7 Digital Switchover

EU State Aid, Public Subsidies and Enlargement

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Introduction

This chapter focuses on the European Union's (EU) Competition Directorate's approach concerning the application of the State Aid mechanism with regard to those Member States who used public subsidies for digital switchover. This paper will show how the European Commission (EC) deployed its competition rules to pursue a normative view founded upon the liberalization of services and the enhancement of consumer needs to ensure economic opportunities. However, it was further required to deliver a framework for social accountability to allow for an equitable delivery of services across a range of different platforms. Therefore, this analysis considers not only how the Directorate's approach was governed by a market-driven set of rules but also discusses whether it proved to be adaptable enough to encompass the specific requirements of Member States.

For national television markets, the introduction of digital services facilitated a range of technological, economic and social reforms. Most espe- cially, digital television (DTV) operations carried many more channels than their analogue predecessors. Through the compression of data in which eight digital channels used the amount of spectrum previously taken up by one analogue station, consumers could benefit by enjoying a wider degree of choice; improved picture quality and better sound; and a greater amount of flexibility through portable and mobile reception, on-demand and enhanced information services (European Commission, 2005a). In tandem, business opportunities allowed for new market suppliers, a rise in competition, first-mover advantage, alternative forms of delivery and convergence (European Commission, 2005a). In this respect, digitalization became a major pillar in the EU's i2010 Initiative and within the Lisbon Agenda adopted in 2000.

Moreover, the freeing up of the analogue transmission spectrum meant that a 'digital dividend' would be effected as business contractors could buy the channels to pursue commercial gains. In particular, the switching off of analogue broadcasts left a surplus of radio frequencies to be divided into three sub-bands on the available Ultra High Frequency (UHF) band 470–862 MHZ for other applications. These included opportunities for mobile and high definition television alongside the release of 800 MHZ bandwidths for transnational mobile telephony including 3G, 4G and WiMAX (ITU, 2012).

Consequently, between 2003 until 2013, the EU promoted digital switchover for economic gain and consumer benefits. It harmonized digital switchover throughout the range of EU Member States while maintaining the principles of subsidiarity and derogation. Thus, the EC recognised the importance of digital switchover in its 2005 Action Plan eEurope and in three related communications. In particular, the Commission committed itself to the goal of analogue switch-off / digital switchover by 2012.This was problematic, as at the beginning of the switchover process in 2003, 43% of all European households were still only in receipt of analogue-based terrestrial services (Matteucci 2008, p. 3). In the event, a number of Member States (Poland, Hungary, Bulgaria, Greece, Romania) could not achieve switchover by the 2012 deadline (Starks, 2013, p. 92).

Moreover, the EU was confronted by the problem that the exponential take-up by Member States of Digital Terrestrial Television (DTT), Digital Satellite Television (DST) and Digital Cable Television (DCT) services had been differentiated due to specific national governmental frameworks, regulatory structures and market demand (Iosifidis 2011b: p. 162). Most especially, despite the mandatory requirement of technological neutrality, it became apparent that the market-leading DTT platform's penetration on an EU-wide level was inconsistent and problematic. Such variability within take-up led to questions of potential market failure and the need to affect public subsidies to ensure complete take-up by 2012.

Therefore, Member State governments, regulators and audio-visual actors sought financial support through public subsidies to facilitate analogue switch-off / digital switchover (Wheeler, 2010). This usage of public subsidies triggered the employment of the EU State Aid mechanism to determine whether such an employment of funds was competitive or had unfairly distorted the market between public and commercial television suppliers. Further, there was an underlying concern that such an employment of state monies would lead to 'mission creep' in which the values of the market might be absorbed into a wider array of public service provisions (Donders & Pauwels, 2008, p. 295). This chapter will provide a review of these concerns with reference to EC legislation and policy provisions to consider how several State Aid cases concerning digital switchover were considered by the Directorate:

> The EU … was particularly hawk-eyed on the subject of State Aid for the digital terrestrial platform, where, of course, rival platforms were quick to complain. While national governments could promote a spe- cific digital television technology if this was justified by 'well-defined general interests', e.g., to achieve a fast and efficient switchover, 'policy interventions should be transparent, justified, proportionate and timely to minimize the risk of market distortion'.
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> (Starks, 2013, pp. 76–77)

