

# **REVIEW OF THE COMMUNICATION FROM THE COMMISSION ON THE APPLICATION OF STATE AID RULES TO PUBLIC SERVICE BROADCASTING – Comments from Finland**

## **1. GENERAL**

### **1.1.**

Considering the recent developments in legislation and judicial practice, particularly with regard to the application of State aid rules (EC 87.1) to financing services of general economic interest (86.2), it is our view that the Broadcasting Communication should be updated.

### **1.2.**

A key issue in Finnish television broadcasting in the past few years has been the digitisation of the distribution networks. The analogue terrestrial distribution network was switched off on 31 August 2007, and analogue broadcasting in cable television network was switched off on 29 February 2008. The process was a great financial and operational challenge to all television broadcasters. During the process, broadcasting legislation and the financing system of the Finnish Broadcasting Company, YLE, were reformed. As a result, the financing is currently based almost entirely on television fees.

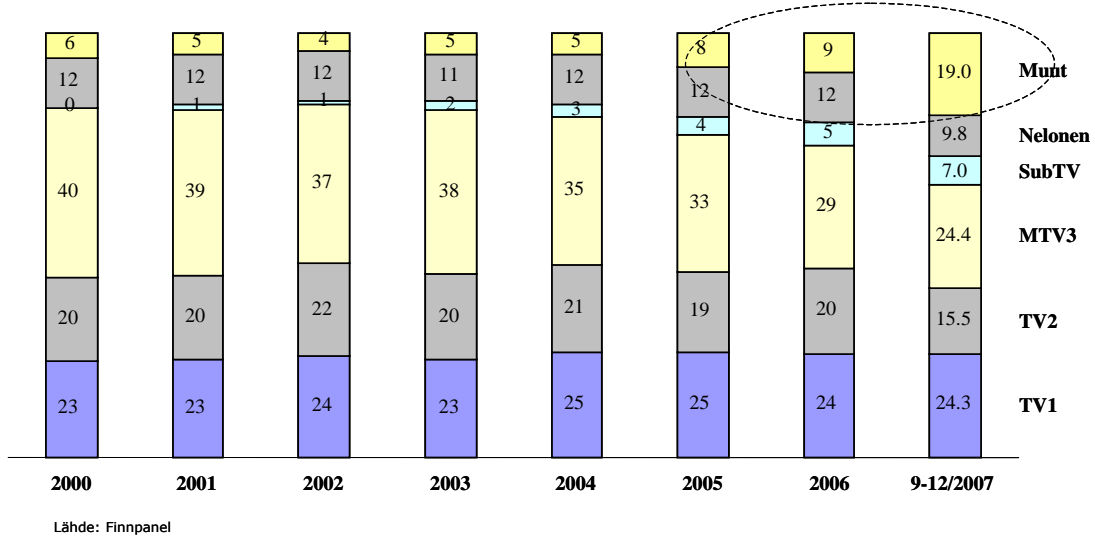
The digitisation of the television distribution networks has enabled a significant increase in the number of television channels. Currently there are 28 national television channels in the terrestrial distribution network, while in the analogue network they were only four.

Since YLE does not operate in the commercial market and does not provide any pay-TV services, competition with the commercial operators is mainly limited to the number of viewers and to broadcasting rights.

In addition to YLE, there are three main players in the Finnish television markets: MTV OY owned by the Swedish Bonnier group, Swellcom Oy owned by Finnish SanomaWSOY, and C More Television Oy which is part of the multinational ProSieben group. YLE has currently four channels in the digital distribution network. Commercial operators also have several digital television channels in their use.

In the digitisation process of the television networks, the main national channels, YLE TV1 and TV2, MTV3 of MTV Oy, and Channel Four (Nelonen) of Swellcom Oy, all except for YLE TV1 lost some of their viewers to small special channels. It should also be noted that the increase in the programme supply has not increased the overall viewing time.

