

EUROPEAN STATE AID POLICY AND THE EX ANTE EVALUATION OF NEW MEDIA SERVICES

SESSION 1: EUROPEAN STATE AID CONTROL AND THE 'GOLDEN EGG' PUBLIC VALUE TEST

Karen Donders

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Aim of the presentation

- **Frame** today's discussion

- **Where** does the idea of introducing a PVT come from?
- **What is the goal** of exporting an ex ante evaluation for new media services to other EU Member States?
- **What** should be the main **principles** of a test < European Commission

- Main questions today \neq **how** do the tests in different Member States look like, but also **do these tests meet** the pre-set **objectives** of the European Commission?

Where does it come from? (1)

- In academic literature: ex ante evaluation relatively uncovered until 2007-2008
- One of 1st 'official' appearances in letter of the European Commission to the German government in **2005**
 - ▣ UK: PVT on iPlayer ended in 2007, first official plans to have a PVT in 2004 (in the BBC's own document *Building Public Value*)
- In answer of the German government in May 2005, hesitance and negative perception of ex ante evaluation for new media services
 - ▣ <=> independence of public broadcasters
 - ▣ Not for the European Commission to ask for such an instrument

Where does it come from? (2)

- Conflict between two positions:
 - *“... an ex ante control would obviously interfere with the editorial independence of public broadcasters ... and is therefore unacceptable.”*
 - *“A public value test for public broadcasters is normal. It should be normal that you check whether or not an activity fits your remit.”*
- However, on 24 **April 2007**: decision which includes extensive ex ante procedure
 - European Commission persistent to have ex ante procedure
 - Many Länder receptive for private sector arguments

Where does it come from? (3)

- After April 2007 decision, ex ante tests in:
 - Norway
 - Flanders
 - Ireland
 - Austria
 - The Netherlands
 - (also Denmark, but not within State aid procedure)
- ! So, in 1.5 years PVT **high on policy agenda** European Commission

What is the goal?

□ Idea behind this ‘wave’ of ex ante tests?

- Less complaints (?!)

- Ensure Member States define the remit adequately / mechanism at national level that balances public value with market interests

- “We need **better definitions** for the public mission of broadcasters where they enter new media markets ... I believe that **the assessment of public value and market impact should essentially be done on the national level and not on the EU-level**. The **BBC offers an example** of how to achieve this with the “public value test” it applies before offering new media services on the market. Similar procedures are now also being put in place in Germany, Ireland and Belgium. And our consultation suggests that other Member States see merit in this approach. The questions in the test matter – **they have to cover BOTH elements of the Amsterdam Protocol: public value AND market impact**. It is also essential to apply the test **BEFORE** the new service is started. It is obviously better to prevent harm rather than to mend it. And finally, stakeholders and citizens should be heard before hand. Only then can a fair and fully informed decision be taken.” (Neelie Kroes, 17 July 2008)

□ Why does this appear to be ground shaking?

- The European Commission ‘wants’ it

- < historical angle: fairly new way (‘evidence-based’) to deal with public broadcasting

What are the main principles? (1)

- < relevant decisions + 2009 Broadcasting Communication
- In spite of diversity of tests in different Member States, some **shared principles** are being put forward by the European Commission
 - ▣ A test for ‘new’ services (Member States have to define what a new service is)
 - *“It is up to the Member States to determine, taking into account the characteristics and the evolution of the broadcasting market, as well as the range of services already offered by the public service broadcaster, what shall qualify as “significant new service”. The “new” nature of an activity may depend among others on its content as well as on the modalities of consumption.⁵¹ The “significance” of the service may take into account for instance the financial resources required for its development and the expected impact on demand. Significant modifications to existing services shall be subject to the same assessment as significant new services.”* (BCC 2009: §85)

What are the main principles? (2)

□ Evaluation public value, market impact and cost

- “In assessing the **impact on the market**, relevant aspects include, for example, the existence of similar or substitutable offers, editorial competition, market structure, market position of the public service broadcaster, level of competition and potential impact on private initiatives. **This impact needs to be balanced with the value of the services in question for society**. In the case of predominantly negative effects on the market, State funding for audiovisual services would appear proportionate only if it is justified by the added value in terms of serving the social, democratic and cultural needs of society,⁵² taking also into account the existing overall public service offer.” (BCC 2009: §88)

□ Involvement third parties / open consultation

- “In the interest of transparency and of obtaining all relevant information necessary to arrive at a balanced decision, **interested stakeholders shall have the opportunity to give their views** on the envisaged significant new service in the context of an **open consultation**. The outcome of the consultation, its assessment as well as the grounds for the decision shall be made publicly available.” (BCC 2009: §87)

What are the main principles? (3)

▣ Transparency of the procedure

- *“The outcome of the consultation, its assessment as well as the grounds for the decision shall be made **publicly available**.” (BCC 2009: §87)*

▣ Independence of bodies responsible for the test

- *“Such an assessment would only **be objective if carried out by a body which is effectively independent from the management of the public service broadcaster**, also with regard to the appointment and removal of its members, and has sufficient capacity and resources to exercise its duties.” (BBC 2009: §89)*

▣ Adapted to specificity of the Member State

- *“**Member States shall be able to design a procedure** which is proportionate to the size of the market and the market position of the public service broadcaster.” (BCC 2009: §89)*
- *“It is **within the competence of the Member States to choose the most appropriate mechanism** to ensure the consistency of audiovisual services with the material conditions of the Amsterdam Protocol ...” (BCC 2009: §86)*

What are the main principles? (4)

□ Evidence-based / some sort of 'objective' evaluation

- *"To help us chart a course through these issues, the Trust has devised procedures including public value tests which we have been regularly applying over our three year life span. These help us assess the public value of any proposal that comes before us. **Of course there is inevitably an element of judgement in doing this, but these tools have helped us put some structure and rationale into what could otherwise be a rather subjective process.** And importantly they give the public and the market reassurance that there is structure and an important role for evidence in the way the Trust approaches these matters."* (Sir Michael Lyons, Chairman of the BBC Trust, 2009)

□ Summarizing:

- *"the prior evaluation therefore consists **of two substantive elements:***
 - *First, there must be consideration of whether the new service adds **value for society** in terms of satisfying the social, democratic or cultural needs of the population.*
 - *Second, the **potential impact** of the new service **on the market** must be assessed.*

Member States must balance the effect on the market with the added value for society. If there are likely to be predominantly negative effects on the market, State funding for audiovisual services would appear proportionate only if justified by an added value in terms of serving the social, democratic and cultural needs of society, taking into account overall public service supply." (Repa et al. 2009)

Conclusion



- There is **no conclusion**
- = **work in progress**
- Idea of this conference = to have a look at this work in progress and see (will be addressed in the last session of today) what are:
 - ▣ the specifics of tests in different Member States;
 - ▣ the strengths and weaknesses of the tests; and
 - ▣ the ways in which the respective tests meet the European Commission's initial intentions.

Contact

- kdonders@vub.ac.be