The Principles of the Eu State Aid Action Plan and Digital Switchover: Market Failure, Competitive Practices and the Facilitation of the Digital Economy

The Commission contends that a State Aid is an appropriate measure if it may stem a market failure (European Commission, 2001). To determine the legitimacy of a State Aid, the EU employs a well-established legal frame- work which is embedded in the EU Treaty. The Commission has contended that if a societal gain cannot be shown to have been maximized, even in cases where market efficiency has been demonstrated, there are grounds for the use of public subsidies to enhance specific social outcomes (European Commission, 2009). However:

> Very clearly, [the EU's] approach [to State Aid] is underscored by strong normative assumptions of the superiority of the market. … Overall, the EU's approach is underpinned by two key ideas – maintaining the primacy of market based competition, where State Aid is viewed as distortive, though necessary, and ensuring appropriate returns (value) for any state resources which are invested.
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> (Simpson 2014, p. 8)

Therefore, it is the EU's general belief that public assistance should not replace the market provision of digital services. However, a key factor in deciding whether public subsidies should be employed concerning digital switchover was determined by the requirement to accelerate take-up by 2012. It remained the Commission's view that, if left to the market, there was the risk that switchover could be slowed down, which might prove fatal for the expansion of the digital economy (Norlander & Melin 2006, p. 257).

Moreover, according to the EC, such a form of switchover had 'positive externalities', which referred not only to a more efficient usage of the frequency spectrum but also to the concern that the extension of channels had a social benefit for consumer demands and citizens' rights. Yet, from the EU perspective such a 'common good' function could often exceed the private interests of the incumbent broadcasters. For instance, it was contended that a commercial broadcaster who does not anticipate a significant increase in audience share and a rise in advertising revenues might be reluctant to participate in switchover. Consequently, the Commission believed that the acceleration of the analogue switch-off process to reap the benefits of the freed-up spectrum was a valid justification for public intervention and possible exemption from an unfettered marketplace (European Commission, 2005b).

In addition, the 2005 State Aid Action Plan commented that Member States could employ State Aid to overcome specific market failures in the transference from analogue to digital services to ensure social cohesion. As María Trinidad García Leiva and Michael Starks comment, two distinct patterns of analogue switch-off / digital switchover occurred (García Leiva & Starks, 2009, p. 790). First, in countries with extensive cable and satellite reception (Germany, the Netherlands, Luxembourg, Switzerland), analogue switch-off was sustainable, as only a small section of the population had been dependent on terrestrial reception. However, in a second model of transference, in states such as the United Kingdom (UK), France, Spain and Italy, the majority of households received terrestrial-based forms of analogue transmissions. For example, in Italy 19 million out of its 22 million households (84.2%) were serviced by terrestrial forms of distribution (Santamato & Salto, 2006, p. 96).

Moreover, there were significant variations in DTV take-up between Northern, Southern and Eastern European countries. In 2010, DTV household adoption in Finland, Norway and Sweden stood well above 70%, with the UK having the highest rate of penetration standing at 92%. Conversely, in Mediterranean states such as Italy, Spain and Greece, take-up levels were well below 50% and in these Member States there was limited awareness of the process of analogue switch-off / digital switchover (Iosifidis, 2011b, p. 162). This meant that the process of transfer was problematized by the variation in different states of digital penetration and the greater amount of time required for switchover. Further, there remained significant danger that only a limited section of the population would benefit from the advan- tages of digital television (García Leiva & Starks, 2009, p. 790–791). These problems are made more acute due to the expenses incurred by the parallel forms of 'simulcasting' between analogue and digital transmissions which were necessitated to smooth the course of switchover.

Across Member States, terrestrial networks had been employed to fulfill Universal Service Obligations (USO) (Starks, 2007, p. 55). This meant that a high percentage of the population had to be covered by digital transmissions before a government could contemplate analogue switch-off. Therefore, the Commission acknowledged that a cohesive switchover could have been undermined by several types of market failure concerning the coordination of technological reforms; by the danger that incumbent broadcasters might gain a competitive advantage by delaying switchover and by the fact that problems associated with audience uncertainty undermined USOs (European Commission, 2005b) .

