

European Commission: Investigation of State Aid to the Swedish Digital Terrestrial Television Network

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On 14 July 2004, The European Commission decided to initiate proceedings in accordance with Article 88(2) of the EEC Treaty against the Swedish State regarding state aid in connection with the establishment of digital terrestrial television ("DTT") in Sweden.

In 2000, the Swedish State gave the state owned entity Teracom permission to extend the DTT network to cover the entire country, and in 2003, the State decided that the DTT network should be extended to cover approximately 98-99% of the population. In 2002, the Swedish Government was authorized to issue an interim credit warranty of SEK 2,000 million to the benefit of Teracom, and in 2003, the State granted Teracom a capital injection of SEK 500 million.

A significant part of Teracom's revenues are payments for transmission services from the public service broadcaster Sveriges Television ("SVT"). SVT is primarily financed through compulsory license fees. Since 2002, SVT is required by the Swedish State to use DTT for digital transmissions. Thus, SVT must pay Teracom for both analogue and digital transmissions. In order to compensate SVT for the increased costs for analogue and digital transmissions, a "Distribution Account" - financed by parts of the compulsory license fees paid to SVT and by loans from the Swedish National Debt Office - was launched by the Swedish State in 2002.

In its decision to initiate an investigation, the Commission clarifies that state aid exists where there is an intervention by a Member State or through state funds, which a) gives the recipient an advantage, b) distorts or threatens to distort competition and c) such intervention may affect trade between Member States.

Despite extensive exchange of information between the Swedish State and the Commission, the Commission is not convinced that the Swedish State has not provided state aid to DTT in Sweden. Specifically, the Commission expresses the following concerns:

The loans from the National Debt Office and the payments from SVT to Teracom all constitute state funds, which appear to be used to compensate Teracom with higher amounts from SVT than SVT would have paid to

Teracom under normal market conditions. The overpayment by SVT to Teracom may be an indirect state aid to Teracom.

The issue of the credit warranty to the benefit of

Teracom constitutes state intervention which gives

Teracom an advantage on the market and it is not possible to rule out that the right to issue a credit warranty does not already include state aid.

The granting by the State of the capital injection of

SEK 500 million to Teracom, clearly constitutes transfer of state funds, and the Commission doubts that there is no state aid in the capital injection.

The Commission then concludes that substitutability exists between the use of the DTT and satellite and cable for distribution of digital television, and that the Swedish State's decision to support DTT exclusively, rather than all forms of digital transmissions is contrary to the Commission's Communication on the switchover from analogue to digital transmissions (COM (2003) 541 final) and has led to a distortion of competition. The Commission states that it can be assumed that trade between Member States will be affected.

On a separate note, the Commission questions if the Swedish State has complied with the "Transparency Directive" (Council Directive 80/723, as amended by Council Directive 2000/52/EEC).

Accordingly, the Commission has, based on Article 88(2) of the EEC Treaty, requested that the Swedish State submit its comments and information to the Commission. The Swedish State is reminded that, under Article 88(3) of the EEC Treaty, it must suspend all state aid to DTT. If the Commission finds that the state aid given by the Swedish State to DTT is illegal, Council Regulation 659/1999 requires that all state aid that has been paid must be recovered.

Commission Note for the attention of the Members of the Commission. Monitoring the application of Community law - State Aid NN 35/2004 - Sweden - Introduction of digital terrestrial television C (2004) 2671 final

http://ec.europa.eu/competition/state_aid/cases/140825/140825_614820_119_1.pdf

