

Public Service Broadcasting and The Contradictions of European Competition Policy

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Regulatory Contradictions

- The Promotion of the General Economic Interest versus the Allocation of State Aid
- The Delivery of a Universal Service in Broadcast Programmes versus a Free market in Electronic Communications Networks
- The Cost for the Consumer to access On-Demand Services financed by State-aid

Amsterdam Treaty

- Article 16: Introduces Service of General Economic Interest (SGEI)
- Protocol allows use of State Aid for Public Service Broadcasters
- Commission's Communications on State aid for PSB of 2001 replaced in 2009)
negotiate the contradiction

SGEI (i)

- Clearly defined by Member State
- Explicitly entrusted with provision of service
- Bar on State aid must obstruct performance of particular task
- Exemption from rules must not adversely affect development of EU trade

State Aid Rules

- The Effect, not the Purpose, is decisive
- *Not liable* to affect trade between States
- *Not confer* advantage on beneficiary
- *Not distort* competition
- Notably: (a) acquisition and sale of programme rights at international level
- (b) Cross-border sale of advertising time
- (c) Cross-border ownership

SGEI (ii) post *Altmark*

- Beneficiary to have clearly defined public service obligations
- Amount to be calculated in advance in a transparent manner
- Compensation not to exceed all or part of costs involved
- Costs to be determined on basis of a typical undertaking

2009 Communication on State Aid to Public Service Broadcasting

- Official Definition of Public Service Remit
- Official Entrustment and Supervision
- Explicit Public Funding Arrangements
- Transparent Assessment and financial control of State aid
- Freedom to Diversify onto other Digital Platforms
- Only Proportionate Effects on Non-psb Remit

Universal Service and Electronic Communications Networks (i)

- Universal Service can be very expensive [cf. BBC 1970]
- 2002 Directives on Electronic Communications
- (a) Framework; (b) Authorisation (c) Access
- (d) Universal Service and User's Rights
- Initial Benefits to P. S. Broadcasters ... but

Universal Service and Electronic Communications Networks (ii)

- Networks are normally larger than Public Service Broadcasters
- Broadcasts are only one category of electronic signal carried by Broadband and NGA Networks
- Seller's market is becoming a buyer's market
- Commission's 2009 Guidelines for State aid for Broadband and NGA Networks are different from those for State aid to Public Service Broadcasters
- They constitute a different "balancing act" between the allocation of State aid and the free market in electronic communications networks

State Aid and Electronic Communications Networks (i)

- Is aid aimed at a well-defined objective of common interest – i.e. does it address market failure or another objective? [?includes universal service]
- Are the distortions of competition and the effect on trade limited, so that the overall balance will be positive?
- Is the aid well-designed to deliver the objective of common interest? More specifically,
 - Are there other better-placed instruments?
 - Will the proposed measure provide an incentive for undertakings to change their behaviour?
 - Could the same change in behaviour be obtained with less aid?

State Aid and Electronic Communications Networks (ii)

- Guidelines require more detailed investigation into individual competitive situation
- “White areas” – rural and underserved; State aid promotes territorial, social and economic cohesion & addresses market failures
- “Black areas” - at least two broadband network providers are competing – State aid refused
- “Grey areas” – monopoly provider – will State aid distort market dynamics?

State Aid and Electronic Communications Networks (iii)

- What is level of broadband prices and what type of services are offered?
- Will access conditions available to third parties promote competition?
- Will entry barriers preclude access by other electronic communication operators?
- Can national regulatory, or competition, authorities overcome any problems?

Policy Questions

- Will public service broadcasts be one of the categories of service which have to be provided by competing networks?
- Will the price which consumers have to pay for them be competitive?
- What will be the competitive relations in network delivery between State-aided broadcasts and the carriage of on-demand services?

Commission's Exemptions as SGEIs (2005 Decision and Framework)

- Turnover < 100million Euros; State aid < 30 millions Euros
- Hospitals and Social Housing
- Air or sea links to islands <300,000 passengers per annum
- Airports (< 1 million passengers) or ports (< 300,000) BUT NOT land transport
- BUT NOT broadcast fee-funded broadcasting

On-Demand Services (i)

- Universal Service, including Off-air Recording, being augmented by On-demand Services
- In 2009, Europe had 696 VoD Services from 366 Companies
- One third from TV Companies, who are offering 241 "Catch-up" Services
- Storage moves from consumer to broadcaster
- Payment for carriage moves from broadcaster to consumer

On-Demand Services (ii)

- Freely available (even to non-payers of broadcasting fee)
- Freely available, but funded by advertising or sponsorship
- Paid for on a subscription basis (cable or satellite services)
- Paid for on a Pay-per-view basis but,

On-Demand Services (iii)

- Users have to pay to access all categories of service (including “free” services)
- Additional State-aid may be available for networks in “white areas” or some “grey areas”
- What from should this new aid take?

Conclusions

- Public Service Broadcasters are not SGEIs and have to obey State-aid rules.
- Public Service Broadcasters may use other Digital Platforms to fulfil Official Mission
- But provision of Universal Service has to be compatible with (different) competitive rules for State aid to Broadband and NGA Networks
- New On-demand Services require Consumers to pay the Access Costs
- How do we fund secondary State aid?