[PL] Legality of State Aid for TVP S.A. Questioned

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In February 2008, Poland's largest media group TVN asked the European Commission to examine whether Polish public television TVP S.A. infringes the EC competition rules and benefits from illegal state aid. Due to a dual system of financing of public television, which comprises of licence fees and advertising revenues, the competition on audiovisual market in practice could be distorted because of unjustified weakening of commercial broadcasters.

TVN is of the opinion that, in particular, the legal definition of the public remit is not precise enough: TVP S.A. can finance commercial activity as if this were a public mission; the definition is so wide that in fact every channel with a licence for a general (universal) programme could fulfil it. Moreover, even though TVP S.A established separate accounts for the public service remit and for its commercial activity financing, their insufficient, i.e. not precise enough, principles would allow for an illegal consumption in subsequent years of the non-used (in a given year) public money, which should be returned to the State Treasury. This money could also be used to compensate for losses incurred by commercial activity. According to experts, between the years 2000 and 2006, TVP received over PLN 600 million (around EUR 175 million) which, according to EC regulations, should be considered an unlawful public aid.

Allegedly the realisation of the public mission by TVP S.A. is not sufficiently monitored due to the fact that the Programme Council of the public television is only of an advisory character (it only adopts resolutions) and the National Broadcasting Council (NBC) does not supervise this issue, limiting itself to the monitoring of statistical data, “the number of hours certain type of programmes were broadcast for the annual report”. TVN recognises the free access of TVP S.A. to programme archives as being illegal, and as constituting discrimination towards private broadcasters regarding access to them.

TVP S.A. refutes all accusations and points out that public media financing in Poland was subject to an EC questioning in 2006. In March 2007, the NBC, the Ministry of Culture and the President of the Office of Competition and Consumer Protection explained that the dual system of financing of public media, which has existed since the early 90s, was not contrary to EU standards. The levels of financing were comparably lower than in Western European states and the definition of the public remit was sufficiently precise and compatible with similar

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definitions in other EU countries.

Regarding the controlling/monitoring of the TVP S.A., it stresses the special rights and activities of the NBC and the supervisory boards within this scope. TVP S.A. emphasises that “the TVP archives consisting of programmes produced by TVP during over the 50 years of its existence and their maintainance, including their digitization, is fully financed by TVP. The usage of the TVP archive materials is by no means a form of public aid. TVP shares these materials with other stations, and TVN is one of the broadcasters that makes use of them the most often”.

TVP S.A. is of the opinion that the above mentioned activities of commercial broadcasters confirm that they aim at weakening the position of public media in Poland and in doing so, they would try to involve the European institutions to support them.

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