paragraph describe the applicable rules or the Commission's approach, and do not, as a result, contain any precise reasoning. The third sub-paragraph, which is moreover unclear in its wording, seems to reiterate claims presented in the context of the first head of claim, which were ruled inadmissible or unfounded.

46 Regarding the fourth and fifth subparagraphs of that paragraph, the applicant is essentially arguing only that the figures presented in recital 86 (table 4) of the contested decision are both brief and incorrect. The fact remains, however, that it is this criticism which lacks any explanation.

47 In the eighth and final subparagraph of paragraph 39, the applicant, moreover, recognises a lack in the application of any arguments serving to clarify its complaint, as it states that it 'will shortly set out in writing the economic analysis necessary so as to rebut the Commission's approach, which seems, in its opinion, to be highly questionable.'

48 This second head of claim must therefore be dismissed as inadmissible under Article 44(1) of the Rules of Procedure.

49 In paragraph 40 of the application, which appears to constitute a third head of claim, the applicant states that 'the Commission … took the view that the prices charged by France 2 and France 3 for advertising slots between 1990 and 1994 did not appear to be significantly lower than those charged by TF1 and M6, their private competitors.' It goes on to say that 'the Commission based this conclusion on a sole criterion: the average cost of GRP (defined in recital 93 … of the contested decision).' The applicant then declares that it 'disputes this analysis and the resulting conclusion.'

50 Nevertheless, after paragraph 40, the applicant, despite this declaration, in no way disputes the Commission's detailed findings in recitals 90 to 100 of the contested decision. In particular, it in no way makes clear why the Commission's use, in its

analysis, of data expressed in terms of GRP (Gross Rating Point (indicator of media intensity)) should be regarded as inadequate.

51 It merely states that 'it questions the lack of analysis concerning the simple fact that the public channels, made up of two networks, France 2 and France 3, offer a broader range than that offered by the applicant, which could explain the differences in price complained of, beside the fact that the public channels, being extensively supported by the contested state aids, are not subjected to the same profit constraints as are the private channels.'

52 The Court notes that the applicant, being, moreover, unclear about the effects of the 'broader range' it refers to, does not supply any explanation of how such an expression should be understood. Given the obvious fact that any given television viewer only watches one channel at a time, the expression 'broader range' used by the applicant and, consequently, the possible reasoning that could lie behind it are, in the absence of any explanation in the application, particularly vague. The attempt to rephrase this expression, in order to try and understand it, whereby it refers to the SGEI potential of French broadcasting to increase the range of its programmes by virtue of its organisation into two channels, which the private channels would not be able to do, does not provide any clarification due again to the fact that a given television viewer only watches one programme at a time. In any event, the reference by the applicant to the ambiguous expression 'broader range' is not combined with any reasoning calling into doubt, in a precise and detailed way, the concrete findings of the Commission in the contested decision. In these circumstances, the third head of claim, set out in paragraph 40 of the application, is also inadmissible.

53 It follows from all of the foregoing that the first ground for annulment is inadmissible in each of its three heads of claim and, in any event, with regard to the first of them, clearly unfounded.

The second plea

54 In paragraph 42 of the application, the applicant contends that 'the Commission wrongly applied Directive (80/723 as amended), particularly by deciding that it was not applicable to public broadcasting prior to the year 2000 (recital 81 of the contested decision)'. The applicant adds that 'this same reasoning leads to an incorrect application of the (Amsterdam Protocol)'.

55 The Commission replies that it does not know which recital of the contested decision contains this claim, which is attributed to it by the applicant. Regardless of its inadmissibility, this plea would, in any event, clearly lack any foundation in law.

56 The Court notes, once again, that the applicant expresses its position in a way which is vague and incomplete. It does not in any way clarify how the allegedly incorrect application of Directive 80/723, as amended, should cause the contested decision to be annulled. The reference to the Amsterdam Protocol likewise lacks any explanation.

57 This being the case, and as in the context of the first plea for annulment, the applicant reduces both the defendant and the Court to speculating about the reasoning and precise observations, both in fact and law, that could lie behind its claims. It is precisely such a situation, creating legal uncertainty and anathema to a sound administration of justice, that Article 44(1) of the Rules of Procedure is designed to avoid.

58 It follows that the present plea must be dismissed as inadmissible in the light of this provision.

59 In any event, the claim that Directive 80/723, as amended, has been incorrectly applied is clearly unfounded. In recital 81 of the contested decision, the Commission in no way suggested that this directive was not effective before the year 2000. It explained that the requirement to maintain separate accounts created by this directive did not apply to the television sector during the period covered by the contested decision.

60 That claim of the Commission is correct. The requirement to maintain separate accounts was included in the amended Directive 80/723 only by Commission Directive 2000/52/EC of 26 July 2000 (OJ 2000 L 193, p. 75), and it did not therefore exist during the period covered by the contested decision.

61 It follows that, irrespective even of its inadmissibility, the second plea, which is based on a false premise, clearly lacks any foundation in law.

62 It follows from all the foregoing considerations that the present application must be dismissed as inadmissible and, in any event, concerning the first head of claim of the first ground, and the second ground, as clearly lacking any foundation in law.

Costs

63 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Under Article 87(4), Member States which have intervened in the proceedings are to bear their own costs.

64 Since the applicant has been unsuccessful, it should be ordered to pay its own costs, as well as those of the Commission, in accordance with the plea by the latter. The French Republic must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. The action is dismissed.

2. Télévision française 1 SA (TF1) is ordered to pay its own costs as well as those of the Commission.

3. The French Republic is ordered to bear its own costs.

Luxembourg, 19 May 2008.

E. Coulon — M. Vilaras

Registrar — President