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**Subject: State aid SA. 28685 (2011/NN) - Spain  
Reception of digital television in Cantabria**

Sir,

## **I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the measure "*Subvenciones destinadas a la captación de la televisión digital en los hogares de la Comunidad Autónoma de Cantabria*" and decided not to raise objections, as the State aid contained therein is compatible with Article 107(3)(c) Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>.

## **II. PROCEDURE**

- (2) By letter registered on 29 May 2009, the Spanish authorities pre-notified a scheme with regard to the reception of digital television in the Autonomous Community of Cantabria, based on ORDEN IND/10/2009 of 18<sup>th</sup> March from the Regional Government of Cantabria (hereafter ORDEN). After informal contacts, by letter registered on 22 December 2009, the

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<sup>1</sup> 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.

Excmo. Sr. D. José Manuel García-Margallo y Marfil  
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Commission requested further clarification to which Spain provided information in a letter registered on 19 January 2010. The Commission sent a complementary request for information on 26 April 2010 to which the Spanish authorities replied by letter registered on 18 May 2010. A telephone conversation between the Commission and the Spanish authorities took place on 23 September 2010. By letter registered on 14 October the Spanish authorities submitted to the Commission the draft notification of the planned measures. The Commission requested additional information in a letter sent on 12 November 2010 to which the Spanish authorities replied by letter of 29 November 2010 and delivered further information with submissions on 7 March 2011.

- (3) The Spanish authorities submitted to the Commission further explanations of the notified measure by letter dated 27 June 2011 and 22 November 2011, in particular how to deal with the reference to 'digital terrestrial TV' in the ORDEN. By email of 3 January 2012 Spain submitted the repeal of the ORDEN and provided some minor factual explanations on the support scheme by email dated 13 and 19 January 2012.
- (4) During the investigation it became clear that part of the State support had already been paid out to the recipients.

### III. DESCRIPTION OF THE MEASURE

- (5) The measure concerns direct grants which the region of Cantabria gives to end consumers for the technical adaptation of television installations in order to enable them to still receive television after the switchover from analogue to digital television.
- (6) *Objectives of the measure:* The measure is set up as a part of the Plan to provide a universal essential public service in the area of digital television in the territory of Cantabria (*Plan de Universalización del Servicio Público Especial de Televisión Digital, TDcan*) which was approved by the Governing Council on 18 October 2007. With the aim of making the digital television public service a universal one, the Plan provides for the establishment of the means of adapting digital reception in accordance with social and economic cohesion criteria and with the principles of technological neutrality, provision of the service free of charge and universal coverage, and limitation of the costs of installation in households. The measure is intended to allow the population of Cantabria, without any discrimination on the ground of home location, access in egalitarian conditions to the essential public service of television, with the aim of ensuring the constitutional right of information. The scheme's focus is on parts of the population which have a risk to be excluded from the reception of digital television ('digital exclusion').
- (7) *Set up of the programme:* In order to better understand the motivation of Cantabria to provide support in relation to the digital switchover, the legal framework for the digital switchover, including the legal provisions on the national level will have to be explained.
- (8) The National Technical Plan for Digital Terrestrial Television (DTT)<sup>2</sup> was approved by the Council of Ministers with Royal Decree 944/2005 and fixed the date of the analogue switch-off in Spain for 3 April 2010. It also established the obligation of private

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<sup>2</sup> <http://www.boe.es/boe/dias/2005/07/30/pdfs/A27006-27014.pdf>

broadcasters to reach by that date 96% of the population in their respective areas of coverage, while public broadcasters should reach 98% of the population in their respective areas of coverage. Three areas have been established in this regard. First, for the territory which covers 96% of the population (Area I), broadcasters and platform operators had to finance the (compulsory) switch-over by themselves. In Area II, which covers 2.5% of the population, the digitisation is not privately profitable and the Spanish government had designed an aid plan of at least EUR 216 million. This money was made available to all the Autonomous Communities to finance the extension of the digital network to remote and scarcely populated areas. Finally, 1.5% of the population lives in Area III which is so remote that it can only be reached by satellite technology. The support scheme set up by Cantabria is not limited to one of these areas, but the vast majority of the support (around 99%) falls within area III, which is explained by the geography of Cantabria. As the scheme intends to foster 'reception', and not coverage, in area I and II the scheme will only cover the adaptation of telecommunications infrastructure in so-called T-communities (see below paragraph 10 of this Decision).<sup>3</sup>

