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European Union State Aid, public subsidies and analogue switch-off/digital switchover

ABSTRACT

This article considers the European Union's (EU) role in the media and communications field concerning analogue switch-off/digital switchover. It focuses on the EU Competition Directorate's approach concerning the application of the State Aid mechanism with regard to those Member States who have used public subsidies for digital switchover. Therefore, this analysis considers how the Directorate has sought to balance its market-driven set of rules with the need to be adaptable to the Member States' specific requirements. In turn, this account will discuss how the demand to achieve the 2012 completion deadline, alongside the requirement to release analogue spectrum to realize a digital dividend, impacted upon the EU's principles of competition. Finally, this analysis will reflect on how the employment of State Aid in relation to digital switchover relates to a wider debate concerning the EU's neo-liberal agendas against Member States' interests to promote their national cultures.

KEYWORDS

Competition Policy
State Aid
European Union
analogue switch-off/digital switchover
liberalization
derogation
subsidiarity
cultural policies

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INTRODUCTION

This article will discuss the European Commission's (EC) Competition Policy procedures in relation to matters of analogue switch-off/digital switchover. It 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 have used public subsidies for digital switchover. In this respect, the EC has 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 discusses whether it has been adaptable enough to encompass the specific requirements of Member States.

For national television markets, the introduction of digital services has been perceived as a means to facilitate a range of technological, economic and social reforms. Especially, as digitalization provides a different way for the sending, receiving and decoding of signals, digital television (DTV) operations can carry many more channels than their analogue predecessors. Through the compression of data in which eight digital channels will use the amount of spectrum previously taken up by one analogue station, consumers may benefit in enjoying a wider degree of choice; improved picture quality and better sound; a greater amount of flexibility through portable and mobile reception, on-demand and enhanced information services. In tandem, business opportunities are exponentially increased to allow for new market suppliers, a rise in competition, first mover advantage, alternative forms of delivery and convergence. In this respect, digitalization has become 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 means that a 'digital dividend' may be affected for commercial gain. In particular, the switching off of analogue broadcasts will leave 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 include opportunities for mobile and high-definition television alongside the release of 800 MHz bandwidths for transnational mobile telephony including 3G, 4G and WiMAX. Concurrently, the employment of digitally based services has been seen to encourage the free flow of information and allow for a pluralistic media. In terms of freedom of the expression, the new technology enables audiences to seek and receive more information via the broadcast media.

Consequently, the EU has sought to promote digital switchover for economic gain, social opportunities and consumer/citizen benefits. It has attempted to formulate a harmonization of digital switchover throughout the range of EU Member States while maintaining the principles of subsidiarity and derogation. Thus, the Commission recognized 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 especially problematic, as at the beginning of the switchover process in 2003, 43 per cent of all European households were still only in receipt of analogue-based terrestrial services (Matteucci 2008: 3).

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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 has been differentiated due to specific national governmental frameworks, regulatory structures and market demand (Iosifidis 2011b: 162). 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 has 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 have sought financial support through public subsidies to facilitate analogue switch-off/digital switchover. For the EU Competition Directorate, this usage of public subsidies triggered the employment of the 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 a form of 'mission creep' in which the values of the market might be absorbed into a wider array of public service provisions (Donders and Pauwels 2008: 295). These concerns have led to several State Aid cases concerning digital switchover being considered by the Directorate.

This article discusses how the provision of Competition Policy with regard to the State Aid Action Plan for switchover has been defined by three significant factors. First, State Aid should be targeted to stem the potential market failures concerning the pace of take-up and cohesion due to universal service obligations (USO) but only in a proportionate manner so as to remain competitive. Second, any intervention must respect the principles of technological neutrality and interoperability between the different digital platforms as confirmed by the Regulatory Framework. Third, the regulation governing the access to public funds should facilitate the EU's central goal of sustainable digitalization for the benefit of media plurality and consumer choice.

