Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 30 May 2017 [1]

Case C-656/15 P

European Commission
v

TV2/Danmark A/S

(Appeal — State aid — Article 107(1) TFEU — Public-service broadcasting — Measures implemented by the Danish authorities for the Danish broadcaster TV2/Danmark — Concept of 'aid granted by a Member State or through State resources')

1. By its appeal, the European Commission seeks to have set aside in part the judgment of the General Court of the European Union in *TV2/Danmark* v *Commission*,[2] by which the General Court, first, annulled Commission Decision 2011/839/EU,[3] in that the Commission had considered that the advertising revenue for 1995 and 1996 paid to TV2/Danmark through the TV2 Fund constituted State aid, and, secondly, rejected, as to the remainder, the action brought by TV2/Danmark A/S ('TV2 A/S') for partial annulment of that decision. This case is connected with Cases C-649/15 P and C-657/15 P, which also concern appeals against the judgment under appeal and in which I am also delivering my Opinion today. It is also related to the case which gave rise recently to the judgment of 8 March 2017, *Viasat Broadcasting UK* v *Commission* (C-660/15 P, EU:C:2017:178).

I. Facts giving rise to the dispute

2. TV2 A/S is a Danish public limited broadcasting company which was created in order to replace, for accounting and tax purposes as of 1 January 2003, the autonomous State undertaking TV2/Danmark ('TV2'), established in 1986. TV2 A/S is, as was its predecessor TV2, the second public television station in Denmark, the first being Danmarks Radio ('DR').

3. The mission of TV2 A/S, like that of TV2 previously, is to produce and broadcast national and regional television programmes. These may be broadcast, in particular, by means of radio equipment, satellite or cable systems. Rules governing the public-service obligations of TV2 A/S and, previously, TV2, are laid down by the Danish Minister for Culture.

4. Apart from the public broadcasters, commercial broadcasters operate on the nationwide television broadcasting market in Denmark. These include, first, Viasat Broadcasting UK Ltd ('Viasat') and, second, the group created from the companies SBS TV A/S and SBS Danish Television Ltd.

1 Original language: French.

2 Judgment of 24 September 2015, T-674/11, EU:T:2015:684 ('the judgment under appeal').

3 Commission Decision of 20 April 2011 on the measures implemented by Denmark (C 2/03) for TV2/Danmark (OJ 2011 L 340, p. 1, 'the contested decision)'.

5. TV2 was set up with the help of an interest-bearing State loan and its activities were, like those of DR, to be funded with the help of revenue from the licence fee paid by all Danish television viewers. The Danish legislature decided, however, that, unlike DR, TV2 would also be able to benefit from, in particular, advertising revenue.

6. Following a complaint lodged on 5 April 2000 by the company SBS Broadcasting SA/TVDanmark, the system for funding TV2 was examined by the Commission in its Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for [TV2] (OJ 2006 L 85, p. 1, corrigendum in OJ 2006 L 368, p. 112; 'the TV2 I decision'). That decision covered the period from 1995 to 2002 and concerned, inter alia, licensing fees and transfers granted from funds used to finance TV2 (TV2 and Radiofonden Funds).

7. After examining the measures concerned, the Commission concluded that they constituted State aid within the meaning of Article 107(1) TFEU. In addition, the Commission decided that that aid, granted between 1995 and 2002 by the Kingdom of Denmark to TV2, was compatible with the internal market under Article 106(2) TFEU, with the exception of an amount of DKK 628.2 million (around EUR 84.45 million) which it classified as overcompensation. It accordingly ordered the Kingdom of Denmark to recover that sum, together with interest, from TV2 A/S, which had in the meantime replaced TV2.

8. The TV2 I decision was the subject of four actions for annulment brought, on the one hand, by TV2 A/S (Case T-309/04) and the Kingdom of Denmark (Case T-317/04) and, on the other, by the competitors of TV2 A/S, namely Viasat (Case T-329/04) and SBS Danish Television (Case T-336/04).

9. By judgment of 22 October 2008 in *TV2/Danmark and Others* v *Commission* (T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457; 'the TV2 I judgment'), the General Court annulled that decision. In its judgment, the General Court held that the Commission had rightly concluded that TV2's public-service mission was consistent with the definition of broadcasting services of general economic interest. The General Court also found, however, several instances of illegality vitiating the TV2 I decision, which led, in short, to the annulment of that decision.

10. Examining the question whether the measures concerned by the TV2 I decision involved State resources, the General Court held, inter alia, that the Commission had failed to state in its decision the reasons why it took advertising revenue from 1995 and 1996 into consideration, de facto, as State resources.

11. Following the annulment of the TV2 I decision, the Commission re-examined the measures concerned. On that occasion, it consulted the Kingdom of Denmark and TV2 A/S and, furthermore, received observations from the third parties.

12. The Commission presented the result of its re-examination of the measures concerned in the contested decision.

13. That decision concerns the measures implemented for TV2 between 1995 and 2002. However, in its analysis the Commission also took into account the recapitalisation measures taken in 2004 following the TV2 I decision.

14. In the contested decision, the Commission maintained its position as regards the classification of the measures concerned as State aid within the meaning of Article 107(1) TFEU in favour of TV2. First, it considered that the advertising revenue for 1995 and 1996 constituted State resources and, second, in determining the existence of a selective advantage, it concluded that the measures concerned did not meet the second and fourth conditions required by the Court in its judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415).

However, whereas in the TV2 I decision it had concluded that the sum of DKK 628.2 million (approximately EUR 84.45 million) was overcompensation incompatible with Article 106(2) TFEU, the Commission took the view, in the contested decision, that that sum was for TV2 A/S an appropriate capital buffer.

