

The three Swedish public service broadcasters, **Sveriges Radio AB**, **Sveriges Television AB** and the educational radio and television broadcaster **Sveriges Utbildningsradio AB** (hereafter collectively referred to as **the Swedish PSB**) welcome the opportunity to comment on the issues raised by the Commission regarding future application of the Community rules concerning State Aid to public service broadcasting.

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?

The Swedish PSB see no need for a revision of the Broadcasting Communication. While recognizing the specificities of the public service broadcasting and the competence of the Member States to define and provide for the funding of such broadcasting the Communication adequately defines the task of the Commission to check for manifest errors in the conduct of the member state.

No cases of alleged breach of state aid rules regarding the Swedish PSB have been filed.

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.

The Swedish audiovisual market consists of two categories of players: the public service radio and television companies and an expanding commercial sector consisting of media houses with activities on all the technical platforms. The public service companies are funded by licence fee and, to a minor part (approximately 2 - 7 percent), by income from the sale of studio capacity, program rights, copies etc. No advertising is allowed on the public service channels or websites.

In terms of economic turnover and audience share the private companies are growing steadily, while the funding of the Swedish PSB is set to shrink in real terms. As a consequence of the recent digital switchover, the number of TV channels addressing the Swedish audience, as well as their penetration, has increased vastly over the past years. This development has been especially favourable to the leading commercial media operators who have been able to

launch supplementary and niche services that compensate for the gradual audience loss of the main channels and contribute positively to the revenue total.

The services of the Swedish PSB contribute to democracy, cultural diversity, media pluralism and they widen the choice of the viewers, but their costs have to be funded by redistributing the unaltered licence fee appropriation.

A few data here below may illustrate the present development on the Swedish market. For further details as well as for conclusions kindly consult a recently published report, Swedish Internet and Broadcast Media – a trend analysis, to be posted as appendix 1 to this contribution.

- The Big Five on the Swedish TV market are losing ground to niche channels, of which the most expansive and the most profitable are spin-off channels of the major Nordic media houses. In 2002 the niche channels commanded 14% of all viewing time, by 2007 the share had more than doubled to 30%.¹

- In the same period the share of the niche channels of the three major media houses on the Swedish market (The Bonnier group, The Modern Times Group and The SBS/ProSiebenSat.1 Group) had increased from 1,7% to 15%.²

- The distribution revenue of the niche channels was in 2002 1,8 billion SEK and is estimated to have passed the 3 billion SEK level in 2007. The total turnover of the Swedish pay TV market in 2007 is estimated to be above 5 billion SEK.³

- The revenue of TV-advertising in 2002 was 3 509 million SEK, in 2007 the TV ad revenue was 4 695 million SEK, up 34% in five years.

- In terms of turnover the internet is gaining momentum: in 2002 the ad revenue was 1 063 million SEK, in 2007 the turnover was 4 073 million SEK, +284% in five years.

- The radio advertising turnover in 2002 was SEK 480 million and in 2007 SEK 641 million. The profitability of the private local radio sector in Sweden has up to the recent years been hampered by the high annual fees the operators agreed to pay at the licence auctions.⁴

- The total income of the public service TV broadcaster, Sveriges Television, was in 2002 SEK 3 765 million, of which 3 500 million from licence fee. In 2007 the total income was SEK 4 028 million, of which 3 748 million from licence fee funding. The total income of Sveriges Radio in 2002 was SEK 2 076 million, of which 2 033 million from licence fee funding. In 2007 the total income was 2 248 million, of which 2 180 million from licence fee funding. The total income of Sveriges Utbildningsradio in 2002 was SEK 313 million, of which 279 million from licence fee funding, and in 2007 the total income was 328 million, of which

¹ Audience statistics from MMS, Mediamätning i Skandinavien

² Audience statistics from MMS

³ Mediavision: Nisch-TV 2007/2008, and further approximations by SVT Strategi

⁴ Statistics from IRM, Institutet för reklam- och mediestatistik

309 million from licence fee funding. The total income of the Swedish PSB has increased over the period by 7 percent.⁵

- The SVT share of viewing time has in the period 2002 to 2007 diminished from 43% to 35%. The daily reach of the Swedish public service radio has so far been more stable, declining over the period from 52 to 48 percent of the audience.

