


FACT

Finnish Association of Commercial Television

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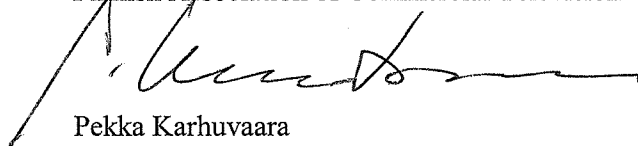
Dear Sir(es),

Finnish Association of Commercial Television¹ (hereinafter: FACT) is pleased to give its statements on the numerous questions which concern state aid directed to financing public service broadcasting, the competitor of commercial broadcasters.

Please, find our answers in the appendix.

We sincerely hope that our answers would help the Commission in the renewal of the Broadcasting Communication in order to create a more streamlined and fair competition in the European broadcasting markets.

Finnish Association of Commercial Television



Pekka Karhuvaara
Chairman

¹ Finnish Association of Commercial Television (FACT) is an union of commercial broadcasters in Finland. Members of the union are: MTV Oy, Subtv Oy, SWelcom Oy, SW Television Oy and Suomen Urheilutelevisio Oy. These companies broadcast television programmes on five free-to-air and 9 pay-tv channels in Finland.

Appendix:

Reply on the EU Questionnaire on renewal of Broadcasting Communication on state aid to public service broadcasting

Central issues:

- 1. There is a clear need to up-date the Broadcasting Communication.***
- 2. Definition, scope, extension and financing of public service go hand-to-hand.***
- 3. Definition should encourage public service broadcaster to deepen programme activities within the scope of public service and discourage expansion outside of the scope, i.e. onto the fields taken care without state aid by commercial broadcasters.***
- 4. Financially, Finland has recently reached basis for a clear model, where public service broadcaster is taking care of public service and financed from public sources (mainly viewers' tv fee), and commercial broadcasters taking care of commercial services and finding their financing from commercial sources (mainly television and radio advertising, sponsorship and product placement). These two financial models - public and commercial - should not be mixed.***
- 5. Definition of public service remit should, however, be rewritten also in Finland. The current wide definition as of "full service" should be replaced by more precise definition of public service, which leads to more qualified programming within the scope of public service and, consequently, public service and commercial broadcasters offer together better and more comprehensible service to television viewers.***

Nb. Answers below are written in *Times Roman, italics*. Finnish Association of Commercial Television is marked as FACT.)

QUESTIONNAIRE

NOTE: An overview of the current rules, Commission decision-making practice and preliminary views of its services as regards the scope of the review are provided in the explanatory memorandum (attached - in English only). It contains useful background information in relation to the questions in this "questionnaire". Each chapter of the explanatory memorandum introduces the corresponding part of the questionnaire following the same numbering.

1. GENERAL

1.1. A number of significant legal developments have taken place in the public broadcasting area since 2001, namely the adoption of the Audiovisual Media Services Directive, the adoption of the Decision and Framework on compensation payments as well as Commission decision-making practice. Do you think that the Broadcasting Communication should be up-dated in light of these developments?

Alternatively, do you consider that these developments do not justify the adoption of a new text?

FACT:

In addition to the developments mentioned above there have been significant changes in broadcasting landscape, e.g. as follows:

- digitalisation of television has extended the number of terrestrial tv channels in Finland from four to 29, which has great influence in the competition on tv markets,*
- analogue tv channels switch off in terrestrial networks as of Sept 1st 2007 at 0400 and in cable networks as of March 1st 2008 at 0800,*
- multiplication of internet content and expansion of broadband connections, which have created a new platform for television broadcasting,*
- expansion of public service remit (twice after 2001).*

Therefore, we consider that the Broadcasting Communication should be up-dated in light of these developments. We strongly support any updates that

- further clarify the scope of the public service remit; as well as*
- increase transparency in terms of financing of the public service broadcasting; and*
- increase transparency as to effects of the public service broadcasting to competition in the broadcasting sector.*

1.2. How would you describe the current competitive situation of the various players in the audiovisual media sector? Where available, please provide the relevant data on for instance leading players, market shares, market share evolution in the broadcasting/advertising/other relevant markets.

