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**Subject: State aid SA.33980 (2012/N) – United Kingdom
Local Television in the UK**

Sir,

1. SUMMARY

- (1) I am pleased to be able to inform you that the Commission has approved the aid measure concerning the construction of a new local digital multiplex for broadcasting of local television in the UK.

2. PROCEDURE

- (2) The UK authorities notified the Commission of the aid measure on 11 May 2012. The Commission sought additional information on 10 July 2012, which the UK authorities provided on 31 August 2012.

3. DESCRIPTION

- (3) The proposed measure concerns aid to build a new local digital television multiplex (local digital terrestrial television, or "local DTT") that will carry newly created local digital television broadcast services (local TV services) covering a

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certain number of cities in the UK (in the first phase 21 locations have been selected¹).

- (4) Aid will be awarded to a single operator, selected by Ofcom (the UK's independent communications regulator)] through a competitive process², licensed to build and operate the multiplex infrastructure. The selected operator will receive aid up to EUR 31 million (GBP 25 million) to cover the capital costs linked to the building of the multiplex (e.g. transmitter equipment, labour associated with the installation and related transmission systems).
- (5) The aid for building the infrastructure will have been distributed by 2017 by which time the new multiplex infrastructure will have been put in place. BBC will monitor the aid and overcompensation, if any, will be clawed back. The competition is open for bids from potential licensees choosing to operate on a commercial or not-for-profit basis.
- (6) The multiplex will require a new network of transmitters to be established at existing masts across the UK. The transmitters will be designed so as to make use of the relevant band of geographic interleaved spectrum and to avoid interference with other DTT services, users of other spectrum bands and other services sharing the transmitter masts, with capacity to broadcast up to three video streams (i.e. three separated television channels at each location), only one of which is required to carry the local TV service, leaving the remainder available for other uses (e.g. selling capacity to other broadcasters, which would in such case pay commercial rate for the carriage).
- (7) Once the infrastructure is in place, the multiplex provider can recover operating costs from each of the local TV services to cover electricity and running costs associated with transmission, however, not capital expenditure as this will have already been met by the aid.
- (8) The local TV multiplex will carry a separate local TV service in each location and will be accessible to the overwhelming majority of households in the local area. The local TV service providers (also selected by Ofcom following an open and transparent process³, and the criteria taken into account include public service broadcasting criteria describing the desired qualities of a local TV service alongside a sustainability criterion) are the indirect beneficiaries; however, the UK

¹ Belfast, Birmingham, Brighton & Hove, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds, Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Plymouth, Preston, Sheffield, Southampton and Swansea.

² The bidding process for the selection of the operator to build and operate the multiplex infrastructure opened on 11 May 2012 and ran until 13 August 2012. Ofcom has published a list of applicants for the local TV multiplex licence (see: <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/applicants-mux/>). The bidders were required to meet a range of criteria though a comparative selection process (comparable to the "most economically advantageous tender" principle) with the primary criteria being the number of locations and the timetable for establishing the local multiplex and the ability to provide a sustainable service for the local TV broadcast services.

³ <http://licensing.ofcom.org.uk/binaries/tv/local-tv/ldtps-ita.pdf>.

has given assurance that any benefit to them will comply with the SGEI decision.⁴ The present decision therefore does not cover the aid to local TV service providers. The licensee will be obliged to carry the transmissions of local service content providers which are SGEI.

- (9) The objective of the measure is to enable sectoral development of new local TV services in the UK distributing content to local communities. The aid is to be used to help the first services emerge on a sustainable basis.
- (10) The legal basis for licensing both the Local TV multiplex operator and the Local TV broadcasters is the secondary legislation The Local Digital Television Programme Services Order 2012 (SI 2012/292) made in pursuant of primary powers under section 244 of the Communications Act 2003. The legal basis for actually paying the proposed aid comes from the BBC Agreement as amended by Clause 7 of the amending Agreement of September 2011, which inserted a new clause 95A dealing with local TV into the main BBC Agreement.
- (11) The funding will be awarded by the BBC subject to an agreement between the BBC and the winner of the multiplex licence competition.

