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## **CONTRIBUTION IN REPLY TO THE CONSULTATION ON THE REVIEW OF THE COMMUNICATION FROM THE COMMISSION ON THE APPLICATION OF STATE AID RULES TO PUBLIC SERVICE BROADCASTING**

### ***INFORMATION ON ISICULT***

IsICult - the Italian Institute for Cultural Industry - is an independent research centre specialising in cultural and media economic policies. Established in 1992, it is now considered one of the Italian research centres of excellence in media system scenarios. It plays the role of an unbiased think-tank. Its Italian customers include Rai and Mediaset (which are both Honorary Associate Members of the Institute), Sky Italia, the Communications Regulatory Authority (AgCom) and the Ministry for Cultural Heritage. Although having Italian roots, it is also active at international level, through a network of correspondents: its foreign customers include the Ebu-European Broadcasting Union, Screen Digest, Mpa-Motion Picture Association of America, McKinsey and Carat Expert. It operates in partnership with the specialist French company Headway International. *Inter alia*, the Institute publishes books on the TV system and for the past 8 years has been running a column in the most widely circulated Italian monthly magazine specialising in the media sector, "Millecanali" (Il Sole-24 Ore group). In particular, IsICult has been working for a decade on the role of the TV public broadcasting service and has published three essays on this topic <sup>1</sup>.

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### ***THIS REPORT***

This report was prepared by an *ad hoc* work group sponsored by IsICult and composed of <sup>2</sup>:

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The authors consider that this report does not contain confidential information and can therefore be published in full.

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<sup>1</sup> Reference can be made to three studies carried out by IsICult and published in a book (the first promoted by the Mediaset Group, and the subsequent ones by Rai): A. Zaccone Teodosi, F. Medolago Albani, "Con lo Stato e con il mercato? Verso nuovi modelli di televisione pubblica nel mondo", Mondadori, Milan, 2000; A. Zaccone Teodosi e F. Barca, "Observatory of Public Service Broadcasting in Europe", Screen Digest, London, 2004; A. Zaccone Teodosi, G. Gangemi, B. Zambardino, "L'occhio del pubblico. Analisi dei 5 maggiori sistemi televisivi pubblici europei", Rai-Eri, Rome, 2008 (being published).

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## *Introduction*

### **Notes on the positive role of the PSB in the new multimedia and multi-platform scenario**

First and foremost, let us consider some assumptions – which are now widely accepted (by the industry and the market rather than by legal experts) with reference to “public service broadcasters”:

- following the end of monopolies and the adoption of the so-called “mixed system”, “public service broadcasters” (PSB) are fully fledged market players, with specific objectives of general interest (set by the general public through its representatives), but basically subjected to the same general rules applied to private players, with whom they share the same operating space;
- in an advanced scenario, we think that the main purpose of the PSB is not the provision of specific services to citizens (which other operators could also provide), but the responsibility to support, and in some cases drive, the development and overall growth (including the growth of their private “competitors”) of the audiovisual communication sector in their own “country-system”;
- for these reasons, in spite of a certain contradiction between the first and second assumptions, the regulation, funding and evaluation of individual PSB remain mainly a problem for the national communities and authorities.

The first assumption is rich in consequences as to the competitive behaviour of PSB; justification for their (partial or total) public financing; freedom of initiative and value production.

The second assumption defines the qualitative role (“benchmarking”) which, in itself, can justify the central, specific and complementary nature of PSB with respect to correct functioning of national (and global) markets.

The third assumption invites caution in the supra-national (European) regulation of the sector, both of the relations between PSB and communication commercial operators and particularly between traditional media forms and the newly-emerging “all ip world”: this does not preclude the need for a grid of general obligations, which can be identified at EU level.

In fact, the real issue is whether the offer of PSB pay-services may give rise to market distortions and undermine the commercial operators’ profitability.

Preliminary responses and precautionary measures can be envisaged to avert this risk (namely, market distortions), over and above the obvious “*ex-post*” measures in case of infringements of rules of competition.

Four hypothetical solutions can be envisaged:

- Option 1: Partnership obligation
- Option 2: Time limits to legitimation
- Option 3: Definition of the scope for operations
- Option 4: Role as stimulator of the entire system.

More specifically:

- 1. Partnership obligation. A solution can be to make the PSB supply of pay-services conditional upon the obligation of partnership with private operators: this would prevent PSB from adhering to self-sufficient, defensive and rival positions, and it would also enable them to turn their objective power into momentum for free competition (provided that business agreements are balanced and reached with differentiated partners so as to strengthen plurality of market operators and not arbitrarily favour some over others).
- 2. Time limits to legitimization. A second option is to limit legitimization in time, by authorising the pay-service offers within the framework of well-defined phases of development of new markets. It is an unprecedented solution, but not devoid of interesting aspects: it could strengthen the general usefulness of PSB initiatives as a validation criterion and present innovative consensual characters as compared to the natural conflicting nature of this sector. Basically, this is an option underpinned by national regulation tools, which are now tried and tested, such as "service contracts" (which are obviously "fixed term").
- 3. Definition of the scope for operations. A third option is to define the boundaries of the new offers, by defining their scope and remit through the PSB provision of services in the "new media" space. A specific question by the EU Commission hints at this solution, the weak point of which could be the necessary national "localization" of criteria, as well as the PSB obligations.
- 4. Role as stimulator of the entire system. Ensuring minimum "information citizenship" to all national community members could (or perhaps should) be a task to be assigned to the PSB within the communication system "European model". The PSB can add the role as "stimulator" of the whole market to its first task of agent for overcoming "market failure". From this perspective, this task would be bound to be extended also to the so-called "new media" since it is a civil and pedagogical task – designed to encourage and motivate users and promote their information literacy – and not a technological service linked to the concept of "broadcasting" and the sole experience of "one-to-many" communication. Furthermore, this task could significantly contribute to strengthening these new markets, namely the same business opportunities as private operators: this prospect can be well tested considering the successes of the UK market. In Italy the delays recorded by PSB on the terrestrial digital market – which should have been the market driver - are serious and emblematic.

Obviously all preliminary responses include illusory elements, since they are based on concepts which are hard to define and not necessarily neutral vis-à-vis market forces (please refer to the first option, in particular).

As regards the first option (partnership obligation), we can say that communication content and services tend ever more to integrate or involve many technological platforms and reach users under many complementary forms. Final users, in their turn, perceive ever more the multiple nature of sources, "delivery" mechanisms and consumption terminals (and modes) as something natural in their daily relations with information, irrespective of supplier.

With reference to the second option, we can note that eliminating the added value produced with public money (PSB content) as against that of products funded by the market could appear as an economic absurdity. In fact, while we can maintain that what the various national PSB carry out on their own (namely by using their public funds) has already been paid by each country's taxpayers or subscribers - hence, it shall be provided free of charge on the national market (a case in point is the course taken by the BBC) – this does no longer hold true for the very frequent cases of content co-produced with private operators and particularly not for the marketing of the PSB production on foreign markets (at global level). This does not rule out the fact that the flows produced by these proceeds should be mainly channelled towards new investment to fulfil the

"PSB mission" and also be subjected to separate accounting, or rather managed by other entities having their own legal identity (as is the case with BBC Worldwide).

The third option – more than the two previous ones – requires permanent political negotiations capable of continuously adapting the PSB mission to the technological and economic evolution of the sector, as well as a sensitive monitoring task (performed by an independent Authority) capable of verifying compliance in a thorough and transparent way.

The fourth option appears to be more "courageous", even though the quick pace at which the TV and media scenarios are changing calls for the commitment and concentration of all parties concerned by means of a clear and pro-competition regulatory framework.

Regardless of the preferred option, the crucial problem remains the clear-cut separation between "public money" and "market money" – hence between products and services funded by both sources.

Let us look once again at the difficult – albeit exemplary – balance between the BBC Worldwide "commercial" objectives and the offer for free access (with a user licence such as the Creative Commons one, but only for UK residents!) to large sections of the BBC Archives, with the Creative Archives project. It is a project which has to be preferred to partnership initiatives such as Rai Click, which enables private operators to prepare a commercial offer through the Rai Archives funded by citizens over the years, who are now offered as pay-services. In this connection it is relevant to raise the issue of entering the proceeds from these activities into the budget – as already suggested.

On the one hand, the criterion of the financial origin of the PSB content, namely the separation between public money and market money at accounting level – hence between the products funded by both sources – seems to be the only concrete and practical way (albeit with obvious limits) to distinguish between the PSB services and its other activities (and to evaluate the weight and costs of the former compared to the latter).

On the other hand, this approach, too, does not avoid the risk of interference between the two groups of products and services. In particular, in absolute terms, it does not prevent or hinder commercial activities and pay-access, as well as the financial profitability of both kinds of products.

If it appears reasonable to ascertain the consistency between the new "Audiovisual Media Services" Directive on the one hand, and the set of EU sectoral provisions and deliberations on the other, as well as the 2001 Broadcasting Communication, it would be wise to confine and limit "clarifications" to this harmonization goal, by avoiding the temptation of pointlessly detailed prescriptions on the "broadcasting" sector.

The real challenge does no longer lie in defining the boundaries of the "public" and "private" respective domains, of the "old" media (namely traditional radio and TV) and the "new" media, namely the "ip" services (such as IPTV, VOD, etc.), but rather in designing and stepping up the progressive standardisation and interoperability of the different platforms (linear or interactive, fixed or mobile) which end-users want to be ever more consistent and transparent.

EU or national regulations shall mainly contribute to building a new market framework, where also the terms and conditions of free competition shall be soon redesigned.

The PSB contribution to this transformation can be remarkable – and even decisive – if it is provided in compliance with free competition rules and in a transparent way: the BBC non-invasive leadership in the positive evolution of the UK digital market is a case in point, even though such examples must be assessed cautiously within the national context.

The obvious existence of many different viewpoints, interests and strategies in the PSB field, – and even within it (between the "public" mission and the physiological needs for economic

freedom on the market; between defensive choices and proactive attitudes; etc.) – is enhanced by the extreme diversity or contingent uncertainty of the respective national political frameworks.

Rather than underlining the weakness of the main party concerned (or at least its extreme difficulty in creating shared options), these symptoms reaffirm:

- the advisability of a cautious approach towards these issues: a Recommendation to member states could prove to be a valuable tool;
- the usefulness of a wide involvement of the parties concerned and the social partners (work groups and self-regulation options);
- the need for more studies on this topic and unbiased in-depth analyses promoted by the EU Commission.

## 1. GENERAL CONDITIONS

*1.1. A number of significant legal developments have taken place in the public broadcasting area since 2001, namely the adoption of the Audiovisual Media Services Directive, the adoption of the Decision and Framework on compensation payments as well as the decision-making process of the Commission. Do you think that the Broadcasting Communication should be up-dated in light of these developments? Alternatively, do you consider that these developments do not justify the adoption of a new text?*

The Communication about State support for public service broadcasting was undoubtedly very useful and made it possible to reach a positive conclusion in more than 20 cases that had emerged from the early 1990s, which coincided in many countries with the first phase of commercial television and with the reactions of public televisions to the collapse of their monopoly and the new competitive situation.

The experience was positive, even in the light of the debate it inspired: some member states modified, or are committed to modifying, their system of public financing for radio and television broadcasting<sup>3</sup>.

In the few years since 2001 the situation has changed significantly, so a revision of the Communication would be useful.

The convergence on multimedia, multiple-platform solutions has radically modified the original structure of the system, so it is time to revise the concept of public service in the broadcasting sector.

Growing competition between linear and non-linear services is changing the economy of the media sector, just as it is changing the habits of consumers.

The implementation of the new 007/65/EC Directive traces a clear picture for development of the audiovisual sector in a multi-platform context, by means of an equitable approach that encourages competition among the various modes of distribution.

During the coming years, public service broadcasting (hereinafter abbreviated PSB) will operate in a world where "television" and "radio", as we have known them until now, may no longer play a central role in providing citizens with information and entertainment.

This affects the very "essence" of the PSB remit and raises serious questions about how this kind of entity will evolve.

In fact, one might wonder if in the future citizens will even need PSB<sup>4</sup> or will gather news/entertainment/information from a plurality of on-demand sources and media of different types. The solution to this question might be that modern audiovisual services, even those of high social value, may be provided for payment or gratuitously even by commercial operators that do not have the privileged PSB status. We will discuss this further in the following answers.

It does seem appropriate to reflect on the role and financing of PSB in the light of recent opinions of the European Court and consolidation of the decision-making process.

After approval of the AVMS Directive, the Broadcasting Communication must be updated starting from the core principles already expressed at § 12 on technological progress. In this context, the decision and framework on compensation payments represents a landmark to

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<sup>3</sup> See P. Dias and A. Antoniadis, "Increased transparency and efficiency in public service broadcasting. Recent cases in Spain and Germany", in "Competition Policy Newsletter", no. 2 – 2007, Brussels, pp. 67-69.

<sup>4</sup> One extremist worth mentioning, among those who believe that public service broadcasting is no longer a demand to which the State must respond, is V. Zeno-Zencovich, "La libertà d'espressione. Media, mercato, società dell'informazione", Il Mulino, Bologna, 2004.

determine, with greater rigour and transparency, when state aid to a PSB may be legitimate and justified<sup>5</sup>.

The decision of the Commission about public service financing in Germany<sup>6</sup> revealed how complex this matter is and confirmed the necessity to introduce a legal point of reference, updated in relation to the evolution of media systems. The recent decision of the Commission to open a dossier about public financing of a PSB in Austria as well, serves as confirmation of the need to prepare a regulatory framework that favours competition<sup>7</sup>.

*1.2. How would you describe the current competitive situation of the various players in the audiovisual media sector? Where available, please provide the relevant data on, for instance, leading players, market shares, market share evolution in the broadcasting/advertising/other relevant markets.*

The Appendix to this document includes data that may provide a useful contribution to the overview of the issues under discussion here.

