STATE AIDS (BROADCASTING): THE RTP CASE

Subject: State aids

Industry: Broadcasting; public service broadcasting

Source: Commission Statement IP/01/1573, dated 13 November 2001

(Note. This report illustrates some of the points made in the preceding report, on the Commission's guidelines for State Aids to public service broadcasting. It is a case in which the independent broadcasters have complained about the special treatment given to the public service broadcaster RTP and is likely to turn on the question of proportionality: that is, whether the amount of state aid granted to RTP is in a reasonable proportion to the special needs of public service broadcasting. The Commission's action in this case follows a critical judgment by the Court of First Instance.)

The Commission has decided to open the formal State aid investigation procedure of Article 88(2) of the EC Treaty on a number of ad hoc measures granted in favour of the Portuguese public broadcaster RTP. The investigation does not address the aid granted to RTP in the form of annual compensation indemnities, as the Commission is not yet in a position to conclude whether the indemnities can be considered as "existing aid" within the meaning of Article 88(1) of the Treaty. As to the ad hoc measures specified below, the Commission has opened the investigation as it has doubts whether or not the Portuguese State over-compensated the reimbursable public service costs of RTP in 1992-1998 by an amount of € 83.6 million.

Complaints by private broadcaster

The Commission received three complaints (in 1993, 1996 and 1997) from the private Portuguese broadcaster Sociedade Independente de Comunicação SA (SIC), alleging that state aid incompatible with the common market had been granted to the public broadcaster Radio Televisão Portuguesa SA (RTP) in the form of annual compensation payments and ad hoc measures. On 7 November 1996 the Commission took a decision on the first and part of the second complaint and concluded that no state aid was present. Following an appeal by SIC, on 10 May 2000 the Court or First Instance annulled the Commission's decision (Case T- 46/97). According to the Court, the Commission was not in a position, at the time when the initial examination was concluded, to establish whether or not the measures constituted state aid and that it was therefore under a duty to initiate the formal investigation procedure.

In view of the judgment, the Commission has now decided to initiate the formal investigation procedure on tax exemptions, payment facilities for use of the television broadcasting network and the rescheduling of debt arising from failure to pay social security contributions, together with waiver of interest for late

payment. The Commission has also decided to initiate a formal State aid probe on the ad hoc measures indicated by SIC in their complaint of 1996 concerning an increase in social capital in 1994, a bond issue accompanied by a State guarantee, a protocol to support cinema and a restructuring plan for 1996-2000. In addition, the Commission will look into capital increases in 1994-1997, as well as loans granted in 1997 and 1998, after a preliminary examination of the information supplied by the Portuguese authorities on the third complaint brought forward by SIC in 1997.

At the present stage the compensation measures granted by the Portuguese authorities seem to be disproportionate to the public service costs as calculated by RTP in their public service reports. The Commission will publish a summary of the decision in the Official Journal of the European Communities. Portugal and any interested parties will have one month to submit their comments.

Public Broadcasting in Portugal

RTP was incorporated in 1955. It launched its first television channel in March 1957 and its second in December 1968. Under the 1976 Constitution television fell under a state monopoly and the Constitution imposed upon the State the responsibility to ensure the existence and operation of a public television service. In 1989 private operators were given access to the television sector. While private Portuguese television channels are financed exclusively by advertising revenues, RTP receives in addition to such revenues public financing, granted annually in connection with its public service obligations. The public service obligations of RTP are laid down in subsequent laws and contracts. Law 58/90 of 7 September 1990 confirms the basic regime for both public and private television broadcasting and grants the public service concession to RTP for a period of 15 years. Law 21/92 imposes a concession contract to be concluded between the State and RTP. On 17 March 1993 a Public Service Contract was signed between the Portuguese government and RTP. On 31 December 1996 a new Public Service Contract was concluded. ■

French Tax Relief and the ECSC Treaty

A reminder that the ECSC Treaty is still alive and has its own competition rules, five years older that the rules of competition under the EC Treaty, is to be found in a recent decision by the Commission that a French scheme for granting tax aid in the form of tax exemptions for setting up branches abroad was incompatible with the ECSC Treaty. None of the exemptions provided for in the Steel Aid Code (that is, aid for research and development, for environmental protection or for closures) was applicable.

Source: Commission Statement IP/01/1627, dated 21 November 2001