FACT:

For market shares and other data on television markets, we would refer to the data published by the European Audiovisual Observatory and the Television 2007 Yearbook from IP Sales.

The competition between public and commercial broadcasters takes place in all other respects (like viewing shares, program acquisitions, sports rights acquisitions, personnel), but not in broadcasting of television and radio advertising. Broadcasting of advertising is not allowed on Yleisradio's television and radio channels by the Act on Yleisradio Oy (§ 12).

In the old days analogue commercial television channels (MTV3 and Nelonen) were compelled to pay a concession fee for financing Yleisradio Oy. The fee was paid to the State Television and Radio Fund which passed it to Yleisradio Oy. The concession fee paid by commercial broadcasters was, however, removed gradually after 2002 due to the fact that it was not anymore sustainable in the new digital competition environment. The concession fee ended August 31st 2007 when analogue terrestrial broadcasts were switched off in Finland.

The concession fee was removed in order to improve commercial television companies' possibilities to participate in the digitalization of Finnish television. As compensation for the removal of concession fee (valued at highest € 48 M), a new television fee system was

introduced in Finland in 2002. The new system (an increase of the television viewing fee by inflation percent plus one percent unit) brought a generous compensation to Yleisradio Oy. The television fee was in 2002 € 165,15 and is € 215,45 for the year 2008. This increase means that annual income of Yleisradio Oy in 2008 is about € 100 M higher than 2002.

The concession fee, during its existence, was a reason for many conflicts between commercial broadcasters and Yleisradio Oy. After removal of the fee relations between companies have improved significantly, although there are some other privileges remaining for the benefit of Yleisradio Oy. This new situation has created more equal competition and possibilities for improved program services to the public.

1.3. In your view, what are the likely developments and where do you see the major challenges for the sector in the future? Do you consider that the current rules will remain valid in the light of the developments or do you believe that adaptations will be necessary?

FACT:

The main challenges in the broadcasting sector relate to difficulties in profitability:

- *Advertising has increased only slowly during the first years of 21st century.*
- *The number of free-to-air television channels has increased from four to 12, due to digitalization of television broadcasting.*
- *In addition to free-to-air television channels there are 15 pay-tv channels which also take their share from the television viewing time.*
- *The average amount of viewers per program and therefore the advertising income per program have decreased.*
- *At the same time private broadcasters are facing increased competition and expenses in acquiring good quality programs, as the public service broadcasters are bidding for the same program offering as the private broadcasters. For example, the Finnish public service broadcaster Yleisradio Oy signed a three-year deal with HBO, a US production company well know for its good quality entertaining television shows.*
- *The public service broadcasters should, rather than competing with the private broadcasters, concentrate on their public service mission.*
- *The mission of the public service broadcasters is to promote democratic, social and cultural needs of society. We do not see how broadcasting American movies and series would serve such purposes. Public service broadcasters should rather focus on producing domestic programs.*
- *Public service obligations imposed to private broadcasters, such as subtitling and services to the disabled, should be publicly financed.*

In light of the aforesaid, we consider that adaptations are necessary.

2. COMPATIBILITY ASSESSMENT UNDER ARTICLE 86 (2) EC TREATY, IN COMBINATION WITH THE BROADCASTING COMMUNICATION

2.1. Coherence with the Commission Decision and Framework on public service compensation

2.1.1. Do you consider that (at least some of) the requirements laid down in the Decision and Framework on public service compensation should be included in the revised Broadcasting Communication or not? Please explain why.

FACT:

Yes. We consider that the assignment of public service broadcasters should be defined more precisely bearing in mind their public service objective. Currently the Finnish act regulating public service broadcasting (Act on Yleisradio Oy) determines the scope of operations of the Finnish public service broadcaster Yleisradio Oy in a very wide manner (full service television and radio programs and thereto related additional and extra services, to be offered in all telecom networks), leaving much room for interpretation.