- (9) The ORDEN sets the regulatory principles to provide funds in order to allow homes located in "Comunidad Autónoma de Cantabria" to receive digital television. The support should mainly go to areas in which there is a risk of digital exclusion. Article 2e) of the ORDEN defines the risk of digital exclusion as the situation of a T-community or a household which is not located in coverage areas defined by the National Technical Plan and which will not receive a signal after the analogue shut down as certified by an authorized company (T-instalador).
- (10) In particular, according to Article 3, investments that can be subsidized are:
- a) investments to adapt shared audiovisual telecommunications infrastructures in T-communities<sup>4</sup>,
  - b) investments to adapt a plug (*una toma*) or an access point in houses within a T-community located in area with a '*risk of digital exclusion*' and
  - c) investments to adapt shared and interior infrastructure made for single-family houses located in areas with "*risk of digital exclusion*'.
- (11) The Spanish authorities state that the lack of coverage of terrestrial technology constitutes a digital divide which is necessary to minimize by offering people grants, regardless of the technological solution they choose (cable, satellite, Hertzian waves, IP) but on conditions that they receive TDcan television. The ORDEN defines TDcan television in Article 2 f) as

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<sup>3</sup> The Spanish government explains that in Cantabria there is a large amount of building stock which does not even have collective aerials to begin with, which makes it necessary to take them into account as well. They further explain that for area I the legal obligation of the broadcasters is to provide coverage *to* the house, but that the support under the notified scheme refers to the 'reception', i.e. the scheme intends to support installations *within* the house. These costs would not be borne by the broadcasters or platform providers.

<sup>4</sup> The first category of support contained in Article 3 a) does not explicitly mention a risk to be excluded. As mentioned in the above footnote, a large amount of building stock does not even have collective aerials, because the consumers would be equally excluded as the adaptation to receive a signal would involve much higher costs than for houses where a basic infrastructure is already in place.

each digital television service which is defined as a public service with an administrative authorization to broadcast in the territory of the Autonomous Community of Cantabria and which fulfils the requirement of technology neutrality.

- (12) In this respect, Article 3(3) of the ORDEN adds that the adaptations that can be subsidised must be carried out in line with the Ministerial Order ITC/1077/2006 of 6 April 2006 which establishes the procedure to adapt the shared infrastructure in buildings for the reception of digital *terrestrial* television (DTT)<sup>5</sup>. In addition, according to Article 12(2) of the ORDEN recipients are required to place, in a visible location of the building, the emblem provided by the Directorate General of Transport and Communications which confirms that the adaptation of the building's collective television signal receiving equipment for the proper reception of DTT was funded by the Government of Cantabria.
- (13) Article 4 of the ORDEN stipulates that under no circumstances the support can exceed the cost of the installation.
- (14) *Execution of the support scheme*: The Spanish authorities pointed out that the technical adaptations which must be made in apartment buildings, apartments and single family houses depend on the technological solution chosen by the individual concerned. The support wants to ensure that a large number of individuals who do not have access to audiovisual telecommunications infrastructure and who access analogue television with a set-top aerial or via private aerial will not be deprived of access to television when the analogue switch-off takes place and because the investment required presents them with a financial barrier.
- (15) Those individuals differ from communities that already have common telecommunications infrastructure installed or single-family houses which, since they are within the footprint which broadcasters are contractually obliged to cover under their State authorisation, will automatically start to receive digital television.
- (16) The aid is granted by the Cantabria Government through a procedure which envisaged four different calls (*convocatoria*, hereafter 'convocations') with a total budget of EUR 422.000. Each of the four convocations is intended to cover different geographical zones<sup>6</sup>. The calls lasted for approximately two months. The calls are in form of grants to end-users of EUR 300 each. However, for business establishments up to EUR 3000 can be granted<sup>7</sup>.
- (17) The allocation of money is established on the basis of the invoices which the customers hand in. These invoices will document the technical solution chosen by the customer. The

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<sup>5</sup> ORDEN ITC/1077/2006, de 6 de abril, por la que se establece el procedimiento a seguir en las instalaciones colectivas de recepción de televisión en el proceso de su adecuación para la recepción de la televisión digital terrestre y se modifican determinados aspectos administrativos y técnicos de las infraestructuras comunes de telecomunicación en el interior de los edificios.