15. Article 1 of the operative part of that decision is worded as follows: 'The measures implemented by Denmark in favour of [TV2] between 1995 and 2002 in the form of the licence fee resources and other measures discussed in this Decision are compatible with the internal market within the meaning of Article 106(2) [TFEU].'

II. Procedure before the General Court and the judgment under appeal

16. By application lodged at the Registry of the General Court on 30 December 2011, TV2 A/S brought an action for annulment of the contested decision.

17. TV2 A/S claimed that the General Court should annul the contested decision, in so far as the Commission finds therein that the measures concerned constituted State aid for the purposes of Article 107(1) TFEU.

18. In the alternative, TV2 A/S claimed that the General Court should annul the contested decision, inter alia because the Commission had considered that the advertising revenue for 1995 and 1996 paid to TV2 through the TV2 Fund constituted State aid.

19. By the judgment under appeal and in particular paragraphs 175, 176 and 210 to 220, the General Court annulled the contested decision for that reason and dismissed the action as to the remainder.

III. The appeal

20. In support of its appeal, the Commission relies on a single ground, by which it claims, in essence, that, in the context of the examination of whether the advertising revenue for 1995 and 1996 transferred from TV2 Reklame to TV2 through the TV2 Fund constitutes State aid, the General Court erred in law by misinterpreting the concept of 'State resources' referred to in Article 107(1) TFEU.

21. The Commission is supported by Viasat and by the EFTA Surveillance Authority.

22. TV2 A/S and the Kingdom of Denmark dispute the Commission's arguments and submit, in essence, that the General Court did not err in law in annulling the contested decision in so far as it classified the revenue at issue as 'State aid'. TV2 A/S and the Kingdom of Denmark argue that, at that time, the Danish State's control over those resources was theoretical and that the Commission's reasoning is based on a misinterpretation of Danish law. In their view, the General Court did not err in law by comparing the present case with the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160). Lastly, the Kingdom of Denmark takes the view that the distinction made by the General Court between the advertising revenue at issue and the audiovisual licence fee resources transferred from the TV2 Fund to TV2 is justified.

23. In accordance with Article 76(2) of its Rules of Procedure, the Court considered that it had sufficient information at the end of the written procedure and that, therefore, a hearing was not necessary.

A. Introduction

24. According to the Court's settled case-law, a classification as 'aid' within the meaning of Article 107(1) TFEU requires that all the conditions set out in that provision are fulfilled. [4]

25. That provision sets out four conditions. First, there must be an intervention by the State or through State resources. Second, that intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the beneficiary. Fourth, it must distort or threaten to distort competition. [5]

26. The appeal concerns only the first of those conditions, namely that, in accordance with the Court's settled case-law, advantages may be categorised as 'aid' within the meaning of Article 107(1) TFEU only if, first, they are granted directly or indirectly through State resources and, secondly, they are imputable to the State. [6]

27. As regards, in the first place, the imputability of the measure to the State, it is not disputed in the present case that the public authorities must be regarded as having been involved in the adoption of that measure. [7]

28. As regards, in the second place, the requirement that the advantage must be granted directly or indirectly through State resources, this does not mean, as is clear from the settled case-law of the Court, that it is necessary to establish in every case that there has been a transfer of State resources for an advantage granted to one or more undertakings to be capable of being regarded as 'State aid' within the meaning of Article 107(1) TFEU. [8]

29. The case-law of the Court includes in that concept of 'State aid', in addition to advantages granted directly by the State, those granted through a public or private body appointed or established by that State to administer the aid. [9] EU law cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid. [10]

30. With those considerations in mind, I shall examine *whether, by ruling that the Commission erred in law in classifying as 'State resources'*, in the contested decision, the advertising revenue for 1995 and 1996 transferred from TV2 Reklame to TV2, through the TV2 Fund, *the General Court correctly interpreted that concept of 'State resources'*, within the meaning of Article 107(1) TFEU.

4 See judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 63 and the case-law cited.

5 See judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 15 and the case-law cited.

6 See judgments of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraph 24; of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 16, and the order of 22 October 2014, *Elcogás*, C-275/13, not published, EU:C:2014:2314, paragraph 21.

7 See judgments of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraph 52; of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 17, and the order of 22 October 2014, *Elcogás*, C-275/13, EU:C:2014:2314, paragraph 22.

8 See, inter alia, judgments of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraph 36; of 30 May 2013, *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 34, and of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 19.

9 See judgments of 13 March 2001, *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 58; of 30 May 2013, *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 26, and of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 20.

10 Judgment of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraph 23. See, also, the particularly relevant case-law in the present case, which I shall examine in detail in points 36 and 37 of this Opinion.

31. That said, it is important to point out at this juncture that neither TV2 A/S nor the Danish Government submits any substantiated line of argument to dispute the first [11] or second [12] of the Commission's justifications. Instead they focus their response on the Commission's third justification, [13] arguing that TV2 Reklame and the TV2 Fund acted exclusively as channels for transferring advertising customers' resources to TV2, without any involvement whatsoever by the Danish authorities in the decision so to allocate those resources.

32. First, it is clear from the case-law of the Court that the absence of discretion on the part of the administrative authorities as regards the use of resources channelled through public bodies is irrelevant so long as the legislation on the basis of which the transfer takes place establishes in detail the way in which the resources must be channelled (judgment of 2 July 1974, *Italy* v *Commission*, 173/73, EU:C:1974:71, paragraph 35, and order of 22 October 2014, *Elcogás*, C-275/13, not published, EU:C:2014:2314, paragraph 33).

33. Secondly and more generally, it is necessary, in my view, to reject, in any event, the line of argument put forward by TV2 A/S and the Kingdom of Denmark as inadmissible in the context of an appeal, since it concerns, in essence, the facts of the case and the interpretation of Danish law [14] or in that it contains new pleas, such as the plea that 'the economic reality of the scheme is decisive', in so far as they were at no point raised before the General Court.

