

State aid – thematic areas (II): public broadcasting, broadband networks and audiovisual production

Arianna Podesta

DG COMP.A5

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Legal Bases

- Communication from the Commission on the application of State aid rules to public service broadcasting (2009/C 257/01)
- Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)
- Communication from the Commission on State aid for films and other audiovisual works (2013/C 332/01)

Public service broadcasting - General principles

- **Member States' freedom to organise public service broadcasting and its financing** ("Amsterdam Protocol")
subject to limited control by the Commission of manifest errors in public service definition and undue distortions of competition
- **Compatibility criteria for State financing (Art. 106 (2) TFEU):**
 - Service in question must be a "service of general economic interest" and clearly defined ("definition")
 - Undertaking concerned must be explicitly entrusted with the provision of this service ("entrustment")
 - Limitation of State aid to what is necessary for the fulfilment of the public service task ("proportionality")

Public service broadcasting - Criteria

“Definition”:

- Wide definition including balanced and varied programming acceptable
- Need for a precise definition of public service tasks and predictability for other market players

“Entrustment” and control:

- Monitoring of compliance with public service obligations

“Proportionality”

- PSB may perform purely commercial activities such as advertisement or sale of programmes, but these activities should not benefit from State financing and thus requirement to keep separate accounts
- Safeguards against cross-subsidisation into commercial activities (no overcompensation, exceptions)
- Safeguards against market distortions e.g. undercutting of prices on the advertisement market



Public service broadcasting – *Ex ante* market test for new services

Member States shall consider, by means of a prior evaluation procedure based on an open public consultation, whether **significant new audiovisual** services envisaged by public service broadcasters meet the requirements of the Amsterdam Protocol, i.e. whether they serve the democratic, social and cultural needs of the society, while duly taking into account its potential effects on trading conditions and competition.



Broadband - Why is State aid control needed?

- Ensure a level playing field for all operators
- Not to jeopardize/crowd out existing investment of operators
- Avoid the creation of local monopolies with the help of public funds
- Inject competition to areas where it was not present before
- Avoid picking the winner operators
- Avoid favouring certain technology platforms
- Accelerating the roll-out of broadband (in particular NGA) networks



Broadband – Aid?

Public funding of infrastructure that is not meant to be commercially exploited excluded from application of the State aid rules

- Building of its own public-sector network to satisfy needs for internet connectivity (the infrastructure cannot be commercially used; beneficiaries do not exercise an economic activity) = **no aid**
- BUT network opened for the use of broadband operators = **aid**

SGEI in the broadband sector

- Market failure
- Universal connectivity(residential and businesses)
- Open wholesale access to the infrastructure on a non-discriminatory basis
- Only passive, neutral and open infrastructure offering all possible forms of network access and allowing effective competition at retail level, ensuring the provision of competitive and affordable services to end-users
- Only wholesale services (retail services excluded)
- No exclusive or special right awarded to the SGEI provider
- Compensation calculation => principle of the SGEI package

Broadband - Communication

- **Digital Agenda targets:** Reinforcement of technological neutrality, step change to connectivity, ultra-fast broadband networks
- **The role of the National Regulatory Authority:** Reinforced role and clarifications, different levels of contribution to State aid measures, Member States are encouraged to provide a formal mandate (where needed) and resources

Broadband - Compatibility

- **Coverage mapping**: Detailed mapping and coverage analysis, consultation with operators to identify geographic areas covered by the measure
- **Competitive selection process** selecting the most economically advantageous offer to limit aid, to respect equal treatment of candidates and to leave the market to come up with the best solution
- **Technological neutrality** not to favour any technology or service provider
- **Use of existing infrastructure** to avoid unnecessary duplication of resources
- **Open wholesale access** to enhance competition and provide more choice for end-users
- **Price benchmarking** to avoid excessive/ predatory pricing
- **Monitoring and claw-back mechanism** to avoid over-compensation to minimise the amount of aid ex post

Audiovisual - Criteria

- Cultural product: aid can only go to works that have passed a cultural test
- Limits to territorial spending: Member States can tie the aid award to expenses on their territory within the following limits:
 - at eligibility step: max 50% of the production budget
 - at granting step:
 - For direct subsidies: max 160% of the aid award, representing max 80% of the budget
 - For aid calculated on the basis of local spending: max 80% of the budget can be used for calculating the aid

Audiovisual - Criteria

- Aid intensities max 50%, with exceptions:
 - Preproduction: up to 100%
 - Difficult work (low budget, 1st film, etc.): up to 100%
- No aid for specific production activities (i.e. post-production)
- Transparency: obligation to publish the aid awards

Audiovisual (videogames) - Criteria

- Absence of discriminatory provisions
- Absence of territorial spending conditions
- Cultural test
- Limited aid intensities
- ...and any DATA proving the support is necessary, adequate and proportional, with limited impact on trade



Thank you for your attention!

