

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the decision of 10 August 2016 by which the selection board in Open Competition EPSO/AST-SC/03/15 excluded the applicant from that competition;
- order the Commission to pay all of the costs in any event.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging a number of manifest errors of assessment on the part of the selection board when evaluating the applicant's professional experience.
2. Second plea in law, raised in the alternative, alleging insufficient reasoning of the contested decision on the basis of the failure to inform the applicant of the selection criteria established by the selection board.

Action brought on 21 November 2016 — Abes v Commission

(Case T-813/16)

(2017/C 030/58)

Language of the case: Portuguese

Parties

Applicant: Abes — companhia de assistência, bem-estar e serviços para seniores, Lda (São Pedro de Tomar, Portugal) (represented by: N. Mimoso Ruiz, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Consider its action for annulment to have been brought in due form and to be admissible, in accordance with Article 263 TFEU and for the purposes of Article 264 TFEU.
- Annul Decision C(2016) 5054 of 9 August 2016, in accordance with Article 263 TFEU, in so far as it considers that the measure described in the complaint does not constitute State aid within the meaning of Article 107(1) TFEU.
- Annul Decision C(2016) 5054 of 9 August 2016, in accordance with Article 263 TFEU, in so far as it considers that, even if the measure described in the complaint does constitute State aid, it is compatible with the internal market within the meaning of Article 107(3)(c) TFEU.
- Order the European Commission to pay the costs of the proceedings and the costs incurred by the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging failure to state reasons. The applicant considers that the decision is vitiated by a failure to state reasons because in that decision it states that even if the measure constituted aid within the meaning of Article 107(1) TFEU, it would be compatible with the internal market in accordance with Article 107(3)(c) TFEU, although no reasons are given for that conclusion.

2. Second plea in law, alleging manifest error of assessment. The applicant considers that the decision is vitiated by an error of assessment as regards the effects of the aid measure on competition and on trade between Member States since the reasons which lead the Commission to assert that the effect of the aid measure in question on trade between Member States is purely hypothetical or presumed and that, if such an effect actually exists, it is only marginal, are not robust and in practice guarantee the proliferation of similar ad hoc aid measures, not only in the Tomar region but throughout the country, with the inherent consequences in terms of deterring national investment and investment from other Member States.
3. Third plea in law, alleging infringement of Article 107(1) TFEU, in so far as the Commission (i) failed to examine with the necessary care and objectivity whether the aid in question was liable to affect trade between Member States; (ii) did not take account of the fact that there is no threshold or percentage below which it can be considered *a priori* that trade between Member States is not affected; (iii) did not take account of the fact that the effect on trade between Member States does not depend on the local or regional nature of the services provided or the importance of the area of activity concerned; (iv) did not sufficiently emphasise that where State aid strengthens an undertaking's position vis-à-vis other competing undertakings, it should be considered that the undertakings competing with the recipient undertaking will enjoy less favourable conditions for financing new investments in the State concerned.

Action brought on 22 November 2016 — Netflix International and Netflix v Commission

(Case T-818/16)

(2017/C 030/59)

Language of the case: English

Parties

Applicants: Netflix International BV (Amsterdam, Netherlands) and Netflix, Inc. (Los Gatos, California, United States) (represented by: C. Alberdingk Thijm, S. van Schaik and S. van Velze, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the Commission's decision of 1 September 2016 declaring an amendment to the German act on measures for the promotion of German cinema in its seventh version compatible with the internal market ⁽¹⁾; and
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging a violation of the Audiovisual Media Services Directive ⁽²⁾.
 - The Commission violated Article 13 (1) AVMSD in deciding that the German measure is compatible with this article interpreted in light of the proposed amendment.
 - The Commission violated Articles 2 (1), 2 (2) and 3 AVMSD in deciding that the German measure does not impinge the Country of Origin Principle.
2. Second plea in law, alleging a violation of Article 110 TFEU.
 - The Commission violated Article 110 TFEU in finding that the German measure is not discriminatory to on-demand audiovisual media service providers ('VOD providers') established outside Germany but targeting German audiences.