B. Should the fact that TV2 Reklame was a State-owned public company have led the General Court to consider that the resources in question constituted 'State resources'?

34. The Commission submits that, by failing to accept, in paragraphs 210 and 211 of the judgment under appeal, that TV2 Reklame's resources constitute State resources, although it is a public company whose sole shareholder is the Danish State and it was therefore entirely controlled by and at the disposal of the latter, the General Court erred in law and thus was too restrictive in its interpretation of the case-law relating to the concept of State resources of public undertakings.

35. As is clear from the case-law which I have just cited, the level of intervention and control of the public authorities is at the heart of the question whether the resources at issue are State resources within the meaning of Article 107(1) TFEU.

36. I note that the Court ruled in the judgment of 16 May 2002, *Commission* v *France*, 'Stardust Marine' (C-482/99, EU:C:2002:294, paragraph 37) that 'it has already been established in the case-law of the Court that [Article 107(1) TFEU] covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of

11 That is, the fact that TV2 Reklame was a State-owned public company should have led the General Court to consider that the resources in question constituted 'State resources'.

12 That is, that TV2 Reklame and the TV2 Fund were appointed by the Danish authorities to manage the flow of advertising revenue from the purchasers of advertising space to TV2 and, therefore, to manage an aid scheme.

13 That is, that the Danish authorities had a margin of discretion to determine whether, and to what extent, the advertising revenue was transferred to TV2.

14 Judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraphs 78 and 79 and the case-law cited. In paragraphs 181 to 186 of the judgment under appeal, the General Court referred to the Danish legislation as set out in the contested decision, without calling into question that determination of the facts, and confined itself to drawing (in my view, erroneous) legal conclusions from the facts as found by the Commission in that decision.

the public sector. Therefore, even if the sums corresponding to the measure in question are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources'. [15]

37. Moreover, the Court ruled in paragraph 38 of that judgment that 'by holding in the contested decision that the resources of public undertakings, such as those of Crédit Lyonnais and its subsidiaries, fell within the control of the State and were therefore at its disposal, the Commission did not misinterpret the term "State resources" in [Article 107(1) TFEU]. The State is perfectly capable, by exercising its dominant influence over such undertakings, of directing the use of their resources in order, as occasion arises, to finance specific advantages in favour of other undertakings' (see, also, the judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 66).

38. I would also refer to paragraph 25 of the judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, according to which 'funds financed through compulsory charges imposed by the legislation of the Member State, managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU even if they are managed by entities separate from the public authorities'. [16]

39. It is common ground in the present case that the State (the Kingdom of Denmark) was the sole shareholder of the public limited company TV2 Reklame, since the company's capital was subscribed by the State and the Minister for Culture had to approve the company's Statutes and amendments to them. TV2 Reklame was therefore wholly controlled by the State. [17]

40. The fact that, as stated in the case-law of the Court which I have cited above, the resources of a public company which is wholly owned and controlled by the State are State resources within the meaning of Article 107(1) TFEU seems to me to be a sufficient reason to propose the setting aside of the judgment under appeal. For the sake of completeness, I shall consider other reasons which will lead me to the same conclusion.

C. The origin of the funds is not decisive

41. In the judgment under appeal (paragraphs 202 and 203), the General Court referred to its judgment of 12 December 1996, *Air France* v *Commission*, T-358/94, EU:T:1996:194. In that case, a subsidiary of a French special public body, established by statute (the Caisse des dépôts et consignations-participations; 'the CDC-P') acquired virtually all the capital of Air France and the question was whether the resources used for the purposes of that acquisition could be regarded as State resources, in so far as they were funds of private origin, which the public body merely managed, and the depositors of those funds could require their repayment at any time.

15 The Court refers to the judgment of 16 May 2000, *France* v *Ladbroke Racing and Commission*, C-83/98 P, EU:C:2000:248, paragraph 50. Indeed, 'lottery proceeds (even if the operation is run by a private company), part of which are allocated by law to a fund, amount to "State resources"'. See Pesaresi, N., Van de Casteele, K., Flynn, L., and Siaterli, Ch., (ed.), *EU Competition Law, Volume IV, State Aid, Book One*, Claeys & Casteels, 2016, p. 213. See the Commission Decisions of 9 April 2002, Authorisation for State aid pursuant to Articles 87 and 88 [EC] — Cases where the Commission raises no objections (Cases N 560/01 and NN 17/02, Brighton West Pier) (OJ 2002 C 239, p. 2) and of 27 May 2003, Authorisation for State aid pursuant to Articles 87 and 88 [EC] — Cases where the Commission raises no objections (Case NN 11/02, UK National Heritage Memorial Fund) (OJ 2003 C 187, p. 9).

16 See, also, judgment of 2 July 1974, *Italy* v *Commission*, 173/73, EU:C:1974:71, paragraph 35. See Latullaie, F., *L'obligation d'achat d'électricité éolienne, une aide d'Etat*?, Dr. env., July-August 2012, No 23, p. 242, Durand, E., *L'affaire Vent de Colère: une légère brise avant la tempête*, JCP A, 2013, No 48, p. 2345, and Ronzano, A., *Notion d'intervention ou de ressources d'État*, RDLC, 3-2013, No 53647.

17 See recitals 80, 89 and 90 of the contested decision. Article 31(1) of the Bekendtgørelse af lov om radio- og fjernsynsvirksomhed (Danish Consolidated Law No 578 on the broadcasting service) of 24 June 1994 ('the 1994 law') (Annex A.4 of the appeal, p. 99) is worded as follows: 'The Minister for Culture shall create a public limited company responsible for selling the advertising space of TV2 (TV2 Reklame A/S). The company's capital shall be subscribed by the State. The Minister shall approve the Statutes of the company and amendments to them'.