A historical analysis of the evolution of the system reveals three phenomena in the long term (ten, if not twenty, years):

1. the growing role that pay television services are assuming in the overall economy of the sector: in the five leading European markets (France, Germany, Italy, United Kingdom, Spain), between one fourth and half of the total resources of television systems derives from payment by the consumer (see the Appendix to this document);
2. the entry of financially strong investors, media branches of the large telecommunications groups, into the pay-TV sector (satellite, IPTV and, slowly but surely, DTT), with their enormous fire power (revenues are 10 to 1 or more with respect to the media groups); these new players are invading the traditional territory of television by way of the Internet and are looking for resources through video-on-demand (hereinafter identified as VOD in this document)<sup>8</sup> and through advertising;
3. the substantially unvaried shares of PSB broadcasters, at least in the traditional television habitat (not digital): that the PSB are forced to rely on defensive strategies in a competitive system that is ever more crowded is inevitable, but the crucial question is if they can/should enter the pay business (independently of which platform).

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<sup>5</sup> A solution for PSB might be adapted for at least some of the four criteria in the Altmark case (Case C-280/00, 24 July 2003), given that the activities and missions of PSB can now be developed in various ways and that it is possible to reason in an advance perspective. See A. Sinnavee, "State Financing of Public Services: The Court's Dilemma in the Altmark Case", in "European State Law Quarterly", 2003, p. 351.

<sup>6</sup> European Commission, "State aid E3/2005 (ex-CP/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcaster in Germany", C (2007) 1761 Final, 24.04.2007, Brussels (published online at: [http://ec.europa.eu/competition/state\\_aid/register/ii/by\\_case\\_nr\\_e2005\\_000.html#3](http://ec.europa.eu/competition/state_aid/register/ii/by_case_nr_e2005_000.html#3); see also documents IP/07/543 and MEMO/07/150).

<sup>7</sup> See the Commission press release: "State aid: Commission requests Austria to clarify financing of public service broadcaster Orf", ref. IP/08/130, 31.1.2008, Brussels.

<sup>8</sup> It is important to specify that VOD refers to a pay mode of video-on-demand; in the case of gratuitous access and use, we will use another acronym, FOD (free-on-demand), which we find better than FVOD (free-video-on-demand). It is also important to mention that the concept of "free", in television, means that the spectator pays nothing to access the service, however in television economics the broadcaster sells the viewer's head to advertisers as a contact, and therefore "free-to-air" is not actually gratuitous.

*1.3. In your view, what are the likely developments and where do you see the major challenges for the sector in the future? Do you consider that the current rules will remain valid in the light of these developments or do you believe that adaptations will be necessary?*

The major challenges are:

- how the structure of the media system will change, in consideration of the growing possibility for the final user (whether evaluated as a citizen or merely a consumer) to access an enormous quantity of content, compared with the historical availability of the flow to which we have been accustomed for several decades: the psychology of use, consumer habits and thus the very economy of the media system will change;
- the concept of public service broadcasting in a market that offers ever greater content (but is it better, in terms of quality and variety?) is bound to be revised, even if it will likely be characterised by new entry barriers, principally of economic, population and multimedia literacy.

Current rules are not sufficient to guarantee fair operation of the PSB on the broadcasting market because this market is evermore similar, and thus more easily confused, with the audiovisual media market: these two markets are no longer just adjacent, they are already partially overlapping and interchangeable, and foster virtually across the board competition among the platforms. When in some countries, such as France, the number of users of television on the Internet (an IPTV type of offer) reaches mass levels (2 million subscribers to IPTV services), there is a powerful invasion of what was the traditionally well-defined and well-defended territory of traditional broadcasters by different investors. Through this platform the citizen/consumer has simple and convenient access to VOD products.

It is likely that VOD" acronym in this document) will become an accessory to use of audiovisual media contents and will gradually substitute the traditional, linear contents. This overwhelming affirmation of on-line services is already disrupting the economic foundations of other sectors such as music and gaming, much like interactive contents. These developments were forecast by the latest research<sup>9</sup>, and this theory is also at the base of the work that led to the adoption of the new 2007/65 Directive. It is sufficient to recall that there are already 150 VOD services available in Europe.

The developments of these new technologies and their modes of use run parallel, and also overlap, linear contents and traditional modes, so it is necessary to acknowledge the changes that will affect the public, segmented into more and more consumer niches, by generating appropriate models for both the free and pay businesses.

On this point, it is important to recall that FOD ("free-on-demand", that is free VOD), according to some observers, damages competition, because it's used to provide for free on other platforms also commercial contents and not only public service programmes.

FOD is generally used for catch-up TV and is offered by free broadcasters to its own viewers<sup>10</sup> as an extension of its services. In this way, viewers who have missed a programme can catch-up. It must be emphasized however that in order to be FOD the service must not be subject to any charge. However, this does not mean that the service cannot be financed by advertising, though

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<sup>9</sup> See S. Nikoltchev (curator), "Legal Aspects of Video on Demand", Iris Special, European Audiovisual Observatory, Strasbourg, 2007, p. 51; see also Screen Digest, "Interactive content and convergence: implications for the Information Society", A Study for the European Commission (Dg Information Society and Media), Brussels-London, 2007.

<sup>10</sup> These are the findings of the European Audiovisual Observatory in the previously cited research on the legal aspects of VOD.



still gratuitous for the user: some broadcasters in the United Kingdom (such as ITV, Ch 4 and Five<sup>11</sup>), seem to be moving in this direction.

As a working hypothesis, it could be argued that even a yearly subscription fee is not "zero cost" and thus, in Italy, Raiclick would also not be FOD. However, if this hypothesis is not accepted, Raiclick on the web can be considered an FOD prototype and, consequently, verify that the competitive impact has not been very significant.

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<sup>11</sup> Keep in mind that even the service offered by BSkyB in the United Kingdom, which gives its subscribers access to a library of thousands of titles on a private peer-to-peer network, could not be classified as gratuitous because access was reserved to the paying subscribers of the BSkyB cinema service.

## **2. COMPATIBILITY, PURSUANT TO SECTION 86, PARAGRAPH 2, OF THE EC TREATY AND THE BROADCASTING COMMUNICATION**

### **2.1. Coherence with the Commission's decision and the framework for compensation of public service obligations**

*2.1.1. Do you consider that (at least some of) the requirements laid down in the Decision and Framework on public service compensation should be included in the revised Broadcasting Communication or not? Please explain why.*

*2.1.2. In the affirmative, please specify which requirements should be included and explain what adaptations, if any, would be appropriate for the broadcasting sector (see also the questions below, in particular those on overcompensation; point 2.6).*

Some of the requirements laid down in the 2001 Decision should be included. Especially those (§19) that refer to accounting separation between activities carried out with public compensation and activities carried out with private funding.

It is legitimate for a PSB to have some operations running on a commercial basis, however, it must be clear that these are something different from its core business and are not essential to its PSB activity.

This is because – until the technical scenario changes with a wider adoption of Internet media - a PSB carries institutional communication and information, government messages, service programming (e.g. broadcast of important sessions of Parliament, of debates, of rallies in election times, etc.). The relationship between these broadcasts, and those financed by advertising, must be crystal clear.

A PSB also uses public funds to finance private suppliers: this policy is comprehensible but only if the public broadcasters adopt best-practice commissioning procedures, and observe principles that do not limit competitiveness by indirectly abusing the force of public financing.

It would again be necessary to apply the principle of separate accounting and perhaps a structural/corporate distinction as well.

In Italy, the principle of separate accounting is still not applied by the Rai in a satisfactory manner, due to a lack of transparency (see the reply to question 2.5.1 below).

It should be mentioned that in February 2008 the Italian PSB announced (but has not yet technically launched) a system called "Quality Meter" as part of the new 2007-2009 Service Agreement concluded with the Italian government (section 3 of the Service Agreement). This "Quality Index" monitors a number of indicators that can evaluate the quality of public service programming and is meant to liberate the PSB from audience rating parameters. An ad-hoc committee has been constituted to apply the specific Guidelines.

## 2.2. Definition of the purposes of public service

*2.2.1. You are invited to provide information on the definition of the public service remit in your country, in particular as regards new media activities.*

Rai, the Italian PSB, has entered into a new agreement ("Service Agreement") with the Italian Ministry of Communication, as provided by Section 45 of Legislative Decree no. 177/2005 (Consolidated Broadcasting Act): the new 2007-2009 Service Agreement defines the details of the Rai public service remit in all fields<sup>12</sup>.

However, the general principles are explicitly recognized as stemming from a number of legislative texts: the Italian Constitution, the EU Treaties, the TV without Frontiers Directives, the IX Protocol about public television attached to the 1993 Treaty of Amsterdam, Communication no. 320 on State Aid to PSBs of 2001, and Italian television legislation (Laws no. 249/97, 112/2004 and, above all, the consolidated act Law no. 177/2005) as well as the Rai guidelines approved by the Italian Communications Regulatory Authority (AGCOM) together with Ministry of Communications decision no. 540/06/CONS.

The new Service Agreement sets very ambitious goals, even if the definition of these seems to be weakened by a lack of specificity in the description of the purposes of public service<sup>13</sup>, and by a final result that is not up to the expectations that were created during negotiations, at least according to many observers<sup>14</sup>.

In particular, Section 6 provides several new media activities in which Rai is to engage.

- Operating on several platforms (DTT, IPTV, satellite, mobile, Internet) coherently with its nature of PSB;
- Producing specific content for Internet and improving the visibility of Rai content on Internet;
- Improving ease of use of its websites on Internet;
- Making TV and radio broadcast content available on the Internet to Rai subscribers in a technically neutral manner and without prejudice to right holders;
- Within 12 months, making programs available on the Internet, as soon as the official broadcast ends;
- Appropriating an increasing amount of resources to licensing content for the Internet using technologies to prevent illegal use without hampering technical neutrality;

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<sup>12</sup> "Consolidated Radio and Television Act", approved by Legislative Decree no. 177 31 July 2005. The 2007-2009 Service Agreement entered into force 29 May 2007 (see also below, reply to question 2.3.1).

<sup>13</sup> The Service Agreement establishes the criteria for a number of issues: "freedom, completeness, objectivity and pluralism of information; conservation of national and local identities, and linguistic minorities; the political and economic evolution of the State, and its modernity; the evolution of political and economic relations with European partners and the diffusion of the fundamental aspects of their cultures; information about the political, economic and social conditions in states outside of the EU, with particular attention to under-developed nations; highlighting the culture, history, traditions and artistic heritage of the nation; conservation of environmental assets; presentation of the reality of daily life of the nation; promotion of work and labour and their conditions; civil rights, solidarity, women's rights and equal opportunities, integration; security of citizens, contrasting all phenomena of violence, criminality, social decay and exclusion; focus on the family; protection of minors and other weak and elderly social groups"... These criteria must be respected by a series of activities that are described in the agreement (in particular, Section 4, where several types of programming are described).

<sup>14</sup> The first drafts of the Service Agreement provided, for example, that RAI would allocate "no less than 7% of all of the financial resources dedicated to production or acquisition of contents for broadcast by radio and television" to the acquisition of rights for Internet diffusion of all the contents broadcast by radio and television. This provision was struck out of the final version of the agreement. See A. Zaccone Teodosi, "Contratto di servizio Rai: modeste innovazioni", in "Millecanali", no. 363, January 2007, Edizioni Il Sole-24 Ore, Milan, pp. 18-22.

- Offering in-house production of specific content;
- Permitting users to download, modify and redistribute a selection of content;
- Offering a space to discuss and communicate, including a space to comment Rai programming;
- Promoting its websites in TV programming;
- Maintaining its interface technology up to date with devices on the market.

Note that in re-defining its multimedia obligations, Rai has to face a serious challenge: in fact, most of the new obligations are to be disbursed on a non-commercial basis, whereas until now Rai had a strategy, although somewhat confused, in the new media sector that was based on a commercial approach (e.g. platform operators paid Rai in order to distribute RaiSat channels on their new platforms<sup>15</sup>).

*2.2.2. Do you consider that the distinction between public service and other activities should be further clarified? In the affirmative, which measures could provide such clarification (e.g. establishment by the Member State of an illustrative list of commercial activities not covered by the public service remit)?*

Yes, it is necessary to further clarify the distinction between public service and other activities. Probably it would be best for each Member State to trace its own distinction on the general matter of what is public service and what is not, as such a distinction largely depends on the local cultural heritage and on the national market situation.

However, tracing a list of activities that are never to be included in public service (definition by exclusion) could be a good starting point: if ever drawn up, these would be activities that should not be financed by public compensation. Such a list of activities could be required by law or by rules.

This is why it is important that there be a system to guarantee the greatest transparency in the public service activities.

It is also fair that non-public service activities, even if carried out by PSBs, have proper financing provided they are not mixed up with PSB activities.

One possible measure would be to institute an obligation to publish a database of programmes that would distinguish between programmes financed by subscription fees and those that benefited from the sale of publicity spaces.

Another hypothesis proposes application of a video-mark on public service programmes and this system would indeed guarantee visibility of the separation between the two categories of programmes.

Marking and separate accounting are implemented in different ways and produce different effects, but they are not mutually exclusive: both tend to create greater attention and awareness in the citizens/viewers.

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<sup>15</sup> According to some observers, it seems that some agreements already exist in which transmission of the three general channels on the satellite platform would be balanced off against Sky services for transmission of other RAI networks on the same platform, and assigning a leading position to RaiSat.

*2.2.3. In the current Broadcasting Communication, activities other than TV programmes in the traditional sense can be part of the public service remit provided that they serve the same democratic, social and cultural needs of society. Does this provision sufficiently clarify the permissible scope of such public service activities? Why? In the negative, do you consider that further clarifications should be provided in a revised Broadcasting Communication?*

We believe that the current Broadcasting Communication is still valid on these issues, but at a general level: clearly, the public service remit cannot be rigidly limited to traditional television broadcasting, but it is just as true that a generic and unlimited liberty to operate in all segments of the new multimedia platforms cannot be conceded. When the system changes from a linear to a non-linear system (see above), we cannot expect a PSB to impose its proposals, or even its mere presence, on the market if this does not correspond to the demand of the population.

However, the growing complexity of the media scenario requires a more detailed framework of criteria to address the situations that have emerged since the Broadcasting Communication entered into force seven years ago in 2001: during this time, the traditional television system has evolved and mingled with the non-linear proposals.

We therefore agree with the recent position of the Commission about support for German PSB<sup>16</sup>, with particular reference to sports rights, and with the request to provide guidelines that clarify when a PSB may conduct commercial activities and when it may not.