<sup>6</sup> Orden IND 11/2009 of 7 April 2009, Orden IND 19/2009 of 14 August 2009, Orden IND 20/2009 of 26 August 2009 and Orden IND 3/2010 of 26 February 2010.

<sup>7</sup> Article 3 of Orden IND/3/2010: T-business (T-establecimientos): Small and medium-sized companies (turnover less than EUR 2 million and with 25 or fewer workers) and legal persons (self employed workers) and whose activity is the catering trade (i.e. restaurants), accommodation industry (hotels), education (schools), welfare and social services and health services according to the Spanish business tax (IAE).

Cantabria Government has already carried out the four calls and some of the support has been granted and notified to the beneficiaries. The effective payment has taken place with regard to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> calls, while the 4<sup>th</sup> call payment has been suspended.

- (18) The Spanish authorities also elaborate on the platform operators which indirectly profited from the end-users subsidies. Spain submits the following data, following the conduct of the four convocations:

*Satellite transmission:* EUR 316.929,66 have been granted to end-users for the purchase of satellite *adaptation equipments*.

*Terrestrial transmission:* The sum of EUR 73.527,53 has been granted for terrestrial adaptations

*Cable transmission:* EUR 31.579,67 are intended to subsidize the purchase of cable adaptation equipments.

- (19) As can be seen from the above, the greatest expenditure was for adaptations for satellite reception. This is explained by the difficult terrain in Cantabria, where there are very sparsely-populated areas, in which the population often has low income levels and where access to television has not been possible until now.
- (20) Legal Basis: The measure is based on the ORDEN IND/10/2009 of the 18<sup>th</sup> of March and on the ORDEN IND/11/2009 of the 7<sup>th</sup> of April<sup>8</sup> both adopted by the Regional Government of Cantabria. The adaptation that can be subsidized must further be carried out in line with Ministerial Order ITC/1077/2006 of 6 April 2006 of the Kingdom of Spain. The four convocations<sup>9</sup> also constitute a legal basis for the support to be paid out if the necessary documentation is handed to the competent authorities.
- (21) Beneficiaries of the programme: The direct beneficiaries of the measure are the private end consumers (users of television) who live in an area "at risk of exclusion" and who receive the grant from the Regional Government of Autonomous Community of Cantabria. These end consumers can be individual persons or undertakings.<sup>10</sup>
- (22) The measure entails indirect benefits for the platform operators (such as satellite, terrestrial or cable operators) which profit from the subsidised purchases of adaptation equipments by being able to extend their platform and services to that area. Benefits might also be involved for the producers of the respective technical equipment and broadcasters which can reach the respective audience in the regions with a risk of digital exclusion.
- (23) Budget and duration of the aid: The overall amount of the sum to be awarded is of EUR 422.036,86. In particular, the Autonomous Community of Cantabria through "*La Ley de Presupuestos Generales de la Comunidad Autónoma de Cantabria*" envisaged the sum of EUR 250.000 for financing the whole aid project. The rest of the overall amount has been

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<sup>8</sup> This ORDEN authorises that convocations are to be carried out.

<sup>9</sup> See above, fn. 6.

<sup>10</sup> See article 7 b) of ORDEN IND/10/2009, which indicates that also companies can hand in their invoices.

granted by a State co-financing of the transition to digital terrestrial television through the "*Ley de Presupuestos para el año 2010*".

