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Regulation of public service broadcasting

Summary:

Public service broadcasting is a quintessentially European type of broadcasting. The lecture opens with the establishment of public service broadcasting (namely the British Broadcasting Corporation) and the rationale that lies behind public service broadcasting. It then moves on to discuss regulatory approaches to public service broadcasting, with examples from various European countries. The lecture closes with the role of the European Union in the regulation of public service broadcasting in member states.

Public service broadcasting is quintessentially European and from its inception recognized that there is a social interest in broadcasting.

A bit of technology history:

Guglielmo Marconi Italian inventor sent and received his first radio signal in Italy in 1895. 1901 received the letter "S" telegraphed from England to Newfoundland; first successful transatlantic radiotelegraph message.

Nikola Tesla and Nathan Stufflefield took out patents for wireless radio transmitters. Tesla is now credited with being the first person to patent radio technology; the US Supreme Court overturned Marconi's patent in 1943 in favour of Tesla.

In 1922 British Broadcasting Corporation Ltd. was founded: The Marconi Co; The General Electric Co; The Radio Communications Co; Metropolitan Vickers Co; Western Electric Co and The British Thompson-Houston Company.

5 March 1926: Parliamentary Crawford Committee published its broadcasting report; termination of the British Broadcasting Company, Ltd. and creation of a Crown-chartered, non-commercial British Broadcasting Corporation from 1927; funded by a licence fee (compulsory radio licence until 1971), broadcasting characterized as public good.

The debate over whether the BBC should be covered by statute or Royal Charter arose in evidence given to the Crawford Committee in 1925. Sir Evelyn Murray, Secretary of the Post Office, submitted to the Committee a memorandum suggesting the establishment, by charter or statute, of a corporation with a widely representative governing body. Murray stated: "the Corporation should enjoy a large measure of independence and should not be subject either in its general policy or its choice of programmes to the detailed control and supervision of the Postmaster-General, from which would follow the corollary that the Postmaster-General

would not be expected to accept responsibility or to defend the proceedings of the Corporation in Parliament."

The Crawford Committee published its report on 5 March 1926, agreeing, among other things, that "the United States system of free and uncontrolled transmission and reception" was unsuited to Britain and that broadcasting had to remain a monopoly "controlled by a single authority". On 14 July 1926, the Postmaster-General announced that the main recommendations of the Crawford Committee had been accepted by the Government. The new British Broadcasting Corporation (not "Commission" as suggested by Crawford) would derive its authority from Royal Charter rather than statute in order to make it clear to the public that it was not "a creature of Parliament and connected with political activity".

BBC as public service broadcaster - 1st general manager John Reith: educate, inform and entertain vs. the United States – funding from advertising (soap opera – dramatic serials on radio sponsored by soap manufacturers: Procter&Gamble, Colgate-Palmolive, Lever Brothers)

PSB is a quintessentially national institution, mainly promoting national culture (or indeed diverse – albeit still – national cultures) and a national public sphere. The Broadcasting Research Unit identified the principles of public service broadcasting as the following: universal accessibility (geographic); universal appeal (general tastes and interests); particular attention to minorities; contribution to a sense of national identity and community; distance from vested interests; direct funding and universality of payment; competition in good programming rather than for numbers; and guidelines that liberate rather than restrict programme makers (as quoted in Raboy, 1996: 6, see also Scannell 1992, Bulck, 2001).

In Europe broadcasting was originally conceived as a service to the public, the spectrum was understood as a "public natural resource" (Schiller in Feintuck, 1999: 26). According to Hall (1993) the public service idea clearly has its basis in the claim that there is "such a thing as 'the public interest' – a *social interest* – at stake in broadcasting" (1993: 24, original emphasis), he goes on to identify some of the roles of broadcasting in modern societies (source of knowledge, creator of a discursive space, a key pass between "the governed" and

“the governors”) to argue that “access to broadcasting has thus become a condition, *a sine qua non*, of modern citizenship” (ibid: 25, original emphasis).

A more pragmatic or maybe cynical view was expressed in an interview with a civil servant from EU’s Directorate of Media who characterized public service broadcasting as solving ‘a particular problem in a particular market with a particular technology.’ (anonymous 1, personal communication, May 27, 2009) With the establishment of commercial television the task was to ‘create some space to resolve how exactly you have some grounds for fair competition in relation to the commercial television interest which we let in partly for promoting pluralism in the 1980s ... and now we have somehow to situate public service broadcasting in a broader and much more competitive context which is multi sectoral and convergent with press and publishing as well.’ (Ibid.)

