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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION

WORKING LANGUAGE

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Subject: **State aid N 671b/2009 – Slovakia**
Switch-over to digital TV broadcasting in Slovakia

Sir,

I. SUMMARY

1. I am pleased to be able to inform you that the European Commission has assessed the sub-measure (hereafter: "the sub-measure") regarding the parallel operation notified as a part of the measure "*Support of transition to digital broadcasting in the Slovak Republic*" and decided not to raise objections as the State aid contained therein is compatible with Article 107(3)(c) of the Treaty on the Functioning of the European Union (hereafter: "TFEU")¹.

II. PROCEDURE

2. Following pre-notification discussions, by letter registered on 1 December 2009, the Slovak authorities notified the above mentioned measure to the Commission. On 21 January 2010 the Commission sent a request for information to the Slovak authorities. The Slovak authorities replied on 1 March 2010. The Commission requested from the Slovak authorities further clarification by correspondences sent on 26 March 2010, 15 April 2010, 12 May 2010 and 12

¹ With effect from 1 December 2009 Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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July 2010, for which they submitted respective answers on 9 April 2010, 20 April 2010, 25 May 2010 and 9 September 2010. On 7 September 2010 a meeting with Slovak authorities took place, followed by submission of additional information on 21 September 2010. The Commission decided to split the notified case into two parts. This decision concerns only the sub-measure regarding the aid for parallel operation.

III. CONTEXT

3. The notified measure will apply in the context of the transition from analogue to digital broadcasting in order to comply with the international commitments of the Slovak republic to switch-off analogue terrestrial TV broadcasting before end of year 2012, at the latest, adopted by the Slovak Republic following the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting (COM(2005)0204) and conclusions of the Council of Ministers on accelerating the transition from analogue to digital broadcasting²).
4. In view of the above international commitments and following a due assessment of the situation in Slovakia, the Slovak authorities have designed this aid measure for parallel operation of broadcasting.

The digital television broadcasting as opposed to analogue transmission is more efficient than analogue television broadcasting due to the use of multiplex transmitters and digital compression systems. Those allow the transmission of up to 8 standard digital TV channels on a single frequency range previously required to broadcast a single analogue TV channel. During the transition period, the analogue channels continue to be broadcasted in parallel with their broadcasting in digital format (simulcast).

5. The main TV broadcasters in Slovakia are three private broadcasters CME (TV Markíza – rating: 60,8 %), MAC TV s.r.o. (TV JOJ – rating: 36,3 %, TV JOJ Plus – rating: 2,7 %), and C.E.N. s.r.o. (TA3 – rating: 4,8%)³ as well as the public broadcaster Slovak TV⁴ (with three

² Council Conclusions: ACCELERATING THE TRANSITION FROM ANALOGUE TO DIGITAL BROADCASTING. 2695th Council Meeting, Brussels, 5 December 2005.

³ The financing conditions of private broadcasters are not legally defined as their resources are private. They can apply for support from the public funds designated for support of audiovisual production such as the Audiovisual Fund.

⁴ The financing conditions of the public broadcaster Slovak TV are defined by Act No. 16/2004 Coll. on Slovak television. According to Article 21 of this Act, the income of Slovak TV includes

- a) fee for the public service in the field of television broadcasting,
- b) subsidy from the state budget in accordance with the Act on State Budget on the ongoing calendar year provided on the basis of the contract with the State and designated exclusively on realization of programs in public interest or on realization of specific investment projects,
- c) incomes from broadcasting of advertising and teleshopping,
- d) further incomes (sponsorship, incomes from renting and sale of property of Slovak TV, interests-rates from bank deposits, gifts, incomes from heritage, grants from private resources).

The fee for the public service is regulated by Act No. 68/2008 Coll. on fee for the public service provided by the Slovak Television and Slovak Radio. In accordance with Article 2 of the Act the fee is designated to securing the public service in the area of TV and radio broadcasting. The duty to pay has any natural person that is connected to

channels: Jednotka – rating: 24,3 %, Dvojka – rating: 3,6 % and Trojka – rating: 1,5 %).⁵ Broadcasters pay network operators for the transmission of the broadcasting signal. Currently there is no broadcaster in Slovakia that would at the same time act as network operator providing signal transmission services for a third party.

6. As regards the state of play of the transition to digital TV broadcasting in Slovakia, the first multiplex is in operation as from 22 December 2009 and its signal should be received in digital quality free of charge by more than 89 % of Slovak population by 31 March 2010. The second multiplex and the public multiplex are in operation as from 30 June 2010.