**Katseluosuudet Suomessa, %**



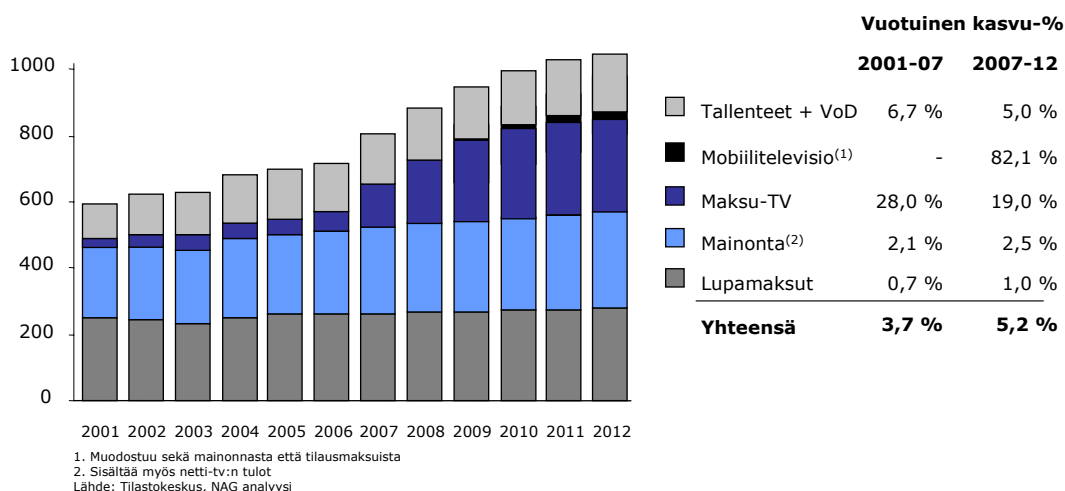
Caption: Channel shares in Finland, %

Although competition in the Finnish television markets has increased, commercial broadcasters' economy has made good progress in the last few years. The television fee, which is the basis for YLE's funding, has been raised in the past few years by one per cent plus the increase in the general cost level. Due to the financing of the digitisation process YLE has been unprofitable, but in 2008 the company's revenue and expenditure are in balance.

In 2007, the total turnover of television and radio broadcasting in Finland was around 800 million euros, of which YLE's share was a little less than 50%. In the next few years the public funding is not expected to increase and the percentage of pay-TV is foreseen to grow substantially. As a result, the proportional share of public funding will probably decrease considerably.

In 2007, YLE's share of the turnover of television broadcasting was about one third. The table below indicates Finnish experts' views on how the financial contributions are expected to develop in the next few years.

**TV-toiminnan rahoitus Suomessa 2001 – 2012**  
**MEUR vuoden 2007 rahassa**



**Captions:**

Financing of television broadcasting in Finland from 2001 to 2012, MEUR, 2007 currency

Annual growth %

Recordings +VoD

Mobile television

Pay-TV

Advertising

Television licence fees

**1.3.**

The ongoing convergence in communications and the related rapid development of the Internet influence the operating environment of the conventional mass media operators in many ways. In Finland, like all over the world, Internet advertising is a fast-growing field. Within a certain period of time this will be reflected in the financing of public broadcasting. As broadband connections become more powerful, the Internet will change the ways people spend their time and acquire information or entertainment services.

Naturally, the conventional communications operators – including public service broadcasters – must react to the changes in the communications environment. Distribution of services through multiple channels and the development and provision of Internet services have become a pivotal part of communications operators' activities also in Finland.

Due to Finland's geography the terrestrial distribution network continues to dominate in television broadcasting. The digitisation of the distribution network has increased the supply but not the overall television viewing time. This means that it is more and more difficult to reach large audiences particularly important to commercial broadcasters who base their income on advertisements. The Finnish commercial operators have, therefore, established new special channels addressed to smaller audiences and entered the rapidly increasing pay-TV market.

According to a recent extensive survey “The future of television” (available in Finnish, “Television tulevaisuus”) commissioned by the Ministry of Transport and Communications, which covers the next 5–10 years, the television will maintain its strong status in the media. This will, naturally, call for constant development of services, including the so-called new services.

