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AER Association Européenne des Radios

Safeguarding the Future of the European Audiovisual Market

A White Paper on the Financing and Regulation of Publicly Funded Broadcasters

March 2004

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FOREWORD

Safeguarding the Future of the European Audiovisual Market: The Financing and Regulation of Publicly Funded Broadcasters was prepared by The Association of Commercial Television in Europe (**ACT**), Association Européenne des Radios (**AER**) and the European Publishers Council (**EPC**) on behalf of their members to both highlight the impact of unfair competition and under-regulation on the sector and propose solutions in the interests of all stakeholders.

The arguments are supported by a market-by-market analysis undertaken by OC&C Strategy Consultants and evidence provided by local broadcasters and publishers.

This White Paper highlights generous State Aid funding, interventions in the advertising market which distort competition, vague programming remits and unchecked expansion into new television and internet markets within Member States. Parallel issues impact the Audiovisual marketplace in many of the accession states. Given the limited availability of quantitative data from the ten countries selected to join the EU in 2004, the analysis herein is focused on the 15 current Member States.

As of the date of publication, ACT, AER and EPC members include:

The Association of Commercial Television in Europe	Association Européenne des Radios	European Publishers Council
Antena 3, Spain	AERC – Asociación Española de Radiodifusión Comercial, Spain	Agora, Poland
Antenna TV, Greece	APR – Associação Portuguesa de Radiodifusão, Portugal	Axel Springer Verlag, Germany
BSkyB, UK	ARCA - Associatia Romana de Comunicatii Audiovizuale, Romania	Bonnier Group, Sweden
Canal+, France	EIRA – Athens Independent Radio Station Association, Greece	Burda Media, Germany
DSF, Germany	CRCA – Commercial Radio Companies Association, UK	Daily Mail and General Trust, UK
ITV, UK	KOMM – Foreningen Af Kommercielle Lokal Radio & TV-Stationer, Denmark	De Persgroep, Belgium
M6, France	NVCR - Nederlandse Vereniging voor Commerciele Radios, The Netherlands	De Telegraaf, Netherlands
Mediaset, Italy	RNA – Radio Nazionali Associate, Italy	Der Standard, Austria
Mega Channel, Greece	RU – Radioutgivareföreningen, Sweden	Egmont Group, Denmark
MTV-Oy, Finland	SRL – Suomen Radioiden Liitto Srl Ry, Finland	Editoriale L'Espresso, Italy
Premiere, Germany	SRGP – Syndicat des Radios Généralistes Privées, France	Financial Times Group, UK
ProSieben, Germany	SRN – Syndicat des Réseaux Radiophoniques Nationaux, France	Gruner + Jahr, Germany
RTL Group, Luxembourg	VPRT – Verband Privater Rundfunk und Telekommunikation e.V., Germany	Grupo Prisa, Spain
Sat 1, Germany	VSP / ASRP – Verband Schweizer Privatradios / Association Suisse des Radios Privées, Switzerland	Hachette Filipacchi Medias, France
Sky Italia, Italy		Impresa, Portugal
Sogecable, Spain		Independent Newspapers PLC, Ireland
Telecinco, Spain		Lambrakis Publishing Group, Greece
TV 3, Ireland		News International, UK
TV 4, Sweden		Reed Elsevier, UK
Vlaamse Media Maatschappij, Belgium		Ringier, Switzerland
		Rizzoli Corriere della Sera, Italy
		SanomaWSOY Corporation, Finland
		Schibsted, Norway
		Société Ouest-France S.A., France
		Telegraph Group Ltd, UK
		Trinity Mirror plc, UK
		Verlagsgruppe Georg von Holtzbrinck GmbH, Germany
		Vocento, Spain

CHAPTER 1 • SUMMARY

The Association of Commercial Television in Europe (**ACT**), Association Européenne des Radios (**AER**) and the European Publishers Council (**EPC**) wholeheartedly support the co-existence of public and private broadcasting in Europe but believe that the system has become unbalanced and is in need of urgent reform.

Years of over-funding and under-regulation of Publicly Funded Broadcasters (**PFBs**) – incumbent TV and radio broadcasters with public service remits funded either wholly through State Aid or through a combination of State Aid and commercial revenues including advertising – has undermined the competitiveness of the television and radio industries as well as adversely affecting the related sectors of multi-channel television, TV programme production, press and internet content.

The result is an unprecedented level of market distortion in a liberalised market which is undermining the very foundation of Europe's unique system of incumbent, Publicly Funded (or part publicly-funded) Broadcasters operating alongside private broadcasters.

Publicly Funded Broadcasters received State Aid equalling a massive €15 billion in 2001 (more than €82.2 billion between 1996-2001). The magnitude of this subsidy effectively makes Publicly Funded Broadcasting the third most subsidised 'industry' in Europe. At the same time that State Aid to Publicly Funded Broadcasters has been increased, competition continues to be undermined by a lack of regulatory rigour that guarantees fair competition as well as prolonged Commission inaction despite numerous Court judgements in the area.

Unfair competition manifests itself in PFB behaviour including:

- Misusing their strong and often leading positions across Europe in the audience and revenue markets;
- Fostering a growing discrepancy between the mission statements and the actual activities of Europe's Publicly Funded Broadcasters;
- Distorting competition in both the output and input markets for television and radio as well as the related markets of multi-channel television, niche radio provision, television programme production, internet content and the press;
- Capturing commercial revenues in addition to State Aid outside the context of Article 86 of the Treaty as applied to other liberalised sectors;
- Increasing confusion in the limits of their mission statements and their actual activities.

At stake are the interests of key stakeholders in the European Audiovisual industry including governments, Publicly Funded Broadcasters themselves, private media owners, advertisers and, most importantly, viewers, listeners, users and readers.

Despite precedents established in other liberalised sectors where a public service sector has been maintained and multiple condemnations from the ECFI, neither the Commission - by applying Articles 87 and 86.2 of the EU Treaty - nor Member States have acted properly to enhance the competitiveness of Europe's Audiovisual market.

- The Commission has acted only belatedly and partially on some of the 11 formal complaints filed against Publicly Funded Broadcasters since 1992, even after unprecedented successive condemnations by the European Court of First Instance;
- The Commission has yet to demonstrate that it is applying the methodology required by the recent Court decision in the Altmark case to its decisions on broadcasting by allowing public funding which does not fulfill the requirement imposed by the court to be maintained under article 86.2 of the EU Treaty[1].

Specifically, ACT, AER and EPC contend that Publicly Funded Broadcasters have benefited and will continue to benefit from:

- Massive State Aid totalling €15 billion in 2001 and €82.2 billion between 1996-2001 (growing at a 5.6% CAGR) making it the third largest recipient of State Aid since 1998 – more than State Aid to Agriculture[2];
- Forecast growth in State Aid to European Publicly Funded Broadcasters of 4.8%, more than 20% ahead of forecast EU GDP growth, over the period 2001 to 2004[3];

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1 According to the jurisprudence of the Court, successive rulings about public service compensation have established an overall interpretation of both Articles 87 and 86.2. The conditions set out in Altmark are similar to those that the Court has repeatedly established to apply Article 86.2 - and therefore public funding which qualifies as State Aid under Altmarket cannot qualify for an exemption under Article 82.6.

2 Ninth Survey on State Aid in the European Union, COM 2001 403 Final, http://europa.eu.int/eurlex/en/com/cnc/2001/com2001_0403en01.pdf; European Audiovisual Observatory database

- The absence of truly independent regulation – where a number of PFBs regulate themselves rather than through independent regulation as set out in the Commission's Communication on the application of State Aid rules to Public Service Broadcasting[4].

While the Commission recently began acting on some of the outstanding formal complaints, serious issues remain with respect to the speed and the consistency with which Member States are acting. The result is a wide variety of competitive conditionings across Member States. What's more, there appear to be similar issues of market distortion and unfair competition in some of the countries scheduled to join the EU in 2004.

While ACT, AER and EPC support public service broadcasting, we do not support activities which distort markets or run contrary to the letter and the spirit of the Treaty. We believe that massive amounts of State Aid combined with inappropriate regulation affect trading conditions and competition within Member States in a way that is contrary to the common interest.

The authors accept that PFBs distort markets by their very existence. This White Paper, however, shows that Publicly Funded Broadcasters who collect advertising in addition to State Aid distort markets in excess of what is acceptable and, fundamentally is contrary to the public interest.

We, therefore, call on Member States with Publicly Funded Broadcasters who collect advertising in addition to State Aid to initiate the process of migration to a single funded model for public broadcasters.

We also call on Member States to implement correctly and in an impartial manner the existing competition provisions of the EU Treaty including provisions of Articles 86.2 and 87 to the public broadcasting sector, as they have been applied to other sectors with a significant element of public service.

With clearly defined remits (subject to proper scrutiny) and a relevant regulatory framework, single funded PFBs can provide distinctive programming, retain their audience share and support fair and open liberalised markets.

Unfortunately, a lack of political will, unimaginable in other sectors, has and continues to undermine the European Audiovisual market across Europe.

Left unchecked, this could put the future of a vibrant, pluralistic European Audiovisual industry at risk, and call into question the credibility of the Commission as a champion for free markets and fair competition.

The time to act is now.

3 EC Autumn 2003 Forecast http://europa.eu.int/comm/economy_finance/publications/european_economy/2003/ee503en.pdf; OC&C analysis

4 EC 320/11 Communication of the Commission on the Application of the State Aid Rules to Public Service Broadcasting, 15 November 2001

Chapter 2 • Historic and Legal Background

To understand how the Audiovisual marketplace evolved to a point where unfair competition threatens the industry's vibrancy and plurality requires a look back at the origins of radio.

Technological, economic and political considerations in the 1920s/30s – including limited bandwidth and immature advertising markets – led to the establishment of national monopoly radio operators in many European countries. After the Second World War, most of Europe adopted this approach with state chartered radio broadcasters the rule.

While the development of television provided Member States with the opportunity to promote liberalisation and adopt free market mechanisms, most chose to extend the familiar radio model to this new medium. Even though many of the technical and market factors underpinning the historic rationale for State chartered television broadcasters had changed and, indeed, the radio market had itself been liberalised, Member States, for the most part, maintained monopoly, State chartered television broadcasters into the 1970s / early 1980s.

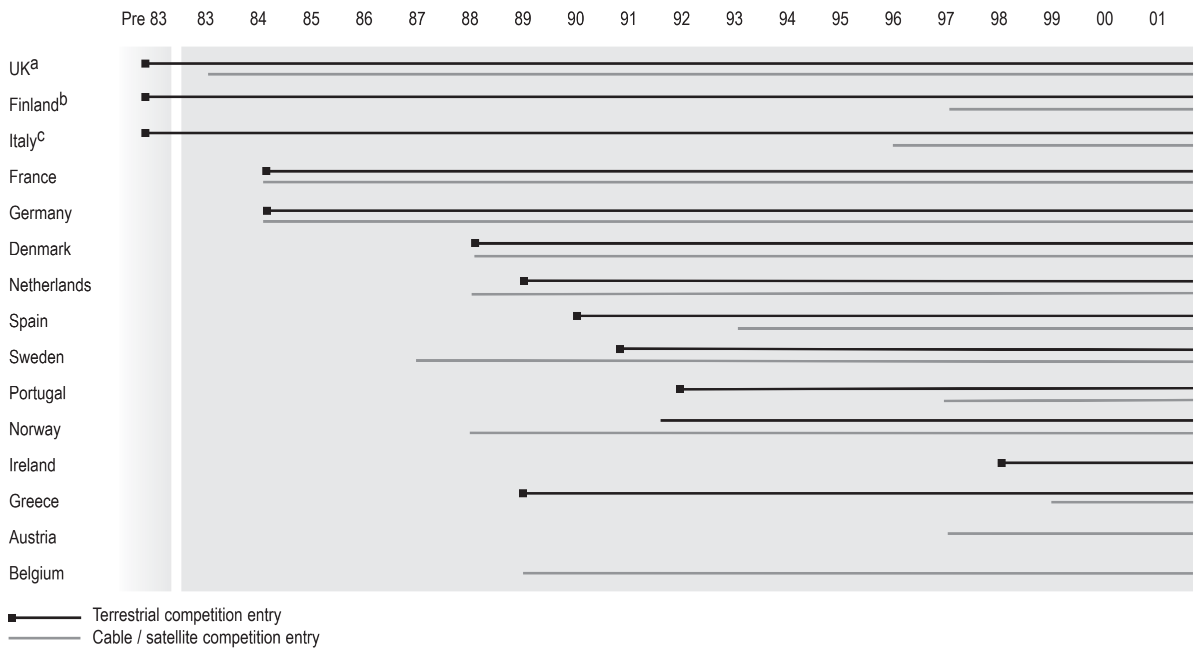
Eventually, as with radio, TV was at least formally opened-up to competition with new, private operators in place across most of Europe by the late 1980s[5]. However, unlike the telecom and electricity sectors (most likely due to the specific market structure and political sensitivity of TV broadcasting), the European Union failed to provide a single, comprehensive legal framework to facilitate competition and safeguard new entrants into broadcast TV.

