[FI] European Commission rejects complaint of unlawful State aid to Finnish public service broadcaster YLE

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On 29 November 2024, the European Commission (the Commission) rejected a complaint by Sanoma Media Finland Oy concerning the granting of alleged unlawful Staite aid to the Finnish public service broadcaster Yleisradio Oy (YLE) for video-on-demand and online learning services.

The complainant is a Finnish media and learning company which, among other services, offers educational publishing and VOD services. It claimed that the public funding to YLE for the provision of its VOD and online learning services constituted unlawful aid. The complainant argued that while YLE's public funding scheme could be viewed as existing aid (put in place before Finland's accession to the EU and therefore not notified to the Commission), the public funding of YLE's online learning services and VOD constituted a new aid. The complainant contended that this new aid distorted competition to the detriment of private market players that offer VOD and online learning services. It further argued that YLE's online learning services, being provided free of charge to students and teachers, further reduced the customers' willingness to pay for similar products and services offered by commercial operators.

In detailed observations challenging the complainant's claim, the Finnish authorities argued that the aid granted to YLE (including the aid for VOD and online learning services) was existing aid, as those services allow for the use of new technologies and distribution platforms. As such, they allow YLE to reach the whole Finnish society and fulfil their public service mandate which predates Finland's accession to the EU in 1995. In the absence of significant changes in the financing of YLE or in the definition of its public service remit, considering VOD and online learning services a new aid would have been unjustified, according to the Finnish authorities. Additionally, they argued that YLE Areena, a free VOD offer addressed to all Finns, constitutes an adjustment to the decreasing consumption of traditional radio and television and increase in consumption on non-linear media. Among other arguments, the Finnish authorities further indicated that the potential impact of YLE's VOD services on commercial operators was small, citing two reports of 2021 and 2022 by economic consulting company Copenhagen Economics.

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In its Decision, the Commission notes that not every modification of existing aid qualifies as an alteration of existing aid, and therefore, as new aid, as per Article 4(1) of the Implementing Regulation. It also considers that the modifications, which regard the organisation and functioning of YLE and the scope of its activities, are non-severable from the original measures. Regarding the replacement of the license fee set by a broadcast fee (the YLE tax) in 2013, the Commission considered that it could not be seen as a substantial alteration of the existing aid, as that change took account of technological changes and is meant to reflect the variety of devices and communication methods used by viewers to access YLE's broadcasting content. Moreover, it noted that the Court of Justice held that replacing a broadcasting fee payable based on the possession of a receiving device, by a broadcasting contribution payable on the basis of occupation of a dwelling or business premises does not constitute an alteration to existing aid (C-492/17 *Südwestrundfunk v Tilo Rittinger and Others*).

With regard to YLE's VOD services, the Commission considers that the introduction of VOD services is not in itself a substantial modification of the public service remit, in part due to the fact that the content provided "corresponds overwhelmingly to YLE's existing programme remit." Lastly, with regard to the provision of online learning services, the Commission is of the view that the online education activities of YLE also fall within the public service remit, in adequation with Article 7 of the YLE Act which refers to its duty to take educational and equality aspects into consideration in its programmes and to provide an opportunity for learning and self-development.

The Commission also pointed to significant differences with the BBC Digital Curriculum case, in which the Commission had stated the planned services were outside of the BBC's public service remit and had to be regarded as new aid. The latter intended to be an extensive online service, provided through a dedicated online interface, with curriculum mapping, assessment, communication, delivery, tutor support and tracking facilities. In the BBC Digital Curriculum case, the Commission held that "*the provision of educational material over the internet may be considered to be within the 'existing aid' nature of the scheme to the extent that it remains closely associated with the BBC's "television and radio services". If, however, the proposed "ancillary service" sheds this "close association" it can no longer be considered as one offering continuity within the existing scheme.*" Contrary to the BBC Digital Curriculum, YLE's online learning services remain closely associated with its public service programming mission, as described in the YLE Act. The Commission further pointed to the fact that the BBC had planned to spend GBP 150 million from the license fee funds on the Digital Curriculum service over a period of five years, while YLE's spending on these services was limited (approximately EUR 1 050 000 in 2021).

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