Second, it will focus on how these ideological, regulatory and policy frameworks have been utilized to define State Aid decisions in relation to digital switchover cases in Germany, Italy and the United Kingdom. In each of these State Aid cases there has been an interface between the liberalizing principles of the Directorate and the economic, political and cultural/historical trajectories of the Member States' 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 has been determined by the economic and political interests of Silvio Berlusconi's Mediaset as against Rupert Murdoch's Sky Italia. Within the United Kingdom, such measures contributed to a debate about the usage and proportion of subsidies to be drawn from the British Broadcasting Corporation's (BBC) licence fee (known as top-slicing).

Finally, in relation to the changing nature of and complexities associated with digitization, this analysis will conclude with a discussion of how the employment of State Aid in relation to digital switchover refers to wider debates concerning the EU's integrationist, neo-liberal agenda as against Member States' rights of derogation. Thus, it will consider matters concerning the financial support for switchover in new Member States such as Slovakia, who have entered the EU due to the processes of Enlargement. In

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tandem, the current economic crisis within the EU has confirmed fears that the respective commercial and democratic gains of switchover could be fatally compromised.

In turn, it considers how the regulatory environment has been shaped by the EU's concern to liberalize services for market opportunities, while national governments have sought to use public subsidies for digitization to maintain social cohesion and consumer protection. And it will discuss whether 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, 2011b: 162).

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. To determine the legitimacy of a State Aid the EU employs a well-established legal framework that is embedded in the EC Treaty to provide it with a considerable degree of authority for action. More recently, the Commission has further 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.
>
> (Simpson 2011: 8)

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Therefore, at a general level, it is the EU's belief that public assistance should not replace the market provision of digital services. Consequently, a key factor in whether public subsidies should be employed concerning digital switchover has been determined by the requirement to accelerate take-up by 2012. Although it remains debatable about whether the 2012 deadline for switchover is legitimate as 'it may lead … to an ill-timed, insufficiently planned and unduly rapid introduction of … DTT' (Iosifidis 2011b: 162), it has been the Commission's belief that if left entirely to the market there is the risk that switchover will be slowed down. Such a slowdown could be potentially fatal for the expansion of the digital economy and may undermine public access to the full delivery of services (Nordlander and Melin 2006: 257).

Moreover, switchover may be deemed to have 'positive externalities' that refer not only to a more efficient usage of the frequency spectrum, but to the concern that the extension of channels has a social benefit for consumer demands and citizens rights. Yet, such a 'common good' function could often exceed the private interests of the incumbent broadcasters. For instance, 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 acceleration of the analogue switch-off

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process to reap the benefits of the freed-up spectrum is a valid justification for public intervention and possible exemption from an unfettered marketplace.

In addition, the 2005 State Aid Action Plan comments that Member States may 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 have occurred (2009: 790). First, in countries with extensive cable and satellite reception (Germany, the Netherlands, Luxembourg, Switzerland), analogue switch-off has been theoretically sustainable as only a small section of the population has been dependent on terrestrial reception. However, in a second model of transference, in states such as the United Kingdom, France, Spain and Italy, the majority of households have received terrestrial-based forms of analogue transmissions. For example, in Italy nineteen million out of its 22 million households (84.2 per cent) have been serviced by terrestrial forms of distribution (Santomato and Salso 2006: 96).

Moreover, there have been significant variations in DTV take-up among northern, southern and eastern European countries. In 2010, DTV household adoption in Finland, Norway and Sweden stood well above 70% with the United Kingdom 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: 162). This means that the process of transfer is problematized by the variation in different states of digital penetration and the greater amount of time that is required for switchover. Further, there is a significant danger that only a limited section of the population will benefit from the advantages of DTV (García Leiva and Starks 2009: 790–91). These problems are made more acute due to the expenses incurred by the parallel forms of 'simulcasting' between analogue and digital transmissions that are necessitated to smooth the course of switchover.