7. The Slovak authorities referred to:

(a) an analysis of the Slovak Telecommunications Authority, the National Regulatory Authority (hereafter: the NRA") of 17 May 2006. According to this Slovak Telekom:

- was a monopoly on the wholesale market of transmission of TV broadcasting to the end users with a share of more than 99% in 2002-2004
- had a substantial advantage against its competitors (with regard to its network of masts, transmitters and other technical equipment, duration of its operation, negotiation position, access to finance, diversification of services, economy of scale, etc.)
- had been bound to comply with certain obligations (transparency, non-discrimination, separate bookkeeping, etc.)
- had a significant market power on the relevant market, had not faced efficient competition and could act independently from its competitors and users

(b) a three-criteria-test⁶ of the NRA of 15 February 2010 according to which:

the electric supply network and any employer that employs more than two employees. Free of this obligation are the people with severe health disabilities and certain legal entities (for example schools, embassies, hospitals). Half the fee applies to the retired people and person in social need. There is one unique fee for both Slovak TV and Slovak Radio. Fee is collected by the company funded by Slovak TV and Slovak Radio (www.rtvs.sk) and the collected fee is split in 70 % for Slovak TV and 30 % for Slovak Radio. Basic monthly fee is 4,64 EUR.

⁵ http://www.strategie.sk/sk/reklama/data/media/sledovanost_televizii

⁶ Article 2 of Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services of 17 December 2007 (2007/879/EC) reads as follows:

"When identifying markets other than those set out in the Annex, national regulatory authorities should ensure that the following three criteria are cumulatively met:

- (a) the presence of high and non-transitory barriers to entry. These may be of a structural, legal or regulatory nature;
- (b) a market structure which does not tend towards effective competition within the relevant time horizon. The application of this criterion involves examining the state of competition behind the barriers to entry;

- TV broadcasting was transmitted by Slovak Telekom until 2007. In that year, its operational part responsible for that transmission was transformed to a separate company TBDS, a. s. ("TBDS"). In February 2008, all rights and obligations of TBDS were transferred to the company TRI R, a.s. ("TRI R"). In May 2008, the name of TRI R was amended to Towercom, a.s. ("Towercom").

- The shares of use of different technological platforms in Slovakia are:

37 % of end users watch broadcasting programmes via the **terrestrial** platform.⁷ Towercom is the only operator of terrestrial broadcasting network regarding both analogue and digital TV broadcasting. Broadcasters pay Towercom for the transmission service.

34% of end users watch broadcasting programmes via the **cable** platform.⁸ 152 mainly local cable operators are present in Slovakia.

24% of end users watch broadcasting programmes via the **satellite** platform. 5 network operators are present: UPC Broadband Slovakia, s.r.o. (UPC Direct); DIGI SLOVAKIA, s.r.o. (Digi TV); Media Vision, s.r.o. (CS Link); Towercom (Skylink) and Slovak Telekom (Magio Sat). The satellite coverage of the Slovak territory reaches 100 %.

5% of end users watch broadcasting programmes via the **Internet Protocol TV** platform. Apart from a number of local operators, 3 large network operators are on the Slovak market: Orange Slovensko, a.s. (Orange Fiber TV), Slovak Telekom (Magio TV) and UPC Broadband Slovakia, s.r.o. (UPC Digital).

- Only the terrestrial platform provides the access to TV broadcasting free of charge. The cable, satellite and Internet Protocol TVs being paid services, they do not substitute the free on air terrestrial broadcasting.

(c) complete lists of holders of broadcasting licences and network operators.

8. The Slovak authorities have conducted consultations on the preparation of the transition to digital broadcasting at two levels. Firstly, a public consultation regarding the draft documents on the transition was organized. These draft documents contained among others information on the simulcast period and the financing of the related costs and they were accessible to the members of the public including satellite and cable network operators. Secondly, a working group for digital broadcasting was set up in 2001. The working group consisted of

(c) the insufficiency of competition law alone to adequately address the market failure(s) concerned."

⁷ The percentage of 37 % does not include end users which watch broadcasting programmes primarily via satellite, cable or Internet Protocol TV and which in parallel use the terrestrial platform on a complementary basis for a second, third, etc. TV set in their household. The terrestrial covers over 95 % of the Slovak territory.

⁸ Overall coverage of (copper) cable is approximately 34 % of the households (mainly in the capital and other larger cities).

representatives of the Slovak telecoms ministry, of the Slovak telecoms regulator and of Slovak broadcasters and operators, including satellite and cable network operators.