As competition from private broadcasters, funded entirely by commercial revenues, began to erode their monopoly market share positions, many Publicly Funded Broadcasters began to react often imitating the tactics of commercial broadcasters with respect to programming and revenue generation, thereby losing focus on their public service missions.

Since 1992 and the TV Without Frontiers Directive: Formal Complaints From Private TV Broadcasters Grow

And yet, due to the sensitivities surrounding broadcasting, in 1989, the Commission did not act when it enacted its first major piece of television legislation – the TV Without Frontiers Directive (**TVWF**). While the intention of TVWF was to grow the sector by fostering competition and facilitating cross-border retransmission of national TV channels, it did not, in contrast to legislation in other

Figure A Market Entry of Commercial Players in European Television



a. UK: ITV entry 1955
b. Finland: MTV entry in 1957
c. Italy: TMC entry in 1974
Source: OC&C analysis

5 With the exceptions of the UK, Finland and Luxemburg

liberalised sectors, provide meaningful support for fair competition or methods of redress for private broadcasters, publishers and radio operators from anti-competitive behaviour by incumbent Publicly Funded Broadcasters. This could have been achieved by establishing common rules as to the definition of the scope of the public broadcasting remit, or, as to the mechanisms Member States could use to confer those public service obligations on specific operators and, if necessary, to provide funding to them. This lack of EU intervention has had the negative consequence of depriving private operators of the means of redress we refer to above.

In other words, the Commission had the opportunity to establish substantive rules deciding which tasks could be considered public service obligations, i.e., the only tasks for which public funding in broadcasting could be granted – as it had for the other liberalised sectors – but chose not to do so.

As unfair competition intensified, private TV broadcasters turned to the Commission, filing formal complaints against particularly egregious examples of unfair competition, such as excessive State Aid, cross subsidy of commercial ventures and over-compensation.

The first formal complaint against a Publicly Funded Broadcaster was filed against illegal funding by Spain (the public 'autonomous' broadcasters, all largely funded by regional government in 1992, followed shortly thereafter by a further complaint against the funding of RTVE, the Spanish state broadcaster in 1993). Since then, at least 11 formal complaints have been filed with the Commission alleging market distortion caused by State Aid, unclear public service missions, the absence of adequate and independent supervision, overcompensation and cross-subsidisation of commercial activities (see *Figure B* below for a summary, a full description of the complaints is available in the Appendix).

Central to these Complaints – most of which remain unresolved – is a clear lack of political will on the part of the Commission and Member States to enforce the Treaty's rules on State Aid to PFBs. The Court jurisprudence on the application of Articles 87.1 and 86.2 of the Treaty to other sectors that encompass both public service and commercial activities would have been sufficiently clear to establish the guidelines we refer to above. Despite the fact that the Commission had used these Treaty powers in other strategic sectors, political pressure seemed to count for more than the Treaty obligations imposed on the Commission.

The 1997 Protocol of Amsterdam

Despite the volume of Complaints, the Commission did not act for quite a while. It took four years after the first complaint was filed against Portugal for the Commission finally to rule. While the initial decision was unfavourable to the private sector (it was later overturned by the Court of First Instance), it apparently raised enough concern among Europe's incumbent Publicly Funded Broadcasters about the potential for future Commission judgements to undermine their positions that they organised a concerted lobby within the Intergovernmental Conference that adopted the Amsterdam Treaty.

After a failed first attempt to exempt the public broadcasting sector fully from competition rules, this heavy lobbying exercise from the public broadcasters, with the active participation of some national governments, did result in a Protocol being adopted as an annex to the EC Treaty.

Figure B **PFB Related Complaints Made to the EC (1992-2003)**

Year	Market	Basis of Complaint
1992	Spain	Different forms of illegal State Aid including the authorisation of debt
1993	Spain	Different forms of illegal State Aid including the authorisation of debt
1993	France	Capital increases and other ad hoc subsidies
1993	Portugal	Grants that distorted competition
1996	Portugal	New State Aid, capital increase and guarantees
1997	Portugal	Incompatible State Aid
1996	Italy	Combination of licence fee as well as tax exemptions, capital increases and other measures
1997	Germany	Launch of two thematic channels
1997	UK	Use of licence fee money to finance a restricted access cable offering
1999	UK	Unlawful State Aid for internet activities
1999	Ireland	Dual-funding mechanism
2000	Denmark	Excess funding, reduction of advertising prices
2002	Netherlands	Unclear public service remit, the absence of adequate and independent supervision and the lack of transparency and structural overcompensation.
2003	Germany	Breaches in competition law by benefiting from hidden State Aid, financing online ventures with revenue from the licence fee, distortion of premium sports rights and inadequate implementation of the Financial Transparency Directive

This Protocol maintains the status quo as to the full application of the competition rules (including the State Aid provisions) to the public broadcasting sector. But it restricts the power of the Commission to liberalise the broadcasting sector, (as it had used its sole Treaty powers to do in the telecoms sector, for instance) for example, by defining at the European level within a general legal instrument, which programmes and activities can or cannot be considered 'public service' or establishing the methods and limits that Member States may use to finance those operators entrusted with those public service obligations.

The result, the 1997 Protocol of Amsterdam:

- Acknowledges that the system of public broadcasting in Member States is directly related to the democratic, social and cultural needs of each society;
- Affirms the need to preserve media pluralism;
- Confirms that the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State;
- Confirms that such funding should not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest;
- Asserts that the remit of that public service shall be taken into account when considering whether or not the funding affects trading conditions and competition.

In other words, as regards the application of the State Aid rules (including the exemption in article 86.2 of the Treaty) to the public funding of public broadcasters, the Protocol does not change anything.

Those rules should be applied to the broadcasting sector exactly as they are applied by the Commission and the Court to other sectors which also include some public services activities (telecom, postal, energy, transport, etc). Nothing had changed except the power of the Commission itself to use article 86.3 to liberalise and harmonise this sector.

European Court of First Instance and DG IV (now DG Competition) Act

At the same time that the Commission delayed acting on the complaints, Member States increased the overall levels of State Aid to incumbent Publicly Funded Broadcasters further amplifying the distortions of competition (see Chapter 3 for details).

In 1998 and 1999, as a result of Commission inaction and ongoing complaints from private television and radio broadcasters as well as internet media companies, the Court of First Instance (CFI) took the unprecedented step of issuing successive condemnations to the Commission for this failure to act. Specifically:

- In 1998, six years after the case was filed, the CFI condemned the Commission for failure to adopt a decision based on two complaints by Telecinco (Spain);
- In 1999, seven years after the complaint was first filed, the CFI condemned the Commission for failure to act on a complaint by TF1 (France).

At the same time, the European Commission attempted to set out in 1998 future Guidelines for action[6] that ultimately led in 2001 to the adoption of the Communication on State Aid to PSB[7].

In a first attempt to comply with the judgment in the Telecinco case, DG IV (now DG Competition) drafted, late in 1998, a first working document, known as the 'Discussion Paper'.

This Discussion Paper was the first draft prepared by DG Competition which would have set out specific guidelines on the application of the State Aid provisions to the broadcasting sector, including the rules and restrictions that, in the Commission's opinion, Member States should comply with in order to benefit from the exemption established in article 86.2 of the EC Treaty, as interpreted by the Court. This first draft of guidelines for the broadcasting sector included, among others, these issues:

- The fact that many complaints were levelled at dual funded Publicly Funded Broadcasters which benefited from both State Aid and advertising revenue;
- That different funding options - including unique funding, dual funding and public tender - were available to Member States but that each option presented unique challenges which had to be considered;

6 NB: Although never published, a leaked version of this Paper was widely distributed and formed the basis for the solitary hearing of interested parties on 4 December 1998

7 EC 320/11 Communication of the Commission on the application of the State Aid rules to Public Service Broadcasting, 15 November 2001

- That coherent remits linking funding to proportionate funding were lacking for many Publicly Funded Broadcasters.

However, the great merit of this paper was that DG IV made an effort to identify, in accordance with the Court's jurisprudence[8] and within the scope of its powers, those programmes and services provided both by public and private operators which could be considered as public service (so benefiting from lawful public funding) and those which could in no circumstances be accepted as services of general economic interest in the meaning of article 86.2 of the EC Treaty, i.e., which would not be able to get public funding within the scope of that specific exemption.

Despite the efforts of DG IV to initiate a discussion on State Aid to the Audiovisual sector, the *Discussion Paper* was quickly withdrawn after only one public hearing.

In the face of intense lobby efforts by Publicly Funded Broadcasters and Member States and despite the fact that further hearings and consultations would obviously have been necessary to improve what was only an internal draft, DG IV felt 'obliged' to withdraw the Paper, preferring a strategy of dealing first with the individual pending complaints before drafting general guidelines on this issue.

Meanwhile, in 2000, the CFI annulled the Commission's decision regarding the RTP complaint. The Court found that:

- Grants paid by the State to RTP conferred a financial advantage;

- RTP was present in the advertising market and is therefore in direct competition with other TV operators;

- The Commission's assessment that there was no State Aid was likely to raise serious difficulties;

- The duration of the preliminary examination (3 years) exceeded significantly the normal time for a first examination.

Notwithstanding the Court judgement and condemnations in November 2001, the Commission chose to release general guidelines on the application of the State Aid rules to Public Service Broadcasting instead of acting on the Complaints. Rather than providing a framework to resolve the continuing market distortion or the outstanding Complaints these guidelines fell well short of what had been contained in the 1998 *Discussion Paper*, as the Commission adopted a policy of non-intervention which could be interpreted as permitting Member States to do whatever they want, although there is no doubt that such an interpretation of articles 87.1 and article 86.2 of the EC Treaty would clearly infringe the Court's case-law.

However, the Commission did not give a full 'carte blanche' to the Member States as far as the funding of Public Broadcasting is concerned:

- It stated, for example, that the public service remit should not be manifestly erroneous and should be sufficiently precise and clear;

- It also mentioned the need for transparency and adequate and independent supervision;

- Moreover, the Commission set out in the document that it would carry out a proportionality test on State financing. In order to satisfy this test, the Commission stated that it is necessary that the State Aid does not exceed the net cost of the public service mission, taking into account other direct or indirect revenues derived from the public service mission;

- It also mentioned that there might be market distortions, which are not necessary for the fulfilment of the public service mission.

In the 18 months between the publication of the Communication in November 2001 and the Court's judgment in the Altmark case in July 2003, there was no resolution of any outstanding complaints. Meanwhile, the issues concerning State Aid remained.

The Altmark Case (July 2003): A Turning Point?

In July 2003, the Altmark Case confirmed that state funding that does not fulfil certain conditions qualifies as State Aid under Article 87 of the EC Treaty.