Across Member States, terrestrial networks have been employed to fulfil USOs. This means that a high percentage of the population should be covered by digital transmissions before any government can contemplate analogue switch-off. Therefore, the Commission acknowledges that a cohesive switchover can be undermined by several types of market failure concerning the coordination of technological reforms; the danger that incumbent broadcasters will gain a competitive advantage by delaying switchover and that problems associated with audience uncertainty will undermine USOs.

Conversely, the Competition Directorate still requires that the Member States abide by State Aid instruments to address switchover to stem any distortion 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 requires that the given State Aid scheme for the digital switchover must be proportionate to the public service obligations. It is only when these conditions are met that State Aid schemes can be considered for approval under Article 87(3) (c) of the EU Treaty (Wheeler 2010: 57).

The Commission contends that this approach provides a fairer assessment of the investigated measures as only well-targeted forms of aid may be understood to be in-line with the overall objective of promoting competitiveness and technological development across Europe (Schoser and Santamato 2006: 23).

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To this end, the Directorate has examined what effect market failures may have on the switchover process by primarily assessing whether these perceived failures prevent the market from achieving full economic efficiency.

Similarly, the EC contends that there should be technological neutrality insofar that there should be competition between platform providers and that no one platform – terrestrial, cable or satellite – may be favoured by a national authority. Therefore, in principle, each network is required to compete on its own strengths and Member States cannot be discriminatory. While public support for one particular option cannot be excluded it should 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. Therefore, the Commission has been concerned that with the different levels of DTT penetration across national markets, there has been a further pressure to employ public subsidies for DTT switchover to ensure USOs.

Finally, public subsidies may be used to sustain the EU's central goal of efficient digitalization for the benefit of media plurality and consumer choice. This means that not all measures constitute State Aid. For example, in one ruling, the Commission decided that the UK regulator OfCom's decision to replace existing analogue licences with digital replacement licences (DRLs) for terrestrial broadcasters including Independent Television (ITV), Channel 4 (C4), 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 has been 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.
>
> (Reding 2009: 2)

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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 occurs as a two-stage process. First, the Commission has to investigate whether a measure can be considered as being a form of State Aid. Second, if the measure is defined as a State Aid, the Commission investigates if any exception or derogation may be deemed as being appropriate. A State Aid must 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 has noted that in many European countries, governments have reserved monies to support consumers, broadcasters

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and network operators to affect digital switchover. However, there have been significant controversies concerning the character of these subsidies. This has led to the Directorate considering whether these forms of State Aid may be deemed as being illegitimate due to their unfair distortion of the competitive marketplace. Yet, the EC's response has been further conditioned by the specific nature of the national broadcasting market, political interests, matters of technological neutrality and interoperability, questions of market failure, and concerns about whether incumbent players have benefited at the expense of their competitive rivals.

GERMANY: THE BERLIN-BRANDENBURG CASE – SOCIAL COHESION VERSUS COMPETITION

The Commission has had to rule over several German State Aid measures regarding digital switchover. The most important of these cases occurred in 2005, when the EC 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. The MABB investigation indicated how the two of the German Lander had employed public subsidies as a means to lubricate a cohesive transfer for analogue switch-off/digital switchover (García Leiva and Starks 2009: 791).

On 13 February 2002, to affect the smooth digitization of broadcasting, MABB had concluded a ‘Switchover Agreement’ with the public service broadcasters (PSB) including Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) and the Zweites Deutsches Fernsehen (ZDF), and commercial players such as Radio Television Luxemburg (RTL) and ProSiebenSat.1, which contained schedules for switchover and the allocation of programme channels. In this respect, MABB had achieved an effective coordination for switchover by affecting binding agreements from all parties and due to a comprehensive public communications campaign, which was deemed as being socially acceptable (Iosifidis 2006: 261). The Berlin-Brandenburg case was praised as a model for switchover as the region had the appropriate technical and commercial infrastructure to allow for a relatively short phase of simulcasting and had completed the switchover by 2003.

