Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 March 2017 *

(Appeal — State aid — Article 107(1) TFEU — Article 106(2) TFEU — Measures taken by the Danish authorities in favour of the Danish public service broadcaster TV2/Danmark — Compensation for the costs involved in the performance of public service obligations — Decision declaring the aid compatible with the internal market)

In Case C-660/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 December 2015,

Viasat Broadcasting UK Ltd, established in London (United Kingdom), represented by M. Honoré and S.E. Kalsmose-Hjelmborg, advokater,

appellant,

the other parties to the proceedings being:

European Commission, represented by L. Grønfeldt and by L. Flynn and B. Stromsky, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

Kingdom of Denmark, represented by C. Thorning, acting as Agent, assisted by R. Holdgaard, advokat,

TV2/Danmark A/S, established in Odense (Denmark), represented by O. Koktvedgaard, advokat,

interveners at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 10 November 2016,

* * Language of the case: English.

gives the following

Judgment

1 By its appeal, Viasat Broadcasting UK Ltd ('Viasat') seeks to have set aside the judgment of the General Court of the European Union of 24 September 2015, *Viasat Broadcasting UK* v *Commission* (T-125/12, EU:T:2015:687) ('the judgment under appeal'), by which that court dismissed its action directed against Commission Decision 2011/839/EU of 20 April 2011 on the measures implemented by Denmark (C 2/03) for TV2/Danmark (OJ 2011 L 340, p. 1) ('the contested decision'), by which the European Commission, while recognising that certain measures adopted by the Kingdom of Denmark in favour of TV2/Danmark ('TV2') had the character of State aid, decided that those measures were to be regarded as compatible with the internal market on the basis of Article 106(2) TFEU.

Background to the dispute

2 The General Court set out the background to the dispute in paragraphs 1 to 17 of the judgment under appeal in the following terms:

'1. The subject-matter of this action is a claim for annulment, in part, of [the contested decision] in that it finds that [the measures implemented by Denmark for TV2/Danmark], although amounting to State aid, are nevertheless compatible with the internal market, within the meaning of Article 106(2) TFEU. The action has been brought by [Viasat], which is a commercial broadcasting company active on the Danish market and a direct competitor of the Danish broadcasting company TV2/Danmark A/S ("TV2 A/S").

2. TV2 A/S was created in order to replace, for accounting and tax purposes as of 1 January 2003, the autonomous State undertaking [TV2], established in 1986, by the Lov No 335 om ændring af lov om radio-og fjernsynsvirksomhed ... [(Law No 335 amending the Law on Broadcasting Services) of 4 June 1986]. TV2 A/S is, as was its predecessor TV2, the second public television station in Denmark, the first being Danmarks Radio ("DR").

3. TV2 A/S, like, previously, TV2, has a public-service mission to produce and broadcast national and regional television programmes. These may be broadcast by means of radio equipment, in particular, satellite or cable systems. Rules governing the public-service obligations of TV2 A/S and TV2 are laid down by the Danish Minister for Culture.

4. Apart from the public broadcasters, commercial television broadcasters operate on the nationwide television broadcasting market in Denmark. These include, first, [Viasat] and, second, the group created from the companies SBS TV A/S and SBS Danish Television Ltd ("SBS").

5. TV2 was set up with the help of an interest-bearing State loan and its activities were, like those of DR, to be funded with the help of revenue from the licence fee paid by all Danish television viewers. The Danish legislature decided, however, that, unlike DR, TV2 would also be able to benefit from, in particular, advertising revenue.