How does public interest relate to media and communications? According to McQuail the origin of the term can be found in economic regulation, Mitnick (in McQuail, 1992: 21) derives it from medieval social theory which led to ideas of economic justice supportive of collective control over market forces.¹ In modern societies we find examples of sources that are regulated in the public interest,² these include basic infrastructure as well as basic telecommunication services. Telecommunication services are part of businesses that are considered to be “affected with a public interest” (Melody in McQuail, 1992: 21) due to the essential nature of the service, its tendency to monopoly and the requirement of universal accessibility. McQuail, however, notes that difficulties with applying the term public interest to an area like communication have their source in misunderstandings according to which features of mass communication are essential and whether interferences with free market mechanisms are justified in order to secure these.

The problematic of identifying public interest in communication is demonstrated by difficulties with finding its place in typologies of public interest. McQuail (ibid: 22-23) draws

¹ Interestingly, certain medieval occupations were also recognized as “common callings”, these included surgeons, bakers, innkeepers etc., they all involved some kind of general (public) interest which overrode the rules of the free market (McQuail, 1992:21).

² “Public goods are goods which cannot be appropriated privately. If such a good is supplied, no member of the collectivity can be excluded from its consumption. Therefore public goods must be produced by institutions other than a market economy and distributed by a mechanism different from markets” (Berger as quoted in Raboy 1996:n7)

on Held's variants of public interest theory which distinguishes three of them. The first, preponderance theory, understands public interest in a majoritarian way, i.e. it aims at maximizing the number of individual preferences. The second theory, common interest theory, refers to cases "where the interests in question are ones which all members are presumed to have in common, with little scope for dispute over preferences" (ibid: 23). The third theory Held identifies is the unitary one, which is "in effect, the assertion of some absolute normative principle, usually deriving from some larger social theory or ideology" (ibid: 23). According to McQuail, it is solely the common interest theory type which can be used for identifying public interest in communication, the other two types are insensitive or irrelevant to some key issues (including popular wants).

It is probably not surprising that apart from difficulties with pinpointing public interest in broadcasting there are also various notions about how best to ensure that broadcasting serves the public. The debate over this question has been dominated by two opposing views. On the one hand we find advocates of privately-run commercial media systems who argue that this is the way of guaranteeing independence and the market will serve the interests of all consumers – it will provide them with what they want³.

In contrast, we find proponents of the view that public service media can best serve the interests of consumers as well as citizens. James Curran (1998) draws upon the work of neo-Keynesians critical of the free market in broadcasting. This critique states that public service media serve "public good" without incurring additional costs, that all advertising-funded markets are imperfect as they are biased against quality (favour high ratings as opposed to highly rated programmes) and favour majority programmes which renders them insensitive to intensities of demand. Moreover, the emergence of new technologies actually increases the need for public control, as one source of monopoly (spectrum scarcity) has been replaced by the monopoly of economies of scale and scope (Curran, 1998:190). Curran very rightly points out that an alternative approach to the question of public service broadcasting takes into account the fact that people are not only consumers but also citizens within a democratic system with a right to be adequately informed about matters relating to public interest. A right, Curran argues, that is best guaranteed by public service broadcasting because "it gives

³ I deal with economic characteristics of broadcasting in more detail in Chapter II.

due attention to public affairs, and is less dominated by drama and entertainment than market-based broadcasting generally is” (Curran, 1998:190).

James Curran (1991) distinguishes three types⁴ of systems of public service media:

- social devolutionary

We find this type for example in Italy and the Netherlands, according to McQuail (1992) it can be characterized by external diversity, i.e. various channels or time blocks are allocated to various interest groups within the society. To make the example clearer, I provide a brief description of the Dutch public broadcasting system which reflects the Dutch social system that can be summarized in one word: pillarization. “Dutch society between the beginning of the twentieth century and the mid-1960s (and notably the first 20 years after the Second World War) was a principal example of ‘segmented pluralism’, with social movements, educational and communication systems, voluntary associations and political parties organized vertically (and often cross-cutting through social strata) along the lines of religious and ideological cleavages” (Brants and McQuail, 1997:154). The Dutch public broadcasting system works on the principle of allocating access to associations with different outlooks and priorities. According to the law “a broadcasting association should aim, as laid down in its statutes, to represent some clearly stated societal, cultural, religious or philosophical stream and to direct itself in its programming to the satisfaction of some actively present social, cultural, religious or philosophical needs” (as quoted in McQuail, 1992:100). McQuail argues that the idea of diversity as expressed in the Dutch broadcasting system mainly relates “to an ‘*external*’ and *exclusive* diversity in which different ‘voices’ and outlooks have their own separate channels, rather than to the more commonly encountered ‘*internal*’ diversity, according to which all tastes are catered for by channels serving large, heterogeneous audiences” (McQuail, 1992:101). In practice, the “allocation of broadcasting time was based on the number of members and/or subscribers to the broadcasting magazines produced by the different organizations” (Brants and McQuail, 1997:155). Dutch public service broadcasting is financed by licence fee, advertising and membership dues and magazine subscription. Commercial broadcasting was legalized in 1990.

