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Amsterdam, 15 januari 2009
De Nederlandse Dagbladers (NDP)
Ref: RE/TN
Subject: **Consultation Broadcasting Communication**

Dear Madam, Sir,

The Dutch Newspaper Publishers Association (NDP) represents the interests of all (paid for) newspaper publishing companies in the Netherlands. All together our members publish 30 independent newspapers. Our members do not only offer content in printed media, but are also increasingly active in the online world.

The primary goal of the NDP is to create the conditions for development of the healthy press in the Netherlands, through which a pluralist offer of newspaper content (in print as well as electronic) can be realised.

In this letter the NDP would like to give its views on the Commission's role in assessing state aid to public service broadcasting laid down in the draft Revised Broadcasting Communication.

1. General

As the Broadcasting Communication was written eight years ago, the NDP welcomes the new Communication in the light of the different legal and technical developments. Any changes in the Broadcasting Communication that will lead to more transparency and legal certainty, and at the same time create a level-playing-field for all media, are encouraged.

In general, the NDP is of the opinion that excessive funding and overcompensation of public broadcasting organisations distort competition, not only within the Dutch broadcasting sector, but also on the market for traditional and new media services. In 2003, the NDP supported the complaint of the Dutch commercial broadcasting organisations concerning state aid granted to the Dutch public broadcasting system. As publishers are also active on the market for new media services, and invest a lot of money in internet reviews, the NDP filed a complaint specifically aimed at this market (and in addition to the complaint of the commercial broadcasters). A new complaint was submitted by the Dutch commercial broadcasting

organisations in November last year, which NDP will again support and will give its specific input on state aid to the Dutch public broadcasters and the market distortion experienced by NDP members.

2. Dutch broadcasting market

In the Netherlands there are currently three big players on the audiovisual market: the Dutch public broadcasting organisation, RTL Netherlands and SBS Netherlands. Publishers are not always linked to the audiovisual media sector, but some publishing companies own shares in television companies and they increasingly offer audiovisual content on the internet (mostly video-on-demand). Especially on the news market (i.e. internet), public broadcasters compete for the same public as publishers.

The total budget of the Netherlands Public Broadcasting (NPO) in 2009 is 761.7 million Euro's. Of that amount Netherlands Public Broadcasting (NPO) intends to spend 49 million Euro's on internet activities in 2009. Moreover, in the past the public broadcasters were able to build up large financial reserves. For broadcasting activities (just TV programmes) an additional reserve of 10% of the total annual budget is permitted in the revised Broadcast Communication. Newspaper publishers can only invest in internet projects by allocating (part of) their profits to such activities. Newspaper publishers have to obtain their advertising revenues in competition with TV and radio, and more and more in competition with internet-publishers. The NDP would like to point out that the Dutch Public Broadcasting is allowed to exploit advertising on tv, radio and internet. Responsible for advertising space is STER, the marketing and selling organisation of the public broadcasting organisation. The NDP is opposed to this hybrid financial system. A public broadcasting organisation should be financed by public means. Seeking a commercial basis at the same time distorts competition.

For the generation of reach (the costs of producing and distributing programmes) the Dutch Public Broadcasting organisations are paid through public means. On top of that they generate advertising income. Therefore, the advertising tariffs of the STER can be artificially low. The very low price-setting of the public broadcasting with regard to the tariffs that newspapers have to charge for their print advertisements are a proof of that. For newspapers, advertising revenues are after all not extra income, but a primary source of income. Newspapers are depending on the advertising market. The very low price-setting of the advertising tariffs of the public broadcasting leads to unfair competition with newspapers. This furthermore has a price depressing effect on the market as a whole, which also harms newspapers.

3. Definition of the public service remit

In the draft-version of the Revised Broadcasting Communication, activities other than TV programmes in the traditional sense can be part of the public service remit provided that they serve the same democratic, social and cultural needs of society.

Under the new Dutch Media Act (also named 'Multimedia Act'), which was enacted on 1 January 2009, all forms of electronic and digital services can be part of the remit of the Dutch

Public Broadcasting organisation. New media services will not be considered as additional tasks anymore, but as a part of the main task. The Dutch government hopes that the new description of the public service remit will take away the comments of the European Commission.

In the report of the Netherlands Scientific Council for Government Policy (in Dutch called the WRR) 'Focus on Functions. Challenges for a Sustainable Media Policy'; this distinguished advisory council pleads for new media policy in the light of the rapidly changing media landscape. The Council is in favour of a functional approach to the media landscape as an alternative for the current practice of a separate broadcasting policy and press policy. This approach sees the media landscape as a cluster of six social and democratic functions:

- news services;
- background to the news and opinion forming;
- entertainment;
- arts and culture;
- specialised information; and
- advertising and public relations.

According to the Council, developments in the media should be seen and be evaluated in the light of these functions and their impact on society, rather than just at the level of the (public) broadcasting policy.

The NDP supports this approach, because the private, commercial sector of the media landscape is as important as the public sector. Commercial parties can serve the public interest as well as public broadcasting companies. The NDP is in favour of a broad and coherent media policy. While determining the scope of the public service remit, the whole media landscape should be taken into account. The NDP agrees with the WRR that public broadcasting organisations should only be active within the functions that are not adequately realized by commercial parties.

All media services should in NDP's view be subject to an ex ante evaluation, but especially new media services, as this is the market where public broadcasting organisations directly compete with publishers. NDP is of the opinion that member states should always take into account the available offers on the market, the impact on competition and the function that commercial parties like publishers fulfil, before deciding to financially support activities of public broadcasting organisations.

4. Dual Funding of public service broadcasters/ pay-services

Pay-services compete with activities of other commercial parties. Therefore, these kind of activities should be restricted and may never lead to unfair competition. Public service broadcasters are among other things allowed to advertise, sell merchandise such as cd's and dvd's on their website and to exploit their copyright (for example the tv-listings).

Furthermore, NDP is of the opinion that the rules for cost allocation can be improved. Negotiations between NDP and the Dutch Public Broadcasting about the tv-listings, that

publishers publish in their newspapers, illustrate this. The Dutch Public Broadcasting Organisation has established a dedicated legal entity for exploiting the tv-listings. This organisation however did not give NDP any insight into the structure and levels of costs. Finally, we agreed to disagree about this issue and we were forced to settle for a price that could not be rationalised by the Public Broadcasting Organisation.

We were recently informed by one of the newspaper publishers about another form of market distortion by the broadcasting organisations. The Dutch public broadcasters are applying state of the art (multi media) technologies. These technologies are for a large part developed at the NOS (our national umbrella organisation for public broadcasters), which receives 5 million euro's a year for software development. As the newspaper publisher tried to buy some tools this was turned down. The technology is not sold on the market. From a financial and technology development point of view this is very inefficient, but of course this is also another example of market distortion.

The NDP would support more effective supervision, which also includes sanctioning mechanisms, as far as this contributes to a level playing field.

5. Final remark

As a final remark, the NDP would like to draw your attention to our previous letter dated March 10 2008.

Yours sincerely,



Drs. C.G.G. Spaan
Chairman of the Dutch Newspaper Publishers Association