Therefore, MABB contended that these grants had been designed to offset market failures and had ensured media diversity by safeguarding infrastructure competition for digital modes of transmission. In particular, it argued that subsidies would ensure an appropriate coordination of players to ensure the removal of any barriers that 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 per cent more expensive than those accrued through broadcasting programmes on an analogue service. And 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.

Yet, following complaints from cable operators, the Competition Directorate decided MABB had unfairly facilitated the use of public subsidies for the advantages of the incumbent commercial broadcasters RTL and ProSiebenSat.1. Especially, in exchange for undertakings with these groups

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to transmit via DTT for five years, it contended MABB had inequitably allocated entire multiplexes to each organization, regardless of audience figures. In particular, the EC pointed out 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 at €82,500 for each channel. Moreover, the financial assistance granted to the commercial broadcasters 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.

Therefore, for the EU, MABB's use of public funds was felt to be anti-competitive 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 technological neutrality as it forced consumers to use T-Systems infrastructure to access the digital platform. Further, in terms of MABB arguments concerning 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.
>
> (Nordlander and Melin 2006: 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 2005).

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. Subsequently, in 2010, the Directorate found that Spanish plans for the subsidizing of DTT switchover and the

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implementation of DTV services in the Castille La Mancha region similarly violated the principles of interoperability between platforms (for further details see Matteucci 2008 and European Commission 2010b).

ITALY: COMPETITION AS A FORM OF CORPORATE WAR – SKY ITALIA VERSUS MEDIASET

The precedent of MABB would be an important determinant for other State Aid cases, 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 broadcasting mogul and on-off Italian Prime Minister Silvio Berlusconi. As both suppliers operated through terrestrial networks, digital switchover was not welcomed by either the Italian media or the political elites. Specifically, the inclusion of a wider spectrum of airwaves has meant that more channels could be broadcasted 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 was renamed as Sky Italia in 2002. From thence on, the Italian government (led by Berlusconi on a second occasion from 2001to 2006) argued that as 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.

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: 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 that subsidized the purchase by Sardinian and Valle d'Aosta DTT consumers of interactive decoders that included an open application programming interface (API) (Santomato and Salso 2006: 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 that was occurring between the Berlusconi and Murdoch empires. They were part of a process through which the Italian government, in an outrageous conflict of interests, sought to rid Mediaset of its major DST pay-TV competitor. This approach protected Mediaset's revenues as 88 per cent of its digital services were funded by subscription monies by undermining the economic opportunities for Sky Italia. 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)

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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 to 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, on 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 payback the subsidies it had received (Renzi 2010).

Subsequently, when Mediaset appealed the decision, the Court of Justice of the EU 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:

> On one hand it gave consumers an incentive to move from an analogue system to a digital terrestrial system, thus limiting expenses for that 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 and successfully sought the further removal of a 2003 clause that barred it from entering the DTT market.

THE UNITED KINGDOM: COMPETITION, PUBLIC SERVICE MONIES AND THE DISTORTION OF MARKETS

In the United Kingdom, the Directorate became involved in a case that referred to whether a potential form of compensation top-sliced from the PSB licence fee infringed State Aid rulings. In 2007, the then Labour government allowed C4 to utilize £14 million of subsidies drawn from

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the BBC's licence fee monies for digital switchover. This led to a stand-off between the Directorate, C4 and the UK government, with the then EC Competition Commissioner Neelie Kroes (who has since become the Information Society and Media Commissioner) claiming the decision breached State Aid rules.

