

FINANCING THE PUBLIC SERVICE BROADCASTING UNDER EUROPEAN UNION LAW

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Abstract

A protocol annexed to the Amsterdam Treaty, regarding public broadcasting in member states, provides that member states are free to fund public service broadcasting as far as it does not affect competition in the European Union to an extent which would be contrary to the common interest. As a result of this condition, the European Commission carries out a proportionality test to check if there is no overcompensation or disproportionate effects of public funding. It nonetheless does so by adopting a global control which considers all public broadcaster programmes as part of the public service remit. Such control is problematic because it does not take into account the distinction between commercial and public service programmes nor the actual quality of programmes. The Commission indeed focuses its control on the advertisement market, making sure that public broadcasters do not take advantage of public funding to lower the price of advertisement rates. The freedom enjoyed by public broadcasters to provide any types of programmes as far as they respect the advertisement market comes out to be contrary to citizen welfare.

Keywords

Public service broadcasting; European Union; State Aid Law; content programmes

INTRODUCTION

The “Protocol on the system of public broadcasting in the member states”, annexed to the Amsterdam Treaty of 1997 states that the system of public broadcasting in the member states is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. Indeed, numerous authors highlight the importance of broadcasting for the implementation of democracy, and even citizen rights (Murdock, 1999). Regarding this particular quality of public service broadcasting, it provides that the member states are free to confer, define and organise the public service broadcasting and to fund it in consequences. It seems to legitimize the public funding of public broadcasting, in a European context where State aids are strictly controlled and supervised. Article 107 of the treaty on the functioning of European Union provides indeed the principle of incompatibility between treaties and state aids.

This protocol seems to reflect a political consensus on the importance for the member states to finance their public broadcaster freely and especially to choose the type of financing. As stated by the Commission, in its Communication on the application of State aid rules to public service broadcasting, funding schemes can indeed be divided into two broad categories “single-funding” and “dual-funding”. The single-funding refers to those systems in which public service broadcasting is financed only by public funds,

mostly the license-fee. The dual funding, on the contrary, refers to those systems in which public service broadcasting (PSB) is financed by public funds and revenues from commercial advertisings (European Commission, 2009). These texts aimed to answer to the private broadcasters, which were arguing that dual funding was generating a breach on competition, because the public funding guaranteed the public broadcaster to propose some lower prices in the advertising market. Germany, in particular, was concerned with the possibility to keep on financing the public broadcasting with a “dual-funding”. The protocol allowed the Commission to state that it has no objection in principle to the choice of public funding made by the member states.

In spite of the general admissibility of public financing, the member states still have to respect some fundamental rules of the treaty, as respect of the public service mission and proportionality of the financing. The Amsterdam Protocol states indeed that the Members State have to define and entrust public service remit when they grant funding to the public service broadcasters, and they shall not affect trading conditions and competition in the community to an extent which would be contrary to the common interest; this condition has been assimilated to the criteria of proportionality by the Commission (European Commission, 2009, point 38).

By the proportionality criteria, the Commission implies a test to know whether the State funding is justified in terms of public service obligations and to check if there is no overcompensation or disproportionate effects of public funding (European Commission, 2009, point 40). This control should raise the issue of the demarcation, often blurred, between commercial and public service broadcasters (Craufurd-Smith, 2001, p. 5) but especially of the demarcation of public service mission and commercial programmes even within the programmes of the public service broadcasters.

The whole issue of this article will be to understand how the commission carries on the control on the proportionality funding, when it has to respect the liberty of the member states to fund their public service broadcasters and how to ensure that the public funding will actually help to implement “the democratic, social and cultural needs of each society”, as stated by the protocol. We will first present the necessity of public funding to ensure the freedom of the public service broadcasters regarding the market (1). We will then regard the definition of the public service remit, whether by the States or by the European law. We will see that the Commission allows a very wide definition of the public service remits and effects a very light control of this definition (2). This allows public service broadcasters to fund programmes which draw near to commercial programmes (3). We will point out the commission’s method to control the proportionality of public funding and will show that it focuses more on the market than on public interest (4).

