

FACT

Finnish Association of Commercial Television

Helsinki, 14 January 2009

European Commission
DG COMP
State aid registry
1049 BRUSSELS
Belgium

Re: Communication from the Commission on the application of State aid rules to public service broadcasting

Dear Sirs,

The Finnish Association of Commercial Television¹ (FACT) welcomes the opportunity to reply to the consultation on the draft Communication on the application of State aid rules to public service broadcasting. We sincerely hope that our views are helpful in the process to update this very important Communication and in the national discussions currently held here in Finland on the future of Yleisradio Oy.

Finnish Association of Commercial Television

Pekka Karhuvaara
Chairman

¹ Finnish Association of Commercial Television (FACT) is an union of commercial broadcasters in Finland. Members of the union are: MTV Oy, Subtv Oy, Sanoma Entertainment Oy, Sanoma Television Oy and Suomen Urheilutelevisio Oy. These companies broadcast television programmes on five free-to-air and 9 pay-tv channels in Finland.

Executive summary

- **FACT supports the Commission in updating the 2001 Communication on State aid for Public Broadcasters**
- **We call on the Commission to ask the Member States to give public broadcasters as tight a definition as possible. The starting point should be assessing which services will certainly not be offered by the market and these should be the cornerstone of the public service remit.**
- **FACT opposes the possibility of public broadcasters to offer pay services.**
- **We believe that any service that does not fall within the remit of the public service broadcaster should be subject to an ex ante evaluation by the market.**
- **In order to ensure transparency and efficiency public broadcasters should be scrutinised by an independent authority, preferably the same one.**
- **We do not agree that public broadcasters should be able to enjoy commercial revenue. The society will benefit the most if there is a clear difference between the services offered by public operators and commercial ones. Were the public broadcaster able to offer commercial services, this should be done under the auspices of a separate commercial entity.**
- **We strongly agree with the Commission that public service broadcasters should not get involved with activities that are already provided by the market or that would result in disproportionate distortions of competition.**

1. Introduction

In our reply to the Commission questionnaire on this issue in spring 2008, FACT emphasised the need to update the 2001 Communication in order to reflect the recent developments in the media landscape. We called for the need to ensure that public service broadcasters have a clear definition of their remit in order to differentiate their activities from the activities of purely commercial operators.

Many of our concerns have been met in the draft Communication by the Commission and we are therefore able to support the proposal with a few remarks. We would urge the Commission to take an even stronger stance on the issue of the definition of public broadcasters. The Commission should also resist any requests by public broadcasters to operate pay-per view services and it should more clearly emphasise the demand for an independent body to supervise them.

We also hope that the Commission will be able to resist the opposition to the draft Communication by many Member States and public broadcasters in their attempt to restrict any control over their public broadcasting activities.

2. Public service remit

FACT agrees with the Commission in that the definition of the public service mandate should fall within the competence of the Member state and be as precise as possible. Currently the Finnish Act regulating public service broadcasting (Act on Yleisradio Oy) determines the remit of the Finnish public service broadcaster Yleisradio Oy in a very wide manner (full service television and radio programs and thereto related additional and extra services, to be offered in all telecom networks). This definition leaves too much room for interpretation as anything Yleisradio Oy does or intends to do can suddenly constitute public service.

We call on the Commission to ask the Member States to give public broadcasters as tight a definition as possible. The starting point should be assessing which services will certainly not be offered by the market and these should be the cornerstone of the public service remit. For example in Finland, programming for the Swedish-speaking and other language minorities should clearly belong to the remit of Yleisradio Oy, as should news, current affairs, documentaries, religious programming etc, ie programming that clearly fulfil democratic, social and cultural needs of the society. Access services for people with disabilities should also be offered by public service broadcasters. Commercially produced programming or programming with commercial spin-off effects, should not be part of the public service remit.

3. Pay services

According to the draft Communication, public service broadcasters shall be able to use the opportunities offered to them by the digitisation process. Pubcasters should be free to operate in the new media environment and may even enter into the pay market on a limited basis.

