

European Commission: Decisions on State Financing of Public Service Broadcasters

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*Sabina Gorini
Institute for Information Law (IViR), University of Amsterdam*

The European Commission has recently announced a number of developments in its analysis of cases relating to State aids to public service broadcasters in certain European Member States.

On 15 October, the Commission concluded its investigations concerning certain ad hoc measures adopted in Italy and in Portugal during the 1990s in favour of public service broadcasters, declaring these measures compatible with the common market under Article 86(2) of the EC Treaty. In both cases, the Commission found that the ad hoc measures in question were limited to the financing of losses incurred by the public service broadcasters in the fulfilment of their public service mission and that no distortion of competition in commercial markets could be established.

In parallel, the Commission has sent letters to three Member States (Italy, Portugal and Spain), stating its preliminary view that amendments are needed to make the general system for financing public television in these states more transparent and to ensure sufficient safeguards against excessive subsidies (the aim of the Commission is to bring these financing systems into line with the Communication on the application of State aid rules to public service broadcasting see IRIS 2001-10: 4). The letters have been sent under the procedure for existing aids in Article 88(1) EC Treaty, which provides that, as regards existing aid (i.e. aid which was introduced prior to the entry into force of the Treaty or the accession of a Member State to the EC, or aid authorised in the meantime), the Commission can propose to Member States any appropriate measures required for the smooth functioning of the Internal Market.

The background to the Italian case is that in 1996 the private broadcaster Mediaset lodged a complaint with the Commission alleging that the licence fee granted to the Italian public service broadcaster RAI, as well as a series of ad hoc measures adopted in favour of RAI in the 1990s, amounted to illegal State aid. The Commission, after having enjoined Italy to provide all the relevant information on the nature of the aid (see IRIS 1999-3: 4), determined that the ad hoc measures adopted in the 1990s constituted "new aid" (as they were introduced after the signature of the EC Treaty) and opened a formal investigation under Article 88(2) EC Treaty in respect of these measures (which, as stated

above, have now been declared compatible). The licence fee, on the other hand, has been seen as pre-dating the EC Treaty and has therefore been dealt with in parallel within the above-mentioned framework for existing aids.

As regards Portugal, the commercial broadcaster SIC complained repeatedly to the Commission that the system of annual compensation and nine ad hoc measures, granted to the public service broadcaster RTP by the Portuguese authorities, amounted to illegal State aid. The Commission adopted a decision on part of these complaints in 1996 (see IRIS 1996-10: 8), which was however annulled by the Court of First Instance in 2000 (see IRIS 2000-6: 2). The Commission then decided to open a formal investigation procedure under Article 88(2) EC Treaty in respect of the 9 ad hoc measures (now declared compatible) and, as in the case of Italy, analysed in parallel the system of annual compensation under the procedure for existing aids.

In the case of Spain, complaints of illegal State aid in favour of the public service broadcaster RTVE had been lodged by the private broadcasters Telecinco and Antena 3 in 1992 and 1994. In 1998, the Commission was condemned by the CFI for failing to take a decision in the matter (see IRIS 1998-9: 5). After issuing an information injunction against Spain in 1999 (see IRIS 1999-3: 4), the Commission came to the preliminary conclusion that the financing mechanisms under assessment constitute existing State aid (as the measures in question were introduced prior to the entry of Spain into the European Communities). These public financing measures include "an unlimited State guarantee linked to the legal nature of the public entity of RTVE ". The Commission has concluded that this State guarantee exceeds the net costs for RTVE of providing the public service and that therefore this existing aid measure should be amended.

"Commission decides on public TV financing in Italy and Portugal", Press Release of the European Commission IP/03/1399 of 15 October 2003

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