PUBLIC FUNDING, A NECESSITY TO ENSURE THE INDEPENDENCE OF PUBLIC BROADCASTERS VIS-A-VIS THE MARKET

The commercial value of broadcasting is not disputable as stated by the Court of Justice in *Sacchi* (Case 155/73 *Sacchi* [1974] E.C.R. 409), and should fall into article 107

TFEU. However, in the Veronica case, the Court had judged that “the cultural-policy objectives are objectives relating to the public interest that a member state may legitimately pursue by formulating the statutes of his own broadcasting organizations in an appropriate manner” and that “the provisions of the treaties on the free movement of capital and the freedom to provide services must be interpreted as not precluding legislation of this type” (Case C-148/91 Rec Veronica Omroep Organisatie, [1993]). The protocol annexed to the Amsterdam Treaty is nothing more than the inscription in the treaties of the Veronica’s jurisprudence. It establishes a clear link between the public funding of the broadcasters and the respect of democratic, social and cultural needs of the society.

In its “resolution on the role of public service broadcasting in a multi-media society”, the European parliament also emphasizes on the importance of public funding for the Public Service Broadcasting (PSB), and goes further than the Commission, “calling on member states to ensure consistent, stable and realistic funding for PSBs, in order to ensure their viability in a competitive market, but without being entirely dependent on advertising revenue and allowing them to fulfil their public service obligations” (European Parliament, 1996, point 39).

According to these texts, the public funding seems to be the normality, a necessity for public broadcasting not to be dependent on private advertisements. This condition has been put by several authors in literature, when they explain the negative impact advertisings has on the programmes. Serge Regourd explains that seeking for the largest audience to attract more advertisers, the private television presents uniformity and standardized programmes (Regourd, 1989, p. 365)¹. Pierre Bourdieu, in his book *Sur la télévision*, had already put that:

Driven by competition on market shares, broadcasters use more and more the old strings of the sensation-seeking press, giving the first position, when not all place, to the miscellaneous facts, in brief, to everything which can satisfy pure curiosity and do not request particular skills, political in particular. (Bourdieu, 1996, p. 58)

A famous sentence of Patrick Le Lay, president of the French private broadcaster TF1 at the time, was really significant about the link between advertising and programme schedule: “our programmes have vocation to make viewers’ brains available: it means to entertain them, to distract them in order to prepare it for the advertising messages. What we sell to Coca-Cola is brain’s time availability” (Le Lay, 2004).

In the light of the importance the television could have for the formation of an opinion, the principle of inclusion in a society and for citizenship, it seems very important not to keep programmes depending on advertisers which would encourage bad-quality programmes.

¹ “By schematizing it with the risks of uniformity and standardization that it entails, public service television postulates a logic of the greatest diversity of publics with the constraints that it implies in terms of public service obligations. This is indeed the concrete translation in the field considered of the classical distinction between activities of greater profit and activities of greater service allowing to mark the specificity of the public sector” (Regourd, 1989, p. 365)

Leaving the financing of broadcasting to advertisers would result in an absence of critical-rational debate, which is yet of paramount importance to democracy (Habermas, 1989, p. 52). Market is seen as a threat against public sphere: on the market people pursue their own private interest while in the public sphere, they direct their actions towards the will to find the right choice regarding the public good (Garhnam, 2000, p. 176). Garhnam, based on Habermas' theory of public sphere, states that the strength of public service broadcasting is that "it (a) presupposes and then tries to develop in its practice a set of social relations which are distinctly political rather than economic, and (b) at the same time attempts to insulate itself from control by the state as opposed to, and this is often forgotten, political control" (Garhnam quoted in Ramsey, 2010, p. 3).

However, if public funding can be explained in this sector by sociological aspects, and in spite of the general admissibility of public financing, it still has to respect some fundamental rules of the treaty, as respect of the public service mission and proportionality of the financing. Otherwise, these funds wouldn't be considered as a State Aid allowed by the Treaty but as State Aid banned by the article 107§1 TFEU (Bartosch, 1999, p. 198 ; Craufurd-Smith, 2001, p. 5). This implies a clear definition of the public service remit.

A VERY LIGHT CONTROL BY THE COMMISSION OF THE PUBLIC SERVICE REMIT

According to the Amsterdam's protocol, it is on the competence of the member state to confer the public service remit to the public broadcasters. The Member State are *a priori* free to define the mission the broadcasters have to fulfil. In its Communication on financing public broadcasting, the Commission states that "it is not for the Commission to decide whether a programme is a service of general economic interest, nor to question the nature or the quality of a certain product".