FACT does not oppose public service broadcasters entering the online, non-linear environment. However, we do very much oppose any such new service having any commercial elements that would directly or indirectly be in competition with commercial operators. We believe that new media services must be restricted to

what is absolutely necessary for the pubcaster's activities, even if they are offered for free. We cannot accept any moves into a pay-per-view market, not even for niche content. Opening up the door for such services could lead to much more wide ranging services in the future. We would therefore agree with the Commission that the universality requirement for public broadcasters would severely suffer were they to move to any pay services in the future.

4. Market assessment

FACT agrees with the Commission that adequate safeguards must be taken in order to assess whether a new service will have a significant effect on the market. We also agree that it should be left to the Member State to determine the most appropriate mechanism for such an impact assessment. The assessment must be carried out by an external and independent body in order to ensure the impartiality of its decisions.

We believe that any service that does not fall within the remit of the public service broadcaster should be subject to an ex ante evaluation. In our view services in the non-linear environment and those subject to payment should always be scrutinised by such an evaluation.

Here we would like to refer to the recent statement by the BBC Trust in which it rejected plans to launch a £68m network of local news websites with video content. The plan had faced fierce opposition from newspaper publishers, who argued that it would damage their own local online operations. The trust said the BBC's proposal did not meet its criteria for offering value to the public. We think that this is a good example of how a public value test should work and therefore it should definitely be implemented in all member states, also in Finland.

5. Supervision

According to the draft Communication, the Commission recommends that public broadcasters should be monitored by an external body independent from the broadcaster. It should have appropriate powers and resources to carry out a regular supervision and impose possible remedies.

FACT agrees with this assessment. We believe that public broadcasters should be scrutinised by an independent authority. In Finland, Yleisradio Oy is currently supervised by an Administrative Council elected by the Parliament. Members of this Council are Members of Parliament and will not therefore always have hands on experience of the broadcasting sector. We believe that a more efficient supervision would be achieved by the Finnish Telecom and Broadcast regulator FICORA that currently monitors all commercial broadcasters in Finland. Moving the monitoring of Yleisradio Oy to the same body as the rest of the sector would result in a more fair and transparent system

6. Dual funding of public service broadcasters

In Finland we have a fairly clear cut system of funding of broadcasters. The public broadcaster Yleisradio Oy is purely funded by the licence fee and commercial operators by commercial means.

We do not believe that public broadcasters such as Yleisradio Oy should be able to enjoy commercial revenue and certainly oppose any pay services being operated by

them. The commercial element should also be avoided in partnership contracts that public broadcasters may have with the market. Were the public broadcasters able to offer commercial services, then these services should clearly be offered by a separate commercial entity.

7. Proportionality – over-compensation

The Commission proposes that public broadcasters would be allowed reserves of up to 10% of the annual budget in exceptional and duly justified cases. We believe that as a general rule, public service broadcasters should not make any profit. Any surplus can be justified only in cases when the public service broadcaster must reserve funds for long term investments, such as transition to HDTV broadcasting. The surplus should never be used for daily expenses.

FACT is of the opinion that public broadcasters must be encouraged to operate in a most cost-effective way in order to keep costs at a minimum and decrease the need for any surpluses. There should also be a regular and effective control over the use of public funding by an independent regulator such as FICORA.

8. Market distortions

We strongly agree with the Commission that public service broadcasters should not get involved with activities that are already provided by the market or that would result in disproportionate distortions of competition. A good example of this is premium sport rights. We oppose any bidding wars between the public and commercial national operators as these usually result in a disproportionate increase in the level of compensation for these rights.

9. Conclusion

FACT very much welcomes the courageous move by the Commission to tackle this important, but politically difficult issue and to propose useful and effective tools for the future of the public broadcasting industry. Many of the suggested changes speak for themselves in the new media environment. Competition in the European and national media industry has increased way beyond recognition and all operators are struggling to find their place in the market. Especially in this environment it is important to have a stable public service operator that concentrates on offering news, information, current affairs etc public value programming that may not always be provided by the market. The public broadcasters should not be tempted to get involved in the commercial market place in order to compete with the commercial operators that very often struggle to provide high-value content based on very fragmented advertising revenue.

It is clear that the society benefits the most when there is a strong public broadcaster with a very strong public value programming portfolio funded by public money and a strong commercial sector that is able to provide high-quality content free-to-air or through pay services.