Conversely, the Competition Directorate required that the Member States abide by State Aid instruments to address switchover to stem any distor- tion of competition and to ensure that the level of subsidy remains limited to an absolute minimum. Therefore, of greater concern for the Directorate than market failure has been how the EU State Aid Action Plan might be employed to support sustainable growth and competitiveness. Thus, the EC required that the given State Aid scheme for the digital switchover must be proportionate to the public service obligations. It is only when these conditions were met that State Aid schemes could be approved under Article 87(3) (c) of the EU Treaty (Wheeler 2010, p. 57).

The Commission contended this approach provided a fairer assessment of the investigated measures as only well-targeted forms of aid could meet the overall objective of promoting competitiveness and technological development across Europe (Schoser & Santamato, 2006, p. 23). Therefore, the Directorate examined the impact of market failures on the switchover process, with reference to whether these perceived failures prevented the market from achieving full economic efficiency.

Similarly, the EC contended that there should be technological neutral- ity to the extent that there is competition among platform providers and that no one platform – terrestrial, cable or satellite – should be favoured by a national authority (European Commission, 2005b). In principle, each network was required to compete on its own strengths and Member States could not be discriminatory. While public support for one particular option was not excluded, it had to be justified by well-defined general interests and be implemented in a proportionate manner. However, due to market demand, DTT has become the most diffused platform across the EU. The Commission was concerned that with the different levels of DTT penetration across national markets, there became a further pressure to employ public subsidies for DTT switchover to ensure USOs.

Finally, public subsidies could be used to sustain the EU's central goal of efficient digitalization for the benefit of media plurality and consumer choice. This meant that not all measures constituted State Aid. For example, in one ruling the Commission decided that the UK regulator Office of Communication's (OfCom) decision to replace existing analogue licences with Digital Replacement Licences (DRLs) for terrestrial broadcasters, including Independent Television (ITV), Channel 4, Channel 5 and Public Teletext was appropriate, as the DRL's contained obligations related to the digital switchover (European Commission, 2006). In view of these obligations and of the diminished 'scarcity' value of the broadcasting licences, the regulator reduced the costs associated with broadcasting licence fees – the so-called 'additional payments'.

However, in spite of such exemptions, the EC remained concerned with how 'to seize this potential in our digital economy', through facilitating the opportunities for competitive market supply, claiming that:

> Europe will need to create the right framework for ensuring effective competition and sound regulatory conditions in a well-functioning single market as well as incentives for innovation. In view of the commitment to the social market economy, we also need to make sure that, in the end, consumers benefit from the digital economy.
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> (Reding, 2009, p. 2)

State Aid and Digital Switchover Cases

It has been with these values in mind that the Competition Directorate has considered a range of cases within Member States concerning the utilization of public subsidies to extend the possibilities of analogue switch-off / digital switchover. The assessment of a State Aid case occurred as a two-stage process. First, the Commission investigated whether a measure could be considered as a form of State Aid. Second, if the measure was defined as a State Aid, the Commission investigated if any exception or derogation might be deemed as being appropriate. A State Aid had to receive the Commission's approval prior to implementation; otherwise the recipient could be liable for the repayment of the subsidy.

In applying these measures, the EC noted that in many European countries, governments have reserved monies to support consumers, broadcasters and network operators to affect digital switchover. However, there have been significant controversies concerning the character of these subsidies. This led to the Directorate considering whether these forms of State Aid were illegitimate due to an unfair distortion of the competitive marketplace. Yet, the EC's response was further conditioned by the specific nature of the national broadcasting market, political interests, matters of technological neutral- ity and interoperability, questions of market failure and concerns about whether incumbent players benefited at the expense of their competitors (Wheeler, 2010).

Germany: The Berlin-Brandenburg Case – Social Cohesion Versus Competition

The Commission ruled on several German State Aid measures regarding digital switchover. The most important of these cases occurred in 2005, when it had to decide whether the regional funding awarded by the Media Council of the Media Authority for Berlin-Brandenburg (MABB) for promoting switchover to the European standard terrestrial digital video broadcasting (DVB-T) network out of licence fees was commensurate with State Aid rulings.[1] The MABB investigation indicated how the two of the German Lander had employed public subsidies to affect a cohesive trans- fer for analogue switch-off / digitalswitchover (Garcia Leiva & Starks, 2009, p. 791).