Same principles had been adopted earlier for Service of Economic General Interest: in its Communication on Services of General interest in Europe, the Commission stated that the determination of general interest services would be left to the member states, which would be subject only to a check for compatibility with "European Commitment" (European Commission, 2000).

In the early stages of liberalization, the Court seemed to rely on the interpretation by national courts of their applicable legislation to interpret Article 86§2 (Case 127/73, BRT v. SABAM and NV Fonoir [1974] E.C.R. 313; Kovar, 1996). This resulted of the absence of a clear mandate or legal basis to develop a common definition of the public service (Karpenschif, 2008, p. 60). This can also be understood on the basis of political philosophy: "the European Union is law without State, whereas public service are inextricably linked to the notion of State" (Stroffaës quoted in *Rapport d'information sur le service public dans le cadre de l'Union européenne*, 1995). The Court still notes in 2005 that "the Members State have wide discretion as to the definition of Service of Economic General Interest" (Case T17/02 Fred Olsen c/ Commission, [2005], point 216).

However, the Court will in some case law became less reliant on the legal national framework and start checking the respect of the sense of the treaties. It is a matter for the

Commission, on the basis of article 106§3 of the TFEU to ensure that article 86 is properly applied, without abuse from the Members State. In order to perform this control, it is necessary to evaluate if the definition the Members State gave is not too wide. As this French author put it, “pragmatism and spill over effect are the reasons why the Commission decided to tackle this issue” (Karpenschif, 2008, p. 65).

As a consequence on broadcasting sector, the Commission stated in its BBC New Decisions that the jurisdiction is competent to ensure that the public service remit as defined by the Members State falls into the concept of service of general economic interest of article 86§2 (Commission Decision of September 29, [1999] in case NN 88/98, *BBC News 24*, [2000] O.J. C78/6 (the “*BBC News 24 Decision*”). In a 1991 sentence, the Court of first instance states for instance that publication of a magazine created to present the schedule programmes is without any rapport with the special RTE service public remit and as such can't be funded by State funding (Case 1 68-69 RTE c/ Commission, 10 of July of 1991).

However, it is only in case of manifest error of assessment that the Commission and the Court can censor a Member State (Case T106/95 *FFSA c/ Commission* of 27 February of 1997).

Later, in its communication on Financing Public Broadcasting, the Commission states explicitly that control must limit itself to the manifest error of assessment (European Commission, 2009, point 48). Manifest error of assessment means that Court and Commission don't grant themselves the right to control which activities do fall into public service remit, but which don't fall into it. It implies that public entities are still free to determine the remit for the public broadcaster, but are submitted to new transparency obligations, in particular the mission imposed by them to the public broadcaster. The Commission notes however that “the definition of the public service remit would, however, be in manifest error if it included activities that could not reasonably be considered to meet – in the wording of the Amsterdam Protocol – the ‘democratic, social and cultural needs of each society’”. Through this definition of which falls into manifest error, a common definition of public service broadcasting which is based on the Amsterdam Protocol is already outlined (Carro-Marina, 1997), even if this definition is “at the margins” (Holmes, 2004)².

The Commission doesn't seem to be very regarding in regard to the activities which don't fall into “the democratic, social and cultural needs of each society”. On the contrary, in its communication, it appears unclear and even contradictory. It first claims that it is in the interests of member states to be as precise as possible in the definition of the obligations imposed upon public service broadcasters; otherwise it would not be able to grant any exemption under Article 86(2). (European Commission, 2009, point 46). However, later, the Commission states that:

At the same time, given the specific nature of the broadcasting sector, and the need to safeguard the editorial independence of the public service

² “The commission asserts only a right to control the definition of public broadcasting at the margins, guarding against abusive interpretations which cannot credibly be related to the democratic, social, and cultural needs of each society.” (Holmes, 2004)

broadcasters, a qualitative definition entrusting a given broadcaster with the obligation to provide a wide range of programming and a balanced and varied broadcasting offer is generally considered, in view of the interpretative provisions of the Amsterdam Protocol, legitimate under Article 86(2) (point 47).

Therefore, the Commission accepts the indetermination of public service remit as defined by the members state. This can be explained as stated by the cultural and entertaining values of audiovisual sector, which the definition can be subjective because it is qualitative rather than quantitative. All the same, it is paradoxical. The definition could hardly be as precise as possible if it can limit itself to a global definition which only includes the necessity of a widespread programme schedule and a varied and balanced programming. Furthermore, this global definition raises the issue of the status of entertainment programs and programs which can also be available on commercial channels. The Court of First Instance answers this doubt saying that “the legitimacy of such a widely defined public service remit rests upon the qualitative requirements for the services offered by a public service broadcaster”.