The UK government's recommendation had been a major victory for C4's Chief Executive Andy Duncan, who had argued that channel could face a £150 million per annum short-fall as digital costs would squeeze its advertising revenue and had lobbied for financial assistance to bridge the gap. Although, the UK government had notified the EC of its plans in October 2007, the investigation was triggered by a complaint from a commercial rival said to be ITV. ITV argued that as C4 was entrusted with a public service remit but received its revenue from advertising, sponsorship and subscription, its access to licence fee subsidy would unfairly distort the British television market. Further, the complainant objected to any further financial assistance towards C4 on the grounds that it had ample cash reserves to meet the costs of digital switchover (European Commission 2008). In the light of these accusations, the Commission expressed doubts about whether the proposed aid was appropriate as, given the inadequate information it had received from the British government, it could not assess whether the channel's net public service costs were proportionate to its obligations. Therefore, the EC argued:

- Although switchover may affect C4's profitability, it will not affect its viability and therefore this did not constitute a valid reason for claiming state funding
- A decline in profitability would not necessarily affect C4 in its delivery of its public service remit or its current schedule
- C4's future plans including investments in new media services, the launch of non-PSB channels and the development of video-on-demand services undermined its case for further financial support
- C4's non-public service commercial activities should not benefit from any form of State Aid, and
- C4's reserves of £145 million were sufficient to cover its transmission costs (Brown 2008).

Thus, in providing an interim decision, Kroes wrote to the then British Foreign Secretary David Miliband commenting that the UK government's plans breached the EC's State Aid rules and claimed: 'The Commission doubts whether the notified measure is compatible with the common market' (2008). Conversely, C4 attempted to minimize the impact of the Competition Directorate's ruling by arguing that the digital switchover assistance from the BBC should be counted as 'special funding' rather than an unacceptable form of state subsidy (Brown 2008). In the event, on 26 November 2008, the then UK Secretary of State for the Department of Culture, Media and Sport (DCMS) Andy Burnham decided to withdraw the £14 million State Aid for the C4's digital transmission costs (Andrew and Mason 2008). Instead, any potential shortfalls in C4's funding arrangements were to be considered under OfCom's analysis of PSB funding entitled *Putting Viewers First* (2009) and within the then Communications Minister Lord Carter's interim report *Digital Britain* (DCMS/DBERR 2009).

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CONCLUSION: RECENT DEMANDS, THE CURRENT ECONOMIC MALAISE AND THE EUROPEAN PROJECT

With regard to the German, Italian and United Kingdom cases, the Commission enforced a liberalizing agenda towards its employment of State Aid rules. In each case it argued that public subsidies for switchover could only be applied if they did not distort the competitive nature of the specific digital marketplaces. The application of these State Aid investigations led to a particular set of outcomes that related to the nature of the national broadcasting market, the political and ideological values that each government employed towards digitization and the relationship between PSBs and the respective commercial sectors.

Consequently, the MABB case was conditioned by the need to affect a coordinated response between public and commercial players to ensure a smooth and cohesive switchover. Although it was defined by similar questions of technical standards of interoperability, the Italian case referred more specifically to corporate interests that reflected an on-going battle to control the pay-television market between Mediaset and News Corporation. Finally, the UK case indicated questions that had permeated the British broadcasting economy concerning the top-slicing of the licence fee and the specific nature of C4 as a PSB, constituted by a public remit and commercial funding.

Throughout these cases, the Competition Directorate remained committed to the principles of technological neutrality and interoperability; the opening up of the market to competition to offset the interests of incumbents and to its belief that market failures had to be effectively proved to be proportionate to the needs of the efficient supply of new services:

> The decisions … show that, even when public intervention is in principle justified, – and indeed the Commission is firmly committed to encouraging the transition to digital TV – the granting of Aid should always follow a process of clearly identifying the problem to be addressed and of choosing the least distortive means of solving it. Only well-targeted aid is in line with the overall objective of ensuring fair competition and promoting competitiveness and technological development in Europe.
>
> (Schoser and Santamato 2006: 27)

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However, more recently, it has faced greater pressures to allow for public forms of financial intervention in those Member States that require greater rates of investment, either due to the demand to bring in new technical standards or because of the relatively weak nature of their broadcasting industries. In France, the government notified the EC of its plans for a complete switchover to DVB-T2 by 30 November 2011, and promised that the new standard would incorporate 'bonus channels' for TF1, M6 and Canal Plus to be allocated in exchange for the erosion of their market shares since the introduction of DTV. While the DVB-T2 standard will not be used until 2013, as it requires consumers to upgrade their decoders, the bonus channels may face opposition from the EU, which had already warned France in November 2010 about the proposal.