As stated above we do believe that a PSB has the right to engage in commercial activities, provided there is a clear separation between these activities and the PSB activities and that the PSB remit is clear and transparent not only to regulators but also to viewers and citizens.

On this issue, we refer again to experiments such as the BBC Public Value Test<sup>17</sup>, and we also hope that the Italian Quality Meter project (see above, reply to question 2.1.2) will contribute to clarifying this matter and stimulating the transparency that is indispensable.

*2.2.4. Do you consider that the general approach in the recent decision-making practice of the Commission (i.e. determination of the public service remit based on an ex ante evaluation for new media activities) could be incorporated into a revised Broadcasting Communication?*

Yes. An update of Communication no. 2001/C320/04 should incorporate the recent decision-making practice of the Commission, thus transforming this principle into a European rule, which could be declined and used for "ex ante" evaluations in every single Member State.

*2.2.5. Should a revised Broadcasting Communication further clarify the scope of an ex ante evaluation of the public service remit by Member States?*

*2.2.6. Which services or categories of services should in your view be subject to an ex ante evaluation?*

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<sup>16</sup> European Commission, "State aid E3/2005 (ex-CP/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcaster in Germany", C (2007) 1761 Final, 24.04.2007, Brussels. See also Memo/07/150 dated 24 April 2007.

<sup>17</sup> The "Public Value Test" (PVT) is divided into two parts: the "Public Value Assessment" (PVA) that measures the public value that a service should generate, and the "Market Impact Assessment" (MIA) that measures the possible impact on real or potential value on the broad market as a result of the change. The PVT contributes to the formation of an opinion by government organs but does not replace it.  
See: [http://www.bbc.co.uk/pressoffice/pressreleases/stories/2005/10\\_october/25/licences.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2005/10_october/25/licences.shtml).

Yes, the revised Broadcasting Communication should further clarify the scope of an ex ante evaluation of the public service remit by Member States.

A revised Broadcasting Communication could define a series of indices that, if not present, would prevent approval of the remit.

Member States should, however, be authorised to request postponements and exemptions, but only insofar as in accordance with EC legislation governing these matters, which establishes that PSB must be granted absolute independence from the power of the Government. Such principle has been repeatedly declared by the Commission in a number of decisions<sup>18</sup> and should not be forfeited in the evolution of the decision making process.

In light of the above, we do believe that ex ante evaluation should be applied to certain services as in the BBC model: once a clear remit has been defined, a policy instrument may be defined to evaluate services on a case-by-case basis.

This implies that what matters is establishing the remit and the evaluation criteria and instruments.

The ex ante evaluation criteria must be clearly identified for all services and activities for which public compensation is sought.

*2.2.7. Should a revised Broadcasting Communication contain the basic principles as regards the procedural and substantive aspects of such an evaluation (such as the involvement of third parties or the possible evaluation criteria, including, for instance, the contribution to clearly identified objectives, citizen needs, available offers on the market, additional costs, impact on competition)?*

Yes, but we believe that such elements could be specified by the Commission only in very general terms, leaving flexible margins to Member States for integration/modification.

Each PSB is different and operates in a different market and each audience has different cultural requirements.

Quality and public service value may therefore find different expressions in different lands.

In this, Italy is in a special situation as it is trying to reinforce its public service broadcaster (Rai) and during the last government term a legislative proposal was presented to entrust control of Rai to a new, independent foundation.

The Italian situation is both static and sticky for the PSB: this is damaging for Rai, but also for the television sector in general.

The Italian broadcaster, despite its new Service Agreement, is not able to be independent of political power because it is still under direct control (Parliament, in fact, nominates the Board and monitors its work).

We therefore agree that the impact on competition should be taken into special account in a revised Broadcasting Communication. The new version of the Communication should also reinforce the principle of clear and transparent separation of accounting/functions/corporate structure between the PSB and any commercial activities it may conduct.

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<sup>18</sup> "Resolution of the Committee of Ministers of the Council of Europe no. R96/10 on the guarantee of the independence of public service broadcasting".

*2.2.8. In view of the fact that the determination of the public service character of such activities may be determined in various ways, to what extent should a revised Broadcasting Communication set out possible different options?*

The core of this issue has been addressed in the answers above.

We believe in flexible national instruments which safeguard the specific individuality of Public Service Broadcasters but are designed around common criteria, established by the Broadcasting Communication.

In particular, the Communication might establish that each broadcaster needs to have service value and quality determination instruments and that these instruments/controls need to be removed from political control.

As discussed above, the ever-evolving technological and regulatory scenario requires PSBs to evolve their services; however, they should be subject to ex ante analysis in any case.

### **2.3. Concession and monitoring**

*2.3.1. You are invited to explain in which way public service concession is granted in your country. Is the procedure leading to the concession subject to public consultation? To what extent is the broadcaster's remit laid down in legally binding acts of entrustment? To what extent is the implementation and determination of the exact scope of activities left to public service broadcasters? Are such "implementing measures" publicly available?*

As is clear from case E 9/2005<sup>19</sup>, concessions are not granted on the basis of a competition, or on cost efficient criteria, but rather on the provisions of an act of the legislature, which established that Rai, the government controlled broadcaster, be the only public service broadcaster.

Currently the relevant statute is Legislative Decree no. 177/2005 (Consolidated Broadcasting Act), specifically Sections 45 to 52.

As established in Section 49 of this Legislative Decree, the public service concession conferred on Rai-Radiotelevisione Italiana S.p.A., a company completely participated by the State (with the exception of shares for less than 1% of share capital held by SIAE, the Italian association of authors and publishers) is valid until 6 May 2016.

Section 45 provides that before each renewal of the Service Agreement, AGCOM and the Ministry of Communications shall jointly draft guidelines. A public consultation shall be held about the guidelines (the latest was accompanied by an open Internet consultation), although some observers believe that the parties, the Ministry and Rai, did not take the debate into much consideration.

The 2007-2009 Service Agreement, which entered into force on 29 May 2007<sup>20</sup>, is available for consultation on the web sites of Rai and the Ministry of Communications.

The Service Agreement establishes the exact scope of the activities conducted by Rai.

Therefore Rai does not establish the implementation of the specific purposes of public service broadcasting.

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<sup>19</sup> Judgement no. C(2005)1164, "Aiuto di Stato n. E 9/2005. Italia. Canone di abbonamento Rai".

<sup>20</sup> RAI and the Ministry of Communications signed the 2007-2009 Service Agreement on 5 April 2007, after the Parliamentary Commission for Radio and Television issued a positive opinion in the meeting of February 14, 2007. The Agreement entered into force when it was published in the official gazette on 29 May 2007.

*2.3.2. Please explain the supervisory mechanisms of public service broadcasters in your country. What is your experience with the existing supervisory mechanisms? Do you consider that there are sufficient possibilities for third parties to take action against alleged infringements/non-fulfilment of public service (and other) obligations in your country?*

The situation in Italy is not entirely satisfactory.

A Commission of Parliament <sup>21</sup> exists to supervise Rai (Commissione Parlamentare di Vigilanza sulla Rai) and AGCOM also has special powers.

According to Section 48 of the 2005 Consolidated Act (expressly mentioned in the 2001 Communication of the Commission), the provision of public service and the achievement of the objectives established by the law and the Service Agreements are subject to monitoring by AGCOM, which is independent of the Government and of Parliament.

AGCOM is entitled to open an infraction procedure if it believes that Rai has not fulfilled its public service obligations as established by the law or, at the request of the Minister of Communications, for violations of the provisions of the Service Agreement <sup>22</sup>.

AGCOM is endowed with ample investigative powers in relation to the infraction procedure and may impose penalties up to 50,000 Euro to persons who do not collaborate or provide false information. In the event that AGCOM ascertains a violation of public service obligations by the concessionaire, the Authority may order that the violation be terminated within 30 days and, in the graver cases, may impose a penalty up to 3% of Rai revenues. If Rai commits a violation that has been previously penalized, the Authority may interrupt transmissions for up to 90 days.

AGCOM may also impose other penalties for violation of specific provisions (for example, in relation to protection of minors). In addition, the Ministry of Communications may also impose sanctions in relation to the provisions that govern the use of transmission frequencies.

Section 39 of the Service Agreement currently in force (2007-2009) provides that the Minister of Communications control the correct implementation of the obligations included in the Agreement, may authorize inspections and may order Rai to provide information and documentation for the purposes of the controls.

In addition, the Parliamentary Commission is authorized to establish a series of guidelines, with reference to specific obligations of public service (for example, information about politics, "access programs" reserved for associations that operate in the fields of human rights, environment, etc. to inform the public about their activities), in exercising its supervisory role, as established in Section 50 of the 2005 Consolidated Act.

Finally, the national Service Agreement provides for the constitution of a joint commission of 8 members (4 nominated by the Ministry of Communications and 4 nominated by Rai), which must verify that the obligations established by the same Agreement are correctly implemented and fulfilled.

However, notwithstanding these mechanisms, Rai enjoys a significant margin of discretion for many of the functions established by the public Service Agreement. This is because the counterparty in the Service Agreement is the Government and, in many instances, the Government does not have much interest to contrast Rai, which provides services that are useful to the Nation and to policies of the Government.

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<sup>21</sup> A Commission of Parliament exists to supervise RAI (Commissione Parlamentare di Vigilanza sulla RAI).

<sup>22</sup> In addition, also at the request of the Regions and the Autonomous Province of Trent and Bolzano, for defaults on the respective Service Agreements.



For their part, viewers and other third parties do not have any real instruments to induce Rai to observe the Service Agreement (as, on the other hand, they do with telecommunications operators and their Service Level Agreements), even if it is true that systems to evaluate television quality (Quality Meter) established by the new Agreement and currently in the development phase, may be considered (even if only virtually for the moment) an instrument of control that the viewers themselves may use (see above).

Until now, legal audits have been conducted using financial results as a (main) parameter, therefore each manager in Rai would probably strive to get results within his/her term and avoid launching investments on medium to long term projects. This too has led Rai to become a public service broadcaster based on formats, which in some way has limited its creative potential, also attributable in part to the lack of a customized auditing system. The evaluation instrument to measure programme quality as mentioned above is an attempt to move in this direction and, at least on paper, seems to be a corrective instrument that should interrupt the mechanism that binds public service programmes to their performance in audience ratings. For now, this instrument has been studied only at the theoretical level, but some observers express concern about concrete implementation of the Quality Meter.

Likewise, this short-term approach by the PSB and the overall immobility of the market is damaging because commercial television faces what might be called unfair competition by the public service broadcaster, which receives public compensation.

Competition in the Italian television system is distorted due to the persistent uncertainty about the mission of Rai.

In conclusion, while it is true that AGCOM monitors Rai and its observance of the rules (as resolutions that have from time to time sanctioned the conduct of the PSB indicate), in general it must be noted that Rai has almost always been penalized for violation of rules that apply to all broadcasters, not those specific to PSB<sup>23</sup>, as in the case of the rules governing equal presentation of political debates on TV during election periods.

In fact, Italian law does not empower third parties (whether competitors or users) to cite Rai in order to force it to respect the obligations of public service<sup>24</sup>.

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<sup>23</sup> Italian law provides for a number of limitations and obligations for private broadcasters. The analyses and the Constitutional Court find that these obligations do not violate the Constitution, (i) because broadcasters are endowed with a legal privilege to make use of rare resources (the spectrum) (see A. Pace, "Verso la fine del servizio pubblico radiotelevisivo?", [www.eius.it/articoli/2004/001](http://www.eius.it/articoli/2004/001), 2004, which emphasizes that such obligations must be specific to avoid violating the economic liberty of broadcasters), and/or (ii) due to the effect of the impact theory (for example, in consideration of the persuasive force of the television medium) (see Constitutional Court, judgement no. 148 of 1981; G. Amato, "Monopolio e pluralismo: un dilemma che non doveva proporsi", in "Diritto delle radiodiffusioni e delle telecomunicazioni", no. 6, 1976; F. Bassanini, "Riserva allo Stato del servizio radiotelevisivo e impianti 'locali'", in "Diritto delle radiodiffusioni e delle telecomunicazioni", 1976, p. 15; A. Barbera, "Intervento", in Aa. Vv., "Servizio pubblico e pluralismo televisivo nell'era del digitale", Roma, 2002, p. 193; E. Apa, *Il nodo di Gordio: informazione televisiva, pluralismo e Costituzione*", in "Quaderni costituzionali", no. 335, 2004.

<sup>24</sup> See A. Pace, "Trasmissioni radiotelevisive e c.d. 'diritti' dell'utente", in "Giurisprudenza costituzionale", no. I, 1976, p. 19779; Id., "Stampa, giornalismo, radiotelevisione", Padua, 1983, p. 242; A. Fantozzi, "Natura e disciplina Iva del canone di abbonamento radiotelevisivo. Disciplina attuale e progetti di riforma", in "Rivista trimestrale di diritto pubblico", no. 590, 1988. See also M. S. Giannini, "Ancora in tema di prezzo e di tassa", in "Giurisprudenza costituzionale", no. I, 1963, p. 682; V. Zeno Zencovich, "Canone radiotelevisivo e effettiva fruizione dei programmi irradiati dalla Rai", in "Diritto dell'informazione e dell'informatica", no. 211, 1985 and E. Apa and L. Ceraso L. "Il canone di abbonamento radiotelevisivo tra servizio pubblico e disciplina europea degli aiuti di Stato", in S. Prisco and G. Luchena G., "Aiuti di Stato tra diritti e mercato", Rome, 2006.

*2.3.3. Do you consider that the Broadcasting Communication should contain further clarifications about the circumstances in which an additional act of concession (i.e. in addition to the general provisions laid down by law) is necessary or are the current rules sufficient?*

The rules currently in force are sufficient: the concession should remain a national matter, at the discretion of the Member State. The Commission could perhaps apply some guidelines, a framework based on general principles.

*2.3.4 Do you consider that the Broadcasting Communication should contain further clarifications in order to ensure increased effectiveness of supervision of public service broadcasters? What are in your view the advantages or possible drawbacks of control authorities independent from the entrusted undertaking (as referred to in the Broadcasting Communication) as opposed to other control mechanisms? Do you consider that effective supervision needs to include sanctioning mechanisms, and if so, which ones?*

Increased effectiveness of PSB supervision would represent a step ahead in drawing a line between Public Service programming and commercial activity.

