

4. Is a restriction on the freedom created by that exit charge justified in order to ensure balanced allocation of powers of taxation, in circumstances where it was possible that capital gains tax might still be imposed on the realised gains, but only if specific circumstances arose in the future?
5. Is proportionality to be determined on the facts of the individual case? In particular, is the restriction created by such a charge to tax proportionate in circumstances where:
 - (a) the legislation makes no provision for an option to defer the payment of tax or for payment in instalments, or for account to be taken of any subsequent fall in the value of the trust assets after the exit,
 - (b) but in the particular circumstances of the assessment to tax under appeal, the assets were sold before the tax was payable and the relevant assets did not decrease in value between the relocation of the trust and the date of sale.

Appeal brought on 3 December 2015 by TV2/Danmark A/S against the judgment of the General Court (Eighth Chamber) delivered on 24 September 2015 in Case T-674/11 TV2/Danmark A/S v European Commission

(Case C-649/15 P)

(2016/C 048/29)

Language of the case: Danish

Parties

Appellant: TV2/Danmark A/S (represented by: O. Koktvedgaard, advokat)

Other parties to the proceedings: European Commission, Kingdom of Denmark, Viasat Broadcasting UK Ltd

Forms of order sought

1. Set aside the judgment under appeal in so far as it finds in favour of the Commission in respect of TV2's principal claim, rule on the case and annul the contested decision in so far as it finds that the measures investigated constituted State aid covered by Article 107(1) TFEU. In the alternative, refer the case back to the General Court for reconsideration.
2. Set aside the judgment under appeal in so far as it finds in favour of the Commission in respect of the second part of TV2's alternative claim, rule on the case and annul the contested decision in so far as it finds that the licence fee revenue which, in the years 1997-2002, was transferred to TV2 and then on to the regions, constituted State aid in favour of TV2. In the alternative, refer this part of the case back to the General Court for reconsideration.
3. Set aside the judgment under appeal in so far as it orders TV2 to bear its own costs and to pay three-quarters of the Commission's costs; order the Commission to pay TV2's costs associated with the proceedings before both the General Court and the Court of Justice. Should the case be referred back to the General Court, a corresponding decision on costs should be made on the referred portion of the case referred back to the General Court.

Pleas in law and main arguments

1. TV2 submits that that part of the judgment under appeal which rejects TV2's first plea in law and thus TV2's principal claim is contrary to the concept of State aid as laid down in Article 107(1) TFEU, thereby vitiating that judgment with an error of law. TV2 puts forward the following principal arguments in support thereof:

- The refusal in the judgment under appeal to accept that the checks carried out by the Rigsrevisionen (National Audit Office) were sufficient to fulfil the fourth *Altmark* condition is based on a strict, literal application of that condition's requirement of cost comparison. This is legally wrong.
- Contrary to what the General Court states in the judgment under appeal, the specific nature of TV2's public service obligations and the retroactive application of the *Altmark* conditions lead to a situation where there should have been a purposive application of that condition: see the principle in the General Court's judgment of 12 February 2008 in *BUPA*, T-289/03, ECLI:EU:T:2008:29, etc.
- The Rigsrevisionen's ongoing checks to make sure that TV2 was a well-run business ensured that the basic purpose of the fourth *Altmark* condition was fulfilled and, therefore, in the specific circumstances of the case involving TV2 and in the light of the purposive application of the condition, sufficient to find that the fourth *Altmark* condition was fulfilled.

2. TV2 further submits that that part of the judgment under appeal which deals with the merits and rejects the second part of TV2's alternative claim is vitiated by an error of law because it is contrary to fundamental procedural principles. TV2 puts forward the following principal arguments in support thereof:

- In its statement in defence the Commission had stated it agreed with TV2 on the point that the licence fee revenue which TV2 passed on to the regions in the period 1997-2002 did not constitute State aid in favour of TV2. The General Court thereby ruled *ultra petita* because it dealt with and rejected the second part of TV2's alternative claim. The judgment under appeal is therefore vitiated by an error of law.
- The General Court further ruled on the merits on the basis of its own line of argument. The General Court's considerations as set out in paragraphs 165-174 of the judgment under appeal have not been argued at any point by either TV2 or the Commission; nor are they to be found in the contested decision. The General Court thereby exceeded the limits of its judicial review.
- At the same time the General Court infringed the principle of the right to a fair hearing: see Article 47 of the Charter of Fundamental Rights of the European Union in that it based its decision on pleas and arguments on which the parties to the case had not submitted pleadings.

3. Lastly, TV2 submits that that part of the judgment under appeal which deals with the merits and rejects the second part of TV2's alternative claim (paragraphs 165-174) is vitiated by an error of law because it is based on a clearly incorrect interpretation of Danish law and is contrary to the concept of State aid as laid down in Article 107(1) TFEU. TV2 puts forward the following principal arguments in support thereof:

- The General Court considers and accords decisive weight to the fact that TV2, as part of fulfilling its duties to distribute regional programmes, received regional programmes from the regions, in return for which the transfer of licence fee revenue was payment for those programmes. This cannot be deduced from the players in the case before the General Court and is clearly contrary to Danish law. The legal test which can be deduced from paragraphs 166, 167 and 171 of the judgment under appeal is therefore substantively met.
- In paragraphs 166, 167 and the first sentence of paragraph 173 of the judgment under appeal, the General Court refers to a hypothetical scenario as part of its State aid assessment. That scenario is inconceivable in practice and irrelevant to the State aid assessment. The decisive factor in TV2's case is, in fact, that TV2 did not derive any economic advantage from the transferred licence fee revenue. As a matter of public law, TV2 was obliged to transfer the licence fee revenue to the regions and did, in practice, perform that obligation. The General Court's decision is therefore contrary to the concept of State aid as laid down in Article 107(1) TFEU.

Appeal brought on 4 December 2015 by Polyelectrolyte Producers Group GEIE (PPG), SNF SAS against the judgment of the General Court (Fifth Chamber, Extended Composition) delivered on 25/09/2015 in Case T-268/10 RENV: Polyelectrolyte Producers Group GEIE (PPG), SNF SAS v European Chemicals Agency (ECHA)

(Case C-650/15 P)

(2016/C 048/30)

Language of the case: English

Parties

Appellant: Polyelectrolyte Producers Group GEIE (PPG), SNF SAS (represented by: R. Cana, avocat, D. Abrahams, barrister, E. Mullier, avocate)

Other parties to the proceedings: European Chemicals Agency (ECHA), Kingdom of the Netherlands, European Commission

Form of order sought

The appellants claim that the Court should:

- Set aside the Judgment of the General Court in Case T-268/10 RENV;
- Annul the Contested Act;
- Alternatively, refer the case back to the General Court to rule on the Appellants' application for annulment;
- Order the Respondent to pay the costs of these proceedings, including the costs of the proceedings before the General Court.

Pleas in law and main arguments

The Appeal is brought against the judgment of the General Court in Case T-268/10 RENV which dismissed the Appellants' action for annulment of the decision of the European Chemicals Agency ('ECHA') to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation No. 1907/2006⁽¹⁾ concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals in accordance with Article 59 of Regulation No 1907/2006.