⁴ Cf. Jakubowicz who works with a different categorization of public service broadcasting systems. Out of his categorization probably the most relevant for my argument is his “attrition model”, which he fears will gradually dominate post-communist countries. The following characterize this model: “PSBs are not allowed to adopt digital technology, develop new channels or services, or indeed operate on the internet in any significant way. This model, proposed by some business quarters, would result in PSBs finally sharing the fate of the dinosaurs as they failed to adapt to new circumstances” (2002: 7).

- liberal corporativist

This type exists for example in Norway, Finland, Denmark and Germany, the basic principle is to ensure the participation of various interest groups in the supervisory and regulatory organs which is understood as a guarantee of diversity. In Germany the responsibility for broadcasting lies with the states of the Federal Republic, this results “in a uniquely decentralized broadcasting system with production centres in every region of the country” (Kleinstеuber, 1997:85). All broadcasting corporations are governed by an independent broadcasting council whose representatives are supposed to “reflect the ‘socially relevant groups’ of society” (Kleinstеuber, 1997:87). The representatives are either elected in the parliament or are delegated by various groups (including political parties, churches and labour organizations). Despite these provisions political parties have been able to gain influence in the Broadcasting Councils because “German parties are relatively strong in all segments of the political and social system and penetrate practically all of the ‘socially relevant groups’” (Kleinstеuber, 1997:87). In the mid-1980s commercial competition challenged the public broadcasting system and a dual system was established. Private broadcasting is regulated by special licensing and supervisory institutions. Public service broadcasting is mainly financed by a monthly licence fee and advertising revenues (limited to twenty minutes each weekday).

- public service

This type is characterized by a high degree of internal diversity, i.e. the needs of various interest groups are catered for by a large scale of programmes on the same channels. This system is typical, for example, of the United Kingdom of Great Britain and Northern Ireland. The United Kingdom has a highly centralized communications system. Public service media are guided by the principles of high quality programming with a diversity of contents and general accessibility. Public service broadcasting in the United Kingdom tends to be central and national. Independent television companies run local television channels. The British Broadcasting Corporation is regulated by a Board of Governors, consisting of amateur regulators appointed by the government of the day. The BBC is required to commission twenty-five per cent of its programming from independent producers. It is financed by a licence fee and its Royal Charter has to be periodically renewed. Commercial television was introduced in the United Kingdom in 1955 with the establishment of the Independent Television network. “In Britain commercial television

adopted the traditions of a public broadcast service. It was modelled to redress weaknesses in the BBC, to make broadcasting more sensitive to popular taste, to promote regional culture and to oppose Londonism” (Coleman and Rollet, 1997:23). In 1990 the duopolistic arrangements came to an end with the deregulation of the Independent Television network. All commercial television channels in the United Kingdom are regulated by the Independent Television Commission.

The particular importance of public service broadcasting for European Union member states is reflected in the fact that a protocol specifically related to public service broadcasting was in 1997 annexed to the “Treaty on European Union”⁵ (“Treaty of Amsterdam”). The “Protocol [No. 32] on the system of public broadcasting in the Member States” (further Protocol) opens with the statement that “the system of public service broadcasting in Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”. The Protocol includes the following interpretative provision:

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, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

The major goal of the Protocol appears to be to confirm the role of public service broadcasting (although this role is defined vaguely) and ensure the continued provision of funding for it. It does not clarify values associated with public service broadcasting in any detail, nonetheless it makes a clear reference to media pluralism and the role of public service broadcasting in its maintenance and vague insinuations at public interest (societal needs). The Protocol’s other goals evidently are to place the funding of public service broadcasting under the jurisdiction of member states (as well as the overarching issues related to the definition and organization of public service broadcasting) and to ensure that the funding will not affect

⁵ All references to “The Treaty on European Union” refer to its consolidated version of 2 October 1997, see *Official Journal of the European Communities*, C 340, 10.11. 1997: 109.

trading conditions and competition within the European Union (in this respect the issue of state aid is crucial, see further).

More precisely defined goals, values and mechanisms could be analyzed in relation to the specific cases of the member states, this, however, is not the purpose of my analysis. The Protocol makes it clear that regarding justifications for the regulation of public service broadcasting two of Feintuck's categories apply, both the public service justification as well as the economic one. As I have already suggested these two justifications appear to be irreconcilable in many respects, moreover, they are characteristic of broadcasting policy pursued by the European Union in general. Public service broadcasting is thus subject also to competition regulation, particularly in relation to questions of state aid and distortion of competition. Indeed Collins suggests that "it is an odd feature of Community history that policies to do with competition and market structure have been more important than have overt and explicit broadcasting and audio-visual policies in shaping the audiovisual and broadcasting sectors in the European Community" (ibid.: 144).