However, independent authorities have not proven to be the best control instrument, as regulation of the relationship between the PSB and the Authority would then become a very complex regulatory issue.

The German model, where there is a very wide electoral body to nominate the governing organs of public broadcasting, seems to be a good example to be followed.

The models recently adopted by the United Kingdom and by Spain (even if the final version has scaled down the original intentions for reform) may also constitute interesting benchmarks.

The model proposed in the draft "Gentiloni 2" <sup>25</sup> bill was inspired by these models to a certain degree and could have led to good results: a permanent foundation (with a board of 11 members) would represent all the political, social and cultural components of the Nation at large, and would hold control of the share capital but its activity would be limited to the nomination of a Board of Directors with 5 members, that would in turn nominate the top managers and the CEO (among the 5 directors).

*2.3.5. Should there be specific complaints procedures at national level where private operators could raise issues related to the scope of the public service broadcasters' activities? If so, what form should they take?*

Since the law regulates this matter, these issues should be decided, depending on the case, by the national Antitrust Authority and/or the sector authority.

Specific complaint procedures may prove weaker when it comes to enforcing sanctions.

## **2.4. Double financing of public broadcasters**

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<sup>25</sup> Legislative proposal no. 1588, entitled "Disciplina ed organizzazione del servizio pubblico radiotelevisivo" (Organisation and procedures of public service broadcasting).

*2.4.1. What is, in your view, the expected impact of (partly) State-funded pay-services on competition?*

*2.4.2. Should pay-services always be considered as purely commercial activities or are there instances in which they could be regarded as part of the public service remit? For instance, do you consider that pay-services, as part of the public service remit, should in this respect be limited to services which are not offered on the market? Or do you think that pay-services could be regarded as part of the public service remit under certain conditions? In the affirmative, please specify which. For instance, should the conditions include elements such as specific public service objectives, specific citizen needs, existence of other similar offers on the market, inadequacy of existing public service obligations or inadequacy of existing funding to meet particular citizen needs?*

Some of these themes have been discussed in previous answers.

We believe that a premise is useful: Section 34 of the Broadcasting Communication states that "the duties of public service may include some services that cannot be qualified as programmes in the traditional sense of the word, such as online information services". In addition, it must be recalled that the Communication includes the system based on "double financing" that "includes an ample variety of schemes, in which the PSB may be financed by different combinations of State funds and revenues from commercial activities" (not limited to the sale of advertising spaces).

It therefore follows that the Communication does not prevent a PSB from offering pay services that are within the perimeter of the public service remit.

Italian law does not refer specifically to this matter.

However, the second paragraph of Section 24 of the new Service Agreement does obligate Rai to use a significant percentage of its investments in favour of new contents for digital television: this implies that another percentage of investments may be used to launch pay services.

In any case, Section 29 of the same Agreement does expressly provide that Rai shall:

- "develop additional proposals for multimedia contents through pay channels (paragraph 1, letter e);
- "extend the variety of services administered jointly with national and international groups and companies, in order to extend its industrial character and to acquire new technology and competence"; this "as long as it does not damage public service and does contribute to balanced company operations".

Consequently, at this time Rai is not only fully justified (in principle) to offer pay services, but it is the very Service Agreement in force that includes them in the description of the public service mission. For example, Section 45 of the Consolidated Act includes, among the duties of public service, the obligation to maintain and protect the historical archives of Rai and make them available to the public.

Section 86 refers to duties that are universal services<sup>26</sup>. Consequently, services that are only partly financed by the State should be allowed only if an alternative non-commercial source of financing is a concrete possibility: for example, financing from local communities for regional services.

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<sup>26</sup> See R. Mazza, "Diffusione televisiva e disciplina comunitaria della concorrenza", Giappichelli, Turin, 2006, pp. 96 ff.; see also G. Napolitano, "Il servizio universale e i diritti dei cittadini utenti", in "Mercato, Concorrenza, Regole", Il Mulino, Bologna, 2000, pp. 429 ff.

There is a lack of competition in Italy, as emphasized above, because Rai programming is the result of a mix-up of State financing and revenues from advertising, without clear-cut criteria for most of the offer.

Member States are also entitled to isolate some services of general interest from the rules of a competitive marketplace, and to endow such services with special prerogatives, which is not considered damaging for the national or European markets<sup>27</sup>.

However, the public broadcaster must know at all times (as must the State, the community and the viewers), whether it is operating 100% private or 100% public, without hybrid, confused or uncertain solutions.

As for pay-services, we generally argue that the public broadcaster can provide them but it must be clear that they are outside the public remit when they are provided on a Business-to-Consumer model. This means that a PSB must be accessed by its subscribers for free on any platform in full version (technical neutrality) and Rai has this obligation in its latest Service Agreement, the 2007-2009 edition.

However, access to a platform does not mean access to every provider present on a platform. So, if a pay-operator, broadcasting on a certain platform (e.g. a satellite TV operator) wants to include a Public Service Broadcaster in its bouquet of channels to stimulate marketing of the other channels<sup>28</sup>, then the PSB may be allowed to license its channels on a commercial basis.

To obtain the same channels for free, the same operator would have to have technology that enables the PSB channels to be viewed without any encoding and proprietary addition (i.e. no smart card required, no technical protection measures, no software which includes bouquet advertising, etc.). In other words, the free "must offer" of public service channels seems justified for all open and interrelated platforms, as long as they are not used to transmit additional advertising.

## 2.5. Transparency requirements

*2.5.1. To what extent are commercial activities carried out by the public service broadcaster itself in your country? Is there a structural or functional separation between public service and commercial activities?*

Rai has introduced separate accounting, defined on the basis of an agreement reached in advance with the Communications Regulatory Authority, based on three financial categories.

The scheme prepared by the Communications Authority provides for three distinct accounting units:

- the first is public service, which includes costs and revenues related to the production and programming of public services;
- the second refers to commercial activities;
- the third refers to support and transmission activities for the production, conservation and broadcasting of programmes.

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<sup>27</sup> Case law about these circumstances has established a principle of proportions ("no restrictions of inter-State exchanges more than what is necessary to achieve the objective are to be allowed"). Cases are important and numerous: from no. 5/73 *Balkan Import Export GmbH v. Hauptzollamt Berlin-Packhof*, to C-157/94 *Commission v. Kingdom of the Netherlands*.

<sup>28</sup> Viewers will probably not want the bouquet if they don't have the possibility to access the PSB offering too, because they will want to have only one set-top-box for their families.

Deliberation no. 102/05, approved by the Council of the Communications Regulatory Authority<sup>29</sup>, provides for "transfer prices", distinguishing the costs of technical services of the commercial unit from those of public service unit and, if provisions of the law should result in a lack of revenue to attribute to the commercial unit (due to exceeding limits), the mechanism of the transfer charges must indicate the corresponding liability in the public service unit.

This separate accounting, however, is not available to the public and we believe that this conduct violates the principles of transparency: this type of data, and the evaluations that follow, must be possible not only for the Authority, but also for the community of citizens, viewers (and certainly at least for those who pay the subscription fee).

Separate accounting, therefore, has not yet been substantially implemented, at least with reference to transparency<sup>30</sup>. In the 310 pages of the latest Rai financial statements (approved), the expression "separate accounting" is totally absent. It is worthwhile to note that in 2005 the separate accounting of Rai indicated that the public service activities were sustained by the commercial activities for a sum of more than 200 million euro<sup>31</sup>.

Because Rai has not adopted a structural separation, it can conduct commercial and public service activities jointly.

*2.5.2. Do you consider that there is a need for a structural or functional separation of commercial activities, and if so why? What would the positive or negative effects of either a structural or a functional separation?*

Some of these themes have been discussed in previous answers.

Italy's Rai does carry out many commercial activities, in the absence however of a real structural or functional separation (and of a transparent and public separation of accounting; see above reply to question 2.5.1).

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<sup>29</sup> Published in the official gazette, no.40 dated 18 February 2005.

<sup>30</sup> The Communications Authority approved a specific deliberation about this matter as early as 2005: Agcom, "Modalità di attuazione dell'articolo 18, commi 1 e 2, della legge 3 maggio 2004, n. 112", Deliberation no. 102/05/Cons. dated 10 February 2005. Section 47 of the Consolidated Radio and Television Act (entitled "Financing of Public Service Broadcasting") reads: "1. In order to determine the cost of provide public service broadcasting, covered by a subscription fee as at decree-law of the reign dated 21 February 1938, no. 246, transformed by Law 4 June 1938, no. 880, and successive modifications, and to ensure transparency and responsible use of public financing, the concessionaire shall prepare the balance sheet with separate indication of the revenues from subscriptions and the expenses of the previous year for providing said service, on the basis of the scheme approved by the Authority, recording or attributing expenses on the basis of accounting principles that are applied coherently and objectively justified and clearly defining the principles of analytic accounting that govern the keeping of separate accounts. Each time the same resources of personnel, equipment, plants or other types of resources are used, for duties related to public service and for other activities, the related costs must be divided on the basis of the difference between the total costs of the company calculated as including or excluding the public service activities. The financial statements shall be transmitted to the Authority and the Ministry within thirty days of approval".

<sup>31</sup> The following considerations are to be found on page 11 of the RAI financial statements for 2006, approved in June 2007: "With reference to the economic viability of the various processes it must be recalled that today advertising finances not only typically commercial undertakings, as to be expected, but Public Service as well. This phenomenon is clearly illustrated by the separate accounting, a legal instrument, which certifies that public resources are not sufficient. The accounts drawn up in accordance with the scheme approved by the Communications Authority and certified in 2006 by an independent auditor reveal the existence of a public deficit of more than 220 million Euro" (this evaluation refers to 2005 financial year and was calculated by Deloitte&Touche). However, the document cited in the 2006 financial statements is not public. In its 2008-2010 Business Plan RAI (p. 28, dated 28 October 2007), approved between end 2007 and early 2008, the information cited above is again cited in reference to the 2005 financial year ("income statement with separate accounting": operating margin of the public sector: - 221 million euro).

We believe that implementing such an important and urgent separation would very much benefit the media system in Italy.

The goal is to ensure that there is a part of Rai that is able to work for the common good, whereas another part carries out the commercial interest of Rai, without having to compromise in every decision with politics and with public service obligations.

A functional separation could stimulate the programming, production and authors and would increase pluralism of the market.

This is why, as we will discuss later, we believe that leaving a margin for compensation only if there is a functional separation, could be an incentive for the same.

*2.5.3. Do you consider that the rules for cost allocation as set out in the current Broadcasting Communication could be improved in light of experience in your country? If so, please give possible examples of good practice. Or do you consider that the current rules are sufficient?*

*2.5.4. Against the background of your answers to the previous questions (2.5.1, 2.5.2, 2.5.3), do you consider that a revised Broadcasting Communication should contain further clarifications of transparency requirements?*

We believe that current market conditions in Italy (and elsewhere) require different cost allocations rules.

The core principle is that public service is not meant to generate audience but to serve social needs that may (or may not) encounter a large audience.

Sometimes public service is specially needed in cases of market failure.

If a television system, for a variety of reasons, reduces a type of programming (as is the case in Italy with reference to creating new documentaries), then there is a market failure and the action of the PSB has a specific justification, both social and economic.

Therefore, we believe that the current criteria used by the Commission, by which audience is generated to fulfil the public service remit and for commercial purposes/to sell advertising is subject to criticism.

We believe that if a television programme is produced to fulfil the public service remit, its costs are justified if the program does fulfil the public service remit. If so, the audience of that program is not relevant and we believe there should be no commercials in the program.

Audience is generated to sell advertising, if a program does not fulfil the public service remit.

Also, there should be criteria to indicate when programming may/may not be licensed to commercial operators on a commercial basis (see above, answer 2.4.2).

Finally, we suggest that a transparent costing method should be adopted, especially when third-party producers are involved (e.g. formats).

The cost allocation criteria chosen should be capable of eliminating "sunk costs" (such as the bottom-up and Activity Based Costing methods used in the telecom sector) in the television sector<sup>32</sup>.

Also, transparency should be ensured, not only to regulators but also to viewers/subscribers who wish to have their fee accounted for.

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<sup>32</sup> Sunk costs are expenses sustained that cannot be recovered. To be efficient, the cost accounting method adopted must be such that these are not considered. For broadcasting a variety of hypotheses might be considered: there are certainly sunk costs related to the broadcasting network (frequencies not coordinated by Ginevra that must be discontinued); there may be sunk costs related to productions that are discontinued (initial investment for programmes suspended after only a few episodes, investments for programmes for which the archive rights are not available, investment in discontinued DDT channels, etc.); there may also be sunk costs related to technology, human resources (fees paid to artists who did not have the expected profile) and others.

## 2.6. Proportional criteria – Exclusion of overcompensation

*2.6.1. Do you consider that the Broadcasting Communication should include a requirement for Member States to clearly lay down the parameters for determining the compensation amount?*

Yes, in this regard Spain's Law 17/2006, art. 33 seems to be a good result, as it follows the compensation criteria and the principle of proportionality suggested by the Commission in the Broadcasting Communication (§ 57) in a very clear and effective manner<sup>33</sup>.

*2.6.2. Do you consider that the requirements currently laid down in the Broadcasting Communication allow sufficient financial stability for public service broadcasters? Or do you think that the current rules excessively limit pluri-annual planning of public service broadcasting?*

The requirements laid down in the Broadcasting Communication are very demanding and achieving them could, in theory, bring sufficient general financial stability, provided that each Public Broadcaster finds a remit that it is able to fulfil at the fullest, and therefore receives adequate public financing.

However, at least in Italy, this theoretical forecast does not correspond to reality.

Italy has witnessed more than one Service Agreement between Rai and the Government that has remained a wish list, while the ordinary Rai mission seemed to be to try to compete with private broadcasters, despite not having a mandate to do so.

This has created a confused situation, in which financial stability could not be achieved because public resources (the subscription fees) were allocated for public service but were insufficient and therefore stimulated (forced, according to some Rai managers) the PSB to behave more like a commercial operator.

The subscription fee of Rai is one of the lowest in Europe, evasion is the highest, and the general conditions of the market do seem to force the Italian PSB to operate in the commercial arena. This mechanism of emulation and authorisation has provoked perverse consequences, because Rai is losing its specific and different character, which disqualifies its public image and, in some ways, also contributes to evasion of the subscription (Italy has a negative record: about 25% of those who should pay the fee are evaders). This is truly a vicious circle that must be broken up.

