

# NIELSEN NØRAGER

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## **REVIEW OF THE COMMUNICATION FROM THE COMMISSION ON THE APPLICATION OF STATE AID RULES TO PUBLIC SERVICE BROADCASTING**

We address you on behalf of SBS TV A/S, Denmark.

As the Commission knows, SBS TV is part of the ProSiebenSat.1 Group which is broadcasting a number of commercial television channels to Danish viewers.

As already stated by SBS TV in the reply of 10 March 2008 to the Commission's questionnaire, SBS TV supports that the Broadcasting Communication is updated.

Although SBS TV with certain exceptions supports the general tenor of the proposed update SBS TV maintains all its comments of 10 March 2008.

SBS is concerned about the risk of market distortions caused by a liberal regime for public service broadcasters. This risk is present whenever the public service broadcaster offers commercial advertising or offers pay services of any kind.

It is important to maintain the specific examples and comments in the communication in order to facilitate proper control with how the public service rules are applied.

This applies inter alia to the delimitation between public service activities and commercial activities set out in para. 47 and to the examples provided in para 54.

As set out in the reply of 10 March 2008 SBS TV is strongly against state funded pay services. Pay services should always be considered as purely commercial activities. SBS TV wishes a modification of paras 54 and 55 to reflect this position.

It is very important that third parties are given the possibility to comment on anticipated new services as set out in para 59.

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SBS TV supports the proposed mechanisms in paras 60 - 62.

SBS TV is concerned about the ways whereby dual financing of public service broadcasters can distort competition.

SBS TV is opposed to giving public service broadcasters the right to introduce pay services, and in particular the right to introduce subscriber payments for their core services, ie. the public service television channel(s) whenever this service is (partly) funded by state aid.

The introduction of subscriber payments will enhance the distortions of competition which are already inherent on the advertising market, where public service broadcasters are able to build up significant market positions by virtue of their state funding.

SBS TV does not see any reason why public service broadcasters that are fully or partially funded by state aid and set up as special vehicles to provide a public service should be allowed to keep a profit margin.

SBS TV is concerned about the proposed right to build up reserves. If maintained, it should be made clear that any cost based percentage limit such as the proposed 10 % limit, should be calculated on the basis of the net cost of the public service operation, ie. costs after deduction of commercial income derived from the activity (such as advertising income).

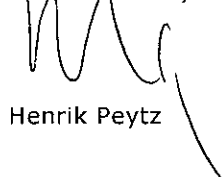
The proposed rules for acquisition of rights, cf. para 102, should not only concern premium rights but in principle all rights, and the national rules should be subject to review by the Commission.

SBS TV suggests that the content of para 105 is reconsidered, both as regards the substantive tests to be applied and as regards the question of whether it is national authorities or the Commission that should assess these issues.

SBS TV is of the view that because of the conflict of interest, this assessment is better made by the Commission.

It should be made much more clear by which standards under- or overpricing are to be assessed. This is in particular the case if the control were to be delegated partially to national authorities.

Yours sincerely



Henrik Peytz