Competition policy is viewed as an effective tool for dealing with/preventing concentration in the media market and to prevent market failure, Nitsche (2001: 8) makes an interesting point when she writes that "a more populist view conceives of competition, particularly on the global scale, as a struggle for dominance not only between companies, but also between nations, necessarily producing winners and losers" which she believes had an impact on the conceptualization of EU audiovisual policy. She goes on to stress that "the Protocol certainly did not remove public service broadcasting from the application of the state aid rules. ... Arguably it [the Protocol] reduces the Commission's margin of discretion to the extent that only funding which clearly is not connected to the public service mission is illegal under the state aid rules" (2001: 152-153). The most significant interventions on the part of Directorate General IV (Competition) in the audiovisual field involve "broadcasters' acquisition of rights to sporting events and cinema films" (Collins, ibid.: 147).

The Community's position in relation to public service broadcasting is further reinforced in the "Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council" of 25 January 1999 [further Resolution] concerning

public service broadcasting.⁶ Indeed the Resolution considers the fact that public service broadcasting “in view of its cultural, social and democratic functions which it discharges for the *common good* has a vital significance for ensuring *democracy, pluralism, social cohesion, cultural and linguistic diversity*” (emphasis added) and stresses that “the increased diversification of the programmes on offer in the new media environment reinforces the importance of the comprehensive mission of public broadcasting in the Member States of the Treaty of Amsterdam”. The Resolution also includes a clause stating that “broad public access, without discrimination and on the basis of equal opportunities, to various channels and services is a necessary precondition for fulfilling the special obligation of public service broadcasting”. The goals of the Resolution obviously include a further reinforcement of the acknowledged importance of public service broadcasting and of conditions for its funding, taking into account specifically the issues linked to technological developments (new audiovisual and information services) which are, importantly, seen as further stressing the need for public service broadcasting. The values that are alluded to in the Resolution include the vaguely defined cultural, social and democratic functions in the public interest and more concretely universality (in terms of public access), diversity (of channels and services), quality (of programming, not further specified) and social cohesion (prevent fragmentation). No reference is made to regulatory mechanisms with which the goals can be achieved, obviously due to the fact that this issue is under the jurisdiction of individual member states (as already pointed out).

In a similar vein the “Report from the High Level Group on Audiovisual Policy” [further Report] of October 1998 states that

the dual system (private and public broadcasters) is a distinctive feature of the broadcasting landscape in Europe. *This should not be questioned as such, and it should be left up to individual Member States primarily, as well as to market forces to determine the respective importance of the public and private sectors in each country.* However, certain basic principles should apply, and should be translated into a set of concrete criteria for funding arrangements .⁷

⁶ *Official Journal of the European Communities* C 30, 5.2. 1999:1.

⁷ http://europa.eu.int/avpolicy/legis/key_doc/hlg_en.htm, emphasis added.

In relation to public service broadcasting the Report identifies two main principles at stake: “the first is that public television plays a vital role in most Member States of the European Community, a fact which has recently been acknowledged in the *Protocol on the system of public broadcasting in the Member States* attached to the *Treaty of Amsterdam*. The second is that European economic integration is rooted in competition and the free market.” The Report goes on to acknowledge that the “future of Europe’s distinctive ‘dual’ public/private broadcasting system depends on these two apparently incompatible principles being reconciled as far as possible”. This acknowledgement is of key importance as the tension between the two principles and their proponents (as I have already suggested) is characteristic of the regulatory framework.

Among values associated with public service broadcasting an open reference is made to cultural diversity, pluralism, universality and quality (in particular of entertainment). Concrete recommendations relating to public service broadcasting do not deal with mechanisms for the achievement of the vaguely acknowledged democratic, societal and cultural roles⁸ but rather stress the importance of funding arrangements that are to be proportional, open and ensure fair competition in order to realize the economic potential of the audiovisual industry. Importantly, the Report deals with the changing regulatory environment in relation to technological convergence. What is proposed is a move towards deregulation, “there is a case to be made for the relaxation of unnecessarily restrictive regulations, especially as terrestrial free-to-air services will have to remain competitive with a host of new services emerging as a consequence of higher capacity on all networks”. Deregulation is understood as a means of increasing competitiveness, the deregulatory framework should “abide by certain principles and in particular it should encourage competition, pluralism and open, non-discriminatory access. It may take account of other, more specific, public policy goals, primarily set at national level”. The report states that

the regulatory framework, in order to evolve without the need for constant adaptation and the consequent lack of legal security, should be more based on principles and consist of less detailed rules. Such principles, however, should include pluralism, the