6. Following a complaint lodged on 5 April 2000 by SBS Broadcasting AS/TvDanmark, another commercial broadcaster on the Danish market, the system for funding TV2 was examined by the Commission of the European Communities in its Decision 2004/217/EC of 19 May 2004 on measures implemented by Denmark for [TV2] (OJ 2006 L 85, p. 1, corrigendum in OJ 2006 L 368, p. 1; "the TV2 I decision"). That decision covered the period from 1995 to 2002 and concerned the following measures: licensing fees, transfers granted from funds used to finance TV2 (TV2 and Radiofonden Funds), sums granted on an ad hoc basis, exemption from

corporation tax, exemption from interest and servicing charges on loans granted to TV2 at the time of its formation, the State guarantee for operating loans and favourable terms for payment of fees for nationwide transmission frequencies (taken as a whole, "the measures concerned"). Lastly, the Commission's investigation also concerned the authorisation given to TV2 to broadcast on local networks and the obligation for all owners of communal aerial installations to relay TV2's public-service programmes through those installations.

7. After examining the measures concerned, the Commission concluded that they constituted State aid within the meaning of Article 87(1) EC (now Article 107(1) TFEU). That conclusion was based on the finding that TV2's funding system, which sought to compensate it for the cost of providing its public services, failed to meet the second and fourth of the four conditions laid down by the Court of Justice in its judgment of 24 July 2003 in *Altmark Trans and Regierungspräsidium Magdeburg* [(C-280/00, EU:C:2003:415) ("the *Altmark* conditions")].

8. In addition, the Commission decided that the aid granted between 1995 and 2002 by the Kingdom of Denmark to TV2, in the form of licence fees and the other measures described in the TV2 I decision, was compatible with the internal market under Article 86(2) EC (now Article 106(2) TFEU), with the exception of an amount of 628.2 million Danish Kroner (DKK) which it classified as overcompensation (recital 163 to and Article 1 of the TV2 I decision). It accordingly ordered the Kingdom of Denmark to recover that sum, together with interest, from TV2 A/S (Article 2 of the TV2 I decision), which had in the meantime replaced TV2 (see paragraph 2 above).

9. Given that the recovery of aid referred to in Article 2 of the TV2 I decision rendered TV2 A/S insolvent, the Kingdom of Denmark notified the Commission, by letter of 23 July 2004, of a planned recapitalisation of that company. That plan provided, so far as State-funded measures were concerned, for a capital injection of DKK 440 million, on the one hand, and the conversion into capital of a State loan of DKK 394 million, on the other. By its Decision C(2004) 3632 final of 6 October 2004, in State Aid Case No N 313/2004 relating to the recapitalisation of [TV2 A/S] (OJ 2005 C 172, p. 3; "the recapitalisation decision"), the Commission concluded that the two measures planned for TV2 A/S were "necessary to rebuild the capital which TV2 [A/S] need[ed], following its conversion into a limited company, to fulfil its public-service mission" (recital 53 of the recapitalisation decision). Consequently, the Commission decided that any element of State aid that might be connected with the planned recapitalisation of TV2 A/S was compatible with the internal market under Article 86(2) EC (recital 55 to the recapitalisation decision).

10. The TV2 I decision was the subject of four actions for annulment brought, on the one hand, by TV2 A/S (Case T-309/04) and the Kingdom of Denmark (Case T-317/04) and, on the other, by the competitors of TV2 A/S, namely [Viasat] (Case T-329/04) and SBS (Case T-336/04).

11. By judgment of 22 October 2008 in *TV2/Danmark and Others* v *Commission* [(T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457)], the Court annulled the TV2 I decision. [In paragraph 124 of that judgment], the Court held that the Commission had rightly concluded that TV2's public-service mission was consistent with the definition of broadcasting services of general economic interest ... It also found, however, several instances of illegality vitiating the TV2 I decision, which led, in short, to the annulment of that decision.

