

Comments on the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting

15 January 2009

1. The Communication appears to assume that threats to the unhindered competitive operation of commercial broadcasters, posed by public service broadcasting, represent a grave danger to the health of Europe's audiovisual sector. (See, e.g., 60, 61 and 62.)
2. On the basis of this assumption, it is indeed logical to conclude – as the Communication does – that the strengthening of protections against public service broadcasters is an urgent necessity.
3. However, this underlying assumption does not square with our findings, drawn from detailed monitoring surveys of television in 20 European countries (2005), and more recently in follow-up reports on 9 of those countries (2008).
4. Of our larger sample of 20 countries, 16 are so-called 'new democracies' of central and eastern Europe; and 15 are members of the European Union. Of the smaller sample of 9 countries, all but one (Italy) are 'new democracies', and all but one other (the Republic of Macedonia) are members of the EU.¹
5. The 2005 monitoring found that "public service broadcasters appear to risk losing much, if not most, of the traditional justification for their privileges. Nonetheless, ... the argument for public service broadcasting remains compelling." Furthermore, "the condition of public service broadcasting in Europe's new democracies gives special cause for concern, and its future is far from secure."²
6. Seeking to account for the widespread public and professional indifference to public service broadcasting in the new democracies, we identified the following features of their public service broadcasting: "a lack of professionalism, an enfeebled sense of mission, a lack of viable funding, political interference with its governing bodies, and low public awareness of public service television's distinctive role."³

¹ These surveys are available on our website, www.mediapolicy.org

² Open Society Institute, *Television across Europe: regulation, policy and independence* (2005), vol. 1, pp. 23-24.

³ *Ibid.*, p. 54.

7. Our more recent set of monitoring reports – covering 8 member-states of the European Union, and published in December 2008 – found that the key trends in public service broadcasting are “over-extension, under-funding and self-doubt. ... The traditional mission of PSBs to inform, educate and entertain the citizens who fund them, directly, through the licence fee and in most cases also indirectly through advertising, has come under ferocious pressure just when technology has created the opportunity to reach more citizens, in more ways, than ever before.” We also found that “political elites in Eastern and Central Europe still as a rule refuse to let the PSBs become editorially or financially independent. ... In our sample, the re-politicisation of public service media is clearest in Poland, Romania and Slovakia, though it is evident too in Lithuania and elsewhere.”⁴
8. Accordingly, we are concerned that the Communication presents – by implication – a somewhat misleading picture of the European audiovisual landscape. While the situation of public service broadcasting is weakest in the ‘new democracies’, it is not necessarily much more strongly placed in some of the ‘old democracies’.
9. Accordingly, certain positions taken in the Communication strike us as prejudicial and even, in a sense, contradictory. While the Communication calls for member states to clarify the remit of public service broadcasters, it also hints that its authors already possess a (restrictive) conception of this remit.
10. For example, the requirement or expectation (paragraph 86) that public service broadcasters should separate their public service activities from other activities “at the level of organisation” strikes us as likely to be very difficult to accomplish, and indeed as imposing an unfair burden on public service broadcasters. Once again, we question an underlying assumption: in this case, it is the assumption that public service content should or can be so clearly differentiated from other kinds of content. For it has been an established principle since the 1950s that public service broadcasting “must set as its aim the best available *in every field*”.⁵ The proposition that public service broadcasting should be defined in contrast to more commercial programme strands is itself highly controversial; it is usually associated with commercial actors that have a vested interest in keeping public service broadcasters away from mass audiences wherever possible.
11. Footnote 40 hints at the same assumption: that public service content may be defined by its dissimilarity to “existing commercial offers”.
12. The Communication’s tacit support for this proposition does not sit comfortably with the endorsement of public service broadcasting as a pillar of social, democratic and cultural life by the European Union and the Council of Europe. (The Communication provides a useful resumé of these endorsements.) We urge the Commission to revise the Communication, in order to avoid adding to the very

⁴ Open Society Institute, *Television across Europe 2008: more channels, less independence* (2008), pp. 19-20.

⁵ Sir Ian Jacob, Director General of the BBC, writing in the *BBC Quarterly*, autumn 1954. Emphasis added.

considerable burden of challenges that Europe's public service broadcasters already bear.

The full text of the Open Society Institute monitoring reports mentioned in this document is available at www.mediapolicy.org and at www.eumap.org.

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