

**The European Commission  
GD COMP  
State Aid Register  
1049 Brussels, HT.963**

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**Email: [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu)**

## **Hearing response – Revision of the European Commission’s state aid rules for radio and television activities**

### **General remarks**

DI/ITEK welcomes the decision to implement a critical review of the conditions for public service and state aid in the member states.

It is the clear opinion of DI/ITEK that the general public service concept should be rethought. The concept of public service dates back to a period when listeners and viewers were restricted to state radio and television corporations and one dominating form of distribution, namely the broadcast of radio and TV signals.

In recent years we have seen a dramatic revolution in the media picture carried forward by a strongly increasing supply of privately produced programmes and by technological developments. This development has meant that the consumption of sound and pictures is now covered by a broad spectrum of platforms: satellite, cable-TV and Internet, including pod-casts, mobile and other wireless forms of dissemination than broadcast.

This development raises several fundamental issues regarding the public service function of the future:

- Is there at all a need for public service in a media environment that provides the consumers with access to an abundant supply of content on many platforms?
- If a public service function is retained for cultural or national reasons, should this function then be maintained by making special public service content available for the market or should it be attached to one or several specific institutions?
- How can it be avoided that public service providers create unfair competition in relation to the many commercial providers/distributors of content services, including Internet portals?
- To what extent should a public service company be able to undertake commercial activities in parallel with a government-financed public service company?

– or more generally:

- To what extent is it acceptable to mix public and private financing?

### **Public service should be maintained – but rethought**

In the opinion of DI/ITEK member states should be allowed to maintain a public service function. Each country has cultural values and ways of viewing the outside world, and this motivates the creation and communication of content that supports particular national and cultural attitudes.

Particularly for a small language area such as Denmark, a culture-bearing locomotive is needed to ensure the development and creation of music, drama and other Danish content. For this reason it is well-founded to have a financially and politically independent organisation to ensure a basic supply of Danish culture, news and documentary content as a supplement to commercial content.

### **DR as the carrier of public service?**

In the light of the increasing number of distribution channels for homes and terminals it is, however, questionable whether the public service function should necessarily be attached to one corporation. One conceivable model could be to leave the production of public service content with a neutral foundation that finances and outsources the content production and then makes the content available for all on all platforms.

DR and other public service companies have argued that they – by having a suitably large production environment with their own employees – are better equipped to safeguard quality in public service productions. Against this and on behalf of private enterprise, we have argued that radio and television production can easily be outsourced – like so many other tasks. By creating a sustainable commercial production environment it should be equally possible to achieve critical mass and quality. It could even be argued that in reality, by NOT outsourcing DR blocks the formation of a sustainable Danish private content industry.

Alternatively, one could imagine a model according to which the transmission of public service content was a precondition for supplying radio and television programmes in Denmark, cf. the recent auction of radio frequencies. Seen from a government point of view this would be a “cheap” way of creating public service content. On the other hand, it would be cost-demanding for commercial providers. In addition, there is a risk of uneven quality and a recurring discussion with the authorities on whether the public service requirement has been met.

In conclusion, DI/ITEK acknowledges the fact that the state takes care of and finances the public service task through the self-governing and politically independent institution, DR.

At the same time, DI/ITEK wishes to raise a debate about how public service should be defined in the future, and which tasks a public service station should assume in addition to the politically determined tasks.

### **Towards narrower public service content?**

With regard to the public service content, DI/ITEK has so far accepted DR’s viewpoint that, in order to be attractive as a channel, the public service function should be

so broadly defined that the channel could also show sports and entertainment programmes.

However, this argument is no longer valid. We have witnessed a development in which DR's entertainment and lifestyle programmes directly compete with corresponding private concepts. Instead of supplementing the commercial supply, DR has chosen to enter into direct competition with private providers. Similarly, DR's actions on the market for sports rights have contributed to driving up the prices for all providers. Instead, DR should find its role as the channel that reports the sports event afterwards instead of covering it simultaneously.

Against this backdrop, ITEK finds it relevant that the authorities take the issue one step further and narrow the public service function down to only supplying radio/TV programming which is not deemed commercially feasible. This could be news and current affairs, Danish drama, culture and history programmes and subjects/themes in which a Danish angle on global developments is particularly relevant.

For nearly ten years, DR has argued that channel identity would eventually be dissolved. This has not yet happened, but its advent is probably closer than ever before – cf. the emergence of on-demand web-TV. The consumers of the future will seek the content they need individually, at the time of their choice.