IV. DESCRIPTION OF THE MEASURE

9. *Objective:* The measure is set up to support the introduction of digital television transmission technologies and applications for broadcasting and to facilitate the switchover from analogue to digital television in Slovakia. According to the Slovak authorities, the measure is in line with the *Action Plan eEurope 2005*⁹, the conclusions of the Council of Ministers for Transport, Telecommunication and Energy of 20 November 2003¹⁰ as well as the two Communications of the Commission relating to the digital switchover (hereafter: "*the Switchover Communications*")¹¹.
10. *Background:* Compared with analogue TV, digital television provides many advantages: digital transmission of television provides for better use of the scarce frequency spectrum, allowing for more TV channels. The availability of more channels is also seen in many countries as a way of enhancing media pluralism. In addition, digital TV provides for better picture and sound quality and enables additional interactive services. According to the Slovak authorities, the intervention of the public sector in the transition from analogue to digital broadcasting is desirable in view of the economic, technical and social impacts of that transition on the population in the territory of Slovakia, the business sector and the development of information society as a whole. The Slovak government explained that the measure is based on the principle of equal treatment of different geographic areas of the Slovak Republic.
11. *Description of the measure:* The sub-measure corresponds to the first funding category in the "*State Aid Scheme for the support of transition to digital broadcasting in the Slovak Republic*" (hereafter: "the scheme"):

Sub-measure I. Parallel operation

This measure aims at contributing to broadcasters' additional costs of (1) parallel analogue and digital broadcasting and (2) mobile temporary analogue broadcasting units used for feed of analogue transmitters, due to the obligation to transmit in both analogue and digital transmission modes during a clearly defined simulcast phase. The additional costs refer to the costs of the parallel analogue broadcasting during the simulcast phase, either charged by the network operator or incurred to the broadcaster itself. Grants are not intended to cover the usual operating costs of broadcasting but to co-fund the directly attributable, actually incurred eligible costs of broadcasters due to continued additional analogue transmission during the simulcast period.

⁹ COM(2002) 263 final, eEurope 2005: An information society for all.

¹⁰ See document 14469/03 TELECOM 141 Audio 22, 2543rd meeting

¹¹ COM(2003) 541 final, Communication on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off') and COM(2005)204 final, Communication from the Commission on accelerating the transition from analogue to digital broadcasting.

12. *Legal basis:* The sub-measures is based on:
- Act No 220/2007 Coll. on digital broadcasting of programme services and on provision of other content services through digital transmission and on amendments of certain acts (Digital Broadcasting Act), as amended by the Act No 654/2007 Coll.;
 - Act No 523/2004 Coll. on budgetary rules for public administration and the amendment of certain acts, as amended;
 - Act No 231/1999 Coll. on state aid, as amended;
 - Order of MTPT SR on granting subsidies for the transition to digital broadcasting in the Slovak Republic (hereinafter: „Order“).
13. *Budget and funding instrument:* The aid is granted in the form of a direct grant. The budget of EUR 6,540,000 is divided as followed: EUR 6,340,000 for parallel analogue transmission and EUR 200,000 for purchase or rental of temporary mobile alternative transmitters. This consists of estimated eligible costs of the individual projects necessary for the successful transition to digital broadcasting. As a reference, the Slovak authorities have provided figures concerning the analogue signal transmission costs of the four main broadcasters for the period from August 2009 to October 2009. The total of the said costs of the four main broadcasters equalled on average EUR 1,4 million per month. The notified amount thus reflects the aid intensity of up to 50 % and the duration of the measure up to 1 year (see paragraph 15).
14. *Aid intensity:* The aid intensity will not exceed 50 % of total eligible costs of the project.
15. *Duration:* The validity of the scheme ends on 1 July 2013. The application for reimbursement of eligible costs must be submitted by 31 January 2013, at the latest. The simulcast period shall take place until the end of 2011 at the latest and it will take maximum 12 months or less if deemed satisfactory by the Slovak authorities.
16. *Beneficiaries:* Direct beneficiaries of will be:
- Broadcasters, as regards the costs of the services of a network operator of analogue signal transmission or the costs of their own analogue transmission (e.g. MAC TV s.r.o. has its own transmitters). All broadcasters incurring costs for parallel analogue operation are eligible under the scheme. However, the Slovak government expects that only the four main broadcasters broadcasting via terrestrial network would apply for the aid for the parallel operation.
 - Network operator(s) of analogue signal transmission (most probably Towercom), as regards the costs of the purchase or rental of mobile temporary analogue signal transmission units. The network operator(s) also benefits from the additional revenue for the transmission of analogue and digital signals of the broadcasters.
17. *Funding criteria:* Funds will be allocated following the scheme via an open call for proposals. This call will ask for the submission of projects in the specific funding categories addressed by the measure. Each applicant which fulfils the conditions of the scheme will be granted the aid under the principle of equal treatment.
18. *Eligible costs:* Grant recipients may only claim the directly attributable, actually incurred costs for the projects, as outlined in the scheme. Eligible costs will be costs representing

broadcasters' additional costs of television signal spreading also through the analogue network in the parallel operation. These will not be common operating costs of the broadcaster, but directly corresponding costs in actual time caused by the continuation of the analogue spreading. Another eligible cost will be the applicant's cost of acquisition/lease of tangible investment asset – temporary mobile analogue transmitters – related to parallel coverage of the territory of the Slovak Republic during the transition to digital broadcasting.