In addition to redefining the contents of the public service remit in legislation, we support ex ante public consultation and increased transparency in terms of financing of the public service broadcasting and its effects to competition.

2.1.2. In the affirmative, please specify which requirements should be included and explain what adaptations, if any, would be appropriate for the broadcasting sector (see also the questions below, in particular those on overcompensation; point 2.6).

2.2. Definition of the public service remit

2.2.1 You are invited to provide information on the definition of the public service remit in your country, in particular as regards new media activities.

FACT:

In legislation, full service television and radio programs and thereto related additional and extra services, to be offered in all telecom networks, defined as follows:

*"Chapter 3
Section 7 (635/2005)*

The company shall be responsible for the provision of comprehensive television and radio programming with the related additional and extra services for all citizens under equal conditions. These and other content services related to public service may be provided in all telecommunications networks.

The public service programming shall in particular:

- 1) support democracy and everyone's opportunity to participate by providing a wide variety of information, opinions and debates as well as opportunities to interact;*
- 2) produce, create and develop Finnish culture, art and inspiring entertainment;*
- 3) take educational and equality aspects into consideration in the programmes, provide an opportunity to learn and study, give focus on programming for children, and offer devotional programmes;*
- 4) treat in its broadcasting Finnish-speaking and Swedish-speaking citizens on equal grounds and produce services in the Sami, Romany, and sign languages as well as, where applicable, in the languages of other language groups in the country;*
- 5); support tolerance and multiculturalism and provide programming for minority and special groups;*
- 6) promote cultural interaction and provide programming directed abroad; and*
- 7) broadcast official announcements, for which further provisions shall be issued by decree, and make provision for television and radio broadcasting in exceptional circumstances*

(Act on Yleisradio Oy, Finnish Broadcasting Company, 1380/1993; amendments up to 635/2005 included.)

The topic in the definition of the public service remit (above) lays in the first chapter: "The company shall be responsible for the provision of comprehensive television and radio programming..." In the original Finnish language version of the Act the word "comprehensible..." is said "full service", which is regarded as too wide definition of public service.

In practise: YLE produces programs and content services for radio, TV, mobile and Internet in order to reach Finnish people both domestically and abroad:

1. *TV*
 - *YLE's share of TV viewing was 44 % in 2007*
 - *YLE has 4 TV channels: YLE TV1, YLE TV2, YLE Teema, and YLE FST5.*
 - *Other TV services include YLE Text TV and TV Finland (digital satellite channel for Finns abroad in Europe)*
2. *Radio*
 - *YLE's share of radio listening was 52 % in 2007*
 - *YLE's radio channels include YLE Radio 1, YleX, YLE Radio Finland (including regional channels), Radio Peili, Swedish channels YLE Radio Vega, and YLE Radio Extrem.*
 - *The following are also transmitted through digital TV network: YLE Radio Extrem, YLE Radio Peili, YLE Classic, FSR+ (consisting of YLE Radio Vega's and YLE Radio Extrem's talk shows and Nordic programming), and YLE Mondo (foreign language programming).*
3. *Local services*
 - *20 Regional radios for local communication*
 - *Radio Saame in Lapland*
 - *Local TV news in 8 regions*
4. *New services*
 - *YLE's new services are linked to the public service programming*
 - *New and cross-media services are YLE's answer to increasing demand for time and place shifting as well as interactivity and community features*
 - *Mobile services cover news, current affairs, educational content, entertainment, and services for special groups; 3G services will be developed further*
 - *Online services include blogs, RSS feeds, radio podcasting, digital programming archive ("The Living Archive"), online TV and Radio with catch-up service ("Areena"), and EPGs (for TV, radio & Internet)*
 - *Speech synthesizing service is offered for visually impaired people*

2.2.2. Do you consider that the distinction between public service and other activities should be further clarified? In the affirmative, which measures could provide such clarification (e.g. establishment by the Member State of an illustrative list of commercial activities not covered by the public service remit)?

