European Commission: Support for private broadcasters in breach of EU state aid rules

IRIS 2016-8:1/2

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 5 August 2016, the European Commission concluded that a Spanish scheme to compensate terrestrial private broadcasters for carrying out parallel broadcasting during the digitisation of the terrestrial television signal was in breach of EU state aid rules (for related decisions, see IRIS 2014-10/2 and IRIS 2013-7/5). However, as no aid had been granted to date, no recovery was ordered.

The decision arose from a 2011 notification from Spain that it planned to compensate private broadcasters for certain costs associated with the switch from analogue to digital broadcasting. In particular, Spain had imposed a “simulcast" obligation on broadcasters, requiring them to broadcast both analogue and digital signals during the digital switchover transitional period, in order to avoid service disruptions for viewers. The scheme planned to compensate private broadcasters for costs incurred due to this simulcast obligation. However, in 2012, the Commission opened an investigation into the scheme.

In its decision, the Commission first noted that under EU state aid rules, member states may “support the reallocation of radio spectrum and to mitigate its impact on operators”. Moreover, “they can, in particular, offer compensation for costs that operators, in the case of a proven market failure, could not be expected to carry themselves absent the need for the migration. To avoid any undue distortion of competition, such measures must be necessary for reaching the assigned objective. The aid granted needs to be proportionate to the goals and the measure must be technologically neutral.” The Court of Justice confirmed the principle of technological neutrality in the Mediaset case T-177/07 (see IRIS 2011-8/4).

However, the Commission found that “Spain's support for the transition from analogue to digital TV broadcasting was offered only to digital terrestrial broadcasters to the detriment of alternative platforms, such as satellite, cable or IPTV (TV over Internet Protocol)”. The Commission considered that “Spain did not substantiate why the principle of technological neutrality would not be justified in this case. Any exception to this principle would have to be duly justified, for example, on the basis of an ex ante independent study, combined with a market consultation, demonstrating the efficiency of the DTT platform over alternative platforms.” The Commission concluded that the measure selectively favoured terrestrial broadcasters as well as platform operators to the detriment of

© European Audiovisual Observatory (Council of Europe) 2026

broadcasters and operators representing alternative platforms, and thereby distorted competition in the Single Market.

European Commission, "State aid: Commission finds Spain's support for private TV broadcasters in breach of EU rules", 5 August 2016

http://europa.eu/rapid/press-release_IP-16-2741_en.htm

European Commission, Compensation of costs for the liberation of the first digital dividend in Spain, SA.32619, 5 August 2016

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32619

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026