Considering the trends and challenges in the sector the basis for the current rules is up-to-date. However, with reference to our reply in 1.1, we believe that particularly the state aid rules and the judicial practice should be better considered when updating the Communication.

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

2.1.

2.1.1.

### **A description of the Finnish system**

As of 1 September 2007 the funding of public service radio and television broadcasting in Finland / YLE has been based almost entirely on television fees. YLE does not operate on the commercial or pay-TV markets and has no commercial operations that would amount to any significant income. Since it is not a commercial operator on any markets, the questions of over-compensation, cost allocation and cost accounting do not concern it and are thus irrelevant.

The Finnish State owns 99% of YLE’s shares. YLE has never paid dividends. Due to the digitisation process of the Finnish television broadcasting system YLE has made a substantial loss in the past few years.

In Finland, television fees are collected in an extra-budgetary fund. Under section 5(3) of the Act on the State Television and Radio Fund the Government adopts a utilisation plan about the allocation of the assets in the fund. The assets are allocated by calendar years. Under section 4 of the Act the funds are allocated to YLE in instalments and periods approved by the Ministry of Finance and in accordance with the utilisation plan and YLE’s financial needs.

The duties of YLE are defined in a separate Act (Act on the Finnish Broadcasting Company YLE 1380/1993). The duties were last reviewed and amended in 2005. The amendments proposed to the company’s duties were based on views by a broad-based parliamentary working group. The group heard all parties significant for public broadcasting, including the key operators in television and radio broadcasting. The parties involved had the opportunity of commenting the working group report and the related act proposal in writing. It is a standard practice in Finland that key parties involved have the opportunity to express their views in Parliament, which was also the case here.

While the views relevant to public service broadcasting presented in the Decision and Framework on public service compensation payments have been taken into account in

the current Finnish legislation, it would be reasonable, for the sake of clear interpretation of the Community law, to include the key principles of the above mentioned rules in the Broadcasting Communication.

### 2.1.2

One of the key elements to be included in the Communication are the principles in the Decision Article 5, insofar as they cannot be deemed to be part of the current communication. It would be particularly important to include the principles of supervising over-compensations. Similar important rules in the Framework are items 2.4. and 3.

## 2.2.

### 2.2.1.

The duties of YLE have been defined in section 7 of the Act on YLE. Section 7(1) of the Act states that "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 purpose of the regulation is explained in more detail in the Government proposal (available in Finnish and Swedish). It is said in the proposal that "digitised television and radio broadcasting can provide the viewers and listeners with new types of services, for example Internet services. YLE must be able to serve its customers making use of the new technologies. The wording of the section is proposed to be changed so that these services be included in the Act's definition of public services. YLE must, however, ensure that they are in every respect in line with its duties, particularly in terms of contents."

### 2.2.2.

It is our view that each Member State should continue to have the opportunity to independently define the contents of the public service remit. In this respect the present communication is, in our view, clear enough.

### 2.2.3.

In accordance with its public service mission YLE has developed various Internet-based services, for example. This has not prevented other operators from developing their own services on commercial basis.

The rapid development of digital communications networks, and particularly the Internet, is changing the operating environment of public service broadcasting. The operators must, naturally, react to these changes. It is our view that a detailed ex ante regulation would not be well suited for the requirements of a quickly changing communications environment, considering the significant role of public service broadcasters in the development and innovation of new services. Emphasis should also be given to the principle of general technology neutrality and editorial independence of public service broadcasters.

We would also like to pay attention to the fact that although the development of the Internet is rapid, the development of high-quality services takes time and considerable amount of resources. Development and provision of Internet services is not regulated in the same way as, for example, television broadcasting in terrestrial distribution networks. Private operators cannot be required to maintain and develop public service broadcasting – a viewpoint that should also be considered when reviewing public service broadcasters.

It is our view that the current Communication is clear enough with regard to new services.

#### 2.2.4.

It is our view that in this respect the current communication is clear enough.

#### 2.2.5.

We don't see any need for this.