- (24) The support is granted through four different call procedures. As stated above (paragraph 17), the money of the fourth convocation will only be paid out after the Commission's investigation of the case.
- (25) *Comments by the Spanish authorities on the respect of the technology neutrality principle:*  
The Spanish authorities reiterate that the aid was granted in order to provide all Cantabrians, independently of their place of residence, with equal access to the general-interest service of television. The measure is targeted to provide a solution for people for which a T-installation company (*T-instalador*) will not receive a television signal after the switchover. Due to the concessionary obligations of the broadcasters these people ought to have television reception, but in practice do not have coverage due to e.g. the existence of a wooded area, a mountain or simply a taller building which casts a shadow, and for whom it is necessary to provide a specific solution.
- (26) The funding should overcome a market failure and pursues an objective of common interest, in accordance with social and economic cohesion criteria and with the principle of technological neutrality. Spain argues that it is the market and the customer which chooses the most appropriate solution in each area, whether it is a DTT re-transmitter or adaptations required for cable or satellite or any other technology. Factually, it turned out that the invoices handed in by the end consumer are mainly claims for a satellite solution. The terrestrial and the cable platforms have been respectively the second and third solution. This is documented by the figures above (see paragraph 18 of this decision).
- (27) Spain further underlines that ministerial order ITC/1077/2006, despite of reference to *terrestrial* transmission, covers common telecommunications infrastructure in buildings in general and it applies to various technological solutions (terrestrial, cable, satellite).
- (28) The Spanish authorities argue that the provision uses the term DTT ("TDT") rather than "digital terrestrial television" in order to take advantage of the wide dissemination of the term in Spain and the campaigns organised by the Spanish Government, and the fact that people identify it with digital television rather than digital terrestrial television and thus talk in general terms about *terrestrial* DTT, *satellite* DTT and *cable* DTT. By letter of 29 November 2010 the Spanish authorities provided several legal and policy documents (i.e. the Real Decreto Ley 1/2009 of 23<sup>rd</sup> February, the Ley 7/2010 of 31<sup>st</sup> March and the Regional Plan to provide a universal essential public service in the area of digital television in the territory of Cantabria) where the "DTT" term is intended to cover the digital television in general and does not entail any difference on the grounds of the technological solutions. The Spanish authorities argued that, colloquially, DTT is used to refer to the content (channels) and therefore when the same content is broadcast via satellite the term used is satellite DTT and when it is broadcast via cable the term used is cable DTT. To sum up, grants are awarded for any technological solution, provided that it complies with national legislation.

- (29) However, the Spanish authorities confirmed that
- i) the support scheme will be terminated with the payments under the fourth convocations.
  - ii) ORDEN IND/10/2009 will be repealed<sup>11</sup>, which in the meantime has been done by ORDEN INN 14/2011 of 14.12.2011. Consequently references to the Ministerial Order (referring to DTT) do no longer exist and the use of the word 'DTT' in article 12 (2) of the ORDEN itself will be eliminated.
  - iii) no other support will be given to broadcasters or other parties involved in the digital switchover<sup>12</sup>.
- (30) Spain committed that once the repeal procedure is over, the respective documents will be sent to the European Commission and did so on 3 January 2012.

#### IV. STATE AID ASSESSMENT OF THE MEASURE

##### 1. Presence of aid

- (31) According to Article 107(1) of the TFEU, “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (32) *State resources*: The Commission notes that the notified aid scheme is funded directly from the budget of the Autonomous Community of Cantabria and the Kingdom of Spain as the funding is provided for both in the Regional and in the national Budget Law. Hence, these allocations can be considered as State resources.
- (33) *Economic advantage*: The funds granted by the Spanish authorities do not confer an economic advantage to private individuals, which are not carrying out an economic activity within the meaning of Article 107 (1) TFEU.
- (34) However, in so far businesses will also receive support for the costs of technical adaptations, this will constitute an economic advantage for an undertaking within the meaning of Article 107(1) TFEU. The advantage is in so far selective as these undertakings are identified by the convocations and these convocations took place only during a limited time slot of two months<sup>13</sup>. Only companies handing in an invoice following the convocation are entitled to receive the support, which puts them in a better position than

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<sup>11</sup> The legal procedure is to repeal the act and then to issue a new ORDEN without the references to the ministerial order ITC 1077/2006. By email of 3 January 2012, the Spanish authorities submitted the above mentioned act of repeal.

<sup>12</sup> Notification form, page 21, submitted by Spain on 27 June 2011.