On 13 February 2002, to ensure the smooth digitization of broadcast- ing, MABB had concluded a 'switchover agreement' with the public service broadcasters (PSBs) including Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) and the Zweites Deutsches Fernsehen (ZDF) and commercial players such as Radio Tele- vision Luxemburg (RTL) and ProSiebenSat.1, which contained schedules for switchover and the allocation of programme channels. In this respect, MABB received binding agreements from all parties and enacted a com- prehensive public communications campaign deemed to be socially accept- able (Iosifidis, 2006, p. 261). The Berlin-Brandenburg case was praised as a model for switchover, as the region had the appropriate technical and com- mercial infrastructure to allow for a relatively short phase of simulcasting and had completed the switchover by 2003.

Therefore, MABB contended these grants had offset market failures and had ensured media diversity by safeguarding infrastructure competition for digital modes of transmission. In particular, it argued that subsidies allowed the players to remove those barriers which could undermine the expedition of a speedy process for switchover. Further, MABB claimed the €4 million granted to the broadcasting groups was proportionate as it reflected how the transmission costs of a multiplex (consisting of several bundled programming channels) were 50% more expensive than those accrued through broadcasting programmes on an analogue service. In addition, the German Federal Government argued that as the financial assistance had not been selective it did not distort competition, as any broadcaster or network operator could have benefited from the funding (García Leiva & Starks, 2009, p. 792).

Yet, following complaints from cable operators, the Competition Directorate decided MABB had unfairly employed public subsidies for the advantages of the incumbent commercial broadcasters RTL and ProSiebenSat.1. Most especially, in exchange for undertakings with these groups to transmit via DTT for five years, it contended MABB had inequitably allocated entire multiplexes to each organisation regardless of audience figures. The EC contended that RTL enjoyed an annual level of grant of €265,000 per annum at a rate of €66,250 per programme channel, while ProSiebenSat.1 received a subsidy of €330,000 a year working out to €82,500 for each channel. Moreover, the financial assistance granted to the commercial broadcast- ers indirectly benefited the network operator T-Systems, as it would enjoy guaranteed income from the two major German broadcasting groups for a minimum of five years. In turn, the Commission commented that such financial assistance also enabled T-Systems to charge higher transmission prices (European Commission, 2005c).

Therefore, for the EU, MABB's use of public funds was felt to be anticompetitive as it had skewed the German broadcasting system by favouring incumbent commercial players and had undermined an open and transparent tendering process. Moreover, the EU noted that while MABB's use of state intervention achieved beneficial forms of cohesion, in this case such a use of State Aid breached the principles of technolog- ical neutrality as it forced consumers to use T-Systems infrastructure to access the digital platform.[2] Further, in terms of MABB arguments con- cerning the need for coordination to stem market failures, the Directorate concluded:

> State Aid to reduce the burden of transmission costs is not the appropriate instrument to address the problem of coordination between market players. Limiting the duration of the simulcast phase and achieving a simultaneous switchover may instead be attained by, for example, setting a common expiry date for all analogue licences.
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> (Norlander & Merlin, 2006, p. 260)

The MABB decision proved to be a test case and had implications for the application of State Aid concerning digital switchover in other Member States. Principally, the EC decided that the specific indications of acceptable forms of public subsidy included:

- Funding for the roll-out of a transmission network in areas where otherwise there would be insufficient television coverage.
- Financial compensation to PSBs for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate.
- Subsidies to consumers for the purchase of digital decoders as long as they are technologically neutral, especially if they encourage the use of open standards for interactivity.
- Financial compensation to broadcasters which are required to discontinue analogue transmission before the expiry of their licences, provided this takes account of granted digital transmission capacity (European Commission, 2005c).

Italy: Competition as a Form of Corporate War – *Sky Italia V. Mediaset*

The precedent of MABB would be an important determinant for other State Aid cases, most especially with regard to the digitization of the Italian broadcasting system. In Italy, the television market was dominated by two major incumbents: Radiotelevisone Italiana (RAI), the public broadcaster, and the commercial media monopoly Mediaset, owned by the broadcast- ing mogul and former Italian Prime Minister Silvio Berlusconi (European Commission, 2007, p. 1). As both suppliers operated through terrestrial networks, digital switchover was not welcomed by either the Italian media or the political elites. Most specifically, the inclusion of a wider spectrum of airwaves meant that more channels could be broadcast, thereby leading to the potential growth of new or alternative competitors. Consequently, the European rules for switchover were implemented at a painfully slow rate and the abolition of the analogue signal was postponed on several occasions.