12. Thus, first, examining the question whether the measures concerned by the TV2 I decision involved State resources, the Court held that the Commission had failed to state in its decision the reasons for which it took advertising revenue from 1995 and 1996 into consideration, de facto, as State resources [(judgment of 22 October 2008, *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraphs 160 to 167)]. Second, the Court found that the Commission's examination as to whether the second and fourth *Altmark* conditions had been met was not supported by serious analysis of the legal

and economic considerations which governed the setting of the amount of the licence fee income payable to TV2. The TV2 I decision was, in consequence, vitiated by failure to state reasons on that point [(judgment of 22 October 2008, *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraphs 224 to 233)]. Third, the Court held that the Commission's conclusions on the examination of the compatibility of the aid in the light of Article 86(2) EC, in particular on whether or not there had been overcompensation, were also vitiated by a failure to state reasons. According to the Court, that inadequacy of the reasons stated was attributable to the failure to undertake a serious examination of the actual legal and economic conditions which governed the setting of the amount of the licence fee income payable to TV2 during the period under investigation [(judgment of 22 October 2008, *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraphs 192, 197 to 203).

13. The recapitalisation decision was the subject of two actions for annulment, brought by SBS and by [Viasat]. By two orders delivered on 24 September 2009, the Court ruled that, in the light of the annulment of the TV2 I decision and the close link between the obligation to recover the aid resulting from that decision and the measures which are the subject of the recapitalisation decision, it was no longer necessary to rule on those cases [(orders of 24 September 2009, *SBS TV and SBS Danish Television* v *Commission*, T-12/05, not published, EU:T:2009:357, and [of 24 September 2009,] *Viasat Broadcasting UK* v *Commission*, T-16/05, not published, EU:T:2009:358)].

14. Following the annulment of the TV2 I decision, the Commission re-examined the measures concerned. On that occasion, it consulted the Kingdom of Denmark and TV2 A/S and, furthermore, received observations from the third parties.

15. The Commission presented the result of its re-examination of the measures concerned in the contested decision, which is the subject of the present action and of another action brought by TV2 A/S [(*TV2/Danmark* v *Commission*, T-674/11, EU:T:2015:684)], in which the Court has delivered its judgment today.

16. The contested decision concerns the measures granted to TV2 between 1995 and 2002. However, in its analysis the Commission also took into account the recapitalisation measures taken in 2004 following the TV2 I decision.

17. In the contested decision, the Commission maintained its position as regards the classification of the measures concerned as State aid within the meaning of Article 107(1) TFEU in favour of TV2 (recital 153 of the contested decision). First, it considered that the advertising revenue for 1995 and 1996 constituted State resources (recital 90 to the contested decision) and, second, in determining the existence of a selective advantage, it concluded that the measures concerned did not meet the second and fourth *Altmark* conditions (recital 153 to the contested decision). However, whereas in the TV2 I decision it had concluded that the sum of DKK 628.2 million was overcompensation incompatible with Article 86(2) EC, in the contested decision the Commission took the view that that sum was a capital buffer appropriate for TV2 A/S (recital 233 to the contested decision). In the operative part of the contested decision, it therefore declared as follows:

"Article 1

The measures implemented by Denmark in favour of [TV2] between 1995 and 2002 in the form of the licence fee resources and other measures discussed in this Decision are compatible with the internal market within the meaning of Article 106(2) [TFEU]."'

The procedure before the General Court and the judgment under appeal

3 By application lodged at the Registry of the General Court on 14 March 2012, Viasat sought annulment in part of the contested decision.

4 Viasat claimed that the State aid granted to TV2 was incompatible with the internal market, raising two pleas in this connection. The first plea alleged an error of law committed by the Commission which, in assessing the compatibility of the measures concerned with the internal market under Article 106(2) TFEU, did not take into account the second and fourth *Altmark* conditions. The second plea alleged a failure by the Commission to fulfil its duty to state reasons in so far as that institution, without explaining the reasons for its decision, found that Article 106(2) TFEU applied in the present case, although the second and fourth *Altmark* conditions were not met.

5 By the judgment under appeal, the General Court declared that it was unnecessary to adjudicate on the action, in so far as that action sought the annulment of the contested decision in that the Commission had found that the advertising revenue from 1995 and 1996 paid to TV2 by the TV2 Fund amounted to State aid, and dismissed the action as to the remainder.