4. ASSESSMENT

- (12) This decision only deals with the State aid related aspects of the measure and does not prejudice its assessment under EU rules on public procurement.

Existence of aid

- (13) According to Article 107(1) TFEU, there is State aid when there is a financial intervention by the State or through State resources which confers a selective economic advantage on an undertaking, distorts or threatens to distort competition and which is liable to affect competition and trade between Member States.
- (14) The aid is decided by the State and financed through a direct grant from the television licence fee administered by the BBC (only to be transferred after approval from the Commission). It is provided to a single operator to build and operate the multiplex infrastructure. The aid is designed to meet the initial capital costs, thus removing the risk for the multiplex provider investing in a new platform and services that are likely to generate marginal profits and covers the commercial shortfall the multiplex operator may reasonably expect to recover without over-compensation but with a reasonable rate of return. The local TV service providers are the on-going indirect beneficiaries of the aid by having a platform on which to broadcast without having to meet considerable capital start-up costs and in the form of carriage at less than the full economic cost which is made possible only because of the capital funding available to the multiplex

⁴ The dates for the bidding process for the local TV licences are the same as the multiplex licence as both licensees are co-dependent and the agreements will be conterminous.

operator. Hence the funding provides an economic advantage to selected undertakings.

- (15) Although the potential distortion of competition and effect on trade between Member States seems rather limited (the closest competitor are local and regional newspapers and local radio and thus the measure may have some impact upon local advertising revenues and the local news market), it cannot be completely excluded. According to the Court of Justice, for a State measure to be relevant under Article 107 TFEU, a direct impact on actual trade between Member States is not necessary. It is sufficient that the measure puts the recipient in a more favourable position compared with other undertakings which are competing in intra-Union trade⁵.
- (16) Therefore the notified measure constitutes State aid within the meaning of Article 107 (1) TFEU.

Compatibility

- (17) In view of the above, the compatibility of the aid measure needs to be assessed. There are no existing frameworks or guidelines which can be applied to assess the current scheme. The Broadcasting Communication⁶ is not applicable as the direct aid is not awarded to a broadcaster, but for the construction of an infrastructure (multiplex) and the construction is separated from the services to provided there (by local service content providers which are not covered by the present decision as explained above). Thus, the Commission considers that the assessment of the compatibility of the measure with the internal market needs to be based directly on Article 107(3)(c) TFEU except for the local service providers, for which the UK has to ensure compliance with the SGEI Decision.⁷
- (18) According to Article 107(3)(c) TFEU, aid to facilitate the development of certain economic activities may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions and competition in the Union to an extent that is contrary to the common interest.

Common interest

- (19) As explained by the UK authorities the measure will significantly improve media plurality in the UK by making news and other local content available to communities which do not currently have the benefit of such television programming. It will also contribute to local democracy, e.g. through facilitating civic understanding and offering fair and well-informed debate.

⁵ 730/79 *Philip Morris v Commission*, 17.9.1980.

⁶ Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27/10/2009 P. 0001 – 0014.

⁷ Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L7, 11.01.2012, p. 3-10.

- (20) The UK authorities have also explained that the local TV services are services of general economic interest and that they see local TV is regarded as linear forms of service; distributing content that is public service in nature. The aid measure assists the emergence of a new local TV sector that covers a certain number of towns and cities. It will thus meet wider social, cultural and democratic objectives as described above.
- (21) Freedom and pluralism of the media is recognized in article 11 of the Charter of Fundamental Rights of the European Union, and as described the measure will also promote the diversity of cultures in the light of article 167.4 TFEU and distribution of public service programmes through the selected local service content providers.