In particular, in recent years, there have been several impressive programming wars, truly direct front-end collisions, whereby Rai would schedule a quiz/entertainment-show equivalent to that of its rival, Mediaset, at the same time, in prime time.

Obviously no point of the Rai remit provides that it should dedicate such large amounts of financial resources to this absurd competition (engaging artists for very high fees, buying format rights, etc).

There are strong doubts that this activity has anything to do with public service and it is clear that some new mechanism must be provided to avoid further imbalance.

It is therefore crucial that functional (or structural) separation be achieved: in this way, financial resources received through public compensation could not freely flow into commercial activities.

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<sup>33</sup> See E. Bustamante, "Storia della radio e della televisione in Spagna (1939-2007)", Rai-Eri, Rome, 2007, p. 653.

This process would be crucial to correcting the current dynamics, in which competitive linear broadcasting activities draw off much of the resources, while the most innovative parts of the remit (future certification by the Quality Meter, creative licenses, archives, etc.) do not have a very high priority in attracting financial resources.

*2.6.3. Under what circumstances could it be justified public service broadcasters to keep a surplus at the end of a financial year? Do you consider that the related provisions in the service of general economic interest Decision and Framework (cf. the overview in the explanatory memorandum and in particular the 10% cap on annual surplus) could be incorporated into the new Broadcasting Communication?*

There are situations in which a PSB might produce profits, and this surplus would be amply justified if, for example, the broadcaster were obliged by law to invest in new technology (DTT for example).

However, it seems to be difficult to find ex ante criteria and it is preferable to use ex-post methods to evaluate each yearly request.

As for the specific cap, we believe that 10% is a viable surplus margin, to be evaluated in any case with reference to special obligations that may justify it.

*2.6.4. What should be the safeguards/limits in order to avoid possible undue distortions of competition (e.g. should the 10% margin remain at the public service broadcaster's free disposal within the limits of its public service tasks or should it be earmarked for particular purposes so that reserves may only be used for predetermined purposes/projects? Should there be a re-evaluation by the Member State of the public service broadcaster's financial needs in case of consistent surpluses)?*

As specified above (see answer to question 2.6.2), one of the main issues in Italy is that budget is unevenly distributed between innovative programming (rare), pure public service activities and traditional semi-commercial programming (prevalent).

Complaints about the ever-rising costs of television productions are addressed with the necessity to "keep audience" from running away from public service television.

A limit applied from the exterior, based on transparent criteria would be helpful in bringing this situation back under control without distorting competition.

It is worth noting that the risk of a significant margin is quite low for Rai.

*2.6.5. Do you consider that the current rules laid down in the Broadcasting Communication could possibly act as a disincentive for public service broadcasters to achieve efficiency gains? If so, how could this situation be remedied? What are the mechanisms in place in your country that could be referred to as a good example?*

As repeatedly stated, the Broadcasting Communication is far from being a priority of the PSB or the Government in Italy.

The current influence of the Communication on the Italian television economy is null.

Our opinion is that the regulation mechanisms contained in the Communication are necessary, and must be updated.



We repeat, however, that the introduction, in the 2007-2009 Service Agreement, of a system to monitor programme quality, in addition to the traditional audience ratings, should be interpreted as a valuable innovation.

*2.6.6. In what circumstances and under which conditions would you consider that public service broadcasters could be allowed to keep a profit margin?*

Probably, the only profit margin that a PSB should be allowed to keep is that coming from a functionally separated, or better, a structurally separated, commercial division. Otherwise, any profits should be totally reinvested in public service activities.

## **2.7. Test of proportionality – Exclusion of market distortion that is not necessary for fulfilment of the public service remit**

*2.7.1. What are the available mechanisms in your country under which private operators could challenge alleged anti-competitive behaviour of public service broadcasters? Please indicate whether you consider that these mechanisms ensure a sufficient and effective control. Are lower revenues due to demonstrated anti-competitive behaviour (e.g. price undercutting) taken into account when determining whether or not the public service broadcasters have been overcompensated?*

Private Italian broadcasters may contest alleged anti-competitive conduct of public broadcasters through normal procedures in force, on the basis of the laws and regulations that govern competitiveness<sup>34</sup>.

In terms of principles, antitrust measures should be sufficient to guarantee effective controls. However, such mechanisms have been implemented very rarely.

Reduced revenues that derive from proven unfair conduct (such as the reduction of prices by a PSB that receives overcompensation) are considered in the process of evaluating specific events by the Antitrust Authority (AGCM) that supervises competition and the market.

The current regulatory mechanisms under Section 5 of Legislative Decree no. 177/2005 (Consolidated Broadcasting Act) on accounting separation can be considered as sufficient to check price undercutting behaviour, but this practice in the advertising market is not the only, nor the most serious negative consequence of ineffective PSB regulation in Italy. As we have

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<sup>34</sup> The principal source, in Italian law, regulating competition is Law no. 287/90, "Provisions for the protection of competition and the market". The competent Authority may be petitioned as follows: "The means may vary. For example, proceedings may start when someone files a complaint about conduct believed to be prohibited by the laws governing competition. The petitioner may be company that believes it has been damaged by the contested conduct, or a public administration; even an individual citizen may petition the Authority directly, by presenting a written claim (not anonymous however): each will receive a reply. The Authority may, in any case, begin an investigation whether a complaint has been filed or not, if it suspects that a certain conduct is damaging to competition. In some cases this has occurred following publication of information by the press" (Autorità Garante della Concorrenza e del Mercato, "Antitrust a portata di mano", Agcm, Rome, 2007, p. 20). Note that one of the functions of Agcm focuses specifically on the communications sector: the Communications Department, which monitors electronic communications, radio and television, television copyrights, press and publishing, advertising, music and cinema.

discussed above, separate accounting remains an internal PSB function, transmitted only to the Communications Authority (AGCOM) and not in the public domain.

Paradoxically, overcompensation from the state may also affect the efficiency of the PSB negatively.

*2.7.2. As regards the possible anti-competitive behaviour of public service broadcasters (and in particular as regards allegations of price undercutting), do you consider that the Broadcasting Communication should include requirements for public service broadcasters to respect market conditions as regards their commercial activities in line with Commission decision-making practice, including appropriate control mechanisms?*

In Italy, there is no real risk of price undercutting strategies.

However, public funding of broadcasting does create a problem in competition when it becomes the instrument for avoiding and not stimulating a clear-cut separation between public service remit and commercial activities.

*2.7.3. Do you consider that the methodology for detecting price undercutting should be clarified, possibly also including other tests which could be used as an alternative to the methodology currently referred to in the Broadcasting Communication? Please make reference to tests applied in your country to the pricing behaviour of public service broadcasters and which could be used as an example of good practice.*

The current methodology for price undercutting is to be considered a second-best solution (e.g. the most practical).

However, we believe that methodologies aimed at checking anticompetitive behaviour in relation to State aid to public broadcasting need to be upgraded in the light of new promising economic theories such as the multisided market theory. This theory takes full account of the existing relation between the advertising and the audience market, and shows that prices equal to marginal cost on one side, without considering the other, are in most cases not efficient. Price undercutting may not be the consequence of overcompensation nor of abusive behaviour, but rather a tool for encompassing external network components arising from the other side.

*2.7.4. Do you consider that the Broadcasting Communication should contain clarifications as regards the public funding of premium sports rights? In the affirmative, what further requirements should in your view be included in the Broadcasting Communication and how would they specifically address potential competition concerns resulting from State funding? Alternatively, do you think that potentially adverse effects on competition due to the acquisition of such rights by public service broadcasters would be sufficiently addressed under the antitrust rules?*

Yes. As has already emerged in the German case about sports rights, the future financing regime will contain the necessary provisions to ensure that the funding received by public service broadcasters is limited to what is necessary for the fulfilment of the public service remit and that commercial activities do not benefit from any state aid.

Premium sports rights do not necessarily have a part in a public service remit except in occasions where the events are of universal interest, included on the list of events which are to be available in free-view (e.g. World-Cup final).

However, public service could help sports where the premium concept ends: local sports, information on sports events, minor sports.

Furthermore, the public service could play a role in developing and diffusing premium sports rights on alternative platforms (e.g. web-TV) to keep the market open and competitive.

The Broadcasting Communication could require, in our view, that any premium right held by a PSB in its public service role, not be held competitively, meaning use on an exclusive platform.

A PSB, just as required for any broadcaster who holds sports rights, in accordance with the new Italian sports rights legislation should be prohibited from sub-licensing and from buying rights for platforms which it does not operate.

Rights that are licensed should be used or forfeited.

## **2.8. Other questions**

*2.8.1. Do you consider that the reference to the difficulties of smaller Member States is necessary?*

*2.8.2. What would you consider to be typical difficulties of smaller Member States and how should these be taken into account?*

We believe that reference to the different nations, populations and cultures of the Union as well as reference to the traditions of the various PSBs may suffice.

Emphasizing the distinctive characteristics of the smaller Member States, with respect to the larger, might penalize the former.

History has demonstrated that many small States can occupy a leading position among the big ones where technology is concerned.

### 3. FINAL REMARKS

*3.1. You are invited to explain what would be in your view the impact of the possible amendments to the current rules on for instance the development of innovative services and in more general terms, employment and growth in the media sector, consumer choice, the quality and availability of audiovisual media and other media services, media pluralism and cultural diversity.*

Referring to the Italian situation, the context is quite varied and in a phase of evolution on the consumer side:

- the basic consumer has access only to analogue TV (9 national channels);
- the semi-advanced consumer has access to the DTT platform (more than 30 channels and near-video-on-demand for sports and films);
- finally, the advanced consumer has access to satellite TV (about 200 channels and near-video-on-demand) or uses IPTV services (more than 300 thousand subscribers), which includes all satellite and VOD channels, and also includes interactive services inside a closed network.

IPTV is not growing (Fastweb, the first IPTV provider in the Union started with 160,000 subscribers and now, after seven years, is still at about 200,000) because for many years this technology was linked to the rigid triple play model, but now Fastweb also offers a stand-alone television service<sup>35</sup>.

A PSB that chose to invest in public service innovation might dramatically change the current scenario.

BBC has launched its own satellite TV in United Kingdom, but in collaboration with ITV, a private broadcaster: a very interesting case of *coopetition* (similar in some ways to the more recent Kangaroo as far as VOD on the Internet is concerned), that has been successful and forced the satellite competitor, BSkyB to modify its own strategy, with positive effects on the market.

The same could happen with IPTV.

Rai, in fact, has its internal IPTV projects being developed by internal resources for a hybrid decoder, but for the moment the PSB does not have sufficient resources to come out on its own.

However, if the existence of projects in the sector (new TV platforms) were set as a condition to keep public compensation alive and produce profits, this would immediately reinforce the innovative divisions of the PSB.

Public compensation is a very versatile tool in the hands of the Lawmaker and it should not be ignored or scorned.

Therefore, amendments to the Communication could all work towards the creation of a unified public service platform, where Rai would again become a central figure, even in a neutral technology system. Such a platform would be endowed with a set of technical specifications that could adapt to different set-top-boxes, for each technology of distribution and encoding.

It would have to guarantee that anyone accessing this platform would benefit from the public value in terms of consumer choice, quality, availability, media pluralism and cultural diversity.

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<sup>35</sup> See E. Prosperetti, G. Tripaldi, V. Visco Comandini, "Iptv. Missed expectations: can regulation do the trick", Side Conference, Milan, 2007.

*3.2. To what extent do you expect that the possible additional clarifications outlined above could create new administrative burdens and compliance costs?*

*3.3. Do you consider that the possible additional clarifications as outlined above would create a better regulatory framework?*

*3.4. Please explain whether or not you consider that the positive impacts of possible additional clarifications along the lines outlined in this questionnaire outweigh the negative impacts.*

In Italy there is strong feeling that administrative burdens and the costs of conformity for the public service broadcaster need to be reorganized and reformulated because they are, in many fields, out of control due to lack of new national regulations to monitor effective observance and correct functioning of the new Service Agreement.

Therefore, any additional clarifications included in the new text of the Communication will be welcome, because they will improve the current regulatory situation.

We therefore believe that an obligation for absolute transparency in separate accounting should be included.

We also believe that in a scenario as the one described above, a more efficient regulatory framework would protect the new public service, and would provide a good opportunity to restructure the remit and vital functions of Rai, and compensate for any negative effects.

As we have said, since 2004, the Italian PSB has been and still is at the centre of a debate about regulations. Three governments have attempted to propose legislation to change the governance of Rai. The first one succeeded, but proposed a joint stock company model, which never entered into force (Law 112/2004) and was not confirmed in the 2005 Consolidated Broadcasting Act. There are doubts that it could ever be concretely implemented.

Following this, in 2007 the current Minister of Communications proposed a new governance model for Rai, in a draft bill (Gentiloni 2 cited above) that, as mentioned, tried to separate Rai management from political control.

We believe that the impact of introducing the regulations, as outlined in the questionnaire, into the future Communication, will undoubtedly be positive. The new Communication about State support to PSB may contribute to creating the conditions for approval of a new Italian regulatory framework.