As indicated by the statistics above, the commercial audiovisual market in Sweden is growing rapidly, whereas the share of the public service radio and television is diminishing, both in terms of economy and market share, largely due to the steadily weakening purchase power of the licence fee funding: the annual increment of 2% of the licence fee income covers less than half of the estimated annual cost rise.

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?

Private digital media houses, international as well as Nordic and Swedish, will continue to expand through a further proliferation of services, both broadcast and nonlinear. The global technological innovations will gradually change the media consumption patterns from passive reception toward more active choices, particularly among the younger audiences. Services demanded by the users will have to be offered by all content providers, including the public service.

The international investment groups will continue to restructure the Swedish market towards larger units. The major domestic players (The Bonnier Group, The Modern Times Group) and the Swedish arm of the Pan-European ProSiebenSat.1 Group will continue to grow by means of complementary services on all technical platforms.

There is increasing use of new technology by young people, which has resulted in an erosion of the young audiences of public broadcasters. The audience of public service broadcasters is becoming older year by year. If the Swedish PSB do not succeed in reaching a substantial audience by offering a wide spectrum of content, the PSB will lose the necessary connection with its audience and will no longer be able to play its role of trustworthy beacon for the public and the significant norm setter for the market.

The technical development, the ensuing changes in consumption patterns and the structural changes on the market call for flexible regulation in touch with the market within each member state. The competence of the Swedish government to define the remit and to provide for the funding of the Swedish public service broadcasting, based on the balanced considerations in the Amsterdam protocol, should not, in the view of the Swedish PSB, be infringed.

⁵ Statistics from the Public Service Accounts of the Swedish PSB 2002 and 2007

The Swedish procedural framework allows for a proper *ex ante* examination of the remit as well as a stepwise *ex post* control of the fulfillment of the remit, the latter placed on the Swedish Broadcasting Commission, which is mandated annually to assess the comportment of the three public service broadcasters and thus to contribute to the overall evaluation of the definition of the remit, ahead of the forthcoming Charter period. The Swedish Competition Authority has the overall responsibility for the surveillance of the market.

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 compensations

2.1.1. Do you consider that (at least some of) the requirements laid down in the Decision and Framework on public service compensation⁶ should be included in the revised Broadcasting Communication or not? Please explain why.

No. The Decision is applicable to small public service organizations only, of little relevance to the Swedish PSB. The Framework spells out general conditions under which public compensation for services of general economic interest, which are not necessarily applicable to the specific conditions of the PSB, notably the competence of the Member States to secure the prerequisites of the public service broadcasting.

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).

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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.

As an example of the steering documents of the Swedish PSB, the Charter of Sveriges Television for the period 2007-2009 and the Conditions for the Appropriations in 2008 are appended to this document. Appendices 2 and 3 .

Some of the issues in the Sveriges Television Charter in abridged form:

The right to broadcast shall be exercised "without bias or prejudice and based in fact, bearing in mind that ample freedom of expression and freedom of information shall prevail in television services". 5§

Programming shall respect individual's right of privacy unless a compelling public interest should demand otherwise. 6§

SVT shall offer a diversity of programmes of good quality in all genres, developing new content and forms of presentation, and the programmes shall, "by virtue of their accessibility and diversity", cater for differing interests and needs of the population 7§

Programming shall on the whole be imbued with an ambition to enlighten, and it shall offer a diversity of opinions, taking into account the variety of conditions and capacities present in the general public. 7§

SVT bears a particular responsibility for the Swedish language and its position in Swedish culture and society. 8§