⁸ Mr Oreja’s report to the European Commission “Audiovisual policy: progress and prospects” of 30 July 1997 deals with the societal and cultural challenges to audiovisual policy, among them he identifies the reflection of cultural diversity, safeguarding of linguistic diversity, developing audiovisual education for children, striking a balance between the cultural and commercial value of certain contents (such as major sporting events, museum and library collections etc.), http://europa.eu.int/avpolicy/legis/key_doc/hlg_en.htm

need to provide for quality content, respect for linguistic and cultural diversity and the protection of minors. In addition, clear rules and safeguards are needed to ensure open, non-discriminatory, and equal access both for competing providers and for users to digital networks and services. The framework should also be conducive to fostering European, national and local audiovisual production.

Regarding regulatory mechanisms in the age of convergence the report makes a special reference to the need to maintain “specific regulation for audiovisual content, based on the fundamental distinction between public and private communication”. The report supports European-level co-operation between national regulators and it does not consider it crucial to create a regulatory body at the Community level. At the global level “it is essential that the specificity of content and legitimacy of public policy objectives based on cultural diversity and pluralism of expression is recognized in international trade negotiations”. According to Nitsche (2001: 35)

it appears that both the Commission and the Council consider self-regulation not with regard to broadcasting but within the context of new media, most notably the Internet. Hence, it will become significant for broadcasting only if that convergence will advance considerably in the future, ultimately blurring the distinction between watching television “the traditional way” and over the Internet. But even on this assumption, the role of self-regulation at Community level will be limited and will exclude public-interest considerations, which are likely to remain exclusively within the Member States’ competence.

The above discussion has already hinted at the lack of legislative measures related to public service broadcasting and the contradictory justifications for its continuing existence, on the one hand the economic justification and on the other the public service one. Ward (2003) thinks that the stress on the European Union’s pro-competitive stance in relation to public service broadcasting is exaggerated, he believes that the Commission understands its role as solely confined to assessing the funding structure of public service broadcasting systems and he provides examples of cases in which the Commission made decisions that confirmed that the definition of public service remained within the jurisdiction of individual members states. Ward’s point is a valid one but he misses the fact that legislative measures at the transnational

European level are crucial for securing citizens' (not only consumers') rights in relation to public service broadcasting.

In word file:

Czech TV

483/1991 Sb.

ZÁKON

České národní rady

ze dne 7. listopadu 1991

o České televizi

ve znění zákonů č. 36/1993 Sb., č. 253/1994 Sb., č. 301/1995 Sb., č. 39/2001 Sb., č.

231/2001 Sb., č. 82/2005 Sb., č. 127/2005 Sb., č. 304/2007 Sb., č. 384/2008 Sb., č.

132/2010 Sb. a č. 153/2010 Sb.

§ 2

(1) Česká televize poskytuje službu veřejnosti tvorbou a šířením televizních programů, popřípadě dalšího multimediálního obsahu a doplňkových služeb na celém území České republiky (dále jen "veřejná služba v oblasti televizního vysílání").

(2) Hlavními úkoly veřejné služby v oblasti televizního vysílání jsou zejména

a) poskytování objektivních, ověřených, ve svém celku vyvážených a všestranných informací pro svobodné vytváření názorů,

b) přispívání k právnímu vědomí obyvatel České republiky,

c) vytváření a šíření programů a poskytování vyvážené nabídky pořadů pro všechny skupiny obyvatel se zřetelem na svobodu jejich náboženské víry a přesvědčení, kulturu, etnický nebo národnostní původ, národní totožnost, sociální původ, věk nebo pohlaví tak, aby tyto programy a pořady odrážely rozmanitost názorů a politických, náboženských, filozofických a uměleckých směrů, a to s cílem posílit vzájemné porozumění a toleranci a podporovat soudržnost pluralitní společnosti,

d) rozvíjení kulturní identity obyvatel České republiky včetně příslušníků národnostních nebo etnických menšin,

e) výroba a vysílání zejména zpravodajských, publicistických, dokumentárních, uměleckých, dramatických, sportovních, zábavných a vzdělávacích pořadů a pořadů pro děti a mládež.