**REVIEW OF THE COMMUNICATION FROM THE COMMISSION ON THE  
APPLICATION OF STATE AID RULES  
TO PUBLIC SERVICE BROADCASTING**

*Appendix.*

**A set of essential data and observations on scenarios**

(a technical contribution to the European Commission)

*Summary*

1. A number of trends in public funding
2. Impact of public funding on national economy and that of broadcasters: comparison with advertising and Pay-TV
3. Trends in the advertising market and forecasts for 2006 – 2015 for the major TV groups in the 5 big markets
4. Strategies of the major PSBs in the multi-channel habitat and their presence on different platforms in individual markets

## 1.

### **Main trends in public funding**

- The total amount of resources made available in 2006 in the 5 major European markets in the form of subscriptions (license fees), direct government funding or other methods of taxation is roughly equivalent to 12.4 billion euros. The amount of public resources is slightly up on the previous year (+ 1,8 %), recording a lower growth rate against total revenues, at 3,0 %.
- It is interesting to observe the resulting, albeit slight, reduction in the impact of public financing against total revenue, changing from 68.4 % for 2005 to 67,6 % for 2006.
- A picture emerges that reflects a lack of a uniform trend, in which the positive figure corresponding to around 5% of the United Kingdom is in contrast to the negative performance of Spain (due to the change in the financing mechanism and the elimination of authorised debt) and to a stable situation on the Italian market, in line with the rate of inflation.
- Although the fluctuations in annual growth are almost always below the level of inflation, there is still a substantial "turnover", if we look at the current scenario - definitely a far cry from the age of public monopoly - in which most television households are able to choose between numerous options, from the free-to-air content of commercial networks to multi-platform pay packages, dvd and broadband services.
- At a European level, a dynamic and varied situation can be observed: a number of PSB benefit from a very high television licence fee (such as Sweden, Austria, Finland, Denmark, Norway), superior to 200 euros per annum, others fall into a middle band of between 100 and 200 (as in Germany, Belgium, Ireland, the United Kingdom and Switzerland) while yet others are placed beneath the threshold of 100 euros; including Italy, along with France.
- It should be noted that recently some governments have decided to put an end to the system based on the licence fee – as in the case of the Netherlands and in the Flemish region of Belgium while in others - such as Hungary - the licence fee has been replaced with direct funding.  
This is a trend to be encouraged in those countries where the licence fee system is still in use, a practice which is now considered to be obsolete for at least two reasons:
  - being a sort of "aspirational tax" linked to the possession of a television set (as in Italy) was in the past justified as few people owned a TV set;
  - as the public remit increasingly extends to other non-TV platforms, a tax on the television set would not make sense as a source of funding for the multimedia activities of the public service remit.
- Figures for the allocation of public spending per television household also show diversification, from which emerge the high levels registered in the United Kingdom and Germany.
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Synoptic table public funding European PSBs (millions of euros %)												
PSB	Country	Public funding			Total revenues			% 2005 finanziamento pubblico su totale ricavi	% 2006 Public funding on total revenues	TV licence 2007 euro	Av. public exp.e per HH 2006 (euro)	Share 2006 "all-day" * (fully controlled and participated channels) %
		2005	2006	Δ % 2006 - 2005	2005	2006	Δ % 2006 - 2005					
France Tv	France	1.796,8	1.834,3	2,1	2.785,2	2.961,6	6,3	64,5	61,9	79,81	71,10	37,6
Arte	France/Germany	338,0	350,2	3,6	352,8	356,6	1,1	95,8	98,2	17,05	5,48	1,7 - 0,5
Ard	Germany	2.675,2	2.722,1	1,8	3.629,1	3.685,3	1,5	73,7	73,9	138,20	118,51	31,0
Zdf		1.620,5	1.668,9	3,0	1.875,0	1.961,4	4,6	86,4	85,1			
Rai	Italy	1.372,8	1.380,7	0,6	2.916,3	2.970,1	1,8	47,1	46,5	96,30	58,60	44,0
Bbc	United Kingdom	3.627,5	3.805,7	4,9	4.851,9	5.094,6	5,0	74,8	74,7	160,80	155,58	34,5
S4c		130,9	134,1	2,4	143,7	142,5	-0,8	91,1	94,1			
Tve	Spain	** 651,7	538,1	-17,4	1.314,6	1.226,8	-6,7	49,6	43,9	0,00	36,81	23,4
<b>Sub total major 5</b>		<b>12.213,4</b>	<b>12.434,1</b>	<b>1,8</b>	<b>17.868,6</b>	<b>18.398,9</b>	<b>3,0</b>	<b>68,4</b>	<b>67,6</b>	-	-	-
Orf	Austria	450,8	462,8	2,7	882,8	927,1	5,0	51,1	49,9	267,63	134,58	49,0
Rtbf	Belgium	181,9	192,2	5,7	251,9	266,6	5,8	72,2	72,1	152,46	101,58	20,5
Vrt		242,5	256,7	5,9	333,3	365,3	9,6	72,8	70,3			
Dr	Denmark	415,9	421,9	1,4	471,0	468,0	-0,6	88,3	90,1	288,87	172,74	32,1
Tv2		0,0	0,0	-	228,3	265,6	16,3	0,0	0,0			
Yle	Finland	334,2	345,5	3,4	374,5	383,6	2,4	89,2	90,1	208,15	150,41	43,8
Ert	Greece	268,7	271,9	1,2	297,7	321,9	8,1	90,3	84,5	-	79,73	16,7
Rte	Ireland	170,1	182,8	7,5	369,9	405,0	9,5	46,0	45,1	158,00	140,83	42,8
Ned	The Netherlands	482,2	404,4	-16,1	704,9	553,1	-21,5	68,4	73,1	0,00	57,63	33,7
Rtp	Portugal	200,5	224,3	11,9	266,1	292,1	9,8	75,3	76,8	0,00	44,25	31,0
Svt	Sweden	427,2	407,7	-4,6	457,0	448,5	-1,9	93,5	90,9	222,19	97,65	37,3
<b>Sub total EU 15 ***</b>		<b>3.174,0</b>	<b>3.170,2</b>	<b>-0,1</b>	<b>4.637,4</b>	<b>4.696,8</b>	<b>1,3</b>	<b>68,4</b>	<b>67,5</b>	-	-	-
Nrk	Norway	431,4	447,1	3,6	455,3	477,4	4,9	94,8	93,7	262,24	222,20	43,5
Tvp	Poland	111,2	112,3	1,0	360,7	373,5	3,5	30,8	30,1	45,00	8,49	41,1
Ctv	Czech Republic	79,2	128,4	62,1	143,9	197,3	37,1	55,0	65,1	45,07	34,38	30,8
Stv	Slovakia	35,5	37,6	5,9	56,5	56,0	-0,9	62,8	67,1	34,85	23,32	24,8
Srg Ssr	Switzerland	455,9	457,4	0,3	995,7	1.001,7	0,6	45,8	45,7	182,27	138,88	32,7 - 32,3 - 31,2
Mtv	Hungary	84,6	90,9	7,4	183,4	196,5	7,1	46,1	46,3	0,00	25,60	15,6
<b>Sub total other EU</b>		<b>1.197,8</b>	<b>1.273,7</b>	<b>6,3</b>	<b>2.195,5</b>	<b>2.302,4</b>	<b>4,9</b>	<b>54,6</b>	<b>55,3</b>	-	-	-
Psb	USA	71,0	42,8	-39,7	421,3	443,7	5,3	16,9	9,6	0,00	0,39	**** 2,0
Nhk	Japan	4.558,8	4.546,2	-0,3	4.637,5	4.623,2	-0,3	98,3	98,3	106,03	-	***** 17,8
<b>Total major EU</b>		<b>16.585</b>	<b>16.878</b>	<b>1,8</b>	<b>24.702</b>	<b>25.398</b>	<b>2,8</b>	<b>67,1</b>	<b>66,5</b>	-	-	-

Note: for ease of data comparison, only television broadcasting is taken into consideration, excluding radio broadcasting. This also applies to the licence fee quota. In Italy, for example, it is estimated that of a licence fee costing 104 euros, around 94.1 go to finance television broadcasting while the remainder funds radio broadcasting; (\*) the share for channels is attributed to the 5 big players of the entire group for channels that broadcast in DTT, (\*\*) the datum for the funding of RTVE for 2005 is attributed to the "television quota" of the total of aid and authorised debt by Parliament, abolished as from 2006; (\*\*\*) Europe 15 without Luxemburg; (\*\*\*\*) Reference target adults + 18; (\*\*\*\*\*) Reference target adults + 20.

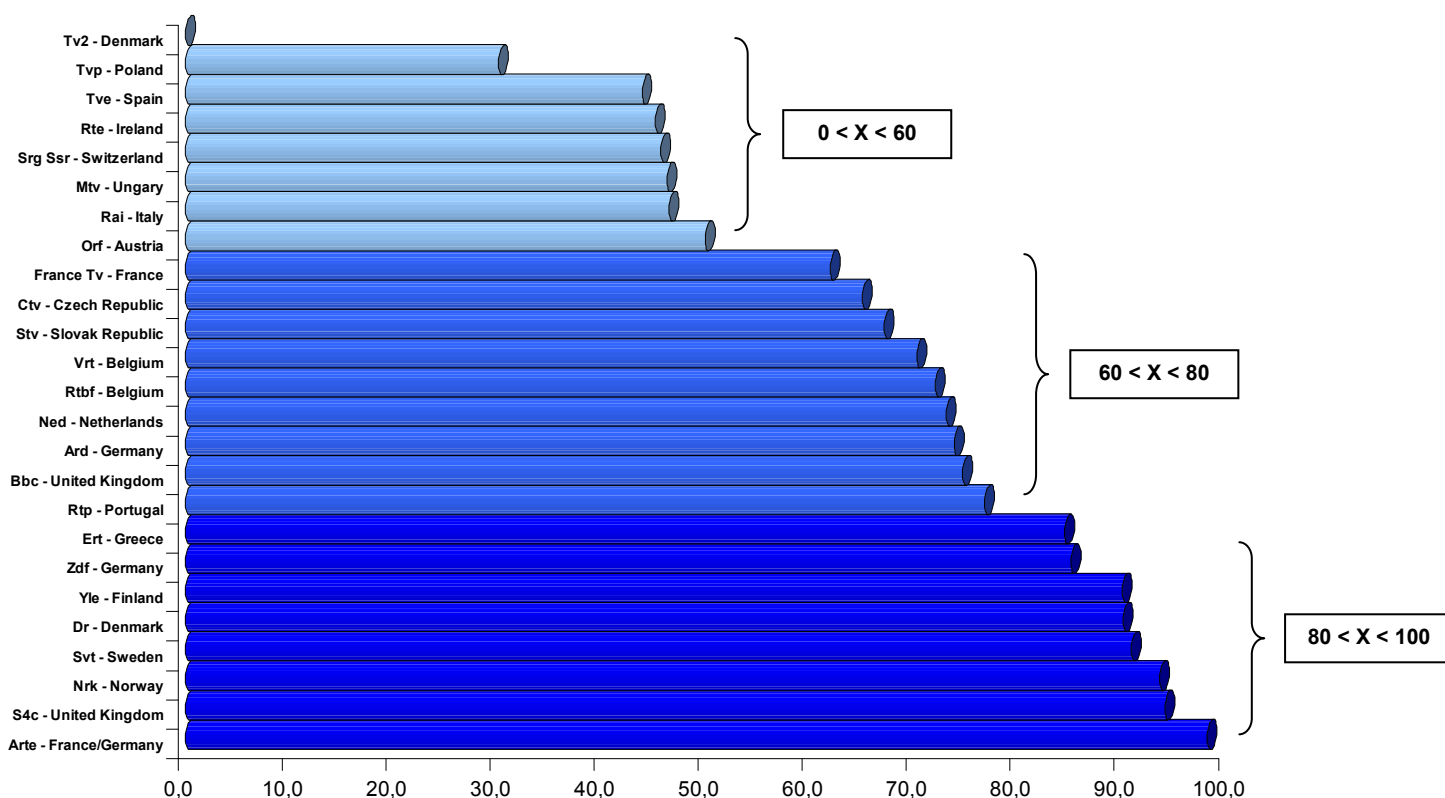
Source: ISICULT using various data on Screen Digest, EAO and corporate.



Always taking as the parameter the percentage of impact the public revenue has (derived solely from television licence fee) as regards the accumulative total of revenues, and focusing attention on the performance of single public broadcasters, a decidedly varied situation emerges, with a range varying from 30 % of TV2 to 97 % of Arte. In outline, we can discern 3 "macro-groups":

- a) a primary group, benefiting from public revenue in excess of 80 % on the total, and which includes Arte, many northern European TV networks, ZDF and ERT, which in recent years has succeeded in overcoming the scourge of licence fee evasion (linking payment to the electricity bill);
- b) a second "intermediate" group, which also includes the BBC and ARD, who can count on a level of public financing well above 50 %;
- c) and finally, a third group, in which Rai and RTVE both figure, which fluctuates between 40 % and 50 %, with the exception of TV2.

### European ranking impact of public funding on PSBs total revenue 2006



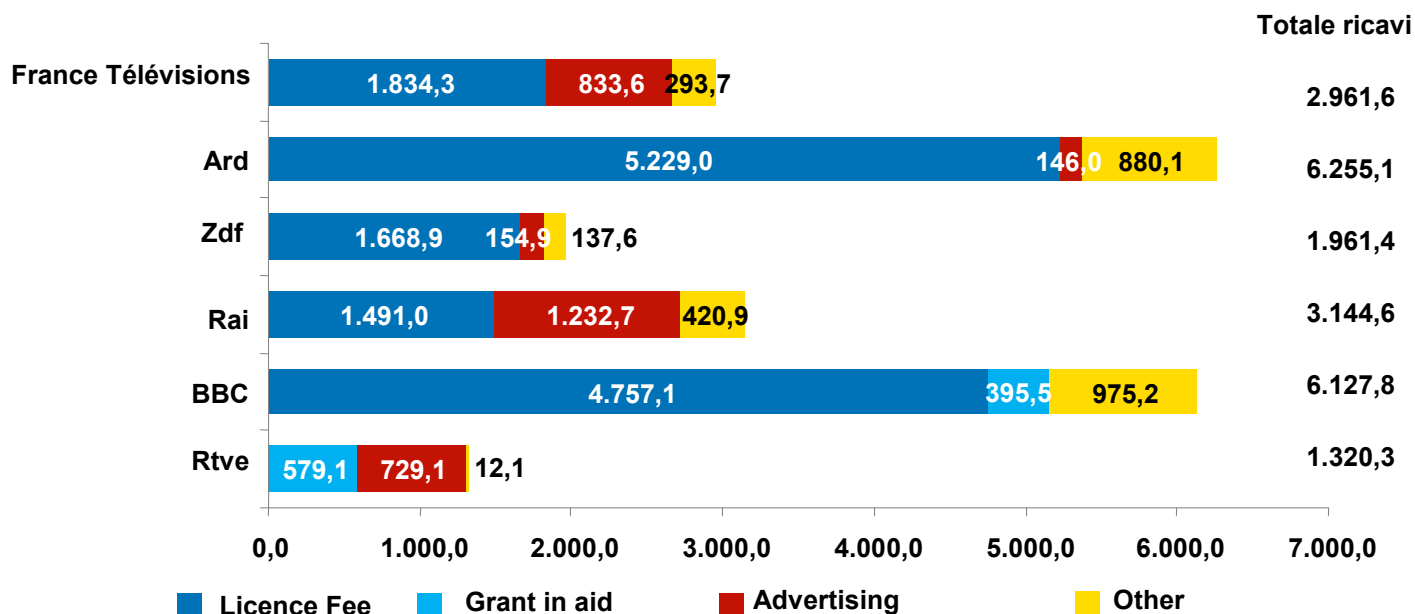
Source: ISICult - Italian Institute for Cultural Industry - using various data on EAO, Screen Digest et alia.

