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**Subject:** State aid No. C25/2004 (ex NN 36/2004) – Germany  
*DVB-T in Berlin-Brandenburg*

Sir,

The Commission wishes to inform Germany that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

### **I. Procedure**

1. By fax dated 16 December 2002, ANGA (the association of private cable network operators in Germany) submitted an informal complaint concerning the financing of the digital terrestrial television transmission network (DVB-T) in Berlin-Brandenburg<sup>1</sup>. In a letter dated 26 March 2003, ANGA urged the European Commission to open the procedure and suspend the granting of aid.
2. On 2 May 2003, the Commission sent a letter to the German authorities with a request for information. The authorities concerned asked for an extension of the deadline till 2 July 2003. The extension was granted. The Commission received the information provided by the authorities on 30 June 2003.
3. On 1 October 2003, the Commission services met with the alleged aid grantor, Medienanstalt Berlin-Brandenburg (Media authority for Berlin and Brandenburg,

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<sup>1</sup> DVB-T stands for digital video broadcasting over a terrestrial network. Other forms of digital video broadcasting are DVB-S (Satellite) or DVB-C (Cable).

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hereinafter: Mabb). Mabb supplied further information on 23 October 2003 and 4 February 2004.

4. On 23 December 2003, Kabel Baden-Württemberg GmbH & Co. KG announced a submission of an additional complaint with regard to the financing of DVB-T in Berlin-Brandenburg. The complaint was eventually filed on 8 March 2004.
5. Kabel Baden-Württemberg alleges that public broadcasters received compensation through the licence fee, but not from Mabb, for the establishment of a digital transmission network. This network is subsequently made available to private broadcasters at below market rates or even for free. Although this issue is related to this investigation, it will however not be the subject of this formal investigation procedure<sup>1</sup>.

## **II. Detailed description of the measure/aid**

### Background

6. In 1997 the German authorities set up a Committee called “Initiative Digitaler Rundfunk” which had to develop a strategy for digital television. Representatives of the Länder, the public and private broadcasters, consumer organisations as well as transmission operators are member of this Committee. The Committee came with a plan in 2000 (“Startszenario”): digital terrestrial television had to be introduced and analogue television had to be switched off by 2010.
7. The ideas were adopted by the relevant German authorities. The most important is first of all the switchover which finds its legal base in the amended Frequency Allocation Regulation (“Frequenzzuteilungsverordnung”). Secondly, Article 52a of the Interstate Broadcasting Treaty (“Rundfunkstaatsvertrag”) allows ARD, ZDF and Deutschlandradio to gradually phase out analogue terrestrial television. Third, the Post and Telecommunication authority, RegTP (“Regulierungsbehörde für Telekommunikation und Post”) created the tender procedure for the award of the digital frequencies. In November 2002, Mabb was the first Media authority (“Landesmedienanstalt”) to implement this plan. The Mabb has opted for a digital terrestrial television (DVB-T) network rather than to promote DVB-C or DVB-S.<sup>2</sup>
8. DVB-T as opposed to analogue transmission makes the distribution of more channels easier and cheaper (more channels using fewer frequencies) and provides for additional features<sup>3</sup>. Analogue terrestrial television has lost importance in comparison with satellite and cable television. In Germany, only less than 10 percent of the households use analogue terrestrial television. In addition, the availability of channels is fairly limited. Only 13 channels could be received through the analogue terrestrial network in Berlin. According to Mabb, DVB-T should be a new infrastructure which competes with cable and satellite. Consumers will be better off, they can receive more programs, while

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<sup>1</sup> This issue will be dealt with in another investigation concerning the financing of the German public broadcasters (CP 43/2003).

<sup>2</sup> Status report from the Ministry of Economics, submitted to the Commission under the eEurope 2005 Action Plan.

<sup>3</sup> DVB-T has a higher quality, it is portable and mobile.

broadcasters also obtain a better position to negotiate, in other words they are less dependent on cable and satellite providers. Mabb states in addition that “given the privatisation of infrastructures, dangers arising because of market concentration should be tackled”.