§ 3

(1) Česká televize naplňuje veřejnou službu v oblasti televizního vysílání zejména tím, že

a) provozuje analogové televizní vysílání dvou televizních programů prostřednictvím zemských vysílacích rádiových zařízení, popřípadě jiných technických prostředků tak, aby v součtu území pokrytého signálem zemského analogového nebo zemského digitálního televizního vysílání a území pokrytého signály souběžného zemského analogového a zemského digitálního televizního vysílání byla pro obyvatele České republiky zajištěna možnost příjmu těchto televizních programů v rozsahu podle odstavce 3, a to za podmínek stanovených zvláštním právním předpisem 1a),

b) provozuje zemské digitální televizní vysílání televizních programů uvedených v písmenu a) a dalších alespoň dvou televizních programů zahrnutých v souhrnném datovém toku složeném z dílčích datových toků náležejících televizním a rozhlasovým programům, multimediálnímu obsahu a doplňkovým službám veřejné služby v oblasti televizního a rozhlasového vysílání, upravených pro společné šíření prostřednictvím zemské sítě vysílacích rádiových zařízení s plánovaným pokrytím alespoň 95 % obyvatel České republiky počítaných podle údajů vyplývajících z posledního sčítání lidu 1b) (dále jen "multiplex veřejné

služby"),

- c) jako provozovatel multiplexu veřejné služby sestavuje společně s Českým rozhlasem souhrnný datový tok a odpovídá za jeho správu a jeho předání k šíření zemskou sítí vysílacích rádiových zařízení,
- d) zřizuje síť vlastních zpravodajů,
- e) v oblasti zpravodajských a publicistických pořadů zajišťuje regionální vysílání prostřednictvím televizních studií České televize (dále jen "televizní studia") pro území jejich působnosti. Regionální vysílání každého televizního studia musí vyváženě obsahovat příspěvky z celého území jeho působnosti,
- f) vytváří archivní fondy, udržuje je a podílí se na jejich využívání jako součásti národního kulturního bohatství,
- g) podporuje českou filmovou tvorbu,
- h) vysílá díla domácí a zahraniční tvorby,
- i) poskytuje alespoň na jednom vysílaném programu 24hodinovou programovou službu, včetně aktuálního zpravodajství,
- j) poskytuje teletextové služby,
- k) opatřuje alespoň 70 % vysílaných pořadů skrytými nebo otevřenými titulky a alespoň 2 % vysílaných pořadů vyrábí v českém znakovém jazyce nebo opatřuje simultánním tlumočením do českého znakového jazyka pro osoby se sluchovým postižením a dále alespoň 10 % vysílaných pořadů zpřístupňuje pro osoby se zrakovým postižením, /účinnost od 1.1.2011/
- l) vyvíjí činnost v oblastech nových vysílacích technologií a služeb.

Rada České televize

§ 4

(1) Orgánem, jímž se uplatňuje právo veřejnosti na kontrolu činnosti České televize je Rada České televize (dále jen "Rada"). Rada má 15 členů. Členy Rady volí a odvolává Poslanecká sněmovna Parlamentu České republiky (dále jen "Poslanecká sněmovna"), a to tak, aby v ní byly zastoupeny významné regionální, politické, sociální a kulturní názorové proudy.

(2) Návrhy kandidátů na členy Rady předkládají Poslanecké sněmovně organizace a sdružení představující kulturní, regionální, sociální, odborové, zaměstnavatelské, náboženské, vzdělávací, vědecké, ekologické a národnostní zájmy. Návrhy lze předložit ve lhůtě 15 dnů ode dne zveřejnění výzvy předsedy Poslanecké sněmovny k předložení návrhů způsobem stanoveným usnesením Poslanecké sněmovny.

(3) Členem Rady může být zvolen občan České republiky, který

a) je způsobilý k právním úkonům,

b) má trvalý pobyt na území České republiky, a

c) je bezúhonný; za bezúhonného se nepovažuje ten, kdo byl pravomocně odsouzen pro trestný čin spáchaný úmyslně, pokud jeho odsouzení pro tento trestný čin nebylo zhlazeno nebo se na něho z jiného důvodu nehledí jako by nebyl odsouzen, a ten, kdo nesplňuje požadavky podle zvláštního zákona. 1e)

(4) Členové Rady jsou voleni z kandidátů navržených podle odstavce 2, a to na funkční období 6 let, přičemž každé 2 roky je volena jedna třetina členů; mohou být zvoleni opětovně. Na místa uprázdněná z jiného důvodu než pro uplynutí funkčního období jsou voleni noví členové na dobu zbývající do konce funkčního období toho člena, jehož místo se uprázdnilo; je-li tato doba kratší než 1 rok, omezení možnosti opětovného zvolení neplatí. V případě odvolání Rady podle § 6 odst. 3 a následném zvolení všech členů Rady Rada na své první schůzi losem určí 5 členů Rady s funkčním obdobím 2 roky, 5 členů Rady s funkčním obdobím 4 roky a 5 členů Rady s funkčním obdobím 6 let.