2.

**Impact of public funding on national economy and that of broadcasters: comparison with advertising and Pay-TV**

- Let us now focus attention on the results of the public broadcasters operating in the 5 major European markets, that is, France, Germany, Italy, the United Kingdom and Spain. Analysis of the revenue of these television groups, divided up on the basis of 4 "macro-categories": licence fee, aid, advertising and other revenues, brings to light a clear predominance of revenues derived from the public domain, compared to other sources of revenue;
- In all countries where a licence fee is provided (France, Germany, Italy, the United Kingdom), the public funding received by broadcasters is equivalent to or in excess of 1.5 billion euros;
- In Germany and the United Kingdom, public financing (taking into consideration both the licence fee and other funding) is over 5 billion euros in 2006.

**REVENUE OF THE MAJOR EUROPEAN PSBs (total and source, in millions of euros)**

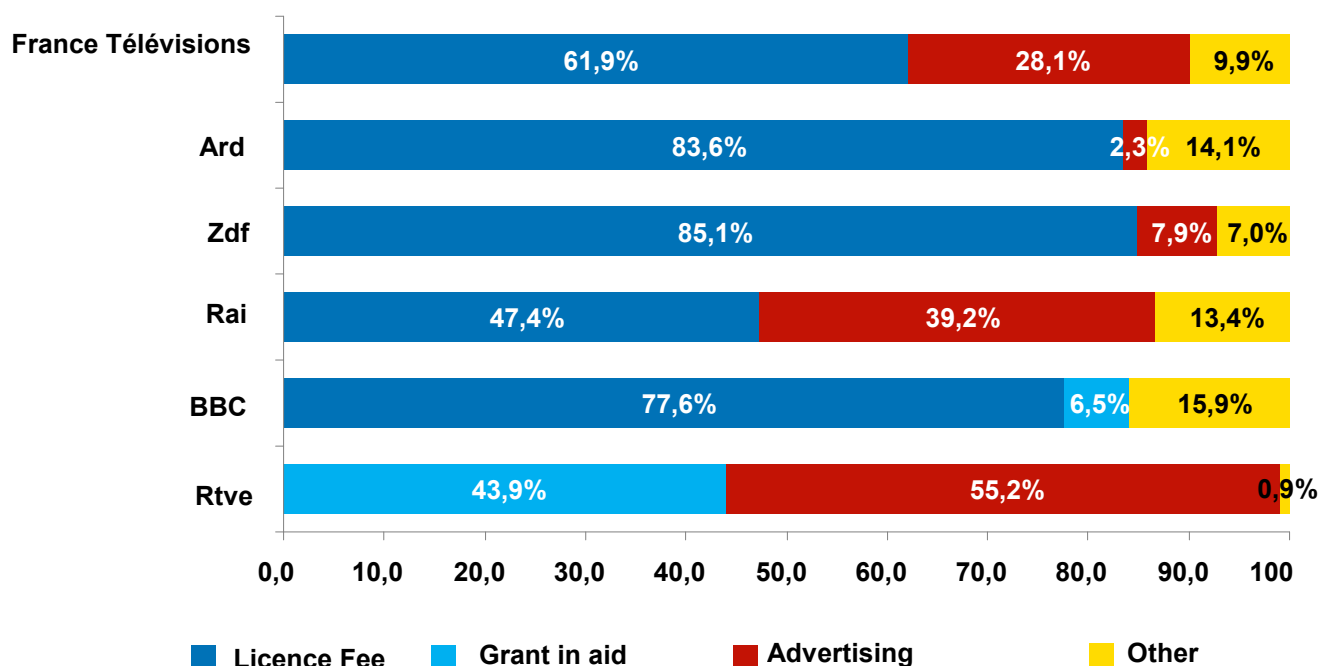


Source: ISICult - Italian Institute for Cultural Industry - using various data on EAO, Screen Digest et alia.

- In all countries where a television licence fee is due to be collected, the income derived from it represents the most significant part of funding for the broadcaster. This stands at a minimum of 47.4 % for Rai, up to a maximum of 84.9% for ZDF, and slightly over 77.6% for the BBC;
- In percentage terms, for 3 of the major European PSBs, public financing still represents over four-fifths of the total revenue;

- The "other revenues" represent a low amount, not greater than 16 % of total revenue, moreover, they do not show growth trends in recent years, unlike those of most commercial broadcasters (Tf 1 and M6, for example, obtain around half of their income from various activities from the sale of advertising space);
- In this sense, that public services acquire public funding also acts as a restraint on their investing in other areas and on the diversification of their own remit, particularly in new digital TV markets (DTT, IPTV, DVB-H), in which the public remit could act as a driving force in the development of the entire member state.

### REVENUES OF THE MAJOR EUROPEAN PSBs (rates % based on source)



Source: ISICult - Italian Institute for Cultural Industry - using various data on EAO, Screen Digest et alia.

- In the majority of markets (we refer in particular to Germany, France and the United Kingdom), public revenues have represented a basic element of stability for the PSBs, compared to the wavering of the advertising market. In all member states which have licence fees (that excludes Spain), the public services have seen their main source of revenue increase at rates that range from 1.3 % (Germany) to 5.5 % (France);
- In contrast, the television advertising market has been hit by a progressive stagnation, with rates inferior to 1 % (as with Italy, Spain or France between 2001 and 2002), when not actually sliding into regression: take the case of Germany, which saw its own television advertising market drop from 4.5 to less than 4 billion euros of resources, but also that of the United Kingdom between 2001 and 2002.
- On a parallel, the market has seen growth in terms of revenue from Pay-TV (summarised in "subscriptions"). In Italy, Germany and the United Kingdom, these represent the market's source of funding that has registered the strongest rate of growth, with a "cagr" of 9.6%, 2.8% and 12.0 % respectively.

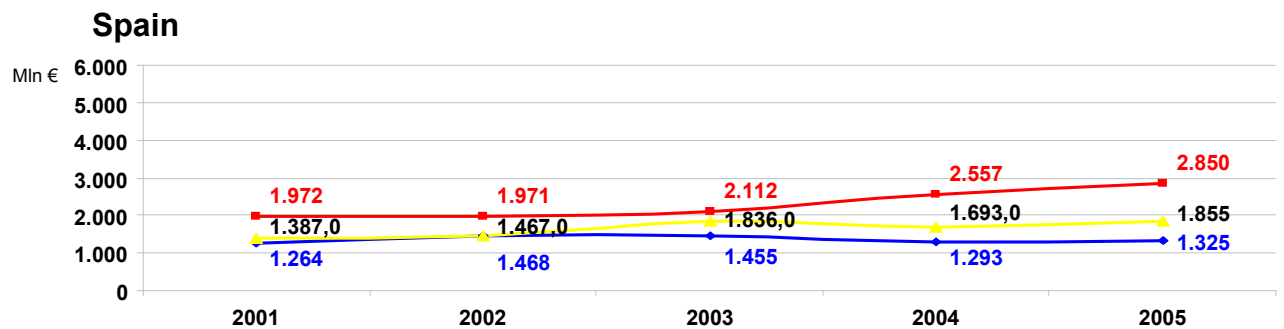
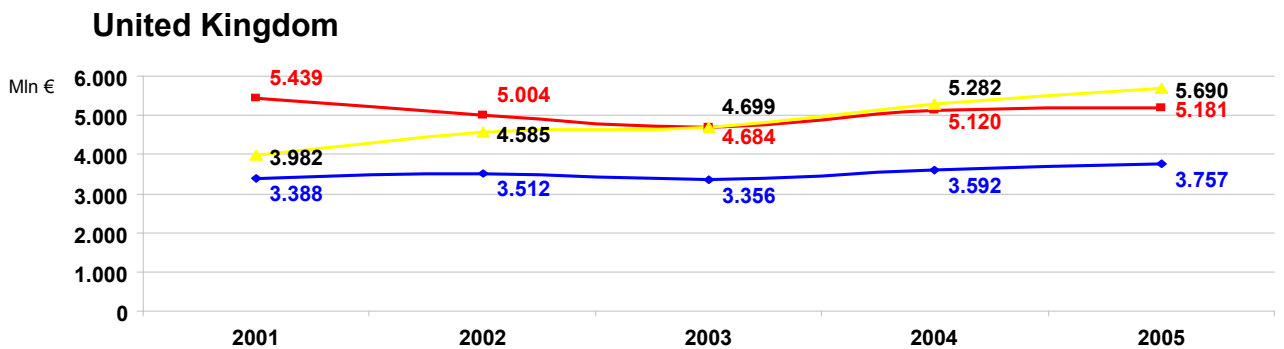
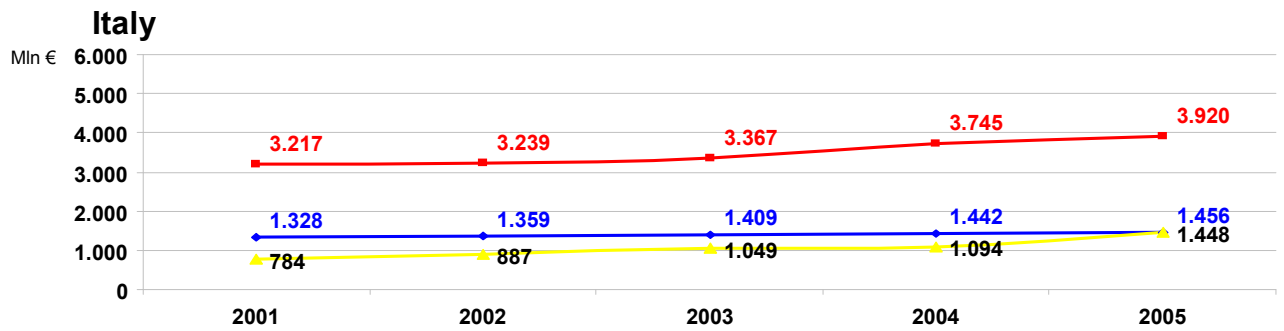
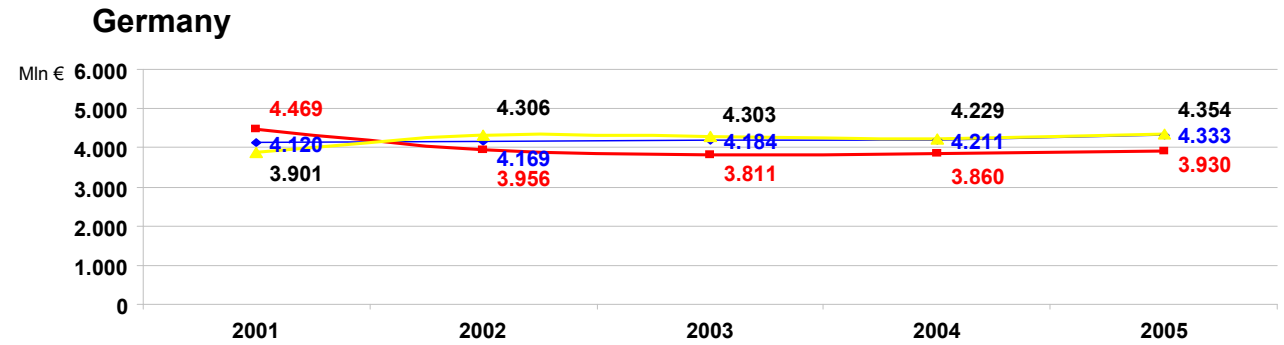
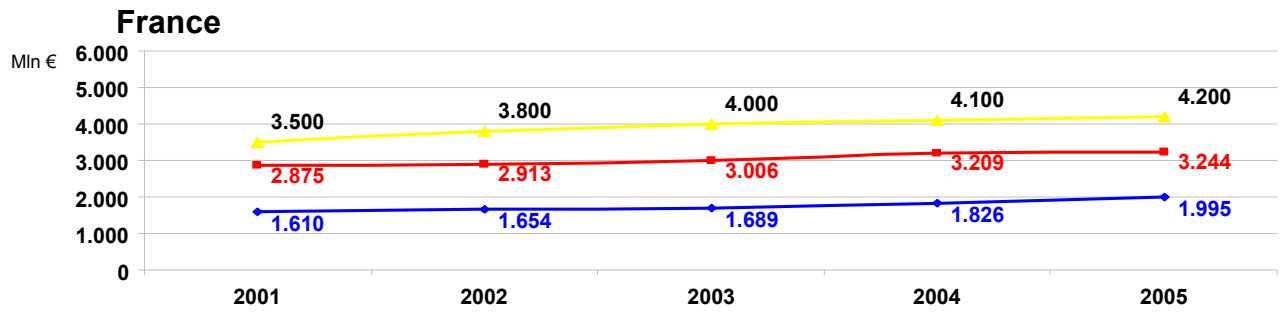
- In France, the United Kingdom and Germany, the income derived from subscriptions to Pay-TV constitutes the market's major item.

<b>The 5 major European television markets: percentage of revenue from public funding, advertising and Pay-TV (%)</b>					
<b>Revenues</b>	<b>France</b>	<b>Germany</b>	<b>Italy</b>	<b>United Kingdom</b>	<b>Spain</b>
<b>Public revenue</b>	44.5	34.5	21.3	25.7	22.0
<b>Advertising</b>	34.4	31.1	57.4	35.4	47.3
<b>Subscriptions</b>	21.1	34.3	21.2	38.9	30.8
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Note: data refers to financial year 2005.

Source: ISICult - Italian Institute for Cultural Industry on various data Agicom, Csa, Alm, Ofcom, Cmt et alia.

# Trends in revenue from public funding compared with advertising and revenue from Pay-TV in the 5 major European markets



Public resources      Advertising      Subscriptions

Source: ISICult - Italian Institute for Cultural Industry - using various data on EAO, Screen Digest et alia.