42. Although, according to the French authorities, the CDC-P was an institution that was independent of the Government, the General Court noted in the judgment under appeal that it had held in the judgment of 12 December 1996, *Air France* v *Commission*, T-358/94, EU:T:1996:194 that Article 107(1) TFEU covered all the financial means by which the public sector *could*, because those means are under its control, actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector.

43. The General Court went on to state in paragraphs 205 to 207 of the judgment under appeal that that rule had subsequently been endorsed in the judgment of 16 May 2000, *Ladbroke Racing* v *Commission*, C-83/98 P, EU:C:2000:248.

44. In paragraph 208 of the judgment under appeal, the General Court then surprisingly inferred from the case-law cited in paragraph 201 of that judgment,[18] read in conjunction with the judgments of 12 December 1996, *Air France* v *Commission*, T-358/94, EU:T:1996:194, and of 16 May 2000, *Ladbroke Racing* v *Commission*, C-83/98 P, EU:C:2000:248, that resources originating with third parties could constitute State resources *provided that* they *either* were placed at the disposal of the State by their owners voluntarily (as was the case with the depositors of the CDC-P in that judgment *Air France* v *Commission*) *or* had been abandoned by their owners (like the winnings unclaimed by bettors in the case that gave rise to the judgment *Ladbroke Racing* v *Commission*), before concluding from this, in paragraphs 211 and 212 of the judgment under appeal, that the advertising revenue at issue in the present case came from advertisers who had purchased advertising space on TV2 and that those resources could not, therefore, be regarded as falling under the control of the Danish State, as they were neither voluntarily placed at the disposal of the State by their owners nor abandoned by their owners and managed de facto by the State.

45. I do not agree with that argument in two respects.

1. The origin of the resources in general

46. Contrary to what is stated in the judgment under appeal, the origin of particular resources and the originally private nature of them (in the present case, the money paid by undertakings wishing to advertise on TV2) are irrelevant when examining the legal question of whether or not funds which have changed hands and are again in the possession and under the control of an entity which is wholly owned by the State are 'State' resources.

47. The General Court therefore erred in law (in particular in paragraphs 208, 211 and 212 of the judgment under appeal) by emphasising elements other than the resources themselves (and, more particularly, their origin).

48. Article 107(1) TFEU 'covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the State. Consequently, even if the sums corresponding to the measure in question are not permanently held by the public authorities, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources'.[19]

18 Judgments of 30 May 2013, *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 35 and the case-law cited, and of 15 January 2013, *Aiscat* v *Commission*, T-182/10, EU:T:2013:9, paragraph 104.

19 Judgment of 10 November 2011, *Elliniki Nafpigokataskevastiki and Others* v *Commission*, T-384/08, not published, EU:T:2011:650, paragraph 87 and the case-law cited.

49. The irrelevance of whether the resources in question are generated by the activity of the undertaking or are transferred by the State, provided that they are under State control and are available to it (judgment of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraph 38), is perfectly illustrated by paragraph 33 of the judgment of 8 May 2003 in *Italy and SIM 2 Multimedia* v *Commission* (C-328/99 and C-399/00, EU:C:2003:252) which reads as follows: 'the financial resources of a private-law company such as Friulia, 87% of which is held by a public authority such as the Region of Friulia-Venezia Giulia and which acts under the control of that authority, may be regarded as State resources within the meaning of [Article 107(1) TFEU] … . The fact that Friulia participated using its own funds is irrelevant in that regard. For those funds to be categorised as State resources, it is sufficient that, as in the present case, they constantly remain under public control and therefore available to the competent national authorities' (see, also, judgment of 21 March 1991, *Italy* v *Commission*, C-303/88, EU:C:1991:136, paragraphs 11 to 14).

50. I shall again cite the judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413. In paragraph 70 of that judgment, the Court notes that 'It is of little account that that designated company was at one and the same time the centralising body for the tax received, the manager of the monies collected and the recipient of part of those monies. The mechanisms provided for by the Law and, more specifically, the detailed accounts certified by an auditor, make it possible to distinguish those different roles and to monitor the use of the monies. It follows that as long as that designated company did not appropriate to itself the amount of 400 million NLG (Dutch florins) (EUR 181512086.40), at the time when it was freely able to do so, that amount *remained under public control* and therefore *available* to the national authorities, *which is sufficient for it to be categorised as State resources*' (my emphasis).

51. As far back as 1993, Advocate General Darmon [20] imagined 'a public measure which requires individuals — consumers, workers, trading companies or any other category of private persons — to pay certain sums to a given undertaking or a given sector of industry'. In his view, 'it follows from the *ratio legis* of Article [107], namely maintaining equal conditions of competition between rival traders, that such a measure ought to be classified as aid. The "public" nature of the aid which is implicit in Article [107(1)] relates more to the authority which adopted the measure — the State and its agencies — thereby disrupting normal market conditions, than to the body or the person financing the aid. The revenue of the State is provided by private individuals, through direct or indirect taxation and, ultimately, whatever the nature and the number of intermediate entities, the financing of the aid is to a greater or lesser extent borne in any event by individuals and traders. As I see it, and as the Court stated in the judgment of 22 March 1977, *Steinike und Weinlig*, 78/76, EU:C:1977:52, "regard must primarily be had to the effects of the aid on the undertakings or producers favoured ...". There is no special need, therefore, to take account of the origin of the funds. … Where an undertaking is favoured, as a result of a derogation arising from specific conduct by the State, regardless of the origin of the financing, the conditions of competition are affected and Articles [107 and 108 TFEU] must then be applied'.

20 See his Opinion in *Sloman Neptun*, C-72/91 and 73/91, EU:C:1992:130, points 40 and 41 (but see also points 12 to 46). See, also, his Opinion in *Kirsammer-Hack*, C-189/91, EU:C:1992:458, points 18 to 27, even though at the time the Court rejected that interpretation and adopted a more restrictive approach.

