

Commission orders Danish public broadcaster TV2 to pay back excess compensation for public service tasks

Today the European Commission closed its State aid investigation into the State financed Danish public broadcaster TV2/DANMARK, ordering TV2 to reimburse approximately € 84.4 million plus interest of State aid. The formal investigation showed that this amount of aid that TV2/DANMARK received exceeded the cost of fulfilling its public service mission.

As a general rule, state financing of public service tasks will not be prohibited under the State aid rules as long as the public financing is proportionate to the net cost of providing the public service. When calculating the net cost, the Commission takes account of the advertising revenues generated by the public service programmes. In the current case, these principles led to the following result:

- As a first step, the Commission calculated whether the State compensation was proportionate to the net cost TV2 had to bear in fulfilling its public service obligation. The Commission found that TV2 had been overcompensated by DKK 628.2 (€ 84.4) million during the period 1995-2002.
- As a second step, the Commission analysed TV2's behaviour in the television advertising market. In order to establish whether a public service broadcaster has received more aid than necessary to fulfil its public mission, the Commission will also look whether this broadcaster has aimed to maximise revenue in its commercial activities. If this is not the case, the need for public fuinding will be increased accordingly. Although the television advertising prices in Denmark are rather low, the Commission's investigation did not produce evidence that TV2 had chosen not to maximise its advertising revenues.

In addition, the Commission's investigation revealed that the Danish State, as owner of TV2, did not behave like a market investor when it decided to reinvest the annual amounts of excess compensation into TV2. Although the Danish State claimed that the surplus was necessary to build up equity, it did not follow the strategy of a private investor because:

- The Danish State did not, before reinvesting the excess compensation into TV2, specify what the appropriate level of equity capital should be for such a TV broadcaster
- The Danish State limited itself to let the overcompensation accumulate in the company.

Therefore, the Commission concludes that an amount of € 84.4 million in public financing is not necessary for the accomplishment of TV2's public service mission and therefore should be reimbursed.

Background

The analysis carried out in today's decision is in line with earlier decisions of the Commission on RAI (Italy), France 2 and 3 (France) and RTP (Portugal).

The Commission assessed the State measures in accordance with the principles of the "Communication on the application of state aid rules to public service broadcasting".

The in-depth investigation was launched in January 2003 following initial investigations made by the Commission based on a complaint from one of the commercial broadcasters active on the Danish market. The complainant's concerns were mainly raised against TV2's behaviour in the advertising market and the different financing mechanisms that TV2 is benefiting from.

TV2 has benefited from a number of different State measures. In addition to licence fee resources, TV2 has received interest and instalment free loans, State guarantees for operating loans, a corporate tax exemption, ad-hoc capital transfers as well as access to a transmission frequency with national coverage on favourable terms.

TV2 is engaged in commercial activities and receives the major part of its income from advertising. Other commercial activities of TV2 include sale of programmes, exploitation of internet sites, purchase of programmes rights etc. TV2 can also establish new companies or invest capital in existing companies.

In line with the decision to open formal investigations of January 2003, today's final decision covers the period 1995-2002.

The Commission is aware that in 2003 TV2 has been converted from a public institution into a limited liability company. The new status requires the company to establish a certain amount of equity capital, which it previously did not need.

The Commission believes that any capital injection should be carried out in an operation that is entirely separate from the compensation payments for the fulfilment of public interest tasks. It should also be carried out under market terms. The Commission is presently discussing with the Danish State how such terms could be met.

Today's decision confirms that, although the Commission accepts a broad public service broadcasting remit, it does not accept structural excess compensation of the cost of providing the public service. Excess compensation raises serious concerns when a public broadcaster also carries out commercial activities, as it unduly favours the public broadcaster compared to competitors that do not receive any State funding. In these circumstances, excess compensation can allow the beneficiary to depress prices in commercial markets to levels not attainable to those competitors that do not receive State aid.

The Commission accepts TV2's broadly defined public service broadcasting task as a service of general economic interest (SGEI). Under this task, TV2 broadcasts a mix of programmes on culture, sport, entertainment and news on several television channels.