The conclusions of the Court in Altmark are significant as the Court concluded that public funding granted to operators that provided a public service within the meaning of article 86.2 of the EC Treaty did not qualify as State Aid in the meaning of Article 87(1) if four conditions were satisfied:

- First, the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined;

- Second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;

8 Porto di Genova judgment, Case C 179/90, confirmed by GT Link, Case 242/95, 17 July 1997 and by Enirisorse, Cases 34/01 and 38/01, 27 November 2003

- Third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;

- Fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means [...] so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

This judgment is particularly notable as it is expected to form the legal basis for the approach the Commission will take to State Aid cases, as, in an unusual procedure, the Court heard oral arguments from several interested parties.

Altmark has added a condition that the Commission did not refer to in its Communication, being that - in the absence of a public tender procedure - the compensation cannot exceed the costs of a well-run undertaking that is adequately equipped with the means to provide the public service.

This comes very close to, or indeed, is an efficiency test. This condition could be given greater prominence since it could be argued that the costs of an organisation that has a public service should be in line with that of a well-run company in order for funding to escape the qualification as State Aid. If there are indications that a PFB operates on the basis of extraordinary costs not related to those of a well-run company, it may be argued that State Aid within the meaning of Article 87 EC is clearly involved and that the Commission should act against it.

Indeed, the Altmark reasoning has already been followed in the GEMO and Enirisorse judgments (GEMO, Case 126/01, 20 November 2003. Enirisorse, see footnote 8).

Finally, the Commission Begins to Act but is it Enough?

Following the Altmark case, the Commission finally began to take Decisions on the long standing complaints in the broadcasting sector.

However, as of the date of publication, only four of the outstanding cases have been addressed beginning with the Italian and Portuguese cases (October 2003) followed by the French case (December 2003) and the opening of an investigation in the Dutch case (February 2004) as well as an investigation into the Danish case (2003).

On 3 February 2004, the European Commission launched the opening of the investigation in the CLT-UFA HMG case against the Dutch public broadcaster NOS. In addition, there remains concern as to the consistency with which Altmark is being complemented.

Altmark provides the Commission with a clear methodology for considering State Aid matters.

Even when, finally, the Commission began to act, its interpretation of the Altmark case-law does not comply with the Court's doctrine.

Properly applied, Altmark provides the Commission with a clear methodology for considering State Aid matters when applied to the public funding of services of general economic interest. However, the Decisions taken so far in the broadcasting sector suggest that, rather than use Altmark to provide a single, combined interpretation of both articles 87.1 and 86.2 of the EC Treaty, the European administration has reinterpreted the Court's ruling - maybe to avoid Member State opposition and the possible curbing of Commission powers in a sector considered to be politically strategic - and permitted public funding that does not comply with the four conditions established in Altmark, on the grounds that in such cases article 86.2 could be applied.

Chapter 3 (the Privileged Position of PFBs) and Chapter 4 (Market Distortions) of this White Paper show that a substantial gap exists between the application of State Aid rules according to Altmark and the reality of the recent history in the Audiovisual sector.

Chapter 3 • The Privileged Position of Publicly Funded Broadcasters: Strong Funding, Large Audience, Weak Regulation

The combination of State Aid, large audiences for their channels, weak regulation and, in some cases, dual funding has put Publicly Funded Broadcasters in a position where their success threatens to undermine the goal of a pluralistic European Audiovisual sector.

PFB revenues are on the rise both from increasing State Aid and from the success of their own commercial activities, many of which are questionable under existing European regulations. State Aid is in fact the fastest rising of all European subsidy categories. Despite this, State Aid to PFBs is not tracked in the Commission's official State Aid Score card.

This Chapter will look at the current situation:

- Publicly Funded Broadcaster revenue, from both public (an average 66% of a PBF's budget is State Aid) and commercial sources (so-called dual-funding), is substantial and on the rise;
- Public subsidy to incumbent broadcasters is not officially tracked obscuring the total amount of public funding across Member States;
- Public subsidy to PFBs has been rising even in an economic downturn market which begs the question: 'are PFBs operating on a reasonable cost basis?';
- Regulation is weak and poorly enforced with many Publicly Funded Broadcasters lacking clearly defined remits and independent regulation.

The combination of strong funding and light regulation undoubtedly helps Publicly Funded Broadcasters to retain market positions, which is detailed in this Chapter. The result, which we will detail in Chapter 4, is the distortion of competition with private radio and TV broadcasters as well as internet publishers in the audience and advertising markets. It is worth noting that private broadcasters, many of whom have public service obligations - sometimes in excess of incumbent Publicly Funded Broadcasters - do not get compensated as such.

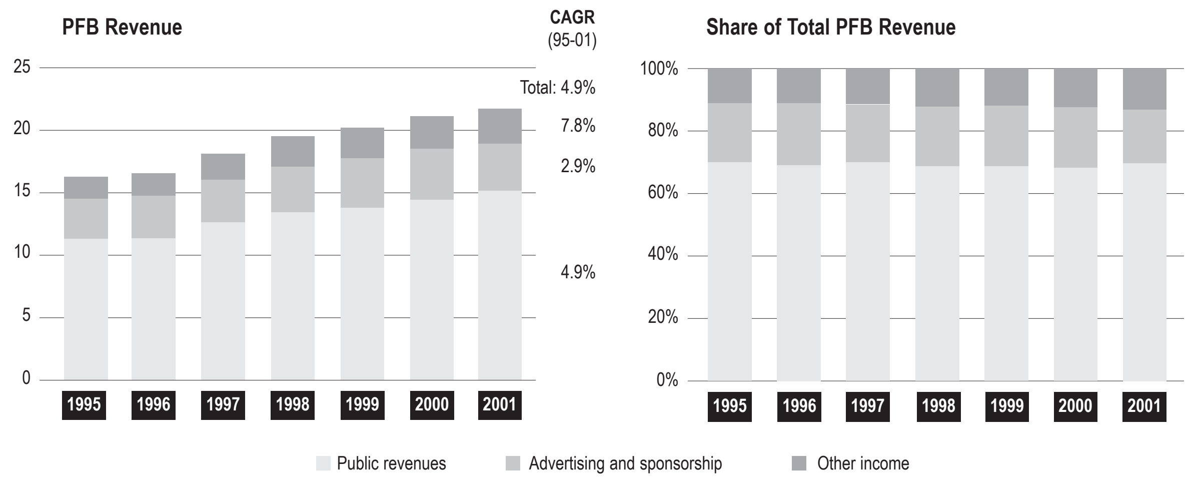
Substantial Funding for PFBs

Between 1996 and 2001, State Aid to Publicly Funded State Broadcasters totalled €82.2 billion; on average €13.7 billion per annum. In 2001 alone, State Aid to Publicly Funded Broadcasters totalled €15 billion.

Against a backdrop of increasing competition and escalating rights costs, many Member States granted their Publicly Funded Broadcasters increases in State Aid in the 1990s. This provided PFBs with a predictable, stable and reliable income stream that they could use to build a position at the expense of private radio and TV broadcasters as well as press and internet publishers during the downturn.

Increased state funding, debt financing, write-downs and write-offs, in addition to increasing revenues generated

Figure C European PFB Revenue Sources[9] (1995-2001) €bn, %

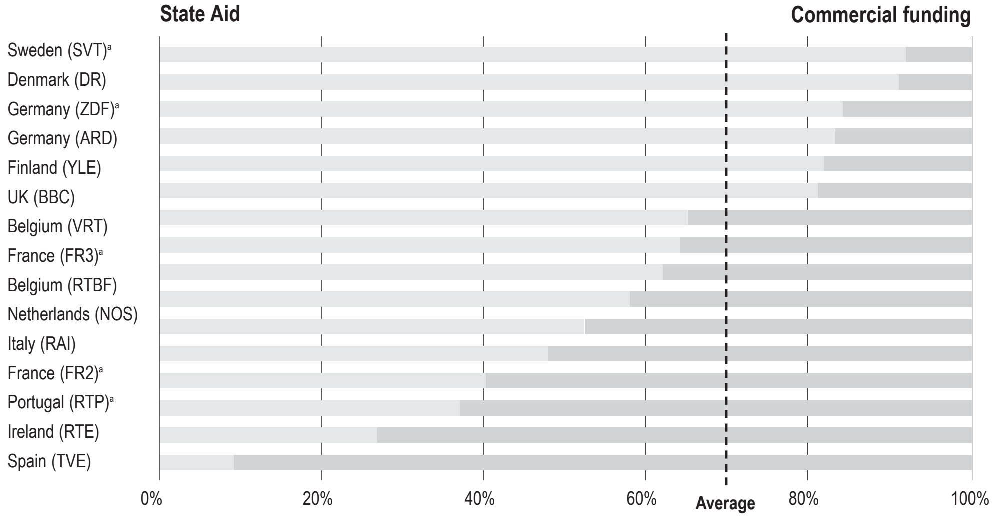


Source: EAO, OC&C analysis

9 PFB revenue figures include radio where the PFB does not break out the figures

NB: Unfortunately, comprehensive data from across the EU on PFB and private broadcasters revenues is only available through 2001

Figure D Composition of Publicly Funded Broadcaster Revenue (1990-2001), %



a. 2000 data. In Finland, commercial funding includes concession fee and other commercial revenues

Source: EAO, Zenith Media, OC&C analysis

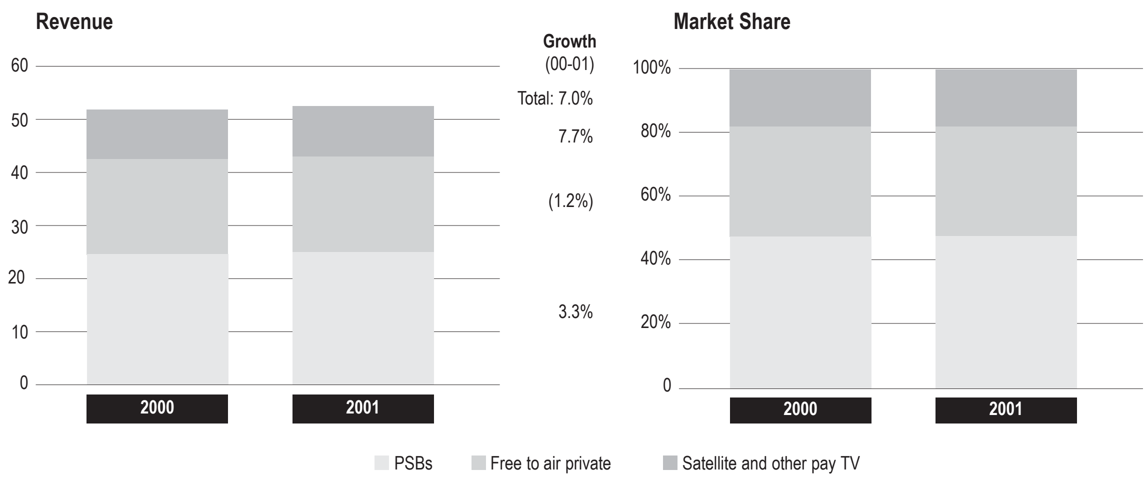
from the commercial exploitation of Publicly Funded Broadcaster programming, combined to increase revenues for Publicly Funded Broadcasters at an average annual rate of 5% over the period 1995 – 2001 as shown in *Figure C*. In total, State Aid (predominately licence fees and government subsidies) accounted in absolute terms for 66% of PFB funding over the period 1990 – 2001 and 69% in 2001 as shown in *Figure D*.

Between 1996 and 2001, the benefits of State Aid funding grew for Publicly Funded Broadcasters. As shown in *Figure E*, total revenues for Publicly Funded Broadcasters grew 3.3% between 2000 and 2001 as the revenue of free-to-air broadcasters declined by 1.2%.