19. The Commission wishes to highlight that the present decision only concerns the notified measure and projects, as outlined in the scheme. This decision does not concern other specific measures related to the introduction of digital terrestrial television in Slovakia. In the context of the transition to digital television broadcasting, the Slovak Republic confirmed that it would not grant any other State aid, except the one that is included in the notification under present assessment (N 671/2009). The public broadcaster Slovak TV did not and will not receive any other State aid specially designated for parallel operation of analogue and digital broadcasting from the State budget.

V. SUMMARY OF RELEVANT DECISIONAL PRACTICE

20. It is worth noting that the Commission has already addressed the issue of subsidizing the digital switchover in a number of cases. Indeed, the Commission confirmed that the digitisation of broadcasting is an objective of common interest.¹² It is generally recognised that the switchover may be hindered by certain market failures. Moreover, there is a risk that not all parts of the population can benefit from the advantages of digital television in view of their disadvantaged social situation (social cohesion problem).
21. In 2005, the Commission approved a digitisation fund in Austria which included among others subsidies to broadcasters to compensate for additional transmission costs when broadcasting analogue and digital TV in parallel ("simulcast phase").¹³
22. Furthermore, in 2007 the Commission stated in its decision assessing the introduction of digital terrestrial television in North Rhine-Westphalia that: *"Over the past three years, the Commission has assessed a number of State measures in different Member States aimed at promoting the switchover. In several State aid decisions, based on the Communications related to the digital switchover, the Commission has clarified the application of the State aid rules in this sector and provided guidance to both public and economic actors. Member States have several possibilities to grant public funding for the switchover, provided that the measures do not entail an unnecessary distortion between technologies or companies and are limited to the minimum necessary:*

¹² C 25/04 Introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg – Germany, 9 November 2005 (OJ L 200, 22.7.2006, p. 14), paragraph 134. This decision was fully upheld by the General Court (then Court of First Instance) in its judgment of 6 October 2009, case T-8/06, *FAB Fernsehen aus Berlin GmbH v Commission*, nyr.

¹³ N 622/03 Digitalisierungsfonds – Austria, 16 March 2005 (OJ C 228, 17.9.2005, p. 12) which was referred to in C 25/04 Introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg – Germany, 9 November 2005 (OJ L 200, 22.7.2006, p. 14), paragraph 132.

... d)subsidies to broadcasters to compensate for additional transmission costs when broadcasting analogue and digital TV in parallel (“simulcast phase”);¹⁴

VI. ASSESSMENT OF THE AID MEASURE: PRESENCE OF AID

23. There is State aid within the meaning of Article 107(1) TFEU when:

- there is an intervention by the State or through State resources;
- it confers an advantage on the recipient and is selective;
- it distorts or threatens to distort competition;
- the intervention is liable to affect trade between Member States;

State resources

24. The Commission notes that the notified aid scheme is funded directly from the budget of the Slovak Republic. Hence, these monies can be considered as State resources.

Economic advantage and selectivity

25. The notified scheme confers an economic advantage to the beneficiaries of the measure, particularly to the broadcasters. The beneficiaries receive a subsidy, which effectively reduces their costs. In addition, the Commission notes that the sub-measure indirectly benefits the particular network operator(s) of broadcasting transmission services chosen by the broadcasters or the broadcasters themselves. The notified scheme is selective since it is partially targeted towards undertakings active in the sectors related to the digitisation of television, for instance broadcasters and partially, directly or indirectly, towards undertakings active in the market for digital transmission services¹⁵. The measure grants an advantage to a specific sector and is thus to be considered as a specific measure.

Distortion of competition

26. When State aid strengthens the position of an undertaking compared with other competing undertakings, the latter must be regarded as affected by that aid. Broadcasters benefiting from the subsidies during the simulcast phase compete with other broadcasters who will not benefit from the same funding. Moreover, there are indirect benefits to some network operator(s) and broadcasters. Hence, there are potential distortions of competition in the market for broadcasting and potentially in the downstream market for digital transmission services. Competition between undertakings which will benefit from the scheme and the ones which

¹⁴ C 34/06 Introduction of digital terrestrial television (DVB-T) in North Rhine-Westphalia – Germany, 23 October 2007 (OJ L 236, 3.9.2008, 10), paragraph 137.