Necessity and proportionality

- (22) The UK has explained that there has never been a sustainable local TV market in the UK and the market has not taken the risk to invest in capital infrastructure and service provision to provide local TV unlike in many other Member States. Also the structure of the UK's media market, including market barriers preventing low-cost television business models from emerging and a lack of regulatory incentives have been indicated in order to justify the market failure. The difficulties faced by local television stations have been illustrated by the UK authorities by the fact that the largest station, run by a large commercial newspaper group has recently ended due to lack of the right commercial incentives and poor profitability. Despite this, it is claimed that there is a clear desire from audience for local TV in the UK.⁸ The services will be local in nature as opposed to regional television (which cover very wide geographical areas) and national television.
- (23) The creation of a local television infrastructure in the UK carries significant costs and the potential revenue levels for the multiplex licensee are highly uncertain and variable during the lifetime of the licence. By providing a multiplex service that is affordable for the local TV services, the aid is needed to cover the cost of capital.
- (24) The amount of aid is capped at EUR 31 million (GBP 25 million) and no further aid will be available. The competition for the licence will minimise capital and operating costs and thus ensure that the minimum and necessary amount of aid is required as the aid will only be made available once the selected operator has demonstrated that the amount is necessary for the construction of the infrastructure.

⁸ Consultations carried out by Ofcom has shown that nine out of ten adults regularly consume some form of local news and over three-quarters of people rate local news and weather as important types of media. Through extensive consultation with the market the UK authorities have also found a strong ambition to provide local services if certain barriers and risks associated with starting up local TV broadcasting infrastructure were removed/minimised.

- (25) Following the license process, the winning bidder will enter into a funding agreement in order to receive the aid to be distributed. Within this funding agreement will be a condition that requires the aid recipient to return any aid that represents over-compensation.
- (26) Over-compensation will be calculated and clawed back by comparing the multiplex licensee's business plan to the bench-mark price, their actual expenditure, actual costs and actual revenues generated. Over-compensation will be clawed back e.g. by withholding all or part of future aid payments, requiring further rollout of local TV location or requiring repayment of funds. The precise terms of what happens to aid which is clawed back may vary depending on whether the multiplex operation is a commercial or not-for profit entity and is entirely dependent on if and when it starts making a profit.
- (27) BBC will monitor the aid via the grant conditions for three years which will include the infrastructure-build period. In carrying out its monitoring function, BBC may seek input of other bodies, such as Ofcom. At the end of the three year period, the Department for Culture Media and Sport (DCMS) or a body nominated by DCMS will take over the monitoring function from the BBC until the end of the licence period.

Technology

- (28) According to established case practice, confirmed by the European Courts⁹, technological neutrality needs to be respected. This could be done by a technologically neutral tender or by establishing ex ante that only one particular technology can deliver the required quality or service. In the latter case this needs to be thoroughly justified and based on comprehensive ex ante market research, public consultation and convincing comparative cost analysis.
- (29) The UK authorities have undertaken extensive consultations and ex ante market and cost analysis. Two independent ex ante cost analyses have been carried out, both supporting the technology choice of local DTT (in 2010 by Ofcom and in 2012 by FTI Consulting¹⁰). On the basis of these studies, the UK authorities argue that local DTT is the optimum platform as allegedly none of the other platforms (broadband, satellite or cable) nor other options of DTT carriage (national DTT on a commercial multiplex, PSB multiplex or 600MHz multiplex) can provide the same localised technological solution as well as achieving the objective of being free-to-view, reaching at least 75% of the population in the local area and the required duration of 10-12 years.
- (30) In sum, the advantages, disadvantages and costs of the different platforms/options are the following.

⁹ See Court judgments concerning the Commission decision in the Berlin/Brandenburg (Case T-21/06, Germany v Commission) and in the Mediaset case (T-177/07), upheld by the Court of Justice, Case C-403/10 Mediaset v. Commission and see also Case C-544/09 Germany v. Commission.

¹⁰ FTI Consulting is a global financial consultancy firm.