Increasing sums of public money provides Publicly Funded Broadcasters with secure, steady income streams, takes the risk out of the development and launch of a multitude of initiatives, a luxury that commercially funded competitors do not enjoy. Examples of increased State subsidies include:

- **Ireland**: RTE was granted a 40% increase in the licence fee effective 1 January 2003 despite enjoying a 7.3% average increase per year in State Aid between 1995 and 2001;
- **UK**: The BBC was granted a license fee increase in 1997 forecast to generate an additional £200 million per annum over seven years. This led the CEO of another UK public broadcaster (a former top BBC TV executive) to comment that the BBC was 'basking in a Jacuzzi of spare public cash'[10];
- **Netherlands**: In the Dutch budget projections 2003, which were sent by the Dutch government to the Dutch

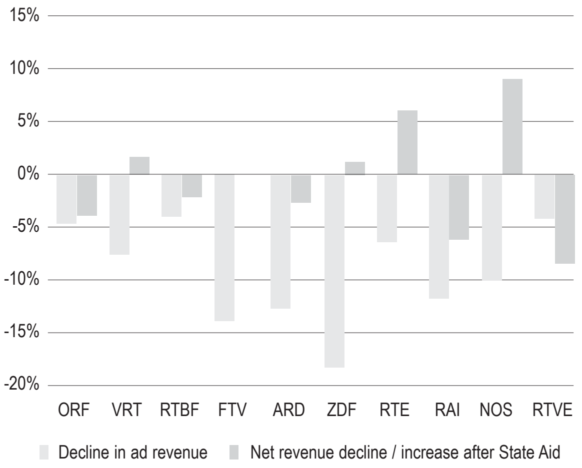
Figure E Western European TV Broadcaster Revenue and – Revenue Market Share (2000-2001) €bn, %



Source: EAO, Zenith Media, OC&C analysis

10 Media Guardian, 11 April 2002

Figure F Decline in PFB Advertising Revenue and Net Revenue Change After State Aid (2000-2001) %



Source: EAO, Zenith Media, OC&C analysis

Parliament at the end of 2002[11], the Dutch government gave a brief overview of the finance system and the funds 'available' for the media in 2002 (€846 million). This overview confirmed that the Dutch PFB financing system is a closed system, in which the granting of state funds is not based on the need to fund public service task but merely on the amount of funds available in the media budget;

No mention was made of the costs of the public service expected or made by the public broadcasting organisations. In a chart, the government merely stated that the projected expenditure for the years 2003-2007 is 'legally required' without giving any further specification about the real need to grant approximately €850 million to the public broadcasting system, nor giving any background as to what legal obligation is actually referred to.

Many Publicly Funded Broadcasters benefit from commercial revenues including advertising in addition to State Aid. These 'dual funded' incumbent broadcasters compete with private radio and television broadcasters as well as print and internet publishers for commercial revenues over and above their state subsidies. In fact, PFBs in Spain, Portugal and Ireland enjoy the benefits of State Aid even though they derive a majority of funding from commercial sources, as shown in *Figure D*.

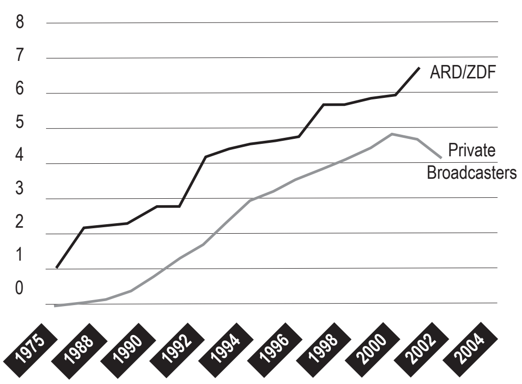
- **Spain**: The accumulation of debt was permitted to grow above €6 billion which is equivalent to c.1% of Spanish GDP. Despite this, the PFB continued to grow its advertising revenues seeking to grow its 2004 advertising income by 10%[12];

- **Germany**: In 2000, ARD/ZDF were awarded an increase in State Aid at the same time that revenues for private broadcasters began declining as a result of the weak advertising market as shown in *Figure G*.While 'dual funded' broadcasters saw advertising revenues decline between 2000 and 2001, in most cases increased State Aid more than compensated. With the exception of RTVE in Spain, ten Publicly Funded State Broadcasters offset declining advertising revenues with increases in State Aid, as *Figure F* shows.

In several markets – including Belgium, Ireland, the Netherlands and Germany – State Aid was the difference between an overall revenue decline and an increase in net revenue, as shown in *Figure G*.

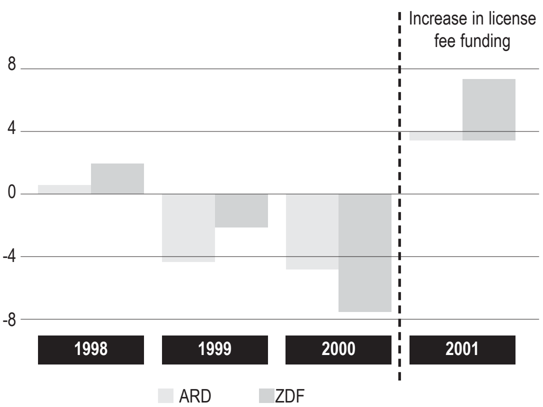
What's more, several Publicly Funded Broadcasters would operate at a loss if it were not for increases in State Aid.

Figure G ARD/ZDF Revenue vs Private Broadcasters (1975-2004), €m



Source: VRPT

Figure H ARD and ZDF Operating Margin (1998-2001), %

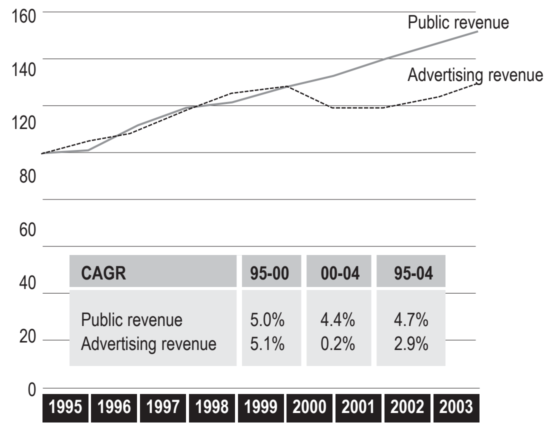


Source: EAO, Zenith Media, OC&C analysis

11 Tweede Kamer, vergaderjaar 2002-2003, 286000, hoofstuk Viii, Nr. 2, pages 297-303

12 *La Tribune*, 23 March 2004

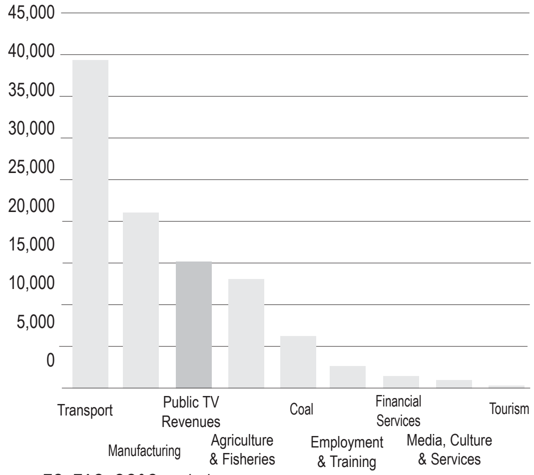
Figure I European PFB Public and Advertising Revenue Growth (1995-2004) – Indexed (1995 = 100)



CAGR	95-00	00-04	95-04
Public revenue	5.0%	4.4%	4.7%
Advertising revenue	5.1%	0.2%	2.9%

Source: EAO, Zenith Media (July 2002), OC&C analysis

Figure J EU State Aid Scoreboard Including PFB State Aid (2001), €m



Source: EC, EAO, OC&C analysis

For example:

- **Portugal**: RTP has recorded an average operating margin of -79% over the period 1995-2001, despite aid and grants of over €450m from the State. At the same time, the level of State Aid increased over the period at an average annual rate of 17%;

- **Spain**: RTVE recorded an average operating margin of -65% over the period 1995-2001. An untenable position for any commercial broadcaster and yet RTVE continues to spend far in excess of its revenues due, presumably, to its belief that its debts will be authorised by the State. Over the period, the government forgave in excess of €500 million in debt. Overall, State Aid grew at an annual average of 13.3% between 1995 and 2001;

- **Germany**: ARD/ZDF were granted an increase totalling €600 million year over year for the period 2001-2004 turning a combined €11.6 million loss into a combined €4.6 million operating profit in 2001 as shown in *Figure H*.

As Publicly Funded Broadcaster revenues grew, many private broadcasters (who for the most part rely almost entirely on advertising revenues) recorded decreasing revenues as a result of the economic downturn, as shown in *Figure I*. This trend looks set to continue exacerbating the structural issues impacting competition in Europe's Audiovisual sector.

The fact that Publicly Funded Broadcasters require increasing sums of revenue – from public and commercial sources – at the same time that private competitors have managed with less raises the question as to whether PFBs operate on cost bases compatible with Altmark.

State Aid Scoreboard

Analysis of the European Audiovisual Observatory (**EAO**) database and company accounts reveals that Member States provided c. €82.2 and c. €15 billion in State Aid to Publicly Funded Broadcasters between 1996 and 2001 and in 2001, respectively. This constitutes a substantial and unreported component of subsidy.

According the Commission's State Aid Scoreboard[13], Member States expended more than €86 billion in subsidies in 2001 – which does not, for the most part, include PFB subsidies. In fact, overall State Aid grew to the highest level since 1998 despite the pledge at the Stockholm European Council of March 2001 to reduce aid levels and to redirect spending towards horizontal objectives of Community interest.

What's more, despite the Commission's acceptance that public funding of broadcasters is to be categorised as State Aid[14], subsidies to Publicly Funded Broadcasters are not included in its official State Aid Scoreboard.

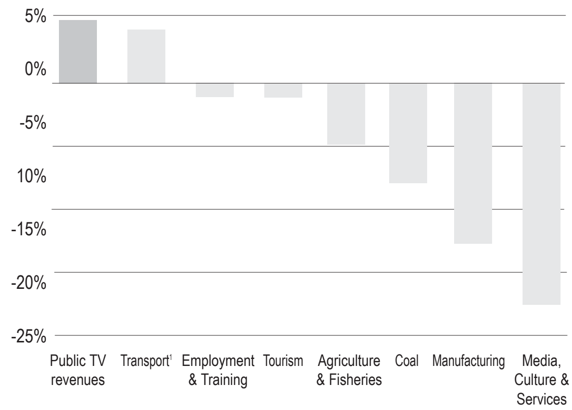
If it were, State Aid to Publicly Funded TV and Radio Broadcasters would rank third, ahead of subsidies to Agriculture and Fisheries[15] and behind Transport and

13 State Aid Scoreboard, Spring 2003 Update, European Commission, COM(2003) 225 Final (http://europa.eu.int/comm/competition/state_aid/scoreboard/2003/en.pdf)

14 For example, decisions on Kinderkanal, BBC News 24, Communication of November 2001, RAI decision 2003, etc

15 Not all of the State Aid related to the Common Agricultural Policy is classified as State Aid for the purposes of the State Aid Scoreboard

Figure K **EU State Aid Scorecard CAGR 1997-2001%, €m**



Note: Increase in Transport CAGR is due to exceptional increase in 2001 in the UK
Source: EC, EAO, OC&C analysis

Manufacturing[16] as shown in *Figure J* and would increase the total amount of State Aid by more than 17%.

Moreover, State Aid to Publicly Funded Broadcasters grew at a faster rate (4%) over the period 1997 to 2001 than any other category of public subsidy as shown in *Figure K*. In fact, if it were not due to an one-off increase in State Aid to the Transport sector by the UK in 2001, public support of Publicly Funded Broadcasters would have been the only category showing an increase over the period.

This all begs the question as to why this important and significant component of State subsidy is not reported in the EU State Aid Scoreboard[17]. According to an official at the State Aid Scoreboard, in 2002 and 2003, there were public broadcasting cases in Belgium, UK, Portugal, Italy and France. The State Aid register contains detailed information, including the budget, on most of these cases. (This State Aid does not appear, however, to be captured in the 2001 Scoreboard). The official goes on to say that due to distinctions based upon 'abstract legal criteria' the Scoreboard has 'decided to exclude all aid compensating for SGEI (Services of General Interest) from the main body of analysis in the Scoreboard.'