¹⁵ Under the Regulatory Framework for electronic communications, this is “market 18”: broadcasting transmission services, to deliver broadcast content to end users. See Commission recommendation 2003/311/EC of 11 February 2003.

will not receive funding will also be distorted. Therefore, the State aid will have the effect of distorting competition.

Effect on trade

27. Finally, it can be concluded that there is an affectation of trade. Possible direct and indirect beneficiaries of the measure are active on European and international markets. Broadcasters operate on the advertising markets and purchase content rights across borders, competing with companies from other Member States. The Slovak markets for broadcasting and platform operators also host foreign players (*e.g.* content providers and advertisers). Network operators of broadcasting transmission compete on a cross-border level with each other as well as with other network operators of electronic communications.

Conclusion

28. In view of the above, the Commission considers that the project grants a selective economic advantage to the selected beneficiaries of the notified scheme as well as to some potential indirect beneficiaries, as outlined above. The scheme is publicly funded, distorts competition and has an effect on trade between Member States. Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 107(1) of the TFEU. Having established that the project involves aid to the beneficiaries within the meaning of Article 107(1) of the TFEU, it is necessary to consider whether the measure can be found to be compatible with the internal market.

VII. ASSESSMENT OF THE MEASURE: COMPATIBILITY ASSESSMENT

Compatibility with Article 107 (3)(c) of the TFEU

29. With regard to the parallel operation sub-measure in question, the Commission acknowledges that the existing frameworks and guidelines interpreting Article 107(3) of the TFEU cannot be applied to assess aid measures that specifically target this objective. The Commission therefore considers that the assessment of the compatibility of sub-measure with the internal market needs to be based directly on Article 107(3)(c) of the TFEU.

30. Article 107(3)(c) of the TFEU states that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be considered to be compatible with the internal market.

VII.1. The balancing test and its application to aid for the transition to digital TV broadcasting

31. In order to assess whether a measure is compatible with the internal market under article 107(3)(c) TFEU, the Commission balances positive effects of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of

trade and competition. In applying the balancing test, the Commission assesses the following questions:

- (1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or other objective)?
- (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate instrument?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

VII.2. Objective of the measure

The aid is in line with the Union Policy

32. The Commission has recognised the importance of the switchover from analogue to digital transmission and its benefits in the *Action Plan eEurope 2005* as well as in the *Switchover Communications*. In comparison with analogue TV, digital transmission of television provides for better use of the scarce frequency spectrum, allowing for more TV channels. The availability of more channels is also seen in many countries as a way of enhancing media pluralism. In addition, digital TV provides for better picture and sound quality and enables additional interactive services. In its *Switchover Communications*, the Commission points out that the switchover from analogue to digital broadcasting will involve significant costs and difficulties and that government intervention might be necessary in cases where general public interests are at stake or in cases of market failure.
33. Hence, the digitisation of TV transmission constitutes a policy objective which can be seen in line with Union interest and priorities.

The aid addresses a market failure

34. With regard to the digital switch-over, a market failure may arise, for example, where market players are unwilling to agree on a common timetable to switch to digital TV (coordination problem) or where market players do not take into account the positive effects of switchover for society as a whole because they do not have the right incentives to do so (positive externalities).¹⁶
35. Consumers might not be willing to shift to the digital platform until it can carry a large number of broadcasters. Accordingly, broadcasters might want to wait for other operators

¹⁶ C 34/06 Introduction of digital terrestrial television (DVB-T) in North Rhine-Westphalia – Germany, 23 October 2007 (OJ L 236, 3.9.2008, 10), paragraph 135. This decision was upheld by the General Court (then Court of First Instance) in its judgment of 5 October 2009, case T-2/08, *Landesanstalt für Medien Nordrhein-Westfalen v Commission*, nyr.

before moving to the digital platform. Without coordination of broadcasters, there is a risk that a critical mass of consumers is not reached and/or the switchover is delayed. It is therefore necessary to ensure a simultaneous switchover of broadcasters.