SVT is obliged to report news and otherwise illuminate current events and processes, providing the all-round information citizens need to be well oriented and to form opinions on matters of socio-economic and cultural importance, to stimulate public discussions of such issues, and to scrutinize authorities, organizations and private enterprises which exert influence over policy affecting the public. News reporting shall be conducted so as to ensure diversity of news selection, news analysis and commentary in programming overall. 9§

SVT shall offer a diversity of culture programmes, of high quality. It shall cover, reflect and examine cultural activities in Sweden and other countries of the world. Programmes from abroad shall reflect different cultural spheres and originate from different parts of the world. Programmes about and originating in neighbouring Nordic countries shall be offered with a view to strengthening Nordic cultural bonds. 10§

SVT shall – independently or in co-operation with outside producers and performers – produce an extensive offer of culture programmes. Particular emphasis shall be put on drama productions. It is important to reflect the many different cultures and cultural manifestations in Sweden. In co-operation with other cultural institutions and producers SVT through its programming shall offer the general public events, concerts and other cultural activities from different cultural spheres, taking place throughout the nation. 10§

SVT shall offer a diversity of programmes of good quality for children and youth; programmes for children and youth should afford cultural and artistic sensations and offer news and information. SVT shall bear in mind the special language needs of children belonging to linguistic or ethnic minorities. 11§

SVT shall bear in mind the special prestige and influence of the television medium in it's selection of subject matter, forms of presentation and scheduling of programmes. SVT shall be cautious of the depiction of violence in newscasts and other programmes informing viewers of real incidences of violence. 12§

SVT shall observe the needs of functionally challenged and viewers with disabilities as well as the special needs of linguistic and cultural minorities. 13-14§

For diversity in programming, the output shall consist of both in-house and acquired productions, co-productions and productions commissioned to independent producers. 15§

SVT shall transmit official announcements free of charge. 16§

Anyone who has just cause to rebut a statement made in a programme shall be given the opportunity to do so. 17§

SVT may not broadcast commercial advertisements or sponsored programmes, with the exception of sponsorship to certain special events (sports events, Eurovision etc). 18-21§

Excerpts from the Conditions for the Appropriations to Sveriges Television, 2008:

2. *The allowance shall fund the core activities of the company, i.e. to produce and broadcast TV programs to the general public. The allowance shall also, when applicable, fund complementary activities, i.e. such as development of the core activities and activities that enhance the availability of the services to the general public.*
3. *Ancillary activities shall bear their costs and shall be carried out in observance of competition neutrality in relation to undertakings that offer corresponding services. Ancillary services shall be reported as separate accounting units... The annual account shall be audited by the company auditors.*
7. *SVT may distribute its program services by satellite to the general public in Sweden, Finland and the rest of the world.*
8. *The program services broadcast in Sweden shall be available to the general public free of charge other than the TV licence fee. Broadcasting to audiences outside Sweden shall bear its own costs.*
10. *SVT shall distinguish between its core activities and complementary activities and maintain in quantitative terms a good balance between them. SVT may not without the consent of the Government change its core activities to a significant extent, eg. by launching new permanent program channels or similar services. Ancillary services shall neither by quantity nor by character risk to infringe upon the core activities.*

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?)?

No. The Member State has the responsibility and – according to the Amsterdam Protocol – the competence to spell out the characteristics of the public service broadcasting, valid in each period and relevant in the cultural and social settings of the country. The procedural framework in Sweden, as outlined in 2.3.1, provides for sufficient clarity as well as flexibility in the definition of the task. The discretion of all the involved parties – including all the stakeholders - in the

process works better than a static list – either positive or negative – of characteristics that should define the services in question.

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?

Yes. The Broadcasting Communication provides for a sufficient framework for the application of the Community regulation of State Aid on public service broadcasting.