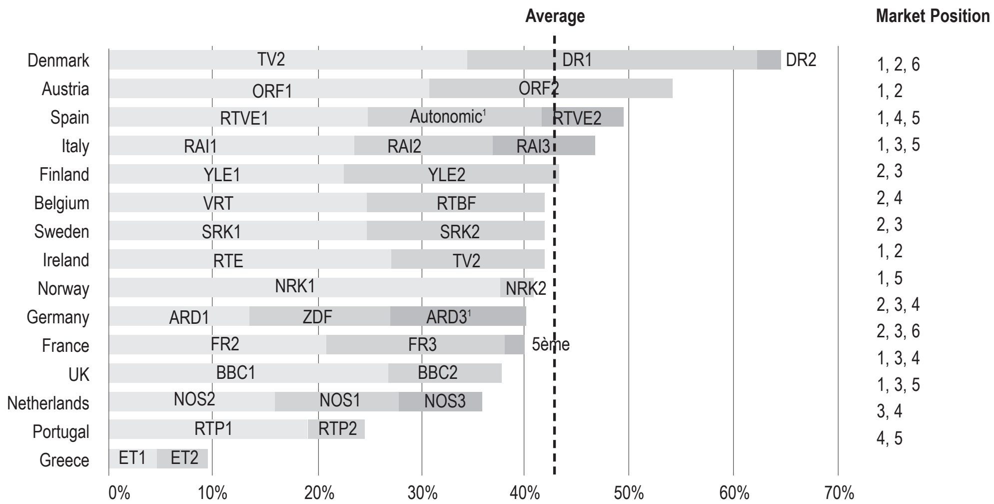
Large Audience

Strong funding appears to have helped PFBs generally to maintain their market position against the general direction of the market and, therefore, most likely against the general interest.

Not surprisingly, the emergence of competition had an impact on the monopoly audience of Publicly Funded Broadcasters. And yet, State funded incumbents typically operate both the leading channel and the third most popular channel in their respective markets as shown in *Figure L*.

Indeed, in 2001 (the last year for which comprehensive data is available), Publicly Funded Broadcasters captured an average audience share of 41% across Europe and had, for the most part, succeeded in significantly reducing the rate of share decline. From 1992 to 1995, major European Publicly Funded Broadcaster channels lost more than 1% audience share each year on average, as shown in Figure C.

Figure L **PFB Audience Market Share (%) and Market Position (2001)**

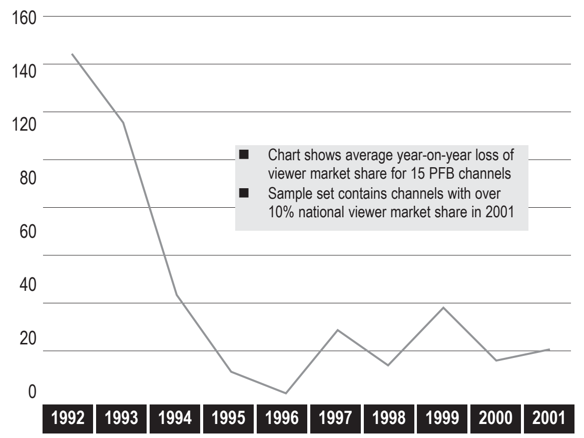


Note: Total of multiple regional channels
Source: EAO, OC&C analysis

16 State Aid Scoreboard, Spring 2003, EAO database, OC&C analysis

17 Response to an email sent to the State Aid Scoreboard 3 January 2004 inquiring as to why subsidies to Publicly Funded Broadcasters are not included in the Scoreboard

Figure M PFB Audience Share Erosion (1992-2001)



Source: EAO, Annual Reports, Merrill Lynch, OC&C analysis

During the period 1995-2001, Publicly Funded Broadcasters staged a remarkable turn-around halting, and in some cases reversing, audience share decline to a European average of 0.2% each year on average.

According to a 2001 report on the European Radio market, despite liberalisation, Europe's €9.8 billion radio broadcasting sector was dominated by 400 public service stations accounting for 38% of listening hours. The 1/10th of a percent of total listing hours per PFB station compares to the 1/100th of a percent average listening hours per station for more than 5,100 private commercial stations. In addition, the 400 public service stations capture a c. 60% of total market revenues[18].

Weak Regulation

The 'Communication from the Commission on the application of State Aid Rules to Public service Broadcasting'[19] recommends that Member States:

- Establish an official definition of the public Service mandate (the remit);
- Ensure that the remit is as precise as possible so as to leave no doubt as to whether a certain activity performed by the Publicly Funded Broadcaster is intended by the Member State to be included in the mandate or not;
- Entrust a given broadcaster with the task of providing balanced and varied programming in accordance with the remit;
- Supervise the Publicly Funded Broadcaster through a body whose authority is independent from the entrusted undertaking.

However, the reality is quite different and not at all consistent across Member States, as shown in *Figure N* (see next page).

In France, for example, the European Commission ruled that State Aid for French PFBs between 1988 and 1994 was 'limited to compensation for the costs associated with the fulfilment of their public service obligations'. However, it went on to acknowledge that amendments to its broadcasting financing operations as set down in national law need to be made pointing out that 'French broadcasting legislation does not provide sufficient guarantee that television stations with public service obligations do not receive public financial compensation in excess of the cost of those obligations, or that they comply with market practice in their commercial activities'[20].

Figure N (see next page) highlights the differences in the regulation and supervision of PFBs with respect to television.

18 Oliver & Ohlbaum Associates, Prospects for European Radio to 2006 (2001), as reported in *The Radio Magazine*, http://www.theradiomagazine.co.uk/PastNews/2001-12.htm
19 2001/C 320/04
20 *EUpolitix*, 12 December 2003

Figure N Overview of Regulation of Publicly Funded TV Broadcasters

Countries	PSB Remit	PSB reporting and monitoring content programme requirements			PSB Digital remit and restrictions	
		Monitoring by media authority	**Monitoring by broadcaster (body)**	**Monitoring by other authority**	**Internet part of PSB remit**	**Digital channels part of PSB remit**
Austria	Yes	No	No	No	Yes	No
Belgium (Flanders)	Yes	No	No	Representative for Flemish Community	Yes (in general terms)	Yes (in general terms)
Denmark	Yes	Radio and Television Board	No	No	Yes (in general terms)	No
Finland	Yes	Finnish Communications Regulatory Agency (2004)	No	No	Yes (in general terms)	Yes (in general terms)
France	Yes	CSA	No	No		Yes
Germany	Yes	No	Own Supervisory Board	No	Yes	Yes
Greece	No	National Council for Radio and Television	No	No	No	No
Ireland	Yes		RTE Board	No	No	No
Italy	Yes	AGCOM: only for European and national works		Ministry of Communications	No	No
Netherlands	Yes	CvdM	No	No	Yes (in general terms)	Yes (in general terms)
Norway	Yes	No	No	Advisory Body for PSB	No	No
Portugal	Yes	No	No	No	Yes (in general terms)	Yes (in general terms)
Spain	Yes (2002)	No	No	Special Committee of Spanish Congress with no power of sanction	Yes	Yes
Sweden	Yes	Swedish Broadcasting Commission	No	No		
UK	Yes	ITV, Channel 4 and 5: by ITC (now Ofcom)	BBC: Board of Governors	No	No	Yes

Source: Commissariaat voor de Media, http://www.cvdm.ni/document/psb.pdf

Chapter 4 • Market Distortions Caused by Publicly Funded Broadcasters

Several years ago, Competition Commissioner Mario Monti commented on the implications of the substantial State subsidies noting that "*... the cumulative effect of some €86 billion of State Aid in 2001 (Europe wide) still has a considerable distortive effect on competition in the Internal Market*.[21]"

While not commenting on the Audiovisual sector in particular, the Commissioner identified the key problem facing the industry: the combination of State Aid, large audiences, strong funding and weak regulation placing Publicly Funded Broadcasters in favoured positions where their success threatens to undermine the goal of a generally competitive, pluralistic European Audiovisual sector.

A review of PFB activities across Europe finds numerous examples of activities which not only appear to increase the cost to provide services and cost more than typical undertakings from other providers, but also distort competition in the audience and advertising markets in radio, TV, press and internet publishing. The result is a skewed market that favours the Publicly Funded Broadcasters to the detriment of the public interest.

Scope

Publicly Funded Broadcasters have, for many years, engaged in activities that limit the ability of private media companies to compete. Some of these activities hinder the ability of private operators to grow their share of the audience and advertising market, which diminishes their voice in the media landscape. Other activities impact the market for rights and other inputs to the Audiovisual market. Key areas where PFBs are skewing the markets include:

- Running programmes that imitate the programming of private broadcasters;
- Adopting schedules that mirror commercial operators;
- Unfairly competing for advertising revenues with private operators;
- Pre-empting the development of new multi-channel television and internet content markets by launching initiatives that duplicate private sector activities;
- Scheduling serious output outside of prime time or on secondary channels;
- Entering into, and sometimes exacerbating, 'bidding wars' for rights to popular programmes;
- Poaching talent from private broadcasters to produce programmes.

The Output Market: Competing for Audience and Advertising

The output market for broadcast television, radio, press and internet media includes two sets of customers: viewers / readers / listeners / users and advertisers. These 'customers' are hotly contested because the viewers / listeners / users / readers allocate limited time to media among the various public and private options available. In dual funded markets, both public and private operators aggressively compete in the advertising market, each selling their ability to deliver the viewers / listeners to advertisers.

By building their audiences with State Aid, Publicly Funded Broadcasters limit the ability of private operators in all media, not just television and radio, to develop their businesses. This is particularly damaging in countries where PFBs are overcompensated and/or where PFBs benefit from dual financing (collecting State Aid as well as advertising).

PFBs: Audience Share by Whatever Means

Publicly Funded Broadcasters maintain significant audience share and are part of the media landscape. However, the tactics employed by recipients of State Aid to maintain ratings and prioritise audience share at the expense of creativity and distinctiveness resulting in public service programming being provided at the margins of the schedule and/or when politicians are reviewing the broadcaster's license.

This concern was memorably addressed by the Chief Executive of the Independent Television Commission, which at the time regulated and licenced commercial TV in the UK, who said that the BBC "*should accept the*

21 IP/03/595, Brussels, 30 April 2003, EU Scoreboard on State Aid - Twelve out of fifteen Member States fulfil Stockholm pledge to reduce aid http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/595|0|RAPID&lg=EN

challenge to make the market; that is, to make it different from what it would be if the BBC didn't exist. Beating ITV with Blue Planet is a triumph. Beating it with Celebrity Sleepover is a tragedy"[22] .

PFB Tactics: Counter-scheduling

There are numerous examples of scheduling PFBs programmes which directly or indirectly increase the cost of programme rights, distort the market and run counter to the spirit of most PFB mission statements. Some examples include:

- **UK**: The BBC recently scheduled an extra episode of a soap opera against an ITV adaptation of Othello, thereby gaining ratings at the expense of distinctive and challenging programming being offered by the commercial sector. It also scheduled the reality talent show Fame Academy in the same slot as ITV's Pop Idol.