52. I also agree with the Commission's statement in its Notice on the notion of 'State aid',[21] namely that 'the origin of the resources is not relevant provided that, before being directly or indirectly transferred to the beneficiaries, [22] they come under public control and are therefore available to the national authorities, even if the resources do not become the property of the public authority'. [23] … [A] transfer of State resources is present where the charges paid by private persons transit through a public or private entity designated to channel them to the beneficiaries. [T]his is the case even where a private entity is appointed by law to collect such charges on behalf of the State and to channel them to the beneficiaries, but is not allowed to use the proceeds from the charges for purposes other than those provided for by the law. In this case, the sums in question remain under public control and are therefore available to the national authorities, which is sufficient reason for them to be considered State resources [(judgment of 17 July 2008, *Essent Netwerk Noord*, C-206/06, EU:C:2008:413, paragraphs 69 to 75)]. Since this principle applies both to public bodies and private entities appointed to collect the charges and process the payments, changing the status of the intermediary from a public to a private entity has no relevance for the State resources criterion if the State continues to strictly monitor that entity'. [24]

53. An entirely different situation arose in the case which gave rise to the judgment of 15 July 2004, *Pearle and Others*, C-345/02, EU:C:2004:448, paragraph 37 in which the Court held that 'the file clearly shows that the initiative for the organisation and operation of that advertising campaign *was that of the Nederlandse Unie van Opticiensa private association of opticians, and not that of the Board [(Hoofdbedrijfschap Ambachten), a trade association governed by public law]. [T]he Board served merely as a vehicle for the levying and allocating of resources* collected for a *purely commercial purpose previously determined by the trade and which had nothing to do with a policy determined by the Netherlands authorities*' (my emphasis).

54. To give another example of the same type, I shall refer to the Commission Decision on Universal Banking Services.[25] In paragraph 23 of that decision, the Commission notes the following: '*The contributions which will be paid by the banks [i.e. by private undertakings*] to the POCA bank as evidence of their social responsibility are voluntary. In practice, not all banks are contributing. The funds collected *pass simply through the hands of the State who has no discretion for their allocation [i.e. those contributions are not controlled by the State*]. They are transferred integrally to the POCA bank. They therefore *do not constitute State resources [even if they pass through the hands of the State en route to the ultimate beneficiary*] and are not an aid under [Article 107(1) TFEU]' (my emphasis).

2. The requirement of an origin of specific resources

55. In paragraph 208 of the judgment under appeal, the General Court wrongly attempts to infer from the two judgments of the Court that one or other of two 'new' and additional conditions (see point 44 of this Opinion) must be fulfilled in order for resources from third parties to be regarded as State resources.

21 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ 2016 C 262, p. 13 et seq.).

22 Judgments of 16 May 2000, *France* v *Ladbroke Racing and Commission*, C-83/98 P, EU:C:2000:248, paragraph 50, and of 17 July 2008, *Essent Netwerk Noord*, C-206/06, EU:C:2008:413, paragraph 70.

23 The Commission, citing the judgment of 12 December 1996, *Air France* v *Commission*, T-358/94, EU:T:1996:194, paragraphs 65 to 67 says that 'concerning an aid granted by the Caisse des Dépôts et Consignations which was financed with the voluntary deposits of private citizens which could be withdrawn at any time. That did not affect the conclusion that those funds were State resources because the Caisse was able to use them from the balance produced by deposits and withdrawals as if they were permanently at its disposal'. See also, judgment of 16 May 2000, *France* v *Ladbroke Racing Ltd and Commission*, C-83/98 P, EU:C:2000:248, paragraph 50'.

24 See Commission Decision 2011/528/EU on State aid measure C 24/09 (ex N 446/08) — State aid for energy-intensive businesses under the Green Electricity Act in Austria (OJ 2011 L 235, p. 42), recital 76, confirmed by the judgment of 11 December 2014, T-251/11, *Austria* v *Commission*, EU:T:2014:1060 (an appeal was not brought against the latter).

25 Decision N 514/01 of 13 February 2002, Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections (modernisation of system of payment for services and provision of access to universal banking services (by post offices) (OJ 2003 C 186, p. 17, paragraph 23)

56. I believe (like the Commission) that the case-law cited above contains no evidence to support the conclusion that the resources of public undertakings should be regarded as State resources within the meaning of Article 107(1) TFEU only where they were either voluntarily placed at the disposal of the State by their owners or abandoned by their owners and managed de facto by the State.

57. In any event, this is not apparent from the case-law that is relevant in the circumstances of the present case, namely the judgment of 16 May 2002, *France* v *Commission*, 'Stardust Marine', C-482/99, EU:C:2002:294, paragraphs 37 and 38, which, furthermore, post-dated the two judgments on which the judgment under appeal seeks to rely.

58. Moreover, as pointed out by the EFTA Surveillance Authority, while the second of the conditions suggested by the General Court (that of abandoned resources) clearly has no connection with the circumstances of the present case, the first (voluntary placement at the State's disposal) runs counter even to the most recent case-law of the General Court.

59. In its judgment of 27 September 2012, *France* v *Commission* (T-139/09, EU:T:2012:496), which was not the subject of an appeal, the General Court (Sixth Chamber) ruled (in paragraphs 63 and 64) that the mere fact that a subsidy scheme is partially financed by voluntary contributions of private origin is not sufficient to deny the existence of State resources since the relevant criterion is not the origin of the resources but the degree of intervention of the public authority in the definition of the measures in question and their methods of financing, even if the contributions are not obligatory.

D. The control of the public authorities is decisive

60. It is clear from the foregoing that, in order to be classified as 'State resources', it is sufficient that the resources concerned 'constantly remain under public control, and therefore available to the competent national authorities' (see point 48 of this Opinion).

