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State aid registry
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Our case handler
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European Commission consultation on the funding of public service broadcasting

We refer to the consultation on the Review of the current Broadcasting Communication. Our response relates to only a few of the questions in the questionnaire from the Commission:

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?)?

In our view it is necessary to further clarify the distinction between the permissible scope of the public service remit and other activities. *Commercial activities* should in principle not be part of the public service remit. At the same time such activities should be kept clearly apart from the services offered under the public service mandate. That is to say if part of the public service remit corresponds with or is funded by commercial activities. For instance it should be permissible for the public service broadcaster to establish a separate company – to operate on arm lengths basis from the public service mandate – which is clearly defined for commercial activities and not part of the public service remit. E.g. in Norway the public service broadcaster has established a separate entity/company which operations are defined as purely commercial and hence falls outside the scope of the public service remit.

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?

According to the existing Broadcasting Communication the Member States are required to define the public service remit clearly, leaving no doubt whether or not a certain activity is part of the remit. Further, according to the Broadcasting Communication, examples of activities which cannot normally be viewed as part of the public service remit are advertising and e-commerce.

We recommend that the Commission uses the opportunity in this revision of the Broadcasting Communication to include additional clarifications as regards the scope and definition of the public service remit in order to increase legal certainty and to reflect the changes in the Commission's decision-making practice since 2001, the changes in the legal framework conditions and the technological developments.


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?

Although commercial activities in principle should be distinct from the public service remit, we recognise that in some cases it might be considered as acceptable to let pay-services be regarded as part of the public service remit, e.g. on-demand sale of archive material, web-based text services or other similar content-related payments.

The Commission should, however, not in any case allow the public service broadcaster to partially fund the public service remit by offering pay-tv-services. Such pay-tv-services should be considered as purely commercial activities. If such services are not considered falling out of the scope of the public service remit, the private distributor of broadcasting services will risk to be forced to increase the prices of its products offered to the consumers, without any profit gain respectively. In this aspect we consider it a good approach to require each Member State to produce an illustrative list of commercial activities not covered by the public service remit as suggested by the Commission.

Yours sincerely



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