36. In Slovakia, the switchover from analogue to digital transmission happens by means of a phased approach, which is justified inter alia by frequency management considerations (due to the limited range of frequencies available in Slovak republic) and the need for operators and consumers to prepare the transition to digital TV. During the so-called simulcast phase, broadcasters have to transmit their programmes in both analogue and digital transmission modes¹⁷. The primary objective of the parallel broadcasting during the simulcast period is to secure freely accessible television broadcasting as the main source of information for the population¹⁸.
37. The notified scheme aims at contributing to broadcasters' additional costs which arise from the obligation to transmit in both analogue and digital transmission modes during the simulcast phase. In this respect, the Slovak authorities have argued that the costs of transition to digital broadcasting would not be compensated by the costs savings that this investment might generate.
38. Slovakia has decided that State aid should be granted only in relation to free-to-air broadcasting. In practice, free-to-air broadcasting is transmitted via the terrestrial platform. However, the Slovak authorities have indicated that if a broadcaster transmits broadcasting in parallel via another technology platform (cable or satellite) for free for the end user, the costs would also be eligible.
39. In general, the digital transmission costs are lower than the costs of the analogue signal distribution. Indeed, one of the benefits of the switch-over from analogue to digital broadcasting is that the broadcasters save broadcasting expenditure and transmission capacity. In the present case however, the State does not subsidise the switch-over as such. Instead it foresees a simulcast period which gives rise to particular costs. These additional costs arise in particular because due to broadcasting simultaneously in analogue and digital form, more electricity has to be used and more capacity has to be rented from the platform operator. To illustrate the above, the Slovak authorities provided information about estimated cost for broadcasting in April 2010, based on the broadcasters' estimation (in EUR):

¹⁷ Parallel broadcasting can be exercised until the end of 2011 at the latest. The supposed length is up to 12 months. The Slovak authorities have indicated however that they would reduce the length of the simulcast period to up to 6 months, if a shorter simulcast period proves to be satisfactory.

¹⁸ According to the Slovak authorities the simulcast period is inevitable because end users need time to choose the platform that is most suited for them (terrestrial, cable or satellite) and to decide what kind of device they will purchase (new TV set with built in decoder, satellite set-top-box, extension card for PC, etc.) and they need to test their device. Alternation with analogue broadcasting during that period is necessary so that they do not lose access to information.

TV	analogue costs for 1 month during parallel broadcasting	digital costs for 1 month during parallel broadcasting
TV JOJ	████████	████████
TV Markíza	████████	████████
Slovak TV	████████	████████
TA3	████████	information is not available due to the ongoing negotiation on definite price

40. It is therefore concluded that there exists a market failure for the simulcast period of the digital switch-over in Slovakia.

VII.3. Design of the measure

Aid is the appropriate instrument

41. The strategy of transition to digital broadcasting was formulated in the *Strategy of the Transition from Analogue to Digital Terrestrial Broadcasting in the Slovak Republic*, approved on 14 January 2009 by Resolution of the Government of the Slovak Republic No 21/2009. The Slovak authorities have also referred to the *Methods of the introduction of digital broadcasting in SR and the quantification of the scope of the financial support of the state in this process in relation to the population and in relation to the public media*, adopted on 9 April 2008 by Resolution of the Government of the Slovak Republic No 221/2008, and to the *Proposal for financing of selected cost items in the process of introduction of digital broadcasting in SR*, approved on 1 April 2009 by Resolution of the Government of the Slovak Republic No 265/2009. Taking into account the findings included in these documents, the Slovak authorities came to the conclusion that financial incentives in the above funding categories are necessary for motivating industry players, broadcasters and consumers to switch to digital TV.
42. The measure provides financial support where private investment is economically unviable. In so doing, it ensures a smooth transition to the digital technology, without interruptions of the television broadcasting services. In addition, the measure promotes a more efficient use of the broadcasting spectrum.
43. In order to ensure a genuine simulcast phase, the Slovak authorities see no alternative but to grant public aid to the parallel analogue operation.
44. The duration of the period seems appropriate to ensure a smooth transition. The simulcast period creates financial cost for the broadcasters as specified in paragraph 39. State aid is an appropriate instrument to cover this additional cost of the broadcasters.

The aid provides the right incentives to operators

45. Regarding the incentive effect of the measure, it needs to be examined whether the transition investment concerned would not have been successfully undertaken, within the same timeframe, without any State aid.