#### 2.2.6.

See 2.2.7.

#### 2.2.7.

It is our view that in this respect the current Communication is clear enough.

#### 2.2.8.

It is our view that in this respect the current Communication is clear enough.

Although we believe the current Communication to be clear enough in this respect, it would be useful, if the Commission drew up a background memo/handbook to describe its current decision-making procedure in view of the aspects presented in question 2.2.

### 2.3.

#### 2.3.1.

As stated above, the duties of YLE have been defined in the Act on YLE. In Finland, legislative processes are always open processes. It is a standard procedure that the involved parties have the opportunity to express their views both orally and in writing in the different phases of the preparation process. The subsection concerning YLE's duties has been amended twice since 2000. Both amendments were based on unanimous proposals of broad-based parliamentary working groups, which in turn were based on extensive studies, and views of the involved parties. Written comments were also asked on the government proposals, in accordance with the established practice.

The legal definition of YLE's duties follows the principle of wide remit. In practice, this means that the implementation and scope of the activities are dealt with in more detail at the Administrative Council of YLE. The Council is elected by Parliament and its duties have been determined in the Act on YLE.

#### 2.3.2.

According to section 6(1) of the Act on YLE it is the duty of the Administrative Council to decide on issues concerning considerable restriction or expansion of YLE's activities or significant changes in the organization of the company. It is also the duty of the Administrative Council to ensure and supervise that public service programme obligations are met. Under section 12 a YLE must submit a report to the Finnish Communications Regulatory Authority by the end of April every year on the public service provided during the previous calendar year.

The supervision of a public service broadcaster should always be in proportion to the company's duties. In our view the current supervision system of YLE is in line with the duties imposed on YLE.

The issues of public service broadcasting supervision and the interpretation of its role have also been raised in the form of private citizens' complaints about TV reception to the Parliamentary Ombudsman. The Ombudsman, who ensures that public authorities observe the law, has issued statements that have also led to measures.

#### 2.3.3.

We are of the opinion that an additional act of entrustment with regard to extending or specifying the public service obligation is within the discretion of the national authorities, and the current rules require no further clarification in this respect.

#### 2.3.4.

It is our view that the principles of supervision applied to the EC state aid system (incl. the obligations of the national courts of law), and the related sanctioning mechanisms are sufficient to ensure that the requirements of supervision are adequately met in public service broadcasting. In terms of public service broadcasting, special arrangements adding to the administrative burden are not required.

#### 2.3.5.

It is our view that in this respect the current rules are sufficient.

### 2.4

#### 2.4.1.

We have little experience in the field. It has been a standard practice in Finland that YLE does not provide pay-services. The public service obligation of "available to everyone on equal terms" referred to above has been taken to mean that the services must be free of charge. YLE's Internet services are currently available to everyone. In the future the company will probably tie the use of the services to the television fee.

It is our view that any factors influencing the competition in pay-services will come to the Commission's attention through the prior information procedure of Article 88(3) of the EC Treaty, for example.

#### 2.4.2.

With reference to the rapid development of the digital distribution technology and the related services we do not want to exclude the option of subjecting part of public services to a fee. It would be an oversimplification to state that all pay-services should be considered commercial activities outside the public service remit. In our view the definition of commercial activities possibly included in the public service remit should always be based on discretion and made case by case.

### 2.5.

#### 2.5.1.

YLE has traditionally had very little commercial operation. The possibility has, however, been considered in the Act on YLE which states in section 7a that "If the company provides material, which has been created in the production of television and radio programming, elsewhere than in television and radio operations, it shall differentiate between the public service television and radio broadcasting and other public service operations.

For the purposes of this section, differentiation means that for each financial period a profit and loss statement shall be issued on the differentiated operations as well as a balance sheet on public service operations. A profit and loss statement and a balance sheet that both must be traceable to company accounts shall be drawn up, where appropriate, in accordance with provisions of the Accounting Act (1336/1997).

If the company takes into its own use material produced in public service television and radio operations in order to provide it elsewhere than in television and radio operations, the same terms shall be applied as when the company releases material to be used outside the company.

