



8 May 2009

Ministry of Culture Sweden

Response from the Swedish Government to the second draft Commission Communication on the Application of State Aid Rules to Public Service Broadcasting

Sweden welcomes the changes adopted by the Commission in the second draft. We appreciate the process and that the comments of Sweden and others have been taken into account. In particular we welcome that many of the detailed examples have been removed as this makes the main principles stand out clearer. We also welcome that the second draft is clearer in giving MS flexibility to organise their public service companies according to national needs.

In particular, we welcome that it is left to MS to decide on the details of the ex ante-evaluation in the second draft.

Some points remain unclear:

§48 The last sentence is problematic. The main problem seems to be that it becomes unclear in relation to the rest of the paragraph and placed under the heading of “Definition of public service remit”. The description in the preceding sentence is sufficient to describe manifest errors when MS define the remit.

We also noted that in the Multilateral meeting the Commission stressed the fact that the word “could” is used in the last sentence, thus weakening the phrase. We would like to point out that this word is omitted in the Swedish version of the text, making this version considerably stricter.

Suggestion: Delete the last sentence of §48.

§54 At the Multilateral meeting it was explained that “a body effectively independent from the management of the psb” could very well be the Government or the Parliament. Still, we believe that the wording “to

impose appropriate remedies” of the last part of the last sentence is unfortunate in relation to independent media companies.

***Suggestion:* Delete the last part of the last sentence.**

§ 74-75 We certainly accept the clear rule on the net cost principle and agree that only very limited exceptions should be accepted to that rule. Nevertheless, given the nature of these companies and the way they are financed, the details in §§ 74-75 seem inappropriate and difficult to apply. The main principles would be clearer and easier to understand standing alone.

We believe that for exceptional cases where a larger share than 10% overcompensation is accepted, the details of how this reserve should be treated can be worked out in a case-by-case-manner.

***Suggestion:* Delete second sentence of §74 and the entire §75.**

§85 The principle when determining what is a new service is clearly stated in the first sentence. The second sentence is, according to what was explained at the Multilateral meeting, only added with the purpose to be a clarifying example of what is **clearly not** a new service. MS are thus left free to define what constitutes a “significant new service”. However, we believe that it would be more appropriate and helpful for the Commission to clearly state that the principle of platform neutrality applies, and that a change of platform does not in itself constitute a new service.

***Suggestion:* Replace the third sentence with: “However, the principle of technology neutrality means that the distribution of the same content on a new distribution platform is not in itself a new service”.**

§88 We fully agree with the fact that the list of criteria in §88 is meant to be a list of evident criteria that will always be used if a market evaluation is made. In order to add flexibility this should not be phrased as an obligation, but as a list of examples. If this change is not made, we cannot accept the first criteria which is ambiguous and could be misinterpreted.

The last sentence is important as it makes it clear that a market evaluation that finds that there are predominant negative effects on the market, can be balanced with a clear positive public value test result. However, in order to avoid misinterpretations (and it clearly can be misinterpreted as several have pointed out) it should be rephrased and aligned with the wording of the Amsterdam Protocol.

***Suggestion:* Change “inter alia” to “for example” and rephrase the last sentence so as to avoid ambiguous wording.**