3.

### **Trends in the advertising market and forecasts for 2006 – 2015 for the major TV groups in the 5 big markets**

- We consider it useful to supply a series of data and guidelines with which to track developments in scenarios relative to future positioning of the major public and commercial television networks operating on traditional free-to-air platforms.

#### **Advertising market shares**

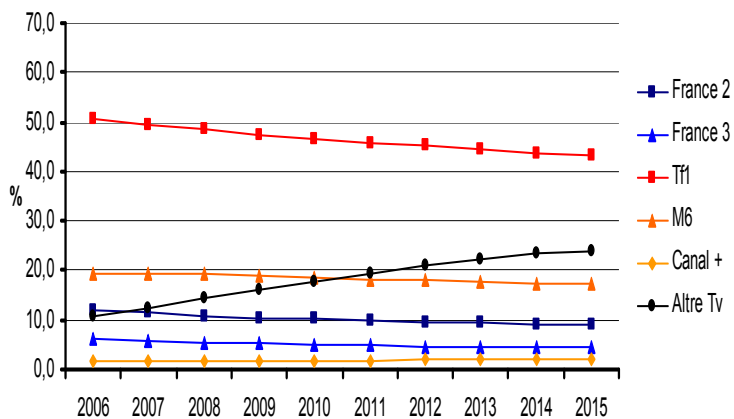
- Recent long-term estimates relative to the advertising market unequivocally show a common trend - from here to 2015 - towards a progressive downsizing in the public broadcasters' market shares, but also in the commercial groups, to the advantage of "other TV media".
- This is a trend that will necessarily push the PSBs to, on the one hand, strengthen the level of public financing in order to try to maintain a healthy balance while on the other hand increasing the incidence of other revenues.
- The British case is emblematic, in which, in 2015, the market share of these latest (already well positioned in 2006-2007) should exceed that of commercial channels, touching the threshold of 40 %.
- In Italy the slice of advertising income of which other forms of TV media will benefit would register a considerable growth, thereby threatening Rai's market share while the drop in Mediaset would be less significant.
- Also in France, Tfl should undergo a dilution of its own market share, though less devastating compared to public television channels, which in this case are also squeezed out by other forms of television media.
- In Italy, in particular, Rai from 2000 to 2007 lost, in real terms, 20 % of advertising revenue.

#### **TV ratings trends**

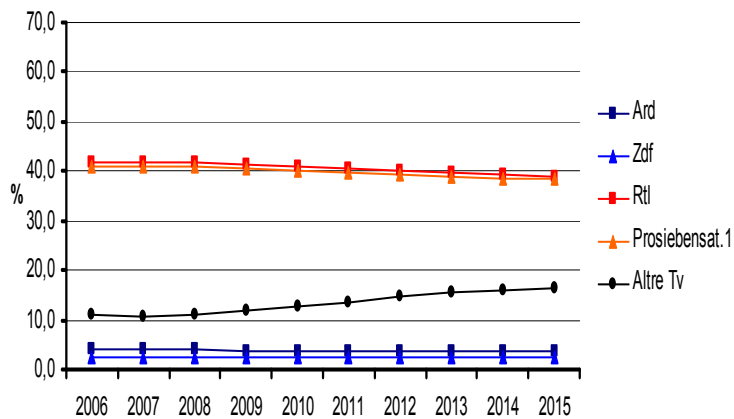
- Estimates for TV ratings trends (share all day) regarding the 5 most prominent European markets show an even more marked trend: in fact in every State (except Germany), right from 2009-2010, other TV platforms succeed in overtaking traditional television media
- In the space of 10 years, the share of other TV media registers steadily high growth rates: from 10-15 % average at the start, reaching a high of 25-30 %. In France, the rate touches 35% to 2015.
- In Italy, as in the rest of the States analysed, a slight yet constant erosion of ratings is noted, linking both public and commercial networks with more visible rates of decrease for the "flagship" networks.
- In Germany, the growth of other TV media in the coming years will not succeed in edging out the pre-eminence of public TV ratings.

## The 5 major European television markets. Advertising market share. Trend 2006-2015 (traditional channels)

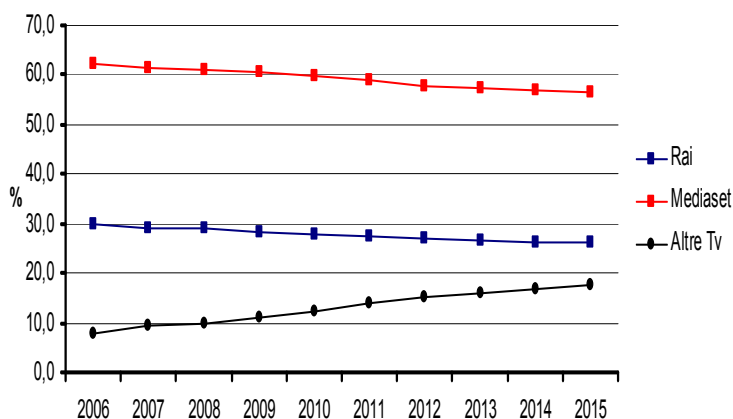
France



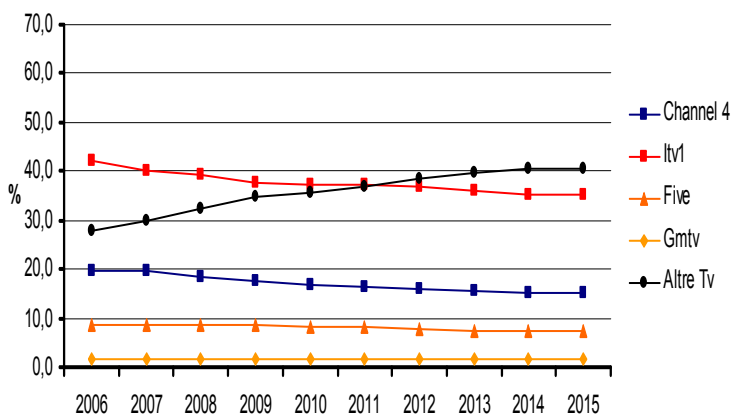
Germany



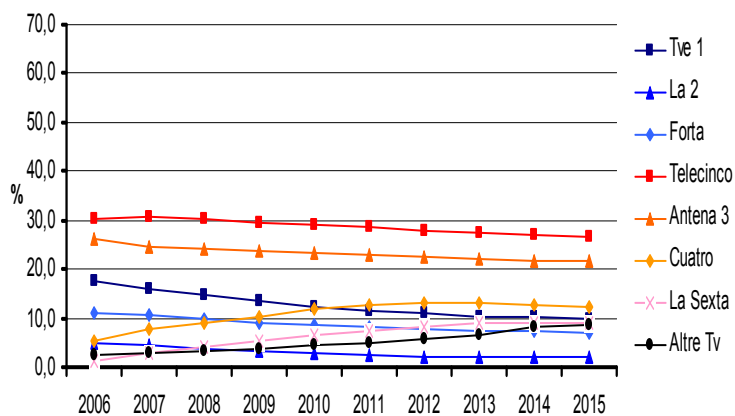
Italy



United Kingdom



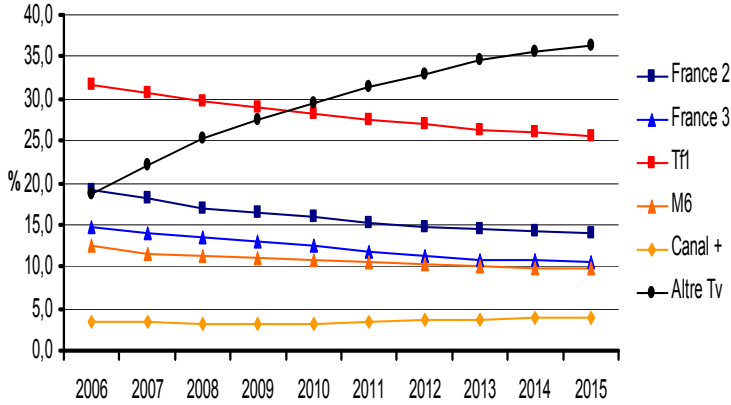
Spain



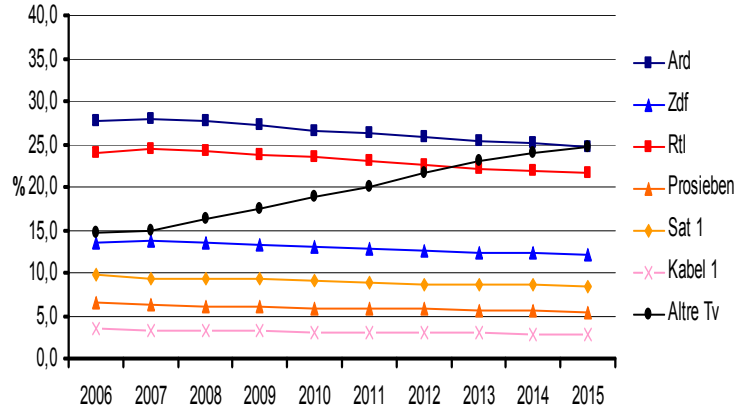
Source: ISICULT - Italian Institute for Cultural Industry - using various data on EAO, Screen Digest et alia.

## The 5 major European television markets. Shares "all-day". Trend 2006-2015

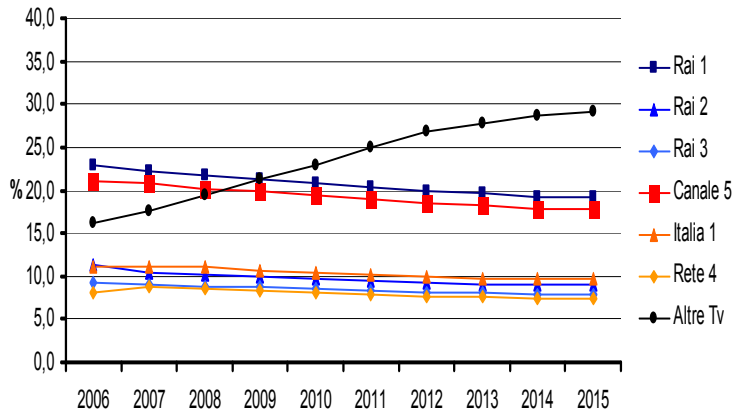
France



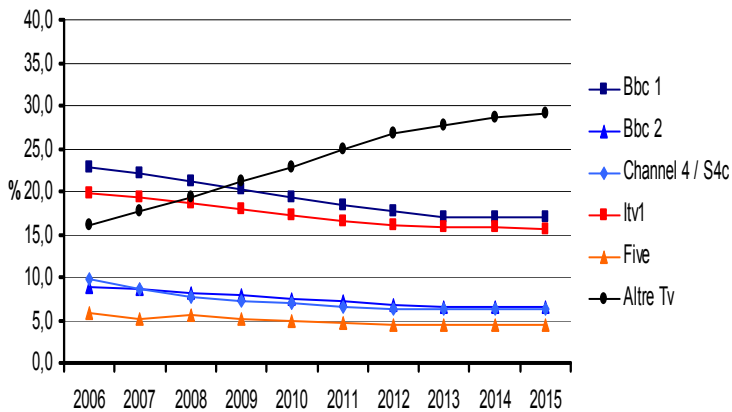
Germany



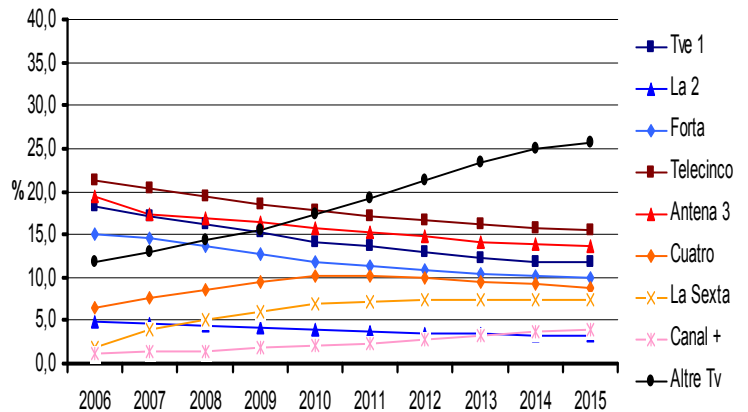
Italy



United Kingdom



Spain



Source: IsICult – Istituto Italiano per l'Industria Culturale using various data on UBS

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4.

**Strategies of the major PSBs in the multi-channel habitat and their presence on different platforms in single markets**

- Analyzing the principal European markets, one notes that not a single pubcaster has yet launched its own pay-to-view platforms, preferring to market its own content on third-party platforms.
- In the French and British markets, the commercial TV networks have launched their own pay-to-view platforms in various multi-channel habitats.

<b>Own pay platforms: comparison between the 5 major European States</b> [ ●: available - grey: not available ]								
States	PSB				Commercial TV			
	DTT	Sat	Cable	IPTV	DTT	Sat	Cable	IPTV
France					●	●	●	●
Germany						●	●	●
Italy					●	●		●
United Kingdom					●	●	●	●
Spain						●	●	●

Source: IsICult - Italian Institute for Cultural Industry using various corporate data

- Germany is the only State in which its public service networks do not offer pay-to-view channels on any of its 4 platforms.
- Rai is present in the satellite television market through the diffusion of its own free-to-air bouquet (3 generalist channels) and the supply of a bouquet of pay channels on the Sky platform. The Italian PSB is also active on the IPTV platform (Rai Click in joint-venture with Fastweb).
- The BBC offers more than half its own channels as pay-to-view.

<b>Pay channels on non-proprietary platforms: comparison between the 6 major European PSBs</b> [ ●: available - grey: not available ]								
States	Number of channels				Platform			
	Free	Pay	Total	%	DTT	Sat	Cable	IPTV
France Télévisions *	6	3	9	33.3		●	●	●
Ard *	10	0	10	-				
Zdf *	8	0	8	-				
Rai	10	6	16	37.5		●		●
Bbc	8	10	18	55.6	●	●	●	●
Tve	5	2	7	28.6		●	●	●

Note: (\*) including Arte.

Source: IsICult - Italian Institute for Cultural Industry using various corporate data