46. When planning the notified measure, the Slovak authorities have taken into consideration the particular circumstances of the country, which faces a fundamental frequency scarcity problem. Indeed, due to its geographical situation (it is surrounded by five neighbouring countries, therefore it can use less frequencies) and topology (its mountainous character), Slovakia has only a limited frequency spectrum available. In this respect, the Geneva plan offers only limited spectrum capacity to Slovakia for nationwide network coverage and, in addition, reserves certain frequencies to the armed forces, the civil services, the police, the ministry of foreign affairs as well as to mobile phone operators. Under such circumstances, the frequencies needed for the digital broadcasting are the same which are currently used by the broadcasters for analogue transmissions. Therefore, Slovakia has no additional frequencies which could be made available to broadcasters for digital broadcasting.
47. For these reasons, the simulcast period is necessary, according to the Slovak authorities, because a sudden switch to digital broadcasting would leave blank signal reception spots on the Slovak territory which is highly penetrated by the analogue terrestrial signal transmitted by emitters of low emission power. Indeed, when switching to digital, the analogue “white” spot will appear and the analogue mobile transmitters will be used to fill in these blanks in the transition period. These transmitters will only be used during the simulcast period. In addition, the financing of a simulcast period will allow the deployment of temporary mobile transmitters for analogue signal in areas which, without the aid, would remain without TV signal (blank areas), thus avoiding any blackout in the broadcasting
48. The consultation of broadcasters and network operators made by the Slovak authorities has shown however that no investment would take place without public funding in the next three years. Also, it results that a major part of the Slovak population is not yet equipped with the necessary digital decoder nor has shown any intention to buy one at the moment.
49. According to the Slovak authorities, if the switchover to digital terrestrial broadcasting happened now, without any simulcast period, only 5% of the population would be equipped with the necessary receiving equipment and would thus be able to receive the free-to-air digital signal. Furthermore, approximately 25% of the population would not be reached by any signal whatsoever, whether digital or analogue. In this context, the Slovak authorities have identified a current low economical attractiveness of the digital TV market for broadcasters. This low economic attractiveness for the main analogue broadcasters is even stronger in view of the fact that they might face stronger competition on the digital broadcasting market, due to the fact that new frequencies will be available on that market, allowing new entrants to compete with them (see description at point 4 above).
50. In relation to the circumstance that the Slovak population would not be equipped with digital decoders, it ought to be recalled that a measure regarding aid for digital decoders was approved by the Commission on 15 September 2010 (N 671a/2009). In spite of that aid measure (notably for its reduced scope), the market of digital broadcasting would not be attractive enough for broadcasters. Indeed, that measure enables only the poorest part of the population (approximately 10% of the population) to receive an aid of up to 20 EUR for the purchase of digital decoders.

51. Hence, due to the unwillingness of the population to acquire decoders, broadcasters would not switch to digital broadcasting in advance on the legal deadline, but, according to the Slovak authorities, would rather wait to implement the transition until the very last moment, so to allow their viewers to equip themselves with the digital decoder. Therefore, in order to avoid a "last-minute" switchover and any consequent risk of delay, the Slovak authorities have provided for a simulcast period. The simulcast will indeed extend the period for viewers to invest in the purchase of a digital decoder (or a new digital TV set) and will then create the conditions for the broadcasters to switch to the digital technology well in advance of the legal deadline.
52. In the light of the above considerations, the aid is necessary as an incentive for operators to anticipate their investments and to achieve an earlier, more effective and smooth transition of their broadcasting services from the analogue to the digital frequencies.¹⁹

The aid is proportional

53. With this sub-measure, the Slovak authorities aim at covering part of the additional cost of broadcasters caused by the additional burden to broadcast in both analogue and digital mode.
54. Eligible costs are only costs of the simulcast in connection with parallel analogue broadcasting, specifically costs for the services provided by the distributor of the analogue signal, (internal) costs for distribution of analogue signal and costs related to purchase or rental of temporary devices for distribution of analogue signal. Investment or production costs are not eligible and aid will be provided based on presenting documents confirming that the aid does not cover other costs except additional costs directly related to simulcast broadcasting. Analogue transmission being supported, the aid scheme does not aim to support the development of the digital platform as such.
55. To estimate the cost to be covered, the Slovak authorities commissioned a study dated 31 July 2007 on the possibilities of financing the transition to digital broadcasting. On the basis of this study, the measure only covers part of the estimated costs. Aid intensity is 50%. On this basis it is concluded that the aid is proportional.

¹⁹ Case N 622/03 Digitalisierungsfonds – Austria (footnote 13) is a precedent in which aid was allowed for the territory of the country taken as a whole under Article 107(3)(c) TFEU. With this single exception, the present case is different from other cases in which the Commission assessed the aid related to the switch-over to digital broadcasting. In particular, in the Brandenburg case (see footnote 12), the aid was directed towards digital broadcasting as such, whereas in the present case, the aim of the aid is to support the parallel **analogue** broadcasting. Indeed, the aid is not dedicated to one digital platform without possibility to check precisely the costs, but instead it is aimed at supporting a concrete part of the broadcasters' costs of the analogue broadcasting during the simulcast period. Moreover, as referred to in footnote 12, in the Brandenburg case, the Commission explicitly stipulated for the possibility to grant aid for additional transmission costs when broadcasting analogue and digital TV in parallel.