However, this process was radically altered when Rupert Murdoch's News Corporation established a competitive satellite broadcaster monopoly from its acquisition of the existing Telepiu stations (owned by Vivendi) which were renamed Sky Italia in 2002. From then on, the Italian govern- ment (led by Berlusconi on a second occasion from 2001–2006) argued that since the terrestrial delivery of broadcasting signals was the major means of receiving television in Italy, a subsidized programme for DTT switchover was necessary. It claimed that such a use of State Aid would ensure that the commercial applications of digitization could be maximized for the public's social benefit (European Commission, 2007, p. 2).

Therefore, from 2004 to 2005, Berlusconi's government distributed over €200 million in grants to enable consumers to purchase or rent interactive digital decoders capable of receiving only DTT and DCT transmissions (European Commission, 2007, p. 1). In effect, these subsidies awarded each buyer of digital terrestrial decoders with a sum of €150 per person in 2004 and €70 in 2005. In 2006, Italy provided notification of a further measure which subsidized the purchase by Sardinian and Valle d'Aosta DTT consumers of interactive decoders that included an open application programming interface (API) (Santamato & Salto, 2006, p. 98).

Thus, at a formal level, Italy defended the scheme by citing DTT's benefits including an improved use of frequencies to promote pluralism, economic development, information technologies and e-society services. However, these measures reflected the ongoing war which was occurring between the Berlusconi and Murdoch empires. They were part of a process through which the Italian government, in an outrageous conflict of interest, sought to rid Silvio Berlusconi's Mediaset corporation of its major DST pay TV competitor. This approach protected Mediaset's revenues, as 88% of its digital services were funded by subscription monies by undermining the economic opportunities for Sky Italia (Santamato & Salto, 2006, p. 99). Moreover, in applying these public subsidies, Berlusconi's government failed to notify the Commission and by only supporting the purchase of terrestrial decoders undermined the EU principles of technological neutrality. Such a lack of interoperability was evidenced in the exclusion of Sky Italia's customers (who used alternative satellite DVB-S decoders) from receiving financial support in buying the kit required to receive digital satellite services.

It was within this economic, political and regulatory context that Sky Italia's lawyers filed a complaint with the Competition Directorate contending that the Italian state's financial contributions unfairly distorted the Italian pay TV market. In turn, the Commission opened a formal State Aid investigation into the 2004–2005 subsidies, while simultaneously providing an analysis of the 2006 measures, about which it had also received complaints from satellite television operators. In 2007, after consulting with the market operators, the Commission concluded that both the 2004–2005 and the 2006 round of subsidies provided an indirect advantage to the incumbent terrestrial television broadcasters by unfairly allowing them to develop their digital audience – a crucial revenue base for subscription television services (European Commission, 2007).

In making this judgement, the EC contended that even those measures that supported an objective of common interest (like digitalization) must be proportional. The Italian explanation that the subsidy could be excused under those rules regarding the social character of State Aid was not accepted. Further, the utilization of public subsidies not only benefited some consumers over others but aided the incumbent companies and discriminated against other operators who had to provide their consumers with decoding equipment at their own expense. Concurrently, the Commission rejected the argument that the aid was only part of delivering services of general economic interest and required Mediaset to pay back the subsidies it had received (Renzi, 2010).

Subsequently, when Mediaset appealed the decision, the Court of Justice of the European Union backed the EC in 2011 by ruling that the Italian government's use of subsidies infringed the European State Aid rules (case T-177/07). The court expressed agreement with the Commission's assertion that the grant did not have the required technology neutrality and that:

> [o]n one hand it gave consumers an incentive to move from an analogue system to a digital terrestrial system, thus limiting expense for digital terrestrial television broadcasters, and on the other it had allowed these same broadcasters to consolidate their position in the market compared to new competitors, in terms of brand image and reinforcing the loyalty of their clientele (Court of Justice of the European Union, 2011).

In effect, the Commission's decision and the Court's backing tipped the balance of power in the Italian pay TV market to Sky Italia, who immediately sought the further removal of a 2003 clause that barred it from to entering the DTT market.

