



## Reports of Cases

**Case T-461/13**

**Kingdom of Spain**  
**v**  
**European Commission**

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less urbanised areas in Spain — Decision declaring the aid compatible in part and incompatible in part with the internal market — Concept of an ‘undertaking’ — Economic activity — Advantage — Service of general economic interest — Distortion of competition — Article 107(3)(c) TFEU — Duty of diligence — Reasonable time — Legal certainty — Equal treatment — Proportionality — Subsidiarity — Right to receive information)

Summary — Judgment of the General Court (Fifth Chamber), 26 November 2015

- 1. Competition — Union rules — Addressees — Undertakings — Concept — Exercise of an economic activity — Deployment, maintenance and operation of the terrestrial digital television network in remote and less urbanised areas — Existence of a market — No exercise of prerogatives of the public authorities — Inclusion*  
*(Art. 107(1) TFEU)*
- 2. State aid — Concept — Measures designed to compensate for the cost of public service missions undertaken by an undertaking — First condition set out in the Altmark judgment — Clearly defined public service obligations — No recipient undertaking actually entrusted with performance of public service obligations — Inclusion in the concept — Weakening of the market — Fact insufficient for a finding of the existence of a service of general economic interest*  
*(Art. 107(1) TFEU)*
- 3. State aid — Effect on trade between Member States — Adverse effect on competition — Criteria for assessment*  
*(Art. 107(1) TFEU)*
- 4. State aid — Adverse effect on competition — Satellite and terrestrial platforms for the provision of digital television services — Area falling within the competitive sector*  
*(Art. 107(1) TFEU)*
- 5. State aid — Prohibition — Exceptions — Discretion of the Commission — Judicial review — Limits*  
*(Art. 107(3) TFEU)*

6. *State aid — Examination by the Commission — Examination of an aid scheme as a whole — Lawfulness*  
*(Arts 107(3) TFEU and 108 TFEU)*
7. *Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision on State aid*  
*(Arts 107 TFEU and 296 TFEU)*
8. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based*  
*(Art. 263 TFEU; Rules of Procedure of the General Court, Art. 44(1)(c))*
9. *European Union law — General principles of law — Right to good administration — Diligent and impartial consideration of the case — Commission decision on State aid*
10. *State aid — Prohibition — Exceptions — Account taken of the situation existing at the time the measure adopted*  
*(Art. 107(3) TFEU)*
11. *State aid — Commission decision to open a formal investigation procedure in respect of a State measure — Provisional nature of the Commission's assessments*  
*(Art. 108(3) TFEU; Council Regulation No 659/1999, Art. 6(1))*
12. *State aid — Examination by the Commission — Opening of a formal examination procedure — Maximum period of two months — Inapplicable where aid not notified — Obligation to complete both the preliminary investigation and the formal investigation procedure within a reasonable time — Assessment of actual situation*  
*(Art. 108 TFEU; Council Regulation No 659/1999, Arts 4(5), 7(6), and 13(2))*
13. *State aid — Recovery of unlawful aid — No breach of the principle of legal certainty*
14. *State aid — Decision of the Commission finding aid incompatible with the internal market and ordering its recovery — Possibility of the Commission leaving to the national authorities the task of calculating the precise amount to be recovered — Duty of cooperation between the Commission and the Member State where difficulties encountered by the State — Scope*  
*(Art. 4(3) TEU; Arts 107 TFEU and 108 TFEU; Council Regulations No 994/98, Art. 2, and No 659/1999, Art. 14; Commission Regulation No 1998/2006)*
15. *State aid — Recovery of unlawful aid — Restoration of the prior situation — No breach of the principles of proportionality and equal treatment*  
*(Art. 108 TFEU)*
16. *State aid — Examination by the Commission — Exclusive competence — Review of compatibility of aid with the internal market — Judicial review — No breach of the principle of subsidiarity*  
*(Art. 5(3) TEU; Arts 107(3) TFEU and 108 TFEU)*

1. See the text of the decision.

(see paras 35-46)

