STATE AIDS (BROADCASTING): COMMISSION GUIDELINES

Subject: State aids

Industry: Broadcasting; public service broadcasting

Source: Commission Statement IP/01/1429, dated 17 October 2001; also the *Communication on the application of State Aid rules to Public Service Broadcasting*, which will be published on the Internet pages of the Commission's Directorate General for Competition as soon as the legal and linguistic revisions of the text have been completed (http://europa.eu.int/comm/competition).

(Note. One of the odd features of the State Aid regime of the European Communities is that, while it is quite properly designed to protect competition from unfair subsidy, it is full of exceptions. One of the most recent exceptions was included in the Treaty amending the Treaty on European Union, often known as the Amsterdam Treaty, which came into force in May, 1999. This Treaty has a Protocol designed to keep public service broadcasting largely outside the rules on State Aids, though it is worded in such a way as to create some uncertainty about how it should be applied. The Commission's initiative in producing guidelines is to be applauded. As the last paragraph of the Commission's statement shows, there are several pending cases in this field; and some of them have arisen precisely because competing broadcasters, who do not receive state aids themselves, have complained about the resulting distortions of competition.)

The Commission has adopted in principle a Communication which explains how State aid rules are applied to the funding of public service broadcasters. The Communication, which is still to be formally adopted in the Community languages, makes it clear that Member States are in principle free to define the extent of the public service and the way it is financed and organised, according to their preferences, history and needs. The Commission, however, calls for transparency on these aspects in order to assess the proportionality of State funding and to control possible abusive practices. Member States are asked whenever this is lacking to establish a precise definition of the public service remit, to entrust it formally to one or more operators through an official act and to have in place an appropriate authority monitoring its implementation. The Commission will intervene in cases where a distortion of competition arising from the aid cannot be justified by reference to the need both to perform the public service as defined by the Member State and to provide for its funding.

The "Amsterdam Protocol"

The Commission is currently investigating several complaints from private operators concerning State financing of public broadcasters. To take into account recent developments (such as the so-called Amsterdam Protocol on public service

broadcasting, the new Commission Communication on services of general interest and the amended Transparency Directive), treat consistently the various cases and provide guidance to public authorities and operators, the Commission has decided to draft a Communication on the application of State aid rules to public service broadcasting.

The Communication adopts the following approach. The Commission recognises the particular role of public service broadcasting as acknowledged by the Protocol to the Amsterdam Treaty in the promotion of democratic, social and cultural needs of each society. The Commission is responsible for the control of State aids. Public broadcasting can be defined as a service of general interest, but its funding by state resources in general remains a form of State aid. This means that, while Member States are responsible for the definition and choice of methods of funding the public service, the Commission continues to have a duty to check abusive practices and possible cases of over-compensation.

Member States are free to define a broad programme spectrum as a public service remit. In other words, the public remit can be defined as providing the public with a balanced and varied programming which also includes, for instance, entertainment and sport. This means that no objections will be raised to the nature of the programmes included in the public remit. The definition of the public service remit, however, could not extend to activities that could not be reasonably considered to meet in the wording of the Protocol the "democratic, social and cultural needs of each society".

Proposed conditions for compliance

The Commission will seek compliance with the following three conditions:
- the establishment of a clear and precise definition of public service in broadcasting (whatever its content);
- the formal authorization, by means of an official act, of one or more undertakings to carry out the public service mission. (It is also necessary that the public service should be actually supplied in accordance with the formal authorization.. To this end, it is desirable for a body or authority appointed by the Member State and independent of the authorized undertaking(s) to monitor its performance; and
- the limitation of public funding to what is necessary for the performance of the public service mission (the principle of proportionality).

These conditions are based on Article 86 of the EC Treaty, which states that the application of the competition rules of the Treaty - in this case, the ban on State aid, - may be limited if it obstructed the performance of the public service. This approach is fully consistent with the provisions of the Amsterdam Protocol , which refers to the "public service remit as conferred, defined and organised by each Member State" and provides an exception to Treaty rules for funding public service broadcasting "in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit...and ...does not affect trading conditions and competition in the Community to an extent which would

be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account").

In carrying out the proportionality test, the Commission will consider whether any distortion of competition arising from state aid can or cannot be justified by reference to the need both to perform the public service as defined by the Member State and to provide for its funding. When necessary, the Commission will also take action in the light of other Treaty provisions.

The question of transparency

Finally, the Communication recalls that public service broadcasters, in so far as they are beneficiaries of State aid and are also active in non-public service activities, are subject to the transparency requirements indicated in the so-called "Transparency Directive". The Directive imposes the separation of accounts between public service and non-public service activities: the present Communication specifies the criteria to be followed by broadcasting operators.

The Commission has opened formal State aid procedures regarding public service broadcasting in Italy and France and will soon decide on cases concerning Spain and Portugal. (The circumstances of the Portuguese case are set out in the next report.) The Commission also received notifications of aid from the United Kingdom and from Belgium and is examining complaints concerning the funding of public broadcasting in Greece, Ireland, Austria, Denmark and Sweden. ■

Formula One: the FIA Case

The Commission has informed the four-wheel motor sports regulator, the Fédération Internationale d'Automobile (FIA), and the Formula One companies that it has closed the various anti-trust investigations into certain regulations and commercial arrangements involving that sport. The investigation of the FIA regulations and commercial agreements relating to the FIA Formula One Championship came about following voluntary notifications in 1994 and 1997 requesting clearance from European competition rules. The Commission objected to certain of the rules in 1999 on the grounds that FIA had abused its power by putting unnecessary restrictions on promoters, circuit owners, vehicle manufacturers and drivers as well as to certain provisions in the commercial agreements with television broadcasters. However, the FIA agreed to modify its rules to ensure that its role would be limited to that of a sports regulator, with no commercial conflicts of interest; its rules would not be used to prevent or impede new competitions unless justified on grounds related to the safe, fair or orderly conduct of motor sport; and it has sold all its rights in the FIA Formula One World Championship.

Source: Commission Statement IP/01/1523, dated 30 October 2001