- (31) Local DTT (the chosen platform): Local DTT does not exist today (it requires different transmission infrastructure to the existing national DTT infrastructure). The capital costs are relatively high, but operational costs comparatively low. In Ofcom's cost study from 2010, the total estimated one off capital expenditure for 20 local TV services was EUR [...] million (GBP [...] million), and the on-going operational expenditure was estimated at EUR [...] million/year (GBP [...] million/year). 20 local TV services would thus equal to an average of EUR [...] /year (GBP [...] /year). These costs were confirmed in the study by FTI in 2012 (cost of delivery over 12 years for 21 channels was estimated at EUR [...] (GBP [...] million)).
- (32) National DTT (PSB) multiplex: Carriage on existing DTT multiplex, however, to make the slot local rather than national the multiplex would have to be reengineered, and to make such a slot available, an existing service would have to be removed. According to the FTI study, the cost of delivery over 12 years for 21 channels was estimated at EUR [...] (GBP [...] million)).
- (33) A new national DTT multiplex (600MHZ): Utilisation of a new band of national spectrum without detriment to existing multiplex providers or services, but this would come at very high opportunity cost (the specific cost data are confidential, but this was never considered a realistic proposition anyway by the UK).
- (34) National DTT (Commercial) multiplex: According to the 2010 cost study, the annual operating costs for 20 local TV service was GBP [...] million/year (but not reflecting any reengineering costs necessary to localise the multiplex, nor the opportunity cost of displacing a service) with an indicative figure of GBP [...] million over the lifetime of the local TV service. According to the FTI study, the cost of delivery over 12 years for 21 channels was estimated at EUR [...] million (GBP [...]).
- (35) Satellite: In 2010, Ofcom's technical advice showed that satellite could provide reliable coverage across the UK. Ofcom advised that a slot on a satellite transponder could be secured for local TV but it could place constraints on the extent to which the platform could be utilised for other services. In terms of costs, Ofcom assumed the total operational costs for 20 local TV service would be EUR [...] million/year (GBP [...] million/year), capital requirements would be negligible. Costs are similar in the FTI analysis, with operating costs for 21 local services over 12 years on the Sky platform as being EUR [...] million (GBP [...] million) equalling EUR [...] million/year (GBP [...] million/year), and also finding that there would be no capital costs. The FTI study also includes the same data for satellite transmission by Freesat (the figures provided are only marginally lower with operating costs for 21 local services over 12 years being EUR [...] million (GBP [...] million)).

**[...]: the information in brackets is covered by the obligation of professional secrecy*

- (36) Cable: Cable would have the ability to provide localised television service, but the availability is limited to homes passed by cable operators, predominantly only in urban areas and thus penetration stands at around 30% of households. But costs are relatively small in comparison to satellite or national DTT. In 2010, Ofcom estimated that EUR [...] million (GBP [...] million) would be needed to cover headend¹¹ costs with annual operational costs of around EUR [...] million/year (GBP [...] million/year) for 20 local services via cable. According to the FTI study, the cost of delivery over 12 years for 21 channels was estimated at EUR [...] million (GBP [...] million).
- (37) Broadband: In order to receive such a service, households would require good broadband access/connection and meet subscription fees. As recognized in several reports, in the long-term, local TV looks set to be delivered through IPTV technology, however currently, households viewing dedicated IPTV services over broadband remain very low (estimated at around 1-2%). The costs for "an over the top" broadband solution in 2010 was around GBP [...] for capital and between GBP [...] for on-going operation costs for 20 local TV stations. The FTI study did not provide any cost data for transmission via IPTV due to insufficient information available.
- (38) In short the cost analyses estimate the cost of delivery (over 12 years for 21 channels) by local DTT to be EUR [...] (GBP [...] million), whereas for satellite the costs for the same services and years have been estimated to be EUR [...] million (GBP [...] million) on the Sky platform and EUR [...] million (GBP [...] million) by Freesat. For delivery over cable the costs were estimated at EUR [...] million (GBP [...] million).
- (39) Transmission via broadband would be significantly less costly, however, currently the number of households viewing IPTV services over broadband remain very low (estimated at around 1-2%) and would thus not meet the objective of reaching 75% of the population in the local area. Cable is also limited in reach and only available to homes passed by cable operators, predominantly only in urban areas and thus penetration stands at around 30% of households.
- (40) Also based on the studies, other forms of DTT would either be too costly (new national DTT multiplex 600MHZ), and/or require reengineering to make a slot local rather than national and removal of an existing service (national DTT PSB or Commercial multiplex).
- (41) As the UK Government has reserved up to EUR 31 million (GBP 25 million) for the construction of the multiplex, the remaining (operational) costs will need to be met by the local services and any other services carried on the multiplex. Besides the cost aspect, local DTT has the advantage of targeting specific local areas for coverage and it is expected that at least 80% of households would be served.