FACT:

Yes, a list of examples of activities falling in and outside of the scope of public service broadcasting would definitely clarify the situation.

Currently, e.g. advertising and electronic commerce have been excluded from the scope of public service. We consider that any pay services should be excluded from the scope as well.

More generally, the Amsterdam Protocol allows Member States quite freely to define the public service remit and financing according to conditions defined in the Protocol. In practice, the problem is in the intentionally wide interpretation of the remit, like "all we do is public service", which cannot be acceptable.

To be exact, the Protocol allows Member States to define "public service broadcasting" but not "public service". Therefore, we must ask, does internet and other network services belong to public service broadcasting and can public service remit be applied to them?

In practice again, it is strange that American HBO-programs were "changed" from commercial programs to public service programs after YleisradioOy had acquired them for their own television channels. Therefore, we must ask, is this the right way to use public financing especially when we know that the very same programs were to be broadcasted to the Finnish audience by commercial broadcasters?

Therefore, the public service remit should be defined more clearly than that the program will be broadcasted on the channels owned by the state.

2.2.3. In the current Broadcasting Communication, activities other than TV programmes in the traditional sense can be part of the public service remit provided that they serve the same democratic, social and cultural needs of society. Does this provision sufficiently clarify the permissible scope of such public service activities? Why? In the negative, do you consider that further clarifications should be provided in a revised Broadcasting Communication?

FACT:

We consider that the provision very well clarifies the permissible scope of such public service activities. We would, however, propose a further clarification stating that public service activities should always be free of charge, i.e. publicly funded.

2.2.4. Do you consider that the general approach in the recent decision-making practice of the Commission (i.e. determination of the public service remit based on an *ex ante* evaluation for new media activities) could be incorporated into a revised Broadcasting Communication?

FACT:

Yes, we consider that important, as the national legislation in Finland leaves too much room for interpretation.

2.2.5. Should a revised Broadcasting Communication further clarify the scope of an *ex ante* evaluation of the public service remit by Member States? Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty 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 L 312 of 29 November 2005) and Community framework for State aid in the form of public

service compensation, (OJ C 297 of 29 November 2005). For an overview of the various elements, please consult the explanatory memorandum on point 2.1.

FACT:

Yes, we consider that the Broadcasting Communication should further clarify the scope of an ex ante evaluation. Any amendments and processes bringing further clarity and transparency to the scope of the public service remit are strongly supported by us.

2.2.6. Which services or categories of services should in your view be subject to an ex ante evaluation?

FACT:

Any services that do not fall within the remit of the public service broadcasters (i.e. service of democratic, social and cultural needs of society) should be subject to an ex ante evaluation. In our view services subject to payment should always be subject to such an evaluation.

2.2.7. Should a revised Broadcasting Communication contain the basic principles as regards the procedural and substantive aspects of such an evaluation (such as for instance the involvement of third parties or the possible evaluation criteria, including for instance the contribution to clearly identified objectives, citizen needs, available offers on the market, additional costs, impact on competition)?

FACT:

Yes.

2.2.8. In view of the fact that the determination of the public service character of such activities may be determined in various ways, to what extent should a revised Broadcasting Communication set out possible different options?

FACT:

A list of examples of activities falling in and outside of the scope of public service broadcasting would definitely clarify the situation.

2.3. Entrustment and Supervision

2.3.1. You are invited to explain in which way entrustment is granted in your country. Is the procedure leading to the entrustment subject to public consultation? To what extent is the broadcaster's remit laid down in legally binding acts of entrustment? To what extent is the implementation and determination of the exact scope of activities left to public service broadcasters? Are any such "implementing measures" publicly available?

FACT:

Public service remit is set in the Act on Yleisradio Oy according to normal procedure.

See: <http://www.finlex.fi/en/laki/kaannokset/1993/en19931380.pdf>.

