

Nordic PSB

Representation of Nordic Public Service Broadcasters



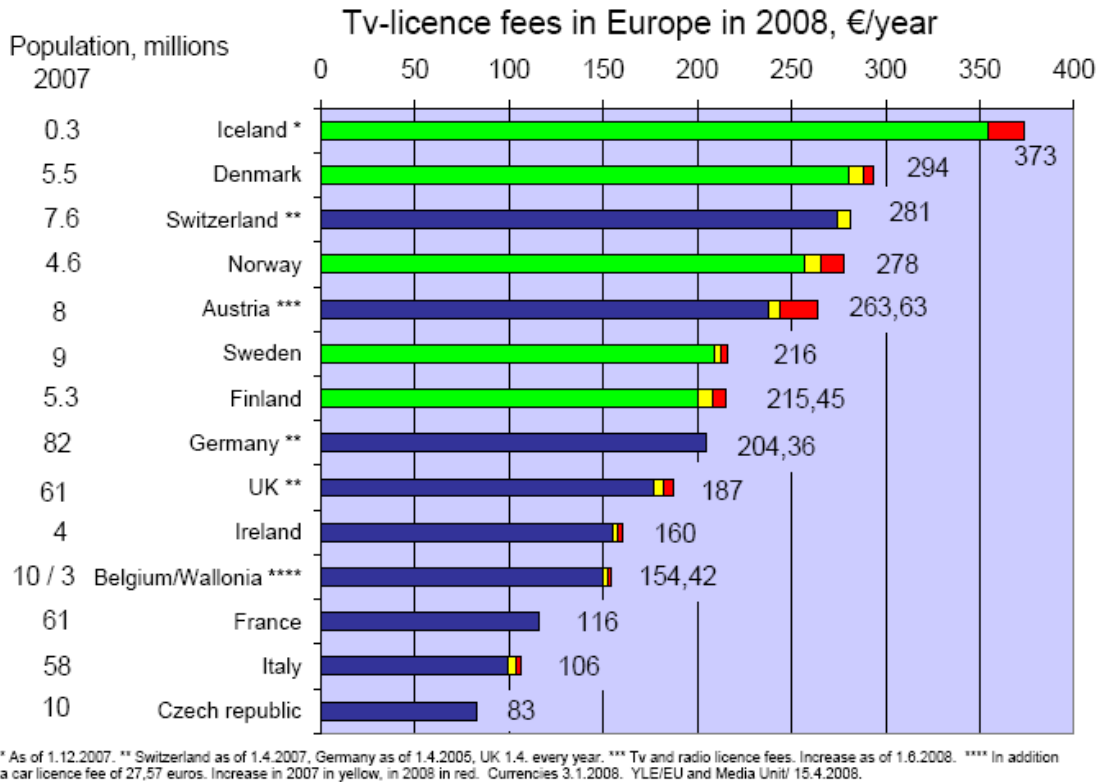
Public service broadcasting, more important than ever

14th of January 2009

The seven Public Service Broadcasters DR, NRK, RUV, SVT, SR, UR and YLE in the five Nordic countries welcome the possibility to comment on the proposal for revised state aid rules for Public Service Broadcasting put forward on the 4th of November 2008. Each of the Nordic Public Service Broadcasters in the Nordic Member States will also, separately submit remarks to the draft proposal. But together we would like to highlight some of the main aspects of the proposal and what we think should be recognized in a revised Broadcasting Communication.

The Nordic Public Service Broadcasters are disappointed about the proposal in the draft to delete the provision for smaller Member States in the Communication from 2001. Nothing in the media environment has changed in a direction that would motivate or demand that point 62 in the Communication from 2001 should be deleted. On the contrary. As the broadcasters have stated already, smaller Member States encounter difficulties of their own, such as under-compensation and the lack of funds for major technological projects, and this may complicate planning of their activities over several years. In big, as well as small countries Public Service Broadcasting is directly linked to the democratic, social and cultural needs of each society. But, in the smaller Member States the basis for financing Public Service Broadcasting is smaller. In general, the cost per capita of public service broadcasting is higher for smaller countries. However, the social, cultural and democratic needs of the society are no less in smaller member states, than in the bigger ones.