It means that whatever the nature of the programmes, news, educational, television games, sports, news, movies, the qualitative criteria is what distinguishes them from the programs offered by the private. The fact that these same programs are also diffused by private broadcasting is not problematic, as public broadcaster can be seen as establishing a ‘benchmark’ regarding the global offer, helping maintaining high standards of quality in all the channels (Craufurd-Smith, 2001, p. 16). Indeed, these qualitative criteria are “the justification for the existence of broadcasting SGEIs in the national audiovisual sector”. There is “no reason for a widely defined broadcasting SGEI which sacrifices compliance with those qualitative requirements in order to adopt the conduct of a commercial operator” (T-442/03, SIC v Commission, paragraph 211).

This definition seems to answer to a broad conception of public service broadcasting, much broader than the market failure model advocated by numerous authors. This model was first highlighted by Peacock in his report on the future of BBC, in 1986. For this liberal, close to Margaret Thatcher, the public intervention would be legitimated in the broadcasting sector only by filling the gap left by private broadcasters on the market. This meant that Public broadcasters shouldn’t propose the same programmes as the private broadcasters, even if the quality level was different. This model was put in question by others authors who claim that Public broadcasting is not about narrow market failure, because it would confine the public broadcasters to a ghetto, providing very elitist programmes and letting apart the popular needs of the majority of the population. According to these authors, given the impact of broadcasting in shaping the mentality of one country, the definition of the aims of this medium can’t be left to the market.

However, the competition with commercial broadcasting led the public service broadcasters to adopt the codes of the private sector (Albarède, 2013, p. 40).

THE CONVERGENCE BETWEEN PUBLIC BROADCASTERS AND PRIVATE BROADCASTERS

In order to verify this assertion we undertook a brief comparison between public programming and private programming in the French television, based on a sociological TV analysis³. Numerous comparative studies have compared public and private TV programming, to find out if there are still enough effective differences to legitimize the existence of public channels (see for instance Krüger, 1990). These studies tend to focus on two main methods – a comparison of the programming schedule and a comparison between the content of programmes. For the purpose of this study we have decided to focus on the comparison between two programming schedules at the same time of the day. In order to do that, we used the very typical programming schedule of one private channel, TF1, and one public channel, France 2, and put them in a tableau to be able to do a hour by hour comparison of the two (excluding the evening programmes which change each day).

The main difference between the two channels is that while TF1 programming schedule during a day is mainly composed by american fiction (43,2%), France 2 programming schedule is mainly composed by magazines (50%). For instance, the three main programmes of the afternoon are american fictions in TF1 while in France 2 they are magazines.

This classification by genres of programmes is questioned by some authors, because of the heterogeneity of the criteria used by the channels to classify them (Brachet, 2005). This classification would depend on two antagonistic things: the willing of the producer and the understandings of the viewers (Jost & Leclerc, 1994, p. 53). For instance, in the magazines, France 2 includes one talk-show about everyday life, one about personal issues, and one documentary-fiction. Even if the three programmes are classified as magazines by the channels, the viewers will not perceive them the same way. This trend of television to mix genres leads, according to F. Lahire, to the jamming of legitimate and illegitimate cultures. For instance, one magazine could aim to instruct the viewers while some others are purely entertainment. As a result, it is not possible to claim that the public broadcaster France Television proposes a better programming than TF1 simply because it presents magazines instead of fiction.

We have also decided to focus our attention on content analysis of the mentioned programmes.

Berelson first defined content analysis as “a research technique for the objective, systematic, and quantitative description of the manifest content of communication” (Berelson, 1952, p. 18). The systematic method is opposed to the impressionistic one (see Lasswell, 1942, p. 15; Leites & De Sola Pools, 1942, p. 2). When using impressionistic method, individuals characterize content without specifying the criteria that they use while systematic procedures are used to make the criteria of judgment as explicit as possible. Systematic content analysis attempts to show objectively the nature and relative strength of the stimuli applied to the readers or the listeners (Lasswell, 1942, p. 15). The

³ Study to be continued for Italy and UK television.

difficulty in this method is evidently to design the preliminary coding categories in which will be fitted the content to analyse (Franzosi, 2008). It must of course be designed given the specific research needs of the investigator, but the most typical reason given for the choice of a specific coding scheme is its use in past research (Berelson, 1952).