The wording in this Act defining the public service remit is very loose (= full service television and radio programs and thereto related additional and extra services, to be offered in all telecom networks). In practice, the Finnish public service broadcaster Yleisradio Oy is entitled to freely determine the scope of its own activities within these limits.

2.3.2. Please explain the mechanisms to supervise public service broadcasters in your country. What is your experience of the existing supervision mechanisms? Do you consider that there are sufficient possibilities for third parties to take action against alleged infringements/non-fulfillment of public service (and other) obligations in your country?

FACT:

The Finnish public service broadcaster Yleisradio Oy is a state owned company, which operates under the Parliament. It is supervised by its administrative council, consisting of 21 members and nominated by the Parliament. In practice, members to be nominated to the administrative council represent all political parties of the Parliament.

The administrative council elects members to the board of directors.

Duties to the administrative council and board of directors are defined in the Act on Yleisradio Oy (§§ 6 and 6 a).

The administrative council provides every second year a report on the public service activities to the Parliament. The Finnish Communication Regulatory Authority (hereinafter: FICORA) is authorized to supervise the compliance by Yleisradio Oy of its obligations to handle part of its operations separately in its bookkeeping.

Further, the board of directors of Yleisradio Oy provides an annual report to the FICORA on the public services offered during the year. The Authority then gives a statement on the report to the Finnish Government.

Formally, the administration, regulation and control on Yleisradio Oy seem to be OK. From the point of practice we can, however, present following observations:

- Parliament is far from strategic and operative actions of Yleisradio Oy, and that's why it does not have any real possibilities to control operations of Yleisradio Oy,*
- administrative council decides on most important issues in Yleisradio, but also its possibilities to real control are vague,*
- FICORA regards, that the control of Yleisradio is set as the task of the Parliament by the Act on Yleisradio Oy. Therefore, FICORA does not have any possibilities to control it nor to interfere on any possible faults. The annual report of the board of directors to the FICORA is in practice a formality.*
- the possibilities for the third parties to take action against alleged infringements/non-fulfilment of public service obligations in Finland are to our understanding limited to making a complaint to FICORA, as regards Yleisradio Oy's obligation to separate its bookkeeping, and to requesting for action of the Finnish Competition Authority as regards any anticompetitive measures taken by Yleisradio Oy.*

- the Act on Yleisradio Oy (14.6.2002/492, 3§) stipulates as follows:

"In developing other television and radio broadcasting activities including the related additional and extra services, the Ministry of Transport and Communications shall take into account the operating requirements of public service referred to in section 7."

In other words, interests of Yleisradio Oy are always taken into account when any new legislation is developed and prepared (in the Ministry and State Council) and decided (in the Parliament).

From the point of Yleisradio Oy this is, of course, an excellent position:

- the definition of the remit allows wide interpretation and extensive operation of public service (=full service),
- the state is committed to organize financing in all circumstances,
- infringements or distortions of competition cannot be interfered,
- in the renewal of the regulation interests of Yleisradio Oy are always taken into account by the law.

In the future development, the Act on Yleisradio Oy shall be changed so that in developing communication activities and related regulation the interests of various parties involved in the media field will equally be taken into account.

2.3.3. Do you consider that the Broadcasting Communication should contain further clarifications about the circumstances in which an additional act of entrustment (i.e. in addition to the general provisions laid down by law) is necessary or are the current rules sufficient?

FACT:
Yes.

2.3.4. Do you consider that the Broadcasting Communication should contain further clarifications in order to ensure increased effectiveness of supervision of public service broadcasters? What are in your view the advantages or possible drawbacks of control authorities independent from the entrusted undertaking (as referred to in the Broadcasting Communication) as opposed to other control mechanisms? Do you consider that effective supervision needs to include sanctioning mechanisms, and if so, which ones?

FACT:
For realising more efficient supervision of Yleisradio Oy and the fulfilment of the public service remit, the supervision of Yleisradio Oy should be moved from the Parliament under the supervision of FICORA which supervises also all other broadcasting entities. FICORA should be given effective means to pursue this activity.

