



Reports of Cases

Judgment of the General Court (Fifth Chamber) of 15 December 2016 — Spain v Commission

(Case T-808/14)

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

1. *Acts of the institutions — Amendment of a final decision on State aid — Conditions*
(Art. 108(2) TFEU; Council Regulation No 2015/1589, Art. 11)
(see paras 40, 43-45)
2. *State aid — Concept — Grant of an advantage to the beneficiaries — Receipt of funds intended for the improvement and extension of the terrestrial digital television network in remote and less-urbanised areas — Included*
(Art. 107(1) TFEU)
(see para. 49)
3. *Competition — EU rules — Addressees — Undertakings — Concept — Exercise of an economic activity — Deployment, maintenance and operation of digital terrestrial television in remote and less-urbanised areas — Existence of a market — No exercise of State prerogatives — Included*
(Art. 107(1) TFEU)
(see paras 55-66)
4. *State aid — Concept — Assessment according to the criterion of the private investor — Requirement to compare the conduct of a public investor with a private holding company or groups of undertakings guided by prospects of profitability in the long term*
(Art. 107(1) TFEU)
(see paras 69-72)

5. *State aid — Concept — Implementation of the private investor test — Discretion of the Commission — Judicial review — Limits*

(Art. 107(1) TFEU)

(see para. 73)

6. *State aid — Concept — Assessment according to the criterion of the private investor — State shareholder of an undertaking — State acting as a public authority — Distinction as regards application of the private investor criterion — Information needed for an assessment*

(Art. 107(1) TFEU)

(see paras 76, 81)

7. *State aid — Concept — Assessment according to the criterion of the private investor — Assessment of all factors relevant to the transaction at issue and its context — Account taken of available information and foreseeable developments at the time the decision on the measure in question was taken*

(Art. 107(1) TFEU)

(see para. 82)

8. *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 carrying out public service obligations — Inclusion in the concept — Weakening of the market — Fact not sufficient for a finding that a service of general economic interest exists*

(Art. 107(1) TFEU)

(see paras 89, 96-98, 102-107)

9. *State aid — Examination by the Commission — Assessment of legality by reference to the information available at the time the decision adopted*

(Art. 108 TFEU)

(see para. 107)

10. *State aid — Effect on trade between Member States — Adverse effect on competition — Criteria for assessment*

(Art. 107 TFEU)

(see paras 117, 118)

11. *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)
(see para. 121)

12. *State aid — Prohibition — Exceptions — Discretion of the Commission — Judicial review — Limits*
(Art. 107(3)(c) TFEU)
(see paras 127, 129)

13. *Acts of the institutions — Statement of reasons — Obligation — Scope*
(Art. 296 TFEU)
(see para. 140)

14. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application based*
(Rules of Procedure of the General Court, Art. 76)
(see para. 153)

15. *EU law — General principles of law — Right to sound administration — Diligent and impartial consideration of the case — Commission decision on State aid*
(Art. 107(3)(c) TFEU)
(see para. 154)

16. *State aid — Commission decision to open a formal investigation procedure into a State measure — Provisional nature of the Commission's assessments — Consequences*
(Art. 108(2) TFEU; Council Regulation No 659/1999, Art. 6(1))
(see para. 166)

17. *State aid — Examination by the Commission — Examination of an aid scheme as a whole — Lawfulness*
(Arts 107(3) TFEU and 108 TFEU)

(see para. 168)

18. *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 procedure 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))

(see paras 172-175)

19. *State aid — Recovery of unlawful aid — No breach of principle of proportionality*

(Art. 108 TFEU)

(see paras 194, 206-209, 213, 214)

20. *State aid — Decision of the Commission finding aid incompatible with the internal market and ordering its recovery — Possibility of the Commission leaving to national authorities the task of calculating the precise amount to recover — Duty of cooperation between the Commission and the Member State in the event of difficulties encountered by the State — Scope*

(Arts 107 TFEU and 108 TFEU; Council Regulation No 994/98, Art. 2; Commission Regulation No 1998/2006)

(see paras 196, 197, 199, 203)

21. *State aid — Examination by the Commission — Exclusive competence — Review of the compatibility of aid with the internal market — Judicial review — No undermining of the principle of subsidiarity*

(Art. 5(3) TEU; Arts 107(3) TFEU and 108 TFEU)

(see para. 220)

Re:

APPLICATION based on Article 263 TFEU and seeking the annulment of Commission Decision C(2014) 6846 final of 1 October 2014 on State aid SA.27408 ((C 24/2010) (ex NN 37/2010, ex CP 19/2009)) implemented by the authorities of Castilla-La Mancha for the deployment of digital terrestrial television in remote and less urbanised areas of Castilla-La Mancha, as amended by Decision C(2015) 7193 final of 20 October 2015 correcting certain errors contained in Decision C(2014) 6846 final.

Operative part

The Court:

1. Dismisses the action;
2. Orders the Kingdom of Spain to pay the costs.