

2. Alternatively, is there a requirement to issue or, alternatively, facilitate the provision of such residence authorisation by virtue of European Parliament and Council Directive 2004/38/EC<sup>(1)</sup> on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Directive')?
3. Where a decision to refuse a residence authorisation is not founded on an extensive examination of the personal circumstances of the Applicant and is not justified by adequate or sufficient reasons is such decision unlawful as being in breach of Article 3(2) of the Citizens Directive?
4. Is a rule of national law which precludes an appeal to a court or tribunal against a decision of the executive refusing to issue a residence card to a person claiming to be an extended family member compatible with the Directive?

<sup>(1)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJ 2004, L 158, p. 77

**Appeal brought on 20 February 2017 by Cellnex Telecom S.A., formerly Abertis Telecom S.A. against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Joined Cases T-37/15 and T-38/15, Abertis Telecom Terrestre S.A. and Telecom Castilla-La Mancha, S.A. v European Commission**

(Case C-91/17 P)

(2017/C 129/10)

*Language of the case: Spanish*

#### **Parties**

*Appellant:* Cellnex Telecom S.A., formerly Abertis Telecom S.A (represented by: J. Buendía Sierra and A. Lamadrid de Pablo, lawyers)

*Other parties to the proceedings:* European Commission and SES Astra

#### **Form of order sought**

The appellant claims that the Court should:

- set aside the judgment under appeal;
- give final judgment on the action for annulment and annul the Commission's decision; and
- order the European Commission and SES Astra to pay the costs.

#### **Pleas in law and main arguments**

In the judgment under appeal, the General Court confirms a Commission decision on State aid concerning various measures adopted by the public authorities of the Spanish Autonomous Community of Castilla-La Mancha in order to ensure that the digital terrestrial television (DTT) signal reaches remote and less urbanised areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission recognised that, in material terms, the market would not offer that service in the absence of public intervention. Nevertheless, it questioned whether the activity was classified as a service of general economic interest (SGEI) in the Spanish legislation, stating that, from a formal perspective, that activity had not been 'clearly' defined and commissioned by the public authorities. The Commission also stated that, in any event, those authorities were not empowered to opt for a certain technology when they organised the SGEI.

In support of its appeal, the appellant relies on two grounds of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Articles 14, 106(2) and 107(1) TFEU and of Protocol No 26 annexed to the TFEU on Services of General Interest.

In particular, the appellant submits that the General Court erred:

- by going beyond the limit of the ‘manifest error’ in the assessment of the various measures defining and allocating SGELs;
- by unduly limiting the ‘wide discretion’ of the Member States, which applies both to the definition and the ‘organisation’ of the SGIE and therefore includes the choice of the methods of providing the SGIE and the choice of a specific technology, irrespective of whether they are set out in the measure defining the SGIE or in a separate measure;
- by analysing the applicable Spanish law, distorting the meaning of the provisions analysed and of the case-law interpreting those provisions, and interpreting it in a manner which is manifestly contrary to its content and giving some information a scope which it should not have in relation to other information;
- by failing to observe that the ‘definition’ of the SGEL and the ‘commissioning’ of the SGEL to one or more undertakings may take place in one or more measures;
- by failing to observe that the ‘definition’ of the SGEL and its ‘commissioning’ do not require the use of a specific formula or expression, but rather a material and functional analysis; and
- by quantifying the alleged advantage received as the total amount of the contracts concluded by the public authorities, disregarding the fact that that amount is not a non-repayable subsidy, but rather constitutes consideration for the goods and services that the undertaking in question provided to the State.

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**(Case C-92/17 P)**

(2017/C 129/11)

*Language of the case: Spanish*

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