6 By its judgment of 24 September 2015, *TV2/Danmark* v *Commission* (T-674/11, EU:T:2015:684), the General Court, in an action brought by TV2, annulled the contested decision in so far as it had characterised as State Aid the advertising revenue received by TV2 for the years 1995 and 1996.

The forms of order sought

7 Viasat claims that the Court should:

— primarily, set aside the judgment under appeal in so far as it dismissed its action and annul the contested decision, and order the Commission to pay the costs of the proceedings before the General Court and the Court of Justice; and

— in the alternative, set aside judgment under appeal, refer the case back to the General Court for a decision and reserve the decision on costs.

8 The Commission contends that the Court should:

— dismiss the appeal; and

— order Viasat to pay the costs incurred at both instances.

9 The Kingdom of Denmark contends that the Court should dismiss the appeal.

10 TV2 A/S contends that the Court should:

— primarily, dismiss the appeal;

— in the alternative, maintain the effects of the judgment under appeal and of the contested decision; and

— order Viasat to pay the costs of TV2 A/S.

The request to reopen the oral procedure

11 Following the delivery of the Advocate General's Opinion, Viasat, by letter of 3 January 2017, requested the Court to reopen the oral part of the procedure. In support of its request, Viasat submits that the Advocate General's Opinion distorts some of its arguments and raises separate arguments which were not debated between the parties.

12 It should be borne in mind that, according to Article 83 of the Rules of Procedure of the Court of Justice, that court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

13 However, the Statute and those Rules make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 30 and the case-law cited).

14 In that regard, it follows from the second paragraph of Article 252 TFEU that it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions examined in that Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (see judgment of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraphs 60 and 61 and the case-law cited).

15 The Court therefore considers, having heard the Advocate General, that it has before it all the necessary information to give judgment and that the information has been the subject of debate between the parties.

16 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

The appeal

The first plea, alleging infringement of Article 106(2) TFEU

Arguments of the parties

17 By its first ground of appeal, Viasat claims that the General Court erred in law in finding that the Commission, in its assessment of the proportionality of the measures concerned in the light of the requirements set out in Article 106(2) TFEU, in particular those providing that, first, the application of the rules of the Treaties must obstruct the performance of the tasks assigned and, secondly, the performance of those tasks must not affect the development of trade as would be contrary to the interests of the European Union, was not required to take into consideration the fact that those measures did not meet the second and fourth *Altmark* conditions. According to those conditions, the parameters on the basis of which the compensation for the performance of the public service is calculated must be established in advance in an objective and transparent manner, and that compensation must be determined on the basis of an analysis of the costs which a typical and well run undertaking would have incurred in performing the public service tasks concerned.

18 Viasat claims that it is apparent from the wording of Article 106(2) TFEU that the requirement that the application of the rules in the Treaties, in particular the competition rules, must obstruct the performance of the tasks assigned must be interpreted so as to refer to the other provisions of the Treaty. Thus, in an assessment of the compatibility of State aid in the light of Article 106(2) TFEU, those other provisions must be examined beforehand. Therefore, in the present case it should, according to Viasat, have been ascertained in this connection whether or not the application of any of the *Altmark* conditions obstructed the performance of the public service tasks assigned to TV2. Had that examination taken place, the Commission would have concluded that the adoption, in favour of TV2, of measures meeting the second and fourth *Altmark* conditions would not have obstructed the performance of that task.

19 Consequently, in order to ensure compliance with the requirements that the performance of the tasks at issue must be obstructed and the development of trade cannot be affected to such an extent as would be contrary to the interests of the Union, the Commission should have requested the Kingdom of Denmark to prove that complying with the second and fourth *Altmark* conditions would have prevented the performance of the tasks of general economic interest assigned to TV2.

20 The Commission, the Kingdom of Denmark and TV2 A/S contend that the first ground of appeal is unfounded.

Findings of the Court

21 By its first ground of appeal, Viasat claims that the General Court erred in law in finding that the Commission was not required, in its assessment under Article 106(2) TFEU, to take the second and fourth *Altmark* conditions into consideration in order to ascertain whether compliance with those conditions would have obstructed the performance by TV2 of the tasks assigned to it.

