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State aid: Commission rules subsidy for digital terrestrial TV (DVB-T) in Berlin-Brandenburg illegal; explains how digital TV can be supported

The European Commission has decided that subsidies worth some €4 million granted to commercial broadcasters for the use of the digital terrestrial television (DVB-T) network in the German Land of Berlin-Brandenburg violate EC Treaty state aid rules (Article 87(1)) because they are liable to distort competition. The Commission has also decided that the subsidies, which had not been notified to the Commission, must be paid back insofar as already paid over to broadcasters (about half the total). The Commission stressed at the same time that it fully supports the transition to digital broadcasting in line with its 2003 and 2005 Communications (see [IP/03/1276](#) and [IP/05/595](#)). Member States have numerous possibilities to assist the digital switchover in ways that are compatible with EC Treaty state aid rules. The Commission's decision therefore includes guidance on how these rules can best be complied with.

Competition Commissioner Neelie Kroes commented: "The Commission is firmly committed to encouraging the transition to digital TV, which has many advantages for consumers and innovation. However, state support must be based on objective criteria, address specific issues where the market does not provide solutions and avoid distortions of competition, particularly between terrestrial, cable and satellite platforms".

Without notifying the Commission, the media authority of Berlin-Brandenburg ('Mabb') gave the subsidy to commercial broadcasters, for example RTL and ProSiebenSat.1, to meet part of their transmission costs via the DVB-T network launched in November 2002. In return, the broadcasters undertook to use the DVB-T network licensed to the company T-Systems for at least five years.

Following complaints by cable operators, the Commission opened a formal inquiry in July 2004. After consulting market operators, the Commission has concluded that Mabb's subsidy violates EC Treaty state aid rules. The aid was not based on any specific switchover costs and was decided after the switchover had been agreed. Different amounts of funding were given without objective justification to broadcasters, who already benefited from receiving free digital licences which allow greater transmission capacity at lower cost per channel. The subsidies also indirectly favoured the DVB-T network over competing TV platforms, such as cable and satellite, disregarding the principle of technological neutrality.

The Commission recognises that the digital switchover may be delayed if left entirely to market forces and that public intervention can be beneficial, through for example regulation, financial support to consumers, information campaigns or subsidies to overcome a specific market failure or to ensure social or regional cohesion. The onus is on Member States to demonstrate that aid is the most appropriate instrument, is limited to the minimum necessary and does not unduly distort competition. In the case of Berlin-Brandenburg none of these conditions were met. The Commission recognised the existence of certain market failures, but found that the aid was neither the most appropriate instrument nor necessary to solve these problems.

In the latest DVB-T decision, the Commission gives specific indications of acceptable forms of public support for the digital switchover.

The Commission would in particular view favourably:

- funding for the roll-out of a transmission network in areas where otherwise there would be insufficient TV coverage
- financial compensation to public service broadcasters 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.

Some of these indications are based on a Commission decision of March 2005 to approve support for DVB-T in Austria through pilot projects and research; subsidies to individuals for the purchase of set-top boxes for any platform to prevent the exclusion of low-income households from access to TV reception (in the case of Berlin-Brandenburg, the Commission did not further investigate such subsidies to 6000 households); grants to companies to develop innovative digital services; and subsidies to broadcasters to compensate for additional transmission costs when broadcasting analogue and digital TV in parallel ("simulcast phase"). These measures were approved because they respected the principles of transparency, necessity, proportionality and technological neutrality.

The guidance provided today is intended to enhance legal certainty for possible public policy interventions in the forthcoming EU-wide transition to digital TV. Member States remain, of course, obliged to notify to the Commission all state aid measures before they put them into effect.