(5) Rada je ze své činnosti odpovědná Poslanecké sněmovně.

(6) Členství v Radě je veřejnou funkcí. 2) V souvislosti s jejím výkonem přísluší členům

Rady odměna, jejíž výši určí svým usnesením Poslanecká sněmovna.
(7) Rada volí ze svého středu předsedu a odvolává ho.

The EU's Competition Directorate:

It has been dealing with cases that involve European public service broadcasters and in the following I look at examples of case practice and the more general issues involved.

A civil servant from DG Competition gave an interview to me in mid-2009 and the following is important for this lecture:

The remit of PSB is defined by member states, its mission is to fulfill specific social and democratic roles, however, aid for PSB should not distort competition. Since 2001 (up to mid-2009) the DG made decisions in 20 cases – this he considers too many. In the cases against PSBs the member state is the counterpart and compatibility with competition rules is assessed. Most frequent complaints involve:

1. replication of programmes
2. PSBs' book keeping is not transparent
3. PSBs' have premium rights – there is not enough left to commercial broadcasters
4. complaint made by newspapers – PSB websites look like newspapers

The role of EBU – in the cases against PSB it advises PSBs and supports them logistically.

Case practice:

http://ec.europa.eu/competition/sectors/media/decisions_psb.pdf

Run through cases and decisions on them.

Commission decisions on State aid to public service broadcasting (1999-2010)

30. 20/07/2010 C27/2009 (ex. N34b/2009) – France - Subvention pluriannuelle pour France Télévisions

29. 20/07/2010 C38/2009 (ex. NN58/2009) – Spain - New tax-based funding system for public broadcasting in Spain.

28. 26/01/2010 E5/2005 – the Netherlands - Yearly financing of Dutch public broadcasters

27. 03/12/2009 C 38/2009 – Spain - Investigation into the new financing of RTVE

26. 28/10/2009 E 2/2008 – Austria – State funding for Austrian public service broadcaster ORF

25. 01/09/2009 C 27/2009 – France – Investigation into the new financing of FT

24. 04/08/2008 N287/08- Denmark - Rescue Aid to TV2/Denmark A/S

23. 16/07/2008 N 279/2008 – France – Capital injection for France Télévisions
22. 27/02/2008 E 8/2006 – Belgium – State funding for Flemish public broadcaster VRT
21. 27/02/2008 E 4/2005 – Ireland – State aid financing of RTE and TNAG (TG4)
20. 24/04/2007 E 3/2005 – Germany - Financing of public service broadcasters in Germany
19. 07/03/2007 NN 8/2007 – Spain - Financing of workforce reduction measures in favour of RTVE
18. 04/07/2006 NN 31/2006 – Portugal - Financial support to public service broadcaster RTP
17. 22/06/2006 C 2/2004 – Netherlands - Ad-hoc financing measures of Dutch public service broadcasters
16. 22/03/2006 N 638/2005 – France - Aide à la création de la chaîne corse Via Stella
15. 22/03/2006 E 14/2005 – Portugal - General financing system for RTP
14. 07/06/2005 N 54/2005 – France - Chaîne française d'information internationale
13. 20/04/2005 E 9/2005 – Italy - Licence fee payments to RAI
12. 20/04/2005 E 10/2005 – France - Licence fee payments to France 2 and 3
11. 20/04/2005 E 8/2005 – Spain - Financing of RTVE
10. 06/10/2004 N 313/2004 – Denmark - Recapitalisation of TV2
9. 19/05/2004 C 2/2003 – Denmark - Financing of TV2
8. 10/12/2003 C 60/99 – France - Ad-hoc payments to France 2 and 3
7. 15/10/2003 C 85/2001 – Portugal - Ad-hoc payments to RTP
6. 15/10/2003 C 62/99 – Italy - Ad-hoc payments to RAI
5. 01/10/2003 N 37/2003 – United Kingdom - BBC digital curriculum
4. 22/05/2002 N 631/2001 – United kingdom - BBC licence fee
3. 03/04/2002 NN 2/2002 – Germany - ZDF Medienpark
2. 14/12/1999 NN 88/98 – United Kingdom - BBC 24 hours news channel
1. 24/02/1999 NN 70/1998 – Germany - Kinderkanal/Phoenix

(*) **Commission decisions:** the Commission issues the following types of decisions – as defined in the [Council Regulation \(EC\) No 659/1999](#) of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (*Official Journal L 83, 27.03.1999, pages 1-9*), (see http://ec.europa.eu/comm/competition/state_aid/legislation/rules.html)

After a preliminary examination (phase I decisions):