*The measure in detail*

9. Article 40 of the Inter State Treaty on Broadcasting (Rundfunkstaatsvertrag) states that two percent of the licence fees can be used by the Media authorities of the different Länder for financing new technical infrastructure for the transmission of TV and radio signals.
10. The Media Inter State Treaty between Berlin and Brandenburg creates the legal base for the intervention by the Mabb in this area. Mabb was explicitly entrusted with the task to take all measures necessary to allow for digital television in the Berlin-Brandenburg area.
11. In order to promote DVB-T, Mabb has signed an agreement with the private broadcasting groups RTL and ProSieben/Sat.1 and the public broadcasters in February 2002. Based on this agreement, Mabb concluded an additional agreement with the two private broadcasting groups.
12. The private broadcasting groups were granted one multiplex each for a period of seven years<sup>4</sup>. On such a multiplex they can offer four channels. The private broadcasters commit themselves, independent from market developments, to broadcast for at least five years digitally over the DVB-T network. At the same time, the private broadcasters have handed back the frequency for analogue transmission to Mabb in exchange for a digital one.
13. For the new digital terrestrial television network, the RegTP allocated through a special procedure (Frequenzzuteilungsverfahren) two frequencies for Berlin-Brandenburg. One frequency was allocated to T-Systems (a subsidiary of Deutsche Telekom AG, hereinafter: DTAG) and the other one to SFB (which was succeeded by RBB). There were no other interested parties<sup>5</sup>. The allocation conditions are not known to the Commission. DTAG and T-Systems are however not party to the agreements between Mabb and the private broadcasters.
14. The two undertakings which were awarded the frequency were obliged to build out the DVB-T network. T-Systems now offers transmission services to the broadcasters and requires a fee which should cover the costs fully. According to the authorities T-Systems acts as a commercial operator while RegTP controls the fees paid by the broadcasters to T-Systems.
15. RTL, ProSieben/Sat.1 and other (private) broadcasters pay the transmission fee for DVB-T directly to T-Systems. The total fee for the digital transmission

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<sup>4</sup> A Multiplex (or Mux) is a collection or block of frequencies which you can use for broadcasting programs. Generally, a multiplex covers 4-6 channels. In Berlin there are 4 channels within a Mux. RTL offers RTL, RTL II, Super RTL and VOX; ProSieben/Sat.1 offers SAT.1, ProSieben, Kabel 1 and N24.

<sup>5</sup> The role of RBB seems to be marginal, but is above all unclear. It is said that RBB, which is related to ARD, has developed its own distribution network that is open to private broadcasters as well.

service provided by T-Systems is approximately one and a half times higher than the fee for analogue terrestrial transmission. The fee paid to T-Systems for the digital transmission covers however four programs rather than just one program. Consequently, the fee per channel for digital transmission is much lower.

16. During the start-up phase there is a risk that DVB-T may not be economically viable for the broadcasters. This would be the case if the number of actual viewers on DVB-T is lower than on analogue. As compensation for - at the introduction stage- the fact that participation in the project is economically not viable, Mabb pays to the private broadcasters for a period of seven years compensation ("Ausgleichsbetrag"). This compensation equals approximately to 30% of the transmission fee for digital television to be paid by the private broadcaster (except for the compensation granted in the first two years). During the first two years, Mabb will pay to RTL and ProSieben/Sat.1 €330.000 and in the next five years € 250.000 per multiplex per year. According to the authorities, other private broadcasters which are not part of the aforementioned private broadcasting groups will be treated in the same way<sup>6</sup>.
17. The public broadcasters are also paid for the digital terrestrial activities. They are however compensated for through the licence fees. There is no direct relation between Mabb and the public broadcasters.

*Allegations put forward by the complainant*

18. ANGA states that the development of DVB-T is considerably subsidised. These subsidies allegedly constitute state aid within the meaning of Article 87(1) EC. The aid favours the DVB-T network. Due to the fact that DVB-T customers do not pay a subscription fee, cable will loose customers to T-Systems. Private cable owners and satellite operators, who are also represented by ANGA, moreover fear that the subsidies granted to the private broadcasters endanger (future) investments in cable networks such as the envisaged digitalisation of the cable networks.

### **III. Legal assessment**

#### **State aid within the meaning of Article 87(1) EC**

19. According to the EC Treaty and consolidated case-law there is State aid in the meaning of Article 87(1) when:
  - there is an intervention by the State or through State resources;
  - it confers an advantage on the recipient and,
  - it distorts or threatens to distort competition;
  - the intervention is liable to affect trade between Member States.

*Intervention by the State through state resources*

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<sup>6</sup> For example BBC World and FAB.