<sup>13</sup> Only the last convocation lasted for almost 4 months. The first three convocations lasted for two month each.

those not able to receive funding. In addition, the convocations refer to T-businesses (T-establecimientos) as defined by ORDEN 3/2010<sup>14</sup>. This administrative act only names tourism (catering and hotels) enterprises, social services and education. I.e. there is also selectivity involved by favouring certain economic sectors.

- (35) The public funding might constitute also an indirect aid to platform operators in digital television transmission. The support will allow end-users to make an investment in order to adapt their buildings/houses for the digital terrestrial television reception that they would probably not have made without public support. In this regard, compared in a situation in which no subsidy is granted to end-users, platform operators might obtain profits that they would not have obtained under normal market conditions. The equipment purchased and the technological adaptations carried out by the end-users allow platform operators to expand their market coverage. Therefore, platform operators indirectly benefit from the public financing of the technical adaptations for digital television reception. There might also be an indirect aid to producers of technical equipment as they will profit via the increased purchases from the support. Broadcasters are also likely to gain an advantage by reaching an audience, which due its geographic location and the lack of investment in the adequate technical equipment might not have switched over to digital television.
- (36) The scheme is also selective since the indirect benefits arising from the end-users subsidies will confer an advantage only to the undertakings active in the sector related to the transmission of digital TV<sup>15</sup>.
- (37) *Distortion of competition:* When State aid strengthens the position of an undertaking compared with other competing undertakings, the latter must be regarded as affected by that aid. The support strengthens the position of the above mentioned businesses compared with other competing undertakings by enabling them to install TV equipment without bearing the full costs for that. Competition between undertakings profiting from the scheme and those not profiting from it will be distorted.
- (38) There are also potential distortions of competition in the market for digital transmission services, as the scheme – via the support to end consumers - indirectly benefits the platform providers which compete with each other. Competition between those who profit from the scheme and those who will not, will therefore be distorted. This applies to network operators and broadcasters, but also covers the producers of the respective technical equipment.
- (39) *Effect on trade:* Finally, the Commission considers that the measure in question affects trade between Member States. For those end consumers which are undertakings in the meaning of Article 107 (1) TFEU, they are active in a variety of markets for which trade relations exist. Platform operators, broadcasters and producers of technical equipment compete cross-border with each other and there is a Community market for such services.

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<sup>14</sup> Cited above, fn.6.

<sup>15</sup> See also the reasoning in Commission Decision C(2005)586 final, State aid N 622/03 – Austria "Digitalisierungsfonds", paragraph 16.



Conclusion:

- (40) In view of the above, the Commission considers that the project grants a selective economic advantage to the indirect beneficiaries. 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 Treaty on the Functioning of the European Union.

**2. Respect of the standstill obligation**

- (41) The Commission notes that for three of the four convocations, the grants have already been paid out to end consumers. This infringes the standstill-obligations in Article 108 (3) TFEU. The aid is therefore considered unlawful aid within the meaning of Art 1 f) of Regulation 659/99<sup>16</sup>.

**V. COMPATIBILITY ASSESSMENT**

- (42) The Commission has assessed the compatibility of the scheme according to Article 107(3)(c) of the TFEU in order to verify its possible compatibility with the internal market. The compatibility of the contested measure must be assessed in the context of the Plan to provide a universal essential public service in the area of digital television in the territory of Cantabria (Tdcán).
- (43) The Commission will carry out a three-step test for assessing and balancing the benefits and the negative effects of the measure in question.
- (44) In applying this balancing test, the Commission will assess the following questions:
- a. 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)?
  - b. Is the aid well designed to deliver the objective of common interest? In particular:
    1. Is the aid measure an appropriate instrument, *i.e.* are there other, better placed instruments?
    2. Is there an incentive effect, *i.e.* does the aid change the behaviour of firms?
    3. Is the aid measure proportional, *i.e.* could the same change in behaviour be obtained with less aid?
  - c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

**Objective of the measure**

*The aid is in line with the European Union policy*

- (45) The aid scheme aims at improving digital television reception in certain rural areas of the Autonomous Community of Cantabria. These areas are considered by the Spanish authorities as remote area "*at risk of exclusion*". In this respect, the measure is targeted to

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<sup>16</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83 of 27 March 1999, p.1.

allow people living in those rural areas to watch television and to exercise their constitutional right to access information. The Commission has recognised the importance and the benefits of the digital transmission in the Action Plan eEurope 2005<sup>17</sup> as well as in its two Communications on the transition from analogue to digital broadcasting<sup>18</sup>. In its iCommunication – A European Information Society for growth and employment<sup>19</sup>, the Commission has pointed out that the planned switching off of analogue terrestrial television by 2012 will improve access to spectrum in Europe.