61. In that regard, I believe that, in paragraphs 212, 214 and 215 of the judgment under appeal, the General Court erred in law by giving an overly-restrictive interpretation of the concept of 'control' in the context of the assessment of whether the Danish State exercised, through the TV2 Fund, control over the resources transferred from TV2 Reklame to TV2.

62. The General Court emphasised only the possibility of State intervention in relation to advertising revenue in the context of the transfer of resources from the TV2 Fund to TV2 and did not take into account the State's influence in the transfer of TV2 Reklame's profits to the TV2 Fund (see, also, recitals 80 and 81 of the contested decision).

63. The arguments put forward by the General Court in paragraphs 214 to 217 of the judgment under appeal appear to require the Minister for Culture to have, in this case, the power to use any resources of TV2 Reklame withheld on his instructions for purposes other than a transfer to the TV2 Fund in order for those resources to be regarded as State resources, since their payment to the TV2 Fund, with no obligation for the latter to transfer them to TV2, does not make it possible to classify them as 'State resources'.

64. As rightly pointed out by the Commission, the General Court itself states in the judgment under appeal (paragraph 182) that it is clear from Article 29(2) of the 1994 Law that the TV2 Fund received the profit generated by advertising on TV2. It is also clear from that article that it was the Minister for Culture who decided on the share of the profit of TV2 Reklame that was to be paid into the TV2 Fund. [26] As the General Court indicated in paragraph 181 of the judgment under appeal and as stated

26 Paragraph 1 of that article provides that the part of the licence fee to be allocated to TV2 payable by the owners of radio receivers and television sets is to be paid into a special fund, known as 'the TV2 Fund' and managed by the central directorate.

in recital 81 of the contested decision, the part of TV2 Reklame's overall profit which was not paid to the TV2 Fund could be used by the Minister for Culture — with the approval of the Finance Committee of the Folketing (the Danish Parliament) — for the repayment of a State guarantee called on previously *or for cultural purposes* (see Article 33 of the 1994 Law). [27]

65. Therefore, the State enjoyed all the rights in and had full control over TV2 Reklame's profits and it was clear *directly from the legislation* that those resources could be used for purposes other than their transfer to the TV2 Fund.

66. In so far as the Minister for Culture was able to decide that the resources would be used for a purpose other than a transfer to the TV2 Fund, it should be concluded that the State controlled those resources, irrespective of how the Minister for Culture actually decided to use those resources in any given year.

67. Moreover, only the Minister for Culture could decide on the amount to be transferred, for any given year, from the TV2 Fund to TV2, since the transfer of resources from the TV2 Fund to TV2 could be made only in accordance with TV2's budget framework, established by the Minister for Culture. [28]

68. Therefore, I agree with the Commission that the General Court erred in law, first, by failing to take into account, in its assessment of whether or not State resources are present, [29] the fact that the State enjoyed all the rights in and had full control over TV2 Reklame's resources and could decide whether those resources were to be transferred to the TV2 Fund or used for other purposes, for example cultural ones, and, secondly, by failing to take into consideration the fact that the State fully controlled the resources of the TV2 Fund and could therefore decide unilaterally when those resources were to be transferred to TV2 and the amount to be transferred.

E. The General Court misinterpreted the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160)

69. To justify its arguments that the Danish authorities did not have sufficient public control for the resources at issue to be classified as 'State resources', the General Court compared the present case to that which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160).

70. I note that there are State resources within the meaning of Article 107(1) TFEU where resources of private origin pass through a fund under public control.

71. Thus, the Court ruled that the financing of an obligation to purchase electricity using a tax imposed on the purchasers of electricity and which passes through a State-controlled fund constituted an intervention through State resources. [30]

27 See, also, recitals 81 and 84 of the contested decision. According to Article 33 of the 1994 Law (Annex A.4 to the appeal, page 99), 'The part of TV2 Reklame's accumulated profit which is not paid to the TV2 Fund may be used by the Minister for Culture, with the approval of the Finance Committee of the Folketing, for the repayment of a State guarantee called on previously or for cultural purposes'.

28 Article 30(1) to (3) of the 1994 Law (Annex A.4 to the appeal, pages 98 and 99) provides as follows: 'TV2's overall activities are financed by resources transferred from the TV2 Fund in accordance with the budget frameworks established by the Minister for Culture, by income from the sale of programmes, and through other contributions, subsidies, etc.', that 'In order to safeguard the resources necessary for the exercise of TV2's activities, a State guarantee shall be established, in an amount to be defined by the Minister, with the approval of the Finance Committee of the Folketing'. and that 'In so far as it is not possible to undertake all the programming activities using the income referred to in paragraph (1), the central directorate may, with the support of the Minister, call upon the State guarantee, which guarantees the loans obtained by the TV2 Fund and is paid for and reimbursed by the Fund'.

29 The Commission recalls its first argument, according to which the resources at issue in the present case are State resources even if only because they originate from a State-controlled public company, and points out that its arguments and its conclusion cannot be relied on to conclude that, in its view, it is necessary to carry out such an analysis. I share that view (see point 40 of this Opinion).

30 Judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413. See Fromont, M., and Cartier-Bresson, A., *Fasc. 256: Aides économiques. — Notion. Typologie*, JurisClasseur Administratif, 20 January 2015, p. 19.