20. It should be pointed out that advantages granted directly or indirectly through State resources are to be considered as aid within the meaning of Article 87(1) EC. The advantages which are granted by a public or private body designated or established by the State also fall within the definition of Article 87(1) EC<sup>7</sup>. The Mabb can be considered as such a public body which is designated or established by the State. First of all, the Mabb is, although independent from the government, a body of public law. The Mabb has been established on the basis of a public law Treaty (Medienstaatsvertrag 1992) between the Länder Berlin and Brandenburg. Furthermore, Mabb has been assigned public tasks by public law. Article 40 paragraph 2 of the Rundfunkstaatsvertrag assigns the task of promoting and developing (“Förderung”) of public channels to the Media authorities. The fact that it is an independent body (according to the German principle of “Staatsferne”) does not necessarily imply that it can not be regarded as a public body<sup>8</sup>. Therefore the payments made by the Mabb are to be considered as transfer of resources which are imputable to the State.
21. In addition, the fact that the payments are to be considered as state resources has implicitly been acknowledged by the German authorities. It is stated in the reply of 30 June, “it is not a payment by the state *to a specific undertaking*”: i.e. the authorities do recognize that the payments are made by the State.

*Specific advantage*

22. The measure seems to favour two (groups of) beneficiaries on different levels in the business chain. First, it favours the private broadcasters (direct beneficiaries) and secondly, it seems that it also favours T-Systems (indirect beneficiary)<sup>9</sup>.

*(A) Direct beneficiary*

23. With regard to the direct beneficiaries, the authorities have brought forward the following arguments:
- (1) the measure is of a general character since every (private) operator can be eligible for such a subsidy. So, not only RTL Group and ProSieben/Sat.1 have benefited from the subsidy, but in addition also broadcasters FAB and BBC World have benefited;
  - (2) the measure does not entail an advantage but is a *mere* compensation.
24. As regards the first allegation, the subsidy is not of a general character but seems to be selective. It is aimed at private broadcasters who use the service of T-System. Therefore it can even be considered as a ‘sectoral aid’ within the meaning of Article 87(1) EC rather than a general measure which would fall outside the scope of that Article.

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<sup>7</sup> See Case 82/77 *Openbaar Ministerie of the Netherlands v Van Tiggele* [1978] ECR 25, paragraphs 24 and 25.

<sup>8</sup> See Case T-358/94, *Air France v. Commission*, ECR [1996] II-2109, paragraph 62.

<sup>9</sup> It seems that there is similarity with the Case C-156/98, whereby (private) investors were granted a tax rebate if they invest in companies established in the new Länder in Germany. The indirect beneficiaries were in this case the companies in the new Länder.

25. As regards the second argument, it is questionable whether the measure is a *mere* compensation. It is in general difficult to quantify the direct and indirect advantages and disadvantages for the broadcasters. There are certainly advantages. The transmission fee for DVB-T is much lower per channel and the broadcasters will obtain more channels. In addition, the broadcasters obtain access to a new technology, with additional features (mobility and portability).
26. There are also disadvantages. It is not certain yet, whether DVB-T will be really successful in the longer term. This creates a certain risk for the broadcasters as well. Secondly, due to the fact that there are more channels available for the viewers, broadcasters will face more competition from other broadcasters on DVB-T.
27. There are also characteristics inherent to the roll out of the DVB-T which are more difficult to assess. It is for example unclear whether the advertising revenues will rise or fall and whether the broadcasters will obtain a better bargaining position vis-à-vis the cable and satellite operators.
28. The authorities have quantified the costs which are related to the transmission and the (possible) change in advertising revenues. However, also this calculation raises doubts. In relative terms, DVB-T is cheaper for the broadcasters (fee is only +/- €150.000 per channel rather than €500.000 per channel for analogue transmission) and there are no costs anymore for analogue transmission.
29. Finally, there is no direct relation between the subsidy and the extra costs incurred, since the subsidy is established at a flat-rate<sup>10</sup> and above all and beyond, the broadcasters participate on commercial considerations and there has not been any legal obligation to cease the analogue transmission. The analogue network has been closed in the DVB-T area.
30. The Commission will investigate in the course of this procedure whether the monies granted by Mabb is to be considered as a mere compensation. Hereto the Commission would like to receive further information.