2. In State aid matters, according to the first criterion in the *Altmark* judgment, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Whilst Member States have wide discretion to define what they regard as a service of general economic interest (SGEI), that power is not unlimited and cannot be exercised arbitrarily for the sole purpose of removing a particular sector from the application of the competition rules. In order to be classified as an SGEI, the service in question must be of a general economic interest exhibiting special characteristics by comparison with the general economic interest of other economic activities. In that regard, the scope of the General Court's review of the Commission's assessments necessarily takes account of the fact that a Member State's definition of a service as an SGEI can be questioned by the Commission only in the event of a manifest error. That review must nevertheless ensure respect for certain minimum criteria relating, inter alia, to the presence of an act of the public authority entrusting the operators in question with an SGEI mission, and to the universal and compulsory nature of that mission. As regards the performance of public service obligations, the mere fact that a service is designated in national law as being of general interest does not mean that any operator providing that service is entrusted with performing clearly defined public service obligations within the meaning of the judgment in *Altmark*. The classification of a service as an SGEI within the meaning of that judgment requires that responsibility for its management be entrusted to certain undertakings. In that regard, where public contracts are concluded between the public authorities and the operators concerned, whilst the mandate entrusting the public service mission may also encompass contractual acts, provided that they emanate from the public authority and are binding, a fortiori where such acts give effect to the obligations imposed by legislation, the mere fact that a service forms the subject-matter of a public contract does not mean that that service automatically assumes, without any specific explanation on the part of the authorities concerned, the status of an SGEI within the meaning of the judgment in *Altmark*. Finally, the existence of a weakening in the market is insufficient for a finding that an SGEI exists.

(see paras 53, 61-63, 67, 71, 78)

3. See the text of the decision.

(see paras 88, 89)

4. See the text of the decision.

(see para. 92)

5. See the text of the decision.

(see paras 98-100)

6. In the case of an aid scheme, the Commission may limit itself to studying the characteristics of the scheme in question in order to determine, in the grounds of its decision, whether the scheme is appropriate for achieving one of the objectives referred to in Article 107(3) TFEU. Thus, in a decision which concerns such a scheme, the Commission is not required to carry out an analysis of the aid granted in individual cases under the scheme. It is only at the stage of recovery of the aid that it is necessary to look at the individual situation of each undertaking concerned. Where the Commission rules in a general and abstract way on a scheme of State aid, which it declares incompatible with the internal market, and orders recovery of the amounts received under that scheme, it is for the Member State to verify the individual situation of each undertaking concerned.

by such a recovery operation. It follows that, where the Commission examines an aid scheme, it may confine itself to analysing a sample of cases in which that scheme is applied, without being required to examine all cases of its application.

(see paras 104, 105, 134, 163)

7. See the text of the decision.

(see para. 110)

8. See the text of the decision.

(see para. 115)

9. In State aid matters, the principle of sound administration requires a diligent and impartial investigation by the Commission of the measure at issue. In that regard, a possible delay in sending documents cannot, of itself and without more, call into question the Commission's objectivity and impartiality.

(see paras 116, 144)

10. See the text of the decision.

(see paras 124, 127, 147, 148)

11. It follows from Article 6(1) of Regulation No 659/1999 laying down detailed rules for the application of Article [108 TFEU] that the analysis carried out by the Commission in the decision to initiate a formal investigation procedure into a measure likely to constitute State aid incompatible with the internal market is necessarily preliminary in nature. It follows that the Commission cannot be required to present a complete analysis of the aid in question in its notice of intention to initiate that procedure. Moreover, the stage for reviewing aid referred to in Article 108(2) TFEU is designed to enable the Commission to be fully informed of all the facts of the case. It follows that the fact that the decision to initiate the procedure does not refer to certain matters cannot allow the conclusion that the procedure carried out by the Commission was incoherent.

(see para. 132)

12. See the text of the decision.

(see paras 138-141)

13. See the text of the decision.

(see para. 158)

14. See the text of the decision.

(see paras 160, 162-164)

15. See the text of the decision.

(see paras 168-171, 175-179)

16. In State aid matters, assessment of the compatibility of aid with the internal market falls within the exclusive competence of the Commission, subject to review by the EU judicature, so that, where the Commission assesses the compatibility of aid, it does not breach the principle of subsidiarity. Pursuant to Article 5(3) TEU, that principle applies only in areas which do not fall within the exclusive competence of the European Union.

(see para. 182)