

Pleas in law and main arguments

The judgment under appeal upheld a Commission decision on State aid relating to several measures adopted by the Spanish public authorities to ensure that the signal for digital terrestrial television (DTT) reaches remote areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission acknowledged that, from a substantive point of view, the market could not offer this service without public intervention. Nonetheless, it denied that it was a service of general economic interest (SGEI) claiming, from a formal point of view, that that service had not been 'clearly' defined and entrusted by the public authorities. It also claimed that, in any event, the public authorities did not have the power to choose a specific technology at the time of organising the SGEI.

First and only ground of appeal: errors in law in the interpretation of Articles 14, 106(2) and 107(1) TFEU, Protocol (No 26) on services of general economic interest and Protocol (No 29) on the system of public broadcasting in the Member States

In particular, the appellants submit that the General Court erred in the judgment under appeal in that:

- it clearly exceeded the boundaries of 'manifest error' in its assessment of the public authorities' various documents defining and entrusting the SGEI;
- it unduly restricted the Member States' 'broad discretion', which applies both to the definition of the SGEI and the 'organisation' of the SGEI and which thus includes the choice of the ways of performing the SGEI and the choice of a specific technology, independently of whether those are included in the document defining the SGEI or a separate document;
- its analysis of the applicable Spanish law was flawed;
- it failed to recognise that the 'definition' of the SGEI and the 'entrusting' of the SGEI to one or several undertakings can be done by means of several documents;
- it failed to recognise that the 'definition' of the SGEI and the 'entrusting' do not require the use of a specific formula or wording, but a substantive and functional analysis;
- it ignored the applicability of Protocol (No 29) on the system of public broadcasting in the Member States annexed to the TFEU and TEU.

⁽¹⁾ Commission Decision of 19 June 2013 on State aid SA.28599 (C 23/10 (ex NN 36/10, ex CP 163/09)) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha) (OJ L 217, p. 52).

Appeal brought on 5 February 2016 by Navarra de Servicios y Tecnologías, S.A. against the judgment of the General Court (Fifth Chamber) delivered on 26 November 2015 in Case T-487/13, *Navarra de Servicios y Tecnologías, S.A. v Commission*

(Case C-68/16 P)

(2016/C 118/19)

Language of the case: Spanish

Parties

Appellant: Navarra de Servicios y Tecnologías, S.A. (represented by: J. L. Buendía Sierra and A. Lamadrid de Pablo, abogados)

Other parties to the proceedings: European Commission and SES Astra

Forms of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of 26 November 2015;
- give a definitive ruling on the action for annulment and annul the Commission decision of 19 June 2013;⁽¹⁾
- order the European Commission to bear the costs.

Pleas in law and main arguments

The judgment under appeal upheld a Commission decision on State aid relating to various measures adopted by the Spanish public authorities to ensure that the signal for digital terrestrial television (DTT) reaches remote areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission acknowledged that, from a substantive point of view, the market could not offer this service without public intervention. Nonetheless, it denied that it was a service of general economic interest (SGEI) claiming, from a formal point of view, that that service had not been 'clearly' defined and entrusted by the public authorities. It also claimed that, in any event, the public authorities did not have the power to choose a specific technology at the time of organising the SGEI.

First and only ground of appeal: errors in law in the interpretation of Articles 14, 106(2) and 107(1) TFEU and of Protocol (No 26) TFEU on services of general economic interest and Protocol (No 29) on the system of public broadcasting in the Member States

In particular, the action emphasises that the General Court erred in the judgment under appeal in that:

- it clearly exceeded the boundaries of 'manifest error' in its assessment of the public authorities' various documents defining and entrusting the SGEI;
- it unduly restricted the Member States' 'broad discretion', which applies both to the definition of the SGEI and the 'organisation' of the SGEI and which thus includes the choice of the ways of performing the SGEI and the choice of a specific technology, independently of whether those are included in the document defining the SGEI or a separate document;
- its analysis of the applicable Spanish law was flawed;
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- it failed to recognise that the 'definition' of the SGEI and the 'entrusting' do not require the use of a specific formula or wording, but a substantive and functional analysis;
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Appeal brought on 5 February 2016 by Cellnex Telecom S.A. and Retevisión I, S.A. against the judgment of the General Court (Fifth Chamber) delivered on 26 November 2015 in Case T-541/13, Abertis Telecom S.A. and Retevisión I v Commission

(Case C-69/16 P)

(2016/C 118/20)

Language of the case: Spanish

Parties

Appellants: Cellnex Telecom S.A., formerly Abertis Telecom S.A., and Retevisión I, S.A. (represented by: J. L. Buendía Sierra and A. Lamadrid de Pablo, abogados)