  Over time, the BBC has moved serious, distinctive programming off the main channel allowing it to compete with its commercial rivals and boost ratings. BBC flagship serious current affairs Panorama, has been moved over the years from 8pm on Monday evenings to 10.15pm on Sundays. Similarly arts programmes almost disappeared from BBC1 for a few years until public criticism – and the approach of charter review – led to a change of policy in 2003;

- **Germany**: The reaction of the public sector to the success of Deutschland sucht den Superstar – the Pop Idol format – was not to counter-schedule with distinctive programming of its own but rather to commission their own reality talent show, Die Stimme in 2003;

- **Greece**: After two successful series on the private Mega Channel, publicly-funded broadcaster ERT purchased series 3 of Who Wants to Be a Millionaire. An unusual approach to distinctiveness and viewer choice;

- **Belgium**: The Belgian trade union CGSP recently criticised the 'RTL-isation of the PFBs new radio stations, commenting that the strategy of the Public Service Broadcaster appears merely to 'vie for the audience of its competitors by occupying the same ground as they do[23];

- **Austria**: Public broadcaster ORF caused controversy by screening the reality show "The Bachelor", including severe criticism from its regulator;

- **France**: According to a comparative analysis carried out by Le Monde of the programming offered by TF1 and France 2 on 17 June 2002, a day chosen as a sample, the PFB presented programmes very similar to those of the private channel. This analysis caused the paper's opinion writers to note that "*the question today is how to redefine the notion of public service so as to define more precisely the 'added value' which it can bring to viewers*."

The lesson to draw from these examples is that the lack of regulation, or of clearly defined public service missions, appears to allow PFBs to drop public service programming when it suits them, and to re-instate it in the schedule only when it is necessary (such as when politicians are reviewing funding).

PFB Tactics: Showcasing the Popular Fare to Garner Ratings

Many Member States have allowed their Publicly Funded Broadcaster to launch additional television channels. This affords the Publicly Funded Broadcasters certain advantages, especially a vehicle to feature their more distinctive but less ratings-oriented programming. Often the main channel is reserved for mainstream entertainment directly competitive with the top channels of their commercial rivals.

Publicly Funded Broadcasters also have increased the overall quantity of entertainment programming in a bid to maintain their privileged positions.

- Eight out of eleven incumbent channels surveyed increased the volume of 'entertainment-based' programming between 1999 and 2001;

- Total hours of entertainment-based programming increased by 9% from 1999 to 2001 across the Publicly Funded State Broadcasters surveyed as shown in *Figure O*.

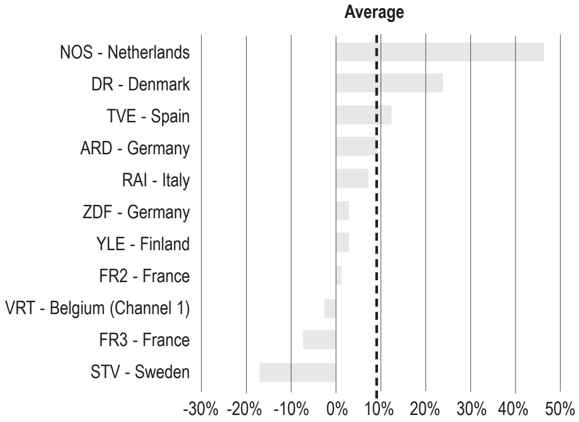
The emphasis on scheduling popular programming is more pronounced in markets where the Publicly Funded Broadcaster collects both advertising revenues and State Aid. In fact, the higher the advertising figure as a proportion of total revenues the more the output of a Publicly Funded Broadcaster is likely to be entertainment orientated.

As shown in *Figure P*, broadcasters with a high proportion of advertising revenues feature less news, information, art, science, religion, and education programmes in their schedules.

22 Blue Planet was a co-production between the BBC and the US commercial broadcaster Discovery Channel which featured marine life, Celebrity Sleepover was a BBC programme featuring various media 'celebrities', Royal Television Society Fleming Lecture, 5 March 2002

23 Quoted in *La Libre Belgique*, 28 November 2003

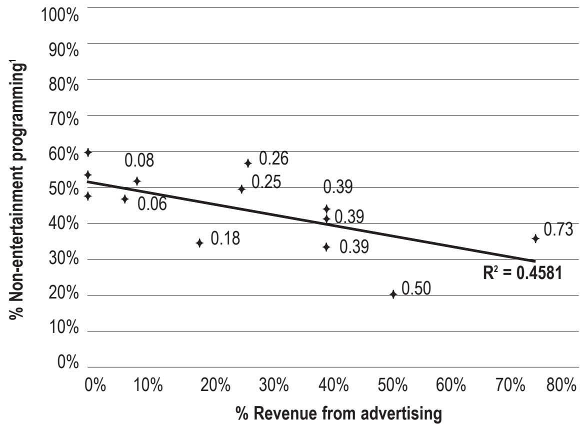
Figure O **Advertising Revenue and Programming Mix (2001), % (TV)**



1. Entertainment-based programming includes series, serials, sitcom, feature films, animations, entertainement, music and sport (excludes other programme and advertising)
2. Change in programming defined as percentage increase in number of hours of entertainment-based programmes

Source: EAO, Annual reports, OC&C analysis

Figure P **Advertising Revenue and Programming Mix (2001), % (TV)**



Note: Non-entertainment programming covers news, information, arts, science, religion and education programmes

Source: EAO, Annual reports and company press releases, OC&C analysis

For example:

- **UK**: In the UK where the BBC's charter is already being discussed in the run up to renewal in 2006, there are influential voices calling for clearer and tighter control of how the BBC interprets its role as a PFB.

  Channel 4 Deputy Chairman Barry Cox, who also heads the UK's Digital Stakeholders' Group, which acts as a bridge between government and the commercial sector in digital switchover, says that under its new charter the BBC will likely be obliged to broadcast a minimum amount of hours of news, current affairs, arts and science programmes.

  "*The longstanding defence of the relative freedom given to the BBC to interpret its public service obligations, as compared to the tougher regime applied to ITV and Channel 4 (other UK broadcasters with public service obligations), was that it could be trusted to honour the spirit of the charter. However, following the arrival of Greg Dyke as Director General in 2000 and the more commercially aggressive strategies he encouraged, this became visibly less tenable,*" writes Cox in a pamphlet recently published by UK think tank Demos.

  Cox says the public service obligations imposed on commercial broadcasters ITV and Channel 4, such as the requirements for news, religious and arts programmes, are more tightly defined than those of the BBC. He argues that the Corporation has therefore been allowed to become 'more and more commercial in its programming', in particular on BBC1[24]. The net result is the BBC1 has overtaken ITV1 as the most popular channel in Britain;

- **Netherlands**: In The Netherlands, an interesting example is a report from NOS that was obtained from the Dutch Media Authority. The report was prepared by NOS itself and was sent to the Dutch Media Authority on 29 March 2001[25]. In the document, NOS compared the programme offering of all commercial operators and the public broadcasting system in the evening (so on prime-time). In a statement that speaks for itself, NOS concluded: "*In the evening, the public broadcasters spend somewhat more time for 'entertainment' and 'advertising' (compared to the commercial operators).*"

It's Not Just TV

The tactics employed by Publicly Funded Broadcasters – of neglecting meaningful public service programming in favour of popular formats – are not limited to TV. Radio stations operated by PFBs often apply some of the same tactics as used by TV programmers at Publicly Funded Broadcasters. The same pattern is emerging in internet publishing where PFBs are present.

PFBs: The Dual Revenue Stream Distortions

When Member States allow Publicly Funded Broadcasters to participate in the advertising market, distortions of

24 Demos, January 2004
25 Letter of NOS to Media Authority with report, dated 29 March 2001 on 'classificatie van programmasoorten en programmmavoorschriften', see particularly page 4 of the report

competition become increasingly pronounced. This is because TV and radio broadcasters sell space to advertisers based, in large part, upon the size of the audience watching or hearing the advertisement and the demographics of that audience. All other factors being equal, advertisers should value similar inventory at similar rates.

- **Ireland**: The Publicly Funded Broadcaster RTE has been in a position to use the economic cushion provided by State Aid to subsidise its advertising rates. After a 20% licence fee increase in 2001, RTE's advertising rates fell immediately. The unintended financial consequence of this move appears to be the transfer of much of the benefit of the licence fee increase directly to advertisers through increased discounts[26];

- **Finland**: The Publicly Funded State Broadcaster is directly financed through the 'concession fee' model. Finnish commercial broadcasters are obliged to pay a proportion of all turnover above €10m in analogue television to the state broadcaster. In 2001, this meant that the state broadcaster received, in addition to public revenue of €322m, an additional €49m of compensation from its competitors' income of €200m distorting the public/commercial imbalance of 322 : 200 to a total of 381:151. While the concession fee was halved in July 2002, it remains at 12.25% of advertising sales in analogue television;

- **Poland**: Distortion of markets is also prevalent in countries due to join the EU this year. For example, in Poland, the competition authority has upheld a complaint filed by two commercial broadcasters – POLSAT and TVN – that the publicly funded broadcaster TVP was abusing its dominant position by offering its clients preferential discounts in exchange for a commitment to place up to 80% of their advertisement expenditures on the public TVP network.

  The Polish authority actually concluded that TVP was distorting competition by granting these price discounts, particularly given that the expenditures concerned amounted to over 50% of the Polish TV advertising market. TVP was ordered to cease the practice of offering price discounts in exchange of spending commitments.[27]

These market distortions also affect consumers in that unfair competition from State Aid funded incumbents impacts the absolute income private operators can deploy to fund their programming offer to viewers.

Input Markets / Rights

The input market for broadcast television revolves principally around the acquisition of programme rights, the commissioning of original material and the hiring and retention of key talent. In radio, the input market is mainly made up of the latter two.

There is a substantial body of evidence available from private broadcasters that indicates that State Aid also results in distortion of competition in the market for programme rights. Much of this data, however, is commercially sensitive or bound by confidentiality agreements with third parties.

Specifically, broadcasters in the UK, Portugal and Spain report instances of Publicly Funded Broadcasters inflating rights costs by 200% – 400% because they entered bidding wars for programming.

Evidence also exists of incumbent broadcasters in the Netherlands and Germany actively inflating sports rights costs in the markets for both local and Champions League football rights. For example:

- **Netherlands**: Recently, PFB NOS was able to outbid the commercial sector for all rights to Champions League football. In the complaint filed against NOS, it is clear that the broadcaster has been able to obtain the huge majority of sport rights in the Netherlands, consisting of the most valuable rights that attract the highest number of viewers (like the Dutch Premier League, the Champions League).

  An Annex to the HMG complaint to the Commission states that the possible advertising revenues by broadcasting extracts of the Dutch Premier League was DFL 21 million. However, Public Broadcaster NOS paid DFL 55 million for these rights. This shows that the offers made by NOS on behalf of the public broadcasters do not reflect the actual market value of these rights or respond to any economic rationale. This leads to the distortion of competition in the acquisition of broadcasting TV rights;

- **Germany**: When the German Bundesliga sought bids from broadcasters for the free-to-air rights, ARD was able to bid €70m per annum, a price at which private competitors walked away from the auction, having calculated that any bid in excess of €50m per annum was not a prudent use of shareholders' funds;

- **Ireland**: According to TV3, the publicly funded Irish channels RTE and TG4 are in a position to outbid

26 TV3 Submission to Irish Broadcasting Forum

27 Press release of Polish competition authority, 13 December 2002, available at www.uokik.pl, "Telewizje Polska"

foreign programming rights beyond a reasonable commercial value. TV3 claims that RTE uses the licence fee to underpin its acquisitions by securing and paying for exclusive output deals that preclude other broadcasters from acquiring competitive programmes from certain US studios including Dreamworks and Disney[28].

Related Markets – Thematic Channels and Rights

When Publicly Funded Broadcasters extend the scope of their operations into new markets including the internet market, the market for thematic channels and the market for licensing and merchandising distortions also occur.

The growth of satellite, cable and digital terrestrial television has led to a dramatic increase in the number of channels available to broadcasters and consumers. Many of these new channels are of a 'thematic' nature – narrowly focused in terms of subject area or target audience. Typically, the private sector takes the risk and leads the development of these niche channels.

Recently, however, a number of Publicly Funded Broadcasters decided to launch their own thematic channels, often duplicating established private sector offerings. In doing so, Publicly Funded Broadcasters leverage their dominant market position and well-known brand to rapidly attain market leading positions.

Once the private broadcaster has proven the channel concept, the Publicly Funded Broadcaster launches a rival proposition, duplicating output and distorting the market. Specific examples include:

- **UK**: The BBC launched new channels which duplicate existing offerings as well as withdrawing profit making rights previously licensed to private broadcasters to bolster the position of their own thematic channels within the UK market.