*(B) Indirect beneficiary*

31. Whether or not the private broadcasters are merely just compensated for certain costs, it seems that the position of T-System is more favourable than before. An indirect state aid does not necessarily require the existence of direct state aid to the immediate addressee of the measure in issue. In other words, even if the compensation granted to the private broadcasters does not constitute an aid granted to the private broadcasters, it may nevertheless constitute an aid to T-Systems<sup>11</sup>.
32. Because of the fact that private broadcasters receive a subsidy when distributing their programs over DVB-T, broadcasters will be more inclined to use DVB-T<sup>12</sup>.

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<sup>10</sup> According to the information provided by the authorities, the compensation is fixed at 30% of the fee.

<sup>11</sup> Cf. Opinion of Advocate General Jacobs in Case C-457/00, *Belgium v. Commission* [2003] page I-6931, paragraph 59.

<sup>12</sup> Cf. C-156/98, *Germany v. Commission* [2000] page I-6875, paragraph 26.

In the documents stipulating the procurement conditions of the broadcasting capacities, the Mabb states that it will subsidise the costs related to the transmission over DVB-T. The yearly transmission fee may through the subvention by Mabb be reduced<sup>13</sup>. Without the subsidy, T-Systems would have found it more difficult to launch its service and would have to ask a lower fee from the private broadcasters in order to attract them to switch to DVB-T. Alternatively it would have to bear the launch costs itself or ask a fee from the end-users.

33. Compared to a situation in which no subsidy would have been granted, T-System can in the present case ask (at least in theory) a higher fee from the broadcasters, and does not have to charge the end-users. According to the authorities, RegTP has regulated this fee. At this stage, the Commission has no indication how these allegedly regulated fees have been established. On the other hand, it can be established that the consumers who have switched to DVB-T do not pay a subscription fee to T-Systems.
34. In this respect, another aspect of the indirect aid granted to T-Systems could be raised. The private broadcasters receive compensation from the Mabb. The public broadcasters receive a compensation for the transmission through the DVB-T network through the licence fees (“Rundfunkgebühr”). Their position with regard to the switchover is regulated in, among other regulations, Article 52a of the Inter State Treaty on Broadcasting (“Rundfunkgebühr”). Article 52a stipulates that the public broadcasters may use any kind of transmission network in order to fulfil their tasks of delivering television (and radio) to everybody (“Grundversorgung”). They may gradually downsize analogue transmission “in order to facilitate the roll-out and the allocation of DVB-T capacity”.
35. In other words, the public broadcasters are allowed to refrain from broadcasting through the analogue transmission network, if they subsequently broadcast through other transmission networks. However, Article 52a has only the objective to smoothen the switchover from analogue terrestrial to digital terrestrial. The Protocol attached to the Treaty seems clear on this<sup>14</sup>. The Länder should strive for, within a period of five years, that ARD (and affiliated) and ZDF will have together 50 out of 100 frequency blocks for their services. This includes a technical Multiplex for ARD and ZDF. Therefore, also ARD and ZDF obtain compensation through the licence fees (“Rundfunkgebühr”) in order to use the transmission services of T-Systems.
36. Given the fact that ARD and ZDF are entrusted with an obligation to broadcast, and thus to transmit, it is not excluded that the measure constitutes a mere compensation and therefore it does not constitute an aid within the meaning of

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<sup>13</sup> Tender document published by Mabb; „Ausschreibung der in Berlin und Brandenburg verfügbaren Übertragungskapazitäten für Rundfunk und damit verbundene Dienste über DVB-T“, web site of Mabb, ([www.mabb.de/aktuell/](http://www.mabb.de/aktuell/)).

<sup>14</sup> Protokollerklärung aller Länder zu § 52a i.d.F.d. 5. Rundfunkänderungsstaatsvertrages.

Article 87(1) EC. The Commission would like to signal this issue, but since it is from a legal viewpoint another issue it will not be treated in this investigation<sup>15</sup>.

37. Nevertheless, the compensations granted to the public broadcasters might also have a favourable effect on T-Systems. As stated before, the fact that the compensation to the direct beneficiary does not give rise to state aid considerations, does not exclude the fact that T-Systems also in this case may be the indirect beneficiary of the compensation granted to the public broadcasters. The Commission has concerns as to whether in this regard there is an aid involved and if so, whether the aid is compatible.

*Distortion of competition*

38. Due to the fact that there are presumably different beneficiaries of aid, the distortion of competition may take place on different levels. First of all, the private broadcasters receive funding. Secondly, T-Systems can be considered as a indirect beneficiary.

