

# Exploring the Public Value Test

The German three step test

Irini Katsirea, Middlesex University

# The 12<sup>th</sup> Inter-State Broadcasting Agreement

- Clarified the definition of the remit
- Enabled PBS to offer telemedia that do not relate to a specific programme
- Established a black list of online services
- Highlighted the functions to be performed by PBS telemedia services

# Functions of PBS telemedia

## §11d (3) RStV

- Enabling the whole population to gain access to the information society
- Providing aid to orientation
- Promoting media literacy of all generations and also of minorities

# No need for the three step test

in the case of programmes and programme-related telemedia that are offered for retrieval for a period of seven days (or of 24 hours in the case of major events) (§11d (2) RStV)

# The three steps

## §11f (4) RStV

The broadcasting council needs to check:

- whether a new or significantly amended digital service satisfies the democratic, social and cultural needs of society
- whether it contributes to media competition from a qualitative point of view
- the associated financial cost

# The first step

- replicates the wording of the Amsterdam Protocol
- does not provide specific criteria against which to measure a certain telemedia offer
- almost any online service can be justified

# The second step

Criteria to be taken into account so as to decide whether a certain offering is justified (§ 11f (4) RStV):

- the quantity and quality of already existing, freely available offers
- the market impact of the planned offering
- its likely opinion-forming function

# What is a 'freely available offer'?

- 1<sup>st</sup> view: Only advertising- and publicly funded content
- 2<sup>nd</sup> view: Also pay-services

# How to assess the public value of the online offers?

- Is freedom from advertising a legitimate criterion?
- The *NDR Mediatheque* and *Kikaninchen* tests

# Further unresolved issues

- Can the seven day retrieval period only be extended in exceptional circumstances?
- What weight has to be accorded to the obligatory market impact assessment?
- Is the council entitled to approve of a planned service when the economic existence of numerous commercial offerings is in jeopardy?
- Is the broadcasting council's decision justiciable?
- Which services are excluded by the notion of non-programme related press-like services?