Compliance with subsections 1–3 shall be monitored by the Finnish Communications Regulatory Authority. On request of the Communications Regulatory Authority the company shall deliver its financial statements and the profit and loss statements and balance sheets of the differentiated operations."

#### 2.5.2.

As to the separation of commercial activities and activities under public service obligation, the current Community legislation is in our view clear enough (reference to the Commission Directive 2005/81/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings and to the Commission Decision and Guidelines).

However, insofar as the public service broadcasting package is, regardless of its nature, defined by a single authority, there is no need to differentiate in the accounts the possible various service concepts included in the package.

2.5.3.

We don't believe that the Community legislation needs to be clarified in this respect.

2.5.4.

Our experience does not suggest any need for further clarifications.

**2.6.**

2.6.1.

It is our view that the Community court practice and the provisions clarifying Article 86(2) of the EC Treaty about public service obligations are sufficient to ensure clear parameters for determining the compensation amount. These principles should, however, be included in the Communication, in applicable parts (see items 1 and 2 in our reply).

2.6.2.

Insofar as there have been any problems in public service financing in Finland, they have not been due to the Broadcasting Communications or its guidelines.

2.6.3.

The terms referred to in the Decision and Framework about the definition and supervision of compensation can be applied in full to the supervision of financing for public service broadcasting. The principles could also be included in the Communication, in applicable parts. For example, a procedure described in section 21 in the Framework would, in our view, serve its purpose in public broadcasting too.

2.6.4.

See 2.6.3.

Furthermore, in cases of consistent surpluses, the Member State should re-define the content of its public service obligation and the funding needed. Attention should also be drawn to the general state aid principle, according to which whenever the annual budget increases by more than 20%, a report of the system must be made to the Commission.

2.6.5.

In our view the current rules do not act as a disincentive for public service broadcasters to achieve efficiency gains. The views presented above in 1 and 2 to update the Communication would not prevent any measures to improve efficiency either.

YLE has substantially improved its efficiency in the 2000s. One important reason for this has been the financial situation of the company. It should, however, be born in mind that financial resources are linked with the quality and versatility of the programmes.

#### 2.6.6.

If the profit margin was used for creating a more diverse programming and for improving the quality in public broadcasting.

### **2.7.**

#### 2.7.1.

Under section 12 of the Act on YLE the company is not allowed to broadcast advertising in connection with its television or radio programmes or with other content services that are provided within the public service framework in various telecommunications networks. Since YLE does not operate in commercial markets, there have been no problems relating to pricing of advertising or over-compensation.

#### 2.7.2.

In our view the current Community rules on competition and state aid, including the control mechanisms, are sufficient to prevent any anti-competitive behaviour of public service broadcasters.

#### 2.7.3.

See above.

#### 2.7.4.

Due to the rapid development of television broadcasting and communications technology on the one hand, and the changes in sports and in arranging sports events on the other, we do not consider more detailed instructions on the matter necessary.

### **2.8.**

#### 2.8.1.

The circumstances of television broadcasters in smaller Member States and smaller language areas are in many ways different from those in larger markets. The commercial implementation of many of the conventional television services, and also of the so-called new services, calls for measures that cannot be taken in small markets. It should also be noted that especially with regard to the new services the national operators have to take the operations of international companies also into account.

#### 2.8.2.

See 2.8.1.

### **3. FINAL REMARKS**

3.1.

This greatly depends on how the rules would be changed. Because of geographical and demographic reasons, for example, YLE is a very important institution in terms of communications and cultural policy. It is also the most significant single employer in the audiovisual field in Finland. YLE has played a key role in the digitisation process of television broadcasting. Thanks to digitisation YLE has been able to better serve minorities and to develop new services to disabled people, for example.

3.2.

This also greatly depends on how the rules would be changed. A detailed ex ante regulation would substantially add to the administrative burden.

3.3.

See above.

3.4.

In our view the positive impacts would not outweigh the negative impacts.