European Commission: Excessive State Aid to Dutch Public Service Broadcaster Must be Recovered

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The European Commission has ordered the Dutch authorities to recover EUR 76,3 million plus interest from NOS, the umbrella organization of public broadcasters in the Netherlands. An investigation under EC Treaty state aid rules into ad hoc payments to the public broadcasters between 1994 and 2005 showed that the payments exceeded the financial needs of public broadcasters for public service purposes.

The Dutch public broadcasting system consists of 19 public service broadcasters. NOS is both a broadcaster and the coordination and management organization of the individual public service broadcasters. The public broadcasters benefit from several financial sources deriving from state aid. In addition to the regular financing through licence fees, the broadcasters receive ad hoc financing. Both state aid measures are subject to investigation. This decision, however, only concerns the ad hoc aid granted as of 1994.

The Commission decided to start the formal investigation into the ad hoc payments to public broadcasters in 2004. It was launched following complaints from several commercial broadcasters concerning the financing mechanisms of the Dutch public service broadcasters. The Commission assessed the ad hoc financing according to article 86 (2) of the EC Treaty and the principles of the Communication on the application of state aid rules to public service broadcasting (see IRIS 2001-10: 4). Under Article 86(2) of the EC Treaty, state financing of public service broadcasting is authorised, as long as the financing corresponds to the net cost of providing the public service.

The Commission concluded that the broadcasting organizations were overcompensated in the period of 1994 until 2005 for a total of EUR 76.3 million. This overcompensation is not necessary for the fulfilment of the public service task. The Dutch authorities therefore must recover this amount from NOS, since the financial reserves of individual broadcasters, built up by the overcompensation, were transferred to NOS in 2005. The decision is in line with previous Commission decisions on state aid granted to TV2 (Denmark), RAI (Italy), France 2 and 3 (France) and RTP (Portugal). Since 2005, the compensation has been in conformity with the EC Treaty state aid rules. The Dutch authorities have committed themselves to monitoring the reserves of the public service

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broadcasting organizations and to recovering excess amounts if the reserves surpass a certain threshold.

The regular licence fee resources are subject to different rules, because they had been granted prior to the entry into force of the EC Treaty. The regular financing therefore qualifies as existing state aid, of which recovery cannot be ordered. The Dutch authorities and the Commission are attempting to bring the existing state aid into line with the EC Treaty state aid rules. A draft for a new Dutch broadcasting law, the Media Act 2007, is currently being assessed by the Commission's services. The investigation into the regular financing is expected to be completed before the end of 2006.

"State aid: Commission orders Dutch public service broadcaster NOS to pay back EUR 76.3 million excess ad hoc funding", press release of 22 June 2006, IP/06/822

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