- (46) In its State Aid Action Plan<sup>20</sup> the Commission explains its general approach to State aid geared to sustainable growth, competitiveness and cohesion. It points out that Member States may use State Aid to overcome a specific market failure or to ensure social or regional cohesion. In such cases, it must, however, be shown that aid is the appropriate instrument to address the issue, it is limited to the minimum necessary and does not distort unduly competition. Therefore, the Commission recognises that people whose usual residence is in a rural area may be totally excluded from the digital television signal reception if the digital coverage is left entirely to market forces and that public intervention can be beneficial through financial supports to individuals.
- (47) As stated by the Spanish authorities, it is generally recognised that there is a risk that not all the parts of the population can benefit from the advantages of digital television (problem of social and regional cohesion). A market failure might exist where, on the one hand, players are unwilling to invest in the remote rural areas (such as, the Autonomous Community of Cantabria) and to carry out the adaptations required to receive digital television, on the other hand, market players do not take into account the positive effects of digital switch-over on society as a whole because they do not have the right incentives to do so (positive externalities).
- (48) With respect to social cohesion, Member States want to make sure that all citizens have access to digital TV once analogue TV is switched off<sup>21</sup>. Since the digital switch-over entails some costs for consumers and requires a change in habits, Member States may want to assist people living in peripheral regions. There is a risk that some rural areas in the territory of Cantabria may lose TV reception altogether once analogue TV is switched off. Member States may therefore also consider measures to ensure that all geographical areas continue to have appropriate TV coverage.
- (49) The availability of digital television and the additional services will increase market competition between various electronic communication network operators and will faster innovation (e.g. from broadcasters, network operators and from developers of interactive applications). As digital broadcasting uses spectrum more efficiently, it would free up spectrum capacity for other users, such as new broadcasting and mobile telephony services,

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<sup>17</sup> COM(2002) 263 final, "eEurope 2005: An information society for all".

<sup>18</sup> COM (2003) 541 final, "Communication on the transition from analogue to digital broadcasting (from digital "switchover" to analogue "switchoff")", and COM(2005)204 final, "Communication from the Commission on accelerating the transition from analogue to digital broadcasting".

<sup>19</sup> COM(2005) 541 final, 1 June 2005.

<sup>20</sup> See Less and better target state aid: a roadmap for state aid reform 2005-2009.  
[http://europa.eu.int/comm/competition/state\\_aid/others/action\\_plan/](http://europa.eu.int/comm/competition/state_aid/others/action_plan/)

<sup>21</sup> For the Cantabrian scheme these includes customers living in areas of 'risk to be excluded' i.e. where not signal will be received after the switchover and for those customers which do not even have a basic reception infrastructure like an aerial and for which the adaptation of the house installation would prove very costly.

which will in turn stimulate innovation and growth in the TV and electronic communications industries in the territory of the Autonomous Community of Cantabria.

## **Well-designed aid**

### *Aid is the appropriate instrument*

- (50) State aid by granting a financial support to end-users is to be considered the appropriate measure to achieve the objective of social and territorial cohesion in the Autonomous Community of Cantabria. In such a case, there would be no other better placed instruments, such as a regulatory intervention, that could address the "risk of exclusion" for people living in the rural areas of Cantabria. The Commission has accepted that offering compensation to consumers that need to update their analogue equipment is a necessary step for a smooth switchover process<sup>22</sup>. Therefore, the Commission finds that the aid is the appropriate measure to allow the population of Cantabria, without any discrimination on the ground of home location, the access in egalitarian conditions to the essential public service of television. The technical and economic conditions in the rural areas of Cantabria are such that no market-based solution can be developed.

