



EPC | European
Publishers
Council

Mr Philip Lowe
Director General
Directorate-General for Competition
European Commission
1049 Bruxelles/Brussel
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Dear Philip

Draft Broadcasting Communication - Consultation January 2009

I am writing to you directly with our comments on the Commission Communication on the application of state aid rules to public service broadcasting as published in November 2008 as I would like to link our comments with those you were presented with at the European Parliament last week. Even though many of our members have continuing concerns around traditional TV markets our main interest in the Communication focuses on the extension of state aid to PSB activities on the internet and for mobile markets.

As you know the European Publishers Council (EPC) has been following the increasing tendency of the public broadcasters to migrate to the internet, becoming in many cases, publicly funded newspaper and magazine online publishers, in direct competition with our own web-based services. A clear Commission Communication on the application of state aid rules to public service broadcasting is therefore welcomed by the EPC. Without early intervention by the European Commission to establish an acceptable framework of optimal rules to prevent distortions of competition with the private sector we shall be revisiting the problems of the past in the TV market

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on the developing online markets, to the detriment of our members' interests (see Annex 1 for our current list of Members).

PSB activities on the internet are not analogous to their pioneering role in conventional broadcasting, and to subsequent market developments. We would ask you to consider very carefully the consequences of what has happened in the UK and to make sure that similar scenarios do not develop by default in other EU countries. A lively discussion is underway in Germany as you know where they intend to introduce a UK-style framework of Public Value Test and Market Impact Assessment. This is essential where private sector internet services are well established already so unlike the early days of traditional broadcasting, rooted in spectrum scarcity, there is no need for state-subsidised semi-monopolies to make the heavy investment necessary to ensure the growth of these new markets. On the contrary, we argue that the new market and its customers will benefit from the very opposite architecture: a wide diversity of suppliers, unrestrained by unfair competition from any dominant player. The expenditure, content and cross-promotional advantages enjoyed by incumbent public service broadcasters are so great as to endanger investment in wide areas of potential activity by the private sector. This is compounded by the lack of transparency of PSBs future intentions, and by approvals systems in the Member States which set neither practical limits on, nor effective scrutiny of, the PSBs current or intended expansion into almost every area of internet activity. The result is that creative internet ideas will rarely progress to the planning stage if publicly funded expenditure has the effect of stifling even the prospect of commercial competition over wide areas of activity and interest.

We have long supported the Commission in its decision to update the current regime on the application of state aid rules to public service broadcasting dating back to 2001 and to modernize it by taking into consideration both the Court decisions as well as the technological developments. Overall we feel that the Communication takes a very balanced approach and this is why we want to support and continue working with you and your services in order to reach the best possible result at the end of this process. We would like to take this opportunity to comment upon its content in a constructive manner.

1. Remit (Section 6.1 “Definition of public service remit”)

To avoid uncontrolled expansion of publicly funded broadcasters to the internet and mobile markets the definition of the public service remit is the first important step in order to inject more certainty in the business environment. Despite the high degree of subsidiarity when it comes to this issue and because we operate in the internal market framework, we indeed expect the Commission to point out the manifest errors such as the ones identified in paragraph 47 of the Communication.

The clear identification of the activities covered by the public service remit is necessary in terms of transparency as well as better business planning. In particular there is a need to define programming that meets the "democratic, social and cultural needs of each society" and that guarantees pluralism. Otherwise the Communication will not be able to provide sufficiently clear guidelines for the Commission and the Member States' authorities to bring effective compliance with the remit.

2. New Services on the Internet (Sections 4.2 “Nature of the aid existing aid as opposed to new aid”, 6.1.2 “Market developments” and 6.1.3 Procedural safeguards)

Regarding the online services, EPC is of the opinion that internet publishing is not simply or solely an extension of a public service broadcasting role. It should be considered in terms of its evolution as a separate and rapidly developing means of distribution in which diverse commercial activities and investment must play a significant role. As the Commission recognises, all the online services are not an automatic element of the public service remit and they can have cross border implications in terms of trade and audience. This is why EPC welcomes the existence of the *ex ante* test to assess the market impact of digital media services, which should be carried out by an independent body.

The independent (ex-ante) control for activities of public broadcasters in the online environment could be extended in the Communication to cover not only new ventures but also existing public service ventures and actions due to ever changing online environment (in latter case it would be *ex post* control).

We feel that this test should address the added public value of a service for the society as a whole and its value for the investment/public financing that it calls for, as the best way to go forward as long as it is well structured and the remit itself is well defined.

3. Pay Services (Section 6.1.2. "Market Developments")

As far as the pay services are concerned, despite analysis done by the Commission in the relevant paragraphs of the text, we believe that this Communication should by no means compromise the principle of universality on grounds of vaguely defined "overall circumstances". It is also of great importance to make a clear distinction between "public service remit" and *commercial* content products and services. Therefore, the Communication should establish clear limits on permitted internet related mobile activities to the core public service mission of the public service broadcasters.

In addition to the above, further, stricter and more detailed safeguards/provisions are needed for the correct implementation/use of the paragraph 63 by the Public Service Broadcasters as this could result in informal, "eternally-temporary-only" services which crowd private investments. The body handling the test for the market assessment should also be the one responsible for the proper implementation of this clause.

4. Market Distortions (Section 6.3.3.4 "Market Distortions")

The expansion of the Public Service Broadcasters into disproportionate to their remits activities, is a tendency entailing a high degree of irresponsibility because of the market distortions it generates. Therefore with respect to the relevant section of the communication (paragraphs 101-106), the criteria for market distortion are far from clear or useful in practical terms and they will not help the Member States' authorities nor in controlling and enforcing tasks or in the decision making process.

Following the discussions in the European Parliament, we were disappointed to notice comments which raised concerns over restrictions of PSBs movements especially in the smaller Member States, bureaucracy and political interference which will affect the quality of content.



We consider all these remarks to be too simplistic and not taking all parameters into account whereas this Communication has the potential of achieving a transparent operational framework for the Public Service Broadcasters, which shall give prominence to their social, democratic and cultural role with a more editorial rather than commercial behaviour.

The free, independent European Press faces difficult and growing competition in the online environment by non-European players such as the search engines and other content aggregators. Still, the European values related to the press freedom are based on financial independence not only in the analogue but also in the online environment. It is extremely important that in addition to publicly funded news and other content production there are strong, independent European publishers and TV/film producers, that are active both online and offline. Otherwise the media pluralism and versatile national content offerings will suffer in Europe, especially in the Member States with a small market and language areas flying in the face of the objectives of the Lisbon Agenda.

If governments and more importantly citizens believe that good public service broadcasting is essential to the maintenance of democracy and a decent society, now is the time to make such a review and follow fast with action to reassert core public service objectives, provide clear practical tools to build up fair play conditions and appropriate limits to ensure fair competition.

We continue to support you fully in your endeavours.

With kind regards,

Yours sincerely,

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