72. Similarly, the Court classified as State aid the obligation to purchase electricity produced by wind energy financed by the contribution to the costs of the public electricity service. The State resources criterion was met because of the public control over the funds into which the Contribution to the public electricity service (CSPE) is paid and which are managed by the Caisse des dépôts et consignations. [31]

73. However, as stated by Fromont and Cartier-Bresson, 'the Court does not solely consider the status of the body through which the resources pass. It verifies on a case-by-case basis whether there is public control over the use of the resources. In the judgment [of 15 July 2004, *Pearle and Others*, C-345/02, EU:C:2004:448, paragraph 41], relating to the financing of an advertising campaign for opticians, the resources funding that advertising were collected from private undertakings, by a trade association governed by public law. The Court discarded the criterion of State resources as that trade association had "*never had the power to dispose … freely*" of the contributions, which were "*compulsorily earmarked for the funding of [the] [advertising] campaign*". Similarly, the Conseil d'État [(Council of State, France)] did not classify as State aid an order extending, in accordance … with the Code rural et de la pêche maritime [Rural and Sea Fishing Code], an agreement establishing contributions in the context of an agricultural inter-trade organisation. It took account of the fact that the actions funded by those contributions were implemented autonomously by the inter-trade organisation in receipt of them *without the revenue from the contributions ever being at the disposal of the public authorities (CE, 7 May 2008, Coopérative Cooperl Hunaudaye: Rec. CE 2008, tables, p. 605-640. — E. Glaser, Les cotisations volontaires obligatoires perçues par les organisations interprofessionnelles: Dr. adm. 2008, comm. 160)*. For the same reasons, the Court of Justice ruled *that an extension order, made with regard to an agreement reached within the turkey trade organisation did not meet the State resources criterion* [judgment of 30 May 2013, *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348]' (my emphasis). [32]

74. However, in the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), the Court also held that there was no State aid, as the advantages granted to producers of green electricity were 'financed exclusively' by private electricity suppliers with funds which 'at no stage came under the control' of the State and which therefore 'in fact … never leave the private sphere' (see the Opinion of Advocate General Jacobs in the *PreussenElektra* case C-379/98 EU:C:2000:585, point 166). In the same vein, the judgment of 5 March 2009, *UTECA* (C-222/07, EU:C:2009:124; also cited by the General Court in the judgment under appeal), concerned, like the case that gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), a situation in which the resources concerned had, at no stage, left the private sphere.

75. As Bacon rightly writes, [33] the *PreussenElektra* principle is only applicable 'where the cost of the subsidy is *borne entirely by the private operators* subject to the purchase obligation, without any contribution via a regulated levy'.

76. As is also clear from the judgments of 15 July 2004, *Pearle and Others* (C-345/02, EU:C:2004:448), and of 30 May 2013, *Doux Élevage et Coopérative agricole UKL-ARREE* (C-677/11, EU:C:2013:348, paragraphs 32 and 36), it seems that the *ratio decidendi* was the fact that the proceeds from the levy were not available to the State, but were ringfenced for the direct benefit of those who paid it. [34]

77. According to the judgment under appeal, the present case is comparable to that which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160).

31 Judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851. See Fromont, M., and Cartier-Bresson, A., op. cit., p. 19.

32 See Fromont, M., and Cartier-Bresson, A., op. cit., pp. 18 and 19.

33 Bacon, K., *European Union Law of State Aid*, Oxford University Press, 2017, p. 66, paragraph 2.106 and footnote 454 (my emphasis).

34 Bacon, op. cit., p. 63, paragraph 2.100. Compare with the judgments of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 72, and of 20 September 2007, *Salvat père & fils and Others* v *Commission*, T-136/05, EU:T:2007:295, paragraph 162, where the conclusion differed.

78. Having ruled in paragraph 209 of its judgment that it cannot be held that resources are under public control and therefore constitute State resources simply on the basis that, by legislative action, the State requires a third party to use its own resources in a particular way, the General Court compared, in paragraph 213, the facts of the present case with those of the case which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), and stated that the parallel between the two cases lay in the fact that 'in the latter case the State had set minimum prices for the purchase of electricity produced from renewable energy sources, whereas in the present case the Danish authorities had the power, in essence, to set a maximum sum that TV2 Reklame was to pay to TV2 in return for the latter making advertising airtime available to the former's clients'.

79. I, on the other hand,[35] take the view that the two cases are clearly distinct, both in fact and in law.

80. First, the present case concerns transfers of resources from a public undertaking following a *decision taken every year* by *the Minister* for Culture, while the case which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), concerned a *general legislative provision* relating to transfers imposed on certain undertakings for the benefit of another category of (essentially private) operators.

81. Secondly, as the Commission points out, in the case which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), the company at issue (PreussenElektra) had not been tasked with managing an aid measure, since there was no compensation mechanism by which the companies bearing the additional cost would receive compensation in that capacity.

82. The approach adopted in that judgment therefore cannot apply in a situation where the State has created a distinct legal entity, such as TV2 Reklame, and appointed it to manage an aid measure.[36]

83. However, the facts in the present case are very similar to those in the case which gave rise to the judgment of 17 July 2008, *Essent Netwerk Noord and Others* (C-206/06, EU:C:2008:413).

84. A public company (SEP) had been appointed to collect the amounts resulting from a price surcharge which the Netherlands State had, by law, imposed on purchasers of electricity in order to combat non-market-compatible costs. In practice, that surcharge was paid to the network operator who, every year, had to pay the proceeds to SEP. SEP then retained NLG 400 million (EUR 181512086.40) to cover the non-market-compatible costs which arose in 2000 and transferred the excess to the Minister.

85. The Court ruled in that case, first of all, that it was of little account that that designated company (SEP) was at one and the same time the centralising body for the tax received, the manager of the monies collected and the recipient of part of those monies, as it was possible to distinguish SEP's different roles and to monitor the use of the monies, with the consequence that, according to the Court, (paragraph 70 of the judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413) 'as long as that designated company did not appropriate to itself the amount of NLG 400 million [EUR181 512086.40], at the time when it was freely able to do so, that amount remained under public control and therefore available to the national authorities, which is sufficient for it to be categorised as State resources (see, to that effect, judgment of 16 May 2002 *France* v *Commission*, 'Stardust Marine', C-482/99 [EU:C:2002:294], paragraph 37)'.