We decided to start our analysis by an easily identifiable genre: quizz games. The quizz games represent 29,1% of a day's programming schedule in France 2 and 21,4% in TF1 (excluding the programming of the evening), but they are supposed to be qualitatively different in the public and private broadcasters. According to the French Regulatory Authority, the main difference is that while the private sectors attracts viewers and players with the enticement of big amounts of money, the public sector is supposed to rely on the knowledges of the players. (Lettre du CSA, 2008, p. 214). In order to design the coding categories, we relied on the criteria emphasized by the regulatory authority, taking into account the importance given to the money in the game, as well as the relative knowledge of the players.

In a sociological analysis of a game set in France 2, *Mot de passe*, we counted the number of times the presenter makes references to the amount of money the candidates can win. During the 30 minutes of the programme, the 20 000 euros the candidate can win are mentioned 12 times, once each 2-3 minutes. The playing rules are explained in 20 seconds after 4 minutes (out of 30) of the programme. The proper game is always interrupted by some entertaining commentaries of the guests, which make us think that the knowledge of the players is not the most important thing, contrary to what the CSA claimed.

In the following game of the programming schedule, *N'oubliez pas les paroles*, the presenter also highlights the important amount of money that the candidates can win, at the very beginning of the game. This amount of money is linked to the capacity of the player to answer the karaoke questions. During the game, the presenter makes four references to the amount of money the player could win. Emphasis is put during the game on the personality of the players; a lot of questions are asked to them about their life and the game is always interrupted by commentaries.

In the private channel TF1 the quizz games were *Une famille en Or* and *Le juste prix*, which are clearly geared towards gaining the biggest amount of money. The content analysis for these games didn't result in a real difference between the programmes of the public broadcaster and the ones of the private broadcaster.

Point 53 of the Communication however states that:

it is not for the Commission to judge on the fulfilment of quality standards:
it must be able to rely on appropriate supervision by the Member States of compliance by the broadcaster with its public service remit including the qualitative standards set out in that remit. (European Commission, 2009)

But what if the authority entrusted with the function to supervise the quality standards doesn't comply with its mission, as it is the case in France and Italy? (Trouillard, 2016). Which other authority besides the Commission could control the quality standard? And if the quality standard is not respected, is the public funding still legitimate?

In one of its decisions the Commission validates the definition of public service remit made by France in its law even if this definition is very wide, (point 56) and in a latter point, the Commission asserts that the definition is more precise, quoting the “pluralistic expression of different trends of thoughts and opinions, independence and pluralism of information, adjustment to technological change”, etc., but doesn’t highlight the fact that TF1 also has to respect of all of these “public service tasks” but doesn’t benefit from any public funding to do so.

A CONTROL OF THE COMMISSION FOCUSING ON THE MARKET RATHER THAN ON PUBLIC INTEREST

The Commission states in its communication that it has “no objection in principle to the choice of a dual financing scheme rather than a single funding scheme” (point 57). This formulation implies that single funding is the “normal funding” and dual funding is just accepted by the Commission. In the ruling of the Commission, it seems that dual funding could be a problem, unlike the single funding, which is direct state funding. Yet, in the principles of the European Union, and in virtue of the prohibition of state aids, it is the public funding which is problematic and not the private funding, which is considered as the norm. As a consequence, in the light of article 106§2, public funding can only be justified by a state conferred mission to undertake a specific task. The single funding would therefore mean that each program of the public broadcaster is a public service program which is directly “related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”. By contrast, it could be said that the advertising funding enables public broadcasters to legitimize the commercial programs which don’t answer the criteria of public service remit (Regourd, 2008, p. 112). Even if the criteria of proportionality is very difficult to meet and impossible to check, even with the dual funding, it would legitimize a grey area between public service program and commercial programs diffused by the public broadcasters (Regourd, 2008, p. 113).