- **The Nordic Public Service Broadcasters urge the Commission to reintroduce paragraph 62 of the current Broadcasting Communication which refers to the difficulties some smaller Member States may have in collecting the necessary funds, and when public service broadcasting is addressed to linguistic minorities or to local needs.**



The Commission's duty is to, ex post check for manifest errors. What is the legal ground for the European Commission to introduce a claim for a detailed ex ante regulation for specific new services? The Nordic Public Service broadcasters also question the need to tighten the ex post regulation.

The Nordic Public Service Broadcasters underline that a communication is not an appropriate legal act for imposing new requirements which do not already exist under EC Law. Articles 87 and 86 (2) CE do not expressly or implicitly require ex ante assessment of new services. **We also recall the CFI judgment in the TV2/Denmark case.** It rejects the definition of the remit by references to the activities of the commercial operators. Consequently, **the impact that a service offered by public service broadcasters may have on the commercial offer of competitors cannot be a criterion imposed by European competition law to evaluate the scope of the remit.**

- The rapid development of digital communication networks, and particularly the Internet, is changing the operating environment of public service broadcasting. **The Public Service Broadcasters, must, naturally be able to react in a dynamic way to these changes.**
- **As to individual new services, the Nordic Public Service Broadcasters take a strongly critical stand against the market analysis obligations proposed in the draft communication. The task of public service broadcasting companies is a continuing and developing entity.** According to the Amsterdam Protocol, the definition of duties of public service is a matter within the jurisdiction of national authorities, and community legislation

gives the Commission no right to lay down rules related to the use of these discretionary powers. In accordance with the remit public service broadcasters must be where their public and the citizens are.

- **A detailed or comprehensive ex ante regulation would not be well suited for the requirements of a quickly changing communications environment, considering the significant role of public service broadcasters in the development and innovation of new services and the needs of the society.** There is a serious risk that such a mechanism will imply that creative people and enterprises will turn to other broadcasters and operators who will be able to realize and launch new services in a much quicker and less bureaucratic procedure.
- The Nordic Public Service Broadcasters therefore **urge the EC to delete the points 56-64 about the ex ante regulation. The ex post regulation in 69,100 and 106 should be written as in the Communication from 2001.**

The main raison d' être of a public service broadcaster is not to serve the market. As our name states, we are broadcasters in the service of the public. We deliver reliable and unbiased news, information and documentaries. We produce educational programmes, entertainment and films, and have been assigned the special responsibility of providing quality content for children and the young and for minorities. **Community Law rightly recognizes the need for a broad definition of the remit in the SIC and TV2/Denmark cases.** Media literacy stands high on our agenda at times where there is no end to the information and content people are confronted with. The presence of publicly funded broadcasters online is vital to maintain consumer, and particularly parent trust in quality content on the Internet. **In times of economic crisis it is the public service media which will be able to promote independent production and the audiovisual industry, and will continue to be the driving force for maintaining a high level of investment.** The Nordic public service broadcasters are members of the European Broadcasting Union, EBU. The EBU members invest annually more than 10 billion Euros in audiovisual content.

- **The European Commission should not introduce rules that condition the Member States' right to independently decide how they organize and finance Public Service Broadcasting according to the needs of their societies.** This would at the same time hamper the Public Service Broadcasters possibilities to develop and to be innovative in a field where also their future is: in New Media and especially online where the audience spend more and more time and the young people tend to migrate to.
- **We strongly oppose any special regime for premium sports rights other than those stated in the AVMS-Directive. We see no justification for having tighter rules for sports programming than for acquisition of other programming.**
- **The Nordic Public Service Broadcasters support the EBU reply to the consultation. They also support the view expressed by a majority of the Member States who agree that only small changes are needed in the Communication from 2001.**

Public Service Broadcasting is more important than ever. Thus it is of utmost significance not to make any hasty decisions that will hamper the well functioning dual system in Europe.

On behalf of the Director Generals of the seven Nordic Public Service Broadcasting companies in the five Nordic countries,

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