### *The aid has an incentive effect*

- (51) The four convocations invite end consumers to adapt their infrastructure by naming under which conditions the adaptation is eligible (see the conditions of Article 3 (1) of ORDEN IND/10/2009, described above) and to hand in the respective documentation. The Commission has acknowledged that offering compensation to consumers to update their equipment in order to receive digital television is a necessary step for a smooth switchover process.<sup>23</sup> Via the support of the end consumers the platform operators will be able to extend their services into regions, which could not be reached by digital television before.

### *Proportionality*

- (52) The Spanish authorities have designed the notified measure in such a way that it clearly addresses the identified problem of "*risk of digital exclusion*"<sup>24</sup>. In line with its Communication on interoperability of digital interactive television services<sup>25</sup> and with its analysis of the subsidy for the promotion and development of digital television in Austria<sup>26</sup> the Commission states that consumers subsidises for purchases have to respect the principles of proportionality and technological neutrality. Below, the respect of the technology neutrality principle will be assessed first.
- (53) Technology neutrality: The respect of this principle has to be examined in relation to the network operators. The Commission stated in its earlier case practice that although the

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<sup>22</sup> See Commission decision C (2006) 6634 on the State aid implemented by the Italian Republic for the subsidised purchase of digital decoders (Mediaset), paragraph 148

<sup>23</sup> See above Mediaset decision, paragraph 148. The aspect of technology neutrality referred to in that paragraph of the Mediaset decision will be discussed later.

<sup>24</sup> For category 3 a) of the ORDEN, as mentioned, there is also a risk of exclusion as the houses are lacking in basic infrastructure which makes the adaptation costly, the broadcasters will not cover these costs and the consumers would not be able to receive television signals without this adaptation. The support will change that situation and enable them to receive a signal.

<sup>25</sup> COM(2004)541 final. Communication on interoperability of digital interactive television services, 3.4.2.

<sup>26</sup> Commission Decision C(2005)586 final, State aid N 622/03 – Austria "*Digitalisierungsfonds*"

argument of a smooth switchover to digital television justifies support, it normally does not allow the discrimination of one platform over the other<sup>27</sup>. The respect of the technology neutrality principle as established in the 2003 Communication<sup>28</sup> when assessing the legality of State aid has also been endorsed by the European Courts<sup>29</sup>.

- (54) The Commission notes that there are some references in the ORDEN IND 10/2009 to Ministerial Order ITC/1077/2006, which refers in its title to digital *terrestrial* television telecommunications infrastructure. The Spanish authorities explained that the term "DTT" is used in order to describe common telecommunications infrastructure in buildings in general. In this respect, the Spanish authorities argue that the Ministerial Order applies to various technological solutions (e.g. terrestrial, cable, satellite) and does not refer solely to installations involving terrestrial technology. Spain also points out that the convocations have been carried out in a technology neutral manner. Spain evokes that the notion DTT is widely disseminated in Spain and in general understood as a synonym for digital television, regardless of the technical platform used.
- (55) The Commission does not agree with that argumentation. The Commission finds that in principle it is not satisfactory that an administrative act which foresees support to various digital television technologies contains reference to a ministerial order which, at least by name, is referring in its title to only one of these technologies. In this regard it also would have been desirable that the four convocations do not contain any reference to this ministerial order. Otherwise the formulation of the administrative act and convocations can constitute a deterrent for those end users who wish to use satellite or cable technologies. The Commission finds that the principle of technology neutrality should normally require a neutral formulation of the respective legal bases in order to ensure that no technology is discriminated against.
- (56) However, for the case at hand, the Commission acknowledges the existence of special circumstances.
- (57) *First*, the objective of the ORDEN and the respective convocations is to achieve the introduction of digital television in the whole territory of Cantabria. Both, the ORDEN and the convocations explicitly state in their introductory part that this should be done in a technology neutral manner. Throughout the text of the ORDEN, but also of the text of the four convocations the word 'digital television', which is indeed not referring to a certain technical solution, is used. The reference to the Ministerial Order and Article 12 (2) of the ORDEN are the only reference to DTT in a text which is otherwise technology neutral. It should also be noted that the ORDEN's objective to introduce universal digital television is further specified by defining the term 'TDcan'. As stated above, the respective definition of

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<sup>27</sup> Commission decision C (2006) 6634 on the State aid implemented by the Italian Republic for the subsidised purchase of digital decoders (Mediaset), Commission decision (2006/513/EG), C 25/2004, DVB-T in Berlin-Brandenburg, OJ L 200 of 22.7.2006.