Spain: Digital Service Obligations Against Commercial Interests

From 2005 to 2008, Spain enacted a set of regulatory recommendations to achieve analogue switch-off / digital switchover. For the DTT network to operate effectively there needed to be an upgrade and a building of new transmission centres resulting in the Spanish digital television sector being divided into three distinct areas of delivery. In Area I, which represented the major Spanish cities and towns and accounted for 95% of the national population, the costs could be covered by the broadcasters. For Area II, which was composed from the rural and poorly populated regions, the Spanish authorities believed that the broadcasters would have little or no commercial interest in providing services and established a State Aid scheme worth €260 million to ensure USOs for 2.5% of the population. However, in making this decision, the Spanish government failed to notify the EU. Finally, in Area III, the mountainous topography of the regions being covered meant that a DST platform was chosen to provide digital television channels (European Commission, 2010a).

With reference to employment of public subsidies in Area II, Europe's first private satellite provider, SES Astra, complained to the EC that the Spanish government's use of State Aid had unfairly distorted the market. SES Astra's lawyers contended that it had enabled the incumbent DTT platform operator (Abertis SA) to become a de facto monopoly player. It was argued that the employment of public subsidies violated the principles of technological neutrality and would jeopardize the survival of the digital satellite operators.

Following this complaint, in 2010 the Commission opened an in-depth investigation into the public financing of the DTT infrastructure (case C23/2010). On 19 June 2013, the Competition Directorate's investigation concluded that the State Aid measure had exclusively funded the digitization of terrestrial transmission technology to the detriment of others. The investigation demonstrated that alternative transmission platforms, like satellite, cable or the Internet, would not effectively benefit from the subsidies. Consequently, the EU decided that the public financing for the digitization and extension of the terrestrial television networks in the remote areas of Spain was incompatible with EU State Aid rules. Subsequently, those terrestrial platform operators who had enjoyed a selective advantage over their satellite-based competitors were required to pay the monies back to Spanish taxpayers.

> In short, Spain was held to have not carried out the digital switchover in a technology neutral way. This decision follows precedents set in previous cases concerned with public subsidies to assist the process of digital switchover (e.g., Cases T-8/06, T-21/06 and T-24/06, *Berlin-Brandenburg* and Case T-177/07, *Mediaset*) (EBU, 2013).

Apart from this case, the Commission opened two further investigations into the digitization of television services in Spain. One concerned the implementation of the transition plan in the region of Castilla–La Mancha where, in addition to possible technological discrimination, there had been further discrimination against regional and local terrestrial platform operators. The second case concerned the aid granted to broadcasters for the change of bandwidth (JOCE C/213/2012). This looked at how the Spanish government had planned to compensate DTT broadcasters for the extra costs of parallel broadcasting while services were re-allocated to other frequencies to free up the digital dividend. Again doubts were expressed about the necessity, proportionality and technological neutrality of this measure (European Commission, 2010a).

Eastern European States, Economic Malaise and the European Project

With regard to the German, Italian and Spanish cases, the Commission enforced a liberalizing agenda towards its employment of State Aid rules. It argued that public subsidies for switchover could only be applied if they did not distort the competitive nature of the specific digital marketplaces. However, the EC faced greater pressures to allow for public forms of financial intervention in those Eastern European Member States which required greater rates of investment either due to the demand to bring in new technical standards, their long-standing reliance on traditional terrestrial forms of transmission or because of the financial weaknesses of their broadcasting industries. Further, 'analogue switch-off in … [Eastern] Europe [was] hampered by political issues, governments' lack of political priority and the lack of political consensus that [made] it difficult to reach an agreement (Iosifidis, 2011a, p. 8).

For instance, on 17 November 2010 the European Commission approved Slovakia's €7 million aid scheme, which supported parallel analogue and digital broadcasting during a period of the transition between analogue switch-off to digital switchover (European Commission, 2010b). According to the Slovakian authorities, broadcasters would not be able to switch to digital broadcasting in advance of the 2012 deadline due to the public's unwillingness to acquire digital decoders. Therefore, to avoid a 'last-minute' panic as well as the danger of creating blank signal reception spots, they decided there should be a year-long simulcast period of parallel transmission from 2010–2011. This would provide viewers with the time to purchase digital decoders (or new digital TV receivers) so that the broadcasters could switch to digital technology in advance of the legal deadline. Therefore, the Slovakian government publicly funded the broadcasters and network operators with a 50% contribution to the costs related to analogue signal transmission, and the purchase or rental of temporary mobile analogue transmitters during the period of parallel broadcasting (European Commission, 2010b, p. 2).

