European Commission: State Aid for DVB-T in Berlin Brandenburg Illegal

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Following several complaints from cable network operators, the European Commission announced on 9 November 2005 that it considered subsidies worth around EUR 4 million granted by the Medienanstalt Berlin-Brandenburg (Berlin-Brandenburg media authority - mabb) to commercial broadcasters for the use of the digital terrestrial television network (DVB-T) to be in violation of EC law.

Commercial broadcasters including RTL and ProSiebenSat .1 had received a subsidy towards their transmission costs via the DVB-T network launched in November 2002, even though the Commission had not been notified. In return, the broadcasters undertook to use the network operated by T-Systems for at least five years. The Commission decided that the subsidies did not comply with the EC Treaty rules on state aid (Art. 87.1), since they could distort competition. As a result, the subsidies which had not been notified to the Commission but which had already been paid (about half the total) must be paid back by the broadcasters concerned. The Commission particularly based its decision on the fact that the subsidies indirectly favoured the DVB-T network over competing TV platforms, such as cable and satellite. The mabb had therefore disregarded the principle of technological neutrality, which was called for in the Commission's 2003 and 2005 Communications concerning the switchover to digital TV. However, the Commission stressed that it fully supports the transition to digital TV in line with the conditions set out in the aforementioned Communications. State aid was not, in principle, prohibited, but was completely legal if it was used to fund the roll-out of the network in areas with insufficient coverage, for example. Subsidies given to broadcasters to compensate for the additional costs of broadcasting analogue and digital TV in parallel ("simulcast phase") were also allowed, as long as the principle of technological neutrality was respected.

The impact of the Commission's decision extends far beyond the Berlin-Brandenburg area, since similar subsidies have been paid in other German Länder.

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