Flow-TV will probably continue to dominate for several years yet, but for the zappers it is important that DR refines its profile as a serious content channel since viewers can always zap to the commercial channels if they want entertainment and lengthy sports reporting.

For all these reasons, DI/ITEK encourages a general European discussion on how to define public service content in a narrower sense than has been seen in earlier announcements from the Commission. The goal must be that public service can be defined, measured and controlled.

#### **No to an increase of DR's activities**

DR wants to be able to develop into a media house, to define the public service function broadly and to extend it to more platforms. DR also wants to accept commercial projects, including the production of proprietary commercial content, and to resell others' content and services.

In the opinion of DI/ITEK, DR should concentrate on the production of narrow public service content for radio and television. In step with the development of new forms of distribution, including Internet and mobile reception, DR should make sure that the content produced for flow purposes is available on the new platforms so that consumers have free access irrespective of the platform they are on.

In contrast to this, DR should neither move towards the development of new content for these platforms nor assume the role as provider of the content and services of other producers. If DR was given access to offering such content on a commercial basis, DR would distort competition in relation to the private content providers and web portals which cannot benefit from the connection to the government financed public service content (cross-advertising).

Considerations for competing suppliers favour a general ban on public service stations such as DR against operating commercially. (This should not include accessory activities such as the sale of CDs and DVDs with previously produced programmes such as “Bamse og Kylling” - a children’s programme - or “Forbrydelsen” –a crime series).

### **No to mixed models**

In Denmark, the TV2 construction with its status as a public service operation with mixed public-private financing has caused considerable problems for the Danish television market. There have, for instance, been several complaints to the European Commission regarding illegal state aid.

This speaks in favour of operating with “pure” models only – e.g. a separation of public and private operations, cf. the most recent amendments to the act on TV2 Denmark according to which the nationwide activities are no longer financed through licence fees and the TV2 Regions have been given a more independent status.

Accordingly, it should be a main principle in future European regulation that the state finances private media players neither wholly nor partially. (Private media companies, however, should have the same opportunity as public service stations to place a bid in the outsourcing of specific productions.)

For the same reason, it is questionable whether public service obligations should be imposed on private companies, cf. TV2’s current status. The purpose of a partial sale of TV2 is to give TV2 access to operations on the same commercial terms as other private radio/TV providers. DI/ITEK recommends that such obligations are removed.

### **Other general views**

#### **Equal competition between different platforms**

As mentioned above, broadcast has been the dominant transmission form of public service programming. If the same programmes are transmitted through a cable television network, a retransmission fee has to be paid, and consequently this distribution form becomes more expensive than terrestrial broadcast. This creates uneven competition that will be accentuated by the introduction of digital terrestrial TV. The EU Commission should take the initiative to amend the Bern Convention so that the rights of public service stations are paid in another, and not anti-competitive, way.

### **Answers to the questionnaire**

#### **1.General**

1.1 The rules need updating so that the public service task is narrowed down, and the organisation upon which the public service tasks are imposed is cut off from operating commercially in competition with private suppliers.

1.2 The market is characterised by many new players both on content and distribution where electric, cable TV and mobile telephone companies operate. The public service operator should make sure that the content is made accessible on all platforms (*must provide*). Any obligations regarding the transmission of

the public service provider's programming (*must carry*) should only concern the main programme of the public service provider.

**1.3** Globalisation means that national content is under threat from films and series from big countries such as the United States, France and India. It is therefore relevant to maintain one public service provider in smaller nations. The function, however, should be limited so that the public service company concentrates on providing the (national, cultural) content that is not sufficiently commercially sustainable. The public service company should supplement the commercial supply, but not compete with it.

## **2.2 Definition of new public service tasks**

The current definitions of public service are too broad and imprecise. There is a need to clarify that the purpose of public service is to supplement the commercial supply with news, documentary, music and drama content in order to safeguard national cultures and, in general, ensure an appropriate selection of narrow, deep programmes.

Public service must be definable, measurable and controllable.

Public service should be limited to the production of flow radio and TV programmes, which must be accessible from all relevant platforms.

The public service company may not assume commercial projects in excess of this.

## **2.3 Mandate and inspection**

DI/ITEK proposes that the procedure for the determination of DR's public service obligations is made open and transparent so that private businesses can influence the definition of these obligations and oversee that the public service company does not enjoy unnecessary, preferential treatment.

## **2.4 Bipartite financing of public service companies**

DI/ITEK recommends pure models and, subsequently, advises against bipartite financing that will be anti-competitive.

Payment services should not be part of public service. On the contrary, there should be a ban on embarking on commercial services.

Yours sincerely,



Tom Togsverd  
Director, ITEK