*I Direct beneficiaries: private broadcasters*

39. The Mabb has granted money to at least two private broadcasters, RTL and ProSieben/Sat.1. These broadcasters compete with other broadcasters in and outside Germany on the market for sale of programme rights and also on the advertising market. Granting an advantage to only a few of these broadcasters may potentially distort competition.

*II Indirect beneficiaries: Deutsche Telekom AG and T-Systems*

40. Deutsche Telekom and its subsidiary T-Systems are active in various fields of what generally may be described as distribution of television services. The function of T-Systems as an operator of the DVB-T transmission network is to provide a distribution system linking broadcasters and viewers.
41. On the downstream market, it seems that cable, DTH (satellite or in other words direct-to-home) and even DVB-T, although some technical and commercial differences exist between the different distribution methods, are substitutable. First of all, it seems that the price and the contents of the packages offered are very similar. With the introduction of digital services, offerings by DTH, DVB-T and cable could become less homogeneous, thereby increasing the incentive for consumers to switch. Secondly, the aforementioned development of digital services will make the different distribution systems even more substitutable. Finally, consumers will assess the offering by a cable, DVB-T or satellite operator by the ability to supply an attractive and broad range of services at an attractive price. They will most likely have no preference for any technical means of delivering the new digital services, whether by DTH, broadband cable or any other platform in combination with a back channel for interactive services.

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<sup>15</sup> Also this issue will be dealt with in another investigation concerning the financing of the German public broadcasters (CP 43/2003), see footnote 2.



42. In the upstream market, the distributors acquire the rights to distribute content. Although broadcasters wish to be as widely distributed as possible (and therefore could see distribution systems as complementary rather than alternative) have indicated that they regard cable and DTH as competing distribution channels. Given the technical and commercial features of DVB-T, it can be assumed that DVB-T is also to be considered as a competing infrastructure. Therefore, it can be concluded that a certain degree of substitutability between cable, DVB-T and DTH exists<sup>16</sup>.
43. The Mabb has nevertheless contrary to the policy line indicated in the “Communication on the Switchover” opted for state funding of a specific technology DVB-T, rather than DVB-S, DVB-C or even in the future DVB-H<sup>17</sup>. Cable and satellite providers are able to deliver a similar service to the broadcasters and the consumers, but do not receive funding. The end-users may switch to DVB-T because of the fact that they do not have to pay a subscription fee to T-Systems. Cable providers have to charge their end-users in order to recover the costs of the investments in the infrastructure while Mabb indirectly subsidises part of the DVB-T infrastructure investment. T-Systems and cable providers are not on equal footing anymore. Consequently, there is a potential distortion of competition.
44. There seems to be even empirical proof of the substitutability of the different transmission techniques. In a report published by the Deutsche TV-Platform (regarding the 12<sup>th</sup> Symposium of that organisation), it is referred to a report from ZDF research which states that 60.000 households switched from cable and/or satellite (in addition to, or exclusively) to DVB-T<sup>18</sup>. In another report, provided by Mabb, it is said that of the total amount of terrestrial Set Top Boxes sold by mid July 2003, 40% of the buyers previously relied on cable and/or satellite reception<sup>19</sup>.
45. Secondly, given the fact that there are upcoming applications of digital television (convergence) the distortion of competition might finally be even more considerable. T-Systems is able to roll out its network with guaranteed revenues from the start, after which it can combine this service with other services companies within the Deutsche Telekom Group provide. It may for example provide for a back channel for digital applications together with T-online or offer mobile applications with T-Mobile.

*Effect on trade*

46. Finally, there is an effect on trade. The Court has acknowledged that when state aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the trade between Member States must be regarded as affected by the aid. T-Systems and the private broadcasters are internationally active, and competing with other broadcasters and

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<sup>16</sup>Cf. for example Commission decision 2001/98/EC, Case IV/M.1439, Telia/Telenor, 13 October 1999, paragraph. 261.

<sup>17</sup> The Commission published a Communication on the switchover from analogue to digital television, COM (200) 541 final. DVB-H stands for DVB over Handheld (mobile applications).

<sup>18</sup> Deutsche TV-Platform, Presse Information, 05/2003, Mai 2003.

<sup>19</sup> Cf. Berlin goes digital, „Experiences and perspectives”, Mabb, Berlin-Brandenburg, pages 7 and 8.

telecommunication companies. The broadcasters are active on international markets for the acquisition and sale of programme rights. The acquisition often takes place on an international market. Also the advertising market can have a cross border effect, especially for homogeneous linguistic areas across national boundaries. In addition, the ownership structure of the broadcaster RTL Group covers more than just one Member State. RTL is active in several Member States and is registered in Luxemburg. T-Systems competes with cable operators/media corporations like UPC (Liberty Media), satellite operators like Eutelsat and others in offering infrastructure services (upstream). At the same time, it competes also with these companies for the end-users (downstream).

