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International Conference on Competition Law and Policy (Athens)

Comments on State Funding of Public Service Broadcasting

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New Communication?

- Extensive Consultation:
 - General principles: January-March 2008
 - First draft: November 2008-January 2009
 - Discussion with MS: December 2008
 - Second draft: April-May 2009
- Strong interests of Member States and effect of economic downturn?

PSB: Delicate Balance (1)

- Digital Age: Production of content & distribution platforms:
 - Technology driven (VoD, IPTV);
 - Vertical disintegration – new players, new services
 - Provision of a “special” public service - Amsterdam Protocol: media pluralism tailored for each MS
 - PSBs need to take advantage of new available platforms to fulfil their public mission

PSB: Delicate Balance (2)

- Impact outside the narrow broadcasting sector?
- Application of Altmark criteria:
 - Public Service Remit?
 - Proportionality Test?
- Mixed models of funding: Transparency Requirements
- Is an independent supervisor (e.g. BBC Trust) the solution?

Existing Aid (1)

- Threshold question of great importance
- Analysis of each “broadcasting system” (legal and economic framework):
 - original financial regime within existing aid?
 - new element “clearly severable”?
 - non-severable changes affect the “actual substance” of the original measure?

Existing Aid (2)

- Maintaining the “status quo”:
 - Expansion of current services?
 - Delivery of content via different media?
 - Special channels/platforms/services?
 - “Ancillary” services?
- Rule of thumb: avoid entering in already developed markets where participants had little or no exposure to the PSB as a competitor.

PSBs in Partnerships

Challenging issues:

- Existing Aid?
- Imputability to the State?
- MEIP (see deployment of broadband)?
- Neutrality (editorial & technology standards)
- Merger Control and Article 81EC?