The Competition Directorate decided the scheme was commensurate with State Aid rules as it provided funds related to the additional costs triggered by the simulcast and that it did not favour one technology over another. The beneficiaries were selected in open and non-discriminatory procedure founded on pre-defined criteria, and the Slovakian authorities were required to provide annual reports upon the allocation of the funds to the Commission. Therefore, the EC contended that the measure facilitated digital switchover without unduly distorting competition. Then EC vice-president in charge of competition policy, Joaquín Almunia, commented, 'I commend the Slovak authorities for supporting the parallel analogue operation without unduly distorting competition. This is a further step towards the digitisation of broadcasting in Europe' (European Commission, 2010b).

Moreover, across those Eastern European states who had joined the European Union in 2004 within the process of Enlargement, concerns were raised about the ability of their citizens to afford the purchase of the new hardware required for DTV reception. In 2010, the EC decided that Slovakia's €11 million scheme to support the purchase of decoders for socially vulnerable groups did not infringe the State Aid rules. This meant that those members of the Slovakian public who were on a low income, received an old-age pension or were in receipt of benefits became entitled to claim a voucher with a maximum value of €20 for the purchase of digital television equipment. This measure was especially important as Slovakia had planned to switch from analogue to digital television by the end of 2012, and without upgraded devices, these citizens would have been excluded from this information source. Therefore, such a use of funds for switchover affected the competitive structures of national media markets over a long period and in unforeseen ways (European Commission, 2010c).

As Marko Milosavljević and Sally Broughton Micova have shown, the EU Competition Directorate continued to show a greater flexibility to those South Eastern European States delivering digital services for poor or disadvantaged households (Milosavljević & Broughton Micova, 2013). In Croatia, the authorities offered a subsidy to all households and made equipment available through the post office. Additionally, in Slovenia, Macedonia, Serbia and Montenegro there was the direct use of public money for the construc- tion of the networks by public companies.

> Far from objecting to this intervention in the market for transmission on competition grounds, the EU is also investing in both Serbia and Montenegro through the IPA funds within the context of accession. This can be seen less as a compromise on EU competition policy and more so as a recognition that without such assistance and signifi- cant efforts by the states to push the process, there were no forces to drive digitalization or assurance that these countries would meet the required deadlines.
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> (Milosavljević & Broughton Micova, 2013, p. 273)

Further, because of the general economic malaise that has affected the European Union since the Banking Crisis of 2008, there was an accelera- tion within the processes of digital switchover. For the EC, any slowdown could have had a disastrous consequence in terms of the commercial imper- atives to use up the digital dividend from the freed-up analogue spectrum (EurActive, 2010a). It estimated that the incremental value of the spectrum for wireless broadband across the EU stood at a figure of between €150 and €200 billion. Most especially, the 'Europe 2020' strategy for new jobs and sustainable growth (which has replaced the Lisbon Agenda) placed the availability of high-speed Internet, to be rolled out from freed-up spec- trum, as being crucial in the formation of the EU's Knowledge Economy. Therefore, it contended that an appropriate coordination of Member States was required to affect the digital dividend so that its potential economic impact would raise an additional €50 billion from 2010 to 2015. This was particularly attractive to the EC, as it was cost-free to taxpayers and would be available for all Member States as a means of raising further revenues (Reding, 2009, p. 4).

Consequently, the Directorate remained mindful that any barriers that it imposed over the use of public subsides might detrimentally impact the development of digital services (European Commission, 2010c). Paradoxically, by pursuing the values of competition, the EU could have undermined the commercial benefits to be drawn from the digital switchover process.

Therefore, the application of these measures on a national case-by-case basis led to a wider range of outcomes as the Competition Directorate became less committed to the explicit rules of competition.

This change in attitude focused attention on several divisions which existed in the Competition Directorate between its neo-liberal values and the Member States' normative objectives to maximize the potential for the digital market along with an effective delivery of services with a pronounced social character. Further, all of the cases indicated that a wider tension was apparent with regard to the integrationist 'European Project' in relation to cultural policies, as the inherent:

> [e]conomic and liberalizing concepts designed to ensure the functioning of an internal market as a key pillar of integration established in the Treaty are not always easily aligned to the historical policy frame- work that has evolved in individual Member States and they are not in themselves sufficient to ensure public interest objectives are achieved in this vital sector for European societies and economies …The complexities are further increased by the architecture of the EU itself as it is composed of policy-making processes whose design, all things being equal, is inextricably stamped with a trade-off between the terms of the EC Treaty and national interests.
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> (Ward, 2008, p. 2)