1. **decision does not constitute aid** - where the Commission, after a preliminary examination, finds that the notified measure does not constitute aid - **art. 4(2)**
2. **decision not to raise objections** - where the Commission, after a preliminary examination, finds that no doubts are raised as to the compatibility with the common market of a notified measure, in so far as it falls within the scope of Article 87(1) of the Treaty - **art. 4(3)**
3. **decision to initiate the formal investigation procedure** - where the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the common market of a measure - **art. 4(4)**

After a formal investigation procedure (phase II decisions):

1. **decision does not constitute aid (after formal investigation procedure)** - where the Commission, after formal investigation procedure, finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid - **art. 7(2)**
2. **positive decision** - where the Commission, after formal investigation procedure, finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the common market have been removed - **art. 7(3)**
3. **conditional decision** - where the Commission attached to a positive decision conditions subject to which an aid may be considered compatible with the common market or laid down monitoring obligations - **art. 7(4)**
4. **negative decision without recovery** - where the Commission finds that the aid is not compatible with the common market and shall not be put into effect - **art. 7(5)**
5. **negative decision with recovery** - where the Commission finds that the aid is not compatible with the common market and, as it was unlawful aid, the Commission decides that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary - **art. 7(5) with art. 14(1)**
6. **decision to close formal investigation procedure following the withdrawal of notification** – **art. 8(2)**

As regards **existing aid**, the Commission may **propose "appropriate measures"** to the Member State concerned – **art. 18**

Where the Member State accepts these measures, the acceptance is recorded by the Commission and they become binding upon the Member State – **art. 19**

Where the Member State concerned does not accept the appropriate measures, the Commission may open the **formal investigation procedure** (see above) – **art. 4 (4)**.

Other types of decisions:

1. **revocation of decision** - where the Commission decides to revoke its previous decision due to the fact it was based on incorrect information provided during the procedure which was a determining factor for the decision– **art. 9**
2. **information injunction** – where the Commission requires the Member State to provide the information on alleged unlawful aid in a situation in which the Member State despite a reminder did not provide the information previously requested or provided incomplete information - **art. 10(3)**

Look at the case of the BBC digital curriculum and the decision on it in more detail: PDF file

Brussels, 01.10.2003 C(2003)3371 fin

Subject: State aid No N 37/2003 – United Kingdom BBC Digital Curriculum

2. DESCRIPTION OF THE SCHEME

(4) On 9 January 2003, the Secretary of State approved the BBC's proposals for the Digital Curriculum, a new online service that would provide interactive learning materials free to homes and schools. The approval would allow the BBC to spend £150 million from the license fee funds on the Digital Curriculum over a period of five years from the date of approval of the scheme by the Commission.

(5) The Digital Curriculum will provide an extensive online service, accessed via the internet. The proposed service is aimed for use in schools and homes. The Digital Curriculum service will be accessible through the BBC's existing BBCi online site and the Curriculum Online portal (see paragraph 9 below); in both cases free to all users. The service will be accessible by all with a PC and internet connection, or other suitable receiving devices. The Digital Curriculum is primarily intended to be a broadband service, but at the same time one where the majority of materials will nevertheless be accessible via narrowband connections. A broad range of media would be used in providing the Digital Curriculum and it will involve a mix of interactive learning resources.

(8) The Commission understands that there are four widely distributed MLEs currently available through the commercial market. Additionally, there are also various providers of electronic learning materials in the UK market.

(9) It is of significance that in addition to the BBC's Digital Curriculum service the UK Authorities have also introduced other schemes to encourage 'e-learning and teaching'. These have taken different forms in England, Wales, Northern Ireland and Scotland:

– In England, the largest 'market' in the UK, the government has launched the Curriculum Online portal providing a search engine and an electronic library of certified, educational materials. In addition, the Government has introduced an Electronic Learning Credit (eLCs) scheme whereby £330 million would be provided between the financial years 2002/3 to 2005/6 for schools to spend exclusively on non-BBC materials. The Commission understands that the eLCs are to be used strictly for material which is certified as eligible for the Curriculum Online programme; the programme comprises of products that have been designed and produced to deliver the Curriculum as taught in England.

(11) As the funding for the Digital Curriculum would come from the 'license fee' and the service will compete with active commercial providers the Commission has been asked to assess the 'scheme' under State Aid Rules both by the UK Authorities and the complainant.

(20) In order to ascertain whether the scheme constitutes aid within the meaning of Article 87(1), the Commission has to assess whether the scheme:

- is granted by the State or through state resources;
- provides an economic advantage;
- is capable of distorting competition by selectively favouring certain undertakings or the production of certain goods;
- affects trade between Member States.

6. Decision

The Commission has accordingly decided:

- to raise no objections to the scheme.

2009 Communication on State Aid – PDF file

