



UK Satellite and Cable Broadcasters' Group Response to the Draft EU Commission Communication Application of State Aid Rules to Public Service Broadcasting

The Satellite and Cable Broadcasters' Group

The Satellite and Cable Broadcasters Group is the representative body for multi-channel television in the UK. Its members provide over 100 channels to UK viewers and contributed £2.2 billion to the UK economy in 2007. SCBG members employ nearly 25000 people in skilled jobs in the UK and in 2007 invested over £1.2bn in quality programming.

Many SCBG members are pan-EU broadcasters, producing and commissioning content for numerous markets across the European Union. For more information on the SCBG's members please go to www.scbg.org.uk

The Current Market Situation

The broadcast market is at an important crossroads in its development, with the provision of high-quality content across a number of different media platforms now possible. It is therefore crucial that all media businesses are given a fair opportunity to develop and exploit these new technologies.

PSB activities in this developing market can have a negative influence on its development if they have access to funding to undertake activities which are clearly outside their PSB remit and which discourage other businesses from entering the market. Whilst it is the case that in the UK projects such as the BBC/ITV/C4 Kangaroo VOD offering was rejected by the competition authorities due to its perceived impact on the developing market, the SCBG still has some concerns about other projects being developed such as the 'Canvas' standard for IPTV. We are aware of similar initiatives in Germany and the Netherlands and at this point it is unclear whether the competition authorities in these countries will take a similar stance.

In general, SCBG is of the opinion that the PSB remit in many Member States is ill-defined and there is a lack of transparency on their funding as well as a lack of appeal mechanism available to competitors other than via the expensive legal action.

Ensuring a Level Playing Field

For the reasons given above, the SCBG responded to the first draft Communication on the Application of State Aid Rules to Public Service Broadcasting, welcoming it as a step in the right direction towards providing more clarity on what constitutes a public service

remit and how this might be funded. In this our second response to the further draft we would like to reiterate our opinions and encourage the Commission to produce a Communication which puts a framework in place that will allow the nascent market to develop as it should.

The basis of the Communication should be to provide more certainty for broadcasters about the market they are operating in. Investors need to know the risks involved in the investment they are making. For this to be the case clarity on the Government interventions which may occur is necessary. The SCBG supports fully the principle of subsidiarity and the wording of the Amsterdam Protocol. It should be for the individual Member State to decide what its broadcasting public service remit should look like and how it should be funded but it is equally important that this funding does not 'affect trading conditions and competition in the Community to an extent which would be contrary to the common interest'. SCBG therefore supports a Communication which should help to provide legal certainty in the market by putting the following stipulations in place.

- **Definition of Public Service Remit**

There should be clear definitions of the public service remit and the activities it covers in each Member State. This gives more clarity to other businesses in the market whilst respecting the principle of subsidiarity. SCBG agrees to a certain extent with the Commission's statement on the position of certain types of pay-TV and whether they may be considered as public service content. However we are concerned that even some types of pay-tv produced by PSBs could be considered as public service content as this could set a dangerous precedent which may prejudice new business models SCBG members are developing.

- **Ex-Ante Public Value Test for New Services**

SCBG agrees with the Commission's approach to how Member States should define 'significant new services' and assess the public value they bring before deciding to include them in the PSB remit. We are particularly keen that Member States take into account what potential distortion to the existing market these new services might cause, especially if a number of other non-PSBs are already providing these services.

- **Independence and Impartiality**

SCBG supports the Commission position that there should be an independent body which carries out assessments of the effect on third parties of any new services offered by a PSB.

- **Consultation and Transparency**

SCBG supports the proposal that there should be consultation with 3rd parties in advance of any decision taken on whether to launch a new service. It also supports the proposal that Member States should make the assessment and the grounds for any decision taken publicly available.

In the case of funding, SCBG believes that the nature of funding and what services it applies to should be transparent. We also believe that independent audits of how funding is used should be publicly available.

A further aid to transparency would be a table published and updated by the Commission which lays out how individual Member States have defined their public

service remit and how they are ensuring there is an effective consultation, assessment and monitoring procedure in place.

Conclusion

SCBG supports the Commission's second draft proposal and views it as a significant step forward from the 2001 Communication. In a developing market it is particularly important what falls within the public service remit is clearly defined and that a proper market value test is used to establish the effect any proposed extension to that remit may have.