<sup>28</sup> COM (2003) 541 final, "Communication on the transition from analogue to digital broadcasting (from digital "switchover" to analogue "switchoff").

<sup>29</sup> See cases T-177/07 Mediaset v. Commission. The judgment states in paragraph 127 that aid to 'consumers does not justify the discrimination between different platforms in so far as there is no need to guide consumers towards one digital platform', which was not the case with the measure at issue. The judgment had been upheld by the Court of Justice, case C-403/10 Mediaset v. Commission. Also in Case C-544/09 Germany v. Commission, the Court found in paragraph 80 that in the case at stake it was not demonstrated that the support of one technology over another was necessary to solve a structural problem.

the notion TDcan incorporates explicitly the respect for the technology neutrality principle (see above, paragraph 11 of this decision).

- (58) *Secondly*, Spain is correct that the Ministerial Order does not seem to be limited to the terrestrial technology as its annex 4 – which stipulates the evidence to be provided for the adaptation of the infrastructure in buildings – also contains a chapter on the television by satellite, which would not be explicable if the ministerial order only wanted to refer to the terrestrial platform.
- (59) *Thirdly*, the eligibility criteria employed were neutral and did not implicitly favour any technology. Funds were granted to persons with habitual residence in households in area at risk of digital exclusion in the territory of the Autonomous Community of Cantabria or homeowners' associations for the adaptation of the Common Telecommunications Infrastructure (multi-platform).
- (60) *Fourthly*, it is of importance that the result of the four convocations demonstrates that in reality most of the allocations were used for satellite technology and not for adaptations of terrestrial infrastructure. The fact that the majority of the money went to the satellite technology, is explained by the geographic structure of Cantabria, which has difficult terrain and many sparsely populated areas. There was no bias in favour of that technology either.
- (61) The Commission is further satisfied with the commitments by Spain that after the fourth call will have been paid out after the Commission's decision, the support scheme will come to an end. It further notes that ORDEN IND 10/2009 has been repealed and replaced by an act which no longer contains the reference to the Ministerial Order. In the new ORDEN INN 14/2011, paragraph 12 (2) no longer contains a reference to DTT. It should further be noted that in the meantime also the ministerial order has been superseded by another Decree and is no longer in place. Further, the Spanish government committed that no further aid to broadcasters or other stakeholders in the digital switchover process should be granted. Any such new aid would have to be notified in advance to the Commission.
- (62) Proportionality: In this respect, the Commission recognises that the aid scheme amount of EUR 422.036,86 is well-targeted and that the objective would not be achieved with a lower amount of aid. The amount is given in relation to the installation costs and does not exceed these costs, on the contrary the end consumer never gets the whole amount of his investment reimbursed. There is no danger of overcompensation.
- (63) In general, the amounts for the individual end consumer of EUR 300 and for the 85 enterprises which profited from the scheme of maximum EUR 3000 are limited.
- (64) Other safeguards: The Commission notes that the funding has only been temporary and communicated in a transparent manner via the four convocations. The Commission notes that no further funding will be available under the scheme and that reference to digital terrestrial television have been eliminated from the ORDEN.

## Conclusion

- (65) In view of the above considerations, the Commission considers that the intervention is designed in a way that does not distort competition to an extent contrary to the common interest.

## VI. DECISION

- (66) On the basis of the foregoing assessment, the Commission has accordingly decided that the aid measure " *Subvenciones destinadas a la captación de la televisión digital en los hogares de la Comunidad Autónoma de Cantabria*" is compatible with Article 107(3)(c) of the TFEU.
- (67) The authorities are reminded that, pursuant to Article 108(3) of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.
- (68) 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/eu\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm)

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

European Commission  
Directorate-General for Competition  
State Aid Greffe  
Rue Joseph II 70  
B-1049 Brussels  
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Yours faithfully,

For the Commission

*Joaquín ALMUNIA*  
Vice-President