  In addition, budgets allocated by the BBC far exceed spending by commercial rivals already in the market. For example, BBC3 was recently launched into a market already catered to by the likes of Sky1, E4 and ITV2. It consumes £81 million in State Aid which is reportedly 4 times the budget for Sky One and significantly greater than the budget for E4 and ITV2. While the stated aim of BBC 3 is 'to reach discerning, media-savvy young viewers', it has proved controversial by diverting funds to acquire rights to football matches, despite the fact that there is no reference to sport in its remit.

  Channel 4 described this as 'the BBC promising one thing to get government approval and ends up doing something completely different… another example of the BBC doing what suits its purpose rather than doing what its services have been licensed to do.'

- **Germany**: Discussions are underway in the context of the licence fee renewal as to a possible publicly-funded sports channel. Separately, Neun Live has accused the public broadcasters of imitating their innovative business model in which content was partly refinanced by premium rate telephony.

- **Belgium**: Over the past few years, the Flemish PFB actively bought up rights to most of the major sporting events available. In fact, the Publicly Funded Broadcaster acquired so many rights that they could not air all the sport. Ultimately, the PFB petitioned the government to launch a new channel to feature the sport which it had acquired.

In summary, PFBs have a mission to address market failures yet in launching thematic channels PFBs are using State Aid to launch niche channels already well catered for by the commercial sector. Also, when they launch library channels they not only take on new costs but they typically also reduce commercial revenues by no longer selling programming to commercial broadcasters.

Related Markets – Internet Content

As the internet becomes an increasingly important distribution channel for media content the internet activities of Publicly Funded Broadcasters have also grown.

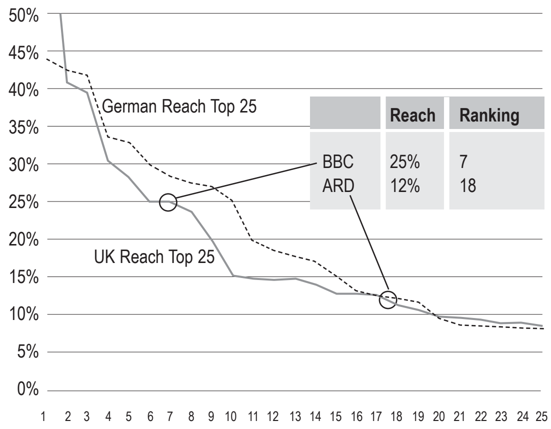
For several years, the BBC has invested in Internet offerings often to the detriment of new private sector entrants. In Germany, however, initial limited investment by ARD and ZDF allowed other content providers to establish their offerings. Elsewhere, actual spend bears little resemblance to forecast and there is evidence of distortion of other markets.

- **Germany**: Initial participation of ARD and ZDF in the online space was restricted by regulations stipulating that their websites had to be 'predominately programme related'. They were forbidden from selling advertising and sponsorship for all web activities. Furthermore, KEF, the body that regulates German PFB spending, limited investment in Internet activities to €13 million (ARD) and €3 million (ZDF) per annum over the period 1998 – 2000.

  However, for the period 2001-2004 both ARD and ZDF have planned to considerably increase their Internet spending. ARD has planned to spend €175 million over the period and ZDF about €17 million. Although the PFBs websites were meant to be 'predominately

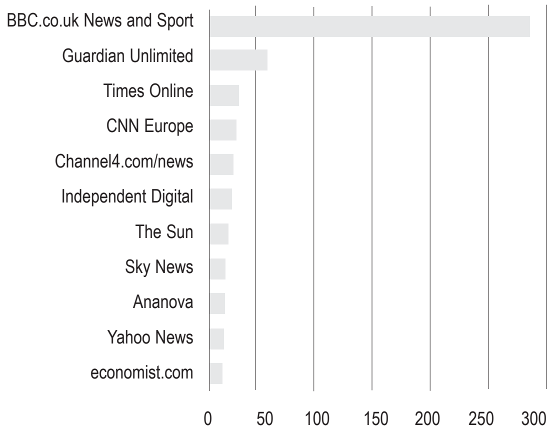
28 TV3 Submission to Broadcasting Forum

Figure Q Reach and Ranking of Top 25 Web Domains UK, Germany (April 2002), %



Note: UK #1 (Microsoft/MSN) has 68% reach
Source: Jupiter, Media Metrix, OC&C analysis

Figure R UK News and Sports Web Page Views (May 2002, Millions



Source: New Media Age, OC&C analysis

programme related', an amendment was necessary to the German Interstate Treaty on Broadcasting deleting the word 'predominantly', reflecting the level of concern about the development of the PFBs role in the German Online space.

- **UK**: The UK government allowed BBC Online (launched in 1997, renamed BBCi) to develop without restrictions on its output or funding. Originally authorised to spend just £21 million, the BBC's investment continued to increase, up to £101 million in 2001 from £54 million the previous year. Under its original remit the BBC agreed that 'the BBC's public service online proposition will not have any competitive effect whatsoever in the market place either now or in the foreseeable future'.

  However, BBCi now runs very commercial services including the websites Celebdaq, Fightbox, and three surfing sites. BBCi also launched its owned BBC-branded search engine where numerous other services were already present.

  Commercial players have reduced their Internet budgets because of economic pressures and intense BBC competition. Only in 2003, once many private operators had closed (including the BBC's commercially funded Beeb.com website) or dramatically downscaled their internet operations did the BBC announce plans to cut back, including chopping some public service and programme support activities. In fact, the BBC's interests have continued to expand.

  The result of the blanket approval granted to the BBC combined with heavy spending and the resulting down turn is the Publicly Funded Broadcaster maintaining a market leading position; effectively foreclosing certain sectors of the market to publishers.

  The net result, as shown in *Figure Q*, is that BBCi has established itself as a top 10 player in the UK market with 25% reach in April 2002. The remaining top ten players consisted primarily of ISPs and portals with BBCi ahead of all other content providers including broadcasters and publishers.

This story is the same in the news and sport segments, wherein BBCi captures more than half of the reported page views as shown in *Figure R*.

- **Netherlands**: Evidence was found on the basis of which it was concluded that at least an amount of €148 million was provided for the years 2002 and 2006 for PFB's to provide Internet and new media activities (the exact sum however is not completely clear as a consequence of the lack of transparency). In 2003, it became clear from an article in the Dutch media magazine Adformatie[29] that for one portal alone of the public broadcasting system "Omroep.nl", an amount of €20 million was available on a yearly basis. This adds up to 100 million Euro for the 5 year-period 2002-2006. This showed that in reality, the sums available for Internet and new media activities seemed to be much higher than the initially estimated amount of €148 million.

29 *Publieke samenwerking op het net*, Adformatie 4, 23 January 2003

It was stated that in any event, the excessiveness of €20 million for one portal alone needed no further explanation. Referral was also made to the following statement in the article made by the Internet coordinator of the Dutch Public Broadcasters Mr. Mol: "*the public broadcasters see it as their task to execute our mission on the Internet based on the law in a period in which the commercial parties withdraw from the Internet as a consequence of a declining advertising market*".

CLT-UFA HMG and other complainants explained that the situation was the other way around: the commercial operators (and the written press) do not have any chance to enter or remain on the Internet and new media markets when they have to compete with a public broadcasting system that has unlimited public amounts available, notably €20 million on a yearly basis for one Internet portal.

What's more, there is evidence of a restriction of competition in Dutch printed media sector as a consequence of the Internet activities of Dutch PSBs.

Mr Broertjes, the Chief Editor of one of Holland's biggest newspapers, *de Volkskrant*, stated at the Dutch National Broadcasting Conference[30] in 2002, that not only for the TV and broadcasting sector but also for the printed media, the current situation as regards Internet activities of the public broadcasters caused a: "*serious restriction of competitive relations*". He also mentioned the fact that the public broadcasters have the opportunity to advertise on their websites. "*And the Government provides millions of Euros for internet-activities of the public broadcasters, plus the possibility to advertise on these Internet sites. [...], the result is pure market destruction*." Finally he stated that the behaviour of STER on the advertising market was anti-competitive: "*STER does not charge prices, which are in conformity with real market conditions*."

Related Markets – The Issue of Cross Subsidy

There are numerous examples where commercial enterprises are cross-subsidised in more subtle but just as effective ways, including cross-promotion on other services, publications and channels owned by the PFB, from sharing resources and from securing rights on favourable terms by offering a multiple-platform deal.

That these actions occur is perhaps not surprising given the poor record of Member States in implementing the 2000 amendments to the Financial Transparency Directive. Legal proceedings are currently underway against eight Member States for non-implementation, and may be necessary in other markets as well. For example, in Germany, implementation of this Directive has so far only been undertaken by the Federal Government, rather than by the individual Länder who are responsible for broadcasting policy.

In Denmark, Finland, France, Germany, Ireland, Italy and the UK, the Publicly Funded Broadcasters now have well-established commercial arms exploiting intellectual property developed, in part, from State funding. While commercial arms have been established as separate entities – as required under the EC's Transparency Directive – evidence suggests that there is still substantial interaction between the 'public' organisation and the commercial production of magazines, Internet sites, videos, merchandise and more.

Ambiguity and limited financial disclosure make it difficult, if not impossible, to determine the true value of Publicly Funded Broadcaster cross-subsidy and/or the financial implications of these activities. Hence the vital importance of meaningful and complete implementation of the Financial Transparency Directive, made all the more crucial by the new criteria of the Altmark judgment.

In conclusion, the State Aid afforded PFBs is being used in ways that distorts the markets in TV, radio and online and this in turn endangers the balance of the public/private media system in Europe. The consequences are that competition is affected within and among Member States to the detriment of other stakeholders – not least, of Europe's viewers, readers and listeners.

30 Speech by Pieter Broertjes, Chief Editor Dutch newspaper de Volkskrant, presented at National Broadcast Conference in Hilversum on 1 October 2002

Chapter 5 • Conclusions and Remedies

Massive amounts of State Aid and Commission inaction have combined to create a crisis in the European television, radio, multi-channel TV and internet content markets with a known effect on the press.

Not only does public funding of State broadcasters represent the third largest component of State Aid in Europe, but it is the only State Aid sector consistently growing. And, despite precedents established in other liberalised sectors and multiple Condemnations from the ECFI and the recent judgments referencing Altmark, neither the Commission nor Member States have acted sufficiently to protect the Audiovisual market across Europe.

Without decisive action, there is considerable risk that incumbent Publicly Funded Broadcasters will forever alter the structure of the market – closing markets to commercially funded competition and reversing decades of progress.

We, therefore, call on Member States, to initiate the process of exiting Publicly Funded Broadcasters who collect advertising revenue in addition to State Aid from the advertising market. This will correct the fundamental distortions caused by dual funding of broadcasters so that a competitive, liberalised market can evolve.

Also, we call on the European Commission to perform its duty as guardian of the Treaty and take immediate action to ensure fair competition within Member States and safeguard Europe's Audiovisual future by:

- Implementing correctly and in an impartial manner the existing competition provisions of the EU Treaty including provisions of Articles 86.2 and 87 to the public broadcasting sector, as they have been applied to other sectors with a significant element of public service;
- Including State Aid to broadcasting within future editions of the State Aid Scorecard;
- Handling all existing complaints without delay, objectively and by a full and scientific application of the principles set out by the Court in the Altmark judgment[28];
- Insisting on rigorous and full implementation of the Financial Transparency Directive[29] in all Member States;
- Adopting substantive guidelines on State Aid, taking into account recent case law so as to include substantive rules as established and applied to other sectors according to Article 86.2 as interpreted by the Court's Jurisprudence;
- Requiring Member States to establish independent authorities to monitor, and in case of infringement, to sanction Publicly Funded Broadcasters through a binding act;
- Imposing these obligations on Member States through a directive adopted ex Article 86.3 of the Treaty.