35 Like Bacon, op. cit., who after her commentary on the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), continues, considering that a '*rather different example of the analysis* of payments from private parties was the advertising revenues paid to the Danish broadcaster TV2, which the [General] Court held were not State resources despite the fact that the Danish authorities could restrict the percentage of those revenues that was transferred to TV2'.(my emphasis)

36 Judgments of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 74; and of 19 December 2013, *Association Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 35, and the order of 22 October 2014, *Elcogás*, C-275/13, not published, EU:C:2014:2314, paragraph 32.

86. The Court then stated that the measure in question in that case differed from that referred to in the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), 'in which the Court held, at paragraph 59, that the obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable energy sources at fixed minimum prices did not involve any direct or indirect transfer of State resources to undertakings which produced that type of electricity. In the latter case, the undertakings had not been appointed by the State to manage a State resource, but were bound by an obligation to purchase by means of their own financial resources' (judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 74).

87. As in the case which gave rise to the judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, TV2 Reklame is an autonomous public entity created for the purposes of collecting resources through the sale of advertising space on TV2 and managing those resources.

88. Similarly, according to paragraph 32 of the order of 22 October 2014, *Elcogás*, C-275/13, not published, EU:C:2014:2314, 'contrary to the case in the main proceedings, in the case which gave rise to [the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160)], in the first place, private undertakings were solely bound by an obligation to purchase by means of their own financial resources (see, in that regard, the judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 74). In the second place, the funds at issue could not be considered a State resource since they were not at any time under public control and there was no mechanism, established and regulated by the Member State, to compensate for the additional costs imposed on private undertakings, through which that State offered those undertakings the certain prospect that those additional costs would be covered (see, in that regard, judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 36)'.

89. Moreover, the same reasoning applies to the TV2 Fund, since it is a public entity and the Minister also had at his disposal the Fund's resources.

90. As in the judgments cited in footnote 36 above, the legislature established a scheme under which a public company (TV2 Reklame in the present case) receives compensation for the aid which it manages, in the present case in the form of the right to market TV2's advertising space.

91. Added to this is the fact that TV2 Reklame was not subject to an obligation to purchase from TV2 by means of its own financial resources, unlike the situation in the judgment of 13 March 2001, *PreussenElektra*, C-379/98, EU:C:2001:160. It is clear, however, from the Danish legislation that TV2 had to make advertising space available to TV2 Reklame and that TV2 Reklame was therefore not required to purchase that advertising space from TV2 for a pre-arranged price, as was the case in that judgment.

92. It follows that the General Court erred in law in holding that the present case was comparable to that which gave rise to the judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160), a misinterpretation which played an essential role in the statement of reasons given by the General Court for annulling the contested decision.

F. No difference as regards the origin of the licensing fee resources and the advertising revenue resources

93. I agree with the Commission that the distinction made by the General Court between the origin of the advertising revenue transferred from TV2 Reklame to TV2 through the TV2 Fund and the origin of the audiovisual licensing fee resources transferred from the TV2 Fund to TV2 is neither logical nor justified in the present case.

94. It is difficult to discern how resources deriving from payments imposed by law on private users for access to public service television channels are different from payments made by private advertisers to obtain advertising space in those media. In both cases, they are resources obtained from third parties paid to a public undertaking, whether DR or TV2 Reklame, for consideration.

95. The errors of law to which I have referred reveal why the General Court came to the conclusion that those two types of resources should be treated differently, even though they have the same source.

G. Confusion between the concepts of 'State resources' and 'advantages'

96. Last, I agree with the Commission that it is clear, inter alia, from paragraph 211 of the judgment under appeal, that the General Court appears to confuse the concepts of 'State resources' and 'advantage' (see, in that regard, paragraphs 175 to 220 of the judgment under appeal).

97. The issue of whether the transfer of the resources concerned constitutes an advantage is irrelevant for the purposes of establishing whether those resources must be regarded as 'State resources' within the meaning of Article 107(1) TFEU. That issue is relevant only with respect to another of the four conditions required for a finding of State aid, for the purposes of that article, namely that the measure at issue is selective, that is to say that it favours 'certain undertakings or the production of certain goods'.

IV. Costs

98. In accordance with Article 138(1) of the Rules of Procedure of the Court, applicable to appeal proceedings by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission and Viasat requested that TV2 A/S should be ordered to pay the costs and the latter is the unsuccessful party, it must be ordered to pay the costs. Pursuant to Article 140(1) of the Rules of Procedure, also applicable to appeal proceedings by virtue of Article 184(1) of those rules, the Member States and institutions which intervene in the proceedings are to bear their own costs. The Kingdom of Denmark, as an intervener before the General Court, is to bear its own costs. Pursuant to Article 140(2) of those rules, also applicable to appeal proceedings by virtue of Article 184(1) of those rules, the EFTA Surveillance Authority is to bear its own costs when it intervenes in proceedings. Consequently, the EFTA Surveillance Authority is to bear its own costs.

V. Conclusion

99. For those reasons, I propose that the Court should:

– set aside the judgment of the General Court of 24 September 2015, T-674/11, *TV2/Danmark* v *Commission*, in so far as it annulled Commission Decision 2011/839/EU of 20 April 2011 on the measures implemented by Denmark (C 2/03) for TV2/Danmark solely on the ground that the Commission considered therein that the advertising revenue for 1995 and 1996 paid to TV2/Danmark through the TV2 Fund constituted State aid;

– dismiss as to the merits the third head of claim put forward in the alternative by the applicant at first instance; and

– order the applicant at first instance to pay the costs of the European Commission and Viasat Broadcasting UK Ltd;

– order the Kingdom of Denmark and the EFTA Surveillance Authority to bear their own costs.