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By Konstantina Bania¹

Competition and Public Service Broadcasting in the contemporary media landscape:

Has the right balance been struck between European Union oversight and the freedom of Member States to develop their own cultural policies?

Key words: Public Service Broadcasters, Media Law, Information law, State aid law, Pluralism, European Union.

“Public sector broadcasting is an aid to informed citizenship ... [I]t is an agency of representative pluralism bringing together different groups in society in a common conversation that shapes public opinion”.²

“How could the democratic, social and cultural needs of society, and the need to preserve media pluralism, be served by a marginalized broadcasting organization catering only for cultural elites or other minority interest groups and essentially concentrating on those types of programs which-for understandable economic reasons- the commercial broadcasting sector will not provide?”³

Striking a balance between fair competition and the freedom of Member States to develop their national public broadcasting systems is of vital significance in the contemporary media landscape both in order to ensure a level playing field for commercial and public operators and to promote media pluralism. This research paper discusses the impact that European Union State aid rules have had on domestic funding of public service broadcasting through the relevant Commission decision-making practice. The analysis will focus on the requirements of clear definition, entrustment/monitoring and proportionality as explicated in the Broadcasting Communication and interpreted by the Commission in its 15-year practice in the field. Through a sectoral-evolutional approach, the paper will make a critical assessment of the Commission reasoning using concrete examples. First, the different approaches followed by the Commission as to what type of broadcasting services may be covered by the public service remit will be identified and assessed. This analysis acquires a unique dimension given recent Commission decisions approving the expansion of public service broadcasters to new media markets such as online advertising and pay-per-view services. Second, attention will be drawn to the shift from relaxed monitoring mechanisms to external and independent control over public broadcasting

¹ PhD candidate, European University Institute, Florence, LL.M. Vrije Universiteit Brussel, MBA Universidad de Barcelona, Attorney at Law, Member of the Thessaloniki Bar

² Resolution of the European Parliament on the role of public service television in the multi-media society, OJ C 320, 28/10/1996, p. 180, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996IP0243:EN:HTML>

³ European Broadcasting Union, Legal Department, *The Public Service Broadcasting Remit: Today and Tomorrow*, p. 1, available at:

http://www.ebu.ch/CMSimages/en/leg_public_service_tcm6-4364.pdf

organizations which has recently taken place in domestic systems upon Commission recommendation. Additionally, the study will evaluate the newly established requirement of separate definition and entrustment for the provision of new media services (ex ante assessment/Amsterdam test). Third, the Commission's influence on the reform of the financial management of public service broadcasters through the proportionality check will be appraised. The paper argues that, while in several instances the Commission went beyond the Treaty letter, its control over State measures favoring public service broadcasting has led to a substantial rationalization of the sector thereby benefiting both commercial operators and the taxpayers/citizens.