Thus, throughout the process of employing State Aid measures to aid analogue switch-off and digital switchover, a growing division existed between the principles of supra-nationalism and inter-governmentalism (Iosifidis, 2011a). On the one hand, Member States were concerned that their sovereign powers had been undermined by the EU as the Competition Directorate had exercised too much control in determining the use of public subsidies. Further, it was a concern that the EU's normative liberalizing agenda conflicted with the need for a coordinated form of switchover to allow for the commercial benefits and demand for social cohesion to be realized in relation to digitization (Norlander & Melin, 2006, p. 267).

Conversely, the Directorate was concerned that Member States had abused their rights of derogation under the European Treaty to expand the digital public service remit in unauthorized ways, such as financing commercial digital activities. Moreover, questions of market fragmentation continued to be related to the DTV take-up rates and the utilization of the digital divi- dend made available from the freed-up analogue spectrum (Kroes, 2010). Therefore, these tensions indicated how the questions of subsidiarity and complexities of cultural practices increasingly came to the fore in the period of digital switchover. As reflected in many areas of EU audio-visual policies, they demonstrated that media and communications reform was as much determined by political and social interests as by the technocratic, legalistic and economic demands of Competition Policy.

Conclusion

This chapter has discussed how the provision of a competition policy with regard to the State Aid Action Plan for switchover has been defined by three significant factors. First, State Aid was targeted to stem the potential market failures concerning the pace of take-up and cohesion due to univer- sal service obligations, but only in a proportionate manner as to remain competitive. Second, any intervention had to respect the principles of technological neutrality and interoperability among the different digital platforms as confirmed by the Regulatory Framework. Third, the regula- tion governing the access to public funds was required to facilitate the EU's central goal of sustainable digitalization for the benefit of media plurality and consumer choice.

The chapter has shown how these ideological, regulatory and policy frameworks were utilized to define State Aid decisions in relation to digital switchover cases in Germany, Italy and Spain. In each of these State Aid cases there was an interface between the liberalizing principles of the Directorate and the economic, political and cultural/historical trajectories of the Member State's broadcasting ecology. For instance, in Germany switchover related to greater concerns about the coordination of public and commercial interests to ensure social cohesion, whereas the Italian case was determined by the economic and political interests of Silvio Berlusconi's Mediaset as against Rupert Murdoch's Sky Italia. In Spain, the questions about USOs and poorly resourced areas came to the fore in relation to the use of public subsidies. In each case, the State Aid mechanism had been seen to be violated and digital suppliers were required to pay back the subsidized monies they had received.

In relation to the changing nature of and complexities associated with digitization, this analysis concludes that there has been a more relaxed employment of State Aid in relation to digital switchover with reference to Eastern and Southern European Member States. This has occurred due to the disadvantages in terms of finances, information infrastructures, consumer take-up and developed broadcasting markets that have emerged in smaller European States. Thus, the chapter has shown how the EU had supported the employment of public finances for switchover in newer Member States such as Slovakia and how the Competition Directorate realized that these subsidies were necessary in light of USO obligations. At the same time, the economic crisis within the EU confirmed fears that the respective commercial and democratic gains of switchover could be fatally compromised.

Moreover, these financial considerations brought attention toward the wider debates concerning the EU's integrationist, neo-liberal agenda as against Member States' rights of derogation. While the regulatory environment was shaped by the EU's concern to liberalize services for market opportunities, national governments have sought to use public subsidies for digitization to maintain social cohesion and consumer protection. Therefore, these fissures have facilitated tensions between the EU's 'macro' liberalizing tendencies to ensure an internal market and 'micro' interests within Member States concerning their sovereignty over the regulation of communications industries (Iosifidis, 2011a; Iosifidis, 2011b, p. 162).

Notes

1. There has been a standardization of DTV transmission and reception technology into three main international families denoted by their acronyms – the DVB in Europe, ATSC in the United States, and ISDB in Japan. A fourth group of standards has been formulated in China.
2. Accordingly, the EU would employ this form of reasoning when it considered whether there had been an imposition of specific platforms of distribution in other switchover cases in other German regions including North Rhine–Westphalia and Bavaria, along with Sweden and Austria and concluded that they had breached State Aid rules.

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