

The implementation of the State Aid decision in Flanders

Long live the ex ante-test!

...

the ex ante-test is dead!

State aid in practice: back to reality

- The weaknesses of the Flemish ex ante-test:
 - unclear empowerment of the Sectorraad Media
 - lack of budget
 - what's "new"?
- Who's to control?

1. What's new?

- Decision:
 - The authorities will set out the criteria which will be used to determine whether a service will be considered as a new service not covered by the current management contract and hence subject to an evaluation.
 - Obligation of the Government to clarify these criteria at a later stage
- However:
 - VRT and Government decided to abandon the set of criteria
- Instead:
 - Explanatory addendum to the management contract 2007-2011 with the VRT on the activities and services which fall in the scope of the management contract

What's new?

- Result:
 - Long and all-embracing list
 - sms alerts, podcasts, websites, multimedia and participative webplatform (including blogs, chatrooms, ...), games, traffic and wheather pay service, ...
 - Services that are subject to an ex ante evaluation in other Member States are included in the Addendum
 - No specifications, e.g.:
 - Catch up-service? (how long, which programs, commercialisation, ...)
 - Websites? (deredactie.be, sporza.be, regional news, webshops, commercialisation, ...)
 - Difficult to say what will be considered as a “new service”
 - VRT: “no new services will be launched before the next management contract”
 - Only what is mentioned under article 3? New channels
 - Testing period of two years
 - Difficult to reverse
 - No limited targeted audience Impact on the future management contract (included?)
 - By-passing of the Sectorraad Media and undermining of the installed ex ante evaluation
 - The addendum has been negotiated directly between the VRT and the Minister-President without consultation of or approval by the Government or any third party advisory body (like Sectorraad Media)
 - See also: testing period
 - No new service as long as it is covered by the management contract
 - However, the European Commission asked for criteria and clarification “despite” the management contract (see par. 180 and par. 183)
 - Is the addendum acquis?

What's new?



- Example:
 - the addendum only sums up what is mentioned in the management contract ↔ the silent introduction of (a) new channel(s)
 - Discussions on the nature of this initiatives
 - President of the Commission Media in the Flemish Parliament: new channel (e.g. other channel + own programming)
 - VRT: “enrichment”
- The new Addendum suddenly gives absolution
 - Sporza bis?
 - No approval by the Government
 - No prior formal entrustment

2. Who's to control in reality?

- Flemish Regulator for the Media
 - Concrete control is limited to
 - the quantitative and qualitative performance indicators
 - the control of the overall rules of the Audiovisual Media Services Directive
 - Mute in the discussions on the “+ channels”
 - No control of market distortion
 - despite the obligation to offer commercial activities under market conditions
 - ≠ decision (par. 195)
 - Sanctioning
 - *warning* for illegal advertising on a VRT television channel, despite the effect on the financing
 - Result of not achieving the performance indicators?

- The test is implemented in theory but not in practice.