Services other than television and radio programmes must be part of the public service remit when they satisfy the democratic, social and cultural needs of society, as well as the necessity of preserving media pluralism. It should be stressed that the means of distribution are not relevant for classifying a public service activity; it is sufficient that the content responds to the democratic, social and cultural needs of society. In the Swedish definition of the public service remit the complementary services are expected to enhance the broadcast services and make it easier for the general public to access all the services of the Swedish PSB.

The PSB will need to adapt to the new technological environment and to new consumption patterns. This has been acknowledged by the European Council and the Government representatives, who in the Resolution of 25 January 1999 concerning public service broadcasting (OJ 1999 C 30/1) reaffirmed that "the fulfillment of the public service broadcasting mission must continue to benefit from technological progress" (point 3). Moreover, they noted that public service broadcasting "has an important role in bringing to the public the benefits of the new audiovisual and information services and the new technologies". Point 6 states: "The ability of public service broadcasting to offer quality programming and services to the public must be maintained and enhanced, including the development and diversification of activities in the digital age."

No further need for regulation on the Community level is called for.

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?

No. According to the Amsterdam Protocol each member state has the competence to confer, define and organize the public service remit, so as to best meet the democratic, cultural and social needs in that state. This principle has been affirmed by the Council of the European Union in the Resolution of 25 January 1999 (OJ 1999 C30/1). It is for the Member States to judge, which methods and

procedures are most appropriate for the definition of the public service remit. An introduction of procedural rules for the definition of the public service remit would go against the principle of the Member States' procedural and institutional autonomy.

The Swedish PSB would also point out the specific character of the public service remit as an obligation to carry out a totality of services, which, complementing each other, all promote the democratic, cultural and social objectives set out in the remit.

This includes the obligation to cover all local areas in Sweden with local news and current affairs programming and to produce programs from the regions to the national output, thereby contributing to the listeners' and the viewers' picture of the whole of Sweden.

The Swedish PSB also has the obligation to produce news and programs in minority languages and to serve the immigrants in Sweden with necessary information in their own languages.

The editorial independence of the public service broadcaster would be jeopardized by an external set of rules for an *ex ante* judgment of any particular part of the totality of the remit. The evaluation of the remit and the assessment of needs for change fall within the mandate of the member state. The role of the Commission should also in the future be confined to monitoring manifest errors (Broadcasting Communication 36.).

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?

No. As discussed in point 2.2.4, the role of the Commission is to monitor manifest errors. The Communication cannot include clarifications regarding the scope of a possible *ex ante* evaluation. It is for the Member States, as part of their competence for conferring, defining and organizing the public service broadcasting remit, to assess whether such *ex ante* evaluation should be introduced and, if so, to define the scope of such evaluation.

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

None. Services will continue to evolve so as to respond to changes in the cultural and social needs and technological developments in each Member State. It is the responsibility of each Member State to define the remit as an undivided whole and, when deemed necessary, to adapt it to these changes. Every attempt to pre-define some aspects of the remit as subject to particular judgment would go against the general principle of subsidiarity and in particular the Amsterdam Protocol.

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)?

No. As the Commission concludes in the present Broadcasting Communication, a case by case approach is the most appropriate (Broadcasting Communication 24.). The basic principles of transparency and proportionality as laid down in the present Communication are sufficient. It is for the Member States to assess which procedures to apply on the evaluation of the remit. Consequently, it would not seem appropriate for the Communication to include further regulation regarding services subject to *ex ante* evaluation.

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?

The very fact that the public service broadcasting should meet the needs of the culture and the society it is set out to serve underlines the importance of observing the principle of subsidiarity in the regulation. The proposed extensions of *ex ante* approach would derogate from that principle. The characteristics of the public service broadcasting and any changes in it, called for by changes in the media environment or in the society, should also in the future be determined by the Member States.

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?