Simultaneously, however, more emphasis on the precise definition of the scope of the public service remit in legislation, as sanctioning and ex post supervision of the public service broadcasters may be difficult.

2.3.5. Should there be specific complaints procedures at national level where private operators could raise issues related to the scope of the public service broadcasters' activities? If so, what form should they take?

FACT:

Yes, that would be arranged in the previous point. This would belong to FICORA.

2.4. Dual Funding of public service broadcasters

2.4.1. What is – in your view - the expected impact of (partly) State-funded pay services on competition?

FACT:

State-funded pay services would distort competition on the pay-tv markets. Such services should be excluded from the scope of the public service broadcasting.

2.4.2. Should pay-services always be considered as purely commercial activities or are there instances in which they could be regarded as part of the public service remit? For instance, do you consider that pay-services as part of the public service remit should in this respect be limited to services which are not offered on the market? Or do you think that pay-services could be regarded as part of the public service remit under certain conditions? In the affirmative, please specify which. For instance, should the conditions include elements such as specific public service objectives, specific citizen needs, existence of other similar offers on the market, inadequacy of existing public service obligations or inadequacy of existing funding to meet particular citizen needs?

FACT:

Pay-services should always be considered as purely commercial.

2.5. Transparency requirements

2.5.1. To what extent are commercial activities carried out by the public service broadcaster itself in your country? Is there a structural or functional separation between public service and commercial activities?

FACT:

Generally speaking, commercial activities of Yleisradio Oy are relatively restricted.

Yleisradio Oy provides facility services (such as studio, equipment, wardrobe) to B to B customers. There are, however, pressures to increase commercial services especially via internet.

There are certain obligations to keep these commercial activities separate in the bookkeeping, which we support. So far, the current status quo works well.

2.5.2. Do you consider that there is a need for a structural or functional separation of commercial activities, and if so why? What would the positive or negative effects of either a structural or a functional separation?

FACT:

The best case is that there are no commercial activities in the public service company, and public services/public financing is not confused with commercial activities/commercial financing. The second best case is that there is a separation between public and commercial services. Therefore, a separate legal entity for commercial activities would decrease negative effects (like cross subvention, using state aid to decreased pricing of commercial services) of such operations to fair competition.

2.5.3. Do you consider that the rules for cost allocation as set out in the current Broadcasting Communication could be improved in light of experience in your country? If so, please give possible examples of good practice. Or do you consider that the current rules are sufficient?

2.5.4. Against the background of your answers to the previous questions (2.5.1, 2.5.2, 2.5.3), do you consider that a revised Broadcasting Communication should contain further clarifications of transparency requirements?

FACT:

Yes.

2.6. Proportionality test – Exclusion of overcompensation

2.6.1. Do you consider that the Broadcasting Communication should include a requirement for Member States to clearly lay down the parameters for determining the compensation amount?

FACT:

Yes.

2.6.2. Do you consider that the requirements currently laid down in the Broadcasting Communication allow sufficient financial stability for public service broadcasters? Or do you think that the current rules excessively limit pluri-annual financial planning of public service broadcasting?

FACT:

The Economy and balance sheet of Yleisradio Oy has been very strong in Finland. Digitalization caused a temporary change (less income, more expenses) to its stable

financing, but this will be balanced during 2008. Yleisradio Oy's economy has improved significantly year after year since 2002.

Difficulties in the economy of Yleisradio Oy have not, however, been caused by the Broadcasting Communication, but despite of it. We consider that current rules will guarantee to public service broadcasters very safe and balanced economy for a long time.

The Ministry of Transport and Communications has just (February 12th 2008) appointed a new parliamentary Committee, which starts to discuss and make proposals about the future financing system of Yleisradio Oy after 2010. Taking into account the stipulation in the Act on Yleisradio Oy (14.6.2002/492, 3§) referred above, we are convinced that the solution will be generous to Yleisradio Oy. Our main concern here is - that whatever the solution will be -, public service shall be financed entirely from public sources and commercial services from commercial sources. This clear distinction must not be mixed.