¹¹ A cable headend is a facility for receiving television signals (e.g. from satellite or terrestrial sources, and/or via fixed distribution circuits) for processing and onward distribution of television services over a cable television system.

(42) The Table below summarises the findings¹²:

	Platform technically able to target local areas	National coverage	Take-up*	Cost to consumer	Cost of delivery over 12 years for 21 channels
Local Muxco (or local DTT)	Purpose built to allow for local targeting	53%	43%	-	GBP [...]
DTT (PSB)	Problems in some areas	98.5%	43%	-	GBP [...]
DTT (Commercial)	Problems in some area	90%	43%	-	GBP [...]
Cable	Possible if suitably modified but unavailable in many areas	44%	14%	GBP [...]	GBP [...]
Satellite Freesat	EPG constraints apply in some areas	98.2%	40%	GBP [...]	GBP [...]
Satellite Sky	EPG constraints apply in some areas	98.2%	40%	GBP [...]	GBP [...]
IPTV	Possible if suitably modified	90%	1%	GBP [...]	Insufficient information available

* Take-up refers to the proportion of TV households. The 53% coverage presented above is for 44 locations. At each specific location identified, it is expected that at least 80% of households would be served.

(43) Because of the extensive ex ante public consultations and market analysis, the UK authorities argue that the steps they have taken in this case have had an effect equal to holding an open tender. The public consultation provided all necessary information and all industry operators had the opportunity to propose alternative solutions if they had wished to do so.

(44) In addition, in the public consultations, the satellite operators Sky and Freesat have not indicated any concerns with the process or with the final proposals and they (Sky and Freesat) do not believe they could provide a linear solution for local TV that meets the objectives especially with regards to cost and viability of the local TV services. Freesat has also told the UK that "[satellite] may not be the most cost effective option for local TV providers". In addition, the satellite provider Astra, has pointed out that given the highly localised nature of the services and the very unique facts related to the UK's local TV plan, they are comfortable that the principle of technological neutrality is respected.

(45) Virgin Media (the UK's cable operator) has also told the UK that they do not believe local TV should be provided in linear form on their platform (huge financial implications in terms of direct and opportunity costs, and offered on-demand solutions).

¹² Source: FTI Analysis.

- (46) Considering the above, by carrying out extensive ex ante consultations with all relevant stakeholders and two independent ex ante cost studies, one carried out by the national regulator Ofcom, the UK has established that local DTT in this case would represent the most efficient and proportionate use of the available aid. The measure therefore complies with the principle of technological neutrality.

Effects on competition and trade between Member States

- (47) Local TV does not currently exist as a meaningful sector within the UK's media market in the UK. The closest competitors are local and regional newspapers and local radio. There may be some impact upon local advertising revenues.¹³ The UK is also keen that local newspapers and radio take an active part in the local television proposition and take the opportunity to diversify their operations into a new media market and thus there may be some competitive impact upon the local news market.
- (48) The content provided by local TV services will be relevant to the local areas within the UK and it will not be broadcast to other Member States unless it reaches the satellite platform. Moreover, the aid is not directly provided to the local service providers but to the multiples operator to build and operate the infrastructure, chosen through a competitive process. Although the potential distortion of competition and effect on trade between Member States may be minimal, it cannot be completely excluded. However, based on the above assessment the measure does not adversely affect trading conditions and competition in the Union to an extent that is contrary to the common interest.
- (49) The Commission therefore considers that, on balance, the overall effect of the measure is positive and comply with the objectives of Article 107(3)(c) TFEU. Thus, the construction of a new local digital multiplex for broadcasting of local television in the UK can be declared compatible with Article 107(3)(c) TFEU.

¹³ Based on independent analysis (Enders analysis, September 2011 –" Local TV – Watch this space"), local TV does not create a new advertising market, and it is expected that local TV across 20 locations could take a 3.1% share of the local advertising market.

5. DECISION

(50) In view of the above assessment, the Commission concludes that the aid is compatible with the internal market under Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.

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/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President