Elsewhere, in some Eastern European states who have joined the EU due to the process of Enlargement concerns have been raised about the ability of their citizens to afford the purchase of the new hardware required for DTV reception. For instance, 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

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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 DTV equipment. This measure was especially important as Slovakia had planned to switch from analogue to DTV by the end of 2012, and without upgraded devices, these citizens would be excluded from this information source. Therefore, such a use of funds for switchover may affect the competitive structures of national media markets over a long period and in unforeseen ways (European Commission 2010a).

Further, because of the general economic malaise that has affected the EU since the Banking Crisis of 2008, there has been a demand to accelerate the process of digital switchover due to potential dangers that the establishment of the new services will be fatally compromised. Such a slowdown could have disastrous consequences for the commercial demand to use the digital dividend from the freed up analogue spectrum (EurActive 2010a). In particular, the Commission has estimated that the incremental value of the spectrum for wireless broadband across the EU stands at a figure of between €150 and €200 billion. Especially, the ‘Europe 2020’ strategy for new jobs and sustainable growth (which has replaced the Lisbon agenda) has placed the availability of high-speed Internet to be rolled out from freed up spectrum as being a central component in the EU’s Knowledge Economy. Therefore, it contends that an appropriate coordination of Member States is required to affect the digital dividend so that its potential economic impact would raise an additional €50 billion from 2010 to 2015. This is particularly attractive to the EC as it is cost free to taxpayers and would be available for all Member States as a means of raising further revenues (Reding 2009: 4).

Consequently, the Directorate has to remain mindful that any barriers that it may impose over the use of public subsidies, which are deemed to violate competition rules, might detrimentally impact on the development of digital services. Paradoxically, by pursuing the values of competition, the EU could undermine the commercial benefits to be drawn from the digital switchover process. Therefore, the application of these measures on a national case-by-case basis has led to a wider range of outcomes as the Competition Directorate has become less committed to the explicit rules of competition and more supportive of national public subsidies.

This change in attitude focuses attention on several divisions that exist in 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 these cases have indicated that wider tensions exist in the integrationist ‘European Project’ in relation to cultural policies as the inherent:

> Economic 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 framework 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.
>
> (Ward 2008: 2)

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Thus, throughout the process of employing State Aid measures to aid analogue switch-off and digital switchover there has been a growing division between the principles of supra-nationalism and inter-governmentalism (Iosifidis 2011a). On one hand, Member States have been concerned that their sovereign powers have been undermined by the EU as the Competition Directorate has exercized too much control in determining the use of public subsidies. On the other, it has been a concern that the EU's normative liberalizing agenda has conflicted with the needs for coordinated forms of switchover to allow for the commercial benefits and demands for social cohesion to be realized in relation to digitization (Nordlander and Melin 2006: 267).

Conversely, the Directorate has been concerned with its belief that Member States have abused their rights of derogation within the European Treaty to expand the digital public service remit in unauthorized ways, such as financing commercial digital activities. Moreover, questions of market fragmentation continue to be related to the DTV take-up rates and the utilization of the digital dividend made available from freed up analogue spectrum (Kroes 2010). Therefore, these tensions indicate how the questions of subsidiarity and complexities of cultural practices have increasingly come to fore in digital switchover process. As reflected in many areas of EU audio-visual policies, they demonstrate that media and communications reform is as much determined by political and social interests as by the technocratic, legalistic and economic demands of Competition Policy.

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