VII.4 Distortion of competition

56. In order to minimise the State aid involved and the potential distortions of competition, the Commission notes the following positive elements, which are in line with the approach taken in the *Switchover Communications* and the *Communications on Interoperability*:

- *Consultation*: By conducting an analysis of the competitive conditions and consulting with stakeholders affected by the relevant measure, the Slovak authorities ensure to minimize distortions of competition with existing broadcasters and network operators who had plans to invest in the near future in digital TV broadcasting and also those who are currently using the existing infrastructure.²⁰
- *Technological neutrality*: The measure as notified is technologically neutral, i.e. it does not favor a priori any technology or transmission platform (particularly it does not discriminate DVB-S and DVB-C against of DVB-T), leaving it to commercial operators to come up with the most appropriate technological solutions to provide parallel operation. Grants are intended to co-fund the directly attributable, actually incurred eligible costs of broadcasters due to the temporary additional analogue transmission via cable, terrestrial or satellite transmission operators.²¹
- *Open call for proposals*: The beneficiaries will be selected in open and non-discriminatory calls for proposals based on clear pre-defined criteria. This procedure has the effect of maximising the effect of the aid provided while minimizing any potential advantage granted for the selected beneficiaries.
- *Temporary funding*: As recommended by the *Switchover Communications*, the funding provided for the measure is clearly targeted at temporary activities related to the switchover. The validity of the scheme ends on 1 July 2013.
- *Necessity test*: The reasons determining the necessity of the public intervention in the transition to digital broadcasting are: the risk of unreasonable protraction of the transition to digital broadcasting and the risk of loss of a significant instrument securing the right to information.
- *Funding requirements*: Beneficiaries may only claim the directly attributable, actually incurred eligible costs for the projects. They are required to use all funds for their specified purpose and in an economic and efficient manner as well as to adequately document the use of these funds to the grantor, whereby they are liable to refund any unused or undocumented funds.

²⁰ As described in paragraph 8, the Slovak authorities have conducted consultations on the preparation of the transition to digital broadcasting at two levels: through a public consultation and a working group of telecoms and broadcasting specialists.

²¹ As said in paragraph 38, the Slovak authorities have indicated that if a broadcaster transmits broadcasting in parallel via another technology platform (cable or satellite) for free for the end user, the costs would also be eligible.

- *Monitoring:* The aid grantor – Ministry of Transport, Posts and Telecommunications of the Slovak Republic - is obliged to submit annual reports on the allocation of the funds to the Commission. The measure will be examined on a regular basis.

VII.5. The balancing of positive and negative effects

57. The digital switch-over is beneficial as it generates the so-called "digital dividend". As described in paragraphs 34 to 40, there is a market failure, and as explained in paragraph 48, the distortions of competition is limited to the minimum. Hence it shall be assessed whether benefits outweigh the remaining distortions.
58. The Slovak authorities have designed the measure in such a way that it clearly addresses some of the identified problems during the introduction of digital television. The scheme provides well-defined financial incentives for broadcasters, while respecting the principles of transparency, proportionality and technological neutrality.
59. The Commission concludes that the measure will offset a commercial handicap and is objectively justified to address the risk of lack of availability of television services due to the commercial unattractiveness of upgrading existing television services.
60. In the view of the above characteristics and of the safeguards applied by the Slovak authorities, the overall impact on competition of the measure is deemed to be positive, because it ensures that the digital dividend is obtained and that all citizens have access to television broadcasting during the simulcast period – supporting the objective of pluralism.
61. On balance, the Commission concludes that the overall effect of the measure is deemed to be positive. The scheme is clearly in line with the objectives of Article 107(3)(c) of the TFEU as it facilitates the development of certain economic activities (digital television services). In view of the above safeguards and regulations, the intervention is designed in a way that does not distort competition or adversely affect trading conditions between Member States to an extent contrary to the common interest.

Conclusion

62. In the light of the above, the Commission has come to the conclusion that the measure is compatible with Article 107(3)(c) of the TFEU.

VIII. DECISION

On the basis of the foregoing assessment, the Commission has accordingly decided that the aid involved in the scheme is compatible with Article 107(3)(c) of the TFEU.

The Commission reminds the Slovak authorities to submit copies of the foreseen annual reports on the implementation of the measure. The reports shall provide enough details for the Commission to monitor whether the measure distorts competition to an extent contrary to the common interest.

The Commission further reminds the Slovak authorities that all plans to modify this aid scheme have to be notified to the Commission.

If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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For the Commission

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