22 In this connection it must be recalled that, for a national measure to be categorised as State aid within the meaning of Article 107(1) TFEU, there must, first, be an intervention by the State or through State resources; second, the intervention must be liable to affect trade between Member States; third, it must confer a selective advantage on the recipient and, fourth, it must distort or threaten to distort competition (see, to that effect, judgment of 2 September 2010, *Commission* v *Deutsche Post*, C-399/08 P, EU:C:2010:481, paragraph 39 and the case-law cited).

23 Since those conditions are cumulative, a State measure cannot be characterised as State aid if one of them is not satisfied. By contrast, if all those conditions are met, that measure constitutes State aid and, accordingly, unless it is covered by a derogation provided for by the Treaties, is incompatible with the internal market.

24 So far as concerns the third criterion for characterising a measure as State aid, it is settled case-law that measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as State aid (see judgment of 30 June 2016, *Belgium* v *Commission*, C-270/15 P, EU:C:2016:489, paragraph 34).

25 However, the Court has stated that, where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 107(1) TFEU (see judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 87).

26 In accordance with paragraphs 88 to 93 of the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415), in order for such a measure not to be characterised as State aid a number of conditions must be met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation must not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations. Fourth, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations.

27 If the conditions referred to in the previous paragraph were not met, the State measure at issue would be deemed to confer a selective advantage on the recipient undertaking and if, moreover, the other criteria set out in Article 107(1) TFEU were met, that measure would constitute aid in principle incompatible with the internal market.

28 Article 106(2) TFEU provides that undertakings entrusted with the operation of services of general economic interest are to be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them and that the development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

29 As is provided by case-law, the wording of Article 106(2) TFEU itself shows that exemptions to the Treaty rules are permitted provided that they are necessary for performance of the particular tasks assigned to an undertaking entrusted with the operation of a service of general economic interest (see, to that effect, judgments of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraph 54 and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 106).

30 In that regard, it is clear from the Court's case-law that it is not necessary that the financial balance or economic viability of the undertaking entrusted with the operation of a service of general economic interest should be threatened. It is sufficient that, in the absence of the rights at issue, it would not be possible for the undertaking to perform the particular tasks entrusted to it, or that maintenance of those rights is necessary to enable the holder of them to perform tasks of general economic interest which have been assigned to it under economically acceptable conditions (judgment of 15 November 2007, *International Mail Spain*, C-162/06, EU:C:2007:681, paragraph 35 and the case-law cited).

31 In allowing derogations to be made from the general rules of the Treaty in certain circumstances, Article 106(2) TFEU seeks to reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or fiscal policy with the Union's interest in ensuring compliance with the rules on competition and the preservation of the unity of the common market (see, to that effect, judgment of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraph 55).

32 As set out in paragraph 21 above, Viasat submits that the Commission was required to examine, in its assessment under Article 106(2) TFEU, whether meeting the second and the fourth *Altmark* conditions would have obstructed the performance by TV2 of the tasks assigned to it.

33 It must be pointed out in this connection that in order to assess a measure under Article 106(2) TFEU, the Commission is not required, contrary to what is claimed by the appellant, to examine whether the conditions laid down by the case-law in *Altmark*, in particular the second and fourth of those conditions, are met.

34 As the General Court indeed held in paragraph 63 of the judgment under appeal, verification of the conditions laid down in the *Altmark* case-law occurs upstream, that is to say in the examination of the issue of whether the measures at issue must be characterised as State aid. That issue must be resolved before the one which consists in examining, where necessary, if incompatible aid is nevertheless necessary to the performance of the tasks assigned to the recipient of the measure at issue, under Article 106(2) TFEU.