### **Compatibility with the Common Market**

47. In the case that the measure constitutes aid within the meaning of article 87(1) EC, it is doubtful whether the State aid granted to the private broadcasters and/or T-Systems is compatible.
48. The aid does not seem to fulfil the conditions for any of the derogations provided for in Article 87(2) or 87(3). As for compatibility under Article 87(3)(c) it can not be established whether the conditions for applying this Article are met. First of all, the intervention by Mabb does not fulfil the conditions as imposed by the “Communication on the Switchover”. The authority has opted for a non-neutral technological intervention, i.e. they have opted for the specific development of a terrestrial network. The authority has so far not come up with any convincing arguments why only DVB-T is a real alternative worth subsidising for providing a digital signal in Berlin. Secondly, it is also difficult to see why the aid is necessary. Even without the aid, there are reasons for the broadcasters to switch to DVB-T. In that case, T-Systems would have rolled-out the DVB-T infrastructure anyway.
49. More generally, the measure is operating aid insofar as it is intended to relieve the recipient undertakings of all or part of the expenses which they would normally have had to bear in their day-to-day management and therefore in principle distorts competition<sup>20</sup>. Even if the measure were found to facilitate the development of certain economic activities, the Commission nevertheless considers, at this stage, that it affects trading conditions to an extent contrary to the common interest. It has not been proven that the beneficiaries are required to provide contribution to the common interest that would counterbalance the distortion.
50. So far, the German authorities have not invoked any of the derogations spelled out in Article 87(2) and 87 (3). According to the Communication on the Switchover, the Commission will assess if the measure is transparent, justified and proportionate. In this context, the Commission has to assess whether the aid is justified by a public policy objective in the interest of society as a whole. Finally, it has to assess whether this aid was necessary in order to permit an

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<sup>20</sup> See Case C-301/87 France v Commission [1990] (Boussac Saint Frères) ECR I-307, Case C-86/89 Italy v Commission [1990] ECR I-3891 and Case C-156/98 Germany v Commission [2000] ECR I-6857.

immediate switchover. At this stage, the Commission does not have the necessary information to make such an assessment.

51. Finally, there is the question as to whether T-System could be considered as an undertaking entrusted with a SGEI or whether the aid qualifies for an exemption on the basis of Article 86(2) EC.
52. According to the authorities, the Länder have the obligation to guarantee the transmission of TV programs. RegTP has contracted a network operator through a tender. The network operator has subsequently the obligation to service those broadcasters appointed by the Media authority of the relevant Land. They add explicitly that unlike a cable provider, the network operator is active within the realm of this legal obligation imposed on the Land. Cable providers however, are to be considered as purely commercial operators. Mabb and the German authorities state that, without the financial intervention DVB-T could not have been established. Consequently, there are according to the authorities some indications, that this activity could eventually be considered as a service of general economic interest. However, the authorities do not clearly argue for this. The arguments which were presented are rather vague.

#### **IV Conclusion**

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests Germany to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter.

The Commission would especially like to receive information with regard to the following issues:

- (1) The conditions under which the Regulierungsbehörde for Telekommunikation und Post (RegTP) awarded the frequency to T-Systems and RBB.
- (2) In order to obtain a frequency from RegTP, T-Systems had to provide financial details regarding the roll-out plan. The Commission would like to receive this plan and all other relevant details submitted by T-Systems to RegTP.
- (3) Besides T-Systems, also RBB obtained a frequency. The Commission would like to know for what purposes RBB received this frequency, and would like to receive further information with regard to the relation between T-Systems and RBB, and the services provided by both undertakings.
- (4) In order to establish the level of compensation, the Commission would like to have a detailed overview of the distribution and transmission costs of the public and private broadcasters for analogue and digital terrestrial television.

- (5) Finally, it is said the RegTP regulated the fee for transmission (“Ausstrahlungsentgelt”). The Commission would like to know how and when this fee was established.

It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately.

The Commission wishes to remind Germany that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
Directorate H State Aid:  
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Yours faithfully,  
For the Commission

*Mario Monti*  
Member of the Commission