2.6.3. Under what circumstances could it be justified for public service broadcasters to keep a surplus at the end of a financial year? Do you consider that the related provisions in the service of general economic interest Decision and Framework (cf. the overview in the explanatory memorandum and in particular the 10% cap on annual surplus) could be incorporated into the new Broadcasting Communication?

FACT:

As a general rule, public service broadcaster should not make any profit, but the goal should be a zero (0) result. Any surplus can be grounded only in such a case when public service broadcaster must reserve funds for long term investments (like transition to HDTV broadcasting). Surplus never should be used for daily expenses.

2.6.4. What should be the safeguards/limits in order to avoid possible undue distortions of competition (e.g. should the 10% margin remain at the public service broadcaster's free disposal within the limits of its public service tasks or should it be earmarked for particular purposes so that reserves may only be used for predetermined purposes/projects? Should there be a re-evaluation by the Member State of the public service broadcaster's financial needs in case of consistent surpluses)?

FACT:

Nothing at all (in average). If the goal of budget is to make surplus, the goal always must be collecting funds for some specified investment (see above). Public services should not be built on achievement of permanent surplus, which from the viewers' point of view can be regarded as an extra tax.

2.6.5. Do you consider that the current rules laid down in the Broadcasting Communication could possibly act as a disincentive for public service broadcasters to achieve efficiency gains? If so, how could this situation be remedied? What are the mechanisms in place in your country which could be referred to as a good example?

FACT:

Current Broadcasting Communication does not make any obstacles to operate in a more effective way, nor does it encourage public services companies to operate more cost-effective. The renewed Broadcasting Communication should, therefore, strengthen interests of public companies to develop more cost-effective working models and create proper measures for follow up. This would be beneficial to the whole society.

2.6.6. In what circumstances and under which conditions would you consider that public service broadcasters could be allowed to keep a profit margin?

FACT:

Only in pre-planned occasions, where profit is collected for some future investments, but never on long term and without accepted investment plan.

2.7. Proportionality test – exclusion of market distortions not necessary for the fulfilment of the public service mission

2.7.1. What are the available mechanisms in your country under which private operators could challenge alleged anti-competitive behaviour of public service broadcasters? Please indicate whether you consider that these mechanisms ensure a sufficient and effective control. Are lower revenues due to demonstrated anti-competitive behaviour (e.g. price undercutting) taken into account when determining whether or not the public service broadcasters have been overcompensated?

FACT:

There are no specific mechanisms for this purpose. It is totally impossible in the current regulatory framework for private stake holders to challenge the anti-competitive behaviour of public broadcaster elsewhere than in newspaper writings. There is a normal procedure in the Finnish Competition Authority or to make a complaint to the EU Commission. But as we all know from the experience, these mechanisms are not, however, sufficient and take too long time to find a decision.

2.7.2. As regards the possible anti-competitive behaviour of public service broadcasters (and in particular as regards allegations of price undercutting), do you consider that the Broadcasting Communication should include requirements for public service broadcasters to respect market conditions as regards their commercial activities in line with Commission decision-making practice, including appropriate control mechanisms?

FACT:

Public service broadcasters should not interfere in commercial operations at all, but take good care of public service.

As we know from the numerous complaints made by commercial broadcasters to the EU Commission and to the European Court of Justice, there are always serious consequences to the markets, if public service broadcasters interfere in the commercial markets. We have now in Finland reached basis for a clear financing model, where public service broadcaster is taking care of public service and financed from public sources (mainly viewers tv fee), and

commercial broadcasters take care of commercial services and find their financing from commercial sources (mainly television and radio advertising, sponsorship and product placement). This model works generally well, but however, precision of the "full service" remit is needed (see our answers above).

2.7.3. Do you consider that the methodology for detecting price undercutting should be clarified, possibly also including other tests which could be used as an alternative to the methodology currently referred to in the Broadcasting Communication? Please make reference to tests applied in your country to the pricing behaviour of public service broadcasters and which could be used as an example of good practice.