- On the initiative of the Swedish government a comprehensive review of the remit and of the needs to adapt it to present and expected changes in the social, cultural and technical environment is carried out.
- In the course of the review process, all the stakeholders and representatives of various interested parties are invited to contribute to the evaluation of the remit.
- The review report (Green Book) is put under debate, and a great number of authorities, NGOs, experts, media researchers and all stakeholders are invited to comment the report.
- Fully transparent parliamentary proceedings ensue, resulting in a White Paper on the guidelines for the forthcoming Charter.
- A Charter is issued by the government, with detailed goals for the activities. The Charter, based on the Radio and Television Act and the Parliamentary Decision, constitutes the legal base for the activities of each of the three Swedish public

service companies. A number of obligations are defined in detail, such as the proportions of programming originated from the regions outside the Capital, the services to deaf and hearing impaired viewers, services to ethnic and linguistic minorities, programming for children and young audiences, a responsibility for the Swedish language and its position in Swedish culture and society, to mirror the whole of Sweden and its various cultures as well as peoples and cultures in other parts of the world.

- The Swedish Broadcasting Commission monitors the fulfillment of the public service remit, continually by assessing complaints concerning alleged breach against regulation, and annually by assessing the Public Service Account of each of the three public service broadcasters so as to conclude whether the activities during the year and over the Charter period as a whole correspond to the obligations laid down in the Charter and the annual Conditions for the appropriation.

- The Parliament annually decides on the funding of the public service broadcasting through an appropriation from the PSB Account. The conditions for the use of the appropriation are annually specified by the government. Both the level of the appropriation and the conditions for its use are normally foreseeable over the whole Charter period but, nevertheless, subject to annual government approval.

- The broadcaster has an obligation to publish its long term plan for the Charter period, in which it should spell out how the goals and obligations expressed in the Charter will be met. The Department of Culture and the Swedish Broadcasting Commission receive the plan for information.

- The PSBs annually publish a detailed account of their public service activities and their relationship to the obligations put forward in the Charter and the Conditions for the appropriation.

- All significant changes in the activities of the PSBs, such as new services, are subject to government approval.

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?

The Swedish mechanisms for the supervision of the public service broadcasting provide for sufficient opportunities for third parties to take action against the PSB as well as against the way the public service remit is defined.

The Swedish Broadcasting Commission screens on complaint or on its own initiative broadcast programmes for alleged breach of regulation concerning impartiality, commercial messages, lack of respect for human dignity etc.

The PSBs annually deliver a Public Service Account in which all the activities are accounted for, as well as the resources used. The Account is audited by the Swedish National Audit Office and by an auditor appointed by the government.

The Swedish Broadcasting Commission annually judges whether the Public Service Account of the PSBs provide for the information necessary for the evaluation of the fulfillment of the public service remit.

The Swedish Broadcasting Commission also evaluates, on the basis of the Public Service Accounts, the broadcasters' fulfillment of their remits. This annual evaluation feeds into the government's assessment of the public service remit ahead of the forthcoming Charter period.

The government may, whenever it deems necessary, initiate a revision of the Charter.

The national Audit Office also audits the efficiency of the PSBs activities, which includes an audition of the use of the public funding of the activities.

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?

No.

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?

The present supervision system in Sweden by an independent authority, The Swedish Broadcasting Commission, works well. The Swedish Broadcasting Commission has a well defined remit to monitor the observance of the regulation laid down in law, the Charter and the Conditions for the use of the annual appropriation. The Swedish Broadcasting Commission, when judging the fulfillment of the public service remit, has the power to point out imperfections in the activities of the broadcasters, but conclusions concerning the necessary improvements are left to the broadcasters and the government.

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?

No. The scope of the public service broadcasting is a matter for the whole society and should be defined by the bodies that represent the society. Private operators as well as other interested parties and the general public are invited to express their

views on the scope of the remit in course of the comprehensive Charter review process. Complaint procedures concerning a remit in force would only serve the private interest of the complainant, not the general interest.

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?

The impact of pay-services on competition depends on the general rules for competition and on the pricing of the services, rather than on the funding of the body offering the services.