35 By contrast, the conditions laid down in the *Altmark* case-law are no longer to be applied where the Commission, having found that a measure must be characterised as aid, in particular in so far as the recipient undertaking is unable to pass the test of comparison with a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public-service requirements, examines whether that aid can be justified under Article 106(2) TFEU.

36 That latter provision, which is supplemented by the Protocol (No. 26) on Services of General Interest (OJ 2010 C 83, p. 308) and, as regards the field at issue in the present case, by the Protocol (No. 29) on the System of Public Broadcasting in the Member States (OJ 2010 C 83, p. 312), cannot be interpreted in isolation having regard merely to its wording without also taking into account the additional information in those protocols.

37 The finding in paragraph 35 of the present judgment is supported, as the Advocate General observed in point 43 of his Opinion, by the wording of Protocol No. 29, which states that 'the provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.'

38 Having regard to the foregoing considerations, the General Court therefore did not err in law when it held in the judgment under appeal that Article 106(2) TFEU does not require the Commission to take into consideration the second and fourth *Altmark* conditions in order to decide whether State aid is compatible with the internal market under that provision.

39 The first ground of appeal must therefore be rejected as unfounded.

The second ground of appeal, alleging breach of Article 296 TFEU

Arguments of the parties

40 By its second ground of appeal, Viasat takes issue with paragraphs 103 and 104 of the judgment under appeal on the ground that the General Court erred in law by rejecting its plea for annulment based on the Commission's infringement in the contested decision of its obligation to state reasons under Article 296 TFEU.

41 Viasat also alleges that the General Court failed to reply to the pleas raised in the application at first instance.

42 The Commission contends that the second ground of appeal is in part inadmissible and, in any event, unfounded.

Findings of the Court

43 It is settled case-law that the statement of reasons required under Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent Court of the European Union to exercise its jurisdiction to review legality (judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 147 and the case-law cited).

44 It must be observed in this connection that, in paragraph 103 of the judgment under appeal, the General Court rejected the plea alleging a failure to state reasons in the contested decision by stating that 'the fact that the contested decision does not mention the role of the second and fourth *Altmark* conditions in the assessment of the compatibility of the measures concerned with the internal market is not attributable to an error of reasoning on the part of the Commission or to a failure to state reasons vitiating the contested decision, but rather to the fact that that decision applies a different analytical framework from that which favours [Viasat]'.

45 As Viasat has conceded, the contested decision would only be vitiated by a failure to state reasons if the Commission had been required to apply the analytical framework which, according to Viasat, results from Article 106(2) TFEU.

46 However, it follows from paragraph 37 above that Article 106(2) TFEU did not require the Commission to take into consideration the second and fourth *Altmark* conditions in order to decide whether State aid is compatible with the internal market under that provision. Accordingly, the General Court did not err in law in holding that sufficient reasons were stated for the contested decision.

47 Moreover, as the Advocate General observed in point 58 of his Opinion, the complaint alleging a failure to respond to the pleas raised in the application at first instance is insufficiently developed for the other parties to the appeal to respond to or for the Court to rule on. Consequently, it is inadmissible.

48 Accordingly, the second ground of appeal must be rejected as in part inadmissible and in part unfounded.

49 It follows from all of the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

50 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

51 Since the Commission and TV2 A/S have applied for costs and Viasat has been unsuccessful, the latter must be ordered to pay their costs.

52 Pursuant to Article 140(1) of the Rules of Procedure, also applicable to appeal proceedings by virtue of Article 184(1) of those Rules, the Member States and institutions which intervene in the proceedings are to bear their own costs.

53 The Kingdom of Denmark, as an intervener before the General Court, is to bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Viasat Broadcasting UK Ltd to pay the costs incurred by the European Commission and TV2/Danmark A/S;**

3. **Declares that the Kingdom of Denmark is to bear its own costs.**

Silva de Lapuerta Regan Bonichot

Arabadjiev Fernlund

Delivered in open court in Luxembourg on 8 March 2017.

A. Calot Escobar
Registrar

R. Silva de Lapuerta
President of the First Chamber