The second problems refers to calculation criteria adopted by the Commission to check if the proportionality is respected. Bavasso states in 2002 that:

the Commission has vowed to be vigilant in relation to distortions which may occur as a consequence of (or which are simply facilitated by) the existence of State funding and which are not necessary for the attainment of the public service mission. (Bavasso, 2002, p. 340)

However, once again, we can doubt it in this the case. The Commission adopts a very large and imprecise criteria to check if the public funding is proportional to the public service remit. For instance, in its Commission decision of 10 December 2003 on State aid implemented by France to France 2 and France 3, the Commission states that:

France 2 and France 3 carry on both a public service activity and commercial activities, either in-house or via subsidiaries. Only the cost of the channels’ public service activity, which includes all the costs necessary for making and

transmitting their programmes, is eligible for financial compensation from the State. (Commission decision of 10 december 2003 on State Aid implemented by France to France 2 and France 3, OJEU, 8/12/2004, L361/21).

Due to an incapacity to measure exactly the cost of the public service remit, the Commission adopts a global calculation mode which includes all the programs diffused by French public broadcasters. The same reasoning is used in the commission refuses to make a difference between commercial programs and “public service programs”, which indeed, would be very difficult to do. As a consequence, the cost of the public service remit is based on a simple subtraction between commercial revenues and total costs of the public broadcasters (Table 4 of the decision).

It seems that this calculation mode is inspired by the Amsterdam Protocol. This protocol talks about a public service mission, rather than “public service obligations” or even “service of economic general interest” the public broadcaster are entrusted by. The difference between the two expressions could be that the former one is a global mission, whereas the latter one is specific and precise. But why, in that case, favoring the single funding rather than the dual funding?

On the one hand, as explained in the introduction, the preference for single funding can be explained by the characteristics of the sector: public funding enables public broadcasters not to be dependent, in their programming, of the advertisers. This could lead to a deterioration of programming quality and that’s why the Amsterdam protocol protects the possibility of public funding by the Member State. But we can totally imagine a system in which the majority of the funding would come from the State and a little part from the advertisers. This wouldn’t lead to a deterioration of the programs as long as the public broadcasting did not get the majority of its funding from advertising.

On the other hand, the funding by the advertisers could cause prejudice to the private broadcasters and distort competition. That is the argument used by the private broadcasters when they intent a request in front of the Commission. In the decision precited of the Commission, TF1 raised the issue that thanks to the aids received, France 2 and France 3 were able to lower the price of advertising, reducing as a consequence the revenues of their competitors, which were forced to adjust. The Commission decided to check the possibility of a state induced market distortion and in order to do that it used the gross rating point (GRP), which is defined as the average number of contacts achieved by an advertising campaign out of 100 people in the target population. In the ensuing decision, the Commission notes that the GRP price of France Television is not significantly inferior to TF1’s so it refused to consider that public funding is contrary to the treaties because it doesn’t entail the competition in the advertising market. This calculation mode to establish if public funding is contrary to the Treaties raises some important issues. It raises the issue of the goal and the aims of competition law as stated by the treaties. As recalled by Prosser, “the chief, and according to many commentators, the only goal for competition law is the promotion of consumer welfare through maximising efficiency” (Prosser, 2004, p. 18). Amato ads:

what is to be understood as efficient and hence as consistent with consumer welfare is any conduct or situation that transfers to the consumer's benefit qualitative improvements in manufactures or in costs reduction, without giving anyone room to "restrict" the market. (Amato, 1997, pp. 21-22)

The main goal for competition law would according to these authors be the promotion of consumer welfare. It is, without doubt, the paradigm supported by the British regulatory authority, Ofcom, which has focused its role on the respect of competition law, to further the interests of the citizen and the consumer (Lunt & Livingstone, 2012, p. 49). However, Posner, one of the main representatives of the Chicago School recognizes that "efficiency is the sole objective of antitrust law, but competition a mediate goal that will often be close enough to allow the Court to look no further" (Posner, 2001, p. 29).

It seems that in the case of public service broadcasting, the Courts should have looked further. Indeed, simply controlling if the public funding doesn't entail the market principles makes the Commission and the Courts show preference for a single type of funding, which is not justified by an efficient delivery of the public broadcasters. Indeed, these tend to act as commercial broadcasters in the market without any control by the Commission or respect for their obligations.

Public funding, which bases its legitimacy on the necessity for public broadcasters to act differently from the private broadcasters is used, at least in two of the studied countries, France and Italy, to broadcast some commercial-tendency programs. In the broadcasting case, we could say that the competition law is respected, because the public funding doesn't entail the competition in the market, but the consumer's welfare is not taken into account. //

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