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?

Pay-services may be a part of a public service remit. A secondary exploitation of the contents produced or acquired by a public service broadcaster as on demand-offer may serve the public interest inasmuch as the offer extends the consumers' choice without further cost to the general licence fee funding.

The decisive criterion for inclusion should be whether the services meet the cultural, social and democratic needs of the society, not the way they are funded. The inclusion of pay-services in the public service remit should be based on an analysis of the remit as a whole and should not be made dependant on the activities and offers of other players on the market.

Pay-services offered by a public service broadcaster should be motivated by diversified demands for an extended use of existing public service content.

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?

To a limited extent, as sales of free studio capacity and sales of programme copies. The commercial activities are separately accounted for and functionally separated from the public service activities.

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?

The commercial activities should be functionally separated from the publicly funded services so as not to distort the competition on the market. A structural separation would increase administrative and overhead costs without substantially adding to the separation of the functions.

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?

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?

No.

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?

No. The present framework in the Broadcasting Communication is sufficient and in tune with the Amsterdam Protocol, according to which the Member State is competent to define and provide for the funding of the public service broadcasting.

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?

The requirements in the Broadcasting Communication have not been an obstacle for for pluri-annual planning of public service broadcasting in Sweden.

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?

The public service broadcaster should be able to plan for the recurring fluctuations in the costs of broadcasting rights, notably those of major sports events and for unexpected costs, such as those related to news concerning disasters, wars, political issues etc. A financial buffer is a condition for the long term planning of the PSB and thus a significant prerequisite of its editorial autonomy.

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)?

To be judged by the Member State on a case by case basis.

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?

The rules in the Broadcasting Communication present no problem. Continuous efficiency improvements in the Swedish public service broadcasters are triggered by the limited funding. An annual increment of the appropriation from the Licence Fee Fund which is less than half of the rise of the costs has to be compensated for by cost cuts by the PSBs.

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?

The Swedish PSBs have no profit.

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?

The Swedish Competition Authority controls and sanctions any anti-competitive behaviour on the market. The Swedish PSBs are funded by appropriation from the PSB Account and only to an insignificant part (2-7 percent) by income from the market. These mechanisms ensure a sufficient and effective control.

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?

No. There are rules of law that sufficiently cover the issue.

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.

No. The national Competition Act covers the issue.

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?

Sport in public service broadcasting plays a vital role as inspiration to ways of life that promote public health and social cohesion and that ensure active citizens in all age categories.

In Sweden most of the premium sports rights have been priced by pay TV-operators beyond the reach of the PSBs. Only a limited number of rights to events of significant public interest are purchased by the PSBs, in many cases shared with one or more commercial undertakings. The present national antitrust regulation is sufficient.

2.8. Other issues

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

Yes. The PSBs in smaller Member States are particularly vulnerable to cost fluctuations caused by the need for major technological investments, by major news events and recurring transmissions from international events. A regulatory framework with proper provisions for financial planning over a number of years is necessary for the independence of the public service broadcasting and for its fulfillment of the democratic and social needs of society.

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

The PSBs in the smaller Member States, such as Sweden, are particularly vulnerable in financial terms. The potential gain from any additional regulatory/administrative burden should be carefully considered.

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.

The commercial audiovisual market in Sweden flourishes (see 1.2) greatly at the expense of the public service broadcasting. The growth within the sector is impressive and the system of both public and private undertakings contributes effectively to media pluralism, cultural diversity and democratic exchange of views. There is no need to amend the present Broadcasting Communication.

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

Compared to the present procedures for the evaluation of the remit the proposed, unspecified *ex ante* regulation would risk to impose extensive administrative costs on the PSB and on the authorities of the Member States, of no avail for the competition.

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

No.

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.

In light of the Swedish experience there is no need for additional clarifications. The proposed amendments could not be motivated by any foreseeable gains in the functioning of the market.