



II-3.7: The European Court of Justice upholds the European Commission's condemnation of Italy's illegal state aid in the form of subsidies to purchasers of digital terrestrial television decoders

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Translated
Article



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MAIN INFORMATION

On July 28, 2011, the European Court of Justice rejected an appeal by an Italian digital terrestrial broadcaster against a ruling of the European General Court, which had also rejected an appeal against the European Commission's condemnation of Italy for having subsidized the purchase or rental by consumers of equipment for the reception of digital terrestrial television broadcast signals, since this was an indirect provision of state aid to the broadcasters.

CONTEXT AND SUMMARY

European Union law forbids state aids since they are a means for governments to favor their own companies, contrary to the European project of creating a common market. The prohibition on state aids is characteristic of European law, in comparison to American law, which allows them, because in the United States the construction of a common market is a non-issue.

Concerning the beneficiaries, the prohibition on state aid only concerns corporations, which are subject to competition law.

Thereby, Italy, in order to facilitate the technological transition from analog broadcasting to digital broadcasting, which requires end users to purchase or rent special equipment to receive the signal, decided to provide a public subsidy to consumers to enable them to acquire the necessary equipment. This subsidy was only granted to equipment that allowed consumers to decode digital terrestrial television signals, and not digital satellite television decoders, which remained unsubsidized.

The European Commission condemned the Italian system, considering that it was a form of prohibited state aid. The Italian digital terrestrial television broadcaster *Mediaset* appealed this decision before the European General Court, which upheld the Commission's decision, which led the broadcaster to appeal before the European Court of Justice.

In its July 28, 2011 ruling, the European Court of Justice rejected the appeal on the grounds that the scheme was intended to provide an incentive in the form of a subsidy for consumers to purchase or rent a digital terrestrial television decoder. Thereby, the recipient of the subsidy is not really the consumer, but in reality, the broadcaster, since the subsidy brings it more clients. Indeed, the purchase or rental of digital satellite television decoders did not benefit from such public subsidies, which harmed competition between digital satellite broadcasters and digital terrestrial broadcasters. Therefore, the subsidy is a form of prohibited state aid to companies, and the European Commission

was thereby justified in sanctioning it.

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BRIEF COMMENTARY

From the narrow point of view of state aid legislation, the logic successively adopted by the European Commission, the General Court, and the European Court of Justice makes perfect sense.

However, the goal of the subsidy wasn't really to provide an incentive to customers to purchase a good or service (digital terrestrial television in this case), but rather to facilitate the transition from analog broadcast to digital broadcast. Various authorities affirm that competition law takes innovation into account, and it is therefore surprising that this essential criterion was not taken into account by the European authorities.

The goal of the subsidy was not to provide an incentive to purchase or rent a decoder, but to provide an incentive to adopt digital technology, which is the key to the modernization of the media and the effectiveness of the movement towards digital convergence, especially between telecommunications and the media.

The fact that the competition authorities did not take this dimension into account shows that they remain—which is legitimate from their point of view—primarily attentive to the market seen as a forum for exchanging goods and services. One might think that regulatory authorities—which are receptive to new technologies and innovation, not only by not hindering it (the competition authority says that it does not hinder new technology, either), but also by providing incentives for it, including by using industrial policy supported when necessary by state aids—would have reasoned differently.

But, for the time being, there is still no such thing as a common industrial policy in Europe.