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To the European Union

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Dear Mr Pieke,

**CONSULTATION ON THE DRAFT COMMUNICATION FROM THE COMMISSION
ON THE APPLICATION OF THE STATE AID RULES TO PUBLIC SERVICE
BROADCASTING**

My Authorities have asked me to thank the Commission for their draft Communication and the opportunity to discuss this at the multi-lateral meeting on 5 December. They apologise for missing your deadline for comment.

As they outlined at the meeting on 5 December, my Authorities are strong supporters of Public Service Broadcasting and of a European public broadcasting sector which is robust, innovative and able to meet all the challenges of new technology and increased competition. It is essential that Member States are able to support PSB financially and that they are able to define the remit according to the social, democratic and cultural needs of their society. They welcome the reiteration of these principles in the draft Communication. However, there does need to be some mechanism to ensure that state funding does not unduly distort competition or stifle developing markets. My Authorities consider that this draft largely manages to strike this balance between the needs of PSB and those of a competitive market. They also welcome the Commission's emphasis on clarifying the principles to be followed by Member States and the Commission itself, but do however have some particular points on the details of the assessment proposed, where they would welcome further clarification from the Commission.

By way of context, my Authorities would note that the particular arrangements adopted by Member States in the organisation of public service broadcasting have to meet a number of policy imperatives and that too prescriptive an approach to the ways in which Member States should address State Aids concerns could have a negative impact on Member States' ability to ensure that public service broadcasters



are able to make their proper and essential contribution to meeting the democratic, social and cultural needs of our society. That is because fundamental to achieving that mission is the independence of broadcasting, as rightly emphasised in paragraph 11 of the draft communication.

Turning now to the substance of their concerns, they remain concerned about the implications of paragraph 95 for entrustment. As drafted, it implies that the entrustment period must be no more than four years. My Authorities were grateful for the reassurance at the multi-lateral meeting that the entrustment period did not have to be four years. However they would suggest that the wording be changed to make this clearer – as the Commission may be aware the BBC Charter or entrustment period runs for ten years. However, it does not seem essential to require any particular fixed term, as long as there are adequate structural, organisational or review arrangements to ensure that the public service mandate is being delivered and that appropriate financing arrangements are in place. They also note that the Commission had in mind that the financial review period be limited to four years in line with that in the SGEI Framework (paragraph 100). In the UK, financial review of the BBC is currently carried out every five years. This is done not only because it makes sense to have a review in the middle of the ten year entrustment period but also because this means that the funding is agreed and reviewed over two Parliaments: the combination of a 10-year Charter and five-yearly financial review by Government are crucial elements in the structure of the relationship between Government and the BBC which help ensure its political independence and these (alongside notably the annual reporting requirements placed on the BBC) seem to my Authorities also to meet the principles set out in the draft Communication. My Authorities fully understand and acknowledge the need for regular review of funding and in particular the need to examine any over compensation, however they wonder if there needs to be a particular time limit set for this. They would not wish to have to change to a four year period, particularly as the current arrangements do not appear to have caused any difficulties.

My Authorities would also be grateful for clarification of paragraph 89. They understand that this refers to the actions which the Commission must take to ensure that the funding is proportionate. However, they note that some of these actions, particularly those concerning possible negative effects of the funding, appear to be very close to action taken by the Member State in carrying out a market impact assessment – see for example the proposals in paragraph 61 . They assume that the Commission has in mind two very separate and different tests and that there is no intention to duplicate or contradict the work done by the Member States. They consider that this should be more clearly brought out in the text and a fuller explanation given of the respective roles of Commission and Member State. My Authorities would hope that if a full independent market impact assessment had been completed by the Member State the Commission should be able to accept this without re-examination. This is very much in line with comments about the role of independent competition authorities in notifications made in my Authorities' response to the consultation on the Commission's State Aid Action Plan in 2005.



My Authorities look forward to clarification of the points raised. They also stand ready to provide any further information or assistance you may require in redrafting the text.

Yours sincerely,

A handwritten signature in cursive script that reads "Antony Manchester".

Antony Manchester

First Secretary, Competition Policy and Company law