FACT:

See our answer 2.7.2. above.

2.7.4. Do you consider that the Broadcasting Communication should contain clarifications as regards the public funding of premium sports rights? In the affirmative, what further requirements should in your view be included in the Broadcasting Communication and how would they specifically address potential competition concerns resulting from State funding? Alternatively, do you think that potentially adverse effects on competition due to the acquisition of such rights by public service broadcasters would be sufficiently addressed under the antitrust rules?

FACT:

Yes, the Broadcasting Communication should contain clarifications as regards the public funding of premium sports rights. In our view bidding contests between public and private broadcasters concerning the same sports rights are absurd, especially if the private broadcaster has the same population coverage as the public broadcaster, as irrespective of the broadcaster of the sports event, the same democratic, social and cultural needs of society are fulfilled. The basic rule should be, that public funding should not be used in services (programmes), which would be broadcasted in that particular country commercially.

2.8. Other issues

2.8.1. Do you consider that the reference to the difficulties of smaller Member States is necessary?

FACT:

Competition in small countries is very much different than in big countries. In a small country one stake holder may have significant market share, but it still remains as a very small player within the European scope. Therefore, "one size suits for all" is a wrong principle also here.

As regards small Member States, it is particularly important to clearly define the scope of the public service remit. The relevant markets in these Member States are smaller and therefore the competition is distorted even more easily than in larger Member States.

2.8.2. What would you consider to be typical difficulties of smaller Member States and how should these be taken into account?

FACT:

Interference to the commercial markets by public service broadcasters has more serious effects on small markets than on big markets. Therefore, dumping or cross subvention of prices of whatever products or services should be prevented.

3. FINAL REMARKS

3.1. You are invited to explain what would be in your view the impact of the possible amendments to the current rules on for instance the development of innovative services and in more general terms employment and growth in the media sector, consumer choice, the quality and availability of audiovisual media and other media services, media pluralism and cultural diversity.

FACT:

It is of vital importance from various reasons that public service broadcasters concentrate on production of public services and products and are financed from public sources (only), and that commercial broadcasters produce commercial products and services and find their funding from commercial sources (only). Consequences of keeping public and commercial sector apart can be listed as follows: this

- (1) makes the division of labour clear,*
- (2) maintains versatility in the programming: public and commercial programmes complete each others,*
- (3) makes financing base clear,*
- (4) reduces conflicts between public and commercial stake holders, and declines complaints to different instances,*
- (5) extends competition between commercial broadcasters and improves quality, innovation and investments of products and services, and*
- (6) increases employment on the broadcasting business.*

These two tasks and financing models - public and commercial - should not be mixed. Finland is currently an example on it.

Furthermore, a more precise definition of the contents of the public broadcasting remit would lead to increased focus by the public service broadcasters to the needs of special groups as well as decrease the needs for financing of the public broadcasters, since the purchases of the program offering not falling within the scope of the public service remit (such as sports rights, American mainstream entertaining television shows) would be financed commercially and transmitted by the private broadcasters .

As a consequence on all of this we regard that the versatility and plurality of broadcasting services will be increased, and the audiovisual industry will get more working possibilities.

3.2. To what extent do you expect that the possible additional clarifications outlined above could create new administrative burdens and compliance costs?

FACT:

It depends on how clear definition can be made. If the clarification is clear, we believe that the administrative burden will be lighter than before.

3.3. Do you consider that the possible additional clarifications as outlined above would create a better regulatory framework?

FACT:

Yes. This streamlined model will reduce administrative burden and costs, and make regulation easier.

3.4. Please explain whether or not you consider that the positive impacts of possible additional clarifications along the lines outlined in this questionnaire outweigh the negative impacts.

FACT:

Yes, we believe that positive effects of streamlining remit as well as financing and supervision of public service would benefit the whole television industry and encourage for better service to television viewers.