In addition, we call on the Member States to safeguard the co-existence of public and private broadcasters operating alongside each other and the related markets of multi-channel TV and programme production as well as the radio, internet and press markets and to honour the Amsterdam Protocol by:

- Imposing clearly defined remits on each channel and/or station operated by a Publicly Funded Broadcaster which must include specific programming obligations which are not also imposed on other broadcasters[30];
- Ensuring that public funding to broadcasters is both necessary and proportional to the remit, and that the principle of economic efficiency is fully applied to public broadcasters' expenditure;
- Regulating Publicly Funded Broadcasters in line with Article 86.3 of the Treaty;
- Establishing independent authorities to monitor Publicly Funded Broadcasters through a binding act.

28 This requires an interpretation of both Article 87.1 and 86.2 as a whole, so that it would be impossible to apply the exemption possible under the latter provision to funding which does not satisfy all four conditions laid down by the Court

29 Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings *Official Journal* L 193 , 29/07/2000 P. 0075 - 0078

30 With clearly defined remits (subject to proper scrutiny) and a relevant regulatory framework, Publicly Funded Broadcasters can provide distinctive programming, retain their audience share and support fair and open liberalised markets

Taken together, this action will provide the basis for healthy, vigorous and fair competition for years to come. Also, it will ensure that State Aid is justified relative to the cost of fulfilling the public service and, importantly, that clear processes and procedures are in place to protect fair competition within and among Member States.

Chapter 6 • Appendices

Formal Complaints to the European Commission

Since 1992, when the first complaint was filed against a European Publicly Funded Broadcaster, a total of eleven official complaints have been filed with the European Commission. Numerous other complaints have been made at the Member State level. These complaints are based largely around State Aid issues, and have come from multiple European countries, as summarised below:

Year	Market	Basis of Complaint
1992	Spain	Antenna 3 and Telecinco launched a case regarding public regional broadcasters on the grounds of excessive State Aid including the authorisation of debt. In 1998 the European Court of First Instance (**ECF**I) condemned the Commission for failing to resolve this complaint.
1993	Spain	Antenna 3 and Telecinco launched a case against TVE on the grounds of excessive State Aid including the authorisation of debt. In 1998 the ECFI condemned the Commission for failing to resolve this complaint.
1993	France	TF1 complained to the Commission about capital increases and other ad hoc subsidies paid to the Publicly Funded Broadcaster channels France 2 and France 3. TF1 cited an annual payment of €879m, as well as subsidies and capital increases totalling €333m. In 1999 the ECFI condemned the Commission for failing to resolve this complaint.
1993	Portugal	SIC complained to the Commission about grants received by RTP arguing that these payments distorted competition. In 1996 the Commission ruled that the value of the grants was less than that required to fulfil their public service obligation. This decision was later reversed by the European Court.
1996	Portugal	SIC lodged a second complaint to the European Commission, resulting from new aid to RTP in 1994-1996, an increase in capital of the public broadcaster and a guarantee given by the Portuguese State in connection with a bond issue by RTP.
1997	Portugal	SIC lodged a third complaint, regarding incompatible State Aid elements in the new Concession Contract that had been concluded between RTP and the Portuguese Government on 31 December 1996. In 2003, due to the actions presented by SIC in the Court of First Instance, in cases T-297/01 and T-298/01, the Commission adopted a decision regarding the ad-hoc measures mentioned in the complaints of 1993, 1996 and 1997. SIC appealed from the referred Commission decision (case T-442/03, still pending). The Commission has not yet adopted a final decision on the annual compensation indemnities granted to RTP between 1992 and 1998 in an amount of €324m.
1996	Italy	RTI (part of the Mediaset Group) complained to the Commission about the level of financing for RAI. In particular, they highlighted the €1.3bn licence fee, in conjunction with tax exemptions, capital increases and other measures. The case remains unresolved.
1997	Germany	VPRT (the Association of Commercial Broadcasters in Germany) filed a complaint regarding the anti-competitive nature of two thematic channels (Kinderkanal and Phoenix) launched by ARD and ZDF. The case was rejected on the basis that the two channels were both public service channels which did not take advertising, and that the level of funding was proportionate.
1997	UK	BSkyB complained to the Commission about the BBC's News24 channel. It argued that using licence fee money to finance a restricted access cable offering constituted a breach of competition law and State Aid rules. The Commission found in favour of the BBC on the grounds News24 was a public service channel which did not take advertising and that the level of funding was proportionate.
1999	UK	The British Internet Publishers Alliance (**BIPA**) complained (October 1999) that the BBC's commercial internet site (Beeb.com) had received significant amounts of unauthorised State Aid and unfair cross-subsidies with adverse effects on competition and effects on trade between Member States; that their Freebeeb internet portal duplicated the private sector service providers and benefited unfairly from its association with the BBC brand and other valuable cross-promotional opportunities. In January 2000 BIPA complained that the BBC was providing mobile telephony services free-of-charge to commercial operators - thereby creating a publicly funded monopoly – which cut across 'the common interest' and was in breach of Article 87.
1999	Ireland	TV3 complained to the Commission that RTE's dual-funding mechanism provides the Publicly Funded Broadcaster with an unfair competitive advantage. TV3 highlighted that RTE received 84% of Irish advertising revenues whilst also being recipient to €170m in licence fees. The case is unresolved.
2000	Denmark	TV Danmark, with support from the Danish Association of Commercial (Radio) Broadcasting, complained to the Commission about the lowering of advertising prices by the dual-funded Publicly Funded Broadcaster which impacted both TV and radio. The case is unresolved.

Formal Complaints to the European Commission (cont'd)

Year	Market	Basis of Complaint
2002	Netherlands	CLT/UFA SA, RTL De Holland Media Group SA and Yorin TV B.V. filed a complaint to the Commission with respect to the financing of the public broadcasting system in the Netherlands. The complaint refers to the unclear public service remit, the absence of adequate and independent supervision and the lack of transparency and structural overcompensation in the Dutch public broadcasting system. The complainant also refer to (the risk of) cross-subsidization and the fact that indirect income is not taken into account when the Dutch state grants funds to the public broadcasters. The case is unresolved.
2003	Germany	VPRT filed a complaint accusing ARD and ZDF of breaches in competition law by benefiting from hidden State Aid, distortion of the market for premium sports rights, financing online ventures with revenue from the licence fee, and the inadequate implementation of the Financial Transparency Directive. The case is unresolved.

Publicly Funded Broadcaster TV Channels and Budgets

Countries	Number TV channels national PSB	Number radio channels national PSB	Budget PSB (€million)	% advertising / sponsoring
Austria	ORF: 2	4	833	42%
Belgium	VRT: 2 RTBF: 2	3 5	273 318	29% 19% (for TV no advertising only sponsoring)
Denmark	3 (DR: 2, TV2 Denmark: 1)	3 (DR)	DR: 392 (TV + Radio) TV 2: 203 (TV)	0% (DR) 68% (TV2)
Finland	YLE: 2 + 5 digital (2 identical with analogue versions + 3 digital theme channels)	4	370	0% (NB: concession fee)
France	6 (France 2, France 3, France 5, France Arte, TV 5, L a Chaîne Parlementaire)	6	4,337	34% (France Télévision) 5% (Radio France)
Germany	ARD + ZDF: 12 + 2 digital platforms: ARD Digital (19 channels and EPG) + ZDF Vision (11 channels and EPG)	2	7,000	4% (ARD) 13% (ZDF)
Greece	ERT: 3	4	170	9%
Ireland	RTE: 3	5	258	53%
Italy	RAI: 3 + 6 digital theme channels, via subsidiary RAIsat another 7 theme channels	4	2,527	44%
Netherlands	NOS: 3 (also broadcast digital via satellite)	6	700	34%
Norway	3 (NRK: 2, TV2)	7 (NRK)	NRK 375 TV2 188 Radio	0% (NRK) 95% (TV2)
Portugal	RTP: 2	3 (RDP)	RTP: 205 RDP: 62	37% (RTP)
Spain	RTVE: 2 (also broadcast 7 digital channels via satellite) Public autonomous channels: 12 with digital channels	4	1,500	73%
Sweden	SVT: 2 + 5 digital (2 identical with analogue versions + 3 digital theme channels)	5 (SVR)	SVT: 414	0% (SVT) 0% (SVR)
UK	BBC: 2 + 7 on all digital platforms (2 identical with analogue version + 5 digital theme channels)	5	4,994	0%

Note: Any discrepancy on this and Figure D can be explained by different statistical basis of calculation
Source: Commissariaat voor de Media (Dutch regulator, 2002)

Publicly Funded Broadcaster Summary of Digital Activities and Budget

Countries	Internet	Digital TV channels	Budget Internet	Budget digital channel
Austria	Yes	1 satellite channel (TW1) via subsidiary company, completely separated from PSB remit		
Belgium	Yes	Experiments digital terrestrial		
Denmark	Yes	TV: No Radio: 8 channels via DAB		
Finland	Yes	2 identical with analogue version + 3 theme channels offered via satellite and DTT		
France	Yes	No: but plans for DTT adopted; France Télévision will launch three digital terrestrial channels	State budget over 3 years 2002-2004 will be €150 million	
Germany	Yes	Two digital platforms: ARD Digital (19 channels and EPG) + ZDF Vision (11 channels and EPG) offered via satellite	ARD: €178.6 million ZDF: €15.1 million	ZDF: €78.1 million
Greece	Yes	No		
Ireland	Yes	No		
Italy	Yes	6 theme channels + 7 theme channels via subsidiary company RAIsat: offered via satellite Experiments digital terrestrial		
Netherlands	Yes	Experiments digital terrestrial	€29.1 million	
Norway	Yes	No		
Portugal	Yes	No	€1.4 million	
Spain	Yes Yes	2 identical with analogue version offered via satellite and DTT		
Sweden	Yes	2 identical with analogue version + 3 theme channels offered via satellite and DTT		
UK		BBC: 2 identical with analogue version and 5 theme channels offered via satellite and DTT	BBCi: €142.7million	CBBC + Cbeebies £28.55 million, BBC3 £75.65 million, BBC4 £45.67 million, BBC News £71.37 million

Source: Commissariaat voor de Media (Dutch regulator), 2002

Publicly Funded Broadcaster Content Programme Requirement

Countries	Basis	Content programme requirements	Qualitative (description type programme)	Quantitative (% or number programme)	Other
Austria	Law	Yes	Yes	Yes	The annual and monthly schemes of television must be designed in such a way that there is a choice of high quality programmes at prime-time(8.00-10.00 p.m.) In competition with commercial broadcasters, PSB must ensure the preservation of unique aspects in terms of content and performance
Belgium	Management Contract	Yes	Yes	No	Reach certain audience shares
Denmark	Law and Contract	Yes	Yes	Yes	
Finland	Law	Yes	Yes	No	
France	Cahier des Missions et des Charges	Yes	Yes	Yes	
Germany	Specific Interstate Treaties Internal	Yes	Yes	No	Public should receive an objective overview with regard to world events and in particular get a comprehensive picture with regard to events taking place
Greece	Law	Yes	Yes	No	
Ireland	Internal	Yes	Yes	No	
Italy	Service agreement between RAI and Ministry of Communications	Yes	Yes	Yes	
Netherlands	Law	Yes	Yes	Yes	
Norway	NRK: Overall aim, bylaws and guidelines Radio P4 and TV2: licences	Yes	Yes	Yes: only Radio P4	
Portugal	Contract of Concession	Yes	Yes	Yes	Oppose tendency towards uniformity and mass appeal in television
Spain	Law	Yes	Yes	No	
Spain Catalonia	Contract Programme	Yes	Yes	Yes	
Sweden	Charter authorized by government	Yes	Yes	No	
UK	Internal: BBC License: others	Yes	Yes	No: BBC Yes: ITV, Channel 4 and 5	

Note: Broadcasters in Spain believe that there are no content programme or